

Rousso Apparel Group, LLC v Seaco Am., LLC

2019 NY Slip Op 33634(U)

December 13, 2019

Supreme Court, New York County

Docket Number: 652405/2017

Judge: Margaret A. Chan

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
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

-----X

INDEX NO. 652405/2017

ROUSSO APPAREL GROUP, LLC, SANTA FE APPAREL, LLC

MOTION DATE 11/19/2018

Plaintiffs,

MOTION SEQ. NO. 002

- v -

SEACO AMERICA LLC,

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for DISMISS.

Upon the foregoing papers, defendant's motion to dismiss is granted; plaintiffs' cross-motion is denied.

In this action to recover storage fees associated with storing shipping containers, defendant Seaco America LLC moves pursuant to CPLR §§ 327 and 3211(a)(7), (8) to dismiss the complaint of plaintiffs Rouso Apparel Group, LLC and Santa Fe Apparel, LLC. Plaintiffs cross-move pursuant to CPLR § 3025 to amend the complaint. Both the motion and cross-motion are opposed.

BACKGROUND

Plaintiffs, both New York corporations, allege that they contracted with non-party Hanjin Shipping Co. (Hanjin) to ship six containers of goods from China to Long Beach, California (NYSCEF # 3, complaint at ¶ 9). According to the complaint, Hanjin shipped the six containers to plaintiff separately. The "Rouso Goods" were shipped to Rouso via container number: SEGU1574912 (*id.* at ¶13). The "Santa Fe Goods" were shipped via container numbers: GESU6273389, HJCU1538890, HJCU1926200, SEGU4690032, and SEGU5328183 (*id.* at ¶17). The Russo Goods were delivered on or about September 13, 2016, and the Sante Fe Goods were delivered on October 28, 2016 (*id.* at ¶¶18-19). Plaintiffs goods were subsequently delivered to Carson, California.

Pursuant to plaintiffs' contract with Hanjin, plaintiffs were required to return the containers to Hanjin after their arrival and unloading in California. Plaintiffs claim three of the six containers utilized by plaintiffs were re-delivered to Seaco Srl in California. The remaining three containers numbered GESU6273389, SEGU4690032, and SEGU5328183 remained in plaintiffs' possession incurring storage and maintenance expenses in the amount of \$28,431.00, plus interest, costs and attorneys' fees.

Plaintiffs seek to recover the storage expenses and a declaration that they are entitled to reimbursement for the storage expenses or that they be permitted to sell the containers to satisfy a lien.

DISCUSSION

Personal Jurisdiction

Defendant contends that this court lacks personal jurisdiction over it. Defendant argues, first, that the court lacks general jurisdiction since defendant is neither incorporated nor is defendant's principal place of business in New York. And second, defendant contends that the court lacks specific jurisdiction over it since defendant lacks minimal contacts with New York.

In opposition, plaintiff contends that defendant has availed itself to specific jurisdiction by contracting for services with a New York corporation. Plaintiffs do not oppose defendant's argument that the court lacks general jurisdiction over it.

In New York, courts may exercise general or specific personal jurisdiction over a defendant. In this matter, it is undisputed that defendant is not subject to CPLR 301 general jurisdiction as it is not "essentially at home" in New York (*Daimler AG v Bauman*, 571 US 117, 127 [2014]). Seaco America does not have "substantial" or "continuous and systematic" contact with the forum state of New York, and the Supreme Court has made it clear that a corporate defendant is at home only where it is incorporated or has its principal place of business (*see id.* at 139). Accordingly, this court cannot exercise general jurisdiction over defendant Seaco America in this matter.

As an alternative, New York courts may exercise specific jurisdiction over a defendant if the claim meets one of four conditions laid out by the CPLR 302 long-arm jurisdiction statute. The burden rests on the plaintiff as the party asserting jurisdiction (*O'Brien v Hackensack Univ. Med. Ctr.*, 305 AD2d 199, 200 [1st Dept 2003]). In relevant part, CPLR 302 states that:

"(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over a non-domiciliary . . . who in person or through an agent: 1. [t]ransacts any business within the state or contracts anywhere to supply goods or services in the state."

(CPLR 302[a][1]).

Determining whether long-arm jurisdiction exists under the "transacts business" provision of CPLR 302 is a two-pronged inquiry: "a court must decide (1) whether the defendant transacts any business in New York and, if so, (2) whether [the] cause of action aris[es] from such a business transaction" (*Wilson v Dantas*, 128 AD3d 176, 181 [1st Dept 2015]). "In effect, the 'arises-from' prong limits the broader 'transaction-of-business' prong

to confer jurisdiction over only those claims in some way arguably connected to the transaction” (*id.*). There must be a substantial relationship between the defendant’s transaction in New York and plaintiffs’ cause of action in order to satisfy the nexus requirement of the statute (*Johnson v Ward*, 4 NY3d 516, 519 [2005]). “If either prong of the statute is not met, jurisdiction cannot be conferred” (*id.*).

Plaintiffs point to defendant’s systematic and purposeful contact with New York through defendant’s business relationship with New York corporation and non-party MN Seatank Agencies Inc., its singular client in New York (*see* NYSCEF # 25 – Folkard Aff). However, plaintiffs’ cause of action arose out of defendant’s alleged failure to reclaim its shipping containers in California, not from any business activity conducted by defendant in New York. Defendant’s relationship to MN Seatank is irrelevant to this action, nor do plaintiffs demonstrate that defendant’s relationship to MN Seatank is related to its cause of action here. Defendant’s relationship with MN Seatank cannot be the basis for jurisdiction in this action.

In the plaintiffs’ other attempt to establish the requisite nexus for jurisdiction, they point to defendant’s general business of leasing shipping containers. Plaintiffs argue that “the business transacted in New York consists of leasing shipping containers to New York corporations and retrieving containers globally and including from the Plaintiffs, New York corporations” (NYSCEF #35, plaintiff’s opp mem at 11). Plaintiffs’ contention is conclusory and unsupported.

Even if plaintiffs’ claim is true, it is of no moment. Again, plaintiffs are unable to establish a proper nexus between defendant’s alleged contact with New York and the cause of action. Plaintiffs contracted with Hanjin, not the defendant, to ship and deliver the containers. Plaintiffs and defendant are strangers that have no contractual relationship to one another. Plaintiffs offer no link between the instant claims and of New York.

Assuming that this court could find CPLR 302 jurisdiction, due process concerns would still prevent this court from maintaining jurisdiction in this matter. The Supreme Court has held that “[i]n order for a state court to exercise specific jurisdiction, ‘the suit must aris[e] out of or relat[e] to the defendant’s contacts with the forum. In other words, there must be ‘an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum state and is therefore subject to the state’s regulation’ (*Bristol-Myers Squibb Co. v Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 [2017]). “[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction” (*Goodyear Dunlop Tires Operations, S.A. v Brown*, 564 US 915, 919 [2011]).

The facts alleged in this case do not establish an affiliation between the forum of New York and the underlying controversy – responsibility for the storage fees for containers located in California. Defendant did not deliver the containers to New York for use in New York and made no marketing efforts in New York. Defendant did not enter into agreements for the lease, sale, or use of the containers in New York. The parties are strangers to one

another and plaintiffs have failed to demonstrate or even suggest any relevant affiliation between their claims and New York. All of the relevant conduct in this matter occurred outside of New York. Thus, pursuant to Supreme Court precedent, this court lacks personal jurisdiction over the defendant in this matter.

As this court is without personal jurisdiction over defendant in this matter, the court need not address defendant's arguments to dismiss this matter for plaintiffs' failure to state a claim (CPLR § 3211(a)(7) or for dismissal on forum non conveniens grounds (CPLR § 327).

CPLR 3025

In support of plaintiffs' cross-motion to amend the complaint to add Seaco Srl as a defendant and to add a negligence cause of action, plaintiffs argue that there would be no surprise to allowing plaintiffs to amend the complaint.

Plaintiffs' cross-motion to amend the complaint is denied, as the court lacks personal jurisdiction over Seaco Srl. Defendant submits the "affirmation" of Rajesh Natali, the General Manager of Seaco Srl, wherein he affirms that Seaco Srl is a "Barbados Society of Restricted Liability formed under the laws of Barbados," with a principal place of business in Barbados (NYSCEF #42 at ¶2). Further, as noted above, plaintiffs' claims do not arise from business activities in New York State.

Accordingly, it is hereby

ORDERED that defendant Seaco America's motion to dismiss is granted, and plaintiffs Rouso Apparel Group, LLC and Santa Fe Apparel, LLC's complaint is dismissed; it is further

ORDERED that plaintiffs' cross-motion pursuant to CPLR §3025 to amend the complaint is denied; it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendant Seaco America LLC.

This constitutes the Decision and Order of the court.

12/13/2019

DATE



MARGARET A. CHAN, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: