

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2010

(Argued: February 25, 2011 Decided: March 5, 2012)

Docket No. 10-1306-cv

YAAKOV LICCI, a minor, by his father and natural guardian,
ELIHAV LICCI, and by his mother and natural guardian, YEHUDIT
LICCI, et al.,

Plaintiffs-Appellants,

- v -

LEBANESE CANADIAN BANK, SAL; AMERICAN EXPRESS BANK LTD.,

Defendants-Appellees.*

Before: KEARSE, SACK, and KATZMANN, Circuit Judges.

Appeal from a judgment of the United States District
Court for the Southern District of New York (George B. Daniels,
Judge) granting the motion to dismiss filed by defendants-
appellees American Express Bank Ltd. ("AmEx"). The plaintiffs,
all Israeli residents, were allegedly injured, or their family
members killed or injured, by rockets fired by Hizballah, a
Lebanese terrorist organization, into northern Israel in July

* The Clerk of Court is directed to amend the official
caption as shown above.

1 and August 2006. The district court dismissed the plaintiffs'
2 negligence claim against AmEx, evaluating the claim under New
3 York state law. Because we conclude that New York law would
4 apply even if a conflict between the laws of the relevant
5 jurisdictions existed, and that the plaintiffs do not have a
6 viable claim against AmEx under New York law, the judgment of
7 the district court insofar as it is in favor of AmEx is hereby
8 AFFIRMED.

9 The district court's dismissal of a separate claim
10 against Lebanese Canadian Bank SAL is considered in a separate
11 opinion filed today.

12 Appearances: ROBERT J. TOLCHIN, Jaroslawicz &
13 Jaros, New York, NY, for Plaintiffs-
14 Appellants.

15 JONATHAN D. SIEGFRIED (Lawrence S.
16 Hirsh, on the brief), Dewey & LeBoeuf
17 LLP, New York, NY, for Defendant-
18 Appellee Lebanese Canadian Bank, SAL.

19 MARK P. LADNER (Mark David McPherson,
20 Michael Gerard, on the brief),
21 Morrison & Foerster LLP, New York, NY,
22 for Defendant-Appellee American
23 Express Bank Ltd.

24 PER CURIAM:

25 The plaintiffs-appellants, Yaakov Licci et al.,
26 appeal from a March 31, 2010, decision and order of the United
27 States District Court for the Southern District of New York
28 (George B. Daniels, Judge) granting the motions to dismiss

1 filed by defendants-appellees Lebanese Canadian Bank, SAL
2 ("LCB") and American Express Bank Ltd. ("AmEx").

3 This opinion addresses only the plaintiffs'
4 negligence claim against AmEx. The plaintiffs' claims against
5 LCB are addressed in an accompanying opinion. See Licci v.
6 Lebanese Canadian Bank, SAL, __ F.3d __ (2d Cir. March 5,
7 2012). A full account of the underlying facts is set forth in
8 that opinion.

9 This case concerns a series of rocket attacks
10 launched by Hizballah, a Lebanese terrorist organization, at
11 targets in northern Israel in July and August 2006. The
12 plaintiffs are American, Canadian, and Israeli civilians who
13 were injured, or whose family members were injured or killed,
14 during the rocket attacks. They allege that LCB knowingly
15 maintained bank accounts for an alleged Hizballah affiliate,
16 the Shahid (Martyrs) Foundation ("Shahid"), and carried out
17 dozens of international wire transfers on Shahid's behalf.
18 These wire transfers, which totaled several million dollars,
19 were conducted using LCB's correspondent bank account at AmEx
20 in New York. The plaintiffs assert that AmEx, by facilitating
21 these wire transfers on behalf of LCB and Shahid, breached a
22 legal duty of care to the plaintiffs and thereby caused the
23 plaintiffs' injuries.

1 "We review the district court's grant of a Rule
2 12(b)(6) motion to dismiss de novo, accepting all factual
3 claims in the complaint as true, and drawing all reasonable
4 inferences in the plaintiff's favor." Famous Horse Inc. v. 5th
5 Ave. Photo Inc., 624 F.3d 106, 108 (2d Cir. 2010). In so
6 doing, we ascertain whether the complaint "contain[s]
7 sufficient factual matter, accepted as true, to state a claim
8 to relief that is plausible on its face." Ashcroft v. Iqbal,
9 129 S. Ct. 1937, 1949 (2009) (internal quotation marks
10 omitted). "Because our review is de novo, we are free to
11 affirm the decision below on dispositive but different
12 grounds." Chase Grp. Alliance LLC v. City of N.Y. Dep't of
13 Fin., 620 F.3d 146, 150 (2d Cir. 2010) (internal quotation
14 marks omitted).

15 This case presents a threshold question of choice of
16 law. Plaintiffs assert that Israeli law governs their
17 negligence claim, while AmEx maintains that New York law
18 governs. "We review the district court's choice of law de
19 novo." Finance One Pub. Co. v. Lehman Bros. Special Fin.,
20 Inc., 414 F.3d 325, 331 (2d Cir. 2005), cert. denied, 548 U.S.
21 904 (2006).

22 "A federal court sitting in diversity or adjudicating
23 state law claims that are pendent to a federal claim must apply
24 the choice of law rules of the forum state." Rogers v.

1 Grimaldi, 875 F.2d 994, 1002 (2d Cir. 1989). Accordingly, New
2 York choice-of-law rules apply in adjudicating the plaintiffs'
3 negligence claim.

4 Under New York choice-of-law rules, "'[t]he first
5 step in any case presenting a potential choice of law issue is
6 to determine whether there is an actual conflict between the
7 laws of the jurisdictions involved.'" Wall v. CSX Transp.,
8 Inc., 471 F.3d 410, 415 (2d Cir. 2006) (quoting In re Allstate
9 Ins. Co., 81 N.Y.2d 219, 223, 597 N.Y.S.2d 904, 905, 613 N.E.2d
10 936, 937 (1993)). A choice-of-law analysis need not be
11 performed unless there is "an 'actual conflict' between the
12 applicable rules of two relevant jurisdictions." Finance One,
13 414 F.3d at 331. If no actual conflict exists, and if New York
14 is among the relevant jurisdictions, the court may simply apply
15 New York law. See Wall, 471 F.3d at 422; Int'l Bus. Machs.
16 Corp. v. Liberty Mut. Ins. Co., 363 F.3d 137, 143 (2d Cir.
17 2004).

18 The district court determined that "no actual
19 conflict exists between the applicable substantive law of
20 negligence in New York and Israel." Licci v. Am. Express Bank
21 Ltd., 704 F. Supp. 2d 403, 409 (S.D.N.Y. 2010). It therefore
22 proceeded to evaluate the plaintiffs' negligence claim against
23 AmEx under New York state law. Id. at 410. The district court
24 observed that under New York law, "[b]anks do not owe non-

1 customers a duty to protect them from the intentional torts
2 committed by [the banks'] customers." Id. (citing Lerner v.
3 Fleet Bank, N.A., 459 F.3d 273, 286 (2d Cir. 2006)). The
4 district court also determined that the plaintiffs had failed
5 plausibly to allege that AmEx's conduct was the proximate cause
6 of the plaintiffs' injuries. Id. at 410-11. For those
7 reasons, the district court dismissed the plaintiffs'
8 negligence claim against AmEx.

9 On appeal, the plaintiffs contend that there is an
10 actual conflict between Israeli law and New York law, and
11 therefore the district court erred in declining to conduct a
12 choice-of-law analysis. The plaintiffs further argue that
13 Israeli law, not New York law, governs their negligence claim
14 against AmEx.

15 We use New York conflict of laws principles to
16 determine whether New York or Israeli law governs. See Rogers,
17 875 F.2d at 1002. Even if the plaintiffs are correct and an
18 actual conflict exists between the relevant substantive laws of
19 New York and Israel, New York conflicts law directs that
20 "[t]he law of the jurisdiction having the greatest interest in
21 the litigation will be applied." GlobalNet Financial.Com,
22 Inc. v. Frank Crystal & Co., 449 F.3d 377, 384 (2d Cir. 2006)
23 (quoting Schultz v. Boy Scouts of Am., Inc., 65 N.Y.2d 189,
24 197, 491 N.Y.S.2d 90, 95, 480 N.E.2d 679, 684 (1985)).

1 "Interest analysis is a 'flexible approach intended to give
2 controlling effect to the law of the jurisdiction which,
3 because of its relationship or contact with the occurrence or
4 the parties, has the greatest concern with the specific issue
5 raised in the litigation.'" Finance One, 414 F.3d at 337
6 (quoting Cooney v. Osgood Mach., Inc., 81 N.Y.2d 66, 72, 595
7 N.Y.S.2d 919, 922, 612 N.E.2d 277, 280 (1993)).

8 In tort-law disputes, interest analysis distinguishes
9 between two sets of rules: conduct-regulating rules and loss-
10 allocating rules. GlobalNet, 449 F.3d at 384. Conduct-
11 regulating rules are those that "people use as a guide to
12 governing their primary conduct," K.T. v. Dash, 37 A.D.3d 107,
13 112, 827 N.Y.S.2d 112, 117 (1st Dep't 2006), while "[l]oss
14 allocating rules . . . are laws that prohibit, assign, or limit
15 liability after the tort occurs," DeMasi v. Rogers, 34 A.D.3d
16 720, 721, 826 N.Y.S.2d 106, 108 (2d Dep't 2006) (internal
17 quotation marks omitted).

18 The alleged conflict in this case concerns a conduct-
19 regulating rule: the scope of a bank's duty to protect third
20 parties against intentional torts committed by the bank's
21 customers. "'If conflicting conduct-regulating laws are at
22 issue, the law of the jurisdiction where the tort occurred will
23 generally apply because that jurisdiction has the greatest
24 interest in regulating behavior within its borders.'"

1 GlobalNet, 449 F.3d at 384 (quoting Cooney, 81 N.Y.2d at 72,
2 595 N.Y.S.2d at 922, 612 N.E.2d at 280).

3 Applying the interest-analysis test, we conclude that
4 New York has the greatest interest in this litigation. All of
5 the challenged conduct undertaken by AmEx occurred in New York,
6 where AmEx is headquartered and where AmEx administers its
7 correspondent banking services. Although the plaintiffs'
8 injuries occurred in Israel, and Israel is also the plaintiffs'
9 domicile, those factors do not govern where, as here, the
10 conflict pertains to a conduct-regulating rule. Cf. GlobalNet,
11 449 F.3d at 384-85. We conclude that New York, not Israel, has
12 the stronger interest in regulating the conduct of New York-
13 based banks operating in New York. See, e.g., Schultz, 65
14 N.Y.2d at 198, 491 N.Y.S.2d at 96, 480 N.E.2d at 684-85 (noting
15 the "locus jurisdiction's interests in protecting the
16 reasonable expectations of the parties who relied on it to
17 govern their primary conduct").

18 Accordingly, even assuming that the district court
19 was mistaken in deciding that there was no actual conflict
20 between New York law and Israeli law, we conclude that a
21 choice-of-law analysis would nonetheless require application of
22 New York law to the plaintiffs' negligence claim against AmEx.
23 The plaintiffs do not dispute that that claim must fail if New
24 York law is applied. The district court therefore did not err

1 in dismissing the plaintiffs' negligence claim against AmEx,
2 and we affirm on that ground.

3 For the foregoing reasons, the judgment of the
4 district court insofar as it is in favor of AmEx is affirmed.