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

**YU FENG and YOURLAND SAIPAN,
 INC. a CNMI CORPORATION,**

Plaintiffs,

v.

**GUI XIANG MA, JUN LI, BIN WANG,
 JUN WANG, and MAO JING SUN,**

Defendants.

CIVIL ACTION NO. 16-0246

**ORDER RESERVING A RULING ON
 PLAINTIFF’S MOTION TO EXCLUDE
 REMOTE TESTIMONY UNTIL SUCH
 TESTIMONY IS OFFERED AS
 EVIDENCE**

I. INTRODUCTION

THIS MATTER came before the Court on Feng Yu’s (“Plaintiff Yu”) Motion to Exclude Remote Testimony Offered by Defendants. Attorney Cong Nie represented Plaintiff Yu. Attorney Stephen J. Nutting represented Gui Xiang Ma, Jun Li, Bin Wang, Jun Wang, and Mao Jing Sun (collectively the “Defendants”).

II. FACTUAL HISTORY

1. Plaintiff Yu and the Defendants were either friends or had a prior acquaintance from business ventures, or they became associated as a result of the business ventures that are the subject of this complaint.
2. Sometime before February 2015, Plaintiff Yu and Defendants entered into a joint venture/partnership to invest in real estate in Saipan.
3. The purpose of the joint venture/partnership was to purchase a building and lease the units to collect rent.

By order of the Court, Judge Joseph N. Camacho

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4. Plaintiff Yu and Defendants intended to take advantage of the rising real estate prices and sell the property at a substantial profit over the initial purchase price.
5. The members of the joint venture/partnership were to have equal interests in any acquired property.
6. Collection of rent and profits were to be shared by the parties.
7. Plaintiff Yu was designated as the agent of the joint venture and took action on behalf of the venture and other members.
8. Plaintiff Yu entered into an Assignment of Lease for a parcel of real property in Garapan. The total purchase price for the Assignment of Lease was \$750,000.
9. Plaintiff Yu owns and controls a company named Yourland Saipan, Inc. (“YSI”).
10. Acting as an agent of the joint venture, Plaintiff Yu directed YSI to pay \$675,000 to assignors to fulfill the terms of the Assignment.
11. The joint venture and its members were expected to repay the purchase money within a year.
12. The joint venture hired a property manager, leased the building to tenants, and began collecting rent.
13. Sometime in 2016, Plaintiff Yu inquired with Defendants about the repayment of the purchase money. Defendants did not respond.
14. Plaintiff Yu became aware that other joint venture members were negotiating to sell the property for \$1,500,000 and that based on the actions and statements from the other joint venture members, Defendants repudiated the joint venture/partnership agreement.

III. PROCEDURAL HISTORY

1. On December 9, 2016, Plaintiffs filed their Complaint alleging Breach of Contract, Breach of Fiduciary Duties, and Quantum Meruit.

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2. On October 12, 2017, Defendants filed an Amended Answer and Counterclaim for Slander of Title and Quiet Title.
3. On November 17, 2017, Plaintiffs filed an Answer to Counterclaim and Affirmative Defenses.
4. On February 26, 2021, Plaintiffs filed a Motion for Summary Judgment arguing that it is undisputed Defendants agreed to have Plaintiff Yu remit the balance of the purchase price. There was no genuine issue of fact because each member agreed to reimburse him at \$112,500 per member. Defendants failed to repay Plaintiff Yu in breach of the agreement. There is no discernible proof that each Defendant repaid their respective share to Plaintiff Yu. The document that the Defendants claim demonstrates their payment of \$562,500 to Plaintiff Yu was written in Chinese and has not been translated into English¹. Defendants failed to proffer admissible evidence that shows the existence of a genuine issue of material fact.
5. On April 30, 2021, Defendants filed an Opposition to Plaintiff's Motion for Summary Judgment arguing that there are questions of fact regarding the credibility of the parties and the veracity of the evidence provided. A breach of contract claim requires a contract. There is no signed written contract for the purchase of the property. Plaintiff Yu has not provided the terms of the contract that were agreed upon, nor has he provided the actual contract. Plaintiff Yu has not explained how Defendants were to reimburse him or when it would be due. Plaintiff Yu has not provided evidence that Defendants agreed to reimburse Plaintiff Yu for paying the purchase price for the

¹ When necessary, designated documents or electronically stored information requested by a party can be obtained after translation by the responding party into a reasonably usable form. *See* NMI R. Civ. P. 34(a)(1)(A). *See also* *Ada v. Nakamoto*, Civil 08-0029D (NMI Super. Ct. Oct. 26, 2010) (Order Partially Granting Defendant's Motion to Reconsider) (finding that defendants are required to translate titles and subtitles of documents for discovery requests to comply with Rule 34.).

