Kousa Intl., LLC v Kejriwal Newsprint Mills LLC
2022 NY Slip Op 32681(U)
July 28, 2022
Supreme Court, New York County
Docket Number: Index No. 159523/2020
Judge: Arthur Engoron
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR ENGORON** **PART** **37**

Justice

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KOUSA INTERNATIONAL, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY,

Plaintiff,

- v -

KEJRIWAL NEWSPRINT MILLS LLC, A NEW YORK DOMESTIC LIMITED LIABILITY COMPANY DBA RESOURCE REUTILIZATION LLC,

Defendant.

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INDEX NO. 159523/2020

MOTION DATE 06/24/2022

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 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

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, and for the reasons stated hereinbelow, plaintiff's motion for summary judgment is granted.

Background

Plaintiff Kousa International, LLC ("Kousa") is a California Limited Liability Company which sells recyclable paper material. NYSCEF Doc. No. 60 ¶2. Defendant Kejriwal Newsprint Mills LLC ("Kejriwal"), a New York Limited Liability Company, purchases paper material that can be recycled into "green" paper products, including fresh newsprint. Id.

In a purchase order dated January 16, 2019, (the "Purchase Order") Kejriwal sought to buy from Kousa $118,000 worth of "Hi Quality" recovered fiber. NYSCEF Doc. No. 19. The Purchase Order specified that, inter alia, the quality of the material was to have less than one percent "Prohibitives," less than three percent "Out throws," and less than 12 percent "Moisture." Id.

In February 2019, Kousa accepted the Purchase Order and shipped the "Hi Quality" recovered fiber from New Jersey/New York ports to Kejriwal's customer, a mill in Spain. NYSCEF Doc. No. 16 ¶ 14. The shipments arrived the next month but were rejected upon arrival by the receiving mill, allegedly due to a high amount of "prohibitives," non-fiber materials, and moisture in the paper. Id. The mill refused to pay for the shipment and, in turn, defendant refused to pay plaintiff. Id.

On June 18, 2019, Kousa filed suit against Kejriwal in California Superior Court, County of Los Angeles, Case No. 19STCV21608, alleging breach of contract. NYSCEF Doc. No. 26.

Kejriwal failed to appear, and on September 28, 2020, Kousa obtained a default judgement in the amount of $162,390.03 (the "California Judgment"). NYSCEF Doc. No. 3.

On November 5, 2020, Kousa moved to domesticate the California Judgment here by moving for summary judgment in lieu of complaint, pursuant to CPLR 3213. NYSCEF Doc. No. 2.

In a Decision and Order dated December 23, 2020, this Court granted Kousa's motion on default. NYSCEF Doc. No. 9.

In a Decision and Order dated April 22, 2021, this Court vacated its previous Decision and Order after Kejriwal successfully challenged the alleged service in New York. NYSCEF Doc. No. 35. Kousa's original moving papers were deemed the complaint and Kejriwal was given time to answer.

On May 12, 2021, Kejriwal filed an answer, asserting 19 affirmative defenses, and a counterclaim for breach of contract. NYSCEF Doc. 40.

On June 1, 2021, Kousa moved to dismiss Kejriwal's counterclaim or, alternatively, to limit initial discovery to the issue of whether Kejriwal was subject to personal jurisdiction in California at the time of the alleged service there. NYSCEF Doc. No. 41.

In a Decision and Order dated July 26, 2021, this Court denied Kousa's motion, pursuant to CPLR 3211(a)(5) and (6), to dismiss Kejriwal's counterclaim but granted Kousa's request to limit initial discovery. NYSCEF Doc. No. 52.

Kousa now moves, pursuant to CPLR 3212, for summary judgment on its claim and to dismiss Kejriwal's answer and counterclaim. NYSCEF Doc. No. 55. Kousa asserts that California had personal jurisdiction over Kejriwal when it issued the California Judgment because: (1) Kejriwal "purposefully directed" and "engaged in significant activities" in California by repeatedly seeking Kousa's assistance and expertise; (2) Kejriwal created a "continuous obligation" with Kousa in California; (3) Kejriwal's "purposefully directed" and "significant activities" in and out of California caused effects in California; and (4) a substantial connection exists between Kousa's claim and Kejriwal's contacts with California.

In response, Kejriwal argues that California lacked personal jurisdiction when it issued the California Judgment and that Kousa cites caselaw rendered irrelevant by the United States Supreme Court's decision in Bristol-Myers Squibb Co. v Superior Court, 137 S Ct 1773 (2017). Kejriwal also argues that this Court should apply the standard set forth in Jacqueline B. v Rawls Law Grp., P.C., 68 Cal App 5th 243, 258 (Cal Ct App 2021), such that, for personal jurisdiction to exist, there must be a specific and substantial connection between the defendant and California relating to the subject transaction, which Kejriwal denies exists.

Discussion

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). Once

that burden is met, the opponent must tender evidence in admissible form "sufficient to require a trial of material questions of fact on which he rests his claim …mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." Zuckerman v City of New York, 49 NY2d 447, 562 (1980).

