

Koppelman v Vaughn Millette & Jobu Presents LLC
2017 NY Slip Op 32430(U)
November 14, 2017
Supreme Court, New York County
Docket Number: 651348/2017
Judge: Eileen Bransten
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EILEEN BRANSTEN
Justice

PART 3

-----X

CHARLES KOPPELMAN
Plaintiff,

INDEX NO. 651348/2017

MOTION DATE 11/08/2017

- v -

MOTION SEQ. NO. 001

VAUGHN MILLETTE AND JOBU PRESENTS LLC,
Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 7, 8, 9, 10, 11, 12, 13, 14, 15, 22, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this application to/for Dismiss and/or Stay

Upon the foregoing documents, it is

ORDERED Defendant's Motion to Dismiss is Granted as stated on the November 6, 2017 record and transcript (James Morelli, SCR) at 6:3-11:14 where by under New York law, the Court, in its discretion, may dismiss an action pursuant to CPLR Rule 327 – Inconvenient Forum: R 327 Inconvenient forum states (a) When 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 domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action.

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Although no factor is controlling and it is always subject to the discretion of the trial court, courts consider and balance the following factors in determining whether a defendant has carried its burden for dismissal based on forum non conveniens: (i) the existence of an adequate alternative forum; (ii) situs of the underlying transaction; (iii) residency of the parties; (iv) potential hardship to the defendant; (v) location of documents; (vi) location of a majority of the witnesses; and (vii) the burden on New York courts. *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 478-79 (1984), *cert den.*, 469 U.S. 1108 (1985)

Here, Plaintiff argued this matter should remain in this venue as Defendants cannot meet the “high burden” of CPLR 327. Plaintiff argued the parties to this action and the events leading up to this suit all have connections to New York, making it the right jurisdiction. Defendants argued, rather, Minnesota has connections to this suit and this action intrinsically relates back to the Prince Estate actions currently pending in Minnesota. The Estate proceedings currently pending in Minnesota concern allegations that Plaintiff breached its duty to the Estate by entering into this subject loan agreement. However, Plaintiff contended even if he is found to have breached his fiduciary duty to the Estate it would have no bearing on the validity of the Note entered into with Defendants.

The Court is not comfortable with such a conclusion, and only being presented with snippets of the arguments advanced and relief sought in the Minnesota action, feels if this Court were to declare Defendants owe money under the Note its implications could be extended into the current Minnesota actions. The second Minnesota action, however, naturally has a more direct bearing on this lawsuit. That is, Defendants seek a rescission of the Note based on plaintiff’s alleged fraudulent inducement. While Plaintiff cannot argue this relief does not directly concern the action currently in this Court, Plaintiff argues the timing of the Amended

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Complaint is circumspect. Plaintiff contended Defendants were only forum shopping by not electing to add their declaratory judgment cause of action until after Plaintiff served a Complaint on May 5, 2017. That notwithstanding, it is incontrovertible Defendants put Plaintiff on notice of their action before Plaintiff did. The amendment of the Complaint by Defendants to add additional claims relates back to the service of the initial Complaint, which was served prior to Plaintiff's Complaint being served. As such, Defendants did, in fact, file and serve their Complaint concerning the August 2016 Note "first" in Minnesota.

Here, it seems clear to this Court the instant matter directly relates back to those currently pending in Minnesota State Courts and, in the interest of justice, should be adjudicated there. As explained by the litigants, there are several underlying issues to the determination as to whether this Note Plaintiff seeks recovery under is even a valid instrument. Litigation to answer that very question is currently pending in Minnesota. Not only is there a question being raised by Defendants in Minnesota as to whether the Note is enforceable and/or whether Defendants were fraudulently induced to enter into it; there is also a question as to whether Plaintiff, himself, breached obligations to the Estate by issuing this August 2016 loan and, therefore, apparently questioning the authority Plaintiff had to enter into such a contract as the fiduciary of the Estate.

If this Court were to conclude Defendants owed Plaintiff the claimed \$2,000,000 from the August 2016 Promissory Note, it appears there would also be an implicit, if not direct, finding that the Promissory Note was indeed valid. The validity which hinges upon various defenses and arguments currently being litigated in Minnesota. While, as Plaintiff argued, the Note may have been executed in New York, and perhaps even defaulted in New York, the interests of justice tip in favor of being dealt with along with the other probate and Estate issues

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in Minnesota. Having only a limited glance into the Estate proceedings and the actions surrounding it, this instant action seems to be but one slice to the whole.

In opposition, Plaintiff argued Minnesota is not an available alternative forum. *Plaintiff's Memo in Opp at 15.* However, by Order dated October 4, 2017, Minnesota courts recently denied Plaintiff's Koppelman and CAK's motion to dismiss and found Minnesota did retain personal jurisdiction. As such, Minnesota is, in fact, not only an adequate, alternative and competent forum -- significantly, it is an available forum for this dispute. See, *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 478-79 (1984), cert den., 469 U.S. 1108 (1985)

Therefore, in the interests of justice, this Court dismisses this matter in favor of it being litigated and decided in Minnesota with the remainder of the Prince Estate litigation.

11/ 14 /2017
DATE


EILEEN BRANSTEN, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: