

Grupo Excem v Amdocs, Inc.
2016 NY Slip Op 30508(U)
March 24, 2016
Supreme Court, New York County
Docket Number: 652845/2015
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 45

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GRUPO EXCEM,

Plaintiff,

Index No. 652845/2015

Motion Sequence No. 001

- against -

AMDOCS, INC., AMDOCS LIMITED, and AMDOCS
SOFTWARE SOLUTIONS LLC,

Defendants.

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ANIL C. SINGH, J.:

In this action for unfair enrichment, quantum meruit and promissory estoppel, defendants Amdocs Inc, Amdocs Ltd., and Amdocs Software Solutions Limited Liability Company (“defendants”) move pursuant to CPLR 3211(a) (8) for an order dismissing the complaint against defendants for lack of personal jurisdiction. Defendants also move pursuant to CPLR 3211 (a) (7) for an order dismissing the complaint against defendants Amdocs, Inc. and Amdocs, Ltd for failure to state a cause of action. Plaintiff oppose.

In its Complaint, plaintiff alleges that it provided consulting services to defendants, which resulted in defendants’ execution of a lucrative contract with third-party Telefonica Vivo (“Telefonica”), a company in Brazil. Specifically, plaintiff argue that they negotiated a Success Fee Agreement (“agreement”) with defendants. Eli Jacobovich, who is employed by defendant Amdocs, Inc. helped Amdocs Software Solutions LLC negotiate this business opportunity with plaintiff.

Plaintiff alleges that Mr. Jacobovich negotiated the agreement from New York. Ultimately, the agreement was not executed by the parties. Plaintiff has brought suit claiming that Mr. Jacobovich violated the principles of equity by renegotiating defendants' obligations to compensate plaintiff. Plaintiff further claims that defendants have refused to pay plaintiff the agreed-upon success fee for its consulting services.

Defendants have now moved to dismiss this action pursuant to CPLR 3211 (a) (7) and (8). Defendants claim that there is no personal jurisdiction over them in New York. Neither the defendants nor the plaintiff are located in New York. The plaintiff is a Spanish company located in Madrid. There are three defendants. Defendant Amdocs Software is a corporation organized and existing under the laws of the state of Hungary, having an address in Budapest. Defendant Amdocs, Inc. is a Delaware corporation that's principal place of business is in Missouri. Defendant Amdocs, Ltd. is a holding company located in the Island of Corsi.

Discussion

Personal Jurisdiction

Plaintiff bears the burden of establishing that personal jurisdiction exists over each of the defendants. From the papers, plaintiff are asserting personal jurisdiction pursuant to CPLR 301 and 302(a).

CPLR 301 provides that “[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore”. The recent seminal case of Daimler AG v. Bauman, 134 S. Ct. 746 (S.Ct 2014) is relevant precedent to the application of general jurisdiction. In Daimler, the Supreme Court held that the only type of local activity by a corporation that will ordinarily qualify for general jurisdiction is incorporation in the state or maintenance of its principal place of business in the state. The New York courts including the First Department has followed Daimler. In Magdalena v. Lins, 123 A.D. 3d 600, 601 (1st Dep’t 2014), the First Department held that “there is no basis for general jurisdiction pursuant to CPLR 301, since [defendant] is not incorporated in New York and does not have its principal place of business in New York.” See also, D & R Glob. Selections, S.L. v. Pineiro, 128 A.D.3d 486, 487 (1st Dep’t, 2015).

CPLR 302(a) (1) provides that long-arm jurisdiction exist for “non-domiciliary...who in person or through an agent...transacts any business within the state or contracts anywhere to supply goods or services in the state.”

Amdocs Software Solutions LLC

Plaintiff alleges that there is jurisdiction under CPLR 302(a) (1) over Amdocs Software Solutions LLC because Eli Jacobovich “negotiated the agreements while in the State of New York, County of New York, on behalf of Amdocs Software Solution, LLC.” To support their allegation that Mr. Jacobovich

negotiated the claims in New York, plaintiff argues that Mr. Jacobovich's LinkedIn page states that he is located in New York.

Defendants have asserted that Mr. Jacobovich's LinkedIn profile indicates that he is located in New York because that is where he lives, not where he works, and in any event, the LinkedIn profile says nothing about where he was when he negotiated the proposed agreement. In his affidavit, Mr. Jacobovich states that he works in Harborside Financial Center, Plaza #5, Jersey City, Jersey.

This court finds that the use of Mr. Jacobovich's LinkedIn page is not sufficient proof that he works in New York. Indeed, the rest of his LinkedIn page which describes the details of his work does not state that he performed his projects in New York.

