

**Corporate Jet Support, Inc. v Lobosco Ins. Group,
L.L.C.**

2015 NY Slip Op 32438(U)

October 7, 2015

Supreme Court, New York County

Docket Number: 651976/2015

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN J.S.C. Justice

PART 55

Index Number : 651976/2015
CORPORATE JET SUPPORT, INC.
vs.
LOBOSCO INSURANCE GROUP,
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 10/7/15

CYNTHIA S. KERN J.S.C.

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X

CORPORATE JET SUPPORT, INC.,

Plaintiff,

-against-

Index No. 651976/2015

DECISION/ORDER

LOBOSCO INSURANCE GROUP, L.L.C.,

Defendant.

-----X

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Affidavits in Opposition.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff commenced this professional malpractice action in New York alleging the defendant insurance broker deviated from accepted standards of practice by failing to procure flood insurance for the plaintiff's inventory located in the State of New Jersey. Defendant now moves for an Order pursuant to CPLR § 3211(a)(8) and/or § 327 dismissing plaintiff's complaint with prejudice pursuant to the doctrine of *forum non conveniens* and lack of personal jurisdiction. For the reasons set forth below, this action is dismissed based on *forum non conveniens*.

The relevant facts are as follows. The basis of plaintiff's complaint in this action is that the plaintiff lost its New Jersey warehouse inventory during Hurricane Sandy and that it has been unable to recover any insurance proceeds as a result of such loss because its New Jersey insurance broker, defendant, allegedly either failed to advise the plaintiff to obtain flood

insurance for such inventory and or allegedly advised the plaintiff not to get flood insurance.

Both plaintiff and defendant are New Jersey corporations. However, defendant is registered to do business in New York and has designated the Secretary of State as its agent for service of process.

As an initial matter, defendant's motion to dismiss this action on the ground that this court lacks personal jurisdiction over it is denied. It is well settled that a corporation's authorization to do business in the State and concomitant designation of the Secretary of State as its agent for service of process is consent to personal jurisdiction. *See Doubet LLC v. Trustees of Columbia Univ. in the City of N.Y.*, 99 A.D.3d 433, 444-445 (1st Dept 2012); *Augsbury Corp. v. Petrokey Corp.*, 97 A.D.2d 173, 175 (3rd Dept 1983). It is equally well settled that New York's assertion of personal jurisdiction over foreign entities that are registered to do business in the State is consistent with due process. Nearly a century ago, the Supreme Court concluded that a statute requiring a foreign corporation to consent to jurisdiction by appointing an agent for service does "not deprive the defendant of due process of law even if it took the defendant by surprise." *Penn. Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 95 (1917); *see also Augsbury*, 97 A.D.2d at 176 ("We reject [defendant's] argument that due process has been violated by the finding of personal jurisdiction solely on the basis of its registration to do business. The privilege of doing business in New York is accompanied by an automatic basis for personal jurisdiction."). Here, defendant does not dispute that it is authorized to do business in the State of New York and that it has designated the Secretary of State as its agent for service of process. Thus, defendant has consented to personal jurisdiction in New York and its motion to dismiss for lack of personal jurisdiction must be denied.

To the extent defendant contends that the Supreme Court rejected the idea that a foreign corporation who is merely registered to do business in New York and has designated the secretary of state as their agent for service subjects the corporation to general personal jurisdiction, such contention is without merit. In support of this position, defendant relies on the Supreme Court's holding in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). In *Daimler*, a group of Argentinian plaintiffs brought suit in California against Daimler AG ("Daimler") for alleged human rights violations committed in Argentina. While plaintiffs conceded that Daimler's contacts with California were "too sporadic to justify the exercise of general jurisdiction," they argued that California could exercise personal jurisdiction over Daimler based on the California contacts of Mercedes-Benz USA, LL ("MBUSA"), a Daimler subsidiary. MBUSA, which is incorporated in Delaware and has its principal place of business in New Jersey, distributes automobiles to dealerships throughout the United States, including California. In granting Daimler's motion to dismiss, the United States Supreme Court held that even if MBUSA's contacts could be imputed to Daimler, the exercise of general jurisdiction over it in California was unacceptable. *Id.* at 760-62. Specifically, the court held that except in an "exceptional case," a corporation is at "home" for general jurisdiction purposes only in its state of incorporation and in the state where its principal place of business is located. *Id.* at 761 fn. 19. Although this holding clearly narrows the reach of New York courts in terms of its exercise of general jurisdiction over foreign entities, it does not, contrary to defendant's contention, change the law with the respect to personal jurisdiction based on consent. Indeed, at least two courts that have considered the reach of Daimler's holding to consent based jurisdiction have acknowledged this distinction and come to this same conclusion. *See Beach v. Citigroup*

Alternative Invs. LLC, 2014 WL 904650 (S.D.N.Y. 2014); *Bailen v. Air & Liquid Systems Corporation*, 2014 WL 3885949 (Sup. Ct., N.Y. Co. 2014). Accordingly, contrary to defendant's contention, this court's exercise of personal jurisdiction over defendant in this matter does not deprive defendant of due process of law.

However, defendant's motion to dismiss based on *forum non conveniens* is granted. Although nonresidents are permitted to litigate their cases in New York as a matter of comity, New York courts are not required to entertain litigation which does not have any connection with the state. *Islamic Republic of Iran v Pahlavi*, 62 N.Y.2d 474, 478 (1984). Pursuant to the common law doctrine of *forum non conveniens*, which is also codified in CPLR § 327, a court may dismiss an action even though it is jurisdictionally sound where it would be better adjudicated elsewhere. *Id.* at 478-479. "The burden rests upon the defendant challenging the forum to demonstrate relevant private or public interest factors which militate against accepting the litigation." *Id.* at 479. Among the factors to be considered "are the burden on the New York courts, the potential hardship to the defendant, and the unavailability of an alternative forum in which plaintiff may bring suit. The court may also consider that both parties to the action are nonresidents and that the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction." *Id.* at 479.

In the instant case, this court finds, after balancing all of the relevant factors, that this case should be dismissed on the ground of *forum non conveniens* as New Jersey is a more appropriate forum for this dispute to be adjudicated. As an initial matter, there is no nexus to the State of New York. This action involves one New Jersey corporation suing another New Jersey corporation for professional malpractice regarding the insuring of a warehouse in New

