



By order of the Court,
Presiding Judge Robert C. Naraja

FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

DAVID GEORGE BANES,]	FCD-DI CIVIL CASE NO. 11-0257
]	
Petitioner,]	
-vs-]	ORDER DENYING
]	RESPONDENT’S MOTION
OXANA GALKINA BANES,]	TO DISMISS
]	
Respondent.]	

**I.
INTRODUCTION**

On June 9, 2011, David George Banes (“David”) filed a Petition To Divorce against Oxana Galkina Banes (“Oxana”)¹. Before the Court is Oxana’s Motion To Dismiss and Change of Venue (“Motion”). The Court conducted a hearing on August 30, 2011 at 9:00 a.m. in Courtroom 202A. Sheila N. Trianni appeared on behalf of Respondent Oxana Banes (“Oxana”). Rexford C. Kosack appeared on behalf of Petitioner David George Banes (“David”).

Oxana moved to dismiss arguing: (1) the Court lacks subject matter jurisdiction; (2) she was not properly served with the summons and complaint; (3) the Court lacks personal jurisdiction over her to determine property and support issues; and (4) trying the case in the

¹ Earlier on May 17, 2011, Oxana filed a Verified Complaint for Divorce in the Guam Superior Court.

1 CNMI is so inconvenient to her that it should be dismissed under the doctrine of *forum non*
2 *conveniens*.

3 Having considered all pleadings, arguments, materials on record, and all relevant rules
4 and case law, the Court enters the following order DENYING Oxana's Motion(s) to Dismiss
5 under each of the four bases.

6 **II.**
7 **BACKGROUND**

8 The following are facts presented by the affidavits of the parties and exhibits thereto:

9 1. Petitioner, David G. Banes, is a citizen of the United States of America. David
10 has lived and worked on Saipan for the past nineteen years. He built a home on Saipan, and has
11 lived in it since 2005.

12 2. Respondent, Oxana G. Banes, is a citizen of the United States of America and is
13 presently residing in the Territory of Guam.

14 3. Before getting married, David and Oxana chose to enter into a Prenuptial
15 Agreement. Oxana was represented by Saipan attorney Eric S. Smith of Smith & Williams.
16 David was represented by Saipan attorney Robert Dunlap of Carlsmith Ball LLP. Oxana and
17 David negotiated the terms intensely for about a two week period in January 2003. They signed
18 the Prenuptial Agreement on Saipan on January 31, 2003. Its purpose was to "fix and determine
19 their respective rights in each other's property and estate that will arise out of their marriage."
20 Preamble ¶ 1. It also stated: "This Prenuptial Agreement is made in the Commonwealth of the
21 Northern Mariana [I]slands and shall be construed under and in accordance with the laws of the
22 Commonwealth; further, this Prenuptial Agreement shall in no way be affected by or modified
23 because of a change in the domicile of either party." § 26. *See* Prenuptial Agreement, Exhibit
24 "A" to Declaration of David G. Banes.
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1 4. On March 27, 2003, Oxana and David were married at the Commonwealth
2 Superior Court by Judge Juan T. Lizama. They lived as husband and wife on Saipan for five
3 years. They never lived as husband and wife in any other jurisdiction.

4 5. The Prenuptial Agreement required David to open a bank account and deposit part
5 of his earnings in it, which was to be called the “Marital Fund.” This money could not be
6 withdrawn without mutual consent.

7 6. On May 24, 2008, David told Oxana he wanted a divorce. Oxana moved to Guam
8 in early July of 2008. David purchased a condominium unit (“Guam Condo”) in Tamuning,
9 Guam on August 20, 2008 for Oxana to live in. She has lived in the Guam Condo during the
10 three years that Oxana and David have been separated.

11 7. On May 17, 2011, Oxana filed a Verified Complaint for Divorce in the Guam
12 Superior Court. It alleges that David breached the Prenuptial Agreement by not establishing a
13 Marital Fund, and requests the Court to disregard the Prenuptial Agreement. ¶ 9.

14 8. David first learned that he had been sued for divorce in Guam when he received a
15 letter from Oxana’s Guam attorney with a copy of the complaint and summons enclosed. The
16 following day, on June 9, 2011, David filed a Petition for Divorce in the CNMI Superior Court.

