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| <b>Radison v WeWork Cos. Inc.</b>  |
| 2019 NY Slip Op 31322(U)   |
| March 11, 2019   |
| Supreme Court, Queens County   |
| Docket Number: 709167/18   |
| Judge: Allan B. Weiss  |
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART 2  
Justice

ALEXANDER RADISON

Plaintiff,

-against-

WEWORK COMPANIES INC., UNIVERSAL BLDG.  
NORTH, INC., JBG SMITH PROPERTIES OF  
WASHINGTON D.C., INC. and JOHN DOES 1-10

Defendants.

Index No.: 709167/18

Motion Date: 11/28/18

Motion Seq. No.: 1, 2

Motions Seq.#1 and 2 are combined for disposition.

The following numbered papers read on the pre-answer motion Seq.#1 by defendants UNIVERSAL BLDG., NORTH, INC., (Universal ) and JBG SMITH PROPERTIES OF WASHINGTON D.C., INC.(JBG) for an Order dismissing the complaint and all cross-claims insofar as they are asserted against the movants pursuant to 3211(a)(1), (8)&(7) defense founded upon documentary evidence, failure to state a cause of action and lack of jurisdiction respectively and pursuant to CPLR 327(a) *forum non conveniens* in the interest of justice; and separate motion Seq.#2 by defendant WEWORK COMPANIES INC.(WeWork) for an Order dismissing the complaint pursuant to CPLR 327 *forum non conveniens*

PAPERS  
E-FILE NUMBERED

|  |         |
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| Seq.#1 Notice of Motion-Affidavits-Exhibits..... | 14 - 24 |
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| Replying Affidavits.....                         |         |

Upon the foregoing papers it is ordered that these motions are determined as follows.

In this action against the defendants alleging negligence and violation of New York Labor Law §§ 200, 240(1) and 241(6), plaintiff seeks to recover for injuries he allegedly sustained on June 15, 2015 when he fell while working at a construction project at 1875 Connecticut Avenue NW, Washington, DC (the subject property).

The defendants, Universal and JBG now move to dismiss the complaint pursuant to 3211(a)(1), (8)&(7) defense founded upon documentary evidence, failure to state a cause of action and lack of jurisdiction respectively and pursuant to CPLR 327(a) *forum non conveniens* in the interest of justice. Defendant WeWork separately moves to dismiss the complaint also pursuant to CPLR 327(a) *forum non conveniens* in the interest of justice.

#### Personal Jurisdiction

A New York court may exercise personal jurisdiction over a non-domiciliary that, either 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]). CPLR 302(a)(1) "is a 'single act statute' and proof of one transaction in New York is sufficient to invoke jurisdiction over a non-domiciliary may exist even where that non-domiciliary never sets foot in New York State (see Paterno v Laser Spine Institute, 24 NY3d 370, 376 (2014); Fischbarg v Doucet, 9 NY3d 375, 38 [2007]; Kreutter v McFadden Oil Corp., 71 NY2d 460, 467 (1988); Paradigm Mktg. Consortium, Inc. v Yale New Haven Hosp., Inc., 124 AD3d 736, 737 [2015]) as long as the defendant's activities in New York were purposeful and there exists a substantial relationship or articulable nexus between the transaction and the claim asserted (see Al Rushaid v Pictet & Cie, 28 NY3d 316, 323 [2016]; Licci v Lebanese Can. Bank, SAL, 20 NY3d 327, 339 [2012]; Fischbarg v Doucet, supra). Purposeful activities have been defined as "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" (see Al Rushaid v Pictet & Cie, supra, quoting Fischbarg v Doucet, supra at 380).

The plaintiff's complaint alleges, inter alia, that the defendants sought a New York construction company and contracted with WeWork, and/or other defendants unknown to plaintiff, to hire a New York Construction Company to provide workers for the Washington DC project; as a result the plaintiff's employer, UA Builders Group, was hired to perform construction and renovation work at the subject premises in Washington, DC.

In support of their motion, Universal and JBG submitted two affidavits. The first is the affidavit of James Iervolivo, Vice President, Risk Management of Vornado Realty Trust the General Partner of Vornado Realty, L.P. and was prior to July 18 2017, the sole member of CESC H Street LLC, which was the majority stockholder of H Street Building Corporation, which was the majority shareholder of Universal Bldg, Inc., which was the sole

shareholder of defendant Universal. Mr. Iervolivo asserts that as the Risk Manager he is familiar with the business operations, structure and records of Universal and has authority to speak on behalf of defendant Universal, that prior to July 18, 2017 Universal did not conduct any business in New York, did not register with the NYS Division of Corporations nor have a registered agent to accept service of process and that its principal place of business was in Washington, DC.

