



## Dickens v. NXP Semiconductors

2023 | Cited 0 times | N.D. California | November 21, 2023

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

ANTOINETTE DICKENS,

Plaintiff, v. NXP SEMICONDUCTORS,

Defendant.

Case No. 23-cv-01073-PCP

ORDER GRANTING MOTION TO DISMISS Dkt. No. 21

amended complaint. For the reasons that follow, the Court grants the motion based on forum non conveniens.

**BACKGROUND** Dickens worked at NXP Semiconductors in the Hamburg, Germany office as a System Security Manager on the Site Certification Team from February 2018 through May 2023. Dickens filed this lawsuit against NXP on March 9, 2023, alleging that her employer violated Title VII and 42 U.S.C. § 1981 by engaging in a hostile work environment, disparate treatment, failure to promote, disparate pay, and retaliation, all based on both her race and her sex. NXP moved to dismiss complaint on three grounds: (1) failure to state a § 1981 claim under Federal Rule of Civil Procedure 12(b)(6); (2) failure to state a Title VII claim under Rule 12(b)(6); and (3) dismissal based on forum non conveniens. On October 16, 2023, Dickens amended her complaint to remove the claims under 42 U.S.C. § 1981, leaving only the Title VII claims. 1

1 In her amended complaint, Dickens clarifies that she is suing NXP NV, a Dutch parent company. Dkt. No. 37-3, at 3. Dickens, however, initially served NXP USA, Inc. an American subsidiary of NXP NV which filed the pending motion to dismiss and subsequent briefing materials. Dkt. No. 21, at 2; Dkt. No. 42, at 6. Because the Court dismisses the case on grounds of forum non

**STANDARD OF REVIEW** forum non conveniens allows a court to dismiss a case properly before it *Cooper v. Tokyo Electric Power Co., Inc.*, 860 F.3d 1193, 1210 (9th Cir. 2017). To prevail on a motion to dismiss based on forum non conveniens, the defendant bears the burden of demonstrating that an adequate alternative forum exists and that the balance of private and public interest factors favors dismissal. *Ceramic Corp. of America v. Inka Maritime Corp.*, 1 F.3d 947, 949 (9th Cir. 1993) (citing



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*Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981)). In the Ninth Circuit, the private interest factors are: (1) the residence of the parties and witness to physical evidence and other sources of proof, (4) whether unwilling witnesses can be compelled to testify, (5) the cost of bringing witnesses to trial, (6) the enforceability of the judgment, and (7) any practical problems or other factors that contribute to an efficient resolution. *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1180 (9th Cir. 2006). The public interest factors are: (1) the local interest in the lawsuit, (2) the court's familiarity with the governing law, (3) the burden on local courts and juries, (4) congestion in the court, and (5) the costs of resolving a dispute unrelated to a particular forum. *Id.* at 1181.

The forum non conveniens determination ultimately lies in the district. *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001) (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504 (1947)). the complaint need not be accepted as true, and the court may consider evidence outside the

*Farhang v. Indian Inst. of Tech.*, 2012 WL 11379, at \*8 (N.D. Cal. Jan. 12, 2012); accord *Alcoa S. S. Co., Inc. v. M/V Nordic Regent*, 654 F.2d 147, 149 (2d. Cir. 1980). I. The Balance of Factors Favors Litigation in an Alternative Forum.

A. Germany Provides an Adequate Alternative Forum. As noted above, dismissal for forum non conveniens is permissible only if the defendant moving for dismissal establishes at the outset that there is an adequate alternative forum in which

conveniens, it need not consider which defendant would be the proper defendant with respect to Title VII claims. An alternative forum is inadequate if provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all. *Creative Technology, Ltd. v. Aztech System Pte., Ltd.*, 61 F.3d 696, 701 (9th Cir. 1995) (citing *Piper*, 454 U.S. at 254). The determination in *Leetsch v. Freedman*, 260 F.3d 1100,

in the competency to decide the legal questions involved. *Id.* The moving party may demonstrate the declarations. *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 768 (9th Cir. 1991).

Here, NXP has met its burden as the moving party. As a threshold matter, in making its adequacy determination, the Court can consider the employment contract introduced by NXP, which shows that Dickens was employed by NXP Germany a German subsidiary of the Dutch parent company NXP NV. Dkt. No. 43-2. Undoubtedly, NXP Germany is subject to personal jurisdiction in Germany and can be served there. 2

Additionally, Germany provides an adequate remedy for Dickens under its anti-discrimination laws. In *Ranza v. Nike, Inc.*, 793 F.3d 1059 (9th Cir. 2015), for example, the Ninth Circuit found the Netherlands to be an adequate alternative forum for an American citizen to bring employment discrimination claims because Dutch law prohibits such discrimination. *Id.* at 1078. The Court did so even though Dutch law provides less generous remedies than Title VII. *Id.* similarly establish that



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Germany has robust anti-discrimination laws that prohibit workplace discrimination on the basis of both race and sex. Dkt. No. 21-3. Under Ranza, that is sufficient.

Dickens counters nuances of historic and systemic race discrimination, and the intersectionality of race and gender at issue in this case. Dkt. No. 36, at 25. She fails to substantiate this claim with any concrete evidence, however.