More importantly, though Mr. Jacobovich's LinkedIn page may state that he is located in New York, it is not evidence that the draft Success Fee agreement was negotiated in New York. In particular, common to all the provisions of CPLR 302 (a) is the requirement that the cause of action "arise from" one or more of the specified categories of New York-directed activity. This means that even if the defendant has engaged in purposeful acts in New York, there must be a "substantial relationship" between those acts and the transaction or occurrence upon which the plaintiff's cause of action is based. Put another way, an "articulate nexus" must exist between the defendant's New York activity and the cause of the

action. See e.g., McGowan v. Smith, 52 N.Y.2d 268, 272 (1981); Licci v. Lebanese Canadian Bank, SAL, 20 N.Y. 3d 327, 339-40 (2012). The causes of action in the complaint arise out of the draft agreement. However, there is no evidence that there was any New York-directed activity by the defendants in relation to the agreement. The agreement was about a business opportunity in Brazil. Neither defendants nor plaintiff are located in New York. And, there is no sufficient proof that Mr. Jacobovich was negotiating the agreement from New York.

Amdocs Inc.

Plaintiff alleges that the court has personal jurisdiction over Amdocs Inc. pursuant to CPLR 301. However, as defendants noted in their briefs, Amdocs Inc. is not incorporated in New York and does not have its principal place of business in New York. In their opposition, defendants do not dispute defendants claim. The Daimler decision and its First Department progenies, including Magdalena, have held that in such situations there lies no claim in jurisdiction under CPLR 301.

Plaintiff cites CPLR 302 (a) and claims that there is an agency relationship between Amdocs Inc. and Amdocs Software. It argues that Mr. Jacobovich's work on behalf of Amdocs Software "was some benefit to Amdocs Inc." and hence Amdocs Software was acting as agent for Amdocs Inc.

Plaintiff's argument holds no water. As stated above, an "articulate nexus" must exist between the defendant's New York activity and the cause of the action.

The court has found that there is no articulate nexus between Amdocs Software's alleged New York activity and the cause of action. Hence, even if Amdocs Software was Amdocs Inc.'s agent, there can be no jurisdiction for Amdocs Inc. pursuant to an agency theory.

Amdocs Ltd.

Plaintiff alleges that there is jurisdiction pursuant to CPLR 301 and 302 because Amdocs Ltd is listed on NASDAQ and is therefore doing business in the state of New York.

Amdocs Ltd is a Guernsey Limited Company, having its global headquarters at Missouri. As in Magdalena, since defendant is not incorporated in New York and does not have its principal place of business in New York, there is no basis for general jurisdiction pursuant to CPLR 301.

Plaintiff cite to B& M Kingstone, LLC. v. Mega International Commercial Bank Co., Ltd, 131 A.D. 3d 259 (1st Dep't 2015) and Vera v. Republic of Cuba, 91 F. Supp. 3d 561 (S.D.N.Y. 2015) for the proposition that Daimler does not end the analysis. However, the cases cited are easily distinguishable. Both related to banks/companies consenting to general jurisdiction in exchange for being able to operate in New York. In the case before this court, the defendants have not consented to general jurisdiction. Nor are they operating in New York.

Plaintiff claims that personal jurisdiction exist because Amdocs Ltd is listed in NASDAQ. However, New York courts have held that listing of a non-resident corporation's securities on NASDAQ is not a basis to exercise personal jurisdiction. Robbins v. Ring, 9 Misc. 2d 44 (NY County 1957).

Jurisdictional Discovery

In order to obtain jurisdictional discovery, plaintiff must make a "sufficient start" demonstrating that long-arm jurisdiction may exist over defendants. See American BankNote Corp. v. Daniele, 45 A.D 3d 338, 340 [1st Dep't., 2007] (holding that plaintiff's pleadings and affidavits alleging that the non-domicile defendants used their New York bank accounts to further their misdeeds, contracted to provide goods for New York clients, and traveled to New York for business was a sufficient start to warrant jurisdictional discovery). The court ultimately has the discretion to grant jurisdictional discovery, but plaintiff must still make a threshold showing that there is some basis for jurisdiction. See, Royalty Network v. Dishant.com, 638 F.Supp.2d 410, 425 (S.D.N.Y. 2009).

Here, the plaintiff have not made a threshold showing that there is some basis for jurisdiction. Apart from Mr. Jacobovich's LinkedIn page and Amdocs Ltd's listing on NASDAQ as discussed above, plaintiff have not asserted other contacts that defendants had with New York.

Accordingly, plaintiff has not made a sufficient start demonstrating that long-arm jurisdiction exist over defendants and therefore, plaintiff's request is denied.

Failure to state a cause of action against defendants Amdocs Ltd and Amdocs, Inc.

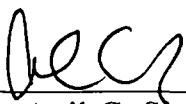
Defendants also move pursuant to CPLR 3211 (a) (7) for an order dismissing the complaint against defendants Amdocs, Inc. and Amdocs, Ltd. Since this court has found that there is no personal jurisdiction over defendants Amdocs, Inc. and Amdocs, Ltd, defendants' motion to dismiss for failure to state a cause of action is denied as moot.

ORDERED that defendants' motion to dismiss the action for lack of personal jurisdiction is granted with prejudice; and it is further

ORDERED that plaintiff's request for jurisdictional discovery is denied; and it is further

ORDERED that defendants' motion to dismiss the action for failure to state a cause of action as to defendants Amdocs, Inc. and Amdocs, Ltd is denied as moot.

Date: March 24, 2016
New York, New York



Anil C. Singh