This Court's function on a summary judgment motion is issue finding, not issue determination. See Farias v Simon, 122 AD3d 466, 468 (1st Dept 2014) ("A court's function on a motion for summary judgment involves issue finding rather than issue determination"). Because summary judgment is a drastic remedy, it should not be granted where triable issues of fact exist, even if such issues are only "arguable" or "debatable." See Stone v Goodson, 8 NY2d 8, 12-13 (1960) ("It now seems well established that if the issue is fairly debatable a motion for summary judgment must be denied").

Legal Standard for Personal Jurisdiction

It is well-settled law that personal jurisdiction may be general or specific. A defendant may be subject to a state's general jurisdiction if he or she has contacts that are substantial, continuous, and systematic. However, even if general jurisdiction is lacking, a nonresident defendant may still be subject to specific jurisdiction. Goodyear Dunlop Tires Operations, S.A. v Brown, 564 US 915, 919 (2011).

> The canonical opinion in this area remains Int'l Shoe Co. v State of Wash., Off. of Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945), in which we held that a State may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has "certain minimum contacts with [the State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

Goodyear at 923. To satisfy the minimum contacts requirement, there must be "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefit and protection of its laws." Hanson v Denckla, 357 US 235, 253 (1958). Courts apply this requirement on a case-by-case basis, focusing on the nature and quality of the defendant's activities in the state or with the state's residents. Burger King Corp. v Rudzewicz, 471 US 462 (1985). Once facts showing minimum contacts with the forum state are established, however, it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable. Id at 476-477.

"Where a sister State's exercise of long-arm jurisdiction is challenged, the law of that State, even though it may be at odds with the New York rule, determines whether jurisdiction was properly obtained." China Exp., Inc. v Volpi & Son Mach. Corp., 126 AD2d 239, 242 (1st Dept 1987).

To determine whether it has personal jurisdiction, California analyzes if a nonresident defendant "has such minimum contacts with the state that the assertion of jurisdiction does not violate traditional notions of fair play and substantial justice." Vons Cos., Inc. v Seabest Foods, Inc., 14 Cal 4th 434, 444 (Cal Sup Ct 1996) (citations omitted).

California's long-arm statute authorizes its courts to exercise jurisdiction to the broadest possible extent "not inconsistent with the Constitution of the United States or the Constitution of California." Cal. Civ. Proc. Code § 410.10. The statute authorizes courts to exercise jurisdiction over nonresidents for "causing effects in the forum state by an act done elsewhere." Id.

In California "[s]pecific jurisdiction exists if: (1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of jurisdiction would comport with fair play and substantial justice." Vons at 446-447.

California's Jurisdiction Over Kejriwal

Here, Kousa has made out its prima facie case by submitting affidavits from Randy Kim, Director of Export for Kousa, as well as exhibits that show that Kejriwal purposefully and repeatedly engaged in the contact necessary to establish personal jurisdiction in California by emailing, calling, and visiting Mr. Kim there, during which "the topic of business would come up." NYSCEF Doc. Nos. 60, 65. Kejriwal's January 2019 agreement to purchase $118,000 worth of paper, thereby invoking the benefits and protections of California law, was the culmination of repeated contacts with Kousa and sufficient to support the breach of contract claim in California. It was reasonable for California to have exercised jurisdiction and doing so comports with fair play and substantial justice.

Kousa correctly asserts that Bristol-Myers and Jacqueline B. are inapplicable here. In Bristol-Myers, California attempted to assert specific jurisdiction over non-resident plaintiffs' claims despite a minimal connection between those claims and Bristol-Myers' activity in California. Despite Bristol-Myers having extensive and wide-ranging contacts in California, that contact was unrelated to the claims at hand and thus was not sufficient to provide the trial court with jurisdiction. The Supreme Court clarified that the nonresident plaintiffs' claims could not be subject to specific jurisdiction simply because said claims were identical to those of the California residents. In the instant case, however, the underlying dispute arises from Kousa's direct sale to Kejriwal and is the result of Kejriwal's repeated contacts with California. Nowhere does Kousa assert that jurisdiction stems from contacts with other parties in California or from contact unrelated to the January 2019 transaction.

Likewise, the unique facts of Jacqueline B. render it unavailing. After examining the *specific* nature and quality of the defendant's activities in the state or with the state's residents, that court found that the defendant had not purposefully availed itself of any California benefits, nor did the lawsuit arise out of the defendant's contacts with the forum state. In doing so, the Jacqueline B. Court found that "the defendants were Virginia-based, did not seek to avail themselves of California's legal process in any way, and resolved plaintiff's federal tort claim entirely through the federal administrative exhaustion process that occurred wholly outside of California, all while plaintiff was not in California and her status as a California resident was reasonably in dispute." Jacqueline B. at 257. Conversely, the instant action resulted only after Kejriwal reached into California to order paper from Kousa.

This Court has reviewed Kejriwal's remaining arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

The motion of plaintiff Kousa International, LLC is granted, and the Clerk is hereby directed to enter a judgment in favor of plaintiff Kousa International, LLC and against defendant Kejriwal Newsprint Mills LLC, now doing business as Resource Reutilization LLC, in the amount of $162,390.03 with post-judgment interest at the California rate of ten percent from September 28, 2020.

7/28/2022
DATE

ARTHUR ENGORON, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE