

Dexter v Dakota Partners, Inc.
2018 NY Slip Op 34224(U)
June 25, 2018
Supreme Court, Dutchess County
Docket Number: Index No. 2017-51459
Judge: Peter M. Forman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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THEODORE DEXTER,

Plaintiff,

DECISION AND
ORDER

-against-

Index No. 2017-51459

DAKOTA PARTNERS, INC., PARROT ENTERPRISES,
INC., and LAUREL HILL RESIDENCES, LLC,

Defendants.

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FORMAN, J., Acting Supreme Court Justice

The Court read and considered the following documents upon
this application:

PAPERS NUMBERED

NOTICE OF MOTION (DAKOTA).....	1
AFFIRMATION IN SUPPORT.....	2
AFFIDAVIT IN SUPPORT.....	3
EXHIBITS.....	4-8
NOTICE OF CROSS-MOTION (LAUREL).....	9
AFFIRMATION IN SUPPORT.....	10
AFFIDAVIT IN SUPPORT.....	11
EXHIBITS.....	12-14
AFFIRMATION IN OPPOSITION (PLAINTIFF)..	15
EXHIBITS.....	16-26
AFFIRMATION IN OPPOSITION (PARROTT)....	27
EXHIBITS.....	28-29
REPLY AFFIRMATION (LAUREL).....	30
REPLY AFFIRMATION (DAKOTA).....	31
REPLY AFFIRMATION (DAKOTA).....	32

This personal injury action arises out of a June 29, 2015 accident that occurred during the construction of an affordable housing apartment complex (the "Project") located at 40 Laurel Hill Road in Brookfield, Connecticut (the "Premises"). Plaintiff alleges that he was injured when he fell from an elevated height while attaching hydraulic tubes to a jackhammer. The Complaint asserts causes of action under Labor Law §§200, 240(1), and 241(6).

Defendant Laurel Hill Residences, LLC, ("Laurel") has moved to dismiss the Complaint pursuant to CPLR 3211(a)(8), on the grounds that the Court lacks personal jurisdiction over Laurel. For the reasons stated herein, that motion is granted as to Laurel, without prejudice to any action that Plaintiff may seek to file in Connecticut.

Defendant Dakota Partners, Inc., ("Dakota") has also moved to dismiss the Complaint pursuant to CPLR 3211(a)(8), on the grounds that the Court lacks personal jurisdiction over Dakota. That motion is denied, without prejudice to renewal upon completion of the jurisdictional discovery authorized herein pursuant to CPLR 3211(e).

BACKGROUND

Laurel is the owner of the Premises. Laurel is a Connecticut limited liability company with a business address of 1264 Main Street, Waltham, Massachusetts.

Laurel is a single-asset entity that was created for the sole purpose of taking title to the Premises in Connecticut. Laurel does not own any property in New York. Laurel does not have an office, mailing address, or phone number in New York. Laurel does not have any employees in New York. Laurel is not registered as a foreign corporation authorized to conduct business in New York.

Dakota is a real estate developer and builder. Dakota acted as the general contractor for the Project.

Dakota is a Massachusetts corporation. Dakota and Laurel share the same Waltham, Massachusetts business address, and have at least one principal in common.

Dakota does not own any property in New York. Dakota does not have an office, mailing address, or phone number in New York. Dakota does not have any employees in New York. Dakota is not registered as a foreign corporation authorized to conduct business in New York.

Dakota concedes that, in 2016, it sought to acquire a 12-story building known as the "Chimes Building," located in Syracuse, New York. However, Dakota states that it was not able to obtain the necessary financing, and that it never completed the acquisition.

Dakota asserts that, other than its unsuccessful attempt to acquire the Chimes Building, it has never conducted any business in New York. However, Plaintiff has produced a copy of Dakota's

website, which states that Dakota "is a Massachusetts-based real estate developer and builder involved in the acquisition and development of multi-family rental communities and for-sale projects in both urban and suburban areas throughout New England and New York." Plaintiff has also produced a copy of Dakota's LinkedIn page containing identical language.

