[* 1]

SCANNED ON 4/21/2009

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

PRESENT: BARBARA R. KAPNICK Justice PART 39

Index Number : 117782/2005
VERIZON DIRECTORIES
vs.
CONTINUUM HEALTH PARTNERS
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. 117782/05

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL. NO.

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

APR 21 2009

COUNTY CLERK'S OFFICE
NEW YORK

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

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

Dated: 4/17/09

BARBARA R. KAPNICK J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IA PART 39

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VERIZON DIRECTORIES CORP.,

Plaintiff,

-against-

CONTINUUM HEALTH PARTNERS, INC.,

Defendant.

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DECISION/ORDER
Index No. 117782/05
Motion Seq. No. 001

In this action, plaintiff Verizon Directories ("Verizon") seeks to recover the sum of $1,035,564.87, together with interest from May 7, 2004 at the contractual rate of 18% per annum, based on work, labor, and advertising services provided on behalf of defendant Continuum Health Partners ("Continuum") pursuant to certain agreements between plaintiff and defendant between May 7, 2000 and May 7, 2004 (first cause of action) and based on an account stated (second cause of action).

Defendant now moves for an order: (i) granting summary judgment dismissing plaintiff's Complaint or, in the alternative, (ii) compelling plaintiff to provide discovery.

Defendant argues that this action must be dismissed on the grounds, *inter alia*, that neither this defendant nor this plaintiff was a party to any of the contracts at issue and that the applicable Statute of Limitations bars plaintiff's claims.

Pursuant to CPLR § 202 (the "borrowing statute"),

> [a]n action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.

Defendant, a New York corporation, contends that the cause of action accrued in Delaware, where Verizon (and its predecessor corporations) were incorporated and that Verizon's claim is completely barred by Delaware's one-year Statute of Limitations for the payment for services contracted for, provided but not paid for and three years for other contract actions.[1]

Plaintiff, on the other hand, argues that New York's six-year Statute of Limitations must be applied in this case since plaintiff is authorized to transact business in New York, its business operations are widespread throughout the State, defendant contracted and negotiated with plaintiff's sales office in New York for directory advertising listings in New York, and plaintiff provided services and advertised for defendant in its New York directory listings.

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[1] Alternatively, defendant argues that the cause of action accrued in Texas, where Verizon had its principal place of business, and that plaintiff's claim would be barred in large part by Texas' four year Statute of Limitations.

Plaintiff argues that the cause of action thus arose in New York. In addition, plaintiff argues that there is an issue of fact to be explored during discovery as to whether plaintiff should be deemed a 'resident' of New York for purposes of CPLR § 202. *See, Antone v General Motors Corp.*, 64 NY2d 20 (1984) which held in a products liability action arising out of a motor vehicle accident which occurred in Pennsylvania, that the issue of whether the individual plaintiff was a New York "resident" for purposes of CPLR § 202 as a result of living in New York for some length of time during the course of the year was a factual determination to be made by the Court.

However, in *Global Financial Corp. v Triarc Corp.*, 93 NY2d 525 (1999), a nonresident corporation (as opposed to an individual plaintiff) sued a client to recover payment for consulting services on theories of breach of contract and quantum meruit. Plaintiff argued in that case, as in this action, that the New York Statute of Limitations applied because its claims accrued in New York, where the contract was negotiated, executed, substantially performed and breached.

The Court of Appeals held that "[w]hen an alleged injury is purely economic, the place of injury usually is where the plaintiff [corporation] resides and sustains the economic impact of the loss (citations omitted)"; i.e., either the State of incorporation or

its principal place of business. *Global Financial Corp. v Triarc Corp., supra* at 529-530.

Based on the papers submitted and the oral argument held on the record on February 4, 2009, this Court finds that the place of plaintiff's injury in this case is the State of its incorporation, i.e., Delaware. This action is, therefore, barred under the applicable Statute of Limitations of that State.[2]

Defendant's motion to dismiss plaintiff's Complaint must, therefore, be granted.

The Clerk may enter judgment dismissing plaintiff's Complaint with prejudice and without costs or disbursements.

This constitutes the decision and order of this Court.

Dated: April 17, 2009

BARBARA R. KAPNICK
J.S.C.

FILED

APR 21 2009

COUNTY CLERK'S OFFICE

BARBARA R. KAPNICK
J.S.C.

[2] Plaintiff has not advanced any argument why this Court should apply the Statute of Limitations of Texas over the Statute of Limitations of Delaware.