Edelman v Taittinger S.A.
2006 NY Slip Op 30029(U)
March 13, 2006
Supreme Court, New York County
Docket Number: _300122/6632
Judge: Karla Moskowitz

SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: Hon. KARLA MOSKOWITZ
Justice

PART 03

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ASHER B. EDELMAN, A.B. EDELMAN MANAGEMENT CO., INC., ASHER B. EDELMAN & ASSOCIATES, LLC, MUSEUM PARTNERS, L.P., MUSEE PARTNERS, L.P., EDELMAN VALUE PARTNERS, L.P. EDELMAN VALUE FUND, LTD., and WIMBLEDON EDELMAN SELECT OPPORTUNITIES HEDGE FUND,

Plaintiffs,

-against-

TAITTINGER, S.A., COMPAGNE FINANCIERTAITTINGER, ANNE-CLAIRE TAITTINGER, CLAUDE TAITTINGER, MICHEL TAITTINGER, JEAN TAITTINGER, FRANCOIS DE LAAGE DE MEUX, PATRICE DE MARGERIE, PATRICIA DE GALARD DE BEARN, JEROME HENRION, PIERRE-CHRISTIAN TAITTINGER, PIERRE EMMANUEL TAITTINGER, CHRISTOPHER DE MARGERIE, COLLETTE DE MARGERIE, MARIE CLOTHIDE HENRION, HUGHES TAITTINGER, HELEN BLONDEAU EP RENOUX, JEAN-CLAUDE MEYER, GUILLAUME DARD, BRIGITTE DE WARREN, SOCIETE FONCIERE, FINANCIER ET DE PARTICIPATIONS, PIERRE PEUGEOT, ODDO ET CIE, JEAN-PIERRE PINATTON, BNP PARIBAS, CREDIT COMMERCIAL DE FRANCE, CAGNAT & ASSOCIES, JACQUES CAGNAT, BACCARAT S.A., CHARGES HENRI FILIPPI, PIERRE DE MARGERIE, JEAN HENRION, FRANCOIS D'AULAN, GERARD MESTRALLET, THIERRY DE MONTBRIAL, FRANTZ TAITTINGER, PASCAL MALBEQUI, FRANCOIS TERREN, and JOHN DOES 1-4,

Defendants.

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INDEX NO. 122663/2000

MOTION DATE ________

MOTION SEQ. NO. 015

MOTION CAL. NO. ________

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits	
Answering Affidavits — Exhibits	
Replying Affidavits	

FILED
MAR 15 2006
COUNTY CLERK'S OFFICE
NEW YORK

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is

ORDERED that this motion is decided in accordance with the accompanying Decision and Order.

Dated: March 13, 2006

KARLA MOSKOWITZ *J.S.C.*

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 3

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ASHER B. EDELMAN, A.B. EDELMAN MANAGEMENT CO., INC., ASHER B. EDELMAN & ASSOCIATES, LLC, MUSEUM PARTNERS, L.P., MUSEE PARTNERS, L.P., EDELMAN VALUE PARTNERS, L.P. EDELMAN VALUE FUND, LTD., and WIMBLEDON EDELMAN SELECT OPPORTUNITIES HEDGE FUND,

Index No.122663/2000

Plaintiffs,

-against-

DECISION and ORDER

TAITTINGER, S.A., COMPAGNE FINANCIER TAITTINGER, ANNE-CLAIRE TAITTINGER, CLAUDE TAITTINGER, MICHEL TAITTINGER, JEAN TAITTINGER, FRANCOIS DE LAAGE DE MEUX, PATRICE DE MARGERIE, PATRICIA DE GALARD DE BEARN, JEROME HENRION, PIERRE-CHRISTIAN TAITTINGER, PIERRE EMMANUEL TAITTINGER, CHRISTOPHER DE MARGERIE, COLLETTE DE MARGERIE, MARIE CLOTHIDE HENRION, HUGHES TAITTINGER, HELEN BLONDEAU EP RENOUX, JEAN-CLAUDE MEYER, GUILLAUME DARD, BRIGITTE DE WARREN, SOCIETE FONCIERE, FINANCIER ET DE PARTICIPATIONS, PIERRE PEUGEOT, ODDO ET CIE, JEAN-PIERRE PINATTON, BNP PARIBAS, CREDIT COMMERCIAL DE FRANCE, CAGNAT & ASSOCIES, JACQUES CAGNAT, BACCARAT S.A., CHARGES HENRI FILIPPI, PIERRE DE MARGERIE, JEAN HENRION, FRANCOIS D'AULAN, GERARD MESTRALLET, THIERRY DE MONTBRIAL, FRANTZ TAITTINGER, PASCAL MALBEQUI, FRANCOIS TERREN, and JOHN DOES 1-4,

Defendants.

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Moskowitz, J.:

Motion Sequence Nos. 015, 016, 017, and 018 are consolidated for disposition, and are disposed of in accordance with the following decision and order.

Defendants Taittinger, S.A. and Compagne Financiere Taittinger (CFT) move to dismiss the amended complaint for lack of personal jurisdiction; forum non conveniens; because the claims must be asserted derivatively; and because the claims are barred by collateral estoppel and res judicata. Defendants Anne-Claire Taittinger, Claude Taittinger, and Patrice De Margerie move to dismiss on the same grounds, but also seek dismissal on statute of limitations grounds. Defendant Baccarat S.A. moves to dismiss for lack of personal jurisdiction; forum non conveniens; statute of limitations; failure to state a claim; and based on the doctrines of law of the case and res judicata. Defendant Societe Des Hotels Concorde seeks dismissal for forum non conveniens; failure to state a claim; because of failure to assert the claims derivatively; and the statute of limitations.

The claims in this action arise out of plaintiff Asher B. Edelman's investment in a French company, Societe du Louvre ("SDL"). Mr. Edelman and the various investment and management funds he established for this investment held a minority shareholder interest in SDL. Plaintiff Edelman was dissatisfied with the management of SDL, bringing numerous actions, over a six-year period, in the French courts for breaches of French law, several of which are still pending. Edelman and the Edelman entities brought this action, not against SDL, but against Taittinger, S.A., CFT and other defendants, for tortious interference, breach of fiduciary duty, unjust enrichment and conversion, based on the same underlying facts regarding the management of SDL as are the subject of the French litigations. Plaintiffs claim that the Taittinger family runs SDL, as a family fiefdom, for their own benefit, and at the expense of the interest of minority shareholders.

The moving defendants all contend that extensive discovery, conducted pursuant to

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CPLR 3211 (d), has demonstrated that this court lacks personal jurisdiction over them as foreign defendants who do not do business in New York, and that, in any event, New York is an inconvenient forum because there is little contact with this forum, all of the wrongs emanate from France, the witnesses and documents are there, and French law would likely apply. Defendants further contend that these claims are derivative, and plaintiffs may not pursue the claims individually. Further, the decisions in the French litigations have collateral estoppel/res judicata effect, barring relitigation of these claims. Several of the defendants, who were either first named in the amended complaint, or who were brought in again after being dismissed from the original complaint, also assert that the claims are untimely. Several of them further assert that the amended complaint fails to allege any substantive facts against them, and, therefore, the court should dismiss the pleading for failure to state a cause of action.

BACKGROUND

The Parties

Plaintiff Asher B. Edelman resides and has a place of business in New York. Amended Complaint, ¶ 1. Plaintiff A.B. Edelman Management Co., Inc. is a New York corporation, with a principal place of business here as well. Id., ¶ 2. The remaining plaintiffs, referred to as the "Edelman Funds" in the complaint, are foreign companies or partnerships, none of which are organized or incorporated in New York. Id., ¶¶ 4-9. The amended complaint alleges that the Edelman Funds, the non-New York plaintiffs, are shareholders of SDL, a French corporation (Id., ¶ 19) and that the Edelman Funds purchased these shares in France, where SDL shares are traded on the Paris Stock Exchange. Id., ¶¶ 19-20.

Defendants Taittinger, S.A. and CFT are French corporations, with principal offices in

France. Defendants Baccarat S.A. and Societe des Hotels Concorde (Concorde) are also French corporations with principal places of business in France. Plaintiffs allege that Baccarat S.A. has a wholly owned subsidiary, Baccarat, Inc. (Baccarat USA), that maintains offices in New York and New Jersey, and that Concorde, that SDL wholly owns, has a wholly owned subsidiary, Concorde USA, that has an office in New York. The individual defendants that are the subject of these motions are all residents of France, with places of business also in France.

The Amended Complaint

The amended complaint alleges that defendants have mismanaged SDL. Plaintiffs allege that the Taittinger family ran SDL for their own benefit, and not in the interests of the public shareholders not connected to defendant Taittinger, S.A. or the Taittinger family. Id., ¶¶ 23, 27. Plaintiffs' allegations of misconduct include the following: defendant Taittinger, S.A. has run SDL as a family "fiefdom" for the benefit of the Taittinger family (Amended Complaint, ¶ 23); defendants have managed SDL in a way that harmed minority shareholders but benefitted the Taittinger family (Id., ¶¶ 21, 67, 75); the Taittinger family conspired with various companies and the Peugeot family, among others, to disenfranchise Edelman and the Edelman Funds (Id., ¶¶ 31, 33-37, 67); SDL, at the direction of the Taittinger family and Taittinger, S.A., sold its interest in a French bank, Banque du Louvre, to Credit Commercial de France, at a lower price than it could have received from another bidder (Id., ¶¶ 38, 67); Taittinger, S.A. and the Taittinger family have caused SDL to pay Taittinger family members for "no show" jobs, and jobs with high salaries where they perform little or no service (Id., ¶¶ 24, 47, 67); Taittinger, S.A. and the Taittinger family have deliberately kept the share price of SDL at an artificially low level for tax purposes (Id., ¶ 44); Taittinger, S.A., CFT and the Taittinger family place their own self interest ahead of

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the rest of the shareholders (Id., ¶¶ 21, 23, 44, 77); and Taittinger, S.A. and the Taittinger family have caused SDL to spend unjustified monies to prevent Edelman from acquiring SDL (Id., ¶¶ 50-52, 67). None of these acts are alleged to have occurred in New York.

Based on these allegations, the amended complaint asserts five causes of action: the first, against all defendants for tortious interference with economic advantage; the second against Taittinger, S.A., CFT and the individual Taittinger defendants for breach of fiduciary duty; the third against Taittinger, S.A. and the individual Taittinger defendants for breach of fiduciary duty; the fourth and fifth against all defendants for unjust enrichment and conversion.

The French Litigations

Plaintiffs Museum Partner, Musée Partners, Edelman Value Partners and Edelman Value Fund (the Edelman Funds) first sued defendants Taittinger, S.A., SDL and others in the Tribunal de Commerce de Paris in June 1998 (exhibit 2 to Affirmation of Jessica M. Klein). The Edelman Funds based their claims on allegations that the Taittinger family controlled and directed SDL and misused their control to harm Edelman (Id. at 4, 7). Plaintiffs sought damages and other relief. On the same day, June 17, 1998, plaintiffs filed an action against individual defendants Anne-Claire Taittinger and Patrice De Margerie (exhibit 3 to Klein Affirm.). In this second action, plaintiffs asserted breaches of fiduciary duty, waste of corporate assets, and violations of French law, based on SDL's sale of treasury shares at below market prices in order to strengthen Taittinger family control and to disadvantage minority shareholders like Edelman (Id. at 4, 6-8). The court consolidated these actions. In a judgment issued on February 1, 2000, the French court rejected plaintiffs' claims (exhibit 4 to Klein Affirm). Plaintiffs appealed this dismissal to the Paris Court of Appeals, that upheld the dismissal (exhibit 5 to Klein Affirm.). On September 21, 2004, the Supreme Court of Appeals in France rejected the plaintiffs' appeal (exhibit 6 to Klein Affirm.).

On November 5, 1998, Edelman again sued SDL in France (exhibit 7 to Klein Affirm.). Edelman alleged that SDL management refused to provide him and his entities with information they asserted they were entitled to as shareholders; the Taittinger family was keeping the stock price of SDL low in order to obtain a lower valuation of their holdings; and SDL transferred majority control of Banque du Louvre at a lower price than it could have received from a different bidder (exhibit 7 to Klein Affirm., at 4, 8-12). The French court rejected all of the plaintiffs' claims (exhibit 8 to Klein Affirm., at 8-15).

On February 19, 1999, the Edelman Funds brought a fourth action in France against SDL and numerous individual defendants, including Claude Taittinger, Anne-Claire Taittinger and Patrice De Margerie, based on allegations similar to those alleged in the amended complaint, including that the Taittinger family controlled SDL and ran it like a fiefdom; that they managed SDL for the benefit of the Taittinger family at the expense of minority shareholders; Taittinger, S.A. conspired with others to disenfranchise Edelman; the Taittinger family sold Banque du Louvre at a price below other bids; SDL paid Taittinger family members for unnecessary jobs; and the Taittinger family artificially depressed the price of SDL's stock (exhibit 9 to Klein Affirm.). On June 20, 2000, the French court again rejected plaintiffs' claims (exhibit 10 to Klein Affirm.). On May 3, 2002, the Paris Court of Appeals upheld the trial court's decision (exhibit 11 to Klein Affirm.). On September 21, 2004, the Supreme Court of Appeals rejected plaintiffs' appeal of the decision (exhibit 12 to Klein Affirm.).

