

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/17/16

DEPT. 30

HONORABLE BARBARA M. SCHEPER

JUDGE

C. WILSON

DEPUTY CLERK

HONORABLE #13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. MAPSTEAD, C.A.

Deputy Sheriff

NONE

Reporter

8:35 am

BC594455

Plaintiff

Counsel

STEVEN PAGE

NO APPEARANCES

VS

Defendant

EDWARD LLOYD ROBERTSON ET AL

Counsel

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER;

The Court rules as follows on the motion taken under submission on 2/5/16:

Page vs. Robertson, et. al., Case No. BC594455

Ruling re: Defendants' Motion to Stay

Defendants Edward Robertson, James Creeggan, Kevin Hearn and Tyler Stewart move to stay the instant action on grounds of forum non conveniens. For the reasons stated in the moving papers, the motion is granted and the action is ordered stayed.

Plaintiff's complaint alleges causes of action for declaratory relief, accounting, breach of fiduciary duty and breach of contract. The first cause of action is alleged against all defendants while the remaining claims are alleged against defendant Robertson only.

Plaintiff alleges that he and defendants were members of the band Barenaked Ladies. (Compl., 1, 7.) In 2006, the band was requested by defendant Warner Bros. Television to compose the theme song for the television series "The Big Bang Theory."

<p align="center">MINUTES ENTERED 02/17/16 COUNTY CLERK</p>
--

02/22/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/17/16

DEPT. 30

HONORABLE BARBARA M. SCHEPER

JUDGE

C. WILSON

DEPUTY CLERK

HONORABLE
#13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. MAPSTEAD, C.A.

Deputy Sheriff

NONE

Reporter

8:35 am

BC594455

Plaintiff

Counsel

STEVEN PAGE

NO APPEARANCES

VS

Defendant

EDWARD LLOYD ROBERTSON ET AL

Counsel

NATURE OF PROCEEDINGS:

(Id., 8.) On 8/21/07, the band, through its loan out company, entered into a written agreement with Warner in connection with the composition which provides that the band was to receive certain designated royalties and other payments. (Id., 9.) "The Big Bang Theory" has been a successful television series and has aired many times, generating substantial royalties and other revenue. (Id., 10.) Plaintiff alleges that the band's share of the royalties have been forwarded to defendant Robertson. (Ibid.) Plaintiff alleges that he has not received his share of the proceeds from Robertson or any other person or entity. (Id., 11.)

Code of Civil Procedure section 418.10 provides that: "(a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: . . . [] (2) To stay or dismiss the action on the ground of inconvenient forum"

Pursuant to California Code of Civil Procedure section 410.30, "[w]hen a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or

<p align="center">MINUTES ENTERED 02/17/16 COUNTY CLERK</p>
--

02/22/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/17/16

DEPT. 30

HONORABLE BARBARA M. SCHEPER

JUDGE

C: WILSON

DEPUTY CLERK

HONORABLE #13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. MAPSTEAD, C.A.

Deputy Sheriff

NONE

Reporter

8:35 am

BC594455

Plaintiff

Counsel

STEVEN PAGE

NO APPEARANCES

VS

Defendant

EDWARD LLOYD ROBERTSON ET AL

Counsel

NATURE OF PROCEEDINGS:

dismiss the action in whole or in part on any conditions that may be just." (Code Civ. Proc., § 410.30(a).) The moving parties have the burden of proof to show that the forum is seriously inconvenient. (In re Marriage of Taschen (2005) 134 Cal.App.4th 681, 691; Stangvik v. Shiley, Inc. (1991) 54 Cal.3d 744, 751.) The granting or denial of a motion for forum non conveniens lies within the court's substantial discretion. (Roman v. Liberty University, Inc. (2008) 162 Cal.App.4th 670, 682; Stangvik, 54 Cal. 3d at p. 751.) Particularized evidence is not required; instead, a court evaluates general facts of a case and general considerations of the factors of forum non conveniens. (Morris v. AGFA Corp. (2006) 144 Cal. App. 4th 1452, 1462.)

Plaintiff argues that an action cannot be dismissed on grounds of forum non conveniens when the action involves a "major contract." (Weil & Brown, 3:410.)

Any person may maintain an action or proceeding in a court of this state against a foreign corporation or nonresident person where the action or proceeding arises out of or relates to any contract, agreement, or undertaking for which a choice of California law has been made in whole or in part by the parties thereto and which (a) is a contract, agreement, or undertaking, contingent or otherwise, relating to a transaction involving in the aggregate not

<p align="center">MINUTES ENTERED 02/17/16 COUNTY CLERK</p>
--

02/22/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/17/16

DEPT. 30

HONORABLE BARBARA M. SCHEPER

JUDGE

C. WILSON

DEPUTY CLERK

HONORABLE #13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. MAPSTEAD, C.A.

