

Fekah v Baker Hughes Inc.
2018 NY Slip Op 32174(U)
September 4, 2018
Supreme Court, New York County
Docket Number: 153767/17
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARBARA JAFFE

Justice

PART 12

-----X
JOSEPH FEKAH, *et al.*,

Plaintiffs,

INDEX NO. 153767/17

MOTION DATE _____

- v -

MOTION SEQ. NO. 2

BAKER HUGHES INCORPORATED,

Defendant.

DECISION AND ORDER

-----X
By notice of motion, defendant moves pursuant to CPLR 3211 and 327 for an order dismissing plaintiffs' first amended complaint. Plaintiffs oppose.

I. FIRST AMENDED COMPLAINT

In their first amended complaint, plaintiffs allege, as pertinent here:

- (1) deceased plaintiff, Clarice Tsogou Mabengou, was hired by defendant in April 2010 and stationed in Gabon;
- (2) plaintiff Boateng entered into an employment contract with Baker Hughes (Ghana) Limited on December 16, 2009;
- (3) on or before February 28, 2014, defendant transferred Boateng to work in Gabon;
- (4) on April 24, 2014, four of defendant's employees, including Mabengou and Boateng, left defendant's office in Gabon at the end of their work day to run personal errands and return to their hotels or homes;
- (5) the employees travelled in a company car owned by defendant, which had been given to one of the employees for her use by the then-country director of Baker Hughes Gabon;

- (6) the car had been parked for a long period of time and was awaiting technical inspection, and the driver's Baker Hughes driving certification had expired a year earlier;
- (7) the car was involved in an accident, resulting in injuries to Mabengou and Boateng;
- (8) defendant was informed of the accident and its employees travelled to the accident scene, and then to the hospital where Mabengou had been taken;
- (9) defendant intervened in medical decisions being made on behalf of Mabengou, who died from her injuries;
- (10) defendant failed to evacuate Boateng to a better medical facility;
- (11) in order to cut costs and without the consent of Boateng's guardian or family, defendant approved Boateng's transfer from a major trauma center to a facility that was not equipped to administer intensive care; the lack of adequate care resulted in Boateng's continuing injuries; and
- (12) defendant later transferred Boateng to a facility in South Africa, which further reversed his medical recovery and ignored his brother's requests that he be returned to a suitable medical center.

(NYSCEF 17).

As a result of the foregoing, defendant failed to: (1) ensure that the Gabon employees of African descent or nationality operated in safe conditions with the same access to medical care and insurance coverage given their caucasian colleagues; (2) provide plaintiffs with emergency medical care and evacuation; (3) ensure that the car driver was fit to drive per defendant's safety regulations and policies; and (4) ensure that the vehicle met the recommended best safety practices, including the presence of side airbags. Plaintiffs further contend that defendant discriminated against them by failing to provide them with appropriate medical care and insurance coverage. (*Id.*).

Plaintiffs advance causes of action for negligence, negligent infliction of emotional distress, negligent undertaking, and promissory estoppel, and assert that this court has personal

jurisdiction over defendant pursuant to CPLR 301 and 302 as it transacts business and contracts to supply goods or services in New York State, has a permanent and continuous business presence in New York, “publicly recruits for positions within its New York operations, including recruitment of employees who oversee [defendant’s] compliance with regulations, standards, and legislation in all global regions, relevant to the issues raised by this action, while based in New York,” and has manufacturing operations here where it produces equipment for the oil and gas industry. (*Id.*).

II. JURISDICTION

A. General jurisdiction

Plaintiffs rely on the following as evidence of general jurisdiction over defendant:

(1) defendant is registered to do business in New York as a foreign corporation, (2) it posted advertisements for three jobs in New York, thus demonstrating that it also has offices here (NYSCEF 57), and (3) it owns real estate in Chemung County, New York. (NYSCEF 34).

Defendant denies owning property or having manufacturing facilities in New York and asserts that the recruitment of three employees in New York is insufficient to establish continuous and systematic affiliations with New York, and that mere registration to do business is also not enough. (NYSCEF 52).

Pursuant to CPLR 301, a court may exercise general jurisdiction over a foreign corporation. In *Daimler AG v Bauman*, the United States Supreme Court determined that a court has general jurisdiction over a foreign corporation when the corporation’s “affiliations . . . are so continuous and systematic as to render it essentially home [in a particular state],” i.e., the state “where [it] is incorporated or has its principal place of business.” (571 US 117 [2014]; *AlbaniaBEG Ambient Sh.p.k. v Enel S.p.A.*, 160 AD3d 93 [1st Dept 2018]). In *Daimler*, the Court

held that the California courts did not have general jurisdiction over Daimler where its principal place of business was elsewhere and notwithstanding its multiple California-based facilities, including a regional office. (*Id.* at 123). A corporation's registration to do business with New York state has also been held as insufficient to confer general jurisdiction. (*Famular v Whirlpool Corp.*, 2017 WL 2470844 [SD NY 2017]; *Kyowa Seni, Co., Ltd. v ANA Aircraft Technics, Co., Ltd.*, 2018 WL 3321410, 2018 NY Slip Op 28211 [Sup Ct, New York County]; *Amelius v Grand Imperial LLC*, 57 Misc 3d 835 [Sup Ct, New York County 2017]).

Here, it is undisputed that defendant is not incorporated in New York, nor does it have its principal place of business here. Even if defendant advertises for and hires employees to work in New York, and even if it has a regional office in New York, plaintiffs fail to demonstrate that such conduct constitutes a sufficient systematic and continuous affiliation with New York. (*See e.g., B & M Kingstone, LLC v Mega Intern. Commercial Bank Co., Ltd.*, 131 AD3d 259 [1st Dept 2015], *lv dismissed* 26 NY3d 995 [operation of one branch office in New York insufficient]; *Gucci Am., Inc. v Weixing Li*, 768 F3d 122 [2d Cir 2014] [no general jurisdiction even though bank had branch offices in forum but was incorporated and headquartered elsewhere]).

B. Specific jurisdiction

Plaintiffs maintain that Boateng, as an employee of defendant, reports to someone located in Albany, New York, and that "[m]anagers in New York assigned to [him] must clearly have access to his files and records, and have involvement in the ongoing decision-making for his employment and immigration status, insurance requests, and contact with [defendant's] insurers, and reports of medical treatment." (NYSCEF 57).

The Legislature enacted CPLR 302(a) to provide for jurisdiction over causes of action arising from certain enumerated acts, including the transaction of business within the state. A

plaintiff asserting such specific jurisdiction over a defendant must establish a “substantial relationship” between the defendant’s transactions in New York and the plaintiff’s cause of action. (*Johnson v Ward*, 4 NY3d 516, 519 [2005]).

The claims against defendant arise from an automobile accident in Africa and the ensuing medical care rendered to Boateng there. Even if decisions concerning Boateng’s continuing care and insurance coverage have been or are being made here, they bear no substantial relationship to Boateng’s claims. (*See Santiago v Highway Freight Carriers, Inc.*, 153 AD3d 750 [2d Dept 2017] [no specific jurisdiction over claim arising from automobile accident that took place in another state]). In any event, plaintiffs’ allegations about defendant’s transactions here are conclusory, unsupported, and speculative. (*See e.g., Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485 [1st Dept 2017] [plaintiff’s vague, conclusory and unsubstantiated allegations do not establish long arm jurisdiction]).

Plaintiffs waive their claim as to Mabengou absent any allegation that there is specific jurisdiction here as to her claims. (NYSCEF 34).

III. FORUM NON CONVENIENS

Even if a plaintiff establishes general or specific jurisdiction, a claim may be dismissed if, in the interest of substantial justice, the claim should be heard in another forum. (CPLR 327[a]). The defendant bears the burden of showing that New York is not an appropriate forum. (*Islamic Repub. of Iran v Pahlavi*, 62 NY2d 474 [1984]). The factors to be considered include where the claim arose, the parties’ residence, the location of evidence and potential hardship to proposed witnesses, the potential hardship to the defendant, the availability of an alternative forum, and the burden on New York courts. (*Id.* at 479).

