

Fischbarg v Doucet

2005 NY Slip Op 30141(U)

October 17, 2005

Supreme Court, New York County

Docket Number: 0101427/2005

Judge: Shirley W. Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Kornreich, Shirley Werner
Justice

PART 54

Index Number : 101427/2005

FISCHBARG, GABRIEL

INDEX NO. 101427/05

vs

DOUCET, SUZANNE

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. 1

DISMISS ACTION

MOTION CAL. NO. _____

motion (to) for dismiss

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

1, 2

Replying Affidavits _____

3

4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is denied in accordance with the annexed Decision and Order.

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

FILED

OCT 26 2005

COUNTY CLERK'S OFFICE
NEW YORK

Dated: October 17, 2005

Shirley Werner Kornreich
SHIRLEY WERNER KORNREICH
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

-----X
GABRIEL FISCHBARG,

Plaintiff,

-against-

SUZANNE DOUCET a/k/a SUZANNE BELL-
DOUCET and ONLY NEW AGE MUSIC, INC.,

Defendants.
-----X

KORNREICH, SHIRLEY WERNER, J.:

Index No.: 101427/05

**DECISION
and
ORDER**

This is an action seeking monetary damages, arising from a dispute over attorneys fees between the parties. Plaintiff raises two causes of action, sounding in breach of contract and unjust enrichment.

I. **Motions**

Defendants now move to dismiss this action pursuant to CPLR 3211(a)(8), for lack of jurisdiction. In support, they have submitted the affidavit of Suzanne Bell-Doucet and copies of: income statements of Only New Age Music, Inc. ("ONAM"); redacted correspondence from defendants to plaintiff; the case docket in the action entitled *Allegro Corp. V. Only New Age Music Corp. and Suzanne Bell-Doucet* (Case No: 01cv790-HU) before the United States District Court for the District of Oregon (the "Oregon Action"); orders dated July 30, 2002 and January 19, 2005, from the Oregon Action; and the summons and complaint. Plaintiff-attorney, *pro se*, opposes, submitting his affirmation and copies of: unredacted correspondence from defendants to him and certain of his billing records. Defendants have replied.

II. **Background**

The complaint alleges the following. On or about January 15, 2002, the parties entered

into an agreement by which “plaintiff would be paid the quantum meruit value of his legal services rendered to the defendants plus his expenses incurred on behalf of the defendants at the conclusion of the [Oregon Action.]” Compl., para. 4. Plaintiff claims that, in consideration for such payment, defendants “received valuable consideration” from plaintiff, including, *inter alia*, legal services and case files. *Id.* The Oregon Action settled in defendants’ favor, on or about January 15, 2005, and despite plaintiff’s demand for \$59,906.38 (the claimed “quantum meruit” value of his legal services), defendants have refused to pay him. *Id.*

Defendant Suzanne Bell-Doucet, ONAM’s President, avers “[n]either ONAM nor [she] ever came to New York, nor did [they] have any meaningful contacts with New York during the course of Mr. Fischbarg’s representation of [them].” Aff. of Suzanne Bell-Doucet, para. 2. However, on or about February 23, 2001, “ONAM, in California, placed a telephone call to Mr. Fischbarg, in New York, during which Mr. Fischbarg agreed to undertake representation of ONAM in connection with [the Oregon Action] on the basis of a one-third contingency fee agreement[,]” which agreement was not memorialized in writing. *Id.*, para. 8-9. At this time, in a letter addressed to Mr. Fischbarg in New York, dated February 23, 2001, ONAM stated the following:

Thank you for offering to help us with our legal efforts concerning [the Oregon Action.] Our understanding is that you offered to take this case on contingency. Our understanding is also, that we only have to pay a deposit of \$2000 against expenses, if you go forward with this case after reviewing our material. After settlement in or outside of court the moneys received from [that action] will be split 1/3 (you) 2/3 us, after the deduction of expenses incurred of [sic] both parties. Expenses will be reimbursed before split.

Letter, dated February 23, 2001 (hereinafter, the “Redacted February 23 Letter”). According to Ms. Bell-Doucet, Mr. Fischbarg did not dispute the contents of ONAM’s letter and accepted two payments from ONAM, totaling \$2,000.

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During his representation of defendants in the Oregon Action, Mr. Fischbarg and defendants “never met in person . . . [and Ms. Bell-Doucet] never traveled to New York in connection with this or any other matter during the time[.]” Bell-Doucet Aff., para. 16. Ms. Bell-Doucet avers that all court hearings in the Oregon Action were held by telephone, with “Mr. Fischbarg attending from . . . New York [and] depositions were held by telephone, with Mr. Fischbarg in New York and [Ms. Bell-Doucet] in Los Angeles.” *Id.* Thereafter, on January 15, 2002, the parties came to disagree about the method by which Mr. Fischbarg was to be paid for his expenses, and “Mr. Fischbarg tendered in writing via e-mail his resignation as the attorney for ONAM and [Ms. Bell-Doucet] in the Oregon Federal Case[.]” *Id.*, paras. 17-18.

A dispute regarding the case file in the Oregon Action ensued, wherein Mr. Fischbarg refused to turn it over, and this dispute, as well as Mr. Fischbarg’s claims for legal fees, was put before the Honorable Dennis J. Hubel, the judge in the Oregon Action. Bell-Doucet Aff., para. 23. Magistrate Judge Hubel, *inter alia*, ordered Mr. Fischbarg to turn over the file and denied his motion for a “charging lien.” *See Oregon Action’s Order*, dated July 30, 2002 (hereinafter, the “July 30 Oregon Order”).

Mr. Fischbarg avers that, prior to January 2001, when defendants contacted him “out of the blue,” he “did not know who they were.” Aff. of Gabriel Fischbarg, para. 3. According to Mr. Fischbarg, “defendants deliberately solicited and sought [him] out in New York to represent them [in the Oregon Action]” and retained him while he was in New York. *Id.* During his representation of defendants, Mr. Fischbarg “did all [his] legal work in the Oregon lawsuit in New York . . . [and] never once went to Oregon or Los Angeles . . . through [his] representation of the defendants in the Oregon lawsuit.” *Id.*, para. 6. Mr. Fischbarg appeared by telephone at all depositions and court conferences, as well as on a summary judgment motion, while he

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remained in New York. *Id.* Defendants “repeatedly communicated with [Mr. Fischbarg] by telephone, regular mail, email and fax in connection with the Oregon lawsuit while [he] was in New York and they were in California[,]” and the parties spoke at least twice per week between May 2001 and January 2002. *Id.*, para. 7.

III. *Conclusions of Law*

CPLR 3211(a)(8) permits a party to move for dismissal where jurisdiction of defendant is lacking. Personal jurisdiction over a non-domiciliary may arise where that party “transacts any business within the state or contracts anywhere to supply goods or services in the state[,]” pursuant to CPLR 302(a)(1), New York’s long-arm statute. Where evidence demonstrates that “plaintiff was solicited by defendant in New York for the purpose of rendering legal services; that, subsequent to his retention by defendant, plaintiff was repeatedly consulted in New York by defendant respecting the matter in which he was retained; and that the present action was brought to obtain payment for services rendered by plaintiff in the very matter in connection with which plaintiff was solicited and retained by defendant, plaintiff has sufficiently established that defendant is subject to the jurisdiction of New York courts” pursuant to CPLR 302 (a)(1). *Kaczorowski v. Black & Adams*, 293 A.D.2d 358 (1st Dept. 2002). Further, CPLR 302(a)(1), is a “single act statute” so that proof of even one transaction in New York sufficiently invokes jurisdiction, “even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted[.]” *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 467 (1988). *See also Otterbourg, Steindler, Houston & Rosen, P. C. v. Shreve City Apartments, Ltd.*, 147 A.D.2d 327, 331 (1st Dept. 1989).

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Here, it is undisputed that: (1) defendants contacted plaintiff, in New York, and solicited his representation of them in the Oregon Action; (2) defendants consulted plaintiff, who was at all times in New York, by telephone, email and facsimile regarding the Oregon Action—the matter for which he was retained; and (3) the instant action has been brought to obtain payment for plaintiff's legal services on the Oregon Action—the very matter for which he was retained. Hence, plaintiff has sufficiently established that defendants are subject to the long-arm jurisdiction of New York. Defendants activities in retaining plaintiff, in a New York attorney situated in New York, to represent them in the Oregon Action was purposeful and a sufficient nexus exists between that retention of plaintiff and the instant claim regarding allegedly unpaid legal fees. Accordingly, it is

ORDERED that defendants' motion to dismiss is denied; and it is further

ORDERED that defendants are directed to serve their answers to the complaint within ten (10) days after service of a copy of this order with notice of entry upon them; and it is further

ORDERED that the parties are to appear for a preliminary conference before the Court at 11:00 a.m. on November 17, 2005, at 111 Centre Street, Room 1227, New York, NY 10013.

The foregoing constitutes the decision and order of the Court.

Date: October 17, 2005
New York, New York


SHIRLEY WERNER KORNREICH

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