

**Beijing Pangu Inv. Co., Ltd. v Alibaba Group, Inc.**

2020 NY Slip Op 33865(U)

November 22, 2020

Supreme Court, New York County

Docket Number: 159567/2019

Judge: Barry Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER, PART IAS 61EF

Justice

Table with 2 columns: Case details (Plaintiff, Defendants) and Motion details (INDEX NO., MOTION DATE, MOTION SEQ. NO.).

DECISION & ORDER ON MOTION

HON. BARRY R. OSTRAGER

This action was brought by plaintiff Beijing Pangu Investment Co., Ltd. ("plaintiff"), a Chinese real-estate and development company. Before the Court is a motion by Alibaba Group Limited Holdings to dismiss the Complaint pursuant to CPLR 3211(a)(8) and 327(a) and for sanctions. On August 24, 2020 this Court entered a reasoned opinion dismissing plaintiff's claims against BBMG Group Co. Ltd, for, inter alia, lack of personal jurisdiction. The analysis in this Court's August 24, 2020 decision applies equally to Alibaba Group Limited Holdings' motion to dismiss the Complaint.

The named defendant sued here is "Alibaba Group Inc.". The Complaint alleges that Defendant Alibaba Group Inc. is an e-commerce and online auction company incorporated in the Cayman Islands, with offices throughout the world, including the United States and that Alibaba Group Inc. is a publicly traded company that is listed on the New York Stock Exchange and traded under ticker symbol "BABA". Complaint ¶ 3 -4. As a preliminary matter, "Alibaba Group Inc." is the wrong defendant.

"Alibaba Group, Inc." is apparently an entity formed in Kings County, New York on December 30, 2019 (weeks after this Action was filed) based on the New York State Department

of State website. This New York entity, Alibaba Group, Inc., has nothing to do with “Alibaba Group Holdings Limited” which was the entity involved in the events giving rise to this Complaint and matching the description set forth in the Complaint. This motion to dismiss was submitted by the intended defendant Alibaba Group Holdings Limited.

The correct defendant Alibaba Group Holdings Limited (“AGHL”) is a Cayman Islands holding corporation that has its principal place of business in Hangzhou, China. AGHL is a non-operating holding company whose Chinese subsidiary operates the online auction platform described in the Complaint. *See* Affirmation of Ho Lok Che at ¶ 1 and Affidavit of Yishu Xu at ¶¶ 5 – 8. Plaintiff does not address this argument in opposition.

The Court finds that it does not have either general or specific jurisdiction over the proper defendant AGHL. This Court does not have general personal jurisdiction over AGHL because AGHL is not incorporated in New York and does not have its principal place of business in New York. This Court does not have specific personal jurisdiction over AGHL because the actions giving rise to the Complaint did not arise out of AGHL’s contacts with New York. Plaintiff’s claims arose out of events surrounding a judicial auction that occurred in China among Chinese parties.

In opposition, plaintiff relies on the fact that AGHL has registered American Depositary Shares (“ADSs”) that are listed on the New York Stock Exchange (“NYSE”). AGHL’s listing of ADSs on the NYSE and ancillary contacts with New York related to the listing does not subject it to jurisdiction under CPLR 301. *See Stormhale, Inc. v. Baidu.com, Inc.*, 675 F. Supp. 2d 373, 375-76 (S.D.N.Y. 2009) (rejecting argument that defendant is doing business under CPLR 301 by listing ADSs on a New York-based exchange and hiring accountants and attorneys to assist with the listing); *In re Petrobras Sec. Litig.*, 393 F. Supp. 3d 376, 383 (S.D.N.Y. 2019) (holding

that maintaining office in Manhattan and listing ADRs on the NYSE are “far from sufficient to subject [a foreign defendant] to the general personal jurisdiction of courts in New York.”).

Plaintiff further makes the conclusory assertion that defendant has committed a tortious act without the state, which has caused financial and reputational damage to plaintiff in the United States and in New York. However, as this Court already found that “[i]n the instant case, plaintiff Pangu was not, and could not have been, injured in New York.” *See* NYSCEF Doc. No. 29 at 3.

As was the case with co-defendant BBMG’s motion to dismiss, because there is no basis for personal jurisdiction over AHGL, the Court need not reach defendant’s alternative request for dismissal pursuant to CPLR 327 based on *forum non conveniens*. However, if the Court were to reach this issue, based on the parties and the record presently before the Court, the Court would be inclined to find that this is a textbook case for dismissal on *forum non conveniens* grounds. Both parties to this motion are non-residents domiciled in China, the acts complained of took place in China and involved real property in China, the parties are theoretically subject to jurisdiction in the Chinese courts, and Chinese law is undoubtedly the governing law. Plaintiff’s claim that a key non-party witness is a New York resident who is unwelcome in China does not, in itself, require the Court to retain jurisdiction under the *forum non conveniens* analysis. *See Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 483 (1984). In any event, the plaintiff and the moving defendant are both Chinese corporations and, on the present record, plaintiff has failed to establish that China is not an available alternative forum.

In sum, this is a 10-year old China-centric dispute which has no connection to New York. Plaintiff is a Chinese real-estate and development company. Complaint at ¶ 2. The principal of the plaintiff, Mr. Kwok, is subject to multiple complaints and proceedings in New

York in which he is alleged to have defrauded creditors. *See e.g. Pacific Alliance Asia Opportunity Fund L.P. v. Kwok, et al.* Index No. 652077/2017. This action, however, has no connection to New York and there is no basis to subject Chinese citizens to litigation in New York arising out of events that took place in China a decade ago and which have no relationship to New York other than the New York residence of the plaintiff's principal Mr. Kwok. It does not even appear that service was properly made on the Alibaba defendant, that service was properly effectuated, and, as explained above, the Alibaba defendant is not subject to jurisdiction in this Court with respect to the subject matter of this lawsuit. Accordingly, AGHL's the motion to dismiss the Complaint is granted, and defendant's motion for sanctions is denied.

The Complaint is also dismissed as to the improperly named defendant "Alibaba Group Inc." as plaintiff did not dispute in its opposition that Alibaba Group Inc. has no relationship to this case. To the extent plaintiff in its opposition memo (p. 6, n. 1) seeks leave of Court to amend the Complaint to properly name Alibaba Group Holdings Limited as the defendant, that request is denied. As indicated above, not only did plaintiff fail to name and serve the proper defendant AGHL, but there is no basis for general or specific jurisdiction over that party. Thus, the amendment would be futile.

Accordingly, it is hereby,

ORDERED that Alibaba Group Holdings Limited's motion to dismiss the Complaint is granted and Alibaba Group Holding Limited's motion for sanctions is denied; and it is further

ORDERED that the Complaint is dismissed in its entirety for the reasons stated above.

Dated: November 22, 2020

  
BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE	<input type="checkbox"/>	