Supplybit, LLC v Standard Power Hosting Infra Co., LLC
2024 NY Slip Op 32613(U)
July 23, 2024
Supreme Court, New York County
Docket Number: Index No. 654473/2023
Judge: Joel M. Cohen

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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SUPPLYBIT, LLC,

Plaintiff,

- v -

STANDARD POWER HOSTING INFRA COMPANY, LLC, MICHAEL GROFF, REPAIRBIT, LLC

Defendants.

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STANDARD POWER HOSTING INFRA COMPANY, LLC,

Crossclaim Plaintiff,

- v –

MICHAEL GROFF and REPAIRBIT, LLC,

Crossclaim Defendants.

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INDEX NO. 654473/2023

MOTION DATE 01/26/2024

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 155, 156, 157, 158, 163, 164, 165, 167, 176

were read on this motion to DISMISS DEFENSES AND CROSSCLAIM.

Plaintiff Supplybit, LLC's ("Supplybit" or "Plaintiff") and Crossclaim Defendant Repairbit, LLC'S ("Repairbit")'s motion (i) to dismiss Defendant – Crossclaim Plaintiff Standard Power Hosting Infra Company, LLC's ("Standard Power") Fifth and Eighth Affirmative Defenses pursuant to CPLR § 3211(b), (ii) to dismiss Repairbit from this action due to lack of personal jurisdiction pursuant to CPLR § 3211(a)(8), and (iii) to dismiss Standard Power's crossclaim against Repairbit pursuant to CPLR § 3211(a)(7) is **granted in part** to the extent that Standard Power's Fifth and Eighth Affirmative Defenses are **dismissed**, and **denied** with respect to that branch of the motion seeking dismissal of the crossclaim against Repairbit.

A. BACKGROUND

This case concerns Bitcoin mining. Supplybit and Standard Power are the parties to a Hosting and Agency Agreement, along with amendments thereto ("Hosting Agreement" [NYSCEF 2-5]). Under the Hosting Agreement, Standard Power agreed to host Supplybit's "miners" (essentially, specialized computers that require a large amount of power to operate), at Standard Power's Conesville, Ohio facility. Among other things, Standard Power was to provide sufficient power and access to water for cooling the miners. Supplybit agreed to pay for Standard Power's services and, among other things, provide collateral to secure its obligations.

Both Supplybit and Standard Power allege that an "Event of Default" has occurred under the Hosting Agreement. Supplybit contends that Standard Power damaged its miners by, among other things, providing water with an inappropriate mineral content, and seeks damages as well as the return of its property located at the Conesville facility. Supplybit's Complaint (NYSCEF 1) includes four causes of action including (1) breach of contract; (2) declaratory judgment; (3) conversion; and (4) replevin.

Standard Power contends that Supplybit failed to pay its invoices and failed to provide collateral as required by the Hosting Agreement. Standard Power's Amended Answer (NYSCEF 153 ["Answer"]) contains (1) affirmative defenses including, as relevant here, unjust enrichment and equitable estoppel; (2) counterclaims for i. breach of contract and ii. declaratory judgment; and (3) a crossclaim for fraudulent inducement against Crossclaim Defendants Michael Groff ("Groff") and Repairbit.

With respect to the crossclaim, Standard Power alleges that Mr. Groff "is the sole owner of the equity interests in both Plaintiff and RepairBit" and that, while Supplybit was the contracting party, that "three specialized computer washing machines" pledged as collateral in

the Second Amendment to the Hosting Agreement are actually owned by Repairbit (Answer ¶¶123-148). Standard Power further alleges that Repairbit solicits business in New York and that executives of Supplybit, including Gross and Wesley Decatur ("Decatur"), are also affiliated with Repairbit.

