

**Coppolino v Lamb**

2008 NY Slip Op 30135(U)

January 14, 2008

Supreme Court, New York County

Docket Number: 0602366/2007

Judge: Barbara Kapnick

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

**BARBARA R. KAPNICK**

PRESENT: \_\_\_\_\_

PART 12

*Justice*

Index Number : 602366/2007

**COPPOLINO, ROBERT**

VS.

**LAMB, JAMIE**

SEQUENCE NUMBER : # 001

DISMISS

INDEX NO. 602366-07

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. #001

MOTION CAL. NO. \_\_\_\_\_

Lead 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

**FILED**

JAN 15 2008

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

NEW YORK  
COUNTY CLERKS OFFICE

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

Dated: 1/14/08

**BARBARA R. KAPNICK** J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate

DO NOT POST

REFERENCE

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

-----X

ROBERT COPPOLINO,  
  
Plaintiff,

DECISION/ORDER  
Index No. 602366/07  
Motion Seq. No. 001

-against-

JAMIE LAMB,  
  
Defendant.

-----X

BARBARA R. KAPNICK, J.:

**FILED**  
JAN 15 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

In this action, plaintiff Robert Coppolino seeks to recover compensatory and punitive damages against defendant Jamie Lamb for: (i) breach of an oral agreement by which defendant agreed to represent plaintiff's client, Creating Limitless Heights ("CLH"), a New Jersey manufacturing corporation, to certain retail establishments, in exchange for a percentage of earned commissions ("the CLH agreement") (first cause of action); (ii) breach of the implied covenant of good faith and fair dealing of the CLH agreement (second cause of action); (iii) fraud and misrepresentation surrounding the CLH agreement (third cause of action); (iv) breach of an oral representation agreement by which defendant agreed to represent plaintiff's manufacturing clients in exchange for monthly payments ("the representation agreement") (fourth cause of action); (v) breach of the implied covenant of good faith and fair dealing of the representation agreement (fifth cause of action); (vi) fraud and misrepresentation surrounding the representation agreement (sixth cause of action); (vii) quantum

meruit (seventh cause of action); and (viii) intentional interference with business relations (eighth cause of action).

Plaintiff also seeks a permanent injunction enjoining and restraining defendant from: (a) disclosing to anyone, other than plaintiff, the names and addresses of any of plaintiff's customers, clients or business associates, or any information pertaining to plaintiff's businesses; (b) soliciting or canvassing plaintiff's customer's, clients or business associates and from aiding or assisting anyone, directly or indirectly, from doing so; (c) interfering with the trade, custom and good will of plaintiff's businesses, and from interfering with plaintiff's customers, clients or business associates by any form of communication; and (d) making use of the knowledge or information each had received in connection with his relationship with plaintiff (ninth cause of action).

Defendant now moves for an order:

(1) dismissing this action pursuant to CPLR § 3211(a)(8) on the ground that this Court lacks personal jurisdiction over the defendant, a resident of New Jersey; and

(2) dismissing this action pursuant to CPLR § 327 on the ground of *forum non conveniens*.

Defendant contends that there is no basis to assert long-arm jurisdiction over him because he is not present in New York with any permanency and continuity, and plaintiff's claims did not arise out of any transactions of business within New York.

Defendant further argues that this action should be dismissed on the grounds of *forum non conveniens* because the parties both live in New Jersey, have their offices in New Jersey, and the majority of witnesses and other evidence are located in New Jersey where CLH, including its main showroom, is based and where defendant maintains its bank accounts and business books. He further claims that it would be inconvenient for him to engage in pretrial and trial proceedings in New York.

In opposition to the motion, plaintiff argues that this Court may exercise personal jurisdiction over the defendant and retain jurisdiction to adjudicate this action on the grounds that defendant regularly does business in the State of New York and performed many aspects of the agreement in New York.

Specifically, plaintiff claims that: (i) discussions were held and orders were received by defendant on behalf of CLH while defendant was present at the offices of various customers in New York; (ii) defendant personally traveled to New York, met with plaintiff, displayed and marketed CLH's sample line, had meetings

with retailers and processed orders at CLH's showroom in New York, during September 2006; (iii) defendant personally traveled to New York, had meetings with retailers and processed orders at various showrooms and offices in New York from 2003 through 2007 in connection with the representation agreement; and (iv) defendant personally traveled to New York to market clients' product lines and solicit orders from various retail establishments, a majority of which were located in New York.

It has been repeatedly held that

the factors in weighing a motion to dismiss include the burden on New York courts, potential hardship to the defendant, the unavailability of an alternate forum, the residence of the parties, and the location of the events giving rise to the transaction at issue in the litigation (*Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 479, ... *cert denied*, 469 U.S. 1108 ... [1985]). The burden remains with the party challenging the forum to demonstrate that the litigation would best be adjudicated elsewhere (citation omitted).

Ghose v. CNA Reinsurance Co., Ltd., 43 A.D.3d 656, 660 (1st Dep't 2007).

It does not appear that the instant case would present any particular burden on the New York courts or any potential hardship to the defendant.

However, New Jersey constitutes an available alternate forum. Moreover, both of the parties as well as one of the central clients at issue, CLH, are residents of New Jersey.


In addition, it appears that New Jersey is the location of the events that give rise to the transaction at issue in this litigation (i.e., the CLH and representation agreements).

Although there is no dispute that defendant performed services under the agreements in New York, this Court finds based on the papers submitted and the oral argument held on the record on October 31, 2007, that New Jersey has the greatest nexus to the claims raised herein and that the litigation would best be adjudicated in New Jersey.

Accordingly, the instant motion is granted to the extent of dismissing plaintiff's Complaint without prejudice and without costs or disbursements. The Clerk may enter judgment accordingly.

This constitutes the decision and order of this Court.

Dated: January 4 2008

  
Barbara R. Kapnick  
J.S.C.  
**BARBARA R. KAPNICK**  
**J.S.C.**

**FILED**  
JAN 15 2008  
NEW YORK  
COUNTY CLERK'S OFFICE