

<b>Homeward Residential., Inc. v Thompson Hine LLP</b>
2018 NY Slip Op 30325(U)
February 22, 2018
Supreme Court, New York County
Docket Number: 156730/2017
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 32

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HOMEWARD RESIDENTIAL, INC.,

Plaintiff,

**DECISION & ORDER**  
**Index No. 156730/2017**  
**Mot. Seq: 001**

**ARLENE P. BLUTH, JSC**

-against-

THOMPSON HINE LLP

Defendant.

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The motion to dismiss by defendant is granted.

**Background**

This legal malpractice action arises out of legal work performed by defendant for plaintiff in connection with a lawsuit in a federal court in Georgia. Plaintiff serviced home mortgage loans and hired defendant to represent it in a lawsuit brought by a property owner. Plaintiff claims that defendant failed to timely assert a claim relating to punitive damages and this oversight resulted in a judgment of \$3 million in punitive damages to be awarded against plaintiff. Plaintiff contends that had defendant properly represented plaintiff, it would have cited to a Georgia statute that limited punitive damages to \$250,000.

Defendant moves to dismiss for lack of personal jurisdiction. Defendant stresses that it is a limited liability partnership organized under the laws of Ohio and its principal place of business is in Cleveland, Ohio. Defendant argues that New York has no connection to the underlying lawsuit that occurred in Georgia— defendant claims that none of its New York-based attorneys

were involved in the Georgia action. Defendant concludes that it is not subject to general jurisdiction in New York.

In opposition, plaintiff points to information about defendant it found listed by the New York Department of State on its website (“DOS”) which plaintiff claims demonstrates that defendant changed its principal place of business from Cleveland to New York City. Plaintiff also points to a filing in another litigation based in New York in which defendant asserted that its principal place of business is in New York City.

In reply, defendant stresses that the DOS website printouts identify defendant’s principal office within New York; it does not list its principal place of business for purposes of general jurisdiction. Defendant also notes that the firm is listed as a foreign limited liability partnership with DOS.

#### **Discussion**

In order to establish general jurisdiction over defendants, they must either be incorporated or have their principal place of business in New York (*see e.g., Magdalena v Lins*, 123 AD3d 600, 601, 999 NYS2d 44 [1st Dept 2014] citing *Daimler AG v Bauman*, 571 US —, 134 S Ct 746, 760 [2014]).

Here, because neither plaintiff nor defendant disputes that defendant is incorporated in Ohio, the critical question for this Court is whether defendant is estopped from claiming that its principal place of business is in New York. Plaintiff claims that the information it found from the DOS website and in a complaint filed in New York state court suggests that equitable estoppel should apply because it reasonably relied on these documents.

“The purpose of equitable estoppel is to preclude a person from asserting a right after having led another to form the reasonable belief that the right would not be asserted, and loss or prejudice to the other would result if the right were asserted. The law imposes the doctrine as a matter of fairness” (*Shondel J. v Mark D.*, 7 NY3d 320, 326, 820 NYS2d 199 [2006]).

### The DOS Printouts

A website printout from DOS submitted by plaintiff identifies defendant’s jurisdiction as Ohio and describes its “entity type” as a foreign registered limited liability partnership (NYSCEF Doc. No. 13). This document also lists an address for service of process in Cleveland (*id.*). A Madison Avenue address in New York City is listed as defendant’s Principal Executive Office (*id.*). This same address in New York is also listed in partnership statements filed in 2017 and 2012 as defendant’s principal office (*see* NYSCEF Doc. No. 19, 20).

Here, plaintiff’s purported reliance on these DOS printouts to support its equitable estoppel argument is simply unreasonable. The fact is that New York had nothing to do with the parties’ relationship. Plaintiff is not based in New York. Defendant represented plaintiff in a lawsuit in Georgia. Plaintiff does not even contend that any of defendant’s lawyers based in New York did anything in connection with the Georgia trial. And, in reply, defendant submits check vouchers in connection with the Georgia action that purportedly show that payments were made to defendant in Cleveland (NYSCEF Doc. No. 33).

The Court observes that the term ‘Principal Executive Office’ appears to relate primarily to issues of venue (*see e.g., Discolo v River Gas & Wash Corp.*, 41 AD3d 126, 837 NYS2d 95 [1st Dept 2007]; *see also* Business Corporation Law § 408[1]); it is not a synonym for principal place of business. Moreover, defendant argues that it means its principal office *within* New York

state; that claim is supported by the current registration form for foreign LLPs created by DOS—the third box asks the entity to list “the address of the principal office of the foreign limited liability partnership in New York state” (NYSCEF Doc. No. 26 at 5). It is not defendant’s fault if the DOS extrapolates from that form to put on its website something that may not be accurate. Quite simply, listing a foreign company’s address within New York, which is what the form asks, does not transform that address into the foreign company’s principal place of business for purposes of general jurisdiction. Therefore, this Court is unable to find that a New York address listed on DOS’s website as an entity’s principal executive office constitutes its principal place of business.

