

Roboff v Mason

2006 NY Slip Op 30292(U)

October 11, 2006

Supreme Court, New York County

Docket Number:

Judge: Barbara Kapnick

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

PRESENT: **BARBARA R. KAPNICK**

PART 12

Index Number : 600528/2005

ROBOFF, ANNIE

vs

MASON, E. JEAN

Sequence Number : 008

REARGUMENT/RECONSIDERATION

INDEX NO. 600528/05
MOTION DATE _____
MOTION SEQ. NO. 008
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 _____	_____

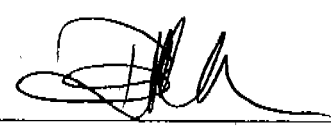
Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED
OCT 17 2006
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/10/06



BARBARA R. KAPNICK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 12

-----X
ANNIE ROBOFF,

Plaintiff,

-against-

E. JEAN MASON, BUDD CARR, ROBERT
D'LOREN, THE SONGWRITERS COLLECTIVE,
LLC, UCC CAPITAL CORP., FORTRESS
CREDIT OPPORTUNITIES I, LP.,

Defendants.

-----X
BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 600528/05
Motion Seq. No. 008

FILED
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NEW YORK
COUNTY CLERK'S OFFICE

Defendant Budd Carr, defendant The Songwriter Collective and defendant E. Jean Mason previously moved (under motions sequence numbers 004, 005 and 006 respectively) to dismiss plaintiff's First Amended Complaint on various grounds, including the ground of forum non conveniens.

By Decision/Order of this Court dated May 31, 2006, this Court dismissed this action on the grounds of forum non conveniens, finding that Tennessee, where plaintiff herself is a resident and where related lawsuits between various parties are pending, presented a viable alternative forum.

Plaintiff now moves for an order pursuant to CPLR § 2221 granting reargument of the prior motions to dismiss on the grounds of forum non conveniens and upon such reargument (a) vacating so much of its Order as directed the entry of judgment of dismissal as to defendants Robert D'Loren and UCC Capital Corp., since said

parties did not move to dismiss this action on said ground (and initially opposed those portions of the co-defendants' motion seeking to dismiss on the ground of forum non conveniens); (b) in light of such vacation, denying the motions of defendants Mason, Carr and The Songwriter Collective to dismiss on said grounds; and (c) to the extent this action is to be dismissed on the grounds of forum non conveniens, conditioning such dismissal upon defendants' agreement to (i) accept service of process; (ii) consent to jurisdiction, and (iii) waive the statute of limitations with respect to the action filed by plaintiff in Tennessee.

Defendants The Songwriter Collective, Mason and Carr oppose the motion to reargue, as do defendants UCC Capital Corp. and D'Loren (who withdraw any prior opposition to the motions to dismiss). They further argue that the issues of acceptance of service and waiver of the statute of limitations are moot, because service has been accepted in Tennessee on behalf of The Songwriter Collective, Mason and Carr, and defendants concede that the statute of limitations was "likely" tolled under the Tennessee Code.


Inasmuch as this Court's prior decision was based, at least in part, on the existence of a viable alternative forum, plaintiff's motion to reargue is granted to the extent of conditioning the dismissal upon all of the defendants' acceptance of service of process, consent to jurisdiction in Tennessee, and the waiver of

the statute of limitation with respect to any claims hereto asserted by plaintiff in this action.

Leave to reargue this Court's prior decision is otherwise denied.

This constitutes the decision and order of this Court.

Dated: October 10 2006



BARBARA R. KAPNICK
J.S.C.

BARBARA R. KAPNICK
J.S.C.

FILED
OCT 17 2006
NEW YORK
COUNTY CLERK'S OFFICE