



By order of the court, Judge PERRY B. INOS

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FOR PUBLICATION

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

ALAN STUART MARKOFF,)	FCD CIVIL ACTION NO. 12-0008
)	
Petitioner,)	
)	
v.)	ORDER GRANTING STAY
)	
REBECCA JEAN JONES HANER)	
MARKOFF,)	
)	
Respondent.)	
)	

I. INTRODUCTION

THIS MATTER was heard on March 12, 2012 at 2:00 p.m. in Courtroom 217A. Alan Stuart Markoff (hereafter, "Petitioner" or "Alan") was represented by Matthew T. Gregory, Esq. Rebecca Jean Jones Haner Markoff (hereafter, "Respondent" or "Rebecca") was represented by Stephen J. Nutting, Esq. The Court, having had the benefit of exhibits, written briefs, and oral argument from counsel, now enters this written Order.

II. FACTUAL BACKGROUND

On October 28, 2000, Alan and Rebecca were married in Houston Texas. In 2004, the couple purchased a dental clinic named Toothworks in Saipan. At that time, Alan moved to Saipan and Rebecca stayed in Texas to continue working as a teacher and sell their family home. Rebecca sold their home in Stillforest and thereafter rented a townhouse in Houston.

1 During 2005 through 2006 Rebecca visited Saipan several times. Allegedly, Alan had told
2 Rebecca that if she did not move to Saipan to be with him, their relationship could be in trouble.
3 Sometime in 2006, Rebecca initiated extended stays in Saipan. It is unclear from the record if she
4 worked at Toothworks or had another job. Nevertheless, Rebecca filed CNMI taxes for the years 2005
5 through the present.

6 Rebecca alleges that it was neither her nor Alan's intention to be domiciled or reside in Saipan.
7 Rather, they merely have a business interest on the island. It is alleged that the last time Rebecca was
8 in Saipan was April 2011 until she returned to Texas for shoulder surgery on July 05, 2011. During that
9 trip, both Rebecca and Alan had returned to Texas. In September of 2011, while both Alan and Rebecca
10 were still visiting Texas, Alan informed Rebecca that he did not want her to return to Saipan with him.
11 Sometime in October of 2011, while still in Texas, Alan told Rebecca that he wanted a divorce. From
12 that point on, their relationship continued to deteriorate. At some point in October, Alan returned to
13 Saipan and Rebecca remained in Texas.

14 During their marriage, Alan and Rebecca accumulated marital property in Texas as well as
15 Saipan. The marital property in Texas is alleged to consist of rental property, an automobile, grand
16 piano, and an assortment of personal property. The marital property in Saipan is alleged to consist of
17 a dental clinic, residential lease, vehicles as well as other personal property.

18 19 **III. PROCEDURAL BACKGROUND**

20 On December 15, 2011, Rebecca filed a petition for divorce in Harris County Texas. (Ex. 1 to
21 Decl. of Rebecca.) On December 21, 2011, the Texas court issued a TRO against Alan and set a
22 January 26, 2012 trial date. (Ex. 2 to Decl. of Rebecca.) On January 13, 2012, Alan was personally
23 served a summons for this matter on Saipan. (Ex. 3 to Decl. of Rebecca.)

24 On January 3, 2012, Alan filed his petition for divorce in Saipan ("Petition"). On January 6,
25 2012, Nick Ngo attempted to personally serve the summons upon Rebecca in Texas. (Decl. of Nick
26 Ngo.) According to Nick, Rebecca attempted to evade service by not admitting her name and by
27 questioning Nick as to what type of documents he had. (*Id.*) Because she was so evasive, Nick dropped
28 the summons at her feet and told her that she had been served. (*Id.*) Nick also went to Rebecca's

1 residence thereafter and spoke to a man who, after picking up the papers from the ground, confirmed
2 that the woman was Rebecca. (*Id.*) The man told Nick that he would ensure Rebecca would get the
3 papers. (*Id.*)

4 At some point, Alan retained the legal services of Texas attorney Joe Sibley. On January 25,
5 2012, Alan instructed Sibley to “pay [Rebecca] \$5,000 subject to later accounting.” Alan alleges that
6 Rebecca had made withdrawals in December of 2011 exceeding \$5,000. These withdrawals are the
7 basis of Alan’s Motion for Declaratory Judgment, filed on February 3, 2012.