2 The fact that NXP USA, Inc. is responsible for the current briefing is of no consequence. An American corporate defendant can concede that another country is an adequate alternative forum if its foreign corporate partner (here, NXP Germany) can be served there. *Estate of Thomson ex rel. Estate of Rakestraw v. Toyota Motor Corp. Worldwide*, 545 F.3d 357, 365 (6th Cir. 2008). Further, under Ranza, purportedly weaker understanding of the relevant principles of discrimination law generally would not make the alternative forum inadequate.

By identifying the numerous relevant anti-discrimination laws that exist in Germany, NXP has met its burden to show that Germany is an alternative forum that could provide Dickens with an adequate remedy.

B. The Balance of Private and Public Interest Factors Favors Dismissal. If the moving party shows that an adequate alternative forum exists, courts must then balance the relevant private and public interest factors in determining whether dismissal for forum non conveniens is appropriate. On balance, both the private factors and public factors support dismissal here.

The first private interest factor is the residence of the parties and witnesses. Because the , most parties and witnesses in this case will reside in Germany. Though Dickens is an American citizen who is purportedly relocating back from Europe to the U office and was perpetrated mostly by German employees. 3

ecause the parties and witnesses in this case are largely based in Germany, this American forum would be inconvenient for most litigants. Human Resources (HR) officers are based in the United States, the HR leadership team is located at NXP US inconvenient forum for these US-based officers as well.

German may make the German forum inconvenient for her, this fact alone does not sway this factor against dismissal given that the majority of litigants are based in Germany.

The third private interest factor is access to physical evidence and other sources of proof. In this case, an American forum would present legal and procedural challenges for accessing

3 d in San José, California during the relevant period Sievers lived and worked in Europe during the relevant years. Dkt. No. 21-5. physical evidence and other sources of proof located in Germany. As



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NXP notes, the process of conducting discovery in Germany will be time-consuming and expensive because of the complex procedures required to obtain German evidence for use in an U.S. civil proceeding under the Hague Convention. Dkt. No. 21, at 29. Even obtaining electronic evidence like e-mails can present technical challenges because of requirements in the German Id. at 30.

The fourth private interest factor is whether unwilling witnesses can be compelled to testify. Under the Hague Convention, compelling the deposition of a German resident for a U.S. civil proceeding would require an American court to first obtain consent from a German court. Id. This prior approval process can be cumbersome and delay the proceedings. See *Société Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 542 (1987) (noting that such approval as well as less certain to produce needed evidence This factor thus favors the German forum.

With respect to the fifth factor the cost of bringing witnesses to trial it is clear that the time and expense of bringing witnesses to trial from Germany to the United States (or even from Texas to California) would be quite high.

As to the sixth factor, it is not clear that a judgement by this Court against NXP Germany would be directly enforceable in Germany absent evidence of a relevant bilateral treaty between the U.S. and Germany. Dkt. No. 21, at 31. As Dickens concedes, across NXP USA, Inc. and NXP Germany. Dkt. No. 36, at 23. Determining whether

exists requires several factual determinations that the Court cannot make at this stage. Thus, while this factor may not support dismissal, it also does not militate against dismissal.

The seventh private interest factor is the presence of practical problems or other factors that would interfere with an efficient resolution. Because most of the key witnesses in this case live in Germany, litigating in this forum is likely to be impractical and inefficient.

On balance, these private factors favor dismissal of this case. The public interest factors also weigh in favor of dismissal.

First, German courts have a strong interest in enforcing their own anti-discrimination laws with respect to discrimination experienced entirely or almost entirely within Germany. While U.S. courts are certainly better suited than German courts to address Title VII claims, whether such claims can even be asserted extraterritorially is deeply disputed here.

Second, and relatedly, German courts are undeniably better suited than this Court to interpret and apply any of their own anti-discrimination laws that might apply to this case.

Third, asking jurors in California to decide the issues presented here, which arose primarily in Germany and involve a company headquartered in the Netherlands and Texas, would be unduly



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burdensome. Indeed, the jurors would likely be confused as to the reasons why the case was being pursued in San José, California instead of Germany, the Netherlands, or Texas.

Fourth, while NXP has not expressly demonstrated that hearing this case would contribute to congestion in this Court, the logic of *United States v. Vestor, LLC*, 290 F.Supp.2d 1057 (N.D. Cal. Oct. 28, 2003) applies with equal force here. As the Court explained in that case, The U.S. District Court for the Northern District of California is a busy court. Trying this case here would require translating law and testimony into and from German. It would be an imposition to ask California jurors to decide a dispute concerning German citizens, corporations and property. This is not a local controversy, since all of the assets and rights at issue are located in Germany and all the culminating events occurred in Germany. California has little interest [in this lawsuit]. *Id.* at 1069.

Fifth, and finally, there may be significant costs to having this Court resolve a dispute that has little relation to this forum. For example, interpretations of German statutes by this Court could conflict with those by German courts. Such conflicts are unnecessary and should be avoided.

**CONCLUSION** Considered together, the private and public interest factors favor dismissal of the lawsuit. Accordingly, . All of s claims are dismissed without prejudice. The Clerk shall enter judgment and close the case. 4

IT IS SO ORDERED. Dated: November 21, 2023

P. Casey Pitts United States District Judge

4 le 12(b)(6) arguments regarding Title VII.

