

Raji v SG Ams. Sec., LLC
2022 NY Slip Op 32174(U)
July 7, 2022
Supreme Court, New York County
Docket Number: Index No. 154174/2019
Judge: Shlomo Hagler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SHLOMO HAGLER PART 17

Justice

-----X

MOURAD RAJI,

Plaintiff,

- v -

SG AMERICAS SECURITIES, LLC, SG AMERICAS, INC,
THOMAS JACQUOT

Defendant.

-----X

INDEX NO. 154174/2019

MOTION DATE 04/07/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for DISMISS

Upon the foregoing documents, it is

In this action sounding in employment discrimination, Defendant Thomas Jacquot ("Jacquot") moves for an order pursuant to CPLR 3211(a)(8) dismissing plaintiff's complaint with prejudice due to the alleged failure to serve Jacquot in compliance with CPLR 308(2). Previously, defendants moved, pursuant to CPLR 3211 (a) (5) and (7), to dismiss the complaint arguing that plaintiff's claims were time-barred. By Decision and Order dated January 8, 2020, the Hon. Kathryn E. Freed, J.S.C., granted defendants' motion to dismiss the complaint without addressing Jacquot's lack of personal jurisdiction defense ("Prior Order") (NYSCEF #38). On December 10, 2020, the Appellate Division, First Department modified the Prior Order with respect to Jacquot and SG AMERICAS SECURITIES, LLC, holding that Plaintiff's NYSHRL and NYCHRL claims were timely under CPLR 205(a) and reinstated Plaintiff's claims in this Court (Raji v. SG Americas Securities, LLC, 189 A.D.3d 514[1st Dept 2020]). Of course,

now that the Appellate Division remitted the case back to this court, the issue of Jacquot's lack of personal jurisdiction defense must be determined.

While Justice Freed did not decide the issue of Jacquot's lack of personal jurisdiction defense in the Prior Order, the court stated, in footnote 3, the following:

Defendants claim, in the alternative, that, inter alia, the action must be dismissed as against Jacquot because he was improperly served. Although Raji submitted affidavits of service for all defendants, the affidavits of service for SG were subscribed and dated April 26, 2019 (Docs. 23-25). However, the affidavit of service for Jacquot was only subscribed and signed by the process server on August 15, 2019, a day before Raji's papers in opposition were due (Doc. 28, 30-31). Defendants submit the affidavit of Daniel Hobbs ("Hobbs"), a paralegal at SG, who allegedly accepted service on behalf of all defendants (Doc. 32). Hobbs avers that the process server never mentioned Jacquot's name or provided any indication that he intended to serve the documents on Jacquot, and he attests that the documents were only addressed "To: SG Americ[icas] Securities L" (Doc. 32). Furthermore, he maintains that members of the legal department are not authorized to accept service on behalf of individual employees (Doc. 32). It is important to note that, although the process server affirms that service on Jacquot was effectuated on April 23, 2019, proof of service was not filed within the 20 days of the effectuation of service as required by CPLR 308 (2). Although this Court acknowledges the problems with service, the argument has been rendered moot by the findings below.

These allegations are sufficient to trigger the necessity of a traverse hearing as to service of the summons and complaint upon Defendant Thomas Jacquot.

Accordingly, it is

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to hear and report to this court on the issue as to service of the summons and complaint upon Defendant Thomas Jacquot; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part;

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the

date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon.

7/7/2022
DATE


SHLOMO HAGLER, J.S.C.

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