8 Rebecca has not submitted an answer to Alan’s petition for divorce. Rather, on February 15,
9 2012, Rebecca filed Motion to Dismiss wherein she argues that this Court lacks jurisdiction to proceed
10 with this matter.

11 12 **IV. JURISDICTION**

13 Based on the arguments made, the threshold inquiry in this matter is whether this Court has
14 jurisdiction. In this case, jurisdiction is a three-part inquiry: *First*, the Court must determine whether
15 it has subject-matter jurisdiction over the divorce proceeding. *Second*, to affect Rebecca’s personal
16 rights with respect to marital property, this Court must determine that it has personal jurisdiction over
17 her. *Third*, upon a finding that jurisdiction is not lacking, the Court must determine whether a stay of
18 this action is warranted in favor of a prior action pending in another jurisdiction.

19 **A. Subject-Matter Jurisdiction**

20 The CNMI Superior Court has jurisdiction to enter a decree of divorce if one of the parties has
21 been a *resident* of the CNMI for at least ninety days preceding the filing of the complaint. 8 CMC §
22 1332(a). This Section defines the term “resident” as a person “*physically present* in the Commonwealth
23 for at least ninety [] days immediately preceding the filing of a . . . divorce or dissolution of marriage.”
24 *Id.* § 1332(a)(1) (emphasis added). Thus, for this Court to have subject-matter jurisdiction over a
25 divorce proceeding filed in this Court, one of the parties must be physically present in the
26 Commonwealth ninety days preceding the divorce action. *Id.*

27 It is the Petitioner’s burden to establish that this Court has jurisdiction to hear the divorce
28 proceeding. *See Bank of Saipan v. Connell*, 2001 MP 1 ¶ 13. Here, Alan has met his burden by

1 establishing that he has been physically present in the Commonwealth for at least ninety days prior to
2 filing his petition for divorce. Thus, this Court has subject-matter jurisdiction over the divorce
3 proceeding.

4 **B. Personal Jurisdiction**

5 Alan concedes this Court’s jurisdiction over him; therefore, the Court may enter a decree
6 affecting his rights to out-of-state property. Thus, the issue becomes whether the Court has personal
7 jurisdiction, over Rebecca.¹

8 Jurisdiction over a non-resident defendant may be obtained though the CNMI’s long-arm statute,
9 7 CMC § 1102, which governs service of process on out-of-state residents.² Section 1102 provides that
10 the Court may exercise personal jurisdiction over a defendant, regardless of citizenship or residency,
11 when a cause of action arises from, among other things, “[a]ny other act . . . from which a cause of
12 action arises and for which it would not be unreasonable” to hold that person responsible in a court of
13 the Commonwealth. 7 CMC § 1102(a). Moreover, the CNMI legislature expressly intended that
14 jurisdiction under Section 1102 “be coextensive with the minimum standards of due process as
15 determined in the United States federal courts.” *Id.* § 1102(e).