Dakota and Defendant Parrott Enterprises, Inc. ("Parrott") entered into a construction subcontract for the Project. Parrott is a New York corporation with a business address of 26 Front Street, Newburgh, New York.

Parrot contracted with non-party Pine Bush Equipment Co., Inc. ("Pine Bush") to provide certain equipment that was required for the Project subcontract, including an excavator and a jackhammer. Pine Bush is a New York corporation with a business address of 24 Sybil Court, Holmes, New York.

Plaintiff is an employee of Pine Bush. On the date of the accident, Plaintiff initially reported to Pine Bush's place of business in New York. Plaintiff then traveled to the Premises, where his duties included attaching hydraulic tubes to a jackhammer that Pine Bush had provided to Parrott. Plaintiff alleges that he fell from an elevated height while attaching those tubes, and that he suffered a severe and debilitating injury as a result.

Dakota argues that the Complaint must be dismissed as against it based upon a lack of personal jurisdiction because the

accident occurred in Connecticut, and because Dakota is a foreign corporation that does not conduct business in New York. In opposition, Plaintiff argues that Dakota has sufficient contacts with New York to be subject to general jurisdiction [CPLR 301] and long-arm jurisdiction [CPLR 302].

Specifically, Plaintiff argues that Dakota advertises on its website, and on its LinkedIn page, that it conducts business in New England and New York, and that these online representations are corroborated by Dakota's unsuccessful attempt to purchase a building in Syracuse in 2016. Plaintiff also argues that Dakota hired two New York companies to work as subcontractors on the Project [Parrott and non-party Advanced Excavating and Landscaping, Inc.], and that Parrott hired the New York equipment company that employs Plaintiff [Pine Bush] to provide equipment for the Project. Plaintiff also argues that he went to Pine Bush's New York location before reporting to the Premises on the date of the accident, and that the Premises is only 14 miles from the Connecticut border. Finally, Plaintiff argues that Dakota has purchased property in Connecticut from one New York company, and that it has partnered with a different New York company in the development of another project in Connecticut.

Parrott also opposes the motion on grounds similar to those of Plaintiff. Parrot also argues that the supporting affidavits are vague and conclusory, and that these deficiencies prevent the Court from making a jurisdictional determination.

Laurel argues that the Complaint must be dismissed as against it based upon a lack of personal jurisdiction because the accident occurred in Connecticut, and because Laurel is a single-asset foreign limited liability company that has never conducted business in New York.

Plaintiff opposes this motion on the grounds that Laurel and Dakota share the same business address in Waltham, Massachusetts, and that these two companies also share at least one principal in common. Therefore, Plaintiff argues that Laurel should be subject to personal jurisdiction in New York. Parrott also opposes the Laurel motion for the same reasons that it opposed the Dakota motion.

Finally, Plaintiff and Parrot both argue that they should be provided an opportunity to obtain jurisdictional discovery from Dakota and Laurel if the Court does not summarily deny the motion and cross-motion [CPLR 3211(e)].

DISCUSSION

Long-arm jurisdiction can be asserted when a foreign corporation has committed a tortious act outside of New York that caused injury to a person within New York [CPLR 302(a)(3)]. However, "the situs of the injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff." [Bloomgarden v. Lanza, 143 AD3d 850, 852 (2d Dept. 2016), *quoting*

Hermann v. Sharon Hosp., 135 AD2d 682, 683 (1987)]. Therefore, long-arm jurisdiction is not available here because Plaintiff was injured in Connecticut, not in New York. [Paterno v. Laser Spine Institute, 24 NY3d 370, 381 (2014); Stern v. Four Points by Sheraton Ann Arbor Hotel, 133 AD3d 514, 514-15 (2d Dept. 2015)].

Long-arm jurisdiction may also be asserted over a foreign corporation when it transacts any business within New York [CPLR 302(a)(1)]. However, the business that was transacted in New York must be purposeful, and there must be a substantial relationship between the New York business transaction and the claim asserted. [Fischbarg v. Doucet, 9 NY3d 375, 380 (2007)].

Hiring two New York companies as subcontractors for the Project was not the type of purposeful activity by which Dakota (or Laurel) will be deemed to have availed itself of the benefits and protections of New York law. [Unitrade Corp., v. International Data Systems, Inc., 114 AD3d 934, 935 (2d Dept. 2014); Muse Collections, Inc., v. Carissima Bijoux, Inc., 86 AD3d 631 (2d Dept. 2011)]. All of the other transactions identified by Plaintiff and Parrott (operating a passive website, conducting business with New York companies in unrelated projects in New England, and unsuccessfully attempting to buy an office building in Syracuse) are too remote, and do not bear a substantial relationship to Plaintiff's claim. Therefore, these additional transactions cannot serve as a basis for long-arm jurisdiction in

this case. [Stern v. Four Points by Sheraton Ann Arbor Hotel, 133 AD3d 514(2d Dept. 2015); Majia-Hafner v. Killington, Ltd., 119 AD3d 912, 914 (2d Dept. 2014)].

"A foreign corporation is [also] amenable to suit 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." [Landoil Resources Corp. v. Alexander & Alexander Services, Inc., 77 NY2d 28, 33 (1990). See also Okeke v. Momah, 132 AD3d 648, 649 (2d Dept. 2015) ("Jurisdiction under CPLR 301 may be acquired over a foreign corporation only if that corporation does business here, not occasionally or casually, but with a fair measure of permanence and continuity")].

Laurel is a single-asset entity that was created solely for the purposes of owning the Premises in Connecticut. There is no evidence that Laurel has ever conducted business in New York. The fact that it shares an office - and at least one principal - with Dakota does not alter the analysis. Therefore, there is no basis to assert general jurisdiction over Laurel pursuant to CPLR 301. [Goodyear Dunlop Tires Operations, S.A., v. Brown, 564 US 915, 920 (2011); FIMBank, PLC, v. Wood Finance Holdings Co., Ltd., 104 AD3d 602 (1st Dept. 2013)].

Dakota claims that it does not conduct business in New York, other than one unsuccessful attempt to purchase a building in Syracuse. But Plaintiff has produced evidence demonstrating that

Dakota's website and LinkedIn page directly contradict this assertion, and expressly represent that Dakota develops projects "in both urban and suburban areas throughout New England and New York." (emphasis supplied). Under these circumstances, Plaintiff has "established that facts 'may exist' to exercise personal jurisdiction over [Dakota] and has made a 'sufficient start' to warrant further discovery on that issue." [Marist College v. Brady, 84 AD3d 1322, 1323 (2d Dept. 2011), quoting Peterson v. Spartan Industries, 33 NY2d 463, 467 (1974)]. Accordingly, Dakota's motion to dismiss for lack of personal jurisdiction is denied, without prejudice to renewal upon the completion of limited jurisdictional discovery as authorized by CPLR 3211(e). [Goel v. Ramachandran, 111 AD3d 783, 789 (2d Dept 2013); Lettieri v. Cushing, 80 AD3d 574, 575 (2d Dept. 2011)]. Based on the foregoing, it is hereby

ORDERED, that the motion to dismiss the Complaint as against Defendant LAUREL HILL RESIDENCES, LLC, is granted, without prejudice to any action that Plaintiff may seek to file in Connecticut; and it is further

ORDERED, that the motion to dismiss the Complaint as against Defendant DAKOTA PARTNERS, INC., is denied, without prejudice to renewal upon the completion of limited jurisdictional discovery as authorized by CPLR 3211(e); and it is further

ORDERED, that counsel for all remaining parties shall appear before this Court for a scheduling conference on July 25, 2018 at 9:30 AM.

The foregoing constitutes the Decision and Order of this court.

Dated: June 25, 2018
Poughkeepsie, New York



Hon. Peter M. Forman
Acting Supreme Court Justice

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