

**Bacon v Nygard**

2016 NY Slip Op 31511(U)

August 10, 2016

Supreme Court, New York County

Docket Number: 154399/2015

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

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LOUIS BACON,

Plaintiff,

Index No. 154399/2015

-against-

**DECISION/ORDER**

PETER NYGARD, NYGARD INTERNATIONAL  
PARTNERSHIP, NYGARD INC., AND DOES 1-20.

Defendants.

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**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for: \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

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Plaintiff Louis Bacon (“Bacon”) has commenced this action against defendants based on his allegations that the defendants have been involved in a harassment campaign against him. He has brought the present action asserting claims for defamation. Defendants Peter Nygard (“Nygard”), Nygard International, and Nygard Inc. (the “Nygard Company”) have brought the present motion to dismiss the action on the ground of forum non conveniens and in the alternative to dismiss portions of the third amended complaint. Although defendants’ original motion sought to dismiss the second amended complaint, the parties have subsequently entered into a stipulation allowing plaintiff to file a third amended complaint and the parties have agreed that the current motion to dismiss will be directed towards the third amended complaint.

Pursuant to the common law doctrine of forum non conveniens, which is also codified in CPLR 327, a court may dismiss an action even though it is jurisdictionally sound where it would be better adjudicated elsewhere. *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 478 (1984). The factors which the court must consider in deciding whether the case should be heard in a different jurisdiction “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. The court may also consider that both parties to the action are nonresidents and that the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction.” *Id.* at 479.

“A defendant has a heavy burden in attempting to establish that New York is an inappropriate forum before plaintiff’s choice of forum is disturbed. This burden becomes even more onerous where the plaintiff is a New York resident, as is the case here.” *Highgate Pictures v. De Paul*, 153 A.D.2d 126 (1<sup>st</sup> Dept 1990). A New York resident plaintiff will not be deprived of its home forum unless “it plainly appears that New York is an inconvenient forum and that another is available which will best serve the ends of justice and the convenience of the parties” (*Silver v Great Am. Ins. Co.*, *supra*, 29 NY2d, at 361). *Id.*

In the instant case, this court finds, after balancing all of the relevant factors, that this case should be dismissed on the ground of forum non conveniens even though plaintiff is a New York resident as the Bahamas is a more appropriate forum for this dispute to be adjudicated. Initially, the transactions out of which this lawsuit arose clearly occurred in the Bahamas rather than in New York. This dispute between the plaintiff and the individual defendant arose out of their relationship as adjoining landowners in the Bahamas. Plaintiff’s entire claim is that the individual defendant Nygard has waged a smear campaign against him which began when the parties were unable to resolve their disputes that arose based on being adjoining landowners. In

describing the actions that constitute the smear campaign engaged in by defendant, it is clear that the allegations almost entirely involve activities which took place in the Bahamas. Thus, in plaintiff's third amended complaint, he alleges as follows:

2. The Nygard Defendants have used a combination of unlawful and heinous means to conduct the Smear Campaign, which include, among other acts: a. threatening and/or engaging in violence against Mr. Bacon and other individuals close to Mr. Bacon; b. engaging in repeated acts of wanton destruction of property and vandalism at Mr. Bacon's residence in the Bahamas; c. instigating an unjustified and trumped-up police raid on Mr. Bacon's residence in the Bahamas; d. organizing and paying for staged hate rallies, marches, and protests against Mr. Bacon and those close to him; e. creating and distributing t-shirts, placards, and signs spreading malicious lies and derogatory statements about Mr. Bacon and his supporters; f. publishing false and derogatory accusations against Mr. Bacon over the Internet, radio, television, and in print media; g. using websites, twitter accounts, and blogs bearing Mr. Bacon's name in their title; and h. filing frivolous and vexatious criminal and civil lawsuits against Mr. Bacon.

Almost all of the foregoing actions allegedly taken by Nygard which constitute the alleged smear campaign have occurred in the Bahamas and not in New York. The alleged violence and threats of violence against plaintiff and individuals close to plaintiff have occurred in the Bahamas, the alleged destruction of plaintiff's property and vandalism of his residence have taken place in the Bahamas, the alleged unjustified and trumped up police raid took place in the Bahamas, the alleged staged hate rallies, marches and protests against plaintiff have taken place in the Bahamas, the alleged distribution of t-shirts, placards and signs spreading malicious lies and derogatory statements about plaintiff have taken place in the Bahamas and the frivolous lawsuits against plaintiff have also taken place in the Bahamas.

Moreover, most of the alleged defamatory statements are alleged to have been published through the Bahamian media or by Bahamians. Plaintiff himself alleges in the third amended complaint that the "Nygard Defendants promoted their Smear Campaign against Mr. Bacon with  
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a series of articles published on Bahamian websites," including the Bahamas National Website

and the Bahamas Press Website, whereby the defendants falsely accused plaintiff of murder, drug smuggling and financial crimes and that defendants paid journalists and members of the media in the Bahamas to publish lies about plaintiff. In fact, when plaintiff made a decision to try to refute the alleged allegations made in the alleged smear campaign, he published two letters in local Bahamian papers. On April 19, 2013 and August 9, 2013, Bacon published two letters in local Bahamian newspapers and on a website in which he claims that Nygard was the mastermind of the purported harassment campaign. In the first letter, Bacon asserts that Nygard "commenced a series of attacks against me" and talks about the "financial ramifications of Nygard's smear-campaign." The second letter, which was published in August 2013, is titled "Louis Bacon Responds to Peter Nygard's Smear-Campaign." The August 2013 letter states, inter alia:

For several years Peter Nygard and his minions have been running a smear-campaign against me. You may have seen some of the preposterous slurs which have been published via anonymous websites, vicious and disgusting videos on YouTube, flyers inserted into newspapers and so on.

Nygard has orchestrated a smear campaign against me which entailed his lawyer, Keod Smith, acting as a conduit to pay off Sherman Brown and Earlin Williams to write ludicrous articles claiming that I conduct an international drug smuggling operation, have been involved with a number of mysterious deaths, payoffs, etc.

Moreover, in March 2016, plaintiff published another letter in the Bahamas Tribune in which he addressed Nygard's alleged smear campaign against him.

Moreover, most of the non-party witnesses in this action are from the Bahamas. With respect to the allegations in plaintiff's complaint regarding the threats of violence against plaintiff, the destruction of plaintiff's property, the police raid on plaintiff's residence, the staged hate rallies and protests and the distribution of t-shirts, placards and signs, all of the witnesses and persons with knowledge of these actions would be in the Bahamas as all of these events took place in the Bahamas. For example, plaintiff alleges in paragraph 21 of his third amended

complaint that “Keod smith-Nygaard’s attorney, and counsel for a number of Nygaard’s proxies in lawsuits brought against them by Mr. Bacon, and a key proxy himself through who the Nygaard Defendants wage their unlawful campaign against Mr. Bacon- instigated a mob riot against Fred Smith, a director of and the lead attorney for Save the Bays and a close ally of Mr. Bacon in the effort to protect the Bahamas environment. At the direction of the Nygaard Defendants’ proxy Keod Smith, the mob, armed with sticks and metal weapons, surrounded Fred Smith’s vehicle, smashed in its rear windshield, and attempted to prevent Fred Smith from escaping unharmed. In addition, Keod Smith threatened Mr. Bacon, stating that Keod Smith would personally ‘make sure that Lois Bacon was jailed in Fox Hill Prison’ and “that a big six-foot black man... is going to take care of bacon”” All of these alleged actions took place in the Bahamas and both Keod Smith and Fred Smith, who are clearly important witnesses in this action, are Bahamian residents. Moreover, the foregoing allegations in the third amended complaint are the same allegations which are being asserted in an action commenced this year by plaintiff, Fred Smith and other plaintiffs against Nygaard and Keod Smith in the Bahamas. Another Bahamian witness identified in the complaint is Commissioner Ellison Edroy Greenslade of the Royal Bahamas Police Force who plaintiff alleges apologized to him for the illegitimate police raid on his Bahamian residence and acknowledged that Nygaard was responsible for the incident. Plaintiff further alleges in his third amended complaint that Sherman Brown and Jason Graham, who are both Bahamian residents, are involved in the Bahamas National Website and the Bahamas Citizen website which have allegedly published many of the defamatory statements about plaintiff and that they have acted at the direction of Nygaard and his proxies. Moreover, other persons also alleged to be Nygaard’s co-conspirators, who would be important witnesses in this

action, reside in the Bahamas or do not reside in New York, including Phillipa Russell and Orland Bodie.

Moreover, there is clearly an alternative and more convenient forum in which this case can be adjudicated which is the Bahamas, which is where most of the events giving rise to this litigation took place and where many of the non-party witnesses reside. In fact, plaintiff has already commenced numerous proceedings related to the subject matter of this action in the Bahamas. Plaintiff has initiated nine separate discovery and defamation actions in the Bahamas since 2011, according to his complaint, against alleged co-conspirators in his attempt to uncover the Nygard Defendants' involvement in the smear campaign. According to the complaint, the "Bahamian Actions were filed against numerous proxies who appeared to be connected to the defamatory statements made against Mr. Bacon as part of the Smear Campaign." Third Amended complaint paragraph 247. Most importantly, in March of this year, plaintiff filed a lawsuit against defendant Nygard and Keod Smith, who is alleged in this action to be plaintiff's co-conspirator, in the Bahamas, in which he makes many of the same allegations that he is making in the present case. In the new Bahamian action, plaintiff seeks relief regarding the same hate rallies and mob riots which are referenced in the complaint in this action.

This court also finds that defendants have not unreasonably delayed in making this forum non conveniens motion fourteen months after the original complaint was filed. Although this action was initially filed in January 2015, the parties just entered into a stipulation in June 2016, after this motion was brought, allowing plaintiff to file a third amended complaint in this action and the current motion before the court seeks to dismiss portions of the third amended complaint.

Thus, there still has not been a determination as to what claims will actually be litigated in this action. Moreover, discovery is still in its early stages in this litigation.