17 ¹ A court may not enter a decree directly affecting title to or an interest in real property located in another state. *See e.g.*,
18 *Baker v. GMC*, 522 U.S. 222, 235 (1998) (“Orders commanding action or inaction have been denied enforcement in a sister
19 State when they purported to accomplish an official act within the exclusive province of that other State Thus, a sister
20 State’s decree concerning land ownership in another State has been held ineffective *to transfer title*); *Keith v. Keith*,
21 763 S.W.2d 950 (Tex. Ct. App. 1989) (finding a lack of jurisdiction to divest parties of their title to out-of-state real estate).
22 However, a court may establish and declare the parties’ respective interests in out-of-state real property if the court has in
23 personam jurisdiction over the parties. *See Baker*, 522 U.S. at 235 (“[S]uch a decree may indeed preclusively adjudicate
24 the rights and obligations running between the *parties*”). *See generally* 34 A.L.R.3d 962 (2010) (citing cases). In such
25 a case, the court may order a party to take specific actions with respect to out-of-state property owned by that party. *See*
26 *In re Marriage of Ben-Yehoshua*, 154 Cal. Rptr. 80 (Cal. 1979) (affirming in personam decree declaring wife to have
ownership rights in Israeli land which husband, an Israeli citizen who personally appeared in California dissolution
proceeding, had title to); *Estabrook v. Wise*, 506 S.W.2d 248 (Tex. Civ. App. 1974) (Texas court had authority to order
husband to execute to wife deed of Florida land). If the court does not have in personam jurisdiction over a party, it may
not order that party to take any action with respect to the out-of-state property. *See e.g.*, *Hoffman v. Hoffman*, 821 S.W.2d
3, 5 (Tex. App. 1992) (“Where the trial court in a divorce proceeding has no personal jurisdiction over the respondent, the
trial court has the jurisdiction to grant the divorce, but not to . . . divide property outside the State of Texas.”). Moreover,
courts generally apply their own state’s law, not that law of the state where the property is located. *See Wanberg v.*
Wanberg, 664 P.2d 568 (Alaska 1983) (Alaska law used to divide Arizona land).

27 ² Even though Rebecca attempted to evade service of process, the delivery method is proper under CNMI law. *See* 7 CMC
28 § 1104(a); NMI R. Civ. P. 4(e)(2) (“[S]ervice . . . may be effected . . . by delivering a copy of the summons and of the
complaint . . . by leaving copies thereof at the individual’s dwelling house or usual place of abode . . .”).

1 Thus, this Court may validly exercise personal jurisdiction over Rebecca only if she had
2 sufficient minimum contacts with the CNMI. *Bank of Saipan*, 2001 MP ¶ 24. Alan, as petitioner in this
3 action, has the burden of demonstrating that the Court has personal jurisdiction over Rebecca. *Id.* ¶ 13.

4 In his petition for divorce, Alan alleged Rebecca filed CNMI tax returns from 2005 to the
5 present. Moreover, the couple maintained a family home on Saipan. Further, while Rebecca attempts
6 to downplay her length of time spent on Saipan, it is clear from the record that she stayed in the CNMI
7 for extended periods. The purpose of her stays are also telling. Rebecca concedes that Toothworks was
8 a joint venture between her and Alan, and that she moved to Saipan at Alan’s request so that they could
9 be together. Thus, Rebecca’s relationship with Alan establishes the purpose of her contacts with the
10 CNMI.

11 Both parties recognize the present debate over personal jurisdiction concerns specific
12 jurisdiction,³ which is the law of “minimum contacts.” Fundamentally, due process requires that “in
13 order to subject a defendant to a judgment in personam, if [s]he be not present within the territory of
14 the forum, [s]he have certain minimum contacts with it such that the maintenance of the suit does not
15 offend traditional notions of fair play and substantial justice.” *International Shoe Co. v. State of*
16 *Washington*, 326 U.S. 310, 316 (1945) (quotations and citation omitted). The contacts with the forum
17 state must be “substantial” and not “random,” “fortuitous,” or “attenuated.” *Burger King Corp. v.*
18 *Rudzewicz*, 471 U.S. 462, 475 (1985) (citations omitted). Due process requires that individuals have
19 “fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.”
20 *Burger King Corp.*, 471 U.S. at 472. “This ‘fair warning’ requirement is satisfied if the defendant has
21 ‘purposefully directed’ h[er] activities at residents of the forum and the litigation results from alleged
22 injuries that ‘arise out of or relate to’ those activities.” *Id.* (citing *Helicopteros*, 466 U.S. at 414). “It
23

24 ³ The Supreme Court has recognized two types of personal jurisdiction: specific and general jurisdiction. *Helicopteros*
25 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 nn.8-9 (1984). General jurisdiction refers to the power of a court
26 to adjudicate any cause of action involving a particular defendant, regardless of where the cause of action arose. *See*
27 *Sondergard v. Miles, Inc.*, 985 F.2d 1389, 1392 (8th Cir. 1993) (citing *Helicopteros*, 466 U.S. at 415). In finding general
28 jurisdiction, a court looks at the “general business contacts of the defendant” to determine “whether those contacts are
‘continuous and systematic,’ to the extent that the corporate defendant could reasonably anticipate being haled into court
in the forum state.” *Samuelson v. Honeywell*, 863 F. Supp. 1503, 1506 (E.D. Okla. 1994) (citing *Helicopteros*, 466 U.S.
at 415, and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

1 is essential in each case that there is some act by which the ‘defendant purposefully avails itself of the
2 privilege of conducting activities within the forum State, thus invoking the benefits and protections of
3 its laws.’” *Wessels, Arnold & Henderson, v. National Med. Waste, Inc.*, 65 F.3d 1427, 1432 (8th Cir.
4 1995) (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

5 In light of this authority, the Court utilizes a three-part⁴ analysis to determine if sufficient
6 contacts exist to exercise specific personal jurisdiction: *first*, the defendant’s contacts with the
7 Commonwealth must represent a purposeful availment of the privilege of conducting activities in the
8 Commonwealth, thereby invoking the benefits and protections of the Commonwealth’s laws and
9 making the defendant’s involuntary presence before the Commonwealth’s courts foreseeable. *Second*,
10 the claim underlying the litigation must directly arise out of, or relate to, the defendant’s
11 Commonwealth activities. *Third*, the exercise of jurisdiction must be reasonable.

12 **1. Purposeful Availment**

13 It is undisputed that Rebecca (1) lived in the CNMI for extended periods of time; (2) maintained
14 a home in the CNMI; (3) worked in the CNMI; (4) filed CNMI taxes; and (5) claims a marital interest
15 in a business organized under the laws of the CNMI. Based on these facts, the Court finds that Rebecca
16 purposely availed herself to the privilege of conducting these activities in the CNMI and therefore
17 invoked the benefits and protections of CNMI laws so that she could have reasonably anticipated being
18 haled into a Commonwealth court.

19 **2. Arising Out Of**

20 Under this prong of the due process analysis the Court must find a nexus between the claims and
21 the defendant’s contacts with the forum. *Fireman’s Fund Ins. Co. v. National Bank of Coops.*, 103 F.3d
22 888, 894 (9th Cir. 1996). The “Supreme Court has stated more than once that the nexus required to
23 establish specific jurisdiction is between the defendant, *the forum*, and the litigation . . . --not between
24 the plaintiff and the defendant.” *Vons Companies, Inc. v. Seabest Foods, Inc.*, 926 P.2d 1085, 1101
25 (Cal. 1996) (italics in original) (citing *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S.
26 408, 411 (1984); *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). “We rely on a ‘but for’ test to
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28 ⁴ See *Bank of Saipan*, 2001 MP 1 ¶¶ 24-40.

1 determine whether a particular claim arises out of forum-related activities and thereby satisfies the
2 second requirement for specific jurisdiction.” *Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995).

3 Nearly half of the marriage was spent on Saipan. Rebecca chose to come to the Commonwealth
4 and lived here in a marriage for close to six years. Having voluntarily engaged in a relationship that has
5 legal consequences, it is unreasonable, to view as unfair, the Commonwealth’s enforcement of Alan’s
6 rights (if any) that arise from that relationship. Although Rebecca claims that she merely had a business
7 interest in Saipan, she also claims a marital interest in that business along with other marital property
8 located here. Rebecca’s contacts with this forum clearly arise out of her marriage with Alan
9 notwithstanding the fact that those interests include a business enterprise. Rebecca cannot defeat this
10 Court’s power to act merely by leaving the jurisdiction.

