

**Mammon v Samper**

2007 NY Slip Op 30573(U)

March 30, 2007

Supreme Court, New York County

Docket Number: 0600046/2007

Judge: Richard B. Lowe

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

PRESENT: Lowa  
*Justice*

PART 56m

Simon Mammon

INDEX NO.

600046/07

MOTION DATE

2/9/07

MOTION SEQ. NO.

001

MOTION CAL. NO.

- v -  
Patricia Samper

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**FILED**

APR 06 2007

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION IS DECIDED WITH REFERENCE TO THE DECISION  
WITH A DISPOSITION OF THE MOTION

Dated: 3/30/07

RICHARD BYLOWE III

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

[\* 1 ]

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 56

-----X  
SIMON MAMMON

Index No:600046/07

*Plaintiff*

*-against-*

**DECISION AND ORDER**

PATRICIA SAMPER

*Defendant*

**FILED**  
APR 06 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
**RICHARD B. LOWE III, J:**

Plaintiff Simon Mammon ("Mammon") moves this Court by Order to Show Cause seeking a declaration that Defendant Patricia Samper ("Samper") is in breach of an oral and written agreement. Samper cross-moves pursuant to CPLR 3211 requesting the dismissal of all claims against her for lack of personal jurisdiction, and pursuant to CPLR 327(a) for forum non conveniens.

**BACKGROUND**

Mammon is a New York domiciliary, and resides in New York, New York. Samper is a New Jersey domiciliary, and resides in Montclair, New Jersey.

Mammon and Samper formed September Group, Inc. on or about March 14, 2006. They organized it under the laws of New Jersey, with its principal place of business in Montclair, New

Jersey. The corporation is to be a café offering coffees, teas, baked goods, and other assorted items.

Both Mammon and Semper are experienced businesspeople. Pursuant to an oral agreement, each agreed to contribute to the corporation's financial needs and assume specific roles in the cafe's daily operations.

During the aforementioned period, Mammon and Semper maintained a romantic relationship in addition to their professional one. In September 2006, Mammon terminated their personal, but not their business, affiliation.

Mammon avers that after he ended their romance, Semper ceased and refused to perform her duties and obligations to the corporation. In November 2006, she sent an email to Mammon stating that she'd "like to continue with [her] commitment to the project by getting it off the ground successfully. . .however, once it [was] off the ground, [they] could split it in a way that makes financial sense." (*Mammon Memo, Ex F*)

Mammon alleges that from that point on, Semper did not contribute her share of the expenses. He approached her, and asked that she fulfill her obligations. Semper then wrote a letter to Mammon, in which she expressed her emotions regarding their romance's dissolution and wrote that he could "have the entire business." (*Id, Ex G*) Mammon avers that this letter constitutes a Buyout Agreement, with Semper agreeing to sell her portion of September Group, Inc. to him.

In alleged reliance on Semper's promise that she would sell her ownership in the café to him, Mammon began to pay the entire amount of the business' expenses, not just his agreed-

upon share. He avers that Semper has not sold her shares in the corporation to him, as she allegedly promised to do so. Moreover, she allegedly continues to fail to meet her business obligations. Accordingly, Mammon contends that he has incurred significant expenses.

Mammon and Semper, through counsel, discussed how to dissolve their business relationship. The parties could not reach an agreement, and Mammon commenced the instant action in New York County.

Mammon brings claims against Semper for breach of contract, breach of fiduciary duty, promissory estoppel, a declaratory judgment that the purported Buyout Agreement is valid, and for specific performance of said agreement. By an Order to Show Cause, he now seeks a declaratory judgment that Semper is in breach of the purported Buyout Agreement and the oral agreement pertaining to her responsibilities to their business. He also seeks injunctive relief prohibiting Semper from refusing to sell her ownership of the corporation to him.

Semper opposes the Order to Show Cause, averring that it is too premature to render a decision on the agreement's validity. She also cross-moves pursuant to CPLR 3211, seeking this action's dismissal for lack of personal jurisdiction because she contends that she has no significant contacts to New York. In the alternative, she cross-moves pursuant to CPLR 327(a), arguing that New York is not a convenient forum for this dispute's resolution because all activity concerning September Group, Inc is effected in New Jersey.

## DISCUSSION

### *I. Mammon's Order to Show Cause*

After oral arguments heard on February 9, 2007, Mammon's Order to Show Cause seeking the declaration that Semper is in breach of said contracts and ordering her to sell her ownership in the company to him was denied. This Court's reasoning for the denial can be found in the minutes.

### *II. Semper's Cross-Motions*

#### *a. Lack of Personal Jurisdiction, CPLR 3211*

"A party may move for judgment dismissing one or more causes of action asserted against [her] on the ground that the court has no jurisdiction of the person of the defendant." (CPLR 3211(a)(8)) Semper argues that she is not subject to New York's personal jurisdiction because she had no substantive contacts here regarding the formation and operation of September Group, Inc. Mammon counter-argues that numerous contacts occurred in New York, which renders her subject to this state's jurisdiction.<sup>1</sup>

"A court may exercise personal jurisdiction over a non-domiciliary. . .who in person or through [an] agent. . .transacts any business in the state. . ." (CPLR 302(a)(1)) In order for New York to exercise jurisdiction over a non-domiciliary, such person "must have purposely availed herself of the privilege of transacting business in New York so as to invoke the benefits and

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<sup>1</sup> Semper proffers arguments pertaining to New York's jurisdiction over a non-New York-domiciled corporation under CPLR 301. But the issue before this Court is not September Group, Inc.'s contacts with New York; rather, it is Semper's. Accordingly, these arguments will not be addressed.

protections of [its] laws.” (*Warck-Meister v Diana Lowenstein Fine Arts*, 7 AD 3d 351 [1<sup>st</sup> Dept 2004].)

Here, New-Jersey-domiciliary Semper entered into a business relationship with New-York-domiciliary Mammon to own and operate a business organized under the laws of, and located in, New Jersey. Mammon avers three specific actions on Semper’s part that allegedly subjected her to New York’s personal jurisdiction. Each will be examined in turn.

First, Mammon asserts that since Semper “agreed to seek and sought and obtained additional and specific professional training. . .in New York City” she is subject to personal jurisdiction here. (*Complaint at page 2*, ¶ 7) Semper enrolled in cooking classes at, and graduated from, the French Culinary Institute located in the Soho section of Manhattan for the purposes of the business.

Generally, a non-domiciliary is subject to the jurisdiction of a New York court if she or he has purposely transacted business within the State, and there is a “substantial relationship” between the activity and the cause of action. (*See, Kreutter v. McFadden Oil Corp*, 71 NY 2d 460 [1988].) In order for Semper to be subject to New York’s jurisdiction, Mammon “must make a prime facie showing that [Semper is] subject to the jurisdiction of the Supreme Court” because there is a nexus between her attendance at the school and her alleged contract breaches. (*Alden Personnel v David*, 2007 WL 853195 [2<sup>nd</sup> Dept].) He fails to do so.

Here, Semper attended a well-known and highly-regarded culinary-educational institution in New York in order to succeed in her chosen business venture. To be sure, she made this contact within New York because of the New Jersey-domiciled September Group, Inc. But

Mammon's claim against Semper is that she breached two agreements: 1) an oral agreement concerning her obligations to the café and 2) the purported written Buyout Agreement. (*Mammon Aff'd at page 2, ¶ 5*) She allegedly stopped contributing to the business in September 2006 because Mammon terminated their personal relationship. Moreover, she refused to sell her interest in the company to him, after she purportedly contracted to do so, beginning in November 2006.

These two alleged breaches bear no relation to Semper's contacts with the New-York based school. She allegedly did not stop funding the New Jersey-based business and cease her daily duties vis-a-vis Mammon because of her school-attendance. Nor does her failure to abide by the purported Buyout Agreement's terms pertain to her culinary training in New York. Accordingly, Semper's contact with New York because of her attendance at a cooking school is insufficient for this state to exercise personal jurisdiction over her in connection with the asserted claims in the instant action.

Second, Mammon contends that New York can assert personal jurisdiction over Semper because she

. . . engaged with Plaintiff [within the environs of New York City] in numerous and substantial planning and negotiations and discussions and numerous and substantive activities concerning and in furtherance of the business venture. . . including. . . discussions concerning and activities in pursuit of the development of the concept and mechanics for the development of the Café [and]. . . activities to obtain the necessary financing. . .

(*Complaint at page 2, ¶ 7*)

When determining whether a non-domiciliary transacted sufficient business in New York to warrant jurisdiction over her/him personally, the court looks at the "quality and nature of the

[non-domiciliary's] activity.” (See, *CPC Intern, Inc v McKesson Corp*, 120 AD 2d 221 [1<sup>st</sup> Dept 1986].) Furthermore, when the non-domiciliary's conduct in New York is incidental to the causes of action, and the effect of which occurs in another jurisdiction, there is an insufficient basis to assert personal jurisdiction here. (See, *Markel Ins. Co v GFM Construction, Inc*, 35 AD 3d 151 [1<sup>st</sup> Dept 2006].)

Here, it cannot escape from this Court's analysis that Mammon and Semper were romantically-involved as well as professional partners. Mammon resides in Manhattan, and Semper undoubtedly visited him here on a personal-level. Because of their bifurcated relationship, it is also reasonable to believe that they discussed corporate matters while on non-business time.

Semper does not dispute that she engaged in conversations with Mammon in New York regarding the café. However, “the quality and nature” of these discussions do not provide a sufficient basis for this state to exercise personal jurisdiction over her.<sup>2</sup> Mammon and Semper conversed about their intentions for a business located in another jurisdiction. The nature of said discussion was the execution of a business operated in New Jersey, and organized under its laws.

Their business plan was not implemented in any respect in New York. While Mammon avers that “activities to obtain financing” occurred in New York, he does not specify a New York-based lender.<sup>3</sup> Semper, on the other hand, identifies JP Morgan Chase Bank in New Jersey as a lending entity through which financing was sought. (*Semper Memo in Opp'n at page 21*)

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<sup>2</sup> See, *CPC Intern, supra*.

<sup>3</sup> See, *Complaint, supra*.

In similar vein, these New York-based negotiations are only incidental to Mammon's claims against Semper. It is in Montclair, New Jersey where the business is located and it is that state's jurisdiction where the corporation was organized. If Mammon is unable to satisfy the cafe's obligations because of Semper's alleged breaches, any default action brought against September Group, Inc. will occur in New Jersey. Indeed, the effect of Semper's alleged breaches will be felt in New Jersey, not New York. Accordingly, Semper's discussions with Mammon in New York are insufficient to assert jurisdiction over her here.

Finally, Mammon avers that "the ultimate agreements concerning the contract and various other agreements between Plaintiff and Defendant. . .were concluded in New York City. . ." (*Complaint at page 2, ¶ 7*) He further attests that

. . .the Buyout Agreement was carried by Defendant to New York, and personally delivered to me by Defendant at my apartment in New York City. . . [and] I further confirm that on Nov. 18<sup>th</sup>, 2006 I met with Miss Semper for 3 hours in NY in a meeting regarding the venture agreement. She remained in NY and drafted and later delivered to me the Buyout Agreement at my apartment in NY.

(*Mammon Aff'd at page 3, ¶ 7*)

Mammon contends that Semper a) repudiated her obligations to the business, and b) offered to sell her interest in it to him in the purported Buyout Agreement. Mammon argues that a three-page letter written by Semper, the majority of which discusses her personal feelings about him and their then-ending relationship, is a valid Buyout Agreement. She concluded the letter by writing

. . . You can have the entire business and all the money that it will make. Just have the decency to pay me back the money I put in. . . You can keep this paper as evidence in case you don't believe me. . .

*(Mammon Memo, Ex G)*

It is not before this Court whether this letter constitutes a valid Buyout Agreement or whether Semper in fact repudiated her oral agreement with Mammon. Rather, this Court will only examine whether Semper's contact within New York connected thereto is sufficient to justify its exercise of personal jurisdiction over her.

"CPLR 302(a)(1) is a single-act statute and proof of one transaction in New York is sufficient to invoke jurisdiction." (*Deutsche Bank Securities, Inc v Montana Bd of Investments*, 21 AD 3d 90 [1<sup>st</sup> Dept 2005].) However the one transaction must be substantially related to the cause of action. (*See, Johnson v Ward*, 4 NY 3d 516 [2005].)

Here, Mammon avers, and Semper does not dispute, that she came to New York to discuss the end of both their personal and professional relationship. Mammon attests that they met for three hours to discuss this. Semper then left Mammon's residence, and returned with a letter that indeed makes reference to relinquishing her ownership in the café to him.

It is clear that Semper came to this jurisdiction to discuss, and indeed manifested as such in a writing, her intention to transact business with Mammon. Furthermore, Mammon's claims substantially relate to Semper's contact with New York because it is her promises that he allegedly relied upon to his, and the business' detriment. "Constitutional due process requires that a court have a jurisdictional basis to exercise its powers over a party." (*Kreutter, supra*) Semper's has sufficient minimal contacts with New York in connection to the cause of action plead against her to warrant this state's jurisdiction over her personally. Her motion to dismiss pursuant to CPLR 3211(a)(8) is therefore denied.

*b. Forum Non Conveniens, CPLR 327(a)*

“When in the interest of substantial justice the action should be heard in another forum, the court. . .may stay or dismiss the action in whole or in part. . .” (*CPLR 327(a)*)

“The burden rests upon the [party] challenging the forum to demonstrate relevant private and public interest factors which militate against accepting litigation.” (*Islamic Republic of Iran v Pahlavi*, 62 NY 2d 474 [1984].) “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 the plaintiff may bring the suit.” (*Bank Hapoalim Ltd v Banca Intesa*, 26 AD 3d 286 [1<sup>st</sup> Dept 2006].) “No one factor is controlling since the great advantage of the doctrine of forum non conveniens is its flexibility based on the facts and circumstances of each case.” (*Id.*)

This case’s facts indicate that it is New Jersey, rather than New York, which is a more convenient forum for the instant action’s resolution. The only defendant in this case is a New Jersey resident. She is clearly subject to that state’s jurisdiction. The business is incorporated in New Jersey and located there. Mammon availed himself of New Jersey’s jurisdiction by incorporating and managing a business within that state.

Furthermore, the ramifications of Semper’s alleged contractual breaches have their nexus in New Jersey. Evidence concerning the costs Mammon incurred, such as the cafe’s lease which is allegedly near default, would be located there. Witnesses, such as the landlord who could testify to the hardship Mammon and September Group, Inc incurred, are all located in New Jersey.

Aside from it being Mammon's domicile and Semper's minimal contacts here, New York has no relation to the instant action. New Jersey thus has a higher degree of contacts than New York in connection with the instant action. Accordingly, Semper's cross-motion for dismissing the action for forum non conveniens is granted.

**CONCLUSION**

For the foregoing reasons, it is hereby

ORDERED that Mammon's Order to Show Cause is denied; and it is further


ORDERED that Semper's cross-motion for dismissal for lack of personal jurisdiction is denied; and it is further

ORDERED that Semper's cross-motion for dismissal for forum non conveniens is granted.

This shall constitute the court's decision and order.

**Dated: March 30, 2007**

ENTER

  
~~RICHARD B. LOWE, III~~  
RICHARD B. LOWE, III, J.S.C.

**FILED**

APR 06 2007

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