The second affidavit is that of Livya Antonacci, Senior Counsel and Senior Vice President of defendant JBG. She claims that as of July 18, 2017 JBG became the sole member of CESC H Street LLC which is the majority stockholder of H Street Corporation, which is the majority shareholder of Universal Building, Inc. which is the sole shareholder of defendant Universal and that her job duties require her to know and understand the business operations, structure and records of the defendants, Universal and JBG is now authorized to speak on their behalf. Ms. Antonacci's affidavit using language identical to that of Mr. Iervolivo, asserts that as of July 18, 2017 to the present neither Universal nor JBG conducted any business in New York, are not authorized to conduct business in New York, do not have a registered agent to accept service of process on their behalf, that Universal's and JBG's principal place of business was and is in Chevy Chase, Maryland that Universal is the owner of the subject property and JBG did not lease manage operate or control the subject property nor enter into any contract to perform work at the subject property.

It is undisputed that the plaintiff, a construction worker was injured in the course of his employment and while working at the subject premises which is admittedly owned by Universal. What is missing from the defendants' proof is any evidence to refute the allegations in the complaint that defendants, either in person or through other agents and/or intermediaries s/h/a John Does sought and hired a New York company, i.e. plaintiff's employer, to perform construction work on property owned by defendant, Universal. How the plaintiff's employer came to work at the subject property and the relationship of each defendant to the property and the construction project is solely in the knowledge and possession of the defendants.

Under the circumstances, any determination as to whether jurisdiction may be asserted against one or more of the defendants pursuant to CPLR 302(1) must be denied at this time.

Forum Non Conveniens

The common-law doctrine of *forum non conveniens*, codified in CPLR 327, permits a court to dismiss an action when, "in the interest of substantial justice the action should be heard in another forum" (CPLR 327 [a]). The doctrine is based upon "justice, fairness and convenience" (Islamic Republic of Iran v Pahlavi, 62 NY2d 474, 479, [1984], cert denied 469 US 1108 [1985]; see Martin v Mieth, 35 NY2d 414, 417 [1974]; Price v Brown Group, 206 AD2d 195, 200-201[1994]; Corines v Dobson, 135 AD2d 390, 391, [1987]), and the burden is on the party challenging the forum to demonstrate that the action would be best adjudicated elsewhere. It is a flexible doctrine to be applied by the court in its sound discretion based upon the facts and circumstances of each case (see National Bank & Trust Co. v Banco De Vizcaya, 72 NY2d 1005, 1007[1988], cert denied 489 US 1067 [1989]; Islamic Republic of Iran v Pahlavi, *supra* at 479; Silver v Great Am. Ins. Co., 29 NY2d 356, 361 [1972]). The doctrine should be applied "when it plainly appears that New York is an inconvenient forum and that another is available which will best serve the ends of justice and the convenience of the parties" (Silver v Great Am. Ins. Co., *supra* at 361; see National Bank & Trust Co. v Banco De Vizcaya, *supra* at 1007). A court should not retain jurisdiction where the action lacks a substantial nexus to New York (see Martin v Mieth, *supra* at 418). Among the factors to be considered are the residence of the parties, the location of the various witnesses, where the transaction or event giving rise to the cause of action occurred, the potential hardship to the defendant in litigating the case in New York, and the availability of an alternative forum (see *e.g.*, *id.* at 479).

The defendants', Universal and JBG and separate motion of WeWork to dismiss on forum non conveniens grounds is granted. The defendants have demonstrated that the only connection of this case to New York is the fact that plaintiff is a New York resident. Although plaintiff would undoubtedly face some hardship in having to prosecute this action in Washington DC all other factors favor dismissal on the grounds of forum non conveniens. The cause of action arose in Washington DC, the alleged tortious conduct occurred in Washington DC and an available alternative forum is available as evidenced by the fact that plaintiff has already commenced another action in Washington DC as against the same defendants to recover for the injuries he allegedly sustained in the subject accident. In addition, the law applicable to this case is most likely that of Washington DC. In this regard it is pointed out that whether or not the action is retained in New York, "the protection afforded to New York

employees by the Labor Law, including Labor Law §§ 200, 240(1) and 241(6), has no application to an accident that occurs outside New York State, even where all parties are New York domiciliaries" (Webber v Mutual Life Ins. Co. of N.Y., 287 AD2d 369, 370 [2001]; see also Padula v Lilarn Props. Corp., 84 NY2d 519, 523 [1994] Titone, J., concurring; Florio v Fisher Dev., 309 AD2d 694, 696[2003]).

Accordingly, the defendants' motions Seq.#1 and Seq.#2 to dismiss this action on forum non conveniens grounds is granted. The action is dismissed without prejudice.

The remainder of the defendants' Universal and JBG's motion is denied as moot.

It is noted that the plaintiff's opposition which was served untimely (see CPLR 2214[b]) was not considered. However, even consideration of the plaintiff's opposition would not change the result.

Dated: March 11, 2019  
D#59

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J.S.C.

FILED  
MAR 14 2019  
COUNTY CLERK  
QUEENS COUNTY