11 **3. Reasonableness**

12 “Once a plaintiff has established its prima facie case in favor of jurisdiction, the defendant ‘must
13 present a compelling case that the presence of some other considerations would render jurisdiction
14 unreasonable.’” *Bank of Saipan*, 2001 MP 1 ¶ 13-14 (quoting *Cartaret Savings Bank, FA v. Shushan*,
15 954 F.2d 141, 150 (3d Cir. 1992)). This third prong requires a finding that the assertion of jurisdiction
16 is reasonable. Therefore, after it has been determined that a defendant purposefully established
17 minimum contacts in the forum, and the claims at issue arise from those contacts, the court must make
18 a further determination that assertion of personal jurisdiction would comport with traditional notions
19 of “fair play and substantial justice.” *International Shoe*, 326 U.S. at 326.

20 In *Bank of Saipan*, the CNMI Supreme Court adopted a seven-factor analysis in determining the
21 reasonableness over asserting personal jurisdiction over a non-resident defendant: (1) the extent of
22 purposeful interjection into the forum state; (2) the burden on the defendant in defending in the forum;
23 (3) the extent of conflict with the sovereignty of the defendant’s state or country; (4) the forum state’s
24 interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the
25 importance of the forum to plaintiff’s interest in convenient and effective relief; and (7) the existence
26 of an alternative forum. *Bank of Saipan*, 2001 MP 1 ¶¶ 33 (citing *Decker Coal Co. v. Commonwealth*
27 *Edison Co.*, 805 F.2d 834, 840 (9th Cir. 1986)).

28

1 Under the seven-factor reasonableness test, it is reasonable for the Court to assert personal
2 jurisdiction over Rebecca. *First*, as laid out above, Rebecca lived in the CNMI for almost six years, she
3 maintained a home here, and she claims an interest in a business organized under the laws of the CNMI.
4 These facts support a finding of purposeful interjection into the CNMI. Thus, this factor cuts heavily
5 in favor of finding personal jurisdiction over Rebecca.

6 *Second*, while there may be some difficulties, relative to distance and travel expenses, in
7 requiring Rebecca to defend this action in the CNMI, given that she is no longer located in the CNMI,
8 “[t]echnological advances have made the burden of defending in a foreign forum far less onerous.”
9 *Bank of Saipan*, 2001 MP 1, 13; *see also Burger King*, 471 U.S. at 483 (requiring that the inconvenience
10 be “substantial” to achieve constitutional magnitude). This factor slightly favors a finding of personal
11 jurisdiction over Rebecca.

12 *Third*, there does not appear to be any conflict which would result from the Court exercising
13 jurisdiction over Rebecca. This factor is insignificant to the analysis because Rebecca does not reside
14 in a foreign country. As such, this factor is neutral.

15 *Fourth*, the Commonwealth “has a substantial interest in protecting its citizens.” *Bank of*
16 *Saipan*, 2001 MP 5 ¶ 55. Rebecca’s spouse claims residency here and has sought the protection of the
17 Court. Moreover, Rebecca claims an interest to an array of marital property which is located in the
18 forum. Thus, this factor favors a finding of personal jurisdiction over Rebecca.

19 *Fifth*, in determining whether adjudication in the CNMI would promote the efficient
20 administration of justice, courts consider where witnesses and evidence are likely to be located. *Bank*
21 *of Saipan*, 2001 MP 1, 14. Here, the marital property, as well as witnesses or evidence related thereto,
22 is a near even split between Texas and Saipan. Therefore, this factor is neutral.

23 *Sixth*, the CNMI is the most convenient and effective forum for Alan because that is where he
24 claims residency.

25 *Seventh*, Alan bears “the burden of proving the unavailability of an alternative forum.” *FDIC*
26 *v. British-American Ins. Co., Ltd.*, 828 F.2d 1439, 1445 (9th Cir. 1987). Alan has failed to show that
27 he could not pursue the action in another forum. Certainly, this matter could be resolved in Texas, the
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1 state where the couple married and where they maintained an assortment of martial assets. Thus, this
2 factor cuts in favor of not finding personal jurisdiction over Rebecca.

