

Certa Dose, Inc. v COPIC Ins. Co.
2020 NY Slip Op 34010(U)
October 20, 2020
Supreme Court, Queens County
Docket Number: 720576-2019
Judge: Leonard Livote
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Present: HONORABLE LEONARD LIVOTE
Acting Justice

Commercial Division

CERTA DOSE, INC., AND DANIEL HOFFMAN.,
Plaintiffs,

Index
Number 720576 2019

- against -

Motion
Date September 1, 2020

COPIC INSURANCE COMPANY, STEVE RUBIN,
STEPHEN R. HOFFENBERG, JOHN BLOOD,
COOLEY LLP, ALAN YOUNG SYNN,
DAVIS K. HURLEY, BRIAN C. HARRINGTON,
DANIEL LEE MILLER, NILES COLE,
J. DANIEL MILLER, JEFFREY ALVIN DORSEY,
GERALDINE A. LEWIS-JENKINS, MARK A. FOGG,
MATTHEW FLEISHMAN, THEODORE J. CLARKE,
MICHAEL L. PLATT, KELLY BARTLING,
ADAM DINOW, THOMAS S. COWAN,
ANTHONY R. MAYER, PHOEBE FISHER,
LFD III GRAT-TRUST U/A 8-26-2015,
KATHERINE DRISCOLL, Trustee, and LEE F. DRISCOLL,
Defendants.

Motion Seq. No. 6

FILED
10/20/2020
3:57 PM
COUNTY CLERK
QUEENS COUNTY

X

The following papers EF131 to EF234 numbered below read on this motion by defendants John Blood, Thomas S.Cowan, Anthony R. Mayer, Phoebe Fisher, 2015 LFD III GRAT (s/h/a LFD III GRAT-TRUST U/A 8/26/2015, Katherine Driscoll, Trustee), and Lee F. Driscoll for, inter alia, an order pursuant to CPLR 3211(a)(8) dismissing the amended complaint against them for lack of jurisdiction.

Papers
Numbered

Notice of Motion- Affidavits- Exhibits	131-148
Answering Affidavits-Exhibits	184-252
Reply Affidavits.....	
Memoranda of Law	149, 254

Upon the foregoing papers it is ordered that the branch of the motion by the defendants which is for an order pursuant to CPLR 3211(a) (8) dismissing the complaint against them for lack of jurisdiction is granted. The remaining branches of the motion by the defendants are denied as moot.

I. The Facts

The facts of this case and the allegations of plaintiff Certa Dose and plaintiff Daniel Hoffman are given in the memorandum and short form order (one paper) rendered on the motion to dismiss made by COPIC Insurance Company and related parties (Sequence No. 5). Briefly, the dispute between the parties concerns the struggle for control of Certa Dose, the payment of certain notes, alleged breaches of fiduciary duty, and the commission of other torts.

Defendant John Blood is a Colorado resident. While in Colorado, he helped incorporate plaintiff Certa Dose, Inc., which operated in Colorado. He works in Colorado as a business executive. In 2018, Caleb Hernandez became Certa Dose's CEO and Chairman, and John Blood became its COO and CFO with responsibilities for the core business, operations, and sales. While in Colorado, Blood allegedly wasted corporate assets, kept secret records, and favored certain investors over others.

Defendant Thomas S. Cowan resides in the state of Illinois. He swears: "I conduct no business in the State of New York. I have never lived in New York State or conducted business in New York State. I do not own any real property in New York State, or pay taxes to New York State. I do not derive substantial revenue from goods or services in New York State. *** I am a passive investor in plaintiff Certa Dose, Inc. ***I played no role in the operation, management, decision-making, or finances of Certa. Dose"

Defendant Anthony R.Mayer swears: " I am domiciled in the State of Colorado, and live in Denver, Colorado with my family. I work in Englewood, Colorado, as a business executive. ***I conduct no business in the State of New York that bears any relation to plaintiffs. ***I am a passive investor in plaintiff Certa Dose, Inc. ***I played no role in the operation, management, decision-making, or finances of Certa Dose. "

Defendant Phoebe Fisher swears: " I am domiciled in the Commonwealth of Pennsylvania, living in Unionville, Pennsylvania, with my family. I work in Wilmington, Delaware as a physician ***. ***I have never lived in New York State or conducted business in New York State. ***I am a passive investor in plaintiff Certa Dose, Inc. ***I played no role in the operation, management, decision-making, or finances of Certa Dose."

Katherine Driscoll, the sole trustee of defendant I2015 LFD III GRAT Trust, swears: “The settlor, beneficiaries, and I as Trustee, are all residents of the State of Colorado,” and the trust itself was created and is administered in Colorado. “The Trust is a passive investor in plaintiff Certa Dose, Inc. ***The Trust played no role in the operation, management, decision-making, or finances of Certa Dose.” and conducts no business in New York.

Defendant Lee F. Driscoll swears: “ I am domiciled in the State of Colorado, and live in Denver, Colorado, with my family. I work in Denver, as the CEO of a Colorado Company. ***. I conduct no business in the State of New York. ***I am not an investor or shareholder in plaintiff Certa Dose. I played no role in the operation, management, or finances of Certa Dose.”

The plaintiffs submitted no evidence contradicting the allegations made by the moving defendants.

II. Discussion

This court lacks both general and specific jurisdiction over the moving defendants. There is no need to repeat here all that the court has already said about jurisdiction in its Short Form Order rendered on the companion motion by the COPIC defendants (sequence no. 5). Briefly, as for general jurisdiction, none of the moving defendants have affiliations with the State of New York that “are so continuous and systematic as to render them essentially at home in the forum state.” (*Aybar v. Aybar*, 169 AD3d 137, 144 [2nd Dept 2019]; *Daimler AG v. Bauman*, 571 US 117[2014].) As for specific jurisdiction, a plaintiff invoking long arm jurisdiction under CPLR 302(a)(1) must establish two elements: (1) the defendant transacted business within the state, and (2) the cause of action arose from that transaction of business. (*Nick v. Schneider*, 150 AD3d 1250 [2nd Dept 2017].) Defendant Lee F. Driscoll has no connection to this case. Defendants Thomas S.Cowan, Anthony R. Mayer, Phoebe Fisher, and 2015 LFD III GRAT are merely passive investors in plaintiff Certa Dose. As discussed more fully in the Short Form Order rendered on the companion motion by the COPIC defendants, defendant Blood’s allegedly tortious acts occurred in Colorado.

The plaintiffs’ attorney alleges that Certa Dose’s “ now principal business, licensing, was always operated out of the New York office, and that almost all revenues have come out of the New York office.” Plaintiff Hoffman alleges that he resides in New York. Neither of these allegations matter. “In the context of a commercial tort, where the damage is solely economic, the situs of commercial injury is where the original critical events associated with the action or dispute took place, not where any financial loss or damages

occurred.” (*CRT Investments, Ltd. v. BDO Seidman, LLP*, 85 AD3d 470, 471–72 [1st Dept 2011].) In the case at bar, the critical events occurred in Colorado. Finally, the moving defendants did not sign any documents placing jurisdiction in the New York courts.

Accordingly, the motion is granted and it is,

ORDERED, that the action is dismissed as against defendants John Blood, Thomas S.Cowan, Anthony R. Mayer, Phoebe Fisher, 2015 LFD III GRAT (s/h/a LFD III GRAT-TRUST U/A 8/26/2015, Katherine Driscoll, Trustee), and Lee F. Driscoll. This constitutes the Order of the Court.

Dated: October 20, 2020



A.J.S.C.

FILED
10/20/2020
3:57 PM
COUNTY CLERK
QUEENS COUNTY