

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BERNARD J. FRIED
Justice

FBEM PART 60

Ana Lida Otomotiv VE
IHTIYAG.

INDEX NO. #604136-2006

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

— IZDAS TRADING Co.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

**NYS SUPREME COURT
REVIEWED
MAY 17 2007
E-FILE DEPT.**

FILED

MAY 01 2007
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion

Defendant moves for dismissal of this action on the basis of an alleged mandatory forum selection clause which, it contends, requires that this action be brought in Istanbul, Turkey. Plaintiff opposes this motion, arguing that the contract's forum selection clause is permissive only.

It is not disputed that the parties - plaintiff, a corporation organized under the laws of Turkey, and defendant, a corporation organized under the laws of New York - entered into a contract in Turkey to ship olive oil to New York. The contract provides as follows:

All possible disputes that may happen during the application of this contract will be solved by good will between the parties. If a settlement is not reached by this way, Courts of Istanbul will be authorized in solving the dispute.

Certainly, "contractual provisions for ...selection of a forum for litigation" are enforced in New York (e.g., Boss v. American Exp. Financial Advisors, Inc., 15 AD3d 306 [1st Dept., 2005]). And, of course, such provisions must be clear and unambiguous (e.g., British West Indies Guar. Trust Co., Ltd v. Banque, 172 AD2d 234 [1st Dept., 1991]).

Here, however, there is no unequivocal indication in the cited contractual provision that the "Courts of Istanbul" shall be the exclusive forum for the settlement of the parties disputes. Rather, it seems to me to be only a permissive clause, consenting to suit in Turkey, rather than requiring such as an exclusive selection. Buttressing this conclusion is that the word "authorized" means "To grant authority or power...[or] To give permission for" (The

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

American Heritage Dictionary of the English Language: Fourth Edition [2000]; see, also, Black's Law Dictionary [Seventh Ed., 1999][To give legal power; to empower]. This meaning does not bar an action commenced elsewhere.

Accordingly, it is
ORDERED that the motion is denied; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that a Preliminary Conference will be held on June 27, 2007 at 10:00 AM.

SO ORDERED

FILED
MAY 01 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 5/1/07



J.S.C. **BERNARD J. FRIED**
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
 DO NOT POST REFERENCE