

First Trinity Life Ins. Co. v Advance Funding LLC

2022 NY Slip Op 30871(U)

March 15, 2022

Supreme Court, New York County

Docket Number: Index No. 652780/2020

Judge: Arlene Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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FIRST TRINITY LIFE INSURANCE COMPANY,
Plaintiff,

INDEX NO. 652780/2020

MOTION DATE 03/11/2022

MOTION SEQ. NO. 007 008

- v -

ADVANCE FUNDING LLC, DAN CEVALLOS, MONICA L. RAY

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 193

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 008) 194, 195, 196, 197, 198, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217

were read on this motion to/for DISMISSAL

Motion Sequence Numbers 007 and 008 are consolidated for disposition. The motion (MS007) by plaintiff for a default judgment against all defendants, Advance Funding LLC ("AF"), Dan Cevallos, and Monica Ray, is granted. The motion (MS008) by defendant Ray to dismiss is denied.

Background

This case is about a lottery winner: former defendant Martinez. Martinez won a New York State Lottery game in April 2008 that had a minimum prize of \$2 million. In August 2016, Martinez entered into an agreement with defendant AF in which he agreed to assign 32 months of prize payments totaling over \$800,000 in exchange for a lump sum payment of \$465,000. AF then assigned its right to the money to plaintiff in exchange for a payment in excess of \$500,000.

In connection with Martinez's assignment to AF, a petition was brought in Schenectady to approve the transfer. However, Martinez later moved (via a new attorney) to strike the assignment and disavow an affidavit he signed in which he agreed to the transaction. He later withdrew the order to show cause in exchange for an increased lump sum payment. Then Martinez brought another application seeking to stop any more payments by the state's Lottery Commission because AF allegedly did not make the additional payments promised to him in the settlement.

Plaintiff contends that it served the three defendants against whom it seeks a default judgment and these defendants have not answered or appeared. After this motion was filed, Ms. Ray filed a motion to dismiss. She claims she was never served with the complaint or the amended complaint, although she admits she received a copy of the second amended complaint in the mail.

Ms. Ray asserts that this Court lacks personal jurisdiction over her because she has never been a resident of the state of New York and has lived in Florida since 1992. She claims that she was a salaried employee of Northeastern Capital Funding LLC ("Northeastern"), whose president was John Cevallos (brother of defendant Dan Cevallos). Ms. Ray alleges that she was asked to assist Dan Cevallos with brokering files for AF and that she processed several hundreds of transactions related to both lottery winnings and other structured settlements. Ms. Ray insists she never worked in AF's office and did all of this work remotely from Florida.

She argues that she has no personal knowledge of whether proofs of payment were provided by AF or whether they were fraudulent and did not have any contact with Citibank on behalf of AF. She claims she simply forwarded information and documents received from AF

and had no personal knowledge of their contents. Ms. Ray demands that this Court dismiss the unjust enrichment and fraud causes of action alleged against her.

In opposition, plaintiff points out that Ms. Ray was served with the second amended complaint in October 2021 and she did not timely answer. Plaintiff alleges that Ms. Ray (who is appearing self-represented) was the director of the legal department for AF and worked directly with Dan Cevallos. It points to the affidavit of Jeffrey Wood, plaintiff's CFO, who claims that Ms. Ray's signature block represented that she worked for AF out of AF's Manhattan office (NYSCEF Doc. No. 204, ¶ 8).

Plaintiff insists this Court has personal jurisdiction over Ms. Ray and, at the very least, it should have the right to conduct discovery about Ms. Ray's connections to New York. Plaintiff explains that its theory of the case is that it was induced to pay \$552,000 for a lottery assignment based on AF's misrepresentations that the winner (Mr. Martinez) had been paid for his assignment. It alleges that Ms. Ray made this misrepresentation and even attached a check and wire transfer despite the fact that, according to plaintiff, this never happened.

In reply, Ms. Ray argues that plaintiff is aware she was never a resident of New York and that she should not be held accountable for the actions of a company, AF, for whom she never worked. She claims she had no reason to question the validity of any documents she received from AF although she admits she was compensated for her work for AF.

Discussion

As an initial matter, the Court observes that Ms. Ray's motion to dismiss is untimely. However, the Court will consider it on the merits as detailed below.

The Court rejects Ms. Ray's conclusory denial that she never received service of process. Ms. Ray does not offer a specific reason to reject the affidavits of service submitted by plaintiff.

In fact, the Court observes that Ms. Ray admits she received a copy of the second amended complaint in the mail.

“CPLR 302(a)(1) of New York's long-arm statute provides, in relevant part, ‘As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent ... transacts any business within the state or contracts anywhere to supply goods or services in the state.’ The CPLR 302(a)(1) jurisdictional inquiry is twofold: under the first prong the defendant must have conducted sufficient activities to have transacted business in the state, and under the second prong, the claims must arise from the transactions. Thus, jurisdiction is proper even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted” (*Al Rushaid v Pictet & Cie*, 28 NY3d 316, 323, 45 NYS3d 376 [2016]).

The Court finds that it has personal jurisdiction over defendant Ray. Plaintiff alleges that Ms. Ray played an integral part in the alleged fraud, which took place in New York. And plaintiff attached emails showing that Ms. Ray’s signature block identified her work address as 48 Wall Street in Manhattan and that she worked for AF (*see e.g.*, NYSCEF Doc. Nos. 205, 206). These emails from Ms. Ray indicate she was the “Director, Legal Dept.” for AF (*id.*). While Ms. Ray argues that she never actually worked for AF and she never lived in New York, plaintiff established its prima facie burden that Ms. Ray had sufficient contacts with New York.

It does not matter, as stated above, that Ms. Ray allegedly never lived in New York. She purportedly participated in a fraud involving a New York lottery winner, did some work on behalf of a New York-based company, and represented on certain emails that she worked in New

York. And plaintiff attached an email thread directly implicating Ms. Ray in the alleged misrepresentation that the lottery winner had been paid in connection with the assignment (NYSCEF Doc. No. 181), an assertion which plaintiff claims was false. That satisfies New York's long-arm statute.

Moreover, the Court finds that exercising jurisdiction over Ms. Ray does not violate her due process rights. "Exercise of personal jurisdiction under the long-arm statute must comport with federal constitutional due process requirements. It is well established that a nondomiciliary must have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice" (*Al Rushaid*, 28 NY3d at 330-31). Ms. Ray should not be surprised that she is named as a defendant in a New York case considering the substantial amount of work she did for AF regarding a New York lottery winner.

Ms. Ray's objections to plaintiff's version of events does not compel the Court to grant her motion to dismiss. "On a motion to dismiss, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Besen v Farhadian*, 195 AD3d 548, 549, 151 NYS3d 31 [1st Dept 2021] [internal quotations and citations omitted]). In other words, that Ms. Ray disagrees with plaintiff's allegations is not a basis to grant the motion to dismiss. The Court can only consider whether plaintiff has stated valid causes of action against Ms. Ray and the Court finds that plaintiff has. Plaintiff contends that Ms. Ray made various misrepresentations about the lottery winner that induced plaintiff into paying for a lottery assignment. And plaintiff alleges that Ms. Ray earned a commission based on the transactions at issue in this case.

Plaintiff's Motion

The Court observes that neither AF nor defendant Cevallos appeared or answered. Therefore, the motion for a default judgment against these defendants is granted on default. The Court also observes that although Ms. Ray filed an untimely motion to dismiss, she did not file any opposition to plaintiff's motion for a default judgment or address plaintiff's motion at all. Accordingly, the Court grants the motion as against Ms. Ray. The Court declines to *sua sponte* allow Ms. Ray to answer given her untimely motion, her failure to request that she be permitted to answer and her failure to oppose the default motion.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for a default judgment against defendants Advanced Funding Solutions, LLC, Dan Cevallos and Monica L. Ray is granted on liability and plaintiff is directed to file a note of issue for an inquest to determine damages on or before April 5, 2022; and it is further

ORDERED that the motion by defendant Monica L. Ray to dismiss is denied.

3/15/2022
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE