

Robison v Tom Cawley's Aviation Serv., Ltd.

2018 NY Slip Op 34076(U)

February 15, 2018

Supreme Court, Dutchess County

Docket Number: Index No. 50845/2017

Judge: Maria G. Rosa

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa

Justice

VESTER HARRISON ROBISON, III and
LASER MAPPING SPECIALISTS, INC.,

CORRECTED
DECISION AND ORDER

Plaintiffs,

Index # 50845/2017

-against-

TOM CAWLEY'S AVIATION SERVICE, LTD. d/b/a
CAWLEY'S AVIATION SERVICE; THOMAS P.
CRAWLEY; N.40.INC; MICHAEL L. TRAVIS; TRIAD
ENGINES, PARTS & SERVICES, INC.; GIBSON & SONS,
INC. d/b/a GIBSON AVIATION; and GIBSON AVIATION,
LLC d/b/a GIBSON AVIATION.

Defendants.

The following papers were read on defendants' motion to dismiss and defendants' cross-motion:

NOTICE OF MOTION
AFFIRMATION IN SUPPORT
EXHIBITS A - G
MEMORANDUM OF LAW IN SUPPORT

NOTICE OF CROSS-MOTION
AFFIRMATION IN SUPPORT
EXHIBITS 1 - 3
MEMORANDUM OF LAW IN SUPPORT

MEMORANDUM OF LAW IN OPPOSITION
AFFIRMATION IN OPPOSITION
AFFIDAVIT IN OPPOSITION

REPLY MEMORANDUM OF LAW
REPLY AFFIRMATION
REPLY MEMORANDUM TO CROSS-MOTION

On April 11, 2014 an airplane plaintiff Vester Harrison Robison, III was flying had engine troubles and crashed in the vicinity of Louisa, Virginia. He commenced this action against the defendants asserting causes of action for negligence and breach of contract. Defendants Gibson & Sons, Inc. and Gibson Aviation, LLC (“Gibson defendants”) move to dismiss pursuant to CPLR §3211(a)(8) alleging a lack of personal jurisdiction. Defendants N.40, Inc., Thomas P. Cawley and Michael L. Travis cross-move for an order striking a National Transportation Safety Board report from the record claiming it is inadmissible as a matter of federal law.

“[A] court may exercise personal jurisdiction over any 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.” CPLR §302(a)(1). A CPLR §302(a)(1) jurisdictional inquiry is twofold. First, the defendant must have conducted sufficient activities to have transacted business in the state. Second, plaintiff’s claims must arise from the transactions. Rushaid v. Pictet & Cie, 28 NY3d 316 (2016). Jurisdiction may be proper even though a defendant never entered New York provided that the defendant’s activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted. *Id.* “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 NY3d 375 (2007). On a motion to dismiss pursuant to CPLR §3211(a)(8) the plaintiff bears the ultimate burden of proof to establish a basis for jurisdiction. Nick v. Schneider, 150 AD3d 1250 (2nd Dep’t 2017). However, a plaintiff need only make out a *prima facie* showing that the defendant was subject to the personal jurisdiction of the court, and the facts alleged in the complaint are deemed true and construed in the light most favorable to the plaintiff. *Id.*

Plaintiffs’ complaint asserts that he is a resident of the State of Mississippi and that the Gibson defendants are corporate entities incorporated and have their principal places of business in the State of Oklahoma. Plaintiff crashed his airplane in the State of Virginia. In support of the motion to dismiss, the Gibson defendants have submitted unrefuted evidence that on or around December 13, 2013 plaintiff ordered aircraft parts via telephone and directed the Gibson defendants to ship the parts to Cawley’s Aviation Service in LaGrangeville, New York. The vice-president of both Gibson defendant entities asserts that neither corporation has any physical presence in the State of New York. He states they do not maintain any bank accounts, offices, mailing addresses or telephone numbers in state. He further asserts that neither entity has ever entered into a contract within the state and are not licensed or registered to do business in the State of New York. He acknowledges that the entities have made sales to customers in the State of New York, but asserts that between the years 2010 and 2017 such sales amounted to only .00933 percent of the entities’ gross revenue and constitute less than one percent of their nationwide sales. Plaintiffs offer no substantive evidence in opposition to defendants’ motion.

The foregoing facts do not establish minimum contacts with New York and maintenance of this action against the Gibson defendants here would offend traditional notions of fair play and substantial justice. Having reviewed the record as a whole and the parties’ contentions, there is nothing demonstrating that these defendants engaged in conduct for which they could reasonably anticipate being haled into court in the State of New York. Movants made a telephonic sale of aircraft parts while in the State of Oklahoma to a customer ordering such parts from the State of

Mississippi. The mere fact that the customer requested that the Gibson defendants ship the parts to an entity in the State of New York is not a sufficient basis upon which to confer personal jurisdiction. Even construing the facts before it in a light most favorable to the plaintiffs, the court does not find that plaintiffs have made a *prima facie* showing that the Gibson defendants purposely availed themselves of the privilege of conducting activities in New York thereby invoking the benefits and protections of its laws. The fact that the Gibson defendants maintain an internet presence is not enough, particularly as their website does not provide for direct purchase. Instead, a prospective purchaser must initiate contact as plaintiff did in this case while he was physically located in the State of Mississippi. This court does not find that the mere shipping of the products to the State of New York sufficient to confer personal jurisdiction as it was done solely pursuant to plaintiff's direction. Based on the foregoing, it is

ORDERED that the motion of Gibson & Sons, Inc. d/b/a Gibson Aviation and Gibson Aviation, LLC, d/b/a Gibson Aviation to dismiss this action for lack of personal jurisdiction is granted **and hereafter the caption will reflect that**. It is further

ORDERED that the cross-motion to bar the court from considering any reference to the National Transportation Safety Board accident report is granted on consent. In a reply memorandum, the Gibson defendants stipulated to the striking of such report as part of the court's consideration of their motion to dismiss. The court declines at this time to make any ruling as to the admissibility of such report or any parts thereof at a trial of this action as the issue is not ripe for adjudication.

The foregoing constitutes the decision and order of the Court.

Dated: February 15, 2018
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

Napoli Shkolnik, PLLC
360 Lexington Avenue
New York, NY 10017

Law Office of Wayne Ferrell, PLLC
405 Tombigbee Street
PO Box 24448
Jackson, MS 39225

Fitzpatrick & Hunt , Pagano, Aubert, LLP
50 Main Street
White Plains, NY 10606

Brown Gavalas & Fromm LLP
555 Fifth Avenue, 3rd Floor
New York, New York 10017

Scanned to the E-File System only.

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.