

Trinity Ctr. LLC v Advance Fin. Applications, Inc.

2012 NY Slip Op 33306(U)

January 13, 2012

Sup Ct, NY County

Docket Number: 104913/10

Judge: Paul Wooten

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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

TRINITY CENTRE LLC,
Plaintiff,

INDEX NO. 104913/10

- against -

SEQ NO. 001

ADVANCED FINANCIAL APPLICATIONS, INC.,
ELECTRONIC GLOBAL SECURITIES INC. AND
AVADHI FINANCIAL TECHNOLOGIES INC., a/k/a
AVADHI FINANCIAL TECHNOLOGY.
Defendants.

The following papers numbered 1 to 4 were read on this motion to dismiss by defendant.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits (Memo)	2, 3, 4
Reply Affidavits — Exhibits (Memo)	

FILED

JAN 27 2012

Cross-Motion: Yes No

On April 15, 2010, plaintiff Trinity Centre LLC ("plaintiff") commenced this action against the defendants for breach of contract, account stated, and attorneys' fees regarding unpaid rental payments for a one million dollar commercial office lease in New York County, New York. Defendant Avadhi Financial Technologies Inc. ("Avadhi") now moves, pursuant to CPLR §§ 302 and 3211(a)(8), to dismiss the complaint against it for lack of personal jurisdiction. Plaintiff opposes Avadhi's application.

BACKGROUND

On June 25, 2007, plaintiff, as landlord, entered into a 5 year, 3 month, commercial office lease with Advanced Financial Applications, Inc. ("AFA") and Electronic Global Securities, Inc. ("EGS") for space located on the 4th floor of its building located at 111 Broadway, New York, New York. The lease provided that failure to pay rent when due constituted a default. The lease agreement also provided that the transfer of the majority stock of the corporate

tenant would without prior consent of the plaintiff/landlord would constitute a material breach of the agreement. On or about October 2009, AFA and EGS stopped making regular payments and fell into arrears. On or about February 9, 2010, the plaintiff delivered to AFA and EGS a seven day notice of default and demanded, *inter alia*, \$172,823.82 in rental payments to be paid by February 22, 2012. Subsequent negotiation attempts to settle the default fell through, and the space was vacated pursuant to a surrender agreement. Plaintiff then commenced the herein action against the defendants. On June 30, 2010 Avadhi filed a motion to dismiss for lack of personal jurisdiction.

In support of its motion, Avadhi's claims that this Court lacks personal jurisdiction over it because it is a Delaware corporation with offices in Michigan and that it has not transacted any business in New York, thus, New York's long-arm statute is inapplicable. Moreover, Avadhi contends that the complaint should be dismissed against it because the plaintiff is seeking to recover money owed under a lease to which Avadhi was not a party.

In opposition to Avadhi's motion, plaintiff submits evidence that the Avadhi made phone calls and sent e-mails from its offices in Michigan to New York concerning the lease agreement at issue. Specifically, plaintiff alleges that the CEO and General Counsel of Avadhi contacted the plaintiff in regards to negotiating AFA and EGS' default under the lease. Plaintiff also maintains that Avadhi had informed plaintiff that Avadhi had merged with AFA and had "taken over all operations of AFA/EGS." Thus, plaintiff asserts that Avadhi's actions herein qualify for personal jurisdiction pursuant to CPLR §§ 302(1) and (4).

STANDARDS

Motion to Dismiss

CPLR 3211 (a) states that:

"[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . (8) the court has not jurisdiction of the person of the defendant"

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction" (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). The Court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*id.* at 87-88). In order to defeat a pre-answer motion to dismiss pursuant to CPLR 3211, the opposing party need only assert facts of an evidentiary nature which fit within any cognizable legal theory (*see Bonnie & Co. Fashions, Inc. v. Bankers Trust Co.*, 262 AD2d 188 [1st Dept 1999]).

Personal Jurisdiction

CPLR 302 provides that:

"[a] Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent: 1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or . . . 4. owns, uses or possesses any real property situated within the state."

DISCUSSION

CPLR 302(a) is a "single act statute [and] . . . proof of one transaction in New York is sufficient to invoke 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" (*Deutsche Bank Sec., Inc. v Montana Bd. of Invs.*, 7 NY3d 65, 71 [2006] *cert denied* 549 US 1095 [2006] [internal quotation marks and citation omitted]). "Purposeful activities are those with which a defendant, through volitional acts, avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws" (*Fischbarg v Doucet*, 9 NY3d 375, 380 [2007] [internal quotation marks and citation omitted]; *D & R Global Selections, S.L. v Pi%25neiro*, __AD3d__, 2011 NY

Slip Op 08665 [1st Dept 2011]; *Daniel B. Katz & Associates Corp. v Midland Rushmore, LLC*, __AD3d__, 2011 NY Slip Op 09584 [2d Dept 2011]).

As early as February 22, 2009, defendant Avadhi represented itself in written and oral correspondence with plaintiff as the "successor in interest" to AFA and EGS, in attempts to resolve the default notice, including signing a lease surrender agreement in that capacity with plaintiff on March 22, 2009. These actions clearly indicate that defendant is transacting business in New York state and/or uses or possesses real property within the state pursuant to CPLR 302 (a)(1) and (4), thus affording this Court personal jurisdiction over Avadhi.

CONCLUSION

Accordingly it is hereby,

ORDERED that defendant Avadhi Financial Technologies Inc.'s motion to dismiss is hereby denied; and it is further,

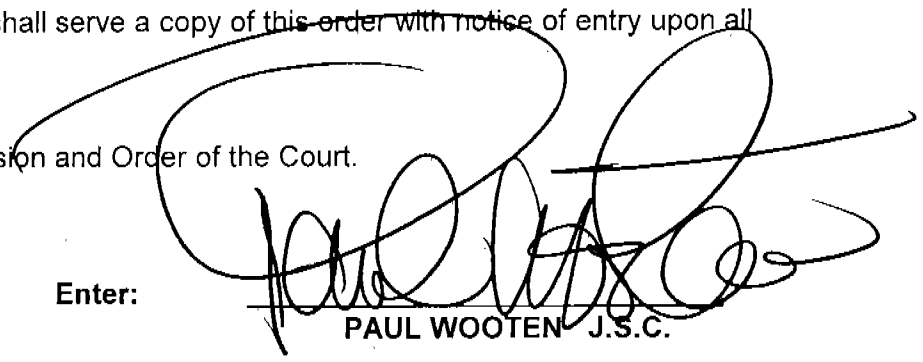
ORDERED that all parties are directed to appear for a preliminary conference at 60 Centre Street, New York, New York, Room 341, on March 21, 2012 at 11:00 a.m.; and it is further,

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon all parties.

This constitutes the Decision and Order of the Court.

Dated: 1/13/2012

Enter:



PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check If appropriate: DO NOT POST

FILED

JAN 27 2012