

Zapata v Welder Training & Testing Inst.

2020 NY Slip Op 32034(U)

May 21, 2020

Supreme Court, Bronx County

Docket Number: 33305/2019E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 14

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MAYLEEN W. ZAPATA,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 33305/2019E

WELDER TRAINING AND TESTING INSTITUTE and
TIMOTHY J. MIERS,

Defendants.

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John R. Higgitt, J.

Upon defendants’ January 23, 2020 notice of motion and the affirmation, affidavit and exhibits submitted therewith; there being no opposition to the motion; and due deliberation; defendants’ motion for dismissal of the complaint is granted.

Plaintiff commenced this action in Supreme Court, Bronx County, against defendants for a motor vehicle accident that occurred in New Jersey. Plaintiff laid venue in Bronx County because plaintiff lives in the County. Defendant Welder Training and Testing Institute (“WTTI”) is a corporation incorporated in Pennsylvania; its principal offices are in that State too. Defendant WTTI is registered to do business in New York. Defendant Miers is a New Jersey resident.

Defendants seek dismissal of the complaint on the ground that the court lacks personal jurisdiction over them (*see* CPLR 3211[a][8]). In support of their motion, defendants submit the pleadings, a copy of defendant Miers’ driver’s license, the certificate of incorporation for defendant WTTI, and the affidavit of Michael Wiswesser (a principal of WTTI). Defendants assert that the court had neither general nor specific jurisdiction over defendants.

The court lacks general jurisdiction over defendants (*see generally Daimler AG v Bauman*, 571 US 117 [2014])

With respect to specific jurisdiction, under New York's "long-arm" jurisdiction, the court may exercise jurisdiction over a non-domiciliary in four circumstances: (1) where the defendant "transacts any business within the state or contracts anywhere to supply goods or services in the state" (CPLR 302[a][1]); (2) where the defendant "commits a tortious act within the state" (CPLR 302[a][2]); (3) where the defendant "commits a tortious act without the state causing injury to person or property within the state, ... if he [or she] (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce" (CPLR 302[a][3]); and (4) where the defendant "owns, uses or possesses any real property situated within the state" (CPLR 302[a][4]).

It is uncontroverted that the accident occurred outside New York State, and that defendants do not own, use or possess real property here. Accordingly, CPLR 302(a)(2) and (4) are inapplicable. Furthermore, the place where plaintiff sustained his or her injuries is where the accident occurred, not where plaintiff resided or experienced the consequences of or received care for the resulting injuries, making CPLR 302(a)(3) inapplicable (*see Paterno v. Laser Spine Inst.*, 24 NY3d 370 [2014]; *Abad v. Lorenzo*, 163 AD3d 903 [2d Dept 2018]; *Stern v. Four Points by Sheraton Ann Arbor Hotel*, 133 AD3d 514 [1st Dept 2015]; *Lancaster v. Colonial Motor Freight Line, Inc.*, 177 AD2d 152 [1st Dept 1992]).

Therefore, the only possible ground for the court to exercise jurisdiction over defendants is under CPLR 302(a)(1).

Defendants argue that because the accident itself did not arise from a New York business transaction, CPLR 302(a)(1) is inapplicable. Wiswesser averred that defendant WTTI is an

organization incorporated in Pennsylvania, and has its sole office and principal place of business in Allentown, Pennsylvania. Wiswesser further averred that although defendant WTTI is authorized to do business in New York, it does not maintain an office in New York and that for the last two fiscal years revenue from business in New York constituted less than 2.5% of the total revenue.

Defendants have demonstrated that they have not purposely availed themselves of New York as a forum for conducting business (*see Aybar v Aybar*, 169 AD3d 137 [2d Dept 2019]).

On a defendants' motion to dismiss pursuant to CPLR 3211(a)(8), plaintiff bears the burden of "[coming] forward with sufficient evidence, through affidavits and relevant documents, to prove the existence of jurisdiction" (*Fischbarg v. Doucet*, 9 NY3d 375, 385 n 5 [2007]; *Coast to Coast Energy, Inc. v. Gasarch*, 149 AD3d 485, 486 [1st Dept 2017]). Plaintiff need only make a prima facie showing of jurisdiction through sufficient documentary evidence (*see Santiago v. Highway Freight Carriers, Inc.*, 153 AD3d 750 [2d Dept 2017]). Here, plaintiff did not oppose defendants' motion, and thus he failed to raise a issue of fact as to whether defendants transacted "significant" business in New York (*see Wang v LSUC*, 137 AD3d 520 [1st Dept 2016]) or conducted "sufficient purposeful activities" in New York (*Santiago*, 153 AD3d at 752).

Furthermore, there is no basis to find that the court has personal jurisdiction over defendant Miers (*see SNS Bank, N.V. v Citibank, N.A.*, 7 AD3d 352 [1st Dept 2004]; *Baran Computer Servs., Ltd. v First Bank of Maury County*, 143 AD2d 63 [2d Dept 1988]).

Accordingly, it is

ORDERED, that defendants' motion seeking dismissal of the complaint under CPLR 3211(a)(8) is granted; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment in favor of
defendants dismissing the complaint.

This constitutes the decision and order of the court.

Dated: May 21, 2020



John R. Higgitt, J.S.C.