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Jurisdiction of Third-Party Claim Against Iran- Finality of Stay Order - Severability (CTI-Container Leasing Corp. v. Uiterwyk Corp.)

applying the forum non conveniens doctrine. The Court reasoned that if determinative weight were given to the possibility of a change in law in the alternate forum, then the forum non conveniens doctrine would become useless. Because jurisdiction and venue requirements are often easily met, a plaintiff could choose the forum with the most favorable laws, and, under the Third Circuit's approach, a defendant would be forced to litigate in that forum regardless of the inconvenience.

In addition to addressing the impact of substantive law variations on the doctrine of forum non conveniens, the Court reaffirmed the distinction between forum selections made by American as opposed to foreign plaintiffs. It concluded that an American forum choice by a foreign plaintiff could not be presumed convenient when the incident giving rise to the litigation occurred outside of the United States. While the Court did not find that determinative weight should be given to the forum choice of an American citizen or resident plaintiff, it did agree with the district court that the American plaintiff's choice should be given special deference.

Justice White concurred in part and dissented in part, finding it inappropriate for the Court to review the district court's analysis of private and public interest factors. Justices Stevens and Brennan dissented on similar grounds[2] while Justices Powell and O'Connor took no part in the decision.

JURISDICTION OF THIRD-PARTY CLAIM AGAINST IRAN—FINALITY OF STAY ORDER—SEVERABILITY—*CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685 F.2d 1284 (11th Cir. 1982).

CTI-Container Leasing Corp. (CTI), a Delaware corporation, leased several ocean cargo containers and related equipment to Uiterwyk Corp. (Uiterwyk), a Florida corporation and an alleged agent for Iran Express Lines (IEL). IEL transported the leased equipment to Iran and retained custody of it. In October 1980 CTI brought suit against Uiterwyk claiming that Uiterwyk breached the leases and failed to pay its obligations to CTI under the leases. In February 1981 Uiterwyk moved to implead Iran and IEL claiming that an agency relationship with them necessitated their joinder as third-party defen-

2. *Id.* at 261.

dants. The United States District Court for the Middle District of Florida stayed CTI's claim against Uiterwyk pending a ruling on the Iran-United States Claims Tribunal's jurisdiction to hear Uiterwyk's claims against Iran and IEL.[1]

The United States Court of Appeals for the Eleventh Circuit held that the stay order was a final order subject to appellate review[2] and that the district court had abused its discretion in granting a stay of the entire proceeding. The trial court was directed to proceed with the main claim and to sever and stay only the third-party claim.

The court of appeals noted that the finality of a stay order of a district court was to be determined by its practical effects, pursuant to the guidelines established by the United States Supreme Court in *Cohen v. Beneficial Industrial Loan Corp.*[3] and *Gillespie v. United States Steel Corp.*[4] The district court proceedings had been stayed pending a determination of the Claims Tribunal's jurisdiction over Uiterwyk's claims against Iran and IEL. This constituted an indeterminate delay of months or even years, and CTI's claim was effectively out of court. Thus, the stay order was a final order subject to appellate review. Although this stay order as applied to Uiterwyk's claims against Iran and IEL was mandatory pursuant to Executive Order 12,294,[5] the stay of CTI's claim against Uiterwyk was subject to review under an abuse of discretion standard. The indefinite duration of delay was deemed immoderate and thus an abuse of discretion.[6]

In response to Uiterwyk's arguments in support of the stay order, the court made the following points. First, Uiterwyk would not be prejudiced in developing evidence to support its agency defense because breach of contract, not agency, was the issue between CTI and Uiterwyk. Second, Uiterwyk would not be subject to duplicative costs in litigating two separate actions as its claim against Iran and IEL was severable and within the Claim Tribunal's jurisdication. Any extra costs Uiterwyk might incur did not outweigh the injustice to CTI from a stay of its claim. Third, joinder of Iran and IEL as third-party defen-

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1. Claims of United States nationals against Iran and its instrumentalities had been suspended in United States courts in February 1981 pursuant to Executive Order 12,294, 46 Fed. Reg. 14,111 (1981).

2. 28 U.S.C. § 1291 (1976).

3. 337 U.S. 541 (1949).

4. 379 U.S. 148 (1964).

5. *See supra* note 1.

6. In reaching its holding, the court relied upon the Supreme Court's decision in Landis v. North American Co., 229 U.S. 248 (1936), which stated that a stay of proceedings was proper only when it would be in effect for a moderate or reasonable duration. Specifically, the Court there found that a stay of indefinite duration, in the absence of a pressing need, was an abuse of discretion.

dants was feasible under Executive Order 12,294. Consequently, the district court was not required to dismiss the entire action under Rule 19(b)[7] regarding non-joinder of indispensible parties.

In support of its conclusions, the court cited the actions taken by three other district courts in similar cases against Uiterwyk in which the leasing agent had moved to implead Iran and IEL.[8] These courts severed and stayed the third-party claims and proceeded to trial on the main action. The Eleventh Circuit agreed that such action was the best means to balance, on the one hand, the implementation of the Iran-United States agreements and Executive Order 12,294 suspending claims by United States nationals against Iran and, on the other hand, the plaintiff's demand for justice in a legitimate claim involving two American corporations.

WARSAW CONVENTION—LIABILITY LIMITS—ENFORCEABILITY—*Franklin Mint Corp. v. Trans World Airlines, Inc.*, 690 F.2d 303 (2d Cir. 1982).

The Franklin Mint Corporation contracted with Trans World Airlines (TWA) for shipment to London of numismatic materials. No special declaration of value was made by Franklin Mint. The goods were either lost, stolen or destroyed, and liability was imposed on TWA in accordance with the parties' contractual stipulation that the strict liability provision of the Warsaw Convention[1] would apply. Franklin Mint sought to recover $250,000 in damages. TWA claimed that its liability was limited by article 22 of the Convention to 250 francs per kilogram with each franc equal to 65.5 milligrams of fine gold. TWA moved for summary judgment, arguing that the francs must be converted either on the basis of the International Monetary Fund's (IMF) reserve unit of account, the Special Drawing Right (SDR), the former official United States price of gold or the current value of the French franc. Franklin Mint cross-moved for summary

7. FED. R. CIV. P. 19(b).

8. NIC Leasing, Inc. v. Uiterwyk Corp., No. 81 Civ. 3866 (S.D.N.Y. Jan. 1, 1982); Cotco Leasing Co. v. Uiterwyk Corp., No. 80-706 (E.D. Pa. Nov. 9, 1981); Xtra, Inc. v. Uiterwyk Corp., No. 79-1021-Civ.-T-H (M.D. Fla. Aug. 25, 1981).

1. Convention for the Unification of Certain Rules Relating to International Transportation by Air, art. 18, *opened for signature*, October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 U.N.T.S. 11 (adherence of the United States proclaimed October 29, 1934).