In August 2000, in a fifth action, SDL sued the plaintiffs here, alleging that plaintiffs were and had been acting in a manner not to take control of SDL, as they claimed, but to manipulate the stock market by circulating false information, with the sole purpose of personal profit, to the detriment of SDL and its shareholders (exhibit 13 to Klein Affirm.). Edelman and his entities counterclaimed against SDL (exhibit 14 to Klein Affirm.). On October 20, 2000, in connection with the counterclaims, Edelman and his entities filed an application in the United States District Court for the Southern District of New York, pursuant to 28 USC § 1782, for discovery (exhibit 15 to Klein Affirm.). SDL had previously made an application under the same statute for discovery from Edelman, that the district court had granted (see Id. at 1). Edelman's counterclaim alleged similar allegations to those alleged here. It asserted waste and mismanagement based on allegations that SDL acted to protect and enrich its directors and senior management, particularly the Taittinger family, at the expense of minority shareholders.

Procedural History in This Action

Plaintiffs initially brought this action in November 2000. On February 2, 2001, all of the defendants named in that original complaint moved to dismiss on the grounds of lack of personal jurisdiction, forum non conveniens, collateral estoppel/res judicata and failure to state a claim.

On August 8, 2001, this court heard oral argument on the motions to dismiss (exhibit 18 to Klein Affirm., August 8, 2001 Transcript). After a comprehensive analysis of the various bases for the motions, including the forum non conveniens factors, this court dismissed the complaint as to all defendants, some on the ground of failure to state a claim, some for lack of jurisdiction and some on the ground of forum non conveniens (exhibits 18 and 19 to Klein Affirm.).

Plaintiffs appealed this decision with regard to defendants Taittinger, S.A., CFT, Anne-Claire Taittinger, Claude Taittinger, Jean Taittinger, Michel Taittinger, Baccarat S.A. and ODDO et Cie. Plaintiffs did not appeal the dismissal of their case against Patrice De Margeric.

On October 29, 2002, the Appellate Division affirmed the dismissal as to 36 of the 38 defendants (Edelman v Taittinger, S.A., 298 AD2d 301 [1st Dept 2002]). With respect to Taittinger, S.A. and CFT, however, the Appellate Division granted plaintiffs the right to take jurisdictional discovery as to whether those defendants were doing business in New York, pursuant to CPLR 301. Specifically, that court permitted plaintiffs to take discovery on "whether the complex corporate relationships involved the parents' exercise of control over their subsidiaries" (Id. at 302). The Appellate Division determined that discovery was properly denied as to the individual Taittinger family members and as to the other corporate defendants, because there was no basis for claiming that discovery would yield facts relating to their doing business in New York (Id.). It further determined that there was no basis for discovery as to any of the defendants under CPLR 302 (Id.). While noting that the courts could not reach the forum non conveniens defense until it resolved the jurisdiction issue, the Appellate Division went on to state that, under the totality of the circumstances, "New York does not appear to be a convenient forum since the contacts with this jurisdiction are tenuous at best" (Id. at 303). It reasoned that the wrongs flowed from conduct in France, the documents and witnesses are in France and the court would likely need to apply French law. It further discounted plaintiffs' argument regarding procedural differences between the courts in France and here, and concluded that the other factors "militate strongly against retention of this action in New York" (Id.).

The remaining parties thereupon commenced jurisdictional discovery that took over two years.

On June 15, 2004, plaintiffs cross-moved to amend the complaint to include additional defendants. On August 5, 2004, this court granted the cross motion to amend.

The Motions to Dismiss

Upon completion of the jurisdictional discovery, defendants Taittinger, S.A. and CFT move to dismiss this action for lack of personal jurisdiction, pursuant to CPLR 301, and on the grounds of forum non conveniens, that plaintiffs must assert the claims derivatively and that the decisions in the French litigations have res judicata or collateral estoppel effect barring the claims. These defendants aver that discovery has shown that there is no basis to conclude that they are doing business in New York under CPLR 301. They urge that the evidence shows that they have no continuous or systematic presence in New York. They contend that Kobrand, a company that basically buys Taittinger champagne from Taittinger, S.A. in France and brings it to the U.S. to distribute it to its various distributors, is simply an independent distributor, not an agent, or a consignee of Taittinger, S.A. or CFT. They assert that their participation in an international wine exposition in 2002, infrequent visits by Taittinger representatives to New York to meet with Kobrand, maintenance of a website accessible in the U.S., and Taittinger, S.A.'s 83% ownership of Domaine Carneros', a California winery, alone or together, do not support CPLR 301 jurisdiction.

Taittinger, S.A. and CFT further urge that there is no basis to assert jurisdiction over them through SDL's subsidiaries in New York - Baccarat USA, Concorde USA, and Annick Goutal, Inc. USA - because those subsidiaries are not agents or mere departments of Taittinger, S.A. or CFT.

On their forum non conveniens defense, Taittinger, S.A. and CFT maintain that the contacts with New York are tenuous at best. They assert that the plaintiffs actually holding the shares at issue are nonresidents, as are all the defendants; the transactions occurred in France; there are duplicate, contemporaneous proceedings in the French courts, arising out of the same facts and transactions; French law applies; relevant documents and witnesses are in France; and the case would unnecessarily burden this court.

With respect to the remaining defenses, Taittinger, S.A. and CFT assert that these claims are derivative claims, because the alleged wrongs were to SDL shareholders, not the plaintiffs individually. Finally, res judicata and collateral estoppel bar the claims based the claims on the issues raised and decided against plaintiffs in the first French proceeding against Taittinger, S.A.

Defendants Anne-Claire Taittinger, Claude Taittinger and Patrice De Margerie, who originally obtained dismissal for lack of personal jurisdiction, again move to dismiss on the same grounds as Taittinger, S.A. and CFT, but also assert that the amended complaint is untimely. With regard to the lack of personal jurisdiction, they contend that the amended complaint does not cure the deficiencies that led this court and the Appellate Division to dismiss the original complaint against them. As with the original complaint, plaintiffs concede that these defendants reside and work in France. The additional allegation that Anne-Claire Taittinger and Patrice De Margerie travel to New York to promote the business of Baccarat, S.A. and Concorde is insufficient, because there is no allegation that they are conducting that business individually, as opposed to in their capacity as officers of certain French companies. As to the timeliness issue, these defendants contend that the claims all concern conduct that occurred in 1997 and early 1998, more than six years prior to the filing of the amended complaint – whether that filing was deemed to have occurred upon plaintiffs' cross motion made on June 15, 2004, or upon this court's grant of the cross motion on August 5, 2004. They assert that the tolling provision in CPLR 205 (a) for the termination of an action does not apply here where the dismissal was for lack of personal jurisdiction. They further contend that there is no basis to apply the relation back doctrine. They also join in the forum non conveniens, derivative claims and res judicata/collateral estoppel arguments of the other defendants.

