

Honig v RDCP Holdings, Inc.
2016 NY Slip Op 31767(U)
September 26, 2016
Supreme Court, New York County
Docket Number: 155715/2016
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
*Justice*PART 13

SARAH HONIG,

Plaintiff,

-against-

INDEX NO.

155715/2016

MOTION DATE

09/21/2016

MOTION SEQ. NO.

002

MOTION CAL. NO.

RDCP HOLDINGS, INC., STAMFORD PLAZA,
LIMITED PARTNERSHIP, STAMFORD HOSPITALITY,
LIMITED PARTNERSHIP and "JOHN DOE", said name
being fictitious and intended to represent the
individual who is referred to in the Complaint below,
Defendants.

The following papers, numbered 1 to 10 were read on this motion to dismiss.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 7</u>
Answering Affidavits — Exhibits _____	<u>8 - 9</u>
Replying Affidavits _____	<u>10</u>

Cross-Motion: ☐ Yes ☒ No

Upon a reading of the foregoing cited papers, it is Ordered that Defendants' motion to dismiss pursuant to CPLR §3211(a)(8), is granted.

Plaintiff commenced this action by electronically filing a Summons and Complaint on July 11, 2016, for personal injuries she sustained on December 19, 2014, after she was struck by a luggage cart pushed by "John Doe", that caused her to fall to the ground in the lobby of "premises" located at 2701 Summer Street in Stamford, Connecticut (herein "the premises"). (Mot. Exh. A).

The Complaint alleges, among other things, that the Defendants RDCP Holdings, Inc.'s (herein "RDCP"), Stamford Plaza, Limited Partnership (herein "SP"), and Stamford Hospitality, Limited Partnership (herein "SH") (collectively referred to herein as "Defendants") are authorized and doing business in New York State; that the Defendants owned, leased/rented, operated, maintained, controlled, and managed the premises and operated it as a hotel; and that "John Doe" was an employee/agent/servant of the Defendants acting within the scope of his employment at the time the incident occurred. RDCP was a general partner of SP and SH, and had business addresses at 1345 Avenue of the Americas, New York, New York, and 875 Third Avenue, New York, New York.

The Defendants now move for an Order: (1) dismissing the Complaint pursuant to CPLR §3211(a)(8); (2) in the event jurisdiction over the Defendants is maintained, then dismissing the Complaint pursuant to CPLR §327; or (3) consolidating this action with another related action pending in New York County Supreme Court under Index No. 163077/2015, pursuant to CPLR §602(a).

Plaintiff opposes the motion.

Defendants argue, among other things, that the Complaint must be dismissed because the Court lacks jurisdiction over them. (CPLR 3211(a)(8)). Plaintiff served one copy of the Summons and Complaint for all Defendants on a “Joanne Doe” c/o Robinson, Brog, Leinwand & Green, an authorized party/management agent, at 875 Third Avenue, 9th Fl., New York, New York. (See Affidavits of Service- Mot. Exh. B). Defendants contend that they are foreign entities unauthorized to do business in New York State, that they have not and do not do business in New York State, that they have not and do not maintain any offices or employees in New York State, and that the individual who was served is Joanne Brennan, an employee of the law firm of Robinson Brog Leinwand Green Geneove & Gluck, P.C. (herein “the Robinson law firm”).

Defendants provide copies of the entities’ corporation/limited liability partnership information as filed with the Department of State, Division of Corporations. RDCP is a corporation that was formed on December 18, 2008, in Delaware, with a registered office located at Corporations USA LLC, 341 Raven Circle Wyoming, Delaware. RDCP has no employees, and Mr. Thomas Rosenberg is the sole owner and president, and its principal place of business is Lakewood, New Jersey. (Mot. Exh. E & Rosenberg Aff. Exh. A).

SP is a limited partnership authorized to do business in the State of Connecticut, formed in 2009 with a registered office located at National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware. (Mot. Exh. F). RDCP was formally the general partner of SP until 2011. Sp’s principal place of business is 6500 Chemin de la Cote de Liesse in Montreal, Quebec. (Aff. of Aristos Pronoitis).

SH is a limited partnership also authorized to do business in the State of Connecticut, formed in 2009 and its registered office is Corporations USA LLC, Wyoming, Delaware, and its principal place of business is 7077 Ave du Parc, Montreal Quebec. RDCP is the general partner of SH. (Mot. Exh. G & Rosenberg Aff.).

Defendants contend that these entities were formed with the assistance of the Robinson law firm in 2008 and 2009 (Aff. of Pronoitis & Aff. of Rosenberg), and that its only connection to New York State is RDCP’s Certificate of Incorporation that lists the Robinson law firm, 1345 Avenue of the Americas (the law firm’s former address), as the name and mailing address of the incorporator. (Rosenberg Aff. Exh. A). Other than

that, the Certificate lists the registered office in Delaware.

