

Cyberbit, Inc. v Cloud Range Cyber, LLC

2023 NY Slip Op 32880(U)

August 17, 2023

Supreme Court, New York County

Docket Number: Index No. 654488/2022

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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CYBERBIT, INC.,

Plaintiff,

- v -

CLOUD RANGE CYBER, LLC, A TENNESSEE LIMITED LIABILITY COMPANY, DEBORAH GORDON, CLOUD RANGE CYBER, LLC, A DELAWARE LIMITED LIABILITY COMPANY, LIVE CYBER, LLC, A DELAWARE LIMITED LIABILITY COMPANY, LIVE CYBER HOLDINGS, INC., A DELAWARE CORPORATION

Defendant.

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INDEX NO. 654488/2022

MOTION DATE N/A, N/A, N/A

MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 25, 26, 27, 28, 30

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 39, 40, 41, 42

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 50, 51, 52, 53, 54, 55, 57, 58

were read on this motion to/for STAY.

This is a case involving Deborah Gordon’s alleged manipulation and abuse of the corporate form in breaching a certain Purchase Order (the **Purchase Agreement**; NYSCEF Doc. No. 2), dated as of June 27, 2018, by and between Cyberbit and Cloud Range, to avoid paying certain installment payments due under the Purchase Agreement and to otherwise misappropriate intellectual property from Cyberbit to companies that she set up and ran out of her home. The parties to the Purchase Agreement agreed that disputes would be resolved in New York. On the record before the Court, Cyberbit adduces substantial evidence (i.e., some 34 exhibits) that no

corporate formalities were observed between these entities and that in sum and substance the entities which Ms. Gordon formed and ran out of her home (which were not parties to the agreement) have continued the business of Cloud Range such that piercing the corporate veil is appropriate. Ms. Gordon's affidavit does not in any meaningful way challenge any of the 34 exhibits which form prima facie evidence that veil piercing is appropriate. Thus, she and the company defendants are subject to the contracted for forum of New York and the motion to dismiss based on lack of personal jurisdiction is denied.

As discussed on the record, the Court has considered the defendant's remaining arguments and finds them unavailing.

The plaintiff's motion to dismiss the counterclaims also is denied. The allegations are that Cyberbit breach the agreement by failing to provide appropriate support services pursuant to the Purchase Agreement and that these services were not "add-ons." As such, the breach of contract claim is properly alleged and dismissal at this stage based on Cyberbit's assertion that this was outside the scope of the Purchase Agreement's services is not appropriate. Cyberbit is also not entitled to dismissal of the breach of the covenant of good faith and fair dealing counterclaim. The allegations are that Cyberbit breached the agreement by interfering with the defendants' ability to properly attract end users and that this otherwise frustrated the purpose behind the agreement which contemplates the employment of such end users. Stated differently, the claim is not duplicative of the breach of contract claim because the allegations go to the manner in which Cyberbit is alleged to have breached the Purchase Agreement and it is based on different alleged wrongful conduct.

It is hereby ORDERED that the Moving Defendants' motion (Mtn. Seq. No. 001) is denied; and it is further

ORDERED that Cyberbit's motion (Mtn. Seq. No. 002) is denied; and it is further

ORDERED that Cloud Forces' motion (Mtn. Seq. No. 003) is denied as moot; and it is further

ORDERED that the defendants shall file an answer within 20 days of this decision and order; and it is further

ORDERED that the parties shall respond to existing discovery requests no later than October 10, 2023; and it is further

ORDERED that document production shall be completed by December 29, 2023; and it is further

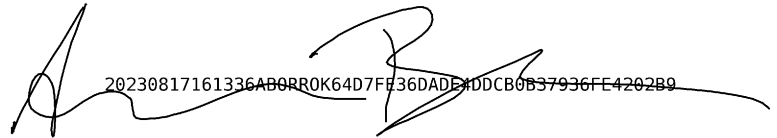
ORDERED that depositions shall occur no later than February 29, 2024; and it is further

ORDERED that fact discovery shall be closed as of March 14, 2024; and it is further

ORDERED that expert discovery shall be complete by May 31, 2024; and it is further

ORDERED that NOI shall be June 14; 2024; and it is further

ORDERED that the parties shall appear for a status conference on October 16, 2023, at 11:30am to provide an ESI protocol.


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8/17/2023
DATE

ANDREW BORROK, 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