

**SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION
TRIAL TERM, PART 44 SUFFOLK COUNTY**

PRESENT: Honorable Elizabeth H. Emerson

MOTION DATE: 7-25-12
SUBMITTED: 9-6-12
MOTION NO.: 001-MG; CASE DISP

BRUCE A. RENSING, X

Plaintiff,

-against-

**SCALZI & NOFI, PLLC
Attorneys for Plaintiffs
16 E. Old Country Road
Hicksville, New York 11801**

**RENCO ELECTRONICS, INC., EDWARD W.
RENSING, JOHN P. RENSING, and EDWARD
W. RENSING, as Personal Representative of the
Estate of JOHN A. RENSING, Deceased,**

**FRANKLIN, GRINGER & COHEN, P.C.
Attorneys for Defendants, Renco
Electronics, Inc., Edward W. Rensing and
John P. Rensing
150 East 58th Street, 27th Floor
New York, New York 10155**

Defendants.

X

Upon the following papers numbered 1-28 read on this motion to dismiss ; Notice of Motion and supporting papers 1-19 ; Notice of Cross Motion and supporting papers _____ ; Answering Affidavits and supporting papers 20-25 ; Replying Affidavits and supporting papers 26-28 ; it is,

ORDERED that this motion by the defendants for an order dismissing the complaint is granted.

The defendant Renco Electronics, Inc. (“Renco”) was originally incorporated in New York, and its shareholders were the deceased defendant and his three sons, the plaintiff and the defendants Edward W. and John P. Rensing. Its principal place of business was Nassau County. In 1981, it moved to Suffolk County and the parties entered into a buy-sell agreement, which enjoined the shareholders from selling or otherwise disposing of their shares without first offering them to Renco and, if Renco refused to purchase them, to the other shareholders. Additionally, the buy-sell agreement required Renco to purchase the shares of a deceased shareholder. It also required the shareholders to unanimously elected each other as the sole directors and officers of Renco, and it required the unanimous consent of the directors to change or vary any of its provisions.

In 1999, Renco moved its headquarters and factory to Florida and became a New York corporation authorized to do business in Florida. All of the shareholders except the plaintiff also moved to Florida. In September 2010, Renco became a Florida corporation and withdrew its authority to do business in Florida as a New York corporation. In February 2011, Renco was dissolved as a New York corporation. In September 2011, John A. Rensing died leaving a last will and testament that was offered for probate in Florida. The will gave the decedent's shares of Renco to the defendants Edward W. and John P. Rensing, in violation of the terms of the buy-sell agreement. The defendant Edward W. Rensing was appointed the personal representative of his father's estate in October 2011. In January 2012, the plaintiff filed a claim against his father's estate for specific enforcement of the buy-sell agreement.

The plaintiff commenced this action in March 2012. The plaintiff alleges that, in 2008, Renco's board of directors held two special meetings of which he received no notice and in which he did not participate. The plaintiff alleges that the board removed him as a director at the first meeting and terminated the buy-sell agreement at the second meeting. The plaintiff also alleges that, in 2009, his deceased father transferred 33 of his Renco shares to the defendant Edward W. Rensing, in violation of the buy-sell agreement. The plaintiff further alleges that his deceased father's will bequeaths his father's remaining shares in Renco to the defendants Edward W. and John P. Rensing, in violation of the buy-sell agreement. The plaintiff seeks both declaratory and injunctive relief. The defendants move to dismiss the complaint on the ground that the court lacks personal jurisdiction over them or that Florida is a more convenient forum in which to litigate this dispute.

CPLR 302 (a) (1) permits the New York courts to exercise personal jurisdiction over a nondomiciliary who transacts any business within the state if the plaintiff's claim arises from the transaction of such business (**Opticare Corp. v Castillo**, 25 AD3d 238, 243; Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C302:6). Thus, the first requirement is that there be a transaction of business within New York (**Opticare Corp. v Castillo**, *supra* at 243). What constitutes the transaction of business has not been precisely defined, but it is clear that a single act may constitute a transaction as long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted (**Id.** at 243).

The Court of Appeals has held that the clearest case in which New York courts have CPLR 302 jurisdiction occurs when a defendant was physically present in New York at the time the contract establishing a continuing relationship between the parties was negotiated and made and the cause of action arose out of such contract (**Reiner & Co. v Schwartz**, 41 NY2d 648, 653). The parties agree that the buy-sell agreement that is the subject of this action was executed by the defendants in New York. Thus, the transaction-of-business requirement is satisfied. Moreover, the plaintiff's claim clearly arose out of the defendants' purported breach of that agreement. Accordingly, the court finds that it has personal jurisdiction over the defendants.

Turning to the defendants' alternate ground for dismissal, CPLR 327(a) permits

the court to stay or dismiss an action in the interest of substantial justice when the court finds that the action should be heard in another forum. Under CPLR 327(a) and the common-law doctrine of forum non conveniens, the court may stay or dismiss an action when it determines that, although it has jurisdiction over the action, the action would be better adjudicated elsewhere (*see, Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478-479). The burden is on the defendant to establish that the selection of New York as the forum will not best serve the ends of justice and the convenience of the parties (*see, Banco Ambrosiano v Artoc Bank & Trust*, 62 NY2d 65, 74; *Islamic Republic of Iran v Pahlavi*, *supra* at 479; *Globalvest Mgmt.Co. v Citibank, N.A.*, 7 Misc 3d 1023[A], *4). It is well established that, unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should not be disturbed (*see, Waterways Ltd. v Barclays Bank*, 174 AD2d 324, 327).

The New York courts consider and balance various competing factors when evaluating whether or not to retain jurisdiction over a particular action (*see, Islamic Republic of Iran v Pahlavi*, *supra* at 479). Although not every factor is necessarily articulated in every case, collectively, courts have considered and balanced the following factors: the existence of an adequate alternative forum, the situs of the underlying transaction, the residency of the parties, the state of incorporation, the potential hardship to the defendant, the location of documents, the location of a majority of the witnesses, and the burden on the New York courts (*Berger v Scharf*, 9 Misc 3d 1122[A] *3; *Globalvest Mgmt.Co. v Citibank, N.A.*, *supra* at *4). The determination rests within the exercise of the court's sound discretion, and no one factor is controlling (*see, Islamic Republic of Iran v Pahlavi*, *supra* at 479).

The fact that Renco is now incorporated in Florida weighs in favor of dismissal (*see, Berger v Scharf*, *supra* at *2). When an action involves the internal affairs of a foreign corporation, the state of incorporation has a paramount interest in hearing the claim (*see, Sturman v Singer*, 213 AD2d 324, 325). Dismissal in favor of the state of incorporation most often occurs when, as here, related actions have already been commenced in such state (*see, Berger v Scharf*, *supra* at *2, *citing Sturman v Singer*, *supra*; *Hart v General Motors*, 129 AD2d 179, 185). Although the plaintiff contends that the Florida probate court does not have jurisdiction over this dispute, he does not contend that the Florida court with jurisdiction is incapable of deciding the issues and granting appropriate relief. Moreover, all the parties except the plaintiff reside in Florida, where Renco has been headquartered since 1999. While there is evidence in the record that Renco still services a number of its customers who are located here, this dispute does not arise out of Renco's business with its customers in New York.

The existence of a substantial nexus between the action and the State of New York weighs against dismissal on forum-non-conveniens grounds (*see, Berger v Scharf*, *supra* at *2). New York has an interest in protecting its citizens from the questionable acts of foreign corporations when the foreign corporation has significant contact with New York (*see, Broida v Bancroft*, 103 AD2d 88, 92; *Berger v Scharf*, *supra* at *3). A substantial nexus between New York and the action may arise based on factors such as the location of the defendant

corporation's principal place of business in New York; the location of books and records in New York; the trading of the defendant corporation's stock on a stock exchange located in New York; the scheduling of stockholders' and directors' meetings in New York; the location of the majority of the defendant corporation's shareholders, officers, and directors in New York; and the defendant's frequent use of the New York courts (*see, Berger v Scharf, supra* at *3-*4).

The plaintiff contends that Renco has maintained an office in Suffolk County for the past 12 years, that he is employed by Renco in that office, and that Renco continues to service approximately 70 customer accounts in New York. The defendants acknowledge that Renco continues to service approximately 70 customers in New York, but they dispute that Renco maintains an office or any employees in New York. They contend that the purported Suffolk County office is maintained by the plaintiff for the production of a Broadway musical, that the plaintiff currently resides in Florida, and that he is currently employed by Renco at its headquarters in Florida.

Renco is a closely held corporation, headquartered in Florida, where the majority of its corporate shareholders, officers, and directors are located. The record does not reflect, nor does the plaintiff contend, that Renco maintains any books and records here in New York, that it holds stockholders' or directors' meetings here, that it is a party to any other litigation in New York, or that its stock is traded on a New York stock exchange. Even assuming that the Suffolk County office is an office maintained by Renco for its New York customers, the court finds that a substantial nexus does not exist between this action and the State of New York. As previously noted, this action involves the internal affairs of a Florida corporation and does not arise out of Renco's business with its customers here in New York.

The court finds that, on balance, the various factors weigh in favor of dismissal. Given Renco's incorporation in Florida and the lack of a substantial nexus between this action and the State of New York, the ends of justice and the convenience of the parties would best be served if the litigation were to proceed in Florida. Accordingly, the motion is granted and the complaint is dismissed.

Dated: December 5, 2012

J.S.C.