

Tufamerica, Inc. v Allegro Media Group

2019 NY Slip Op 30541(U)

March 4, 2019

Supreme Court, New York County

Docket Number: 652514/2017

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT R. REED PART 43

Justice

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TUFAMERICA, INC.,

Plaintiff,

- v -

ALLEGRO MEDIA GROUP, ALLEGRO MEDIA CORP., EDWARD
HOSTMANN, INC., EDWARD HOSTMANN, VINCE MICALLEF,
RICO MICALLEF, JOE MICALLEF, B. RILEY & CO., B. RILEY
FINANCIAL, GREAT AMERICAN GROUP, GREAT AMERICAN
GLOBAL PARTNERS, INC., B. RILEY ASSET MANAGEMENT, B.
RILEY WEALTH MANAGEMENT, CA GLOBAL PARTNERS, INC.,
VAM HOLDINGS, LLC

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19,
20, 21, 22, 23, 24, 26, 27

were read on this motion for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 39, 40, 41, 57,
58

were read on this motion to EXTEND - TIME.

Upon the foregoing documents, it is ordered that motion sequence #002 is granted and
motion sequence #003 is denied.

Plaintiff's amended complaint alleges that plaintiff is a record label, producing and
owning master sound recordings which it issues or reissues for sales to consumers. In 2004,
plaintiff and Allegro entered into a distribution agreement. Allegro obtained exclusive
distribution rights for select titles in plaintiff's music catalog. Plaintiff retained an option to buy-
back any unsold merchandise at the original purchase price (see NYSCEF Doc. No. 11). Plaintiff
has asserted claims against defendants Allegro Media Group, Allegro Media Corp., Edward
Hostmann, Inc., Edward Hostmann, Joe Micallef, Vince Micallef, Rico Micallef, B. Riley & Co.,
B. Riley Financial, Great American Group, Great American Global Partners Inc., B. Riley Asset

DECISION AND ORDER

Management, B. Riley Wealth Management, CA Global Partners, Inc. and VAM Holdings, LLC. for conversion and fraudulent transfer. Defendants Vincent Micallef, Joseph Micallef, Rico Micallef, and VAM Holdings, LLC (The Micallef defendants), move to dismiss the amended complaint (1) pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction and (2) pursuant to CPLR 3211(a)(7) for failure to state a cause of action. Motion sequences #002 and #003 are consolidated for disposition.

Procedural Background

This action was commenced by the filing of a summons and complaint on May 9, 2017 (*see* NYSCEF Doc. No. 1). Defendants Vincent Micallef, Joseph Micallef and Rico Micallef filed a motion to dismiss the complaint as against those defendants, pursuant to CPLR 3211(a)(8) on August 11, 2017 (*see* NYSCEF Doc. 3). Plaintiff filed an amended complaint as of right on August 28, 2017. The amended complaint added defendant VAM Holdings, LLC (*see* NYSCEF Doc. No. 11). The Micallef defendants filed a motion to dismiss the amended complaint as against the Micallef defendants pursuant to CPLR 3211(a)(8) on September 29, 2017 (*see* NYSCEF Doc. No. 15). Plaintiff filed opposition to the Micallef defendants' motion on May 7, 2018 (*see* NYSCEF Doc. No. 28). Plaintiff makes a motion, pursuant to CPLR 2004, seeking an extension of time to respond to the Micallef defendants' motion to dismiss the amended complaint (*see* NYSCEF Doc. No. 38).

In support of its motion, plaintiff's counsel simply alludes to his ethical obligation pursuant to Rule 1.3 of the New York's Rules of Professional Conduct. Plaintiff has failed to make a showing pursuant to CPLR 2004 that warrants an extension of time. Accordingly, plaintiff's motion for an extension of time is denied.

Discussion

To defeat a motion to dismiss pursuant to CPLR § 3211(a)(8) on the ground of lack of personal jurisdiction, “a plaintiff ‘need only make a prima facie showing’ that such jurisdiction exists (*Lang v Wycoff Hgts. Med. Ctr.*, 55 AD3d 793, 794 [2d Dept 2008] citing *Comely v Dynamic HVAC Supply, LLC*, 44 AD3d 986, 986 [2d Dept 2007]). CPLR 302 provides the basis for exercising personal jurisdiction over non-domiciliary defendants. Plaintiffs bear the burden of pleading the factual basis for this court's exercise of personal jurisdiction over the individual defendants (*see Teplin v Manafort*, 81 AD2d 531 [1st Dept 1981]).

The Micallef defendants are non-domiciliaries. The complaint alleges that the Micallef defendants have business addresses in Oregon, and that they are residents of Oregon. Defendants Vincent Micallef, Joseph Micallef and Rico Micallef claim that they acted in their corporate capacities at all times mentioned in the complaint, and that they were neither doing nor transacting business in New York in their individual capacities at any time (see CPLR 302[a]). There are no allegations in the complaints that would give this court jurisdiction over the Micallef defendants. Plaintiff fails to allege sufficient facts on which to base the exercise of personal jurisdiction. Consequently, plaintiff fails to satisfy its prima facie burden. As a result, the Micallef defendants' motion to dismiss the amended complaint against these defendants is granted.

Conclusion

Accordingly, it is

ORDERED that the motion of the Micallef defendants to dismiss the amended complaint is granted and the complaint is dismissed in its entirety as against said defendants, with cost and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to

enter judgment in favor of defendants Vincent Micallef, Joseph Micallef, Rico Micallef, and VAM Holdings, LLC; and it is further

ORDERED that plaintiff's motion, pursuant to CPLR 2004, is denied; and it is further

ORDERED that the action is severed and continued against the remaining defendants;


and it is further

ORDERED that the caption be amended to reflect the dismissal of defendants Vincent Micallef, Joseph Micallef, Rico Micallef, and VAM Holdings, LLC and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/suptctmanh).

3/04/2019
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE