

<b>AXA Winterthur Ins. Co. v Transvalue, Inc.</b>
2011 NY Slip Op 33968(U)
December 23, 2011
Supreme Court, New York County
Docket Number: 650507/2011
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

AXA WINTERTHUR INSURANCE CO.,
Plaintiff,
- v -
TRANSVALUE, INC and CERTAIN INTERESTED
UNDERWRITERS at LLOYD'S,
Defendants.

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Index No.: 650507/2011
Motion Date: 12/20/11
Motion Seq. No.: 001
Motion Cal. No.:

The following papers, numbered to 4 were read on this motion to dismiss

Notice of Motion -Affidavits -Exhibits
Answering Affidavits - Exhibits
Replying Affidavits - Exhibits

Table with 2 columns: PAPERS NUMBERED, 1, 2, 3, 4

Cross-Motion: Yes No

Upon the foregoing papers, this motion to dismiss the complaint for lack of personal jurisdiction over the defendants is denied since this court has jurisdiction over defendant Transvalue, Inc pursuant to CPLR § 302.

Neither party submits a copy of the complaint that defendants seek to dismiss, so the court sua sponte considers the pleading on electronic file with the clerk.

As argued by plaintiff herein, in its federal court complaint in Transvalue v RCX, Inc, (US Dist Ct, SD, NY 10 Civ

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

is a domestic corporation doing business in the State of New York, with whom Transvalue subcontracted to move certain jewelry, which was ultimately stolen, from JFK Airport to Mt. Vernon, New York. Such admission establishes that this New York court has personal jurisdiction over Transvalue in this declaratory judgment action in which AXA Winterthur Insurance Company, RCX Inc's insurer, seeks an adjudication of its obligations under a policy that Transvalue alleges provided coverage in connection with the very transaction that was the subject of the New York federal court action in which Transvalue obtained a default judgment against RCX, Inc.<sup>1</sup>

The policy which defendant Transvalue attaches to its moving papers lists RCX Armored Inc at 62 West 47<sup>th</sup> Street, #1111, New York, New York 10036, which is the exact same address that it lists in correspondence dated February 5, 2007 on its own letterhead addressed to RCX, Inc, and defendant Transvalue does not deny that it sent such letter. Clearly there was no confusion as to the parties involved in the contract. Harmon v Ivy Walk, Inc, 48 AD3d 344, 347 (1<sup>st</sup> Dept 2008).

Nor does the "Evidence of Insurance" constitute irrefutable documentary evidence that RCX, Inc is not domiciled in New York since such document explicitly provides that it confers no rights

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<sup>1</sup>As a corollary, the New York federal court would have had personal jurisdiction over AXA Winterthur, RCX, Inc.'s insurer. Zacharakis v Bunker Hill Mut Ins Co, 281 AD 487 (1<sup>st</sup> Dept 1953).

upon the holder other than those provided in the policy, which sets forth a New York forum selection and choice of law provision.

Moreover, dismissal is not warranted pursuant to CPLR 3211(a)(4) since the action at bar was filed before the defendants filed their now pending action in the Florida federal district court.

Finally, in the interest of justice the court grants plaintiff leave and extends the 120 day period under which it shall effect service upon Lloyd's of London pursuant to CPLR § 306-b, for 120 days from service of this order with notice of entry.

Accordingly, it is

ORDERED that the motion of defendants to dismiss the complaint pursuant to CPLR 3211(a)(1)(2)(4)(7)(8), and (10) is denied; and it is further

ORDERED pursuant to CPLR 306-b that the time for plaintiff to effect service upon Lloyd's of London is extended for 120 days from service of a copy of this order with notice of entry; and it is further

ORDERED that defendant shall serve an answer to the complaint within twenty (20) days after service of notice of entry; and it is further

ORDERED that the parties shall appear for a preliminary

conference in IAS Part 59, 71 Thomas Street, Room 103 on March  
20, 2012, 9:30 AM.

Dated: December 23, 2011

ENTER:

DEBRA A. JAMES  
**DEBRA A. JAMES** J.S.C.