Defendant Baccarat S.A., dismissed originally for lack of personal jurisdiction, is seeking dismissal of the amended complaint on the same ground. Baccarat maintains that the decision by this court and the Appellate Division, holding that there was no jurisdiction over it and no basis even for jurisdictional discovery, are law of the case and res judicata. Baccarat also contends that the amended complaint fails to state a claim against it, alleging only two statements to the effect that it has a subsidiary with a New York office, and that the individual defendants travel to New York to promote the business of Baccarat. Baccarat contends that this amended complaint fails to allege that Baccarat engaged in any wrongdoing. It joins in the other defendants' arguments on forum non conveniens.

Defendant Concorde, the only new defendant with respect to the amended complaint, similarly asserts that there are no allegations of wrongdoing against it in the amended complaint, and so the court should dismiss against Concorde for failure to state a claim. It contends that the statute of limitations for the claims has expired, and there is no basis for the application of the relation back doctrine. Finally, it, too, joins in the forum non conveniens arguments.

DISCUSSION

The court grants defendants' motions to dismiss and dismisses the amended complaint. The threshold issue in these motions is whether this court has personal jurisdiction over the different defendants. The prior motion and appeal has limited the issue of personal jurisdiction over defendants Taittinger, S.A. and CFT and granted jurisdictional discovery only on the issue of whether these defendants were doing business in New York. The courts rejected long-arm

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jurisdiction under CPLR 302 and the pleadings in the amended complaint also fail to raise any basis for jurisdiction under that provision.

To defeat a motion to dismiss for lack of personal jurisdiction, plaintiffs need only make a prima facie showing (see Hoffritz for Cutlery, Inc. v Amajac, Ltd., 763 F2d 55, 57 [2d Cir 1985]). However, the parties have engaged in substantial jurisdictional discovery, and neither party has requested an evidentiary hearing or trial. Therefore, plaintiffs must substantiate their jurisdictional allegations with reference to the evidence, and the moving defendants must present proof refuting the plaintiffs' jurisdictional allegations in order to prevail (see Sankaran v Club Mediterranee, S.A., 1998 WL 433780 [SD NY 1998]). As discussed below, plaintiffs have failed to support their allegations, and defendants have met their burden with undisputed proof.

CPLR 301 confers general jurisdiction over any foreign corporation "doing business" within the jurisdiction, regardless of whether the cause of action arises out of that transaction or business (Landoil Resources Corp. v Alexander & Alexander Servs., Inc., 77 NY2d 28 [1990]; Laufer v Ostrow, 55 NY2d 305 [1982]). The corporate defendant must be doing business in the state at the time plaintiffs commence the action (Lancaster v Colonial Motor Freight Line, Inc., 177 AD2d 152 [1st Dept 1992]) and not occasionally or casually, "but with a fair measure of permanence and continuity" (Tauza v Susquehanna Coal Co., 220 NY 259, 267 [1917]; accord Laufer v Ostrow, supra). The test is a practical one: "is the aggregate of the corporation's activities in the State such that it may be said to be 'present' in the State" (Laufer v Ostrow, 55 NY2d at 310, quoting Tauza v Susquehanna Coal Co., 220 NY at 267). In addition, under constitutional requirements of due process, the quality and nature of the corporation's contacts must be sufficient to make it reasonable and just, according to traditional notions of fair play and substantial justice, to require it to defend an action in the state (International Shoe Co. v Washington, 326 US 310, 316 [1945]).

The factors, under both analyses include the existence of an office; the presence of employees; the solicitation of business; and the presence of bank accounts or other property in the state (Hoffritz for Cutlery, Inc. v Amajac, Ltd., 763 F2d 55, supra; see Bryant v Finnish Natl. Airline, 15 NY2d 426, 432 [1965]).

In this case, the court finds that there is no CPLR 301 jurisdiction over defendants Taittinger, S.A., CFT, individual defendants Anne-Claire Taittinger, Claude Taittinger, Patrice De Margerie, Baccarat S.A., or Concorde. First, with respect to defendants Taittinger, S.A. and CFT, plaintiffs have failed to present any evidence of these factors. Instead, Taittinger, S.A. and CFT have presented uncontroverted evidence that neither of them has any offices, bank accounts, investment accounts, property or employees in New York, and that neither entity pays taxes here (see exhibit 20 to Klein Affirm., Deposition of Pierre Emmanuel Taittinger [PET], dated October 24, 2003, at 45-47, 54-55; exhibit 21 to Klein Affirm., Court Dep., at 28, 44, 115-17; exhibit 22 to Klein Affirm., Deposition of Claude Taittinger [CT], dated October 28, 2003, at 146-48; exhibit 23 to Klein Affirm., Deposition of Michel Taittinger [MT], dated October 31, 2003, at 42-43).

In the absence of these factors, plaintiffs have asserted various theories for CPLR 301 jurisdiction over these two defendants. First, plaintiffs contend that there is jurisdiction over Taittinger, S.A. through Kobrand, a non-party that distributes Taittinger, S.A.'s products in New York. Plaintiffs urge that the Taittinger consigns its products to Kobrand, that does not have to pay Taittinger until it receives payment from its own distributor Peerless, and that Kobrand does not accept any risk. Thus, plaintiffs maintain that Taittinger, S.A. is making direct sales in New York

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through Kobrand. Plaintiffs further assert that Kobrand is Taittinger's New York agent and that Kobrand's sales of the products of Taittinger, S.A. and of Domaine Carneros, a California winery of which Taittinger, S.A. is 83% shareholder, in New York are attributable to Taittinger, S.A. Plaintiffs point to evidence that Taittinger dictates the ex-cellars price of the product that Kobrand orders; that Taittinger, S.A. pays for a 10% marketing budget for all distributors of its products; that it works with Kobrand on its marketing plan; that certain Taittinger executives travel to New York around once a year; and that Taittinger accepts jurisdiction in New York under its operating agreement with Kobrand.

It is well-established that the mere sale of a manufacturer's products through an independent distributor, however substantial, is insufficient to justify the exercise of jurisdiction under CPLR 301 (see Delagi v Volkswagenwerk A.G. of Wolfsburg, Germany, 29 NY2d 426, 433 [1972]; Jurlique, Inc. v Austral Biolab Pty., Ltd., 187 AD2d 637 [2d Dept 1992] [presence of New York distributor not enough for CPLR 301]; Jazini v Nissan Motor Co., 148 F3d 181, 184 [2d Cir 1998][foreign manufacturer not doing business simply because it sells product through New York distributor]; McShan v Omega Louis Brandt et Frere, S.A., 536 F2d 516, 517-18 [2d Cir 1976] [sales, even if substantial, of foreign manufacturer's goods through independent agency, does not make manufacturer subject to CPLR 301 jurisdiction]). Contrary to plaintiffs' allegations, that are completely unsupported by reference to any documents or deposition testimony, Kobrand is an independent distributor of Taittinger, S.A.'s products and is not an agent of these defendants. The exclusive distribution agreement between Kobrand and Taittinger, S.A. clearly states that:

> KOBRAND shall have no right to act as agent for TAITTINGER in any respect whatsoever . . . [nor incur] any liabilities whatsoever on TAITTINGER'S behalf, or otherwise establish or impose any

obligation or liability against TAITTINGER.

Exhibit 24 to Klein Affirm., at T 1000074-75. Michael Quinttus, the senior vice-president and the director of the supply relations department at Kobrand, attested at his deposition that Kobrand does not have the authority to enter into agreements or make sales commitments on Taittinger, S.A.'s behalf, and that it must buy the champagne from Taittinger, S.A. before it can sell it to another distributor (exhibit O to Plaintiffs' Statement of Jurisdiction, Deposition of Michael Quinttus, dated February 24, 2004, at 31). He stated that Kobrand establishes its own marketing activities, and there is normally no discussion with Taittinger, S.A. about them (Id. at 108). He further attested that Kobrand does not consult with Taittinger, S.A. about the price Kobrand sells the products, that Kobrand selects its own distributors to distribute the Taittinger products in the U.S. and that it does not consult with Taittinger, S.A. about the selections (Id. at 89; see Court Dep., at 49-50).

Defendants present further proof that while Taittinger, S.A. gives Kobrand a 10% discount to be used for marketing the products, Kobrand determines, on its own, how and to whom the Taittinger champagne is marketed in New York (PET Dep., at 140, Court Dep., at 101), and Kobrand determines the price it charges to its own customers (PET Dep., at 110; Court Dep., at 69). In fact, Claude Taittinger, the chief executive officer of Taittinger, S.A., stated specifically that Kobrand is free to dispose of the advertising funds as it deems fit (CT Dep., at 123). This proof of the separate and independent nature of Kobrand and the lack of Taittinger, S.A.'s control over Kobrand's activities, defeats any argument that Taittinger, S.A. was doing business in New York through Kobrand.

Standard Wine & Liquor Co. v Bombay Spirits Co. (20 NY2d 13 [1967]), that defendants rely upon, is factually similar and disposes of plaintiffs' theory that Kobrand is Taittinger, S.A.'s agent. In Standard Wine, the Court of Appeals held that an independent distributor was not an agent of a foreign liquor manufacturer. The defendant, Bombay Spirits Co., had no offices, bank accounts, phone listings or warehouses in New York (Id. at 16). It had given the exclusive right to distribute its products in the U.S. to Penrose, a Pennsylvania distributor. Penrose bought the goods from Bombay F.O.B. Great Britain, imported them into the U.S. and sold them at a profit to liquor wholesalers and distributors (Id.). The Court of Appeals found no basis for the assertion of jurisdiction over Bombay (Id. at 17). The court specifically concluded that the record was clear that Penrose "dealt independently of Bombay and was not the latter's agent" (Id.). The Court dismissed the fact that Penrose acted as Bombay's agent in filings with the State Liquor Authority (Id.).

Similarly, here, Kobrand has been given the exclusive right to distribute Taittinger, S.A.'s champagne in the U.S. Kobrand buys the product from Taittinger, S.A. FOB France, imports it to the U.S. and sells the champagne at a profit to wholesalers and distributors. Kobrand takes the risk of loss in transit (exhibit O to Plaintiffs' Statement of Jurisdiction, Quinttus Dep., at 110-11), maintains its own inventory and cannot return the product if it is not sold. It deals independently with Taittinger, S.A., and is not its agent.

Plaintiffs argue that Kobrand is a consignee of Taittinger, S.A. Plaintiffs point to the terms "Ship and Consign to" on the preprinted "Purchase Order" form Kobrand used when purchasing champagne from Taittinger, S.A. (exhibit Q to Plaintiffs' Statement of Jurisdiction) and that Kobrand's distributors in certain instances pay Kobrand before Kobrand pays Taittinger, S.A.

This argument is unpersuasive. Mr Quinttus clearly testified that, in all instances, Kobrand takes title to Taittinger, S.A.'s product when it leaves Taittinger's warehouse in France (exhibit O to Plaintiffs' Statement of Jurisdiction, Quinttus Dep., at 110-11). He explained that there are three ways in which Kobrand distributes Taittinger champagne. The first involves Kobrand purchasing the product from Taittinger, storing it in Kobrand's Beaune, France warehouse and then distributing it to its customers in the U.S. (Id. at 30). The second involves Kobrand purchasing the champagne and transporting it through agents Kobrand hires to Kobrand's warehouse in New Jersey (Id. at 25). The third involves a purchase of a large quantity, enough for a full shipping container direct from Taittinger, S.A. In that situation, Kobrand buys the champagne from Taittinger, S.A., arranges and pays for a freight forwarder to go to Taittinger, pick up the goods and deliver them directly to Kobrand's buyer (Id. at 29-31, 42-48). Mr. Quinttus testified unequivocally that Kobrand takes title and possession of the products when they become loaded onto the truck at Taittinger, S.A. in France. After that, Kobrand bears the risk of loss (Id. at 110-11). The testimony of Pierre Emmanuel Taittinger corroborates this testimony. Pierre Emmanuel Taittinger also stated that Kobrand takes delivery and title to Taittinger champagne in France (exhibit 20 to Klein Affirm., at 151; see also exhibit 21 to Klein Affirm., Court Dep., at 99 [Taittinger does not accept champagne back from Kobrand], 48 [Kobrand is independent, it buys the product, pays for it and owns it]). These undisputed facts defeat any claim that there is a consignee-consignor relationship (see Rahanian v Ahdout, 258 AD2d 156, 157 [1st Dept 1999]).

Plaintiffs next contend that doing business jurisdiction is proper based on the solicitation plus theory. Plaintiffs support their argument by asserting that Taittinger, S.A. had significant New York sales, that plaintiffs estimate at approximately $5 million in sales in 2000, with no evidentiary citation; that Taittinger, S.A. has sold champagne in New York through Kobrand for fifty years; that its principals travel here regularly to confer with Kobrand and to attend Vinexpo and trade shows; that Taittinger, S.A. pays for advertising; and that it has two websites, one American and one French.