In order to arrive at plaintiff’s conclusion that defendant is actually headquartered in New York, one would have to selectively rely on information that supports plaintiff’s position to the exclusion of everything else. Put another way, to embrace plaintiff’s conclusion would require the Court to ignore the fact that plaintiff hired defendant to represent it in a Georgia action, paid defendant at an address in Ohio, and ignore the references to Ohio in a DOS printout which identifies defendant as a *foreign* registered limited liability partnership. Equitable estoppel cannot apply where plaintiff cherry-picks which information to rely on and which facts to ignore.

At best, the references to New York in the DOS printouts create an issue for plaintiff to investigate regarding the location of defendant’s principal place of business before commencing the instant action. And as stated above, the principle of equitable estoppel relies on fairness and it would be inherently unfair for defendant to be subject to general jurisdiction in New York because plaintiff relied exclusively on its own interpretation of information compiled by a third-party (DOS) over which defendant had no control.

Also critical to the Court's conclusion is the fact that the information from DOS is not the only source of information about defendant. For example, defendant notes that profiles of defendant on various websites that rank law firms indicate it is based in Cleveland (*see* NYSCEF Doc. No. 30 at 2-3).

Plaintiff's reliance on the filings of other law firms does not compel a different outcome. The question is whether it was reasonable for plaintiff to think that *defendant's* principal place of business is in New York. How other law firms may have filled out DOS' forms does not establish that it was reasonable for plaintiff to summarily conclude that defendant moved its headquarters to New York especially given the other facts in this case.

### **The State Court Filing**

Plaintiff also claims that equitable estoppel should bar defendant's motion because defendant, in a suit for attorney's fees, filed a complaint in 2014 in which it stated that it "is a law firm and foreign registered limited liability partnership with its principal place of business located at 335 Madison Avenue, New York, NY, 10017" (NYSCEF Doc. No. 25). While this filing certainly supports plaintiff's position, a single document filed in an unrelated case about legal fees that did not involve plaintiff cannot impose general jurisdiction on defendant.

There is no basis upon which this Court can find that plaintiff reasonably relied on another Court filing. The associate who drafted this complaint asserts that it was a mistake (NYSCEF Doc. No. 29). Certainly, a single error (referring to the Madison Avenue address as its principal place of business) does not justify the imposition of equitable estoppel in this case. One oversight by a junior member of a law firm (with hundreds of lawyers) should not subject

defendant to general jurisdiction in New York in perpetuity. Because equitable estoppel is grounded in fairness, the Court finds that it would be unfair to hold that general jurisdiction applies under these circumstances.

### Summary

The Court recognizes that many self-styled “national” law firms have offices throughout the country in order to provide more comprehensive services to their clients. However, opening a New York office does not automatically confer general jurisdiction. Of course, a national law firm might be subject to *specific* jurisdiction arising out of its work or dealings in New York. But that is not the case in this action. Here, plaintiff wants to sue defendant in New York even though the work was performed in Georgia (where defendant has another office), plaintiff made payments issued by defendant’s Ohio office and there is no evidence whatsoever that defendant made any statements or representations that it was headquartered in New York. There is no dispute that defendant does business in New York— it has an office in New York— but plaintiff does not argue that those contacts rise to the level of general jurisdiction. Instead, plaintiff claims that defendant is *equitably estopped* from arguing about personal jurisdiction.

When viewing the instant circumstances, the Court must consider the consequence of finding that defendant is subject to general jurisdiction in New York. Such a conclusion means that defendant could be sued in New York for any claim. As the U.S. Supreme Court noted in *Daimler*, the issue of general jurisdiction “follows from the touchstone principle of due process in this field, the concept of reciprocal fairness” (*Daimler*, 134 S. Ct. at 768). The notions of due

process and fairness compel this Court to find that defendant is not equitably estopped from asserting that this Court lacks personal jurisdiction over it.

Plaintiff may want to sue defendant in New York out of convenience-- plaintiff's attorneys are based in New York. To find that defendant is subject to general jurisdiction in New York would require the Court to bury its head in the sand and find that a Madison Avenue address, listed in response to a question on a form seeking the New York address of a foreign company -- but identified as a principal executive office on the DOS website -- is the equivalent of a principal place of business. And even the error of an associate in the New York office made in drafting a complaint for fees is not a basis to equitably estop defendant from asserting this Court lacks jurisdiction over it. That conclusion would require the Court to block out all other information showing the reality: that defendant is based in Ohio and that plaintiff is aware of that fact given the parties' prior relationship in Georgia.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendant is granted.

This is the Decision and Order of the Court.

**Dated: February 22, 2018**  
New York, New York



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ARLENE F. BLUTH, JSC