

Parking Hungary Szolgaltato v Sabo
2011 NY Slip Op 33762(U)
May 9, 2011
Supreme Court, Richmond County
Docket Number: 101862/2010
Judge: Philip G. Minardo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

PARKING HUNGARY SZOLGALTATO
 KORLATOLT FELEOSSEGU TARSASAG A/K/A
 PARKING HUNGARY KFT, AND PARK TIME
 INTERNATIONAL LTD.,

Plaintiffs,

-against-

DAVID SABO,

Defendant.

DCM PART 6

HON. PHILIP G. MINARDO

DECISION AND ORDER

Index No.: 101862/2010

Motion No. 4051-001

The following papers numbered 1 to 3 were fully submitted on the 14th day of March, 2011.

Papers
 Numbered

Defendant's Notice of Motion to Dismiss Plaintiffs' Complaint,
 with Supporting Papers and Exhibits (dated December 21, 2010) _____ 1

Plaintiffs' Affidavit in Opposition, with Supporting Papers
 and Exhibits (dated February 2, 2011) _____ 2

Reply Affirmation of Defendant, with Supporting Papers and
 Exhibits (dated March 10, 2011) _____ 3

Upon the foregoing papers, defendant DAVID SABO's motion to dismiss plaintiffs' complaint is granted.

Plaintiffs PARKING SZOLGALTATO KORLATOLT FELEOSSEGU TARSASAG
 A/K/A PARKING HUNGARY KFT and PARK TIME INTERNATIONAL, LTD. (hereinafter

PARKING HUNGARY and PARK TIME, respectively) have commenced this action against defendant DAVID SABO in order to recover for, among other things, conversion, breach of contract, and unfair competition.

Defendant DAVID SABO moves to dismiss the plaintiffs' complaint on, among other things, the ground of forum non conveniens.

Plaintiff PARK TIME and defendant DAVID SABO (hereinafter SABO) are parties to the Articles of Association of PARKING HUNGARY which is a Hungarian limited liability company organized pursuant to the laws of Hungary. PARKING HUNGARY was formed by PARK TIME, SABO and others in 2005 to establish and privatize parking systems in Europe. Plaintiff PARK TIME is an Israeli corporation with offices in the British Virgin Islands. The agreement between PARK TIME and SABO was drafted in Hungarian and provides that the laws of Hungary "are guiding with respect to the legal relationship of the parties". Plaintiffs allege that SABO violated this agreement by participating with others in the formation of a parking system in Romania.

It is uncontroverted that all business related to PARKING HUNGARY was to be conducted in Hungary and/or other European locations. All of the non-party witnesses, books and records, and parking facilities are located in Europe. Plaintiffs maintain that the case should be litigated in New York because SABO has a residence in this State and the subject contract was negotiated and signed in New York (although this is disputed by SABO).

New York courts are not compelled to retain jurisdiction over any case which does not have a substantial nexus to New York (see *Turay v. Beam Bros. Trucking, Inc.*, 61 AD3d 964, 965 [2009]). The common-law doctrine of forum non conveniens, also articulated in CPLR

327(a), permits a court to stay or dismiss [an action] where it is determined that the action, although jurisdictional sound, would be better adjudicated elsewhere. In a motion to dismiss on the ground of forum non conveniens, the burden is on a defendant challenging the forum to demonstrate relevant private or public interest factors which militate against accepting the litigation here (see *Islamic Republic of Iran v. Pahlavi*, 62 NY2d 474, 478-479 [1984], *cert denied* 469 US 1108 [1985]; *Stravelle v. Land Cargo, Inc.*, 39 AD3d 735, 736 [2007]).

The court must consider “the residency of the parties, the potential hardship to proposed witnesses including, especially, non-party witnesses, the availability of an alternative forum, the situs of the underlying actionable events, the location of evidence, and the burden that retention of the case will impose upon the New York courts. No single factor controls, so that the fact that a particular litigant resides in New York is not dispositive. (see, *Turay, supra.*, 966, *Stravelle, supra.*).

It is unquestioned that the situs of the underlying actionable events and the location of evidence is in Hungary, Romania or other locations in Europe. The underlying contract is in Hungarian and it provides that Hungarian law will apply. The translation and interpretation of Hungarian law may present a burden to New York courts in adjudicating this matter. The non-party witnesses, including members of the Board of Directors of PARKING HUNGARY, are located in Hungary and/or other parts of Europe and the coordination and expense associated with their travel to New York may prove to be onerous.

Plaintiffs primary concern is that the Hungarian courts would not have jurisdiction over SABO in this dispute because SABO is not a Hungarian national residing in that country and does not own property that may be attached in the event that plaintiffs obtain a judgment against

SABO. However, SABO counters that he is subject to the jurisdiction of Hungary because he has significant assets in the country including a residence and ownership interest in several Hungarian companies.

Accordingly, this court finds that defendant SABO has met his burden in establishing that the State of New York is not the proper forum for this litigation and defendant SABO's motion to dismiss this action is granted.

This shall constitute the decision and order of the court.

ENTER

Dated: May 9, 2011

s/ Philip G. Minardo
J. S. C.