Under the solicitation plus theory, a foreign manufacturer's solicitation of business alone will not justify a finding of corporate presence in New York (Laufer v Ostrow, 55 NY2d at 310; Miller v Surf Props., Inc., 4 NY2d 475 [1958]). The defendant must engage in substantial solicitation and additional activities of substance within the jurisdiction (Laufer v Ostrow, supra). Thus, a "*foreign supplier* of goods or services for whom an *independent* agency solicits orders from New York purchasers is not present in New York and may not be sued here, however substantial in amount the resulting orders" (Id. at 311 [emphasis in original]; see Delagi v Volkswagenwerk A.G. of Wolfsburg, Germany, 29 NY2d 426, supra [foreign car manufacturer not subject to jurisdiction based on solicitation through independent franchised wholesale distributors], supra; Miller v Surf Props., Inc., supra). Activities of substance can include, for example, evidence of the foreign defendant's financial or commercial dealings in New York or proof that the defendant is holding itself out as operating in New York (see Bryant v Finnish Natl. Airline, 15 NY2d at 432 [office, employees and bank account in New York]; Elish v St. Louis Southwestern Ry. Co., 305 NY 267, 270 [1953] [financial transactions and directors meetings, offices and officers in New York]).

Here, neither Taittinger, S.A. nor CFT maintain any office, showroom, or bank accounts, nor do they hold any board meetings in New York. The once or twice yearly periodic trips by Taittinger, S.A. representatives to meet with Kobrand are plainly insufficient to sustain jurisdiction over Taittinger, S.A. (see Chamberlain v Jiminy Peak, 176 AD2d 1109 [3d Dept 1991] [periodic visits to New York are not sufficiently continuous and systematic]; Pacamor Bearings, Inc. v Molon Motors & Coil, Inc., 102 AD2d 355 [3d Dept 1984] [sales manager's eight trips to New York, 10% to 13% gross sales from New York buyers, and lending heavy engineering support to New York buyer are not enough]). Taittinger, S.A.'s participation in Vinexpo in 2002 is insufficient, because it is the defendant's contacts at the time the action was commenced, in this case in 2000, that are relevant. Moreover, attendance at trade shows is not sufficient to confer jurisdiction (see Berner v Ben Kaufman Sales Co., 1994 WL 363935 [SD NY 1994]; ICC Primex Plastics Corp. v LA/ES Laminati Estrusi Termoplastici S.P.A., 775 F Supp 650 [SD NY 1991] [minimal visits to customers or trade shows is not enough]; cf. Kines v Rescue Sys., Inc., 1997 WL 188931 [SD NY 1997] [conduct of business during trade shows warranted jurisdictional discovery]).

Plaintiffs' reliance upon Haddad Bros. Inc. v Little Things Mean A Lot, Inc. (2000 WL 1099866 [SD NY 2000]), is misplaced, as the facts are clearly distinguishable. In Haddad Bros., the foreign defendant maintained a showroom in New York, run by a sales representative of defendant, its name was listed on the door at the showroom and in the building directory as well as in the New York telephone book (Id. at *1). The defendant displayed its merchandise in the lobby of the building, sent catalogs and order forms to potential customers and regularly attended trade shows in New York. It also had a website offering products for sale to New York customers through its online store (Id. at *2). Based on these contacts, the court found that defendant satisfied the solicitation plus test, because it solicited substantial business and processed orders through its corporate showroom here (Id. at *5; see also Fashion Fragrance & Cosmetics v Croddick, 2003 WL 342273 [SD NY 2003] [defendant subject to jurisdiction because it had New

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York City location at which it collected cash and handled accounts receivables, and principal attended business functions in New York]). Here, in contrast, Taittinger, S.A. does not have a corporate showroom or any other offices in New York, nor does it have any employees, or telephone listings, and its website does not permit any ordering. Thus, there is no basis for jurisdiction over either Taittinger, S.A. or CFT under the solicitation plus theory.

Plaintiffs next assert that Taittinger, S.A. and CFT are present in New York because they have subsidiaries - Baccarat USA, Concorde USA, and Annick Goutal, Inc. USA - that are in New York and that, though plaintiffs admit are "technically wholly owned subsidiaries of their French parents," are allegedly all mere departments of the entire Taittinger group. Plaintiffs assert that Taittinger, S.A. and CFT dominate all 275 Taittinger family companies, including these New York subsidiaries. They claim that these companies operate on an integrated basis with no true distinctions and that Claude Taittinger, Anne-Claire Taittinger and Patrice De Margerie control them all. They urge that these New York subsidiaries perform all the New York functions that the parent companies would have to perform, and, therefore, the parents, Taittinger, S.A. and CFT, are doing business in New York through these subsidiaries.

"Where, as here, the claim is that the foreign corporation is present in New York state because of the activities there of its subsidiary, the presence of the subsidiary alone does not establish the parent's presence in the state" (Jazini v Nissan Motor Co., 148 F3d at 184 [citation omitted]). In order for the court to have personal jurisdiction over the parent in New York, the subsidiary must either be an "agent" (Frummer v Hilton Hotels Intl., Inc., 19 NY2d 533, cert denied 389 US 923 [1967]), or a "mere department" (Taca Intl. Airlines, S.A. v Rolls-Royce of England, Ltd., 15 NY2d 97 [1965]) of the foreign parent.

Under the theory that a subsidiary is an agent of the parent, the plaintiff must show that the New York subsidiary "does all the business which [the foreign parent corporation] could do were it here by its own officials" (Frummer v Hilton Hotels Intl., Inc., 19 NY2d at 537). This means that the local subsidiary must represent such a significant part of the business that the foreign parent would have to send its own employees to New York were the subsidiary not conducting affairs on its parents' behalf (Ontel Prods., Inc. v Project Strategies Corp., 899 F Supp 1144, 1147 [SD NY 1995]). The fact of common ownership "gives rise to a valid inference as to the broad scope of the agency" (Frummer v Hilton Hotels Intl., Inc., 19 NY2d at 538).

Here, not only is the proof of common ownership insufficient, there is no proof that Baccarat USA, Concorde USA and Annick Goutal, Inc. USA are doing all of the business Taittinger, S.A. and CFT could do were they acting here through their own officers. First, each of these subsidiaries are related to Taittinger, S.A. and CFT through SDL. A chart plaintiffs developed (exhibit 27 to Klein Affirm.) indicates that SDL owns 51% of Baccarat SA, that in turn owns 100% of Baccarat USA Inc.; that SDL owns 99% of the Concorde Group, that apparently owns Concorde USA; and that SDL owns 99% of Anick Goutal S.A., that in turn owns 99% of Anick Goutal, Inc. USA. Thus, it is SDL, not Taittinger, S.A. or CFT, that is the grandparent of these subsidiaries. Plaintiffs want to take this one and two steps further to Taittinger, S.A. and CFT. However, as the chart also shows, the public owns 58% of SDL, Taittinger owns only 37% of the shares and CFT owns only 35% of Taittinger, S.A. (Id.).