3 In sum, “these seven factors together determine whether ‘under the totality of the circumstances
4 the defendant could reasonably anticipate being called upon to present a defense in a distant forum.’”
5 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 840 (9th Cir. 1986)) (citation omitted).
6 In this case, the “reasonableness” inquiry does favor assertion of jurisdiction in the CNMI for Rebecca.
7 Alan has made a prima facie case that the assertion of personal jurisdiction over Rebecca would not
8 offend due process.

9 **C. Comity**

10 Comity is the principle that “the courts of one state or jurisdiction will give effect to the laws
11 and judicial decisions of another state or jurisdiction, not as a matter of obligation, but out of deference
12 and mutual respect.” *Brown v. Babbitt Ford, Inc.*, 571 P.2d 689, 695 (Ariz. App. 1977).

13 In this case, Rebecca had filed her petition for divorce in a Texas court approximately one month
14 prior to Alan filing his petition in the CNMI. Both cases involve the same parties, the same cause of
15 action, and are in their early procedural stages. In other words, there has not yet been a foreign
16 judgment.⁵ Thus, the Court is not bound by this principal of comity or The Uniform Enforcement of
17 Foreign Judgments Act; rather, the Court is faced with the issue of whether a stay of an action is
18 warranted in favor of a prior action pending in another jurisdiction.

19 If courts in different states have concurrent jurisdiction over a matter, then the proper court is
20 determined by either legislation or the principle of comity. Philip J. Padovano, *Civil Practice* § 1.7
21 (2007). In this case, there is no legislation governing the subject of concurrent jurisdiction over divorce
22 proceedings; therefore, the principle of priority governs as a matter of comity.

23 Unlike Texas, the CNMI has no decisional law regarding the application of the principal of
24 priority. “When a matter is first filed in another state, the general rule is that Texas courts stay the later-
25 filed proceeding pending adjudication of the first suit.” *In re AutoNation, Inc.*, 228 S.W.3d 663, 670

26 _____
27 ⁵ The Uniform Enforcement of Foreign Judgments Act defines “foreign judgment” as “any judgment, decree, or order of
28 a court of the United States or of any other court which is entitled to full faith and credit in the Commonwealth of the
Northern Mariana Islands.” 7 CMC § 4402.

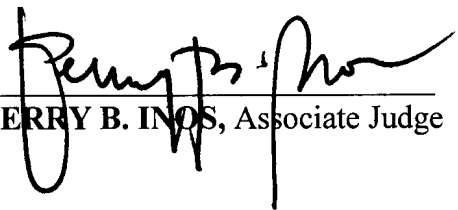
1 (Tex. 2007) (citing cases). “[U]nder [the] ‘principle of mutual convenience,’ Texas will recognize the
2 laws and judicial decisions of other states, expecting that those states will extend Texas the same
3 consideration.” *K.D.F. v. Rex*, 878 S.W.2d 589, 593-594 (Tex. 1994) (citing *Gannon v. Payne*, 706
4 S.W.2d 304, 306 (Tex. 1986)). The Court finds it appropriate to extend the same courtesy and
5 consideration to Texas as we would expect Texas to extend to the Commonwealth.

6 The Court makes this determination with the understanding that the pendency of a previously
7 filed action, without more, does not mandate dismissal or abatement of the later-filed proceeding.
8 Nevertheless, under the facts of this case, it seems particularly appropriate to stay this proceeding and
9 give deference to the first-filed action. This is not a case where the action was first-filed in a forum with
10 no relation to the parties. Rebecca and Alan were married in Texas, they lived there for more than half
11 of their marriage, and they maintain property interests in Texas. As such, Texas clearly has an interest
12 in this dispute. Moreover, even though both cases are in their early stages of procedure, the Texas court
13 has already issued a joint and mutual restraining order and has conducted hearings on the matter.

14
15 **V. CONCLUSION**

16 Based on the foregoing, the Court hereby **STAYS** this proceeding until the judgment in the prior
17 action is final.

18
19 IT IS SO ORDERED this 9th day of April, 2012.

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23 **PERRY B. INOS, Associate Judge**