1 property. As for the Quantum Meruit claim, Plaintiff Yu signed a rescission of the lease
2 in September 2016 and has failed to explain how Defendants could be unjustly
3 enriched by his payment of the purchase price balance if Plaintiff Yu acknowledged
4 that he had no interest in the property.

5 6. On May 19, 2021, Plaintiffs Yu and YSI filed their Reply arguing the Defendants
6 admitted to the existence of a contract in Plaintiffs' First Set of Requests for
7 Admission, Interrogatories, and Production of Documents. Defendants responded that
8 they would each contribute \$125,000. It is also undisputed that Defendants agreed to
9 reimburse Plaintiffs \$112,500 per Defendant. Further, Defendant Bin's Declaration
10 was not authenticated by an authorized Notary Public in the People's Republic of
11 China.
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13 7. On May 17, 2024, Plaintiffs filed a Motion to Exclude Remote Testimony Offered by
14 Defendants ("Plaintiffs' Motion to Exclude Remote Testimony") arguing that there is
15 no compelling circumstance to justify the remote testimony. Inconvenience to the
16 Defendants does not constitute a compelling circumstance. The credibility of
17 Defendants is a key issue in this case and the factfinder will not be able to adequately
18 observe the witness. Further, to procure remote testimony from mainland China,
19 Defendants must employ the procedures under the Hague Convention on the Taking
20 of Evidence Abroad in Civil or Commercial Matters ("Hague Convention") and
21 Defendants have not done so. As such, allowing Defendants to testify remotely in
22 mainland China would be unlawful.
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24 8. On June 21, 2024, Defendants filed an Opposition to the Plaintiffs' Motion to Exclude
25 Foreign Testimony and Evidence of Prior Bad Acts arguing that taking testimony from
26 witnesses in China is not prohibited. As long as the requirements under the Hague
Convention are met, then taking testimony is allowed. However, the Court has not set

1 a date for trial, so Defendants have not begun to satisfy those necessary requirements.
2 Plaintiff Yu cannot assume that Defendants would not be granted authority to take
3 testimony from witnesses in China. Further, Defendants would be prejudiced if denied
4 the chance to meet Hague Convention requirements and testify while Plaintiff Yu can
5 proceed with the lawsuit.

6 9. On July 15, 2024, Plaintiffs filed their Reply to the Defendants' Opposition to Motion
7 to Exclude Remote Testimony arguing that the Defendants have not explained why
8 they cannot travel to Saipan. Further, Defendants have not begun to employ the Hague
9 Convention procedures.
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11 **IV. LEGAL STANDARD**

12 Rule 403 of the NMI Rules of Evidence states that relevant evidence may be excluded
13 "if its probative value is substantially outweighed by a danger of one or more of the following:
14 unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or
15 needlessly presenting cumulative evidence." "For good cause in compelling circumstances
16 and with appropriate safeguards, the court may permit testimony in open court by
17 contemporaneous transmission from a different location." NMI R. Civ. P. 43(a).
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20 **V. DISCUSSION**

21 **Motion to Exclude Remote Testimony is Premature**

22 The Defendants are currently located in mainland China. Rule 43(a) of the NMI Rules
23 of Civil Procedure allows remote testimony "for good cause in compelling circumstances and
24 with appropriate safeguards." Plaintiff Yu argues that there are no compelling circumstances
25 to justify the Defendants' remote testimony and no safeguards to make sure the Defendants
26 abide by CNMI laws while testifying remotely. Plaintiff Yu also argues that Defendants have
not employed the procedures under the Hague Convention for Defendants to testify from

1 mainland China. Under Chinese Civil Procedure Law, Article 284 (formerly Article 277) has
2 limitations on collecting evidence from its citizens:

3 Request for and to provide judicial assistance shall be made through channels
4 prescribed by international treaties concluded or acceded to by the People's
5 Republic of China; or in the absence of such a treaty, shall be made through
6 diplomatic channels. A foreign embassy or consulate to the People's Republic
7 of China may serve process on an investigate [*sic*] and collect evidence from its
8 citizens but shall not violate the laws of the People's Republic of China and
9 shall not take compulsory measures.

10 Except for the circumstances in the preceding paragraph, no foreign authority or
11 individual shall, without permission from the competent authorities of the
12 People's Republic of China, serve process or conduct investigation and
13 collection of evidence within the territory of the People's Republic of China.

