

**U-Freight Am., Inc. v W.R. 9000 Corp.**

2014 NY Slip Op 31265(U)

May 13, 2014

Supreme Court, New York County

Docket Number: 653850/2013

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

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U-FREIGHT AMERICA, INC.,

Plaintiff,

Index No. 653850/2013

- against -

DECISION

Mot. Seq. 01

W.R. 9000 CORP.,

Defendant.

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HON. EILEEN A. RAKOWER

This is an action to enforce a judgment ("California Judgment") obtained by plaintiff U-Freight America, Inc. ("U-Freight") against Defendant W.R. 9000 Corp. ("WR 9000") in an action brought in the Superior Court of California, County of Los Angeles ("the California Action"). U-Freight commenced this action on November 5, 2013. WR 9000 interposed an Answer on November 21, 2013.

U-Freight commenced the California Action on or about May 6, 2013 to recover amounts allegedly due and owing. WR 9000 did not appear. Plaintiff obtained the California Judgment on default in the sum of \$31,677.17.

U-Freight now moves for summary judgment pursuant to CPLR 3212.

WR 9000 cross moves for an Order, pursuant to CPLR 3211(a)(2) and (a)(8) dismissing this action for lack of jurisdiction to enter the underlying California Judgment against WR 9000. WR 9000 submits the affidavit of Sunny Lam, its President, which states that "WR 9000 did not appear in the California action in view of our position that California lacked personal jurisdiction over it."

It is well-settled that “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 Fin. Co. I, L.P. v. Patton*, 284 A.D. 2d 164, 166 [1<sup>st</sup> Dept 2001].

“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.” (*Id.*). “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.*).

Section 410.10 of the California Code of Civil Procedure provides, “A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of the United States.”

“A court deciding whether it has jurisdiction over an out-of-state defendant under the Due Process Clause must evaluate the ‘quality and nature, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), of the defendant’s contacts with the forum state under a totality of the circumstances test, *id.* at 485-86. The crucial question is whether the defendant has ‘purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws,’ *id.* at 475 (*quoting Hanson v. Denckla*, 357 U.S. 235, 253 [1958]) (internal quotation marks omitted), ‘such that [the defendant] should reasonably anticipate being haled into court there,’ *id.* at 474 (*quoting World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 [1980]) (internal quotation marks omitted).” (*Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 242-243 [2d Cir. 2007]).

“In analyzing personal jurisdiction in the internet context, many New York courts have adopted the sliding scale of interactivity, formulated in *Zippo Manuf. Co. v Zippo Dot Com, Inc.* (952 FSupp 1119, 1125-26 [WD Pa 1997]), according to which websites are classified as (1) interactive [a defendant provides goods and services over the internet or knowingly and repeatedly transmits computer files to customers in other states]; (2) middle ground [permits the exchange of information between users in another state and the defendant], and (3) passive [makes information available to users] (*see also Royalty Network Inc. v Dishant.com*,

LLC, 638 F. Supp. 2d 410 [SD NY 2009]).” (*Deer Consumer Prods., Inc. v Little*, 35 Misc. 3d 374, 385 (N.Y. Sup. Ct. 2012)).

Defendant argues that the California Judgment is unenforceable in New York because the California court did not have personal jurisdiction over Defendant. Defendant argues that it is a New York corporation with its principal place of business located at 1407 Broadway, New York, New York, 10018. Defendant argues that it does not maintain an office in California, has no employees or agents in California, and has not appeared in the California court in connection with the alleged debt at issue herein.

Defendant also argues that WR 9000's presence on the internet is for informational purposes only, and that WR 9000's website is passive and not interactive. Defendant argues that the website merely requires the viewer to fill out a form to receive a copy of WR 9000's catalogue, and provides a link to WR 9000's event calendar. Defendant further argues that, while the website provides an option to browse WR 9000's selection of sweaters and tops, it lists each item as “MSRP \$0.00,” and therefore cannot be used for purchasing services or goods.

Defendant argues that it does not solicit business in California, and does not target California business through advertisements on the internet or in trade journals. Defendant argues that it does not purposefully conduct any business activities in California, and that it would be unfair to require WR 9000 to defend a case in California, a jurisdiction in which Defendant claims to have no contact, ties, or relations to this or any other matter.

Plaintiff, in turn, argues that the California Judgment was properly entered as against Defendant. Plaintiff argues that California had personal jurisdiction over Defendant because Defendant operates a website which allows potential customers to fill out a form and obtain a catalogue or sample sale information, and that as such, Defendant should reasonably expect to be haled into court in those states where its potential buyers do business. Plaintiff argues that Defendant purposefully availed itself of California business by making it possible to order through the website, and that a business which seeks internet sales cannot then deny jurisdiction in the states where its potential purchasers are located.

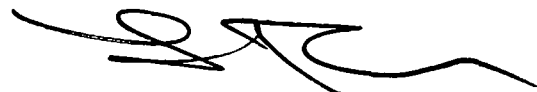
Here, the website at issue appears to occupy a “middle ground,” as users apparently are able to exchange information with the host computer. Where a website occupies a middle ground, “the exercise of jurisdiction in these cases is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site. Where website falls somewhere in the ‘middle ground,’ the jurisdictional inquiry requires closer evaluation of its contact with [the forum state’s] residents (*Royalty Network Inc. v Dishant.com, LLC*, 638 F. Supp. 2d 410 [SDNY 2009]). (*Deer Consumer Prods., Inc. v. Little*, 35 Misc. 3d 374, 385 (N.Y. Sup. Ct. 2012)).

Wherefore, it is hereby

ORDERED that all parties are directed to appear for a conference at 80 Centre Street, Room 327, on August 5, 2014, at 9:30 a.m. to set a discovery schedule for the limited issues raised above.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: MAY 13, 2014



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EILEEN A. RAKOWER, J.S.C.