Deputy Sheriff

NONE

Reporter

8:35 am

BC594455

Plaintiff

Counsel

STEVEN PAGE

NO APPEARANCES

VS

Defendant

EDWARD LLOYD ROBERTSON ET AL

Counsel

NATURE OF PROCEEDINGS:

less than one million dollars (\$1,000,000), and (b) contains a provision or provisions under which the foreign corporation or nonresident agrees to submit to the jurisdiction of the courts of this state.
(Code Civ. Proc., § 410.40.)

Plaintiff asserts that the action arises out of or relates to the Artist Lending Package Agreement entered into between Warner Bros. Television and BNL Entertainment, Inc., a loan out corporation acting on behalf of the band. (See Compl., 1, 9, Exh. 1.) The agreement includes a choice of law and venue provision stating that all matters not pursued through arbitration "may be heard only in a court of competent jurisdiction in Los Angeles County applying California law." (See Def. Exh. 8 [additional terms, § 16].) Plaintiff declares that the underlying transaction involves at least \$1,000,000. (See Page Decl., 3.)

Defendants argue that the dispute at issue does not involve the Warner Bros. contract at all but rather other agreements between and amongst the band members that are being actively litigated in Canada pursuant to an action filed by plaintiff there over two years ago. Defendants point out that the Warner Bros. agreement is between Warner on the one hand and defendants' loan out company on the other hand and has no bearing on the dispute over how royalties

<p align="center">MINUTES ENTERED 02/17/16 COUNTY CLERK</p>
--

02/22/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/17/16

DEPT. 30

HONORABLE BARBARA M. SCHEPER

JUDGE

C. WILSON

DEPUTY CLERK

HONORABLE #13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. MAPSTEAD, C.A.

Deputy Sheriff

NONE

Reporter

8:35 am

BC594455

Plaintiff

Counsel

STEVEN PAGE

NO APPEARANCES

VS

Defendant

EDWARD LLOYD ROBERTSON ET AL

Counsel

NATURE OF PROCEEDINGS:

paid by Warner should be divided among the band members. Therefore, according to defendants, CCP Section 410.40 is inapplicable because the action does not arise out of or relate to the Warner Bros. contract. The court agrees and finds that defendants have carried their burden to show that California is a seriously inconvenient forum and therefore the action should be stayed.

However, even if CCP Section 410.40 governs these proceedings, the court on its own motion stays the instant action pending resolution of the Canadian action. It appears to the court that the Canadian action, which has been litigated for over two years, may well resolve issues which would impact the instant action. In order to avoid potentially inconsistent rulings, this matter must be stayed.

Plaintiff's objections to defendants' evidence submitted in support of the instant motion are overruled for failure to comply with CRC 3.1354.

The ruling on defendants' objections is signed and filed this date.

The case management conference scheduled for February 29, 2016 is vacated. The court's sets a status conference regarding the proceedings in

<p align="center">MINUTES ENTERED 02/17/16 COUNTY CLERK</p>
--

02/22/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/17/16

DEPT. 30

HONORABLE BARBARA M. SCHEPER

JUDGE

C. WILSON

DEPUTY CLERK

HONORABLE #13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. MAPSTEAD, C.A.

Deputy Sheriff

NONE

Reporter

8:35 am

BC594455

Plaintiff
Counsel

STEVEN PAGE
VS

NO APPEARANCES

EDWARD LLOYD ROBERTSON ET AL

Defendant
Counsel

NATURE OF PROCEEDINGS:

Canada for 8/18/16 at 8:30.a.m. in this department.

The (proposed) order re: plaintiff's objections to evidence in connection with motion to stay action is Refused. Not in proper form.

The re-revised proposed orders to seal are not in the proper format.

Order To Show Cause Re Receipt of Properly Revised Sealing Orders is set for 8/16/16 at 8:30 a.m. in this department.

Clerk to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid,

<p align="center">MINUTES ENTERED 02/17/16 COUNTY CLERK</p>
--

02/22/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/17/16

DEPT. 30

HONORABLE BARBARA M. SCHEPER

JUDGE

C. WILSON

DEPUTY CLERK

HONORABLE #13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. MAPSTEAD, C.A.

Deputy Sheriff

NONE

Reporter

8:35 am

BC594455

Plaintiff

Counsel

STEVEN PAGE

NO APPEARANCES

VS

Defendant

EDWARD LLOYD ROBERTSON ET AL

Counsel

NATURE OF PROCEEDINGS:

in accordance with standard court practices.

Dated: 2/18/16

Sherri R. Carter, Executive Officer/Clerk

By:

C. Wilson

Richard C. Leonard
Leonard, Dicker & Schreiber LLP
9430 Olympic Blvd., Suite 400
Beverly Hills, CA 90212-4519

Michael Niborski
Pryor Cashman LLP
1801 Century Park East, 24th Floor
Los Angeles, CA 90067

MINUTES ENTERED
02/17/16
COUNTY CLERK

02/22/2016