17 9. On July 5, 2011 Oxana made a special appearance in this case.
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20 **III.**
21 **DISCUSSION**

22 **A. SUBJECT MATTER JURISDICTION**

23 Oxana initially argued that this Court does not have subject matter jurisdiction².
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25 ² This argument did not appear in her Reply Memorandum, nor was it made in court.

1 The Commonwealth Superior Court is a court of general jurisdiction. 1 CMC § 3202
2 (court has original jurisdiction over “all civil actions”). It has subject matter jurisdiction to grant
3 a divorce if one of the parties has been a CNMI resident for at least ninety days immediately
4 preceding the filing of a complaint for divorce. 8 CMC § 1332(a). There is no issue that David
5 satisfies this requirement, giving the Court subject matter jurisdiction over the divorce. This
6 Court also has subject matter jurisdiction to determine spousal support and dispose of the parties’
7 property. 8 CMC § 1311. Accordingly, the extent the motion to dismiss is based on this
8 ground, it is DENIED.

9
10 **B. SERVICE ON OXANA**

11 Again, Oxana initially argued that the service of process on her was insufficient and
12 defective, but did not argue this issue in her Reply Memorandum or in court. Nevertheless, she
13 has failed to properly raise this issue.

14 A motion to dismiss based on insufficient service is brought under Com. R. Civ. P.
15 12(b)(5). The motion “must specify the particular way or ways in which the serving party failed
16 to satisfy the service-of-process rules.” *Fly Brazil Group, Inc. v. Gov’t of Gabon*, 709 F. Supp.
17 2d 1274, 1279 (S.D. Fla. 2010). This is to give notice to the plaintiff of the claimed defect.
18 Oxana has failed to do this. Accordingly, to the extent the motion to dismiss is based on
19 insufficient service, it is DENIED.

20
21 **C. PERSONAL JURISDICTION OVER OXANA**

22 Oxana admits that this Court has jurisdiction to dissolve the marriage. Indeed, the Court
23 does not need to have personal jurisdiction over both parties to grant a divorce decree. A forum
24 where either spouse is domiciled can grant a valid divorce decree, even though the other spouse
25

1 is absent and not subject to jurisdiction. *Williams v. North Carolina*, 317 U.S. 287, 299 (1942).

2 However, in order to determine property rights and support obligations between spouses, a forum

3 must have personal jurisdiction over both spouses. *Estin v. Estin*, 334 U.S. 541, 549 (1948).

4 There is no dispute that David is domiciled in the Commonwealth.

5 Oxana's position is that this Court does not have personal jurisdiction over her and thus

6 cannot determine her property and support rights. She requests that the Court grant a "divisible

7 divorce," that is, dissolve the marriage, but refrain from determining her property rights. Thus,

8 the issue is whether the Court has personal jurisdiction over Oxana.

9 The Commonwealth Supreme Court requires two elements for personal jurisdiction: (1)

10 there must be a statute conferring jurisdiction over the defendant, and (2) the exercise of

11 jurisdiction over the defendant must accord with the constitutional principles of due process.

12 *Bank of Saipan v. Superior Court (Attorneys=Liability Assurance Society, Inc.)*, 2001 MP 5 & 36.

13 Oxana argues both elements are lacking.

14
15 **1. The CNMI Long Arm Statute**

16 The CNMI long arm statute, 7 CMC § 1102, provides this court with the broadest

17 possible reach of jurisdiction:

18 § 1102. Acts Submitting to Jurisdiction.

19
20 (a) Any person . . . who in person or through an agent does
21 any of the acts enumerated in this section, thereby submits such
22 person . . . to the jurisdiction of the courts of the Commonwealth as
23 to any cause of action arising from the doing of any of the
24 following acts:

25 . . .

(8) **Any other act** done within or outside the
Commonwealth from which a cause of action arises and for which
it would not be unreasonable, unfair or unjust to hold the person
doing the act legally responsible in a court of the Commonwealth.

1 It is clear the legislature intended to give CNMI courts jurisdiction as far as due process
2 will allow. Section 1102(e) states: “The legislature intends that jurisdiction under this section
3 shall be coextensive with the minimum standards of due process as determined in the United
4 States federal courts.”

5 The Commonwealth Supreme Court, in *Waibel v. Farber*, 2006 MP 15, ¶ 13, skirts the
6 two part analysis and focuses primarily on the due process inquiry because the Commonwealth
7 long arm statute is coextensive with due process: “The CNMI long-arm statute reaches as far as
8 the federal law allows . . . so the discussion here will focus mainly on the requirements of due
9 process.” Thus, the only issue this Court need address is whether jurisdiction over Oxana in the
10 CNMI accords with the constitutional principles of due process.³

11 Oxana argues that one cannot look to section 1102(a)(8) for jurisdiction because the
12 language of section 1102(a) states that jurisdiction arises from any “of the acts enumerated in
13 this section” and since subsection (8) does not specifically describe any act, it does not contain
14 an enumerated act. This argument assumes that to “enumerate” means to “describe specifically,”
15 which is not the case. To “enumerate” is to “count off or to designate one by one; to list.”
16 BLACK’S LAW DICTIONARY 555 (7th ed. 1999). Subsection (8) is one of the sections listed, so the
17 legislature intended to grant jurisdiction to the acts described therein.

18 Oxana argues that section 1102 fails to address jurisdiction in domestic relations cases,
19 and that four states have long arm statutes that specifically address domestic relations cases.
20 This fact does not establish that divorce cases cannot be brought under the CNMI long arm
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23 ³The Court also finds that section 1102(a)(1) of the long arm statute (“transaction of any business within the
24 Commonwealth”) applies to this complaint. The negotiation and execution of a Prenuptial Agreement in the CNMI
25 which is to be performed in the CNMI is the transaction of business. *Van Wagenberg v. Van Wagenberg*, 215 A.2d
812 (Md. 1966) (separation agreement). Furthermore, entering into a marriage in the CNMI and having the CNMI
as the parties’ only marital domicile is the transaction of business. *Prybolsky v. Prybolsky*, 430 A. 2d 804 (Del.
Fam. Ct. 1981).

1 statute. The Commonwealth may choose to include a catch-all provision rather than attempt to
2 specifically list all possible acts. *See, e.g., Kulko v. Superior Court*, 436 U.S. 84, 89 (1978)
3 (citing § 410.10, Cal. Civ. Proc. Code Ann. (West 1973)).

4 Oxana also argues that the long arm statute lists two types of contracts, contracts to
5 supply goods or services (§ 1102(a)(2)) and contracts of insurance (§ 1102(a)(3)), so the
6 exclusion of prenuptial agreements, as a form of contract, must have been intended. However,
7 the legislature had passed a law recognizing prenuptial agreements. 8 CMC § 1830. Any
8 attempt to read an intent by the legislature to exclude prenuptial agreements because of the
9 existence of section 1830 fails because the long arm statute was enacted in 1981 and the
10 prenuptial agreement statute was not enacted until 1991. The intent of the legislature is quite
11 clear. It used the broadest language possible in stating that “any other act done within or outside
12 the Commonwealth from which a cause of action arises and for it would not be unreasonable,
13 unfair or unjust to hold a person” responsible in a CNMI court is sufficient for jurisdiction. The
14 argument having failed, the Court now turns to the requirements of due process.
15

16 **2. Due Process**

17 A forum’s authority to extend jurisdiction over a person outside its borders is limited by
18 the Due Process Clause of the Fourteenth Amendment. *Shaffer v. Heitner*, 433 U.S. 186, 207
19 (1977). In a June 27, 2011 opinion, the U.S. Supreme Court stated that *International Shoe v.*
20 *Washington*, 326 U.S. 310 (1945) still governs by requiring a state to have sufficient minimum
21 contacts with the forum such that maintenance of the suit does not offend traditional notions of
22 fair play and substantial justice. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct.
23 2846, 2853 (2011).
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1 There are two categories of personal jurisdiction: general jurisdiction and specific
2 jurisdiction. General jurisdiction arises when a defendant's contacts are "continuous and
3 systematic" and it permits jurisdiction over all matters, even those not relating to the acts
4 occurring in the forum state. *Bank of Saipan (Attorneys=Liability Assurance Society, Inc.)*, 2001
5 MP at & 41. Specific jurisdiction, however, is based upon minimum contacts and jurisdiction
6 must be based upon forum-related acts. In this case, we are concerned with specific jurisdiction
7 only.

8 There are three requirements for specific jurisdiction:

- 9 (1) the defendant has purposely established sufficient contacts
10 with the forum, such that she can reasonably expect to be
11 haled into court in the forum;
- 12 (2) the plaintiff's claim arises out of the defendant's forum-
13 related contacts, and
- 14 (3) the exercise of jurisdiction in the CNMI is otherwise
15 reasonable.

16 *Bank of Saipan (Attorneys=Liability Assurance Society, Inc.)*, 2001 MP at & 42. David
17 bears the burden of proving the first two requirements; but, Oxana bears the burden of proving
18 that jurisdiction is not reasonable under the third requirement. *Bank of Saipan (Connell)*, 2001
19 MP & 33.

20 **a. Purposeful Availment and Causation**

21 Oxana does not contest the presence of either of the first two requirements. The Court
22 finds that both requirements are satisfied by the facts of this case. There are two groups of facts
23 the Court looks to, either of which is sufficient as a basis for jurisdiction.

24 First, the negotiation and signing of the Prenuptial Agreement in the CNMI which was
25 intended to govern marital property rights, and which had a CNMI choice of law provision, is a

1 proper basis for jurisdiction. RESTATEMENT (SECOND), CONFLICTS OF LAW § 36(2), cmt. “e” (the
2 forum in which a contract is negotiated and signed may exercise jurisdiction over the parties with
3 respect to claims arising from the contract). The Court finds: (1) Oxana engaged in purposeful
4 conduct in the forum by entering into the Prenuptial Agreement; (2) she invoked the benefits and
5 protections of CNMI law by contracting in the CNMI; if the Agreement is upheld it will be
6 upheld under the CNMI laws of contract; if there is a breach of contract under those laws, Oxana
7 will seek the benefits of the Commonwealth Marital Property Act; and (3) she could reasonably
8 have anticipated being haled into a Commonwealth court based upon executing the Agreement in
9 the CNMI. *See Van Wagenberg v. Van Wagenberg*, 215 A.2d 812 (Md. 1966) (separation
10 agreement sufficient basis for jurisdiction).

11
12 Second, the facts that Oxana married David in the Commonwealth and lived with him in
13 the Commonwealth as husband and wife for five years before the couple separated provide a
14 sufficient basis for jurisdiction. The Court finds: (1) Oxana engaged in purposeful conduct in the
15 forum by getting married in the Commonwealth Superior Court and then living on Saipan with
16 David as husband and wife; (2) she invoked the benefits and protections of the CNMI domestic
17 relations and family protection laws by conducting domestic activities here; (3) Oxana claims
18 marital property in the Commonwealth⁴; (4) Oxana’s claims to marital property arise under the
19 Commonwealth Marital Property Act; (5) Oxana could reasonably anticipate being haled into the
20 Commonwealth courts for her divorce, because this is where she got married and where the
21 married couple lived together; and, (6) this divorce action arises out of the couple’s marriage and
22 marital domicile in the CNMI. *See Prybolsky v. Prybolsky*, 430 A.2d 804 (Del. Fam. Ct. 1981)
23 (last matrimonial domicile sufficient basis for jurisdiction).

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⁴ At oral argument Oxana’s counsel claimed that the Banes house on Mt. Tapochau was built during the couple’s
marriage and is marital property.

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b. Reasonableness

The burden now shifts to Oxana to “present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *Bank of Saipan (Connell)*, 2001 N.M.I. at 12 (quoting *Carteret Savings Bank, FA v. Shushan*, 954 F.2d 141, 150 (3d Cir. 1992)) (emphasis added). Seven relevant factors must be weighed: “(1) the extent of purposeful interjection into the forum state; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant’s state or country; (4) the forum state’s interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to plaintiff’s interest in convenient and effective relief; and (7) the existence of an alternative forum.” *Id.* at 13.

Oxana argues that it will be burdensome for her to litigate in the CNMI for several reasons. The burdens claimed are: (1) she would have to take leave from her job to prepare for and attend a trial in the CNMI (Affidavit, ¶ 7); (2) she may encounter difficulty in having her divorce handled fairly and impartially by this Court because David practices law in the Commonwealth (*Id.* at ¶ 10); (3) for the same reason, she believes she will find it difficult to obtain a lawyer in the Commonwealth to represent her (*Id.* at p. 4, ll. 16-18); and, (4) she does not have the economic resources to defend a case in the Commonwealth, while David has the resources to defend a case in Guam (*Id.* at ll. 7-8).

Oxana’s arguments fail to make a compelling case that the burden of her defending this case in the CNMI is so great as to make jurisdiction unreasonable. First, whether a trial is held in Guam or Saipan, Oxana would have to take leave from work to prepare for and attend the trial. Second, if Oxana has what her lawyer considers to be a legitimate concern about the impartiality of this Court, then the proper procedure is to move for disqualification under 1 CMC § 3309(b).

1 This has not been done; nor is this Court aware of any grounds for its recusal. Third, Oxana's
2 complaint that she will not be able to find a lawyer to represent her beyond this hearing is not
3 persuasive for several reasons. The Commonwealth Superior Court has often been called upon
4 to hear divorce cases involving attorneys and in these cases the non-attorney spouses have been
5 able to locate counsel. Oxana's "proof" – her statement that she contacted three (unnamed)
6 attorneys who refused to represent her – is hardly convincing given the number of attorneys who
7 regularly practice in the Commonwealth Superior Court.

8 The argument that the cost of travel and the time missed at work amounted to a great
9 burden was made in *Bank of Saipan (Connell)* by an attorney in Hawaii who had been sued in the
10 CNMI courts, and it was rejected by the Commonwealth Supreme Court:

11 Any inconvenience to Connell is not so great as to constitute a
12 deprivation of due process. For example, Connell's burden is
13 lessened in that Carlsmith maintains office and attorneys in this
14 forum. Additionally, the Carlsmith firm is already relying on
15 mainland counsel and local counsel to handle appearances.
16 Connell's presence at pre-trial proceedings is highly unlikely given
17 that she is represented. Her presence at trial need not be
18 continuous, and air travel between Hawaii and the Northern
Marianas is frequent. While Connell's presence in the court room
might disrupt her schedule, it could hardly "severely hinder [her]
ability to maintain [her] law practice in Hawaii," as she asserts.
Technological advances have made the burden of defending in a
foreign forum far less onerous.

19 *Bank of Saipan (Connell)*, 2001 MP 1 & 35.

20 The same arguments apply with more force to Oxana. Guam is only 136 miles from
21 Saipan, while Honolulu is 3,713 miles from Saipan – more than 27 times as far. Any
22 inconvenience to Oxana is not so great as to constitute a deprivation of due process.

23 The other six factors point decisively toward the reasonableness of exercising jurisdiction
24 in the Commonwealth.
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1 (1) Extent of Oxana’s Purposeful Interjection into the CNMI. Oxana lived in the CNMI
2 for 10 years, worked in the CNMI, attended Northern Marianas College where she obtained a
3 degree, negotiated and entered into a Prenuptial Agreement in the CNMI with a CNMI choice of
4 law provision, was married in the Commonwealth Superior Court, and chose to make the CNMI
5 her marital domicile for five years. She has substantial contacts with the CNMI.

6 (2) Extent of Conflict with Sovereignty of Guam. Given the contacts just stated, Guam
7 had little contact with the married couple. If Guam courts were to exercise jurisdiction, it would
8 conflict with the sovereignty of the Commonwealth.

9 (3) Commonwealth Interest in Resolving the Dispute. “The CNMI has a substantial
10 interest in protecting its citizens.” *Bank of Saipan (Attorneys=Liability Assurance Society, Inc.)*,
11 2001 MP 5 & 55. Oxana argues that this is not a case where there is a concern that an abandoned
12 spouse or children are left without support in the forum. That is correct. However, there is a
13 spouse and she claims there is marital property in the forum. That is sufficient for the
14 Commonwealth to have an interest in providing an effective means of redress.
15

16 (4) The Most Effective Judicial Resolution of the Controversy. This factor looks
17 primarily to where the witnesses and evidence are likely to be located. *Bank of Saipan*
18 *(Attorneys=Liability Assurance Society, Inc.)*, 2001 MP 5 & 53. David states that he intends to
19 call as witnesses bank officers who can testify to his opening of the Marital Fund and deposits
20 made into it, members of his law firm to establish his earnings, and persons who can testify to
21 Oxana’s expenditures from the Marital Fund. Thus, most of these witnesses and documents are
22 located on Saipan.

23 (5) The Importance of the Forum to David’s Interests. David argues that it is important
24 for him to try this case in the Commonwealth for two reasons. First, the Prenuptial Agreement,
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1 which appears to be central to this case, has a choice of law clause that selects Commonwealth
2 law. David has an interest in having judges familiar with Commonwealth law hear this case.
3 “There is appropriateness, too, in having the trial . . . in a forum that is at home with the state law
4 that must govern the case, rather than having a court in some other forum untangle problems in
5 conflict of laws, and in law foreign to itself.” RESTATEMENT (SECOND), CONFLICTS OF LAW § 84,
6 cmt. “c.” Second, there are some differences between Commonwealth and Guam law. Guam
7 law provides for the possibility of an unequal division of assets when a divorce is granted on
8 grounds of adultery or extreme cruelty. 19 GCA § 8411(a) (2011). Indeed, Oxana hoped to take
9 advantage of this law in her Guam Verified Complaint for Divorce which alleges adultery,
10 extreme cruelty, and differences that make the continuation of the marriage impossible, stating
11 that the grounds are to be considered in the order stated. ¶¶ 5.1-5.3. Under CNMI law, marital
12 property is divided equally between the parties. 8 CMC § 1820(c) (each spouse has a present
13 undivided one-half interest in marital property). Additionally, Guam has no statute concerning
14 prenuptial agreements, while the CNMI has a detailed provision on the creation of prenuptial
15 agreements at 8 CMC § 1830. David has an interest in having CNMI law apply to this case.
16

17 (6) The Existence of an Alternative Forum. Oxana’s argument has to hinge on proving
18 that while jurisdiction in the Commonwealth is unreasonable, the matter can be heard in Guam.
19 Oxana argues that David purchased the condo in Guam as a married man, he signed a power of
20 attorney allowing her to obtain utility services for the condo, his law firm is “affiliated” with a
21 Guam law firm, and he traveled to Guam during their marriage. Since these facts may give
22 reason for a Guam court to assert personal jurisdiction over David, this factor weighs in favor of
23 Oxana.
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1 In on balance, these factors weigh heavily towards reasonableness. Thus, all three prongs
2 of the minimum contacts test are satisfied and exercising personal jurisdiction in this case
3 comports with due process. Accordingly, the Rule 12(b)(2) motion to dismiss for lack of
4 jurisdiction is DENIED.

5
6 **D. VENUE**

7 Oxana seeks dismissal for “improper venue” under Rule 12(b)(3) on the basis that the
8 “CNMI is clearly an inconvenient venue for Wife” due to “her residence, employment
9 restrictions, economic situation, pending Guam suit, and Husband’s legal status in the legal
10 community in the CNMI.” Opening Memorandum, p. 7, ll. 12-15. A lawsuit may be dismissed
11 because of an inconvenient forum (*forum non conveniens*) only in “exceptional circumstances.”
12 *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504 (1947).

13
14 The Restatement states the rule:

15 **§ 84. Forum Non Conveniens**

16 A state will not exercise jurisdiction if it is a seriously
17 inconvenient forum for the trial of the action provided that a more
appropriate forum is available to the plaintiff.

18 RESTATEMENT (SECOND) CONFLICT OF LAWS § 84.

19 The Restatement explains that this doctrine is invoked when a plaintiff has a choice of
20 forums with some of them having little relation to the cause of action or the parties, and the
21 plaintiff brings suit in such a remote forum believing it is possible to “secure a larger or easier
22 recovery or in the hope that the inconvenience and burden of making a defense will induce the
23 defendant to enter a compromise, to contest the case less strenuously, or to permit judgment to be
24 entered against him by default.” Cmt. “a.” In such a case, a court with jurisdiction but few
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1 contacts may decline to hear the case because it believes “itself to be a seriously inconvenient
2 forum, provided a more appropriate forum is available to the plaintiff.” *Id.* The doctrine of
3 forum non conveniens provides a remedy for abusive forum shopping. But, in this case, where
4 the suit is brought in the place of the plaintiff’s residence, there is no abusive forum shopping.

