

<b>Peters v Coutsodontis</b>
2011 NY Slip Op 32750(U)
September 26, 2011
Supreme Court, New York County
Docket Number: 600482/07
Judge: Barbara R. Kapnick
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **BARBARA R. KAPNICK**

PART 39

Index Number : 600482/2007

PETERS, GEORGE

vs

COUTSODONTIS, STELIO

Sequence-Number : 004

DISMISS

INDEX NO.

600482/07

MOTION DATE

MOTION SEQ. NO.

004

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**

Cross-Motion:  Yes  No

SEP 28 2011

Upon the foregoing papers, It is ordered that this motion

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

Dated: 9/26/11

  
**BARBARA R. KAPNICK J.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 39

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GEORGE PETERS,

Plaintiff,

-against-

STELIOS COUTSODONTIS, GENERAL MARITIME  
ENTERPRISES CORPORATION, ATTIKA  
INTERNATIONAL NAVIGATION SA, IASON  
SHIPPING LTD., PINTO SHIPPING LTD.,  
and KARTERIA SHIPPING LTD.,

Defendants.

-----x

BARBARA R. KAPNICK, J.:

**DECISION/ORDER**  
Index No. 600482/07  
Motion Seq. No. 004

**FILED**

SEP 28 2011

NEW YORK  
COUNTY CLERK'S OFFICE

This is an action for libel per se<sup>1</sup> stemming from allegedly defamatory statements made by defendant Stelios Coutsodontis ("Coutsodontis") against plaintiff George Peters ("Peters") in the context of a prior litigation between the parties. According to the Complaint, Coutsodontis has material ownership and managment interests in the co-defendants General Maritime Enterprises Corporation, Attika International Navigation SA, Iason Shipping Ltd., Pinto Shipping Ltd. and Karteria Shipping Ltd. (collectively, the "Shipping Defendants").

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<sup>1</sup> Although Peters' Complaint initially also asserted a cause of action for unfair competition, this Court dismissed both the libel per se and the unfair competition claims by Decision/Order dated November 26, 2008. However, upon a motion by Peters to renew or reargue the defendants' motion to dismiss, pursuant to CPLR 2221, this Court, by Decision/Order dated August 26, 2009, reinstated his first cause of action for libel per se only.

Defendant General Maritime Enterprises Corporation ("General Maritime") now moves, pursuant to CPLR 3211(a)(5), (a)(7) and (a)(8), to dismiss Peters' Complaint as against it.

The Complaint alleges that the Shipping Defendants manage cargo vessels that operate around the world and are in direct competition with Peters, who also works in the shipping business. Coutsodontis, Peters alleges, has, without justification, reason or cause, maliciously sought the financial destruction of Peters, his competitor, by attempting to injure Peters' business reputation and create an unfair commercial advantage for himself. This conduct, Peters claims, was not only for his own benefit but also on behalf of the Shipping Defendants.

Most recently, according to the Complaint, this conduct manifested itself in alleged defamatory statements Coutsodontis made about Peters in the pleadings filed in an earlier action in this Court captioned *Coutsodontis v Peters, et al.*, Index No. 600511/05 (the "Prior Action"). Specifically, in paragraph 30 of the Prior Action's Complaint, Coutsodontis alleged that Peters "did improperly, knowingly and fraudulently award himself an employment contract," appointing himself to manage the affairs of Sea Trade Maritime Corporation ("Sea Trade"). Additionally, in the Prior Action, Coutsodontis submitted an affidavit dated June 13, 2005, in

which he stated, "I have reviewed two different purported Powers of Attorney, each of which contains what I believe is an erroneous and forged signature of my sister." According to Peters, the defamatory statements were republished when "Coutsodontis provided the [non-party] directors of Hellenic Mutual War Risk Association ("Hellenic"), which is the largest Greek war risk insurance company and is made up of the largest ship owners in Greece, with the litigation papers from the [Prior Action], including the [allegedly] defamatory statements."

The Prior Action, in which Coutodontis claimed to be a shareholder in Sea Trade by virtue of an alleged *inter vivos* gift of shares of the corporation, was dismissed on the grounds, *inter alia*, that the pleadings and documentary evidence demonstrated that the alleged delivery of the shares was insufficient as a matter of law. *Coutsodontis v Peters*, 11 Misc3d 1066(A) (Sup Ct, NY Co 2006) (Cahn, J.), *aff'd* 39 AD3d 274 (1<sup>st</sup> Dep't 2007).

Peters contends in his Complaint in this action that the Prior Action was

brought maliciously and solely for the purpose of later defaming Peters by publishing the [Prior Action] to members of the shipping industry in order to injure Peters. In other words, Coutodontis maliciously instituted the [Prior Action] alleging false and defamatory charges, and then circulated the legal papers from said action in order to libel Peters.

(Complaint, ¶ 20).

The plaintiff's Complaint alleges that, upon information and belief, General Maritime is a corporation registered in Liberia, with its principal place of business in Piraeus, Greece, but that it transacts business throughout the world, including in New York. Coutsodontis and his daughter, Francesca Eleni Coutsodontis ("Francesca"), allegedly have material ownership and management interests in both General Maritime and the ships that it manages. Further, Coutsodontis is alleged to use General Maritime for his own personal business interests, including the operation of four ships in which Coutsodontis has an ownership interest. (Complaint, ¶3).

According to General Maritime, the Court lacks personal jurisdiction over it because it does not conduct business in New York on a regular basis and the cause of action asserted here did not arise from a transaction of business by General Maritime within the State.

Pursuant to CPLR 301, a corporation may be subject to personal jurisdiction if it does business in New York on such a continuous and systematic basis that it is appropriate to deem the corporation "present." *Landoil Resources Corp. v Alexander & Alexander Servs., Inc.*, 77 NY2d 28, 33-34 (1990).

General Maritime submits the affidavit of its Secretary/Treasurer, Nikolaos A. Kotakis, in which he affirms that the company "has never maintained any offices or other real property in the State of New York" nor had any telephone listings, answering services, mailing addresses, directors, officers or other employees, or even a registered agent for service of process in New York. He further states that General Maritime has never been authorized to do business in New York or paid taxes here, and that Coutsodontis has never conducted or transacted business or engaged in any purposeful activities in New York on behalf of General Maritime.

Personal jurisdiction over a non-domiciliary may be found, pursuant to CPLR 302(a), where the cause of action arises from either, 1) a transaction of business within the State; 2) a tortious act committed within the State, except as to a cause of action for defamation of character; 3) a tortious act committed outside New York causing injury within the State, except as to a cause of action for defamation of character; or 4) ownership, use, or possession of real property within the State.

As the only claim asserted here is for defamation of character, and the Kotakis affidavit affirms that General Maritime

does not own, use or possess real property in the State, defendant argues that personal jurisdiction may be based only on a cause of action arising from the transaction of business within the state. However, there is no allegation that the cause of action arises from General Maritime's business within the state. General Maritime points out that the cause of action is based entirely upon the Prior Action and Coutsodontis' conduct within that context, but that General Maritime was not a party to the Prior Action. Although Peters alleges, without factual support, that Coutsodontis' actions were taken "on behalf of" or to otherwise benefit General Maritime, Coutsodontis had no authority to act for General Maritime, according to Kotakis, and therefore his unauthorized personal conduct cannot form the basis for personal jurisdiction over General Maritime. See, *Kreutter v McFadden Oil Corp*, 71 NY2d 460 (1988).

In opposition, Peters argues that Coutsodontis and General Maritime were engaged in a conspiracy and, therefore, Coutsodontis was acting as the "agent" of General Maritime. To satisfy the pleading requirements of a conspiracy, a plaintiff must allege facts which support, "(1) a corrupt agreement between two or more parties; (2) an overt act in furtherance of the agreement, which constitutes an independent tort or wrongful act; (3) the defendant's intentional participation in the furtherance of the

plan or purpose; and (4) resulting damages or injury." *Williams v Sidley Austin Brown & Wood L.L.P.*, 13 Misc3d 1213(A) at \*3 (Sup Ct, NY Co, September 22, 2006), aff'd 38 AD3d 219 (1<sup>st</sup> Dep't 2007).<sup>2</sup>

Peters submits an affidavit, sworn to on August 19, 2010, which he argues satisfies each of the above elements, citing to the familial relationships between Coutsodontis and the families that control General Maritime, Coutsodontis' role as partner in the company, their alleged interference with Sea Trade's operations prior to the actions at issue here, and other alleged efforts to undermine Peters and his competing business. Peters argues that this constitutes evidence or at least sufficient allegations of a corrupt agreement between the two parties so as to defeat the motion to dismiss on jurisdictional grounds.

Peters also cites to the alleged defamatory conduct by Coutsodontis as overt acts in furtherance of the conspiracy, and points to several instances of alleged interference with Peters' business prior to the acts complained of in this action as evidence

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<sup>2</sup> Although Peters acknowledges that he has not asserted a cause of action for conspiracy in his Complaint, he argues that it is unnecessary, quoting *Interstate Cigar Co. v I.B.I. Sec. Serv.*, 105 Misc2d 179, 184-185 (Sup Ct, Nassau Co 1980) ("[t]here is really no substantive tort of conspiracy. . . . It has been held that the allegation of conspiracy is merely a pleading device permitting evidence in the trial connecting one defendant with the act of his codefendant."). The Court need not address this argument for the reasons stated below.

of General Maritime's intentional participation in the plan or purpose. Finally, Peters alleges he was injured in the industry as a result of the defamation.

However, Peters' affidavit fails to satisfy the elements of a claim of conspiracy such that Coutsodontis could be considered a co-conspirator with General Maritime for purposes of establishing personal jurisdiction over the latter. Peters makes no allegation that Coutsodontis and General Maritime entered into an agreement *with regard to the conduct at issue here*. Whether the parties were part of a conspiracy as to other conduct is irrelevant for purposes of finding personal jurisdiction pursuant to CPLR 302(a)(1), where the cause of action must arise from business transacted within the State. Nor is there any factual allegation to support the element that General Maritime must have intentionally participated in such a conspiracy. Further, the only affirmative conduct Peters can point to in this case was taken by Coutsodontis, not General Maritime.

Accordingly, the motion to dismiss the Complaint as against defendant General Maritime Enterprises Corporation, is granted for lack of personal jurisdiction pursuant to CPLR 302. As a result, the Court need not, and does not, reach General Maritime's other arguments in support of its motion.

Counsel for plaintiff and defendant Coutsodontis are directed to appear for a conference in IA Part 39, 60 Centre Street, Room 208 on November 9, 2011 at 10:00 a.m.

This constitutes the decision and order of this Court.

Dated: September 26, 2011



BARBARA R. KAPNICK  
J.S.C.

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

**FILED**

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