Also provided is the affidavit of Joanne Brennan, attesting to the fact that she is an employee of the Robinson law firm. Ms. Brennan also states that she has never been an employee of any of the Defendants, nor was she ever authorized to accept service on their behalf. She states that she told the process server she was not accepting service, nor could she, and that she would take a copy of the Summons and Complaint for research purposes only. (See Brennan Aff. attached to Mot.).

Plaintiff opposes the motion arguing that the Defendants' New York business address is listed as c/o the Robinson law firm. Plaintiff relies on the Connecticut Department of State's recording division printout that lists SH as having been formed in 2009, with a business address of 2701 Summer Street, Stamford, Connecticut, a mailing address of 7077 Park Avenue, Suite 600, Montreal, Quebec, Canada, and listing the Principal as RDCP, General Partner, with a business address of c/o the Robinson law firm, 1345 Avenue of the Americas, New York, New York. (Aff. In Opp. Exh. 2).

Defendants argue that a "business address" in New York is not enough to subject the Defendants to the jurisdiction of New York State Courts.

Although not specifically plead within the Complaint, nor clarified within Plaintiff's opposition, it appears that Plaintiff is relying on CPLR §301 to establish jurisdiction over the Defendants as a result of the Defendants "doing business" in New York State. The nature and quality of the corporate activities constituting "doing business" are "not occasionally or casually, but with a fair measure of permanence and continuity." (*Lancaster v. Colonial Motor Freight Line, Inc.*, 177 A.D.2d 152, 581 N.Y.S.2d 883 [1st Dept. 1992]). "A foreign corporation is amenable to suit in New York Courts under CPLR §301 if it has engaged in such a continuous and systematic course of doing business here that a finding of its presence in this jurisdiction is warranted. The essential factual inquiry is whether the defendant has a permanent and continuous presence in the state, as opposed to merely occasional or casual contact with the state." (*Holness v. Maritime Overseas Corp.*, 251 A.D.2d 220, 676 N.Y.S.2d 540 [1st Dept. 1998]). New York Court's do not have general jurisdiction over a Defendant under CPLR §301 if the entity is not incorporated in New York and does not have its principal place of business in New York. (*Magdalena v. Lins*, 123 A.D.3d 600, 999 N.Y.S.2d 44 [1st Dept. 2014], citing *Daimler AG v. Bauman*, 134 S.Ct. 746, 187 L.Ed.2d 624, 82 USLW 4043 [2014]).

The Defendants are not incorporated within New York State, nor are they authorized to do business within New York State. The Plaintiff relies upon the Connecticut Department of State's recording division printout that lists RDCP as a general partner of SH with a business address as c/o the Robinson law firm. This argument is unavailing. Plaintiff has provided nothing more than this printout as proof of the Defendants "doing business" within New York State. There is no evidence of

the Defendants conducting business out of the Robinson Law Firm, no evidence of any other offices, and no evidence of any employees being present to be considered “doing business” within New York State.

Notwithstanding these facts, even considering the “c/o Robinson” law firm address as being the business address of the Defendants, service was not made upon an authorized agent or officer or someone authorized to accept service on the Defendants’ behalf.

CPLR §311 states in relevant part, that “[p]ersonal service upon a corporation...shall be made by delivering the summons..upon any domestic or foreign corporation, 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. A business corporation may also be served pursuant to section 306 or 307 of the business corporation law.” BCL §306 provides for service of process to be made on a registered agent...or the New York State Secretary of State as agent of the domestic or authorized foreign corporation. BCL §307 provides for service of process on an unauthorized foreign corporation subject to personal or other jurisdiction of New York State Courts to be made on the New York State Secretary of State.

CPLR 310-a states in relevant part, that “[p]ersonal service upon any domestic or foreign limited partnership shall be made by delivering a copy personally to any managing or general agent or general partner of the limited partnership in this state, to any other agent or employee of the limited partnership authorized by appointment to receive service or to any other person designated by the limited partnership to receive process, in the manner provided by law for service of summons, as if such person was the defendant.”

Plaintiff provides no evidence to rebut the proof set forth by the Defendants that Ms. Joanne Brennan was not an individual authorized to accept service on the Defendants’ behalf. The “service” made upon Ms. Brennan was improper and there is no proof that the Defendants are “doing business” within the State sufficient enough to subject them to the jurisdiction of New York State Courts.

For the foregoing reasons, dismissal of the Complaint is appropriate. Based on these findings, the Court does not need to address the Defendants’ remaining arguments.

ACCORDINGLY, it is ORDERED, that Defendants’ motion to dismiss the complaint pursuant to CPLR 3211(a)(8) is granted, the Complaint is dismissed, and it is further,

ORDERED, that the Clerk of the Court enter judgment accordingly.

ENTER:

Dated: September 26, 2016



MANUEL J. MENDEZ

J.S.C.

MANUEL J. MENDEZ
J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE