

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of May, two thousand twenty-five.

PRESENT: RAYMOND J. LOHIER, JR.,
JOSEPH F. BIANCO,
Circuit Judges,
JESSE M. FURMAN,
*District Judge.**

MARIA FERNANDA NADAL
GANAN, AS PROPOSED CO-
ADMINISTRATOR OF THE ESTATE
OF GADEA GARCIA-MINAUR
FONTA AND THE ESTATE OF
MENCIA GARCIA-MINAUR
FONTA, STEVEN N. GARFINKEL,
IN HIS CAPACITY AS PROPOSED
CO-ADMINISTRATOR OF THE

* Judge Jesse M. Furman, of the United States District Court for the Southern District of New York, sitting by designation.

ESTATE OF GADEA GARCA-
MIAUR FONTA AND THE ESTATE
OF MENCA GARCA-MIAUR
FONTA,

Plaintiffs-Appellants,

v.

No. 24-2237-cv

PA SCALE COMPANY OF
FLORIDA,

Defendant-Appellee.

FOR APPELLANTS:

ELISA ALCABES, Alcabes Law,
PLLC, Larchmont, NY
(Cynthia M. Devers, Michael S.
Miska, Devers Miska Law,
Bala Cynwyd, PA, *on the brief*)

FOR APPELLEE:

ANDREW J. HARAKAS
(Stephanie M. Revilla, *on the
brief*), Clyde & Co US LLP,
New York, NY

Appeal from a judgment of the United States District Court for the
Southern District of New York (Alvin K. Hellerstein, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
AND DECREED that the judgment of the District Court is AFFIRMED.

Plaintiffs María Fernanda Nadal Gañán and Steven Garfinkel, proposed
co-administrators of the estates of Nadal's granddaughters, appeal from an

August 2, 2024 judgment of the United States District Court for the Southern District of New York (Hellerstein, J.) granting Defendant PA Scale Company of Florida's ("PA Scale") motion to dismiss on *forum non conveniens* grounds. The Plaintiffs brought negligence, breach of contract, and fraud claims under New York law arising out of a tragic 2016 airplane crash in Spain that killed Nadal's daughter and granddaughters along with the pilot, Rafael Malo, who was the sole owner of PA Scale. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

"We review the district court's grant of dismissal for *forum non conveniens* deferentially for abuse of discretion." *Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 153 (2d Cir. 2005). In considering the application of the *forum non conveniens* doctrine, a court should "determine[] the degree of deference properly accorded the plaintiff's choice of forum," "consider[] whether the alternative forum proposed by the defendants is adequate to adjudicate the parties' dispute," and "balance[] the private and public interests implicated in the choice of forum." *Id.*; see *Iragorri v. United Techs. Corp.*, 274 F.3d 65, 73–74 (2d Cir. 2001) (en banc).

On appeal, the Plaintiffs contend that the District Court abused its discretion in applying these factors. We disagree. The District Court did not err in concluding that the “Plaintiffs’ choice of forum deserves little deference,” Spec. App’x 4, because Nadal and the decedents on whose behalf this action is brought are Spanish citizens, *see Norex*, 416 F.3d at 154, PA Scale is a Florida-based corporation that conducts no business in New York, and the claims lack a “bona fide connection to the United States and to the forum of choice,” *Aenergy, S.A. v. Republic of Angola*, 31 F.4th 119, 128 (2d Cir. 2022) (quotation marks omitted). Nor did the District Court err in concluding that PA Scale sustained its burden of showing that Spain is an adequate alternative forum. We note in particular that PA Scale agrees to accept service of process in Spain and to waive any statutes of limitations available in Spain that arose after this action was filed. Spec. App’x 6; *see Figueiredo Ferraz E Engenharia de Projeto Ltda. v. Republic of Peru*, 665 F.3d 384, 394 (2d Cir. 2011); *Norex*, 416 F.3d at 157. The Plaintiffs point to the possibility that final entry of any civil judgment may be delayed due to ongoing related criminal proceedings. But that possibility does not render Spain a

“clearly unsatisfactory” alternate forum.¹ *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981); see *Blanco v. Banco Indus. de Venez., S.A.*, 997 F.2d 974, 982 (2d Cir. 1993). Moreover, we agree with the District Court that because “[a]ll of the key events occurred in” Spain, *Aenergy, S.A.*, 31 F.4th at 133, consideration of the relevant public and private interests “clearly favor[s] dismissal in favor of proceeding in Spain,” Spec. App’x 5.

In the alternative, the Plaintiffs argue that the District Court should have granted them discovery as to PA Scale’s activities in and connections to the United States. Because the “Plaintiffs have not articulated any persuasive reason for us to believe that the sought after discovery would have yielded additional support for their position,” *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 76 (2d Cir. 2003), we find no abuse of discretion in the District Court’s decision not to allow discovery.

To summarize, the Plaintiffs “make[] no persuasive argument identifying error in the factual or legal components of the [D]istrict [C]ourt’s discretionary decision.” *Olin Holdings Ltd. v. State*, 73 F.4th 92, 110 (2d Cir. 2023) (quotation

¹ Additionally, at oral argument, counsel for PA Scale represented that it would not request a stay of civil proceedings in Spain pending resolution of the criminal proceedings.

marks omitted). We accordingly affirm the District Court's dismissal of the case on *forum non conveniens* grounds.

We have considered the Plaintiffs' remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court