It is undisputed that Groff is the sole owner of Supplybit and Repairbit and that Repairbit owned the washing machines pledged as collateral (Groff Reply to Amended Crossclaim ¶¶128, 141 [NYSCEF 160]). However, Mr. Groff contends "that Standard Power knew, prior to the execution of the Second Amendment, who owned the collateral. . .." (*id.* ¶141).

B. DISCUSSION

a. Supplybit's Motion to Dismiss Standard Power's Fifth and Eighth Affirmative Defenses is Granted

Pursuant to CPLR 3211(b), a "party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." "On a motion to dismiss affirmative defenses pursuant to CPLR 3211(b), the plaintiff bears the burden of demonstrating that the defenses are without merit as a matter of law. In deciding a motion to dismiss a defense, the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (*534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 90 AD3d 541, 541-42 [1st Dept 2011] [collecting cases]). Defenses that merely plead bare legal conclusions are insufficient as a matter of law and subject to dismissal (*see Robbins v Growney*, 229 AD2d 356, 358 [1st Dept 1996]).

As to the specific defenses at issue here, a "party may not recover in quantum meruit or unjust enrichment where the parties have entered into a contract that governs the subject matter" (*Cox v NAP Const. Co., Inc.*, 10 NY3d 592, 607 [2008] citing *Clark–Fitzpatrick, Inc. v. Long Is.*

R.R. Co., 70 N.Y.2d 382, 388, 521 N.Y.S.2d 653, 516 N.E.2d 190 [1987]). Similarly, an "equitable estoppel defense is legally insufficient [where] it is duplicative of the breach of contract affirmative defense" *City of New York v 611 W. 152nd St., Inc.*, 273 AD2d 125, 126 [1st Dept 2000] [citation omitted]).

Standard Power and Supplybit agree that they entered the Hosting Agreement. Contrary to Standard Power's contention, it cannot assert an unjust enrichment defense when there is no dispute that the parties entered into a valid and enforceable contract. Standard Power's unjust enrichment defense alleges that it "provided services for Plaintiff and purchased equipment for their use as part of the Hosting Agreement" and Plaintiff "breached its obligations under the terms of the Hosting Agreement" (Answer ¶93). Further, the damages claimed by Standard Power as a result of the unjust enrichment arise solely from the alleged breach of the Hosting Agreement (*id.*).

Accordingly, Standard Power's unjust enrichment defense is deficient as a matter of law and must be dismissed (*Pappas v Tzolis*, 20 NY3d 228, 234 [2012] quoting *(IDT Corp. v. Morgan Stanley Dean Witter & Co.,* 12 N.Y.3d 132, 142, 879 N.Y.S.2d 355, 907 N.E.2d 268 [2009] ["The doctrine of unjust enrichment invokes an 'obligation imposed by equity to prevent injustice, *in the absence of an actual agreement between the parties concerned*'"]; see *Benham v eCommission Sols., LLC*, 118 AD3d 605, 607 [1st Dept 2014] [an unjust enrichment claim "which seeks precisely the same damages" as a breach of contract claim should be dismissed as duplicative]).

Similarly, both of Standard Power's equitable estoppel theories are based on the Hosting Agreement (Answer ¶ 96). Specifically, Standard Power argues that contrary to Supplybit's allegations that Standard Power provided inappropriate water for cooling the miners, Schedule 2

of the Hosting Agreement requires only that Standard Power provide access to groundwater. Next, Standard Power argues that Plaintiff violated Schedule 4 of the Hosting Agreement by misrepresenting its ownership of certain collateral, including the computer washing machines.

Both of Standard Power's estoppel theories are duplicative of Supplybit's breach of contract defense and must be dismissed (*City of New York v 611 W. 152nd St., Inc.*, 273 AD2d 125, 126 [1st Dept 2000] [dismissing equitable estoppel defense]; see *Town and Country Adult Living, Inc. v The Hearth at Mount Kisco, LLC*, 2021 N.Y. Slip Op. 30519[U], 8 [N.Y. Sup Ct, New York County 2021] [Cohen, J.] citing *Guerrero v West 23rd St. Realty, LLC*, 45 AD3d 403, 404 [1st Dept 2007] ["Because the alleged conduct underlying the estoppel claim is the same conduct underlying plaintiffs' substantive causes of action, including breach of contract, the eighth cause of action is dismissed as duplicative"]).

Accordingly, Standard Power's Fifth and Eighth Affirmative Defenses are dismissed.

b. The Motion to Dismiss Repairbit for Lack of Jurisdiction is Denied

On a motion to dismiss for lack of personal jurisdiction under CPLR 3211(a)(8), "the plaintiff has the burden of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate jurisdiction" (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485, 486 [1st Dept 2017]). However, Standard Power "need not present definitive proof of personal jurisdiction, but only make a 'sufficient start' in demonstrating such jurisdiction by reference to pleadings, affidavits, and other suitable documentation" (*Avilon Automotive Group v Leontiev*, 168 AD3d 78, 89 [1st Dept 2019] quoting *American BankNote Corp. v. Daniele,* 45 A.D.3d 338, 340, 845 N.Y.S.2d 266 [1st Dept. 2007]).

The Court's exercise of personal jurisdiction must also comport with constitutional due process principles (*D & R Glob. Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d

292, 298 [2017]). Due process requires that a defendant must have sufficient minimum contacts with New York such that the defendant should reasonably expect to be haled into court here (*LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 216 [2000], quoting *World-Wide Volkswagen Corp. v Woodson*, 444 US 286, 297 [1980]), and that requiring the non-domiciliary to defend the action in New York comports with "traditional notions of fair play and substantial justice" (*LaMarca*, 95 NY2d at 216, quoting *International Shoe Co. v Washington*, 326 US 310, 316 [1945]).

Standard Power argues that the Court has both general and specific jurisdiction over Repairbit pursuant to CPLR 302(a)(1) and CPLR 302(a)(3). Those sections provide:

> (a) Acts which are the basis of jurisdiction. 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:
>
> 1. transacts any business within the state or contracts anywhere to supply goods or services in the state
>
> 3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
>
> (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
>
> (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce;

Repairbit argues that the Court lacks both general and specific jurisdiction over it. Repairbit further argues that, to the extent any actionable misrepresentation was made, that it was made by either Supplybit or Mr. Groff acting on Supplybit's behalf.

The Court finds that it does not have general jurisdiction over Repairbit, which is not incorporated in New York and is not alleged to have its principal place of business here (*Daimler AG v Bauman*, 571 US 117, 137, 134 S Ct 746, 760, 187 L Ed 2d 624 [2014]). However, the Court finds that Standard Power has made a "sufficient start" towards demonstrating that the Court has specific personal jurisdiction over Repairbit, and that jurisdictional discovery is warranted.

CPLR 302(a)(1) "is a 'single act statute' and proof of one transaction in New York is sufficient to invoke jurisdiction, 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" (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]). With respect to CPLR 302(a)(3), the party asserting jurisdiction must establish five elements: "[f]irst, that defendant committed a tortious act outside the State; second, that the cause of action arises from that act; third, that the act caused injury to a person or property within the State; fourth, that defendant expected or should reasonably have expected the act to have consequences in the State; and fifth, that defendant derived substantial revenue from interstate or international commerce" (*LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000]).

The facts alleged in Standard Power's crossclaim, as amplified during oral argument (NYSCEF 176 [Transcript]), are sufficient to warrant discovery on the issue of specific jurisdiction. It is undisputed that Groff is the sole owner of both Supplybit and Repairbit; that Mr. Decatur is affiliated with both companies; that Repairbit solicits business in New York; and

that Repairbit owns certain of the collateral pledged by Supplybit, specifically the computer washing machines, in the Hosting Agreement. At the pleading stage it is not clear which corporate "hat" (or hats) Mr. Groff was wearing when Repairbit's property was pledged as collateral under the Hosting Agreement (Tr. at 31). At the very least, Standard Power adequately alleges that Mr. Groff had authority to bind Repairbit and caused Repairbit to pledge its property for the purposes of inducing Standard Power to enter the Hosting Agreement. Moreover, Standard Power is entitled to show that Repairbit (via Mr. Groff) knew or should have known that the Hosting Agreement included a clause consenting to jurisdiction in New York. Finally, whether Standard Power knew that Repairbit owned the washing machines, and the legal implications of that knowledge, are not properly resolved on a motion to dismiss.

In those circumstances, the Court finds that Standard Power has made a "sufficient start" to demonstrate that the Court has specific jurisdiction over Repairbit. The nature and degree of Repairbit's knowledge of and participation in the decision to pledge its property are issues of fact which may be explored in jurisdictional discovery (*Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd.*, 184 AD3d 116, 125 [1st Dept 2020]). Thus, the motion to dismiss for lack of jurisdiction is denied without prejudice to renewal after discovery (*Mercedes v Cool Wind Ventilation Corp.*, 223 AD3d 623, 624 [1st Dept 2024] citing CPLR 3211[d]; *Morgan ex rel. Hunt v A Better Chance, Inc.*, 70 AD3d 481, 481 [1st Dept 2010]).

c. The Motion to Dismiss Repairbit for Failure to State a Claim is Denied

When deciding a CPRL 3211(a)(7) motion to dismiss a crossclaim, the Court must construe the pleading liberally, accept the facts alleged as true and afford the crossclaim plaintiff the benefit of every inference (*Ace Am. Ins. Co. v Consol. Edison Co. of New York, Inc.*, 79 Misc 3d 1215(A) [Sup Ct New York County 2023] citing *Leon v Martinez*, 84 NY2d 83, 87 [1994]).

"To state a claim for fraudulent inducement, a party must show a 'misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury'" (*Receivables IM Rest, LLC v GFB Rest. Corp.*, 81 Misc 3d 1248(A) [Sup Ct New York County 2024] *quoting United States Life Ins. Co. in City of New York v Horowitz*, 192 AD3d 613, 614 [1st Dept 2021]). The misrepresentation or omission must relate to a present fact and not future performance (*Gosmile, Inc. v Levine*, 81 AD3d 77, 81 [1st Dept 2010])

Contrary to Repairbit's argument, the crossclaim adequately alleges each element of the asserted claim, including that Repairbit made a fraudulent misrepresentation or omission upon which Standard Power relied. Specifically, the crossclaim alleges that Repairbit (1) knew its assets were being pledged as collateral in connection with the Second Amendment to the Hosting Agreement even though Supplybit was the contracting party; (2) that Repairbit misrepresented or omitted that it owned the pertinent collateral to induce Standard Power to enter the Second Amendment; and (3) that Standard Power relied on the misrepresentation or omission; (4) resulting in injury. Therefore, the motion to dismiss the crossclaim is denied.

* * * *

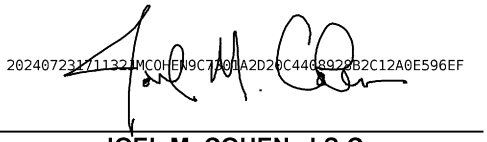
Accordingly, it is

ORDERED that Plaintiff's motion to dismiss is **GRANTED IN PART** and Defendant's Fifth and Eighth Affirmative Defenses are **DISMISSED**; it is further

ORDERED that Crossclaim Defendant Repairbit's motion to dismiss is **DENIED**; it is further

ORDERED that the parties appear for a telephonic status conference on September 10, 2024, at 11:00 am and that the parties circulate dial-in information in advance to sfc-part#@nycourts.gov.

This constitutes the decision and order of the Court.



7/23/2024
DATE

JOEL M. COHEN, J.S.C.

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