SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49

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SOC LLC,

Plaintiff,

-against-

PERSPECTA ENTERPRISE SOLUTIONS, LLC,

Defendant.

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DECISION AND ORDER
Index No.: 651987/2020

Motion Sequence Number: 001

O. PETER SHERWOOD, J.:

Under motion sequence 001, defendant Perspecta Enterprise Solutions, LLC ("Perspecta") moves to dismiss plaintiff SOC LLC's ("SOC") complaint pursuant to CPLR 327 and 3211(a)(8). For the following reasons, defendant's motion is granted.

I. BACKGROUND

SOC is a Delaware company that provides staffing services to prime contractors for both government and private contracts (Compl. ¶¶ 1, 17 [Doc. No. 1]). In June 2013, SOC and Perspecta's predecessor companies entered into a Master Consolidated Services Agreement (the "Master Agreement") which, through a series of conveyances, is now between Perspecta and SOC (*id.* ¶¶ 2, 21-24). Since entering the Master Agreement, SOC has provided staffing services to Perspecta on various government contracts, placing over 800 individuals across thirty locations for Perspecta under the Next Generation Enterprise Services Contract (the "NGEN Contract"), a contract awarded to Perspecta by the United States Navy (*id.* ¶¶ 3, 25-29). SOC recommended qualified individuals for the NGEN Contract based on job postings Perspecta created and placed on Fieldglass, an online database containing a description of the position to the filled, the scope of the work, and related compensation (*id.* ¶¶ 4, 29). Once individuals are placed with Perspecta, SOC pays them and is reimbursed by Perspecta plus an additional fee (the "Bill Rate") (*id.* ¶¶ 5, 29). Due to the nature of Perspecta's work for the Navy, the NGEN Contract is governed by the McNamara-O'Hara Service Contract Act ("SCA") which provides strict requirements for the payment of wage and benefits to employees it covers (*id.* ¶¶ 6-7, 30-34). To ensure SCA compliance on another government contract that SOC staffed for Perspecta in El Paso, Texas (the "El Paso Contract"), Perspecta provided the precise SCA job classification in its Fieldglass posting

in the form of a numeric code matched up with a definition in the SCA Directory (*id.* ¶ 8). On the NGEN Contract, however, Perspecta refused to provide the SCA codes for its Fieldglass postings despite SOC's repeated requests for clarifications, telling SOC to "figure it out" based on the job descriptions posted on Fieldglass (*id.* ¶¶ 9, 38-41). Once Perspecta selected an employee for staffing on the NGEN Contract, SOC paid the employees the wages and benefits believed to be mandated under the SCA and sought reimbursement from Perspecta (*id.* ¶ 10). SOC had no control over the employees after hiring and had no insight into their day-to-day responsibilities (*id.*).

In July 2018, SOC learned that Perspecta actually instructed employees to do work that deviated from the Fieldglass job postings so significantly that they should have received different SCA job classifications with higher SCA-mandated wage rates than what SOC was led to believe (*id.* ¶¶ 11, 46-47). These deviations led the Department of Labor to investigate Perspecta for SCA compliance on the NGEN Contract, ultimately finding that employees on the contract performed tasks beyond those described in Perspecta's job postings at the wrong wage rates, in violation of the SCA (*id.* ¶¶ 12, 49-51). SOC later learned that Perspecta was aware of this issue since 2017 and hid this information from SOC, continuing to use generic job descriptions on Fieldglass for NGEN staffing to induce SOC to accept lower Bill Rates (*id.* ¶¶ 13, 53-58). Upon learning of the DOL's investigation, SOC reviewed the performance of workers staffed on the NGEN Contract throughout the country, ultimately reclassifying several employees staffed with Perspecta on the NGEN Contract to come into compliance with the SCA (*id.* ¶¶ 14, 52). SOC compensated these employees more than $633,856 in back pay and adjusted their Bill Rates going forward (*id.* ¶¶ 14, 59-61). Perspecta has not reimbursed SOC for the back-wage payments and expenses which plaintiff alleges Perspecta's misrepresentations proximately caused. SOC now brings suit against Perspecta alleging six claims: (i) breach of contract, (ii) promissory estoppel, (iii) equitable estoppel, (iv) quantum meruit, (v) unjust enrichment, and (vi) breach of the implied covenant of good faith and fair dealing.

