

Wuersch & Gering LLP v Navarri
2015 NY Slip Op 30627(U)
April 21, 2015
Supreme Court, New York County
Docket Number: 162698/2014
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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WUERSCH & GERING LLP

Plaintiff,

Index No.
162698/2014

**DECISION and
ORDER**

- against -

Mot. Seq. 001

ALESSANDRA NAVARRI,
ANNA'S TUSCANY EXPERIENCE, INC.
TRAVERTINI PARADISO S.R.L.,
CONSORZIO BIOLOGICO TOSCANA
QUALITA,
CIC COMMERCIALE IL CASALE S.A.S.,
ANTIGONE SERVIZI COOPERTIVA A.R.L.,
and RETE DI IMPRESE ANNA'S,

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff Wuersch & Guering LLP ("Plaintiff" or "W&G") brings this action for unpaid legal fees for services allegedly rendered to individual defendant, Alessandra Navarri ("Navarri"), and to entity defendants, Anna's Tuscany Experience, Inc. ("ATE"), Travertini Paradiso S.R.L. ("Travertini"), Consorzio Biologico Toscana Qualita ("Consorzio"), CIC Commerciale Il Casale S.A.S. ("CIC"), Antigone Servizi Coopertiva A.R.L. ("Antigone"), and Rete Di Imprese Anna's ("Rete") (and together with Navarri, collectively, "Defendants"), pursuant to an engagement letter (the "Engagement Letter") dated February 20, 2013.

Antigone and Rete (collectively, "Moving Defendants") now move for an Order, pursuant to CPLR § 3211(a)(8), dismissing Plaintiff's complaint for lack of personal jurisdiction. In support, Moving Defendants submit: the affidavit of Navarri, dated January 16, 2015.

Plaintiff opposes. In support, Plaintiff submits the attorney affirmation of Franscesco Di Pietro (“Di Pietro”), dated January 22, 2015; the affidavit of Michael S. Levy (“Levy”), dated January 14, 2015, attesting to personal service upon Antigone by delivery to Navarri as authorized agent; the affidavit of Levy, dated January 14, 2015, attesting to personal service upon Rete by delivery to Navarri as authorized agent; and, copies of certain email correspondences between Di Pietro and Navarri dated December 8, 2014 and December 11, 2014, respectively.

CPLR § 3211 provides, in relevant part:

(a) 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 over the person of the defendant;

Pursuant to CPLR § 311, personal service upon any domestic or foreign corporation may be made by delivery “to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service.” (CPLR § 311[a][1]). The purpose of CPLR § 311(a)(1), “is to give the corporation notice of the commencement of the suit. Delivery of the summons to the officials or employees designated by the Legislature fulfills the statutory aim since their positions are such as to lead to a just presumption that notice to them will be notice to the corporation.” (*Fashion Page, Ltd. v. Zurich Ins. Co.*, 50 N.Y.2d 265, 271-72 [1980] [internal citations and quotations omitted]).

In civil or commercial matters where there is “occasion to transmit a judicial or extrajudicial document for service abroad”, (Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, 362, 1969 U.S.T. LEXIS 152 [1969]) (hereinafter, the “Hague Convention”), provides means by which to serve process on a foreign national. Compliance with the Hague Convention, “is mandatory in all cases to which it applies, and . . . the law of the judicial forum (here, New York) determines whether or not service of process abroad is necessary.” (*Vazquez v. Sund Emba AB*, 152 A.D.2d 389, 394-395 [2d Dep’t 1989] citing *Volkswagenwerk AG. v Schlunk*, 108 S. Ct. 2104, 2108 [1988]). However, “[w]here service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the Convention has no further implications.” (*Id.*).

Moving Defendants argue that this Court lacks personal jurisdiction over Moving Defendants because Plaintiff failed to properly serve Moving Defendants with process. Moving Defendants argue that they are Italian business entities that do not maintain any office or authorized agent for service of process in New York, and that Plaintiff is required to serve Moving Defendants in Italy, pursuant to the Hague Convention. Moving Defendants argue that Navarri is not a “domestic agent” for service, and that Moving Defendants are not amenable to service in the United States.

In the affidavit of Navarri, Navarri avers that she is President of both Moving Defendants. (Navarri Aff. ¶¶ 1, 5). Navarri avers that Moving Defendants are business entities organized and existing under the laws of Italy with their principal places of business located there. (Navarri Aff. ¶¶ 6, 7). Navarri avers that, on or about December 29, 2014, during the course of a settlement conference with Plaintiff, “a man entered the conference room and handed [Navarri] four copies of the Summons and Complaint, terminating the settlement conference.” (Navarri Aff. ¶ 9). Navarri further avers: “As I was served with four copies of the Summons and Complaint, . . . it seems that Plaintiff purportedly served ATE, Antigone, Rete and me.” (Navarri Aff. ¶ 10). In addition, Navarri avers:

Plaintiff used the settlement conference as a ruse to lure me to Plaintiffs office in New York, in an attempt to serve me and the [Moving] Defendants. [Moving] Defendants, however, do not have a “domestic agent” authorized to accept service of process, as they are Italian business entities. Indeed, as stated, I am citizen and resident of Italy, I do not reside in New York (or anywhere in the United States) and I am not a domestic agent for service on [Moving] Defendants.

(Navarri Aff. ¶ 11).

Plaintiff, in turn, argues that Plaintiff properly effectuated service upon Moving Defendants by personal delivery to Navarri in New York, pursuant to CPLR § 311. In the affidavits of Levy, Levy attests to personal service of Plaintiff’s initiatory papers upon Antigone and Rete on December 29, 2014, by personal delivery to Navarri, as authorized agent. Levy avers that such service took place at “Wuersch & Guering LLP (Conference Room) 100 Wall Street 10th Floor”, and that Navarri “was verbally advised she was being served both in her individual capacity and as President/Authorized agent of [Moving Defendants] after being pointed out

by Francesco Di Pietro.” Plaintiff argues that, as President of both Moving Defendants, Navarri is statutorily authorized to receive service of process on behalf of Moving Defendants. (CPLR § 311[a][1]).

Here, Plaintiff’s affidavits of service adequately demonstrate that Moving Defendants were served with Plaintiff’s summons and complaint pursuant to CPLR § 311, by personal delivery to an individual designated by the Legislature in a manner which, objectively viewed, was reasonably calculated to give Moving Defendants notice of the claims against them. (*Fashion Page, Ltd. v. Zurich Ins. Co.*, 50 N.Y.2d 265, 271 [1980]; *see also Wells v Continuum Health Partners, Inc.*, 118 A.D.3d 632, 632 [1st Dep’t 2014] [observing that, “CPLR § 311, pursuant to which plaintiff purported to make service, is to be ‘liberally construed’ in determining whether service was made on a corporation by delivering the summons to one of the persons delineated in that section”]). Insofar as service upon Moving Defendants via personal delivery in New York to Navarri, as agent, is valid and complete under CPLR § 311, the Hague Convention “has no further implications” in this case. (*Volkswagenwerk AG. v Schlunk*, 108 S. Ct. 2104, 2108 [1988]). Accordingly, Moving Defendants’ motion to dismiss Plaintiff’s complaint on the basis of improper service is denied.

Wherefore it is hereby,

ORDERED that Moving Defendants’ motion to dismiss Plaintiff’s complaint for lack of personal jurisdiction is denied.

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

Dated: April 21, 2015

APR 21 2015



Eileen A. Rakower, J.S.C.