

**Kolaparth v Patel**

2014 NY Slip Op 32123(U)

July 30, 2014

Sup Ct, New York County

Docket Number: 650931/2014

Judge: Melvin L. Schweitzer

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## Background

The facts are as taken from the complaint.

Akarsh Kolaparth (Mr. Kolaparth) resides in Orlando, Florida. Mr. Kolaparth has been in the travel and tourism industry in the United States for over ten years. He is a director of 7M Tours LLC (7M Tours) and conducts business across the United States and internationally.

7M Tours is a Florida limited liability company with its principal place of business in Orlando, Florida. 7M Tours is in the business of travel and tourism across the United States and internationally.

Dr. Kiran C. Patel (Dr. Patel) resides, and has offices, in Tampa, Florida. He owns and/or controls several business in Florida, and an LLC of which he is the principal owns real property in New York City. Dr. Patel was a Member/Manager of Go Bollywood Tampa Bay Florida Convention, LLC (Go Bollywood), and Chairman of the Host Committee formed by it to organize the 2014 IIFA Awards.

Wizcraft International Entertainment Singapore Pte. Ltd. (Wizcraft Singapore) is organized under the laws of the Republic of Singapore, with its principal place of business in Singapore and conducts business internationally and across the United States. Wizcraft Singapore does not regularly conduct business in New York. Wizcraft Singapore maintains no office, real estate, employees, or phone listing in New York.

Wizcraft Entertainment USA, LLC (Wizcraft USA) is a Florida limited liability company with its principal place of business in Tampa, Florida. Wizcraft USA was formed in December 2013 for the purpose of facilitating and providing operational support for the 2014 IIFA Awards.

Andre Timmins (Mr. Timmins) and Viraf Sarkari (Mr. Sarkari) reside in Mumbai, India. They serve as managers of Wizcraft Singapore and Wizcraft USA. Neither Mr. Timmins nor

Mr. Sarkari regularly transact business in New York, either individually or on the behalf of any of the Wizcraft entities.

This action arises from the efforts of Wizcraft Singapore and Wizcraft USA to bring the 2014 IIFA Awards to the United States. In doing so, Wizcraft Singapore and Wizcraft USA formed a relationship with Mr. Kolaparth and 7M Tours.

The IIFA Awards, instituted in 2000, are awards presented by the International Indian Film Academy to honor both the artistic and technical excellence of professionals in Bollywood, the Hindi language film industry. The IIFA Awards ceremony is held annually around the world and is the brand of, and organized by, Wizcraft Singapore and its related entities, such as Wizcraft USA. Wizcraft Singapore works in conjunction with local travel groups, businessmen, investors and public officials of the host country and city to put on the IIFA Awards.

Wizcraft Singapore has historically relied on consultants to: (a) scout the ideal country, city, and venue location to host the awards, (b) connect Wizcraft Singapore to local representatives in the host country and city, (c) introduce Wizcraft Singapore to local public officials in the host city and participate in the negotiations to arrange for their cooperation and the hosting site, (d) introduce Wizcraft Singapore to local investors, (e) arrange for logistics, such as, hotel, travel, and tour bookings and packages for the actors and visitors, and (f) communicate with and arrange for press and publicity for the IIFA Awards.

Mr. Kolaparth alleges that he performed all of these tasks and more, working for over three years to identify and confirm Tampa Bay, Florida as the ideal host city for the 2014 IIFA Awards. Specifically, Mr. Kolaparth alleges that he introduced Wizcraft USA to key people, such as Tampa Bay public officials, investors, and promoters, including Dr. Patel and Chetan Shah (Mr. Shah). Mr. Kolaparth alleges that he and the Wizcraft defendants entered into an oral

agreement, pursuant to which Mr. Kolaparth would receive as compensation for the aforementioned efforts 3% of the revenues from the 2014 IIFA Awards, up to \$17.5 million, and all of the revenues received in excess of \$17.5 million. Mr. Kolaparth alleges that Mr. Timmins and Wizcraft Singapore promised him and 7M Tours that they would hold the exclusive hotel, travel, and tour bookings for the 2014 IIFA Awards.

During the spring and summer of 2013, Mr. Shah negotiated a deal on behalf of his company, Go Bollywood, with Wizcraft Singapore, to provide funding for the 2014 IIFA Awards. The agreement was called the Host City or Tri-Party Agreement and was between Go Bollywood, Wizcraft Singapore, and the Tampa Bay Convention & Visitors Bureau, Inc. Plaintiffs were not parties to this agreement.

In August 2013, 7M Tours entered into a written agreement with Go Bollywood, appointing it as the official travel partner for the 2014 IIFA Awards and giving it exclusive rights to book the hotels and travel, tour, and ticket packages. Plaintiffs allege that the contract formalized the work that they had already been doing for the 2014 IIFA Awards. None of the Wizcraft entities were a party to the contract. The contract does not obligate any party to pay money to 7M Tours, but obligates 7M Tours to share certain net profits with Go Bollywood.

Plaintiffs allege that between December 2013 and January 2014, after a deal failed to materialize between Wizcraft Singapore and Mr. Shah or Go Bollywood, Wizcraft entered into a Release Agreement with Mr. Shah. Wizcraft Singapore officials informed Mr. Kolaparth that, as a term of the Release Agreement, he was no longer entitled to receive any revenues collected from the 2014 IIFA Awards. Plaintiffs allege that during this time period, Wizcraft Singapore, Wizcraft USA, and Dr. Patel began to systematically isolate them, and renege on their promises to them. Plaintiffs allege that defendants entered into confidential side agreements to continue to

work with each other apart from plaintiffs, intentionally excluded Mr. Kolaparth from press and publicity events related to the 2014 IIFA Awards, including an event in New York City held in January 2014 as part of a national tour, tortiously interfered with plaintiffs' contractual and business relations, and denied plaintiffs rights to compensation promised under the alleged agreements. Plaintiffs allege that Dr. Patel and Wizcraft Singapore are collecting monies related to the 2014 IIFA Awards, including those allegedly owed to plaintiffs, in bank accounts, including Wizcraft USA's Bank of America account in New York City. Plaintiffs allege that defendants' actions have exposed them to enormous losses, including lost compensation, immense debt, liabilities to third parties and loss of credibility, goodwill, reputation, and future key business opportunities.

### Discussion

CPLR 327 (a) provides that “[w]hen the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any party, may stay or dismiss the action in whole or in part on any conditions that may be just.” The burden is on the defendants, and it is a “heavy burden [to] demonstrat[e] that the forum chosen by [the plaintiff] is an inappropriate one.” *Banco Ambrosiano, S.P.A. v Artoc Bank & Trust Ltd.*, 62 NY2d 65, 74 (1984). New York courts should not be “required to add to their financial and administrative burdens by entertaining litigation which does not have any connection with this state.” *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478-479 (1984).

The decision to dismiss on *forum non conveniens* grounds is left to the sound discretion of the court, and New York courts consistently dismiss cases lacking a substantial nexus to New York. *See e.g. Pahlavi*, 62 NY2d at 479 (dismissing case lacking substantial nexus to New York that “would be better adjudicated elsewhere”); *Silver v Great Am. Ins. Co.*, 29 NY2d 356,

361 (1972) (same); *Shin-Etsu Chem. Co. v 3033 ICICI Bank Ltd.*, 9 AD3d 171 (1st Dept 2004) (same). To determine whether a substantial nexus exists, New York courts balance the following factors, no one of which is dispositive: (a) the residency of the parties, (b) whether the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction, (c) the location of relevant witnesses and documents, (d) the applicability of foreign law, and (e) the availability of an alternative forum. *See Pahlavi*, 62 NY2d at 479.