II. ARGUMENTS

A. Defendant's Memorandum in Support

Defendant begins by arguing that this court lacks personal jurisdiction over Perspecta pursuant to CPLR 3211(a)(8), CPLR 301, and New York longarm statute CPLR 302(a) (Def. Br. at 5 [Doc. No. 10]). Defendant argues that, to demonstrate jurisdiction pursuant to CPLR 301, plaintiff must show that defendant's affiliations with New York are so continuous and systematic

as to render them essentially at home in New York (Def. Br. at 5; *Goodyear Dunlop Tires Operations, S.A. v Brown*, 564 US 915, 919 [2011]; *Daimler AG v Bauman*, 571 US 117, 127 [2014]). Defendant argues that, absent "exceptional conditions," a corporation is only at home where it is incorporated or where it has its principal place of business (Def. Br. at 5; *Matter of Grabowski*, 2018 NY Misc LEXIS 2643, at *4). Defendant argues that New York courts have repeatedly held that foreign entities do not consent to general jurisdiction for claims unrelated to their affiliations with New York when they register with the Secretary of State (*id.* at 5-6; *see Mischel v Safe Haven Enters., LLC*, 2017 NY Misc LEXIS 1402, at *2-8 [Sup Ct New York County 2017]; *Fekah v Baker Hughes Inc.*, 176 AD3d 527, 528 [1st Dept 2019]; *Murphy v E.I. du Pont De Nemours & Co.*, 2020 NY Misc LEXIS 2430, at *6-7). Defendant argues that, as alleged in the complaint, it is a Delaware limited liability company with a principal place of business in Virginia (Def. Br. at 6; Compl. ¶ 18). Defendant argues that plaintiff fails to allege any further facts sufficient to establish an "exceptional circumstance" rendering defendant "essentially at home" in New York for purposes of general jurisdiction, nor does it allege that this action has any relationship to New York (Def. Br. at 6). Defendant argues that plaintiff's sole allegation relating to jurisdiction in New York is that "Perspecta is actively registered to do business in the State of New York and, upon information and belief, conducts a substantial part of its business in the State of New York" (Compl. ¶ 19). Defendant argues that this allegation is insufficient to establish jurisdiction as a matter of law and, consequently, the complaint should be dismissed in its entirety (Def. Br. at 6).

Defendant next argues that this court should dismiss the complaint under the *forum non conveniens* doctrine because the allegations have no nexus to New York and Virginia is the more appropriate and convenient forum (*id.* at 7; CPLR § 327[a]; *Silver v Great Am. Ins. Co.*, 29 NY2d 356, 361 [1972]; *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478-479 [1984]; *Phat Tan Nguyen v Banque Indosuez*, 19 AD3d 292, 294 [1st Dept 2005]). Defendant argues that when deciding *forum non conveniens* motions, New York courts consider the burden on New York courts, potential hardship to defendant, unavailability of an alternate forum, residence of the parties, location of the events giving rise to the transaction at issue, and location of potential witnesses and documents (Def. Br. at 7-8; *Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 208 [1st Dept 2013]; *Park v Heather Hyun-Ah Cho*, 153 AD3d 1311, 1312 [2d Dept 2017]; *see also Shin-Estu Chem. Co. v 3033 ICICI Bank Ltd.*, 9 AD3d 171, 175-176 [1st Dept 2004]; *Tiger*

Sourcing (HK) Ltd. v GMAC Commercial Fin. Corp.-Canada, 66 AD3d 1002, 1003 [2d Dept 2009]).

Here, defendant argues, these factors weigh in favor of dismissing the complaint (Def. Br. at 8-10). First, the complaint's allegations have no nexus to New York, neither party is a New York resident, and the events giving rise to this dispute occurred outside of New York (*id.* at 8; *Citibank Global Mkts., Inc. v Metals Holding Corp.*, 2006 NY Misc LEXIS 1464, at *22-23 [Sup Ct New York County 2006]; *see also Century Indem. Co. v Liberty Mut. Ins. Co.*, 107 AD3d 421, 423-424 [1st Dept 2013]). Second, the location of witnesses, documents, and other relevant evidence in defendant's possession is primarily in Virginia as both parties coordinated their performance of the Master Agreement out of their Virginia offices (Def. Br. at 8-9; *see Citibank Global Mkts, Inc.*, 2006 NY Misc LEXIS 1464, at *27). Third, maintenance of this action would constitute unfair hardship on defendant as its principal offices are in Virginia and many Perspecta employees likely to be witnesses work in Virginia (Def. Br. at 9). Fourth, Virginia is an adequate alternative forum as it is, arguably, the most appropriate and convenient forum due to the parties' locations, the underlying dispute, and defendant's amenability to jurisdiction there (Def. Br. at 9-10; *Shin-Etsu Chem. Co.*, 9 AD3d at 178; *Silver*, 29 NY2d at 261). Finally, the Master Agreement does not include a forum selection clause designating New York as the chosen forum (Def. Br. at 10). Although defendant acknowledges that plaintiff alleges the Master Agreement has a New York choice of law provision, defendant argues that it is not equivalent to a choice of forum clause (*id.*; *see SLS Capital S.A. v CRT Capital Group LLC*, 2020 NY Misc LEXIS 1088, *17-18 [Sup Ct New York County 2020]).

B. Plaintiff's Opposition Memorandum

Plaintiff begins by arguing this court has personal jurisdiction over defendant (Pl. Br. at 3-4 [Doc. No. 15]; *Crystal Cove Seafood Corp. v Chelsea Harbor, LLC*, 47 AD3d 670, 670 [2d Dept 2008] [when defendant challenges personal jurisdiction, plaintiff need only "make a *prima facie* showing that jurisdiction exists"]). Plaintiff argues that defendant is subject to this court's jurisdiction because its affiliations with New York are so continuous and systematic as to render Perspecta essentially at home in New York State (Pl. Br. at 4; *Goodyear Dunlop Tires Operations, S.A. v Brown*, 564 US 915, 919 [2011]). Plaintiff explains that first, defendant solicits employees to work for it in New York State, including listing employment opportunities for roles such as System Administrator Assistant in New York City and Background Investigators in Syracuse (Pl.

Br. at 4; Haddox Add., Ex. 2 [Doc. No. 18]). Second, defendant has actually employed individuals within New York State, providing examples from Glassdoor, a website providing employee reviews of employers, and Indeed.com, a job search website, of multiple reviews from employees working for defendant in New York State (Pl. Br. at 5; Haddox Aff., Exs. 3-4 [Doc. Nos. 19-20]). Third, defendant has performed work on projects outside of New York that ultimately had effects within the state such as providing services to support the US Navy's deployment of a hospital ship to New York City to aid the City's COVID-19 efforts (Pl. Br. at 5; Haddox Aff., Ex. 5 [Doc. No. 21]; *see Renren, Inc. v XXX*, 2020 WL 2564684, at *12 [Sup Ct New York County 2020]). Plaintiff further argues that the cases defendant cites in their memorandum are distinguishable (Pl. Br. at 6; *Mischel v Safe Haven Enterprises, LLC*, 2017 WL 1384214, at *2-8 [Sup Ct New York County 2017] [there, the court held plaintiff had not established personal jurisdiction because the defendant was registered to do business in the State of New York and had merely solicited business in New York; here, Perpecta actually employed New Yorkers and performed work that saw effects here]; *Fekah v Baker Hughes Inc.*, 176 AD3d 527, 528 [1st Dept 2019] [there, defendant was merely registered to do business and solicited employees in New York, which does not reach the depth of Perspecta's activities in New York]).

Plaintiff next argues that this court is a proper forum for this dispute and dismissal based on *forum non conveniens* should be denied (Pl. Br. at 7). Plaintiff argues that defendant bears a heavy burden to show New York is an inconvenient forum which burden Perspecta has not met (*id.* at 8; *Elmaliach v Bank of China Ltd.*, 110 AD3d at 208. The factors to be considered here when weighed in the balance, do not favor dismissal (Pl. Br. at 8). According to plaintiff, first, the burden on New York courts to adjudicate this case is small because, unlike some other cases facing *forum non conveniens* dismissal, this court would not be required to translate any documents or witness testimony from another language (*id.* at 8-9; *see Bacon v Nygard*, 160 AD3d 565, 566 [1st Dept 2018]). Second, the "applicability of foreign law" factor weighs against a *forum non conveniens* finding as no foreign law would apply because the Master Agreement states New York law governs (Pl. Br. at 9; *see CPI NA Parnassus B.V. v Ornelas-Hernandez*, 2009 WL 357470 [Sup Ct New York County 2009]). Third, litigating the case in New York would pose little hardship to Perspecta as it is a large corporation that does business throughout the country, including in New York (Pl. Br. at 9; *see Bacon*, 160 AD3d at 566). Fourth, the location of witnesses and documents relevant to this matter weigh in favor of denying Perspecta's motion because, while

some witnesses Perspecta has identified are in Virginia, others may be located in many other states as Perspecta has staffed employees on the NGEN Contract across the country (Pl. Br. at 9-10). Further, even if all relevant witnesses were in Virginia, such circumstances would not automatically override SOC's choice of forum when, due to the ongoing COVID-19 pandemic and the development of remote depositions and testimony, there is no reason to believe such information and testimony would be unavailable in New York (*id.* at 10; *see Anagnostou v Stifel*, 204 AD2d 61, 62 [1st Dept 1994]; *see also Gowen v Helly Nahmad Gallery Inc.*, 60 Misc3d 993, 995). Plaintiff concludes arguing that while certain factors may weigh in different directions, the facts on balance point toward denying Perspecta's motion based on *forum non conveniens* (Pl. Br. at 11; *Bacon*, 160 AD3d at 566-567).

III. DISCUSSION

CPLR 3211 [a] [8] provides that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . the court has not jurisdiction of the person of the defendant." When presented with a motion under CPLR 3211 [a] [8], "the party seeking to assert personal jurisdiction, the plaintiff[,] bears the ultimate burden of proof on this issue" (*Marist Coll. v Brady*, 84 AD3d 1322, 1322-1323 [2d Dept 2011]). The party opposing a motion to dismiss need not state all the facts necessary to establish jurisdiction. If evidence of the facts establishing jurisdiction are in the exclusive control of the moving party, CPLR 3211 [d] only a requires a "sufficient start," demonstrating that such facts "may exist" (*see HBK Master Fund L.P. v Troika Dialog USA, Inc.*, 85 AD3d 665 [1st Dept 2011], citing *Peterson v Spartan Industries, Inc.*, 33 NY2d 463, 467 [1974]).

General jurisdiction permits a court to exercise personal jurisdiction over a defendant in its "home" forum based on the defendant's overall contacts with that forum even if the claim has no connection to it. The United States Supreme Court has held that in order for a court to assert personal jurisdiction over a nonresident defendant, the plaintiff must establish that the defendant has a substantial presence in the forum state so that the exercise of jurisdiction over the defendant would comport with the traditional notions of fair play and substantial justice. (*see World-wide Volkswagen Corp. v Woodson*, 444 US 286, 292 [1980], citing *Intl. Shoe Co. v Washington*, 326 US 310, 316 [1945]). New York law is essentially the same. With respect to CPLR 301, "the authority of the New York courts to exercise jurisdiction over a foreign corporation is based solely upon the fact that the defendant is engaged in such a continuous and systematic course of doing

business here as to warrant a finding of its presence in this jurisdiction." (*Laufer v Ostro*, 55 NY2d 305, 309-10 [1982] [brackets, quotation marks and citations omitted]).

In 2014, the U.S. Supreme Court modified the "continuous and systemic" standard in its analysis of general jurisdiction. (*see Daimler AG v Bauman*, 571 U.S. 117, 134 SCt 746 [2014]). In that case, Daimler AG, a German corporation, was sued by Argentinian residents alleging that its Argentinian subsidiary committed tortious acts in Argentina; the suit was brought in a federal court in California based on services performed in California by Daimler's U.S. subsidiary, MBUSA (*see id.* at 750-51). The question before the Supreme Court was "whether Daimler's affiliations with California are sufficient to subject it to the general (all purpose) personal jurisdiction of that State's courts." (*id.* at 758). In its analysis, the Supreme Court stated that "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there" (*id.* at 760). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile" and "[w]ith respect to a corporation, the place of incorporation and principal place of business" are the paradigm bases for general jurisdiction (*id.* [citations omitted, quotation marks in original]). In so holding, the Supreme Court disagreed with the formulation that would allow the exercise of general jurisdiction in every state in which a corporation "engages in a substantial, continuous, and systematic course of business," characterizing such a formulation as "unacceptably grasping" (*id.*).

While *Daimler* left open a possibility that, in exceptional circumstances, "a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State," such contacts must be truly exceptional (*id.* at 756, 761 n19, citing *Perkins v Benguet Consol. Min. Co.*, 342 US 437 [1952]). In *Perkins*, the defendant entity, "a company incorporated under the laws of the Philippines, where it operated gold and silver mines," was unable to continue operations in the Philippines (*Daimler*, 134 SCt at 756). "[I]ts president moved to Ohio, where he kept an office, maintained the company's files, and oversaw the company's activities" (*id.*, citing *Perkins*, 342 US at 448). Ohio had become "the corporation's principal, if temporary, place of business" (*Daimler*, 134 SCt at 756, quoting *Keeton v Hustler Magazine, Inc.*, 465 US 770, 780, n11).