Here, the claim arose in Africa, where the accident occurred, none of the parties reside in New York, and the evidence of defendant's alleged torts, including its response to the accident and plaintiffs' medical treatment, is in Africa. (*See Emslie v Recreative Indus., Inc.*, 105 AD3d 1335 [4th Dept 2013] [action based on vehicle accident and claim that vehicle defectively manufactured in New York better pursued in England, where plaintiffs resided and accident occurred, and witnesses located there; "highly material evidence, such as the eyewitness testimony, accident investigation documents and witnesses, the scene of the accident, and the vehicle itself, which will not be readily within plaintiffs' control in this court, would be more accessible to both sides in a British forum"]; *Turay v Bream Bros. Trucking, Inc.*, 61 AD3d 964 [2d Dept 2009] [case dismissed as automobile collision occurred in North Carolina where police and medical personnel involved and would likely be necessary and important witnesses]).

While plaintiffs contend that the claims here are not based on the accident itself but on defendant's response to it, the accident is directly related to the response and plaintiffs were treated exclusively in Africa, and the negligence claims are specifically premised on defendant's alleged failures to ensure their safety and to procure adequate medical treatment in Africa.

That defendant may have issued corporate policies or made corporate decisions concerning plaintiffs' care in New York is insufficient. (*Bewers v Am. Home Prods. Corp.*, 64 NY2d 630 [1984] [court properly dismissed case as, except for alleged decision made in New York to market drugs in United Kingdom without adequate warning, circumstances of lawsuit occurred in United Kingdom, majority of witnesses and documents were in England related to claims and plaintiffs' medical treatment, and continued prosecution in New York would unduly burden courts and not serve parties' convenience]).

Plaintiffs' fear that they will not receive a fair trial in Gabon or Ghana is unsupported. In any event, defendant establishes that plaintiffs also have an adequate forum in South Africa, and plaintiffs' allegations concerning the corruption of the Gabon judiciary are insufficient. (*See Irwin v World Wildlife Fund, Inc.*, 448 F Supp 2d 29 [Dist Ct, DC 2006] [Gabon adequate forum for resolution of vehicle accident case; generalized allegations of corrupt judicial system insufficient]). In any event, plaintiffs do not dispute that South Africa is an adequate forum. (*See Omollo v Citibank N.A.*, 2008 WL 1966721 [SD NY 2008], *affd* 361 Fed Appx 288 [2d Cir 2010]). Moreover, the absence of an alternative forum does not preclude dismissal of this action. (*Islamic Repub. of Iran v Pahlavi*, 62 NY2d 474, 481 [1984] [dismissals for forum *non conveniens* "not the only instance in which New York courts decline to entertain jurisdiction even though no alternative forum may exist"]).

Given the lack of defendant's contacts with New York, litigating the action here would be a hardship and similarly, the absence of a New York nexus would unduly burden the courts here. (*See Oh v Gelco Corp.*, 257 AD2d 385 [1st Dept 1999] [New Jersey appropriate forum for litigating New Jersey automobile accident, especially in light of marginal connection to New York]; *see also Islamic Repub. of Iran*, 62 NY2d at 479 [New York courts "not required to add to their financial and administrative burdens by entertaining litigation which does not have any connection" with New York]).

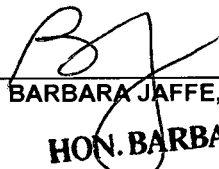
IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant's motion to dismiss is granted, and the complaint is dismissed in its entirety with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED, that the Clerk is directed to enter judgment accordingly.

9/4/2018


BARBARA JAFFE, J.S.C.

HON. BARBARA JAFFE

DATE

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CASE DISPOSED

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DENIED

APPLICATION:

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SETTLE ORDER

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DO NOT POST

CHECK IF APPROPRIATE:

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

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SUBMIT ORDER

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FIDUCIARY APPOINTMENT

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REFERENCE