

Cambiotis v Lightstone Sec., LLC

2008 NY Slip Op 32847(U)

October 20, 2008

Supreme Court, New York County

Docket Number: 100018/08

Judge: Barbara R. Kapnick

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

BARBARA R. KAPNICK

PRESENT: Index Number : 100018/2008

PART 12

CAMBIOTIS, JOHN
vs
LIGHTSTONE SECURITIES, LLC

INDEX NO. 100018/08

Sequence Number : 001

MOTION DATE _____

DISMISS ACTION

MOTION SEQ. NO. 001

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 20 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/16/08



BARBARA R. KAPNICK S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

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

-----X
JOHN CAMBIOTIS and ANASTASIA LEKKAS,

Plaintiffs,

-against-

LIGHTSTONE SECURITIES, LLC, individually
and d/b/a EXTENDED STAY AMERICA and
d/b/a EXTENDED STAY HOTELS,

Defendants.

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

DECISION/ORDER
Index No. 100018/08
Motion Seq. No. 001

FILED
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COUNTY CLERK'S OFFICE
NEW YORK

In this action, plaintiffs seek to recover damages for personal injuries allegedly sustained by plaintiff John Cambiotis while staying at a motel owned by defendants Lightstone Securities, LLC individually and d/b/a Extended Stay America and d/b/a Extended Stay Hotels in Malvern, Pennsylvania, near Philadelphia, from October 14 through October 17, 2007.¹ Plaintiff claims to have been bitten by bed bugs.

Defendants now move for an order pursuant to CPLR § 327(a) dismissing plaintiffs' Complaint with prejudice on the ground of *forum non conveniens*.

Ordinarily, nonresidents are permitted to enter New York courts to litigate their disputes as a matter of comity. Obviously, however, our courts are not required to add to

¹ Defendants contend that the proper party to be named as a defendant herein is HVM, LLC, the manager of Extended Stay America Hotel, but have not moved to dismiss the Complaint on this basis.

their financial and administrative burdens by entertaining litigation which does not have any connection with this State. The common-law doctrine of *forum non conveniens*, also articulated in CPLR 327, ... permits a court to stay or dismiss such actions where it is determined that the action, although jurisdictionally sound, would be better adjudicated elsewhere (citations omitted). The burden rests upon the defendant challenging the forum to demonstrate relevant private or public interest factors which militate against accepting the litigation (citations omitted) and the court, after considering and balancing the various competing factors, must determine in the exercise of its sound discretion whether to retain jurisdiction or not. 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 (citations omitted). The court may also consider that both parties to the action are nonresidents (citation omitted) and that the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction (citation omitted). No one factor is controlling (citations omitted). The great advantage of the rule of *forum non conveniens* is its flexibility based upon the facts and circumstances of each case (citations omitted). The rule rests upon justice, fairness and convenience and we have held that when the court takes these various factors into account in making its decision, there has been no abuse of discretion reviewable by this court (citations omitted).

Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 478-479 (1984);
cert. den. 469 U.S. 1108 (1985). See also, *Banco Ambrosiano v*
Artoc Bank & Trust Limited, 62 NY2d 65 (1984).

Defendants argue that there is no reason to burden the New York courts with this matter because none of the events in question took place in New York and the application of Pennsylvania law may be required.

In addition, defendants argue that they will incur a potential hardship if required to litigate this matter in New York because all of their relevant documents and witnesses (who are unidentified present and/or former employees of the motel) are located in or near Malvern, Pennsylvania.

Although these potential witnesses may be beyond the subpoena power of this Court, defendants have not established that these individuals are not within defendants' control and/or that these individuals would be unwilling to testify on defendants' behalf absent a court-ordered subpoena. *See, Kronengold v Hilton Hotels Corp.*, 166 Ad2d 325 (1990).

Defendants further argue that there is an alternative forum in which plaintiff may bring suit - i.e., Pennsylvania - and that Pennsylvania has a substantial interest in adjudicating an action involving a company which conducts business within that State.

However, defendant Lightstone Securities, LLC's is a New York domestic limited liability company with its principal place of business in New Jersey. The principal place of business of its manager, HVM, LLC, is in South Carolina. Plaintiffs are residents of New York County. In addition, Extended Stay America operates ten hotels throughout New York State and thus has substantial contacts

with New York. See, e.g., *Kronengold v Hilton Hotels Corp.*, supra at 325. Moreover, none of the parties are residents of Pennsylvania.

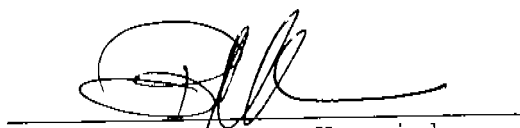
Although the 'transaction' out of which the cause of action arose occurred primarily in Pennsylvania, plaintiff received medical treatment in New York at New York Presbyterian Hospital on October 21, 2007 and at Sodick Dermatology on October 27, 2007. Medical doctors from both these institutions are potential witnesses at trial.

Based on the papers submitted and the oral argument held on the record on June 25, 2008, and taking all the various factors set forth above into account, this Court finds that defendants have not met their burden of showing that justice, fairness and convenience require the dismissal of this action on grounds of *forum non conveniens*. Accordingly, defendants' motion is denied.

This constitutes the decision and order of this Court.

Date:

October 16, 2008



Barbara R. Kapnick
J.S.C.

BARBARA R. KAPNICK
J.S.C.

FILED
OCT 20 2008
COUNTY CLERK'S OFFICE
NEW YORK