Here, plaintiff has failed to show that this court has general jurisdiction over defendant. As noted, both in defendant's memorandum in support and in the complaint, both parties are Delaware companies with principal places of business in Virginia (Compl. ¶¶ 17-18). While plaintiff argues

that defendant, by listing employment opportunities and staffing employees in New York State, has had continuous and systematic contact so as to effectively render Perspecta at home in New York, these facts alone are not sufficient to establish general jurisdiction as New York courts have repeatedly found that out-of-state companies employing New York residents does not rise to the level necessary to find a defendant is "at home" in New York (*Aybar v Aybar*, 169 AD3d 137, 145-146 [2d Dept 2019]; *Kyowa Seni, Co., Ltd. v ANA Aircraft Technics, Co., Ltd.*, 60 Misc3d 898, 903 [Sup Ct New York County 2018]; *see also Kline v Facebook, Inc. and Google, LLC*, 62 Misc3d 1207(A) [Sup Ct New York County 2019] ["Although respondents do not deny that they have offices in New York City, petitioner fails to establish that the presence of those offices signifies that respondents had the required 'continuous and systematic' affiliations with the State of New York"]). Having relied on its argument that defendant has continuous and systematic contacts with New York, plaintiff makes no argument that "exceptional circumstances" exist here so as to render defendant at home in New York, nor could it. For these reasons, the court finds it does not have general jurisdiction over defendant pursuant to CPLR 301.

On a motion to dismiss on the ground of *forum non conveniens*, the defendant challenging the forum bears the burden of demonstrating relevant private or public interest factors which militate against accepting the litigation (*see Islamic Republic of Iran*, 62 NY2d at 479; *Straville v Land Cargo, Inc.*, 39 AD3d 735, 736 [2d Dept 2007]). The doctrine rests upon principles of justice, fairness, and convenience (*see Islamic Republic of Iran*, 62 NY2d at 479). Among the factors to be considered are "the residency of the parties, the potential hardship to proposed witnesses, the availability of an alternative forum, the situs of the underlying action, and the burden which will be imposed upon New York courts, with no one factor controlling" (*Straville*, 39 AD3d at 736, [internal quotation marks omitted]).

Here, defendant has met its burden, demonstrating a sufficient number of factors against accepting the litigation in this forum. Again, as the complaint itself alleges, both parties are Delaware corporations with principal places of business in Virginia (Compl. ¶¶ 17-18). As both businesses, along with relevant evidentiary documents and witnesses, are located in Virginia, Virginia is an adequate alternative forum for this dispute. Plaintiff's assertion that other relevant witnesses *may* be located in states across the country is unavailing. Further, no action in the underlying dispute occurred in New York. While plaintiff argues that it is undisputed that the Master Agreement contains a "choice of law" provision designating New York law as governing

the Agreement, New York courts have repeatedly held that a New York choice of law provision is not the equivalent of a choice of forum clause and cannot alone confer jurisdiction over a litigant (*Borden, Inc. v Meiji Milk Products Co., Ltd.*, 919 F2d 822, 827 [2d Dept 1990]; *Koob v IDS Financial Services, Inc.*, 213 AD2d 26, 34-35 [1st Dept 1995]). Consequently, plaintiff's complaint is dismissed on *forum non conveniens* grounds.

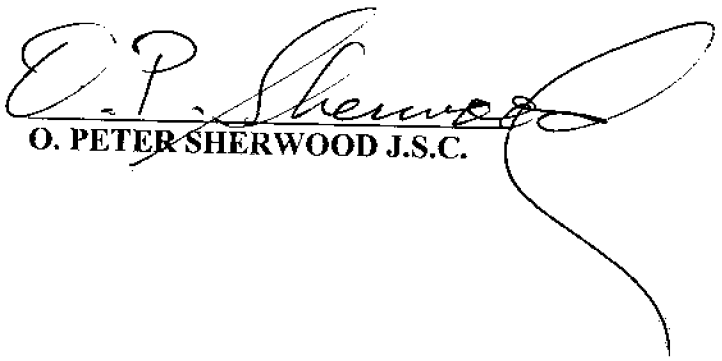
IV. CONCLUSION

For the foregoing reasons, defendant's motion is **GRANTED** and plaintiff's complaint is dismissed in its entirety pursuant to CPLR 3211(a)(8) and 327.

This constitutes the decision and order of the court.

DATED: December 17, 2020

E N T E R,



O. PETER SHERWOOD J.S.C.