More importantly, there is no evidence in the record that any of these subsidiaries of SDL acted as an agent of either Taittinger, S.A. or CFT. It is undisputed that these subsidiaries are in completely different lines of business than Taittinger, S.A or CFT. Taittinger, S.A. produces champagne. CFT is a French holding company that manages shares held by certain French citizens and provides certain services for Taittinger, S.A. and SDL. SDL's subsidiaries, in contrast, sell crystal (Baccarat USA), hotel services (Concorde USA), and perfume (Annick Goutal, Inc. USA). There is no support in the record for any claim that CFT or Taittinger, S.A. rely on these SDL subsidiaries to perform CFT's or Taittinger, S.A.'s functions. Plaintiffs' attempt to overcome this glaring inadequacy in their argument by relying on the "aura of luxury" surrounding Taittinger champagne and the products of these SDL subsidiaries, is unconvincing. There is no basis to connect these disparate products for purposes of assessing parent-grandchild liability under an agency theory of personal jurisdiction. That certain Taittinger family members, like Claude Taittinger, Anne-Claire Taittinger and Patrice De Margerie, may sit on certain boards of these subsidiaries, alone is insufficient to find jurisdiction over Taittinger, S.A. and CFT (cf. Taca Intl. Airlines, S.A. v Rolls-Royce of England, Ltd.,15 NY2d 97, supra [while grandparent, parent and subsidiary shared personnel and directors, there was significant additional evidence that the parent companies determined the policies of the subsidiary, trained all employees of subsidiary, wrote and published all of subsidiary's literature, and all income of the subsidiary went to parent and then grandparent, appearing on their balance sheets]). Defendants present undisputed evidence that Taittinger, S.A. employees did not work for SDL, Baccarat USA, Concorde USA, or Annick Goutal, Inc.. USA (exhibit A to Plaintiffs' Statement of Jurisdiction, Claude Taittinger Dep., at 158). Moreover, there is no proof of financial dependence. Taittinger, S.A. did not guarantee any loans of Baccarat USA, Concorde USA, or Annick Goutal, Inc. USA (Id. at 59).

Similarly, with respect to plaintiffs' allegation that there is jurisdiction over Taittinger, S.A. based on its 83% ownership of Domaine Carneros, the California winery, that has an employee who works in New York (exhibit F to Plaintiffs' Statement of Jurisdiction, Court Dep. at 92), the court finds an insufficient nexus on which to base jurisdiction. The presence of an employee of a California corporation does not create jurisdiction in New York over a related, but independently managed, foreign corporation (see Delagi v Volkswagenwerk A.G. of Wolfsburg, Germany, 29 NY2d 426, supra; Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp., 751 F2d 117, 120 [2d Cir 1984] [when activities of parent show disregard for separate corporate existence of the subsidiary, the court may exercise jurisdiction]). Plaintiffs fail to present any indicia of Taittinger, S.A. control over Domaine Carneros. While the products (wine and champagne) are somewhat more similar than those of the SDL subsidiaries, there is no evidence that Taittinger, S.A. controlled Domaine Carneros' executives and activities or ignored the separate existence of the companies, sufficient to find that Taittinger, S.A. is doing business in New York through one Domaine Carneros' employee.

Plaintiffs' argument that the subsidiaries - Baccarat USA, Concorde USA and Annick Goutal, Inc. USA - are "mere departments" of Taittinger, S.A. and CFT, also is unconvincing. To determine whether a subsidiary is a mere department of the parent, a court considers four factors. The first, that is essential, is common ownership (Delagi v Volkswagenwerk A.G. of Wolfsburg, Germany, 29 NY2d at 432; Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp., 751 F2d at 120). "[N]early identical ownership interests must exist before one corporation can be considered a department of another corporation for jurisdictional purposes" (Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp., 751 F2d at 120). Here, the evidence shows that this crucial element is missing. Plaintiffs concede that the public owns 58% of SDL and that SDL owns each of these subsidiaries, not Taittinger, S.A. or CFT (exhibit 27 to Klein Affirm.). Thus, there is no identical ownership interest.

The remaining three elements include the degree to which the subsidiary is financially dependent on the parent, the degree to which the parent selects the subsidiary's executive personnel and fails to observe corporate formalities and the degree to which the parent exercises control over the subsidiary's operational and marketing policies (Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp., 751 F2d at 120-122). There is no evidence of any of these factors between Taittinger, S.A. and CFT and any of SDL's New York subsidiaries. The overlap of directors between these entities is not enough to find that the subsidiaries are mere departments of these defendants (see Porter v LSB Indus., 192 AD2d 205 [4th Dept 1993] [subsidiary not mere department even though some overlap of officers and directors of two entities]). Plaintiffs have failed to present any proof of the "pervasive control over the subsidiary that the 'mere department' standard requires" (Jazini v Nissan Motor Co., 148 F3d at 185). Therefore, this court lacks jurisdiction over defendants Taittinger, S.A. and CFT.

As to the individual defendants Claude Taittinger, Anne-Claire Taittinger, and Patrice De Margerie, as this court and the Appellate Division already found with regard to the original complaint, there also is no basis for this court to exercise personal jurisdiction over them. These defendants all live and work in France. That they may travel occasionally to New York on behalf of the French companies they work for, fails to provide a basis for personal jurisdiction over them. First, these visits were insufficient for jurisdiction over Taittinger, S.A., and, thus, they could not be sufficient for doing business jurisdiction over these individuals. Second, there is no proof that these individual defendants were engaged in any activity on their own behalf in New York. A defendant does not subject him or herself "individually, to the CPLR 301 jurisdiction of our courts, however, unless he [or she] is doing business in our State individually" (Laufer v Ostrow, 55 NY2d at 313 (citations omitted). Thus, the court dismisses the amended complaint against the individual defendants for lack of personal jurisdiction.

Defendant Baccarat, S.A.'s motion to dismiss also is granted. As I determined with regard to the original complaint, and as the Appellate Division affirmed, this court lacks personal jurisdiction over this defendant. Baccarat, S.A. is a French corporation with offices in France. As discussed with respect to defendants Taittinger, S.A and CFT, the allegations in the amended complaint that Baccarat, S.A. has a wholly owned subsidiary, Baccarat USA, that has an office in New York, without more, is insufficient. Plaintiffs have conducted substantial jurisdictional discovery. Yet, they fail to come forward with proof of the type of control necessary to demonstrate that Baccarat USA was a mere department or simply an agent of Baccarat, S.A. Plaintiffs do not support their jurisdiction argument in their memorandum of law by recitation to documentary or deposition evidence. Their Statement of Undisputed Jurisdictional Facts refers to such evidence, but the testimony they cite does not support the proposition for which they cite it. Therefore, plaintiffs have failed to demonstrate that this court has personal jurisdiction over Baccarat, S.A.

Moreover, even if this court were to find that Baccarat, S.A. was doing business here, the amended complaint fails to state a claim against it. It contains no substantive allegations against Baccarat, S.A. It alleges only that Baccarat, S.A. has a subsidiary with a New York office. Without any allegations of wrongdoing, plaintiffs fail to asserts any claims against Baccarat, S.A.

Similarly, with regard to the defendant Societe Des Hotels Concorde, the amended complaint makes the same factual allegations, that it has a subsidiary, Concorde USA, with a New

York office. Again, the complaint fails to assert any wrongdoing on the part of this defendant. Therefore, the court dismisses the amended complaint against Societe Des Hotels Concorde for failure to state a cause of action.

Finally, the court finds that, even if it has personal jurisdiction over these defendants, it would grant the motions on the ground of forum non conveniens. It is well-settled that New York courts "need not entertain causes of action lacking a substantial nexus with New York" (Martin v Mieth, 35 NY2d 414, 418 [1974]). The doctrine of forum non conveniens codified in CPLR 327 (a), "permits a court to stay or dismiss such actions where it is determined that the action, although jurisdictionally sound, would be better adjudicated elsewhere" (Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 478-79 [1984], cert denied 469 US 1108 [1985]). The central focus of the forum non conveniens inquiry is to ensure that trial will be convenient and will best serve the ends of justice (see Piper Aircraft Co. v Reyno, 454 US 235 [1981]; Capital Currency Exch., N.V. v National Westminster Bank PLC, 155 F3d 603 [2d Cir 1998], cert denied 526 US 1067 [1999]). If the balance of conveniences indicates that trial in plaintiff's chosen forum would be unnecessarily burdensome for the defendant or the court, then dismissal is proper (see Piper Aircraft Co. v Reyno, supra).

New York courts consider the availability of an adequate alternative forum and certain other private and public interest factors when evaluating New York's nexus to a particular action and when deciding whether to dismiss an action on the ground of forum non conveniens (Islamic Republic of Iran v Pahlavi, 62 NY2d 474, supra). Although not every factor is necessarily articulated in every case, collectively the courts consider and balance the following factors: situs of the underlying transaction; residency of the parties; the potential hardship to the defendant; the location of the documents; the location of a majority of the witnesses; the existence of an adequate alternative forum; and the burden on the New York courts (see Islamic Republic of Iran v Pahlavi, 62 NY2d 474, supra; World Point Trading PTE, Ltd. v Credito Italiano, 225 AD2d 153 [1st Dept 1996]; Evdokias v Oppenheimer, 123 AD2d 598 [2d Dept 1986]). A motion to dismiss on forum non conveniens grounds is subject to the trial court's discretion. No one factor is controlling (Islamic Republic of Iran v Pahlavi, 62 NY2d 474, supra; see also Matter of New York City Asbestos Litigation v Rapid-American Corp., 239 AD2d 303 [1st Dept 1997]).

Here, echoing the prior ruling of this court with regard to the earlier motion to dismiss, the Appellate Division recognized that "under the totality of the circumstances, New York does not appear to be a convenient forum since the contacts with this jurisdiction are tenuous at best" (Edelman v Taittinger, S.A., 298 AD2d at 303; see Transcript of August 8, 2001, Proceedings Before This Court, at 59). All of the critical acts giving rise to plaintiffs' claims occurred in France. The claims rest on allegations of mismanagement of SDL, a French corporation, that French officers and directors managed, in which plaintiffs chose to invest, in France. All of the alleged wrongs emanate from conduct, or defendants' alleged failure to act, in France. It is clear that most, if not all, of the witnesses and documents are in France. Indeed, France has the paramount interest in resolving disputes among shareholders vying for control over French entities. New York, on the other hand, lacks sufficient interest in this dispute. In addition, plaintiffs' claims about the management of SDL, and their efforts to gain control over it, are already the subject of review in the French courts in one pending and four previous litigated actions that plaintiffs brought. New York courts have routinely dismissed actions arising out of similar circumstances on forum non conveniens grounds (see Gonzalez v Lebensversicherung AG, 304 AD2d 427 [1st Dept

2003], lv denied 1 NY3d 506 [2004] [New York not convenient forum for action in which parties entered into contract in Spain, and entities, persons, and events predominantly situated there]; Tilleke & Gibbins Intl., Ltd. v Baker & McKenzie, 302 AD2d 328 [1st Dept 2003] [New York not convenient forum where plaintiff, defendant's Thai affiliate, and most of material witnesses were in Thailand and Thai law governed the contracts]; Banco do Estado de Sao Paolo, S.A. v Mendes Jr. Intl. Co., 249 AD2d 137, 138 [1st Dept 1998] [dismissal appropriate on forum non conveniens ground where underlying events and circumstances occurred in Brazil, witnesses were in Brazil, Brazilian law applied and inquiry into complex relationships between industry and Brazilian government was necessary]).

Further, as the Appellate Division recognized, the resolution of certain issues will depend on the application of French law, another factor that militates against accepting the litigation here (see Shiboleth v Yerushalmi, 268 AD2d 300 [1st Dept 2000]). The prior related litigations pending in France also tip the balance in favor of dismissal, because of the undue burden this places on New York courts and the risk of conflicting results (World Point Trading PTE, Ltd. v Credito Italiano, 225 AD2d at 161 [where case pending in Italy, attendant risk of conflicting rulings weighed in favor of dismissal]; see also A & M Exports, Ltd. v Meridien Intl. Bank, Ltd., 207 AD2d 741 [1st Dept 1994]). That two of the plaintiffs, Mr. Edelman and A.B. Edelman Management Co., Inc. are New York residents, does not outweigh the balance of the other relevant Pahlavi factors, clearly favoring dismissal (see Union Bancaire Privee v Nasser, 300 AD2d 49 [1st Dept 2002] [forum non conveniens doctrine warranted litigating in Brazil where witnesses, records and transactions at issue were predominantly situated]), particularly because the remainder of the plaintiffs and the defendants, the parties primarily involved in the transactions and alleged

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wrongdoings, are all nonresidents. Therefore, upon balancing the appropriate factors, defendants have sustained their burden of showing that the end of justice and the convenience of the parties are best served if this action is heard in France.

Accordingly, it is

ORDERED that the motions to dismiss of defendants Taittinger, S.A., Compagne Financiere Taittinger, Claude Taittinger, Anne-Claire Taittinger, Patrice De Margerie, Baccarat, S.A., and Societe Des Hotel Concorde are granted and the amended complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: March 13 2006

ENTER:

J.S.C.

FILED
MAR 15 2006
COUNTY CLERK'S OFFICE
NEW YORK