#### Residency of the Parties

No party is a resident of New York. Mr. Kolaparth resides in Orlando, Florida. 7M Tours is a Florida limited liability company with its principal place of business in Orlando, Florida. None of the defendants reside in New York. Dr. Patel resides and works in Florida and Wizcraft USA and Go Bollywood are companies formed in Florida with their principal places of business in Florida. Wizcraft USA's registered agent resides in Florida and is authorized to accept service of process solely in Tampa, Florida, even though he maintains a New York office, as well. Wizcraft Singapore is a Singapore company with its principal place of business in Singapore and Mr. Timmins and Mr. Sarkari reside in India. With a foreign plaintiff, although defendants maintain a "heavy burden," *Banco Ambrosiano*, 62 NY2d at 74, the plaintiff's choice of forum is entitled to less deference. *Fin. Guar. Ins. Co. v IKB Deutsche Industriebank AG*, 2008 NY Misc LEXIS 7520, at \*10 (Sup Ct NY County Dec 29, 2008). The fact that all defendants do not reside in New York weighs in favor of dismissal, *see Pahlavi*, 62 NY2d at 479, but does not mandate it. *Waterways Ltd. v Barclays Bank PLC*, 571 NYS2d 208, 211 (1st Dept 1991).

### Location of the Underlying Transaction

Defendants argue that this case is on all fours with a recent Court of Appeals case, *Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Brø's Co.*, because “no circumstance supports an argument that New York [is] an appropriate forum.” 2014 NY Lexis 705, at \*7 (Apr 8, 2014). The connections between New York and the transactions and events underlying this action are particularly remote.

Defendants emphasize that this dispute involves facts that took place almost entirely in Florida, which is clearly supported by the record. This action arises out of defendants’ alleged failure to compensate plaintiffs for services rendered in connection with a major international awards show to be held in Tampa Bay, Florida. The promises and contracts allegedly made with and relied on by plaintiffs were made in Florida. Plaintiffs allegedly fulfilled their obligations under the alleged contracts with defendants by organizing the venues, travel, hotel and flight packages, ticket sales, and press for the event in Florida and garnering the support of local public officials and investors. Wizcraft USA, was formed in Florida in order to facilitate and provide operational support for the 2014 IIFA Awards taking place in Florida. Plaintiffs entered into a written contract with Go Bollywood to provide travel services in Florida. During the talks and negotiations between the parties, which occurred largely over e-mail, no one was located in New York. Plaintiffs losses as a result of defendants’ alleged breach of contract and tortious actions were felt in Florida.

Although the three year long series of interactions and transactions out of which plaintiffs’ causes of action arose occurred primarily in an outside jurisdiction, Florida, there are a few attenuated connections to New York. As part of the promotion of the 2014 IIFA Awards, the Wizcraft defendants sponsored a national publicity tour, which included New York as one

stop among many, including Tampa, Orlando, Houston, and Los Angeles. Mr. Kolaparth alleges that he was intentionally excluded from stops on the publicity tour, including New York, which seriously damaged him. Wizcraft USA maintains a bank account in New York that plaintiffs allege has been used to receive monies from the 2014 IIFA Awards allegedly due to plaintiffs.

In cases where there were similar limited connections to New York and the “events of the transaction otherwise occurred entirely in a foreign jurisdiction,” New York courts have held that the connections failed to create a “substantial nexus” to the state and, accordingly, dismissed on *forum non conveniens* grounds. See, e.g. *Viking Global Equities, L.P. v Porsche Automobil Holding SE*, 101 AD3d 640, 641 (1st Dept 2012) (dismissing on *forum non conveniens* grounds where the alleged connections between the case and New York consisted solely of “phone calls between plaintiffs in New York and a representative of defendant in Germany, and the emails sent to plaintiffs in New York, but generally disseminated to parties elsewhere, which allegedly contained misrepresentations”); *Mashreqbank*, 2014 NY Lexis 705 (upholding *forum non conveniens* dismissal and noting that the use of New York banks to facilitate dollar transfers related to the cause of action was of minor importance to the decision where there was “nothing in th[e] case to justify resort to a New York forum”).

The passage of money allegedly due to plaintiffs through a New York bank does not automatically implicate New York’s “compelling interest in the protection of [its] banking system,” and thus weigh against a *forum non conveniens* dismissal. See *Mashreqbank*, 2014 NY Lexis 705 at \*8. According to the Court of Appeals in *Mashreqbank*, New York’s “interest in the integrity of its banks is indeed compelling, but it is not significantly threatened every time one foreign national, effecting what is alleged to be a fraudulent transaction, moves dollars through a bank in New York.” *Id.* Here, where all of the parties and the vast majority of

witnesses reside outside of New York, where Florida is a perfectly appropriate alternative forum, and where the underlying transactions, events, and interactions all happened in a forum outside of New York, the fact that some related monies were transferred into one New York bank account possessed by one defendant is not sufficient to weigh the *forum non conveniens* analysis in favor of a New York forum. “New York’s interest in its banking system ‘is not a trump to be played whenever a party to such a transaction seeks to use our courts for a lawsuit with little or no apparent contact with New York.’” *Id.* at \*9 (quoting *First Union Nat. Bank v Paribas*, 135 F Supp 2d 443, 453 (SDNY 2001)).

#### Location of Relevant Witnesses and Documents

In *Imaging Holdings I, LP v Israel Aerospace Indus. Ltd*, the court said it is “far more efficient, less expensive and involve[s] a greater probability of a complete record for both sides if the case is adjudicated [where] the principal documents and witnesses pertaining to the underlying commercial and corporate claims are located.” 2009 NY Misc LEXIS 3630, at \*2-3 (NY Sup County Dec. 11, 2009). Here, a vast majority of the witnesses likely to be relevant reside in Florida. Defendants point to seventy-eight potentially relevant witnesses, sixty-seven of which reside in Florida and only two of which reside in New York. Since most of the witnesses needed to testify to the alleged underlying business transaction are located in Florida, this factor weighs against New York as an appropriate forum and in favor of a Florida forum. *See Matter of Alla v Univ. of Antigua, Coll. Of Medicine*, 106 AD3d 570, 570 (1st Dept 2013) (affirming dismissal on *forum non conveniens* grounds where both parties were nonresidents, and the location of the events giving rise to the action and of the potential witnesses and documents centered almost entirely outside of New York).

### Applicability of Foreign Law

When “[i]t would, in the circumstances constitute an unnecessary burden on our courts to be compelled to apply foreign law,” this burden weighs in favor of *forum non conveniens* dismissal. *Bewers v Am. Home Products Corp.*, 99 AD2d 949, 950 (1st Dept 1984) (internal citation omitted). Although New York courts are often called upon to apply foreign law, they have historically given the factor significant, but not dispositive weight, in deciding *forum non conveniens* motions. *See e.g. FIMBank P.L.C. v Woori Fin. Holdings Co.*, 2013 WL 1197093 (1st Dept Mar 26, 2013). The court has not yet considered the choice-of-law issue. This factor does not tip the scale either way.

### Availability of an Alternative Forum

“[T]he availability of another suitable forum is a most important factor to be considered in ruling on a motion to dismiss.” *Pahlavi*, 62 NY2d at 481. Defendants argue that Florida is a perfectly good forum for this case. Plaintiffs cannot seriously contest this point.

In *Mashreqbank*, in considering the availability of an alternative forum, the court took into account the location of related pending litigation involving some of the parties and considered that location a potentially appropriate alternative to New York. *Id.* There is presently a related action pending between Mr. Shah and defendant Dr. Patel, filed in Florida. This supports defendants’ contention that Florida would be an appropriate forum. The court finds that this factor weighs in favor of a *forum non conveniens* dismissal.

### Additional Considerations

Plaintiffs advance an argument that defendants have waived any jurisdictional defenses to IIFA-related claims in New York, pointing to jurisdiction/forum selection clauses contained in two IIFA-related written agreements: the Tri-Party Agreement with Go Bollywood and the

Tampa Bay Convention and Visitors Bureau, Inc. (Tampa Bay Convention) and the Release Agreement with Go Bollywood. Plaintiffs argue that because their case against defendants stems, in part, from these two agreements, the New York forum stipulated there should be controlling in this action.

Defendants correctly argue that plaintiffs' position is unpersuasive. First, neither plaintiffs nor Wizcraft USA, Mr. Timmins, or Mr. Sakari are parties to either of the agreements. The Tri-Party Agreement was between Wizcraft Singapore, Go Bollywood, and the Tampa Bay Convention & Visitors Bureau, Inc. and the Release Agreement between Wizcraft Singapore and Go Bollywood. Second, plaintiffs are not suing on either of these agreements. The contract plaintiffs allege defendants to have breached is an oral contract, containing no mention of a particular forum for potential dispute. Finally, the language of the jurisdiction/forum selection clause in the Tri-Party Agreement that plaintiffs rely on as the crux of their argument only stipulates a New York forum for lawsuits "brought *by* Wizcraft Singapore against the Host Committee or the Bureau." In fact, the clause states that any suits brought *against* Wizcraft Singapore are to be brought *exclusively* in Singapore.

It is clear that the clause does not establish Wizcraft Singapore's consent to be sued in New York. Wizcraft Singapore's consent to jurisdiction in one isolated contract to which the plaintiffs were not even parties surely does not "signal its unrestricted consent to personal jurisdiction in New York for all future claims brought against it." *Hunter v Deutsche Lufthansa*, 863 F Supp 2d 190, 201 (EDNY 2012). Plaintiffs mistakenly cite *Babcock & Wilcox Co. v Control Components*, 161 Misc 2d 636 (NY Sup Ct 1993), to support their contention that the court shall not dismiss an action on *forum non conveniens* grounds where the action arises out of or relates to a contract in which the parties have "agreed that the law of [that] state shall govern

their rights or duties in whole or in part.” The decision in *Babcock* was founded on facts distinguishable from the facts here. Unlike here, where plaintiffs rely on the jurisdiction/forum selection clause from an agreement to which neither they, nor many of the other defendants, were parties, both the plaintiff and defendant in *Babcock* were parties to the agreement containing the jurisdiction clause. Unlike here, in *Babcock*, the jurisdiction clause states that both parties agree to submit to the jurisdiction of New York courts. These differences are material and fatal to plaintiffs’ argument.

### **Conclusion**

Neither plaintiffs nor any defendant is a resident of New York. The underlying transaction occurred outside of New York, and the transfer of relevant monies into defendants’ New York bank account is immaterial to the court’s analysis. The vast majority of relevant witnesses are not located in New York. Florida is a suitable alternative forum for the dispute, especially considering there is already a related litigation pending there. Defendants have met their heavy burden to show that plaintiffs’ claims are better adjudicated in Florida.

Accordingly, it is

ORDERED that defendants’ motion to dismiss the complaint herein pursuant to CPLR 327 (a) is granted; and it is further

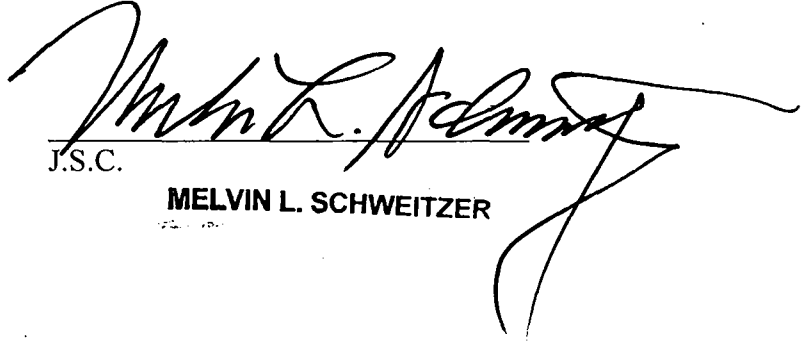
ORDERED that plaintiffs motion for a Preliminary Injunction is rendered moot by this Decision and Order dismissing the complaint; and it is further

ORDERED that the Temporary Restraining Order heretofore issued by the court directing defendants not to transfer or cause to be transferred out of the United States any monies in their possession or under their control representing proceeds from the sale of 2014 IIFA tickets is hereby dissolved; and it is further

ORDERED that defendants' motion for a protective order is rendered moot by this Decision and Order dismissing the complaint.

Dated: July 30, 2014

ENTER:



A handwritten signature in black ink, appearing to read "Melvin L. Schweitzer", is written over a horizontal line. The signature is stylized and cursive.

J.S.C.

MELVIN L. SCHWEITZER