

BUSINESS LITIGATION ALERT

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“Classic *Quid Pro Quo*”: A Foreign Corporation Transacting Business in New Jersey Cannot Take Advantage of the State’s Courts, Absent a Certificate of Authority

Have you been sued in New Jersey by a foreign corporation? Is your foreign company litigating in New Jersey? If so, this case is a reminder of a commonly overlooked prerequisite for asserting claims in New Jersey courts.

The New Jersey Superior Court, Law Division, recently issued an opinion in *Paventia, Inc. v. Harold Wilbert*, denying defendants’ motion for summary judgment against a Canadian corporation based upon the New Jersey Corporation Act, N.J.S.A. 14A:13-11. This Act provides that a foreign corporation transacting business in this state cannot maintain an action in its courts unless the company has a New Jersey certificate of authority. The Court held that the foreign plaintiff had standing to sue in New Jersey even though it was only involved in “bare solicitation” akin to nationwide interstate commerce and was not “transacting business in this State.”

Plaintiff *Paventia* brought suit in New Jersey for alleged nonpayment for goods received by defendant *Wilbert*. *Wilbert* sought summary judgment on the ground that *Paventia* did not maintain a certificate of authority to transact business in New Jersey and thus could not avail itself of the laws of the State. The Court found that a certificate of authority is only needed when a foreign corporation “transacts business” in New Jersey, but no uniform definition for “transacting business” exists. In its analysis,

the Court distinguished cases in which plaintiffs had regular contact in New Jersey versus those in which plaintiffs engaged in bare solicitation in New Jersey. The Court recognized that under the law, “ ‘solicitation’ and ‘transacting business’ can be one-and-the-same where ‘a party induced ‘one local merchant to buy a particular class of goods from another.’ ”

The Court reasoned that the facts before it resembled “bare solicitation” and not “transacting business”; *Paventia* did not maintain offices in New Jersey, have sales representatives in New Jersey, advertise in New Jersey media, nor finalize contracts in New Jersey; its website did not provide a New Jersey-specific search feature for customers. *Wilbert*’s bare assertion that *Paventia* “contacted me to see if I would purchase a product...” was not enough to establish that *Paventia* transacted business so as to require obtaining a New Jersey certificate of authority.

Despite the ruling in favor of a non-certified foreign corporation, *Paventia, Inc.* reconfirms longstanding legal precedent that companies doing more than simply permitting the sale of their goods in New Jersey through general advertisements or websites should obtain a New Jersey Certificate of authority. “Transacting business” may include an out-of-state business that has a New Jersey office or telephone number, has New Jersey-based employees, has representatives that

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come into New Jersey, advertises in local New Jersey publications, or otherwise specifically targets New Jersey consumers. Potential plaintiffs and defendants alike must be aware that, absent that certificate of authority, foreign businesses will not be permitted to avail themselves of New Jersey courts if they “transact business” in our state. While the

Paventia, Inc. case addressed claims by a foreign corporation as a plaintiff, the issue of whether a non-certified foreign corporation may assert a counterclaim or cross-claim is not clearly resolved but it can be easily avoided by obtaining a Certificate of authority. ■

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