14 *Sardini Grp., Inc. v. Imperial Pac. Int'l Cnmi, LLC*, No 1:20-cv-00007, 2023 U.S. Dist. LEXIS
15 177522 at *9-10 (D. N. Mar. I., Sep. 30, 2023) (citation omitted).² The NMI District Court found
16 that Chinese law does not “absolutely prohibit testimonial evidence, but that Sardini would
17 have to go through the procedures of the Hague Convention for the testimonial evidence to be
18 permissible.” *Sardini Grp., Inc.* 2023 U.S. Dist. LEXIS 177522 at *23. The Hague
19 Convention has procedures for examining individuals within an executing state. *See Id.* Since
20 the U.S. and China are both signatories of the Hague Convention, evidence must be acquired
21 through the Hague Convention. *See Id.* at *24 n.3.³ The procedure in the Hague Convention
22 requires that “litigants seeking to examine an individual must specify in a letter of request ‘the
23 names and addresses of the persons examined,’ and ‘the questions to be put to the persons to
24 be examined or a statement of the subject-matter about which they are to be examined.’” *Id.*
25 at *26 (citing Hague Convention, Art. 3, U.S.T. 2555, 2557-64). Defendants argue that, since

26 ² “This translation is derived from *Sun Grp. U.S.A. Harmony City, Inc. v. CRRC Corp. Ltd.*, No. 17-CV-02191-SK, 2019 U.S. Dist. LEXIS 200616, 2019 WL 6134958, at *1 (N.D. Cal. Nov. 19, 2019), which cites it as Article 277—the identical predecessor to Article 284.” *Sardini Grp., Inc.* 2023 U.S. Dist. LEXIS 177522 at *9-10 n.1.

³ The U.S. Department of State's website identifies China as a signatory to the Hague Convention and that evidence, including depositions, must be acquired through the Hague Convention: <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html>.

1 the Court has not set a trial date, they should not be prohibited from having the opportunity to
2 invoke the Hague Convention procedures. Further, Defendants argue if the Court grants
3 Plaintiff's motion to exclude remote testimony, Defendants will be prejudiced because they
4 cannot testify. Defendants have not formally presented to the Court whether specific
5 Defendants will or will not testify. No witness list has been submitted, and no trial date has
6 been set.

7 According to Rule 403, the probative value of the evidence must be weighed against
8 the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting
9 time, or needlessly presenting cumulative evidence.” NMI R. Evid. 403. The Court does not
10 have the opportunity to weigh the probative value of the Defendants’ remote testimony against
11 the potential for prejudice against Plaintiff. “Rule 403 determinations are ‘susceptible only to
12 case-by-case determinations, requiring examination of the surrounding facts, circumstances,
13 and issues.’” *UM Corp. v. Tsuburaya Prods. Co.*, 793 Fed. Appx. 511, 515 (9 Cir. 2019)
14 (citing *United States v. Hinkson*, 585 F.3d 1247, 1267 (9th Cir. 2009) (en banc)). The Court
15 has not been presented with all the facts, circumstances, and issues. For example, the reasons
16 for the Defendants’ absence, whether related to scheduling conflicts, health issues, or other
17 reasons, have not been presented to the court. It is not a guarantee that Defendants will or will
18 not testify. Consequently, the Court cannot ascertain whether there is a compelling
19 justification for this absence. It is too early for the Court to address the admissibility of the
20 remote testimony without having all the facts, circumstances, and issues. *See also Feng v. Ma*,
21 Civil Action No. 16-0246 (NMI Super. Ct. Nov. 25, 2024) (Order Reserving a Ruling on
22 Plaintiff’s Motion to Exclude Evidence of Prior Bad Acts Until Such Bad Acts are Offered as
23 Evidence).
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VI. CONCLUSION

Plaintiff Feng Yu requests the Court to exclude the remote testimony of Defendants Gui Xiang Ma, Jun Li, Bin Wang, Jun Wang, and Mao Jing Sun. Plaintiff Feng Yu argues there is no compelling reason to justify remote testimony, nor are there safeguards for testifying remotely in mainland China. Further, Defendants have not gone through the Hague Convention procedures to take testimony from Defendants. Without the proffered testimonies, the Court cannot properly weigh the probative value of having Defendants testify remotely and determine its admissibility. The Motion to Exclude Remote Testimony is premature as Defendants have not proffered remote testimony for the Court's consideration.

THEREFORE, the Court **RESERVES** its ruling on Plaintiff Feng Yu's Motion to Exclude Remote Testimony Offered by Defendants until such testimony is presented to the Court.

SO ORDERED this 25th day November 2024.

/s/ _____
JOSEPH N. CAMACHO, Associate Judge