5 The Restatement recognizes that suit in the petitioner’s home state is appropriate. “Suit
6 in [the plaintiff’s domicile] may involve hardship to the defendant, but the obvious convenience
7 to the plaintiff in bringing suit there, together with the clear interest of this state in the plaintiff’s
8 welfare, will make this state an appropriate forum except in unusual circumstances.” Cmt. “f”.⁵
9 The Commonwealth, which is David’s domicile, is an appropriate forum.

10 While David may bring this case in Guam, he risks doing so at a disadvantage because of
11 the differences in law, the extent that CNMI law is applied, as well as the location of witnesses
12 and evidence. Thus, the second element – a more appropriate forum – is not present.

13
14 At the same time Oxana has failed to show “weighty reasons” that “strongly” favor
15 dismissal. The factors involved fit into two categories: the interests of the parties and the
16 interests of the public. Under the parties’ interests are: (1) the relative ease of access to sources
17 of proof (much, if not all, of the evidence regarding the marriage is in the CNMI), (2) availability
18 of compulsory process for attendance of unwilling, and the cost of attendance of willing,
19 witnesses (most of the witnesses regarding the prenuptial agreement and the conduct of the

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21 ⁵ Every state which has adopted the *forum non conveniens* doctrine has restricted its use when the plaintiff is a state
22 resident. *Thomson v. Continental Insurance Co.*, 427 P.2d 765, 769 (Cal. 1967). “That doctrine is typically applied
23 to litigation where all of the parties are out-of-state residents and where the cause of action arose outside the forum
24 state.” *Id.* at 768. “California residents ought to be able to obtain redress for grievances in California courts, which
25 are maintained by the state for their benefit.” *Id.* at 769. A finding that a plaintiff is domiciled in the forum state
ordinarily would preclude dismissal for forum *non conveniens*. *Id.* at 769. Because “the plaintiff’s choice of forum
should rarely be disturbed,” the burden is on the defendant to show that public and private interests “strongly” favor
dismissal. *Gulf Oil*, 330 U.S. at 508. The Restatement provides: “The two most important factors look to the
court’s retention of the case. They are (1) that since it is for the plaintiff to choose the place of suit, his choice of a
forum should not be disturbed except for weighty reasons, and (2) that the action will not be dismissed unless a
suitable alternative forum is available to the plaintiff.” RESTATEMENT (SECOND) CONFLICT OF LAWS § 84,
cmt. “c.”

1 marriage are in the CNMI), and (3) the possibility of a view of the premises. *Id.* (citing *Gulf Oil*,
2 330 U.S. at 508). The public interest factors are: (1) whether this would cause litigation to pile
3 up in a congested center instead of being handled where it originated (the litigation originated in
4 the CNMI as the place of marriage and matrimonial domicile); (2) imposition of jury duty on a
5 community which has no relation to the litigation (this is not a jury matter, and this is the only
6 community with relation to the litigation); and, (3) having the case heard in a “forum that is at
7 home with the state law that must govern the case, rather than having a court in some other
8 forum untangle problems in conflict of laws, and in law foreign to itself” (the parties selected
9 CNMI as their choice of law in the Prenuptial Agreement, so the CNMI courts are best equipped
10 to deal with this law.) *Id.* In conclusion, the relevant factors do not “strongly favor” dismissal.

11 Accordingly the Rule 12(b)(3) motion to dismiss is DENIED.

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14 **IV.**
CONCLUSION

15 For the reasons set forth above, the Court hereby:

- 16 1. DENIES Respondent Oxana Galkina Banes’ Motion to Dismiss for Lack of
17 Personal Jurisdiction; and
- 18 2. DENIES Respondent Oxana Galkina Banes’ Motion to Dismiss for Improper.
19 Respondent shall file an answer within ten (10) days from the date of this order.
20

21
22 **SO ORDERED** this 13th day of October, 2011.

23
24 _____
/s/
ROBERT C. NARAJA,
25 Presiding Judge