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Corporations - Forum Non Conveniens Panama Processes, S.A. v. Cities Service Co.

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that would violate international law. There was no evidence that the Cuban government had not waived its right to assert the defense merely because it was a plaintiff.

CORPORATIONS — FORUM NON CONVENIENS — *Panama Processes, S.A. v. Cities Service Co.*, 500 F. Supp. 787 (S.D.N.Y. 1980).

Plaintiff, Panama Processes, S.A. (Panama), a minority shareholder in the Brazilian corporation of Copebras, brought an action sounding in contract and tort, against defendant, Cities Service Company (Cities), for breach of a majority shareholder's fiduciary duty to a minority shareholder. Cities moved for dismissal on the ground of forum non conveniens.

Panama is a Panamanian corporation with its principal place of business in London. Cities is a Delaware corporation whose principal place of business is in Oklahoma.

Panama, the owner of 30.31% of the stock of Copebras, had obtained an agreement with Copebras that recognized Panama's interest in dividend policy. The agreement stated an intention that Copebras would declare dividends of at least 50% of each year's net income after taxes. In the district court, Panama contended that Cities, between 1965 and 1978, obtained 69.6% ownership of Copebras's stock and, as majority shareholders, it breached its fiduciary duty by employing methods that allowed Copebras's earnings to appear less, thereby diminishing earnings from which dividends could be paid. In support of its motion to dismiss the action on the ground of forum non conveniens, Cities asserted that Brazil was the more appropriate forum since it is Copebras's state of incorporation; accordingly, its law should control. Moreover, as a condition to dismissal, Cities offered to submit to Brazilian jurisdiction. The district court granted defendant's motion.

On appeal, the Second Circuit affirmed the district court's judgment. The court, applying the doctrine of forum non conveniens, stated that unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should not be disturbed. It found that the lower court had carefully examined the relevant factors under the doctrine of forum non conveniens: There was only one witness in New York, and Brazil had a greater interest in deciding the case because the nature of Brazilian corporation law served an economic, political and social function.