

STATE OF VERMONT

SUPERIOR COURT
Orange County

CIVIL DIVISION
Docket No. 204-9-09 Oecv

Kaser USA, LLC
Plaintiff

v.

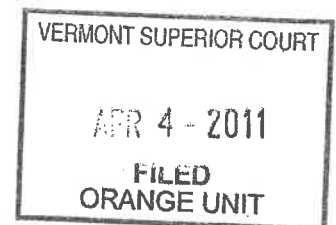
Seabreeze Trading Corp.
Defendant

Decision on Defendant's Motion to Reconsider

In a recent written decision, this court denied defendant's motion to dismiss the complaint for lack of a real party in interest and instructed the parties to submit further briefing on the following jurisdictional question: whether the forum-selection clause in the agency agreement identifies Vermont as a non-exclusive forum for this litigation. Defendant has now moved for reconsideration of this decision on the ground that the court made errors of fact and law when denying the motion to dismiss the complaint for lack of a real party in interest, and errors of fact and law in its handling of the motion to dismiss the complaint for lack of personal jurisdiction.

Part of the confusion here is that defendant raised a number of defenses in the Rule 12 motion, including the defenses of lack of personal jurisdiction, forum non conveniens, and lack of a real party in interest. Although this is permissible, courts confronted with omnibus Rule 12 motions should decide the issue of personal jurisdiction first for the reason that "a court without such jurisdiction lacks power" to decide any other issue in the case. *Arrowsmith v. United Press Int'l*, 320 F.2d 219, 221 (2d Cir. 1963) (Friendly, J.); 5B Wright & Miller, Federal Practice and Procedure: Civil 3d § 1351. Put another way, it would not be helpful for the parties to receive substantive rulings from a court that lacks personal jurisdiction. *Lakeside Equipment Corp. v. Town of Chester*, 173 Vt. 317, 321 (2002).

Given this observation, the court now makes explicit what was apparently implicit in its recent written decision: All other issues in the case are secondary to the question of whether this court may exercise personal jurisdiction over the defendant. In particular, it appears to the court that the forum-selection clause is the *only* potential basis for the assertion of personal jurisdiction in Vermont, and so the question that must be answered first—before any further discussion of real parties in interest or the convenience of litigating here—is whether the forum selection clause actually identifies Vermont as a potential forum for this litigation. The answer to that question will determine whether this court has any future role in this litigation or not.

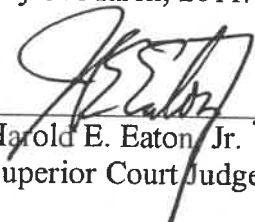


In other words, the court is not considering at this time any further questions about forum non conveniens or the identity of the parties. We will only reach those issues if it turns out that personal jurisdiction may be asserted over defendant in the first instance. And if those issues do become ripe, we will schedule a status conference before deciding them.

For the foregoing reasons, defendant's motion to reconsider is *denied*. Both parties are instructed to refer to the last paragraph of the previous written decision for directions on the briefing schedule to be followed from here.

SO ORDERED.

Dated at Chelsea, Vermont this 31 day of March, 2011.



Harold E. Eaton, Jr.
Superior Court Judge

