

Hill Intl., Inc. v Tecnoconsult, S.A.
2013 NY Slip Op 31764(U)
July 30, 2013
Supreme Court, New York County
Docket Number: 651681/2012
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JUSTICE SHIRLEY WERNER KORNREICH

PART 54

Justice

Index Number : 651681/2012
 HILL INTERNATIONAL, INC.
 vs
 PILLSBURY WINTHROP SHAW
 Sequence Number : 004
 DISMISS ACTION

INDEX NO. _____
 MOTION DATE 7/12/13
 MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 35-38
 Answering Affidavits — Exhibits _____ | No(s). 51-52
 Replying Affidavits _____ | No(s). 53-54

Upon the foregoing papers, it is ordered that this motion is

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

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

Dated: 7/20/13

SHIRLEY WERNER KORNREICH
[Signature] J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
HILL INTERNATIONAL, INC.,

Index No.: 651681/2012

Plaintiff,

DECISION & ORDER

-against-

TECNOCONSULT, S.A., TECNOCONSULT
CONSTRUCTORES, S.A., TECNOCONSULT,
U.S., INC., TECNOCONSULT HOLDINGS, LTD.,
PILLSBURY WINTHROP SHAW PITTMAN LLP,
EDWARD FLANDERS, and JOHN PRITCHARD,

Defendants.

-----X
SHIRLEY WERNER KORNREICH, J.:

Defendant Tecnoconsult US, Inc. (TCUS) moves to dismiss the Amended Complaint (the AC) for lack of personal jurisdiction. Defendant’s motion is denied without prejudice and jurisdictional discovery is directed for the reasons that follow.

I. Factual Background & Procedural History

On May 14, 2012, plaintiff Hill International, Inc. (Hill) commenced this action against former defendants Pillsbury Winthrop Shaw Pittman LLP (Pillsbury), Edward Flanders, and John Pritchard (collectively, the Pillsbury Defendants) seeking money allegedly owed under a consulting agreement that Hill purportedly entered into with defendants TCUS, Tecnoconsult, S.A. (TC Venezuela), Tecnoconsult Constructores, S.A. (TC Constructores), and Tecnoconsult Holdings, Ltd. (TC Holdings) (collectively, the Tecnoconsult Defendants). The Pillsbury Defendants had represented the Tecnoconsult Defendants in connection with an arbitration proceeding, discussed below.

After the Pillsbury Defendants filed a motion to dismiss the original Complaint, on August 29, 2012, Hill filed the AC, which added claims against the Tecnoconsult Defendants. In an order dated January 22, 2013, the court extended Hill's time to serve the Tecnoconsult Defendants because some of them are located in Venezuela. To date, the only one of the Tecnoconsult Defendants that has appeared is TCUS, which filed the instant motion to dismiss on February 26, 2013. That day, the court issued an order dismissing the AC against the Pillsbury Defendants.

As the merits of Hill's claims are not at issue on this motion, the court will not discuss the allegations in the AC in detail. In short, this action was commenced by Hill to recover money owed under a contract whereby it was retained as an expert by some (or all) of the Tecnoconsult Defendants in an arbitration proceeding that concluded in early 2009. Two documents reflect Hill's engagement: (1) a letter dated December 17, 2004 (the Letter), from Hill to Pillsbury, which sets forth the nature of Hill's services; and (2) an unsigned Agreement for Claims Consulting Services between Hill and "Tecnoconsult" (the Agreement). The Letter and the Agreement only refer to "Tecnoconsult" without specifying which entities are being referenced.

Indeed, there are four (purportedly) distinct Tecnoconsult entities. The first two, TC Venezuela and TC Constructores, are incorporated in Venezuela. The third, TC Holdings, is incorporated and does business in Florida. The fourth, TCUS, is a Delaware corporation that used to have an office in Texas and now shares office space with TC Holdings in Florida. The only basis to assert jurisdiction in New York over the Tecnoconsult Defendants, none of which do business in this state, is their nexus to the arbitration proceeding, which took place in New

York. A question of fact exists as to which of the Tecnoconsult Defendants contracted with Hill and participated in the arbitration.

II. Discussion

Hill has not established that TCUS is subject to jurisdiction in New York. The evidence submitted, such as the invoices that were sent to TCUS, is inconclusive. However, Hill has made a “sufficient start” in demonstrating that TCUS participated in the subject arbitration proceeding. See *HBK Master Fund L.P. v Troika Dialog USA, Inc.*, 85 AD3d 665, 666 (1st Dept 2011) (citing *Peterson v Spartan Industries, Inc.*, 33 NY2d 463 (1974)). Indeed, though the other three Tecnoconsult Defendants have not yet appeared, when they do, it would not be surprising if they also make a motion to dismiss that raises the same questions as to which entity or entities contracted with Hill and participated in the arbitration.

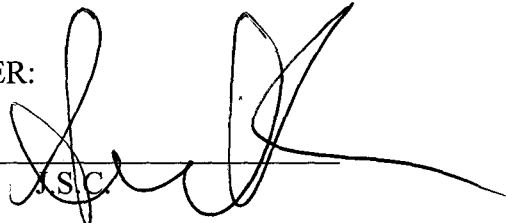
Therefore, the parties are directed to conduct limited jurisdictional discovery, which shall also include veil piercing discovery. Though Hill’s veil piercing allegations may prove essential to any recovery on the merits of its claims, veil piercing discovery also is warranted at this juncture because jurisdiction may exist under the “mere department” doctrine. See generally *Hale Capital Management, LP v Royal Standard Minerals Inc.*, Index No. 652640/2011, Dkt. 189, p. 6-8 (Sup Ct, NY Country May 10, 2013), accord *Volkswagenwerk Aktiengesellschaft v Beech Aircraft Corp.*, 751 F2d 117, 120-22 (2d Cir 1984).

Finally, it should be noted that jurisdictional discovery will not unduly delay this case because this case cannot fully proceed on the merits until service is effectuated on the Venezuelan defendants. Accordingly, it is

ORDERED that the motion to dismiss the Amended Complaint by defendant Tecnoconsult US, Inc. is denied without prejudice with leave to renew after limited jurisdictional discovery is conducted; and it is further

ORDERED that the parties are to appear in Part 54, Supreme Court, New York County, 60 Centre Street, Room 228, New York, NY, for a status conference on August 20, 2013 at 10:30 in the forenoon.

Dated: July ~~20~~ 2013

ENTER: 
J.S.C.