

Liquidation Committee v. Orientex Palau, Inc., 8 ROP Intrm. 321 (2001)
LIQUIDATION COMMITTEE of NANJING ORIENTEX CO., LTD.,
Appellant,

v.

ORIENTEX PALAU, INC., and FRANK HO,
Appellees.

CIVIL APPEAL NO. 00-41
Civil Action No. 99-82

Republic of Palau
Supreme Court, Appellate Division

Argued: May 25, 2001
Decided: June 29, 2001

Counsel for Appellant: Bill Mann

Counsel for Appellees: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
KATHLEEN M. SALII, Associate Justice.

MILLER, Justice:

The Trial Division dismissed this case under the doctrine of *forum non conveniens*, which permits courts to decline jurisdiction over cases which could more conveniently proceed elsewhere. See *United Micronesia Dev. Ass'n, Inc. v. Mitchell*, 7 ROP Intrm. 224, 224 (Tr. Div. 1995); *Piper Aircraft v. Reyno*, 102 S. Ct. 252, 258 (1981). We reverse and remand for further proceedings.

The facts of this case are not complex. Appellant is the self-styled Liquidation Committee of Nanjing Orientex Co., Ltd., an insolvent corporation located in the People's Republic of China ("PRC"). Appellee Orientex Palau, Inc., is a garment factory located and incorporated in the Republic of Palau. Appellee Frank Ho is a resident of Palau. Mr. Ho owns Orientex Palau and is the majority shareholder of Nanjing Orientex through his Hong Kong company World Fame Trading Ltd. Appellant brought this action to collect debts allegedly owed to Nanjing Orientex. The case was originally assigned to Associate Justice Beattie who denied Appellees' motion to dismiss under the doctrine of *forum non conveniens*. The case was reassigned to Associate Justice Michelsen after Judge Beattie resigned from the bench. Judge Michelsen dismissed the case on the grounds of *forum non conveniens* after Appellees filed a motion for reconsideration.

There are two issues on appeal: (1) whether the application of the doctrine of *forum non*

Liquidation Committee v. Orientex Palau, Inc., 8 ROP Intrm. 321 (2001) *conveniens* was erroneous, and (2) whether the granting of a motion previously denied by Judge Beattie violated the law of the case doctrine. We reverse the dismissal of the case on the grounds of *forum non conveniens* and do not reach the issue of whether there was a violation of the law of the case doctrine.¹

In deciding whether to dismiss under the doctrine of *forum non conveniens*, courts must ascertain whether the balance of private and public interests indicate that litigation in an adequate alternative forum would be more convenient for the parties and the court. See **L322** *Mitchell*, 7 ROP Intrm. at 224; *Reyno*, 102 S.Ct. at 258; *Gulf Oil Corp. v. Gilbert*, 67 S.Ct. 839, 843 (1947). Dismissal on the grounds of *forum non conveniens* lies within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Reyno*, 102 S.Ct. at 266. Where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference. *Id.*

It would not have been an abuse of discretion to dismiss this case on the grounds of *forum non conveniens* within a reasonable time after it was filed. Appellees stipulated to jurisdiction and service of process in PRC and the enforceability in Palau of any judgment obtained against them in PRC. These conditions ensured an adequate alternative forum for Appellant's claims. The Trial Division also considered that the litigation arose from a foreign insolvency, none of the parties were citizens of Palau, the collection of the alleged debt would be governed by PRC law, and trial in Palau would require the translation of documents and witness testimony. A conclusion that these factors warranted dismissal would not have been unreasonable.

However, timing of the dismissal substantially alters this calculus. Whether a case should be dismissed pursuant to the doctrine of *forum non conveniens* is a preliminary matter that should be addressed within a reasonable time after the case is filed and should not remain an open issue throughout the proceeding. See *Lony v. E.I. Du Point De Nemours & Co.*, 935 F.2d 604, 605 (3d Cir. 1991). Dismissal after the parties and the court have expended resources in litigation undermines the purpose of the doctrine, which is to avoid expenses associated with litigation in an inconvenient forum. See *Lony*, 935 F.2d at 614; *Lugones v. Sandals Resort, Inc.*, 875 F. Supp. 821, 823 (S.D. Fla. 1995). Defendants should file a motion to dismiss on the grounds of *forum non conveniens* within a reasonable time after the facts or circumstances which serve as the basis for the motion have developed or become known or reasonably knowable. *In re Air Crash Disaster near New Orleans, LA.*, 821 F.2d 1147, 1165 (5th Cir. 1987)²; *Ori Inc. v.*

¹ We bypass this issue, not because it lacks merit, but because it was not raised below. The law of the case doctrine bars reconsideration of decisions made by a previous judge in the same case absent special circumstances such as the discovery of additional facts or an intervening change in controlling law. See, e.g., *Tmeleu Clan v. Daniel*, 2 ROP Intrm. 131, 135 (1990); *Tmetbab Clan v. Gibbons*, 5 ROP Intrm. 295, 297-99 (Tr. Div. 1995). Had it been raised, therefore, the law of the case doctrine should have been taken into account before the motion for reconsideration was granted.

² This case was vacated by *Pan American World Airways, Inc. v. Lopez*, 109 S. Ct. 1928 (1989), but the section of the opinion dealing with *forum non conveniens* was reinstated by the circuit court. *In re Air Crash Disaster near New Orleans, LA.*, 883 F.2d 17 (5th Cir. 1989).

Liquidation Committee v. Orientex Palau, Inc., 8 ROP Intrm. 321 (2001)
Lanewala, 2000 U.S. Dist. WL 1683659, at *3 (D. Kan. Nov. 3, 2000); *Lugones*, 875 F. Supp. at 823. While the failure to file a timely motion to dismiss on the grounds of *forum non conveniens* does not effect a waiver, it is a factor that weighs heavily against dismissal. *Lugones*, 875 F. Supp. at 823.

This case was filed on March 31, 1999. Appellees did not file a motion to dismiss for *forum non conveniens* until March 23, 2000, less than two months before the scheduled trial date of May 8, 2000. The motion for reconsideration was not granted until November 22, 2000, two weeks before the second scheduled trial date of December 5, 2000. Litigation of various motions had narrowed the issues and there is no record of pending discovery when the case was dismissed. The court had already made findings of PRC law on Appellants' authority to represent Nanjing Orientex, one of two relevant issues of foreign law and it can be assumed the parties had begun to prepare for trial. Although trial in Palau may require additional findings of PRC law and there will be translation costs, these inconveniences do not justify dispensing with the result of nearly two years of merits activity two weeks before trial. Any inconvenience to the parties from trial in Palau at this point would be offset by **1323** the costs of starting over in PRC, particularly given Appellees' residence in Palau.

We reverse the granting of Appellees' motion to dismiss on the grounds of *forum non conveniens* and remand the case for further proceedings consistent with this opinion.