

Kleinfeld v Rand

2015 NY Slip Op 30703(U)

April 30, 2015

Supreme Court, New York County

Docket Number: 15629/2014

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
EVE KLEINFELD,

Plaintiff,

-against-

MARNIN RAND,

Defendant.
-----X

Index No. 15629/2014

DECISION/ORDER

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff commenced the instant action to recover pursuant to a promissory note and accompanying guaranty. Defendant now moves for an Order pursuant to CPLR § 3211(a) dismissing the complaint on the grounds that this court lacks personal jurisdiction over him and that plaintiff's action is time-barred. Plaintiff cross-moves for summary judgment. For the reasons set forth below, defendant's motion is granted and plaintiff's cross-motion is denied.

The relevant facts are as follows. Plaintiff alleges that pursuant to a promissory note dated February 8, 2007 (the "Note"), three entities 128 22nd Street Associates, LLC, Mag Builders, LLC and 259 Garside Associates, LLC (collectively the "Borrowers") borrowed \$300,000 from plaintiff. Plaintiff further alleges that defendant personally executed the Note as a guarantor and that the borrowers and defendant have defaulted under the Note by failing to make payment when it became

due. Thus, plaintiff has commenced the instant action against defendant, as guarantor, seeking to recover the amount outstanding under the Note.

Defendant, a New Jersey resident, now moves to dismiss the action on the ground, *inter alia*, that this court lacks personal jurisdiction over him. In opposition, plaintiff contends that jurisdiction over defendant is proper pursuant to both CPLR §§ 301 and 302(a)(1).

It is well settled that plaintiff's complaint need not allege that the court has a basis for personal jurisdiction. *Fischbarg v. Doucet*, 9 N.Y.3d 375 (2007). However, when personal jurisdiction is challenged, the plaintiff has the burden of proving a basis of personal jurisdiction. *See, e.g., Arroyo v. Mountain School*, 68 A.D.3d 603 (1st Dept 2009).

In the present case, as an initial matter, the court finds that plaintiff has failed to satisfy its burden of establishing a basis for personal jurisdiction over defendant under CPLR § 301. CPLR § 301, which is the codification of the common law concept of general personal jurisdiction, provides that “[a] court may exercise such jurisdiction over person, property, or status as might have been exercised heretofore.” A defendant is subject to general personal jurisdiction in this State when it is “engaged in such a continuous and systematic course of ‘doing business’ here as to warrant a finding of its ‘presence’ in this jurisdiction.” *McGowan v. Smith*, 52 N.Y.2d 268, 272 (1981). Here, plaintiff contends that defendant is subject to general jurisdiction in New York as he has made numerous visits over the years to BNB bank’s offices in Manhattan to obtain financing for his real estate business. This contention is simply without merit. Making trips to a bank’s New York offices is simply not the type of activity that would constitute such a continuous and systematic course of doing business within the State to confer general jurisdiction over defendant, nor has plaintiff provided the court with any authority to support a finding to the contrary.

Additionally, the court also finds that plaintiff has failed to satisfy its burden of establishing a basis for personal jurisdiction over defendant under CPLR § 302(a)(1). CPLR 302(a)(1) provides in relevant part:

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

“Whether a non-domiciliary is transacting business within the meaning of CPLR 302(a)(1) is a fact based determination, and requires a finding that the non-domiciliary’s activities were purposeful and established “a substantial relationship between the transaction and the claim asserted.” *Paterno v. Laser Spine Institute*, 24 N.Y.3d 370, 376 (2014) (quoting *Fischbarg v. Doucet*, 9 N.Y.3d 375, 380 (2007)). “Purposeful activities are volitional acts by which the non-domiciliary ‘avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” *Id.* Indeed, “[m]ore than limited contacts are required for purposeful activities sufficient to establish that the non-domiciliary transacted business in New York.” *Id.*

In the present case, plaintiff has failed to present facts establishing that defendant engaged in sufficient purposeful activity in New York in connection with the subject guaranty to constitute transacting business here. Plaintiff asserts that defendant’s attendance at two, perhaps three, meetings in New York to negotiate the essential terms of the Note, including defendant’s personal guaranty, is sufficient to confer jurisdiction over defendant in this action to recover pursuant to the guaranty. However, the court finds that two, maybe three, preliminary meetings in New York where defendant was negotiating the terms of the Note, which was for the benefit of the corporate

borrowers, is not sufficient to constitute that defendant, in his individual capacity, was transacting business in New York in connection with the subject guaranty. Rather, there is very limited connection between these alleged meetings in New York and the actual guaranty plaintiff now seeks to recover under. Indeed, the Note and alleged guaranty were both executed in New Jersey, not New York and both defendant and the borrowers are New Jersey residents. Thus, in the instant case, there simply is not a sufficient nexus between defendant's alleged activities in New York in connection with the guaranty and the present action to confer personal jurisdiction over defendant pursuant to CPLR § 302(a)(1).

Based on the foregoing, defendant's motion to dismiss for lack of personal jurisdiction is granted and this court need not address defendant's remaining arguments. Additionally, as this action must be dismissed for lack of jurisdiction, plaintiff's cross-motion is now moot. Thus, it is hereby

ORDERED that this action is hereby dismissed on the ground that this court lacks personal jurisdiction over defendant. This constitutes the decision and order of the court.

Dated:

4/30/15

Enter:

CK

J.S.C.

CYNTHIA S. KERN
J.S.C.