

Argo Intl. Corp. v MotorWise, Inc.

2017 NY Slip Op 30470(U)

March 6, 2017

Supreme Court, New York County

Docket Number: 652817/2016

Judge: Cynthia S. Kern

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

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ARGO INTERNATIONAL CORPORATION,

Plaintiff,

DECISION/ORDER
Index No. 652817/2016

-against-

MOTORWISE, INC. and THE TECHNOWISE
GROUP, INC.,

Defendants.

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HON. CYNTHIA KERN, J.:

Plaintiff Argo International Corporation commenced the instant action asserting a cause of action for breach of contract against defendants MotorWise, Inc. (“MotorWise”) and The TechnoWise Group, Inc. (“TechnoWise”). Plaintiff now moves for an Order pursuant to CPLR § 3215 granting it a default judgment against defendants. Defendants separately move for an Order pursuant to CPLR § 3211(a)(7) and (8) dismissing plaintiff’s complaint on the grounds that the court lacks personal jurisdiction over defendants and that the parties contracted for venue in the state or federal courts of Florida. These motions are consolidated for the purpose of disposition. For the reasons set forth below, plaintiff’s motion is denied and defendants’ motion is granted.

The relevant facts and procedural history are as follows. Plaintiff is a Delaware corporation with a principal place of business in New Jersey. Defendants are both Delaware corporations with principal places of business in Florida. TechnoWise is the parent company of MotorWise. On or about July 9, 2012, plaintiff and MotorWise entered into a distribution agreement for plaintiff to distribute MotorWise’s products (“the contract”), pursuant to which MotorWise agreed to repurchase certain unsold inventory from plaintiff. On or about May 31, 2016, plaintiff commenced the instant action alleging that defendants are liable for breach of contract due to MotorWise’s failure to repurchase unsold inventory as required by the contract. Plaintiff moved for a default judgment against defendants on or about January 9, 2017 due to defendants’ failure to answer or otherwise appear in the action. Thereafter, defendants moved to dismiss

plaintiff's complaint and defendants' counsel filed a notice of appearance for the limited purpose of disputing jurisdiction and venue.

The court finds that plaintiff's motion for a default judgment must be denied and defendants' motion to dismiss plaintiff's complaint must be granted on the ground that the court lacks personal jurisdiction over defendants. As an initial matter, plaintiff's argument that the court must deny defendants' motion to dismiss and grant its motion for a default judgment because defendants' motion is untimely pursuant to CPLR § 3211(e), which provides that a party may move to dismiss "[a]t any time before service of the responsive pleading is required," is without merit. "Any default judgment or order against a party over which the court lacks jurisdiction is a nullity." *Government Employees Ins. Co. v. Basedow*, 28 A.D.3d 766, 767 (2^d Dept 2006). Thus, where a defendant untimely moves to dismiss the plaintiff's complaint for lack of personal jurisdiction after defaulting but before a default judgment is entered, the court should determine whether the court has personal jurisdiction over the defendant and deny the plaintiff's motion for default judgment and dismiss the complaint if the court in fact lacks personal jurisdiction over the defendant. *See id.* (denying a plaintiff's motion for a default judgment and dismissing the complaint where the defendant untimely moved to dismiss the complaint for lack of personal jurisdiction because "[f]ailing to recognize the realities and adhering to the technicalities would simply undermine the speedy and inexpensive resolution of the controversy") (internal quotation omitted).

While plaintiff's complaint need not allege that the court has a basis for personal jurisdiction, *Fischbar v. Doucet*, 9 N.Y.3d 375 (2007), 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, 604 (1st Dept 2009). In New York, personal jurisdiction may be exercised over a defendant who is subject to general or specific jurisdiction. *See* CPLR §§ 301 and 302. In the instant action, plaintiff does not contend that the court has general jurisdiction over defendants but rather that the court has specific jurisdiction over defendants.

CPLR § 302(a)(1) allows for the exercise of specific jurisdiction over an out-of-state defendant if the defendant “transacts any business within the state or contracts anywhere to supply goods or services in the state” and the plaintiff’s cause of action arises from the transaction of business within the state or the contract to supply goods or services in the state. “By this single act statute . . . proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant’s activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted.” *Deutsche Bank Sec., Inc. v. Montana Bd. Of Invs.*, 7 N.Y.3d 65, 71 (2006) (internal quotations omitted). “Purposeful activities are those with which a defendant, through volitional acts, avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Fischbarg v. Doucet*, 9 N.Y.3d 375, 380 (2007).

In the present case, plaintiff has failed to allege sufficient facts to support a finding that defendants transacted business or contracted to supply goods or services in New York and that plaintiff’s cause of action for breach of contract arises from the transaction of business or contracting to supply goods or services in New York so as to subject defendants to specific jurisdiction. The mere fact that the contract was negotiated by plaintiff’s counsel’s firm in New York is insufficient to show that defendants transacted any business in New York and that plaintiff’s cause of action arises from the transaction of business in New York. However, even if the fact that the contract was negotiated by plaintiff’s counsel’s firm in New York did show that defendants transacted some business in New York, this fact does not show that defendants purposefully availed themselves of the privilege of conducting activities within New York, thus invoking the benefits and protections of New York’s laws. Further, the mere fact that the contract allows plaintiff to distribute MotorWise’s products throughout the United States is insufficient to show that defendants contracted to supply goods or services in New York and that its cause of action for breach of contract arises from contracting to supply goods in New York as plaintiff has not alleged that defendants actually supplied any goods in New York.

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Accordingly, plaintiff's motion for a default judgment is denied and defendants' motion to dismiss plaintiff's complaint is granted. Plaintiff's complaint is hereby dismissed. This constitutes the decision and order of the court.

DATE: 3/6/17

CK
KERN, CYNTHIA S., JSC
HON. CYNTHIA S. KERN