

Norris v Xandros, Inc.
2012 NY Slip Op 32693(U)
October 18, 2012
Supreme Court, New York County
Docket Number: 109575/11
Judge: Paul Wooten
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

JEREMY NORRIS,
Plaintiff,

INDEX NO. 109575/11

-against-

MOTION SEQ. NO. 001

XANDROS, INC. a Delaware corporation,
Defendant.

The following papers were read on this motion by the plaintiff for judgment against defendant pursuant to CPLR 3213.

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

Answering Affidavits — Exhibits (Memo) _____

Reply Affidavits — Exhibits (Memo) _____

Cross-Motion: Yes No

PAPERS NUMBERED
FILED
OCT 26 2012

COUNTY CLERK'S OFFICE
NEW YORK

This action is consolidated with four related actions entitled, *Angleton v Xandros, Inc.*, Index no. 109576/11, *Krisch v Xandros, Inc.*, Index no. 109577/11, *Harper v Xandros, Inc.*, Index no. 109578/11, and *Kettler v Xandros, Inc.*, Index no. 109579/11 for purposes of disposition. In each action, plaintiffs Jeremy Norris ("Norris"), Dennis Angleton ("Angleton"), David Krisch ("Krisch"), Charles Harper ("Harper"), and Larry Martin Kettler's ("Kettler") (collectively, "plaintiffs") move for summary judgment in lieu of a complaint, pursuant to CPLR 3213, to enforce default judgments entered in the Superior Court, San Diego, California.

BACKGROUND

Plaintiffs are California residents and former employees of defendant Xandros, Inc. ("defendant" or "Xandros"), a Delaware corporation with its principal place of business in New York, New York.

In January 2010, plaintiffs filed complaints with the Labor Commissioner of the State of California alleging claims for unpaid salary wages under § 202 of the California Labor Code, reimbursable business expenses, penalties under § 203 of the California Labor Code, and

interest pursuant to § 98.1 or 2802 of the California Labor Code. Plaintiffs essentially claimed that defendant willfully withheld their wages after plaintiffs resigned from their employment.

The Labor Commissioner conducted hearings on May 11, 2011, wherein defendant failed to appear. The Labor Commissioner concluded, upon evaluation of the evidence presented at the hearings, that plaintiffs duly provided 72 hours of work prior to giving notice to defendant of their intent to resign from their employment, and that defendant failed to pay them final wages. By Awards issued in May 2010, the Labor Commissioner granted plaintiffs unpaid wages, reimbursable business expenses, and assessments under § 203 of the California Labor Code. The Labor Commissioner awarded \$86,654.58 to Norris; \$62,595.70 to Angleton; \$31,092.91 to Krisch; \$40,854.17 to Harper; and \$89,513.59 to Kettler.

On July 12, 2010, the Superior Court of the State of California entered judgments in favor of plaintiffs and against defendant, in the amounts of each respective plaintiff's respective Award, plus post hearing interest and expenses. The court entered judgment in the amount of \$87,668.28 for Norris; \$63,257.73 for Angleton; \$31,644.40 for Krisch; \$41,459.72 for Harper; and \$90,560.16 for Kettler. Plaintiffs now move for summary judgment in lieu of complaint to enforce the judgments, and to recover interest from the date of the judgments.

DISCUSSION

"[A] judgment rendered by a court of a sister state is accorded 'the same credit, validity, and effect in every other court in the United States, which it had in the state where it was pronounced'" (*JDC Finance Company LLP v Patton*, 284 AD2d 164, 166 [1st Dept 2001])[internal citations omitted]. "Although collateral attack on the merits is precluded, a party aggrieved by the judgment, nevertheless, may challenge the basis of the judgment court's personal jurisdiction . . . That challenge requires a two-part analysis, requiring a determination whether the sister state's long arm statute has been complied with, and whether that court's exercise of jurisdiction comports with Federal constitutional principles of due process" (*id.*

[internal citations omitted]:

California courts may exercise jurisdiction on any basis that is consistent with the federal and state constitutions (see Cal Code Civ Proc §410.10; *Snowney v Harrah's Entertainment, Inc.*, 35 Cal 4th 1054, 1062 [2005]). Case law interpreting the United States and California constitutions mandate that a forum state may exercise personal jurisdiction over a non-resident if the defendant has minimum contacts with the state such that asserting jurisdiction does not offend traditional notions of fair play and substantial justice (see *International Show Co. v Washington*, 326 US 310, 316 [1945]; *BBA Aviation PLC v Superior Court*, 190 Cal App 4th 421, 429 [2010]). Minimum contacts exist where the defendant's conduct in, or in connection with, the forum state is such that the defendant should reasonably anticipate being subject to suit in that state (see *World-Wide Volkswagen Corp. v Woodson*, 444 US 286, 297 [1980], *BBA Aviation PLC v Superior Court, supra*).

Furthermore, the nature and quality of the defendant's contacts determine whether jurisdiction, if exercised, is general or specific (*Vons Companies, Inc. v Seabest Foods, Inc.*, 14 Cal 4th 434, 445 [1996]). General jurisdiction exists when a defendant is domiciled in the forum state or its activities there are substantial, continuous, and systematic (*Snowney v Harrah's Entertainment, Inc.*, 35 Cal 4th 1054, 1062 [2005], *supra*). Factors leading to the conclusion that a defendant's contacts in the forum are continuous and systematic include maintenance of an office, presence of employees, use of bank accounts, and the marketing and selling of products in the forum state (*F. Hoffman-La Roche, Inc. v Superior Court*, 130 Cal App 4th 782, 796 [2005]).

Even if the nonresident defendant's contacts with the forum state are not substantial, continuous, and systematic so as to support general jurisdiction, a court may still exercise specific limited jurisdiction where: (1) the defendant has purposefully availed himself of the privilege of conducting activities in California, thereby invoking the benefits and protections of

its laws; (2) the claim arises out of the defendant's California-related activity, and (3) the exercise of jurisdiction would be fair and reasonable and would comport with notions of fair play and substantial justice (*F. Hoffman-La Roche, Inc. v Superior Court, supra*, at 796).

The plaintiff bears the initial burden of demonstrating by a preponderance of evidence justifying the exercise of jurisdiction in California (*see Snowney v Harrah's Entertainment, Inc.*, 35 Cal 4th 1054, 1062 [2005], *supra*). Once the plaintiff satisfies the initial burden of proof showing that defendant's minimum contacts in California, the burden shifts to the defendant to present a compelling case demonstrating that the court's exercise of jurisdiction would be unreasonable (*id.*).

Here, plaintiffs maintain that Xandros amply satisfies the minimum contacts requirements for California to exercise general personal jurisdiction over it. In particular, plaintiffs assert that Xandros executives supervised at least five employees in California during 2008 and 2009, that the executives regularly traveled to California and presented trade shows there, and that the executives established the headquarters of one of Xandros' new businesses in California. Plaintiffs further assert that the California courts may also exercise specific jurisdiction over Xandros since Xandros entered into employment agreements with plaintiffs in California and maintained research and development operations in California for many years. Plaintiffs maintain that the employment of plaintiffs and Xandros' California operations form the basis of the claims for unpaid wages, penalties, and interest.

Xandros challenges the judgment court's assertion of personal jurisdiction over it, arguing, that it did not have sufficient contacts with California at the time the actions were commenced and prior to entry of the default judgments against it. Xandros asserts that its subsidiary, Linspire, Inc., a San Diego-based software company, employed and paid plaintiffs.

However, the Court notes that contrary to Xandros' position, the submissions include employment agreements between plaintiffs and Xandros (*see Kettler Affidavit, exhibit A*). The

submissions also include Xandros press releases stating that the company has R&D offices in San Diego (*id.*, exhibits C, D). As such, the Court concludes that Xandros has sufficient minimum contacts with California that it should have reasonably anticipated being subject to suit there. Furthermore, the Court finds nothing to indicate that the assertion of jurisdiction by the judgment court offends traditional notions of fair play and substantial justice.

CONCLUSION

Accordingly, it is

ORDERED that the plaintiffs' motions for summary judgment in lieu of complaint are granted; and it is further,

ORDERED that counsel for plaintiffs is directed to serve a copy of this order with notice of entry upon the defendant and upon the Clerk of the Court; and it is further,

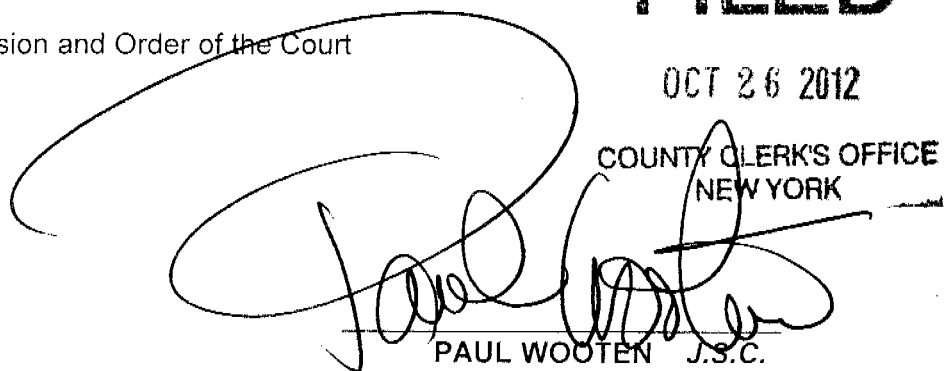
ORDERED that the Clerk of the Court is directed to enter judgment against defendant Xandros, Inc. and in favor of plaintiff Jeremy Norris in the amount of \$87,668.28, Dennis Angleton in the amount of \$63,257.73, David Krisch in the amount of \$31,644.40, Charles Harper in the amount of \$41,459.72, Larry Martin Kettler in the amount of \$90,560.16, together with interest at the statutory rate from the date of July 12, 2010 until the date of the decision on these motions, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of the appropriate bill of costs.

This constitutes the Decision and Order of the Court

FILED

OCT 26 2012

COUNTY CLERK'S OFFICE
NEW YORK



PAUL WOOTEN J.S.C.

Dated: 10/18/12

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE