

SHORT FORM ORDER

SUPREME COURT-NEW YORK STATE-NASSAU COUNTY

PRESENT: HON. ANTHONY L. PARGA

JUSTICE

X PART 4

MARGGIE BATISTA,

Plaintiff,

INDEX NO. 606730/14

-against-

MOTION DATE: 10/06/16
SEQUENCE NO: 004, 005,006

XXX

NERQUIN ANTIGUA, DIONY ANTIGUA, JOSE ANTIGUA, WIRLEN ANTIGUA, ANTIGUA COLLEGE INTERNATIONAL, INC. & ANTIGUA GROUP, INC.

Defendants.

X

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Upon the foregoing papers, the motion by defendants Diony Antigua, Jose Antigua and Antigua College International, Inc. (hereinafter the "moving defendants") for an order pursuant to CPLR Rule 327 changing the venue of this action from the State of New York, County of Nassau to the State of Florida, Miami-Dade County Circuit Civil Court; the cross-motion of plaintiff Marggie Bastista requesting, *inter alia*, default judgment against defendant Nerquin Antigua; and the cross-motion of defendant Nerquin Antigua and the Antigua Group Inc. which seeks, *inter alia*, an order pursuant to CPLR Rule 3211 dismissing the plaintiff's complaint are determined as follows.

The within action seeks monetary damages arising out of an alleged breach of fiduciary duty and fraudulent concealment by the defendant Nerquin Antigua; an alleged breach of contract, conversion, unjust enrichment and fraud against the moving defendants and also alleges aiding and abetting a breach of fiduciary duty against defendant Diony Antigua.

The moving defendants contend that Nassau County is not a proper forum for this action pursuant to CPLR 327 in that all of the moving defendants are situated in Miami-Dade County in the State of Florida; that all of the principal and material witnesses are situated in Miami-Dade County in the State of Florida; and that all of the facts alleged in the plaintiff's complaint concern interests in a Trust, among other interests, all of which are located in Miami-Dade County in the State of Florida.

"The doctrine of forum non conveniens permits a court to stay or dismiss an action when, although it may have jurisdiction over the action, the court determines that in the interest of substantial justice the action should be heard in another forum" (*Koop v. Guskind*, 116 A.D.3d 672, 673, 984 N.Y.S.2d 68 [2nd Dept. 2014]).

"On a motion to dismiss on the ground of forum non conveniens, the burden is on the movant to demonstrate the relevant private or public interest factors that militate against a New York court's acceptance of the litigation...Among the factors that the court must weigh are the residency of the parties, the potential hardship to proposed witnesses...the availability of an alternative forum, the situs of the underlying actionable events, the location of evidence, and the burden that retention of the case will impose upon the New York courts" (*Wild v. Univ. of Pennsylvania*, 115 A.D.3d 944, 946, 983 N.Y.S.2d 58 [2nd Dept. 2014]).

It appears from the submissions of all of the parties herein that each and every named party, including the plaintiff, reside in either the State of Florida or the Dominican Republic. Furthermore, it appears that the actions complained of occurred in the State of Florida and/or the Dominican Republic. Finally, retention of this action in New York would unduly burden the New York Court when there is the availability of an alternative forum.

Accordingly, plaintiff's action is dismissed based on the doctrine of forum non conveniens and pursuant to CPLR Rule 327 and the cross-motion of plaintiff Marggie Batista and the cross-motion of defendants Nerquin Antigua and the Antigua Group, Inc. are denied without prejudice to renew in the proper forum.

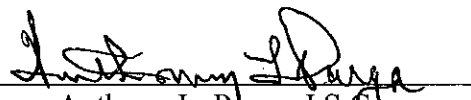
This constitutes the decision and Order of this Court. Any request for relief not expressly granted herein is denied.

Dated: October 6, 2017

ENTERED

OCT 12 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE


Anthony L. Parga, J.S.C.

cc: Massimo & Panetta, P.C.
200 Willis Avenue
Mineola, New York 11501

LaReddola, Lester & Associates, LLP
600 Old Country Road, Suite 224
Garden City, New York 11530

