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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

Present:

HON. LAWRENCE J. BRENNAN
Acting Justice Supreme Court

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GERNOT BRINKMANN and CHUAN CHUAN BRINKMANN a/k/a CHRIS BRINKMANN,

Plaintiffs,

-against-

ADRIAN CARRIERS, INC., MATHEW JOHN LAUGHLIN and DARREN BRINKMANN,

Defendants

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TRIAL PART: 44
NASSAU COUNTY

INDEX NO.: 006935/04

MOTION DATE: 3-1-05
SUBMIT DATE: 3-11-05
SEQ. NUMBER - 003

The following papers have been read on this motion:

Order to Show Cause, dated 2-17-05..... 1
Affidavit in Opposition, dated 2-28-05.....2

Plaintiff's motion for leave to reargue a motion and Decision dated January 13, 2005 is granted. Upon reconsideration the Court adheres to the original Decision for the following reasons:

In the Decision at issue this Court found that Defendant Adrian Carriers did not maintain an agent for the service of process in New York pursuant to the Federal Motor Carrier Safety Administration regulations. Accordingly, Plaintiff did not acquire personal

jurisdiction over Defendant Adrian Carriers in this case.

In this litigation, Plaintiff seeks to recover damages suffered in a multi-vehicle car accident that occurred on August 19, 2003 on Interstate Highway 1-80 in Waltham, Illinois. The essential facts adduced from the pleadings and exhibits are that Plaintiffs were driving a vehicle on Interstate Highway I-80. Defendant Darren Brinkman was driving a vehicle behind Plaintiffs, and that Defendant Mathew John Laughlin was driving a truck for Defendant Adrian Carriers behind Defendant Darren Brinkman.

The underlying motion to dismiss pursuant to CPLR §3211 (a)(8) was granted on January 13, 2005. The Court found that service upon Defendant Adrian Carriers and Mathew John Laughlin, both Illinois residents, was not effective to confer personal jurisdiction in this Court. Specifically, Plaintiff was not able to show sufficient contacts with New York to invoke the long-arm provisions of the CPLR §302(a)(3) that would allow service of the summons and complaint on Defendants in Illinois.

In the complaint, Plaintiff cites the basis for conferring personal jurisdiction over Defendants Adrian Carrier and Mathew John Laughlin to be that they did business in New York and are presently doing business in New York (Plaintiff's Complaint at paragraph #s 8, 9, 14, 15). In order for this Court to find those two Defendants to have transacted business in New York, Plaintiff must show in response to this motion the Defendants engaged in a continuous and systematic course of business in New York that will not offend the traditional notions of fair play and substantial justice. *Tauza v. Susquehanna*, 220 NY 267.

Plaintiff's motion repeatedly brings the Court's attention to numerous documents and indicia of Defendant Adrian Carrier's designation of an agent for the service of process in New York. Another basis for Plaintiff's application is the affidavit of Robert G. Rothstein, Vice President and General Counsel of the American Moving and Storage Association (AMSA), which was submitted in Plaintiff's reply papers. By way of this sworn statement, Plaintiff seeks to show the Court that since 1992 the Defendant Adrian Carriers has continuously participated in the AMSA's Process Agent Program. Participation in this program, Plaintiff argues, satisfies Adrian Carrier's statutory (BOC-3) filing obligations for 48 states, including New York, and designates agents for the service of process on behalf of Adrian Carriers. The Defendant does not dispute this issue.

Jurisdiction over a non-resident for a tortious act occurring outside New York requires more than a designated recipient of process under CPLR §302. The Court granted Plaintiffs every opportunity akin to discovery to submit documents in support of their position by way of the reply with new facts to this application. The acquisition of personal jurisdiction in New York is still governed by the constitutional standard enunciated in *International Shoe v. Washington*, 326 US 310 (1945). That case held that in order to render a judgment against a Defendant, due process requires the Defendant to have minimum contacts in New York, to be properly served with notice of the action, and to be afforded the opportunity to be heard. That case also expanded the minimum contact requirements to include acts by non-New York residents if the cause of action arises out of the activity that serves as the

minimum contact in New York. (See CPLR §302) If the Defendant is a New York domiciliary, the minimum contact requirement is satisfied by the presence of a designated agent to accept process in New York. However, for a Plaintiff to enjoy the opportunity to bring an action in New York against a non-New York resident, the combined effect of all of the defendant's acts and transactions in the State must be weighed. (*International Shoe Co. V. Washington*, 326 U.S. 310).

The argument concerning the Defendant's website adds little or nothing to Plaintiffs' argument. Most businesses have a website; that obviously does not make all of them amenable to suit in any state with a computer, a modem, and a telephone line into all fifty states in which they place orders. Even assuming that a website is a factor in determining whether a party is "present" in a particular jurisdiction, and thus subject to CPLR §301 "presence" jurisdiction, Defendant Adrian Carriers' website does not contribute to long-arm jurisdiction in this case because the cause of action did not specifically arise from the website itself, nor is it indicative of any business transactions in New York.

Although not pleaded, in an effort to afford Plaintiffs an opportunity to resolve this matter in New York, the Court considers the facts in the context of CPLR §302 (a)(3). This allows New York Courts to exercise jurisdiction over a non-resident who commits a tortious act outside New York causing injury in New York. However, the two specific statutory requirements situations do not address the situation where the tort and the injury occur outside New York. The threshold question of whether the allegations in the complaint

concern a tortious act, is not in contention here. However, the question of whether the injury occurred within the state notwithstanding a liberal application; must show regular contact with New York, or the derivation of revenue found in CPLR §302 (a)(3)(i) and (ii), although they need not bear any relation to the event that gave rise to the suit. The cause of action must only "arise from" the out-of-state tortious act to satisfy the part of CPLR § 302(a). 1 New York Civil Practice (Weinstein, Korn & Miller) 302. Plaintiff has not submitted any facts sufficient to meet these threshold questions which would compel the Court to deny Defendant's application for dismissal against Defendant's Adrian Carrier and Mathew John Laughlin.

As to Defendant Mathew John Laughlin, an individual cannot be subject to jurisdiction under CPLR §301 unless he is doing business in New York individually rather than on behalf of a corporation (*Laufer v. Ostrow*, 55 NY2d 305), for there is no personal jurisdiction over an individual non-resident driver based on an accident which occurred outside New York. Even the designation of an agent to accept service of process under the Motor Carrier act would not confer personal jurisdiction over the individual foreign truck driver. (*McKamey v. Vander Houten*, 744 AD2d 529).

Thus, the Court finds for the purposes of this motion on renewal, that the individual Defendant, Mathew John Laughlin is a resident of Illinois who has no legal nexus to New York; that the Defendant, Adrian Carriers is an Illinois corporation which does not conduct business in New York, does not advertise or seek business in New York nor own, lease or

occupy any real or personal property in New York. Defendant Adrian Carriers and Mathew John Laughlin's motion is granted.

This shall constitute the Decision and Order of this Court.

ENTER

DATED: May 25, 2005

HON. LAWRENCE J. BRENNAN
Acting Supreme Court Justice

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