Chadbourne & Parke LLP v Remote Solution Co., Ltd.

2005 NY Slip Op 30486(U)

June 27, 2005

Sup Ct, NY County

Docket Number: 603037/04

Judge: Carol R. Edmead

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SCANNED ON 7/7/2005

[* 1]

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

PRESENT: HON. CAROL EDMEAD PART 35

Index Number : 603037/2004

CHADBOURNE & PARKE LLP

VS

REMOTE SOLUTION CO., LTD.

Sequence Number : 1

DISMISS ACTION

INDEX NO. 603037/04

MOTION DATE 4/19/05

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

FILED
JUL 07 2005
COUNTY CLERK'S OFFICE
NEW YORK

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by defendant Remote Solutions Co., Ltd. to dismiss is granted, and the cross-motion by plaintiff is denied; and it is further

ORDERED that no sooner than five days after service of a copy of this order with notice of entry and a proposed judgment upon plaintiff, the clerk shall enter judgment accordingly upon the presentation of appropriate papers.

This decision constitutes the order of the court.

Dated: 6/27/05

HON. CAROL EDMEAD J.S.C.

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

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY I.A.S. PART 35
----------X

CHADBOURNE & PARKE LLP,

Plaintiff,

-against-

REMOTE SOLUTION CO., LTD. F/K/A HANGO ELECTRONICS CO., LTD.,

Defendant.

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MEMORANDUM DECISION

Index No. 603037/04
Mot. Seq. No. 001

CAROL R. EDMEAD, J.:

In this action to collect legal fees, defendant Remote Solutions Co., Ltd. ("Remote"), moves to dismiss for lack of personal jurisdiction, and plaintiff Chadbourne & Parke LLP ("Chadbourne"), cross-moves for leave to conduct jurisdictional discovery in connection with the motion to dismiss.

Factual Background

Defendant Remote is a Korean corporation that manufactures remote control units. Chadbourne, a law firm headquartered in New York, alleges it was retained on January 6, 2003 to represent it in defense of a patent infringement lawsuit filed in the United States District Court for the District of Delaware by Philips Electronic North America Corp. ("Philips"). Remote discharged Chadbourne about one month later, in late January or early February of 2003 (Lawrence Goodwin affirmation ["Goodwin aff."], para. 7; Suk-Kyu Park affidavit ["Park aff."],

para. 10; David Finger affidavit ["Finger aff."], paras. 3-4).[1] Thereafter, Chadbourne sent a bill for legal fees and disbursements in the amount of $112,968.56 (Goodwin aff., para. 7).

Defendant presents evidence that, upon being served with the papers commencing the lawsuit in December 2002, it retained a Korean law firm, Do & Partners, which associated itself with another Korean firm, Koreana Patent Firm ("Koreana"). Chadbourne was retained to represent Remote pursuant to e-mail correspondence between Koreana and a Chadbourne attorney located in its Washington D.C. office (Finger affidavit, exhibit B), who asserted in later correspondence that the e-mail satisfied "the requirements of the DC Bar rules as an engagement letter" (motion, exhibit B, Kim e-mail dated December 12, 2003). Remote's director avers that Remote was informed by its Korean attorney, Mr. Do, that Chadbourne had been retained to appear in the Delaware action and that, in order to avoid a default, it would need to receive a $25,000 retainer (Park aff., para. 7).

After being retained, Chadbourne prepared a motion to dismiss the Delaware action on jurisdictional grounds, which was filed on January 24, 2003 (see Goodwin aff., exhibit D, p. 2). Remote notes that Chadbourne was not licensed to practice in Delaware, and was obliged to retain yet another firm to act as local counsel (Finger aff., para. 3). Chadbourne asserts that, during the course of its representation, Chadbourne lawyers in New York communicated with Remote's attorneys in Korea by e-mail, letter, fax, and telephone call to the New York office (Goodwin aff., para. 4).

The federal court in Delaware eventually denied Remote's motion by order dated March

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[1]Plaintiff's Memorandum states, without citation, that "Chadbourne's representation of Remote lasted over a year" (p. 2). The assertion is inconsistent with defendant's evidentiary showing and plaintiff's allegation that its bill for services was dated February 24, 2003 (Goodwin Aff., para. 8).

11, 2004 (Goodwin aff., exhibit D). Based on evidence developed in connection with jurisdictional discovery, the Delaware court determined that personal jurisdiction could be exercised over Remote in Delaware under the Delaware long-arm statute because there was a nexus between the patent infringement claim, and Remote's conduct of business in the state, in particular, by selling the allegedly infringing remote control units through an established distribution channel, resulting in a substantial number of units being present in Delaware (*id.*, pp. 7-8). The Delaware court also determined that the exercise of jurisdiction over Remote comports with due process because sufficient minimum contacts exist, noting that Remote had entered into a manufacturing and purchase agreement with a New York corporation, Contec LP ("Contec"), in which it agreed to defend Contec in any litigation brought against it arising out of their business (*id.*, pp. 3-4, 8,11).

Legal Discussion

Although plaintiff is not required to plead jurisdictional facts in the complaint, on a motion to dismiss for lack of jurisdiction, the burden is on plaintiff to demonstrate a prima facie basis for the exercise of in personam jurisdiction (*Fantis Foods, Inc. v. Standard Importing Co.*, 49 N.Y.2d 317, 325 [1980], plaintiff has burden of showing that facts "may exist" to support jurisdiction under long-arm statute). Since the plaintiff ordinarily will not have access to facts necessary to make such a showing, the Court may allow discovery if the plaintiff has made a "sufficient start" indicating that the basis of jurisdiction was "not frivolous" (*Peterson v. Spartan Industries, Inc.*, 33 N.Y.2d 463, 467 [1974]). However, the court may properly exercise its discretion to deny jurisdictional discovery when the plaintiff fails to offer "some tangible evidence which would constitute a 'sufficient start' in showing that jurisdiction could exist"

(*Mandel v. Busch Entertainment Corp.*, 215 A.D.2d 455 [2d Dept. 1995]; see *SNS Bank, N.V. v. Citibank, N.A.*, 7 A.D.3d 352 [1st Dept. 2004]).

Plaintiff seeks to rely on the provision of the New York long-arm statute that authorizes the exercise of personal jurisdiction over a non-domiciliary who "in person or through an agent ... transacts any business within the state or contracts anywhere to supply goods or services in the state" (CPLR 302 [a][1]). Defendant contends that its retention – via e-mail and through representatives – of a law firm with headquarters in New York to represent it in an action in another state does not constitute transaction of business in New York sufficient to warrant assertion of personal jurisdiction.

The facts, viewed in the light most favorable to plaintiff, do not support a finding that Remote transacted business within the State of New York sufficient to assert personal jurisdiction over it under CPLR 302(a)(1). A foreign corporation's retention of a major law firm, headquartered in New York, for the purpose of representing it in defense of an action pending in another state, without anything more except alleged e-mail and telephone contacts, is plainly insufficient to subject the client to jurisdiction in New York. In *Otterbourg, Steindler, Houston & Rosen, P.C. v. Shreve City Apartments Ltd.*, 147 A.D.2d 327 (1st Dept. 1989), the court questioned whether the "single act" of retaining a New York law firm in New York "to provide services in connection with legal proceedings in this State, without more, is sufficient to confer jurisdiction on the courts of this State" in an action to recover legal fees. In *Otterbourg*, the court did not reach the issue, finding that the client's extensive communications with the New York law firm, participation in negotiations related to the New York proceedings by telephone conference calls, and settlement of aspects of the proceedings requiring payments in New York,

together "demonstrated their engagement in purposeful activity in this State in connection with matters involved in this lawsuit" (*id.*, at 332). In contrast, in this case, defendant had even less contact with the State of New York than the minimum transaction posited by the First Department in *Otterbourg*, since it did not come into New York to retain Chadbourne, but retained the firm by e-mail with a partner in its Washington DC office, and since the subject of the representation was not a New York lawsuit, but an action pending in Delaware. The fact that lawyers located in Chadbourne's New York office performed legal services for the Korean client defending a suit in Delaware is insufficient to find that the client transacted any business in the State of New York in relation to the claim (see *PaineWebber Inc. v. Westgate Group, Inc.*, 748 F. Supp. 115 [S.D.N.Y. 1990], a "desire to get a big 'New York' Investment house is not a purposeful availment of New York as a forum just as 'Get me a New York lawyer,' without more, is not an invocation of in personam jurisdiction in the forum state of the lawyer's practice"; *Amins v. Life Support Medical Equipment Corp.*, 373 F. Supp. 654 [S.D.N.Y. 1974], no jurisdiction found over Massachusetts client who retained a New York patent attorney in relation to patent matters involving federal law and the Patent Office located in Washington, DC; *Edelman v. Taittinger, S.A.*, 298 A.D.2d 301, 302 [1st Dept. 2002], telephone calls and letters were insufficient to show "substantial relationship" or nexus between transaction and claim asserted).

Nor has plaintiff demonstrated a sufficient basis to permit discovery concerning whether a basis exists for asserting general jurisdiction over Remote under CPLR 301, or whether additional facts exist supporting its allegation that Remote transacted business in New York in connection with its retention of Chadbourne. "A foreign corporation is amenable to suit in New

York courts under CPLR 301 if it has engaged in such a continuous and systematic course of 'doing business' here that a finding of its 'presence' in this jurisdiction is warranted" (*Landoil Resources Corp. v. Alexander & Alexander Services*, 77 N.Y.2d 28, 33 [1990], finding foreign corporation's underwriting of insurance policies sold in New York insufficient to constitute "doing business"). The essential factual inquiry is whether the defendant has a permanent and continuous presence in the state, as opposed to merely occasional or casual contact with the state (*id.*, at 34; see *Holness v. Maritime Overseas Corp.*, 251 A.D.2d 220 [1st Dept. 1998]), and requires a showing of sufficient "activities of substance," beyond mere solicitation of business (*Laufer v. Ostrow*, 55 N.Y.2d 305, 310 [1982]). The factors considered may include whether the defendant maintains in New York, on an ongoing basis, an office or other "fixed facility,"a bank account or other property, employees, and/or a telephone listing (Alexander, McKinney's Practice Commentaries, C301:8. Doing Business: Foreign Corporations, pp. 27-28).

In this case, Chadbourne has failed to produce any tangible evidence of any presence by Remote in the State of New York, while Remote has submitted evidence that it has no property, offices, employees or bank account in New York, and sells all of its products to the United States FOB Korea (Park affidavit, paras. 2-3) (see *Lemme v. Wine of Japan Import, Inc.*, 631 F. Supp. 456, 459 [E.D.N.Y. 1986], FOB sale does not constitute performance of contract in New York). The fact that Remote entered into contractual agreements with Contec, a wholly separate entity, and its involvement in separate litigation with Contec, could not result in a finding that Remote subjected itself to New York jurisdiction by virtue of Contec's presence in New York (*see Richbell Information Services, Inc. v. Jupiter Partners, L.P.*, 309 A.D.2d 288, 308 [1st Dept. 2003], actions of one corporate entity in New York could not subject separate entity to New York

jurisdiction; *Edelman v. Taittinger, S.A.*, 298 A.D.2d 301 [1st Dept. 2002], showing of agency for jurisdictional purposes will not be inferred from the mere existence of a parent-subsidiary relationship; *Aero-Bocker Knitting Mills, Inc. v. Allied Fabrics Corp.*, 54 A.D.2d 647, 648 [1st Dept. 1976], agreement to arbitrate in New York did not subject party to jurisdiction of New York courts).

Accordingly, the motion to dismiss is granted, and the cross-motion is denied. No sooner than five days after service of a copy of this order with notice of entry and a proposed judgment upon plaintiff, the clerk shall enter judgment accordingly upon the presentation of appropriate papers.

This decision constitutes the order of the court.

Dated: June 27, 2005

Hon. Carol Edmead, JSC

CAROL EDMEAD
J.S.C.

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