

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER  
Justice

PART 61

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PACIFIC ALLIANCE ASIA OPPORTUNITY FUND L.P.

Plaintiff,

INDEX NO. 652077/2017

MOTION DATE 6/29/2017

- v -

MOTION SEQ. NO. 001

KWOK HO WAN,

Defendant.

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 99, 100, 101

were read on this application to/for \_\_\_\_\_ Dismiss

Upon the foregoing documents, it is

Defendant's motion to dismiss this action for forum non conveniens is granted. New York has no interest in deciding a dispute between a Hong Kong investment fund and a citizen of the People's Republic of China with respect to a transaction governed by Hong Kong law relating to real estate in the PRC notwithstanding that the defendant citizen of the PRC presently resides in New York. While the extent to which documents and witnesses relating to this case are located in Hong Kong is unclear, the transactions out of which the claim arises occurred primarily in a foreign jurisdiction and the circumstance that the defendant can be found here is insufficient to outweigh the burden on the New York courts to hear this case. There are indisputably documents and witnesses in Hong Kong and Hong Kong's interest in this lawsuit is far greater than New York's interest. It appears that a translator will be required for at least certain documents and witnesses.

This same analysis largely dictated the forum non conveniens dismissal of the case of *Ace Decade Holdings Ltd. v. UBS AG*, 2016 WL 7158077 (Sup. Ct. NY. Co. December 7, 2016): Perhaps more on point is the First Department case of *Norex Petroleum Ltd v. Blavatnik, et al.*,

151 A.D. 3d 647 (1st Dep't 2017). There the Court affirmed dismissal of a case for forum non conveniens where multiple defendants resided in New York and it was alleged that acts in furtherance of the events that were the subject of the complaint, including the wiring of funds from New York, did not warrant the courts of New York adjudicating a claim by a Cypriot corporation relating to dividends from a Russian company where the key events took place in Russia where the bulk of witnesses and documents were located. Citing other First Department precedents, the *Norex* Court held that “[O]ur courts should not be under any compulsion to add to their heavy burdens by accepting jurisdiction of a cause of action having no substantial nexus with New York.” 151 A.D.3d at 648 quoting *Silver v. Great Am. Ins. Co.*, 29 N.Y.2d 356, 361 (1972). This is precisely such a case. As to the claim that the defendant would not appear in a Hong Kong court, that circumstance would likely benefit plaintiff rather than be a detriment to plaintiff.

Accordingly, it is hereby ORDERED that defendant’s motion is granted and the Clerk is directed to enter judgment dismissing the action based on forum non conveniens.

9/20/2017  
DATE

*Barry R. Ostrager*  
BARRY R. OSTRAGER, J.S.C.  
**BARRY R. OSTRAGER**  
JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	
			<input type="checkbox"/>	DENIED		