

Guerrero v Rojas

2014 NY Slip Op 30908(U)

April 4, 2014

Supreme Court, New York County

Docket Number: 155414/13

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

ROSEMARY GUERRERO, Administratrix of the
Estate of DAMELL MICKENS, AN INFANT,
Deceased, and ROSEMARY GUERRERO,
Individually ,

Plaintiff,

Index No.: 155414/13
Motion Date: 12/13/13
Motion Seq. No.: 01
Motion Cal. No.: _____

- v -

HECTOR ROJAS, CLAUDIA ROJAS and ANGEL DAVID
FUSTER, II,

Defendants.

The following papers, numbered 1 to 3 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED	
_____	1
_____	2
_____	3

Cross-Motion: Yes No

Upon the foregoing papers,

This action arises out of an accident in which the son of
the plaintiff-administratrix drowned while attending a birthday
party organized by defendant Angel David Fuster for his daughter.
The accident occurred on December 8, 2012, at the home of movants
Hector and Claudia Rojas in West Milford, New Jersey.

Plaintiff and defendant Fuster are residents of New York
while the Rojas are residents of New Jersey. Defendant Fuster is

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SETTLE/SUBMIT ORDER/JUDG.

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

the principal of a law firm in New York City where the Rojas are employed. No challenge is raised to the propriety of service upon the parties in New York.

Plaintiff argues there is long-arm jurisdiction over the movants under CPLR 302 because at the time of the accident they were employed in New York at defendant Fuster's law firm and because, it is alleged, they arranged in New York for their property to be used for the party. Plaintiff also cites the police report of the accident that indicated the movants were at the premises when it occurred.

Defendants Hector and Claudia Rojas move pre-answer pursuant to CPLR 3211 to dismiss the complaint against them on the grounds that contrary to plaintiff's argument, long-arm jurisdiction does not reach them as to plaintiff's claims. Movants argue that defendant Fuster sent out the invitations and arranged transportation to the party and that all that movants did was to make their home available and they otherwise had no involvement with the event. Thus the movants contend that for purposes of CPLR 302 they did not transact business within the state so as to subject themselves to jurisdiction for plaintiff's claims.

Long-arm jurisdiction cannot be "be premised in this case upon the provisions of CPLR 302 (subd [a], par 3). Under that subdivision, a nondomiciliary who 'commits a tortious act without the state causing injury * * * within the state' may be brought

before a New York court to answer for his conduct if he has had sufficient economic contact with the State or an active interest in interstate or international commerce coupled with a reasonable expectation that the tortious conduct in question could have consequences within the State. . . . We have already held in the context of a case involving a commercial tort that the residence of the injured party in New York is not sufficient to satisfy the clear statutory requirement of an 'injury within the state.'

McGowan v Smith, 52 NY2d 268, 273-275 (1981). As the accident here occurred in New Jersey, CPLR 302 (a) (3) is inapplicable.

The court must therefore consider whether jurisdiction can be exercised over the movants under CPLR 302 (a) (1). "Under CPLR 302 (subd [a], par 1), the courts of this State are authorized to exercise in personam jurisdiction over a nondomiciliary if the cause of action at issue arose out of the transaction of business within the State. . . . [T]here must have been some 'purposeful activities' within the State that would justify bringing the nondomiciliary defendant before the New York courts." McGowan v Smith, 52 NY2d at 271. The Court further elucidated this requirement stating

Essential to the maintenance of a suit against a nondomiciliary under CPLR 302 (subd [a], par 1) is the existence of some articulable nexus between the business transacted and the cause of action sued upon. Indeed, it is this basic requirement that differentiates the long-arm authority conferred by CPLR 302 (subd [a], par 1) from the more traditional authority of the New York courts under CPLR 301 to exercise in personam

jurisdiction over foreign defendants who are "present" within the State by virtue of their "doing business" here. Where jurisdiction is predicated upon the provisions of CPLR 301, there is no need to establish a connection between the cause of action in issue and the foreign defendant's business activities within the State, because the authority of the New York courts is based solely upon the fact that the defendant is "engaged in such a continuous and systematic course of 'doing business' here as to warrant a finding of its 'presence' in this jurisdiction." Where the plaintiff's proof falls short of establishing such a "systematic course of 'doing business'", however, our statutory scheme permits him to bring the foreign defendant within the power of the New York courts upon a lesser showing of some business contacts within the State only if he demonstrates that his cause of action arose out of those business contacts.

Id. at 272-73 (citations omitted).

The Court applied this principle in the case of Johnson v Ward (4 NY3d 516 [2005]). There the Court held that

[W]e are asked whether long-arm jurisdiction exists over a nonresident holding a New York driver's license and car registration for a tort claim arising from an out-of-state motor vehicle accident. We conclude that personal jurisdiction does not lie under CPLR 302 (a) (1) because there is an insufficient nexus between plaintiffs' personal injury action and any New York transactions.

Id. at 518. The Court reasoned that "[p]laintiffs' cause of action arose out of defendant's allegedly negligent driving in New Jersey, not from the issuance of a New York driver's license or vehicle registration. The relationship between the negligence claim and defendant's possession of a New York license and registration at the time of the accident is too insubstantial to warrant a New York court's exercise of personal jurisdiction over defendant." Id. at 520.

Application of the relatedness principle can be seen in a case concerning a construction accident where the Court stated

Assuming, as we must, that the contract was negotiated in New York, it was nevertheless to be performed in Connecticut, at the defendant's residence. The plaintiffs allege that the defendant provided Brandt with defective equipment in Connecticut to perform work there. The underlying cause of action arises from an alleged breach by the defendant of a duty to provide Brandt with a safe work place, which is wholly separate from the contract negotiations. This duty of care arose in Connecticut, not in New York. . . Supreme Court erred in denying that branch of the defendant's motion which was to dismiss the complaint for lack of personal jurisdiction.

Brandt v Toraby, 273 AD2d 429, 430-431 (2d Dept 2000) (citation omitted).

In the case at bar, even assuming that the movants contracted in New York to make their New Jersey home available for the party, the underlying cause of action arises out the movants' alleged failure to provide safe premises and adequate supervision, neither of which arise out of any alleged transaction in New York. That is, "[e]ven if defendants transacted business within New York, plaintiff's injury and the tort action based on it cannot be said to have arisen directly out of this transaction. Defendants' duty of care to plaintiff arose in" New Jersey, not in New York. Arroyo v Mtn. Sch., 68 AD3d 603, 604-605 (1st Dept 2009) (citations and internal quotations omitted).

Therefore, based upon the facts in the record the court does not have long-arm jurisdiction over the defendants under CPLR 302 because plaintiff's claims do not arise out of the proffered transactions of the movants.

Accordingly, it is

ORDERED that the motion to dismiss for lack of jurisdiction by defendants HECTOR ROJAS and CLAUDIA ROJAS is GRANTED and the complaint is hereby DISMISSED as against defendants HECTOR ROJAS and CLAUDIA ROJAS, only, and it is further

ORDERED that the remainder of this action shall continue; and it is further

ORDERED that the remaining parties shall appear for a preliminary conference on May 13, 2014 in IAS Part 59, Room 103, 71 Thomas Street, New York, NY 10013, at 9:30 am.

This is the decision and order of the court.

Dated: APR 04 2014

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.