

Stenn Assets UK Ltd v Idanim Food Inc.
2024 NY Slip Op 35292(U)
March 1, 2024
Supreme Court, Rockland County
Docket Number: Index No. 035157/2023
Judge: Sherri L. Eisenpress
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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STENN ASSETS UK LTD, as Assignee of HAINAN
XIANGTAI FISHERY CO., LTD.,

DECISION & ORDER

Plaintiff,

Index No.: 035157/2023

-against-

(Motion # 1)

IDANIM FOOD INC.,

Defendants.

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Sherri L. Eisenpress, J.S.C.

The following papers, NYSCEF documents numbered 4-23, were considered in connection with Defendants' Notice of Motion for an Order, pursuant to CPLR § 3211(a)(3) and Bus. Law § 1312, and CPLR § (a)(7), seeking dismissal of the complaint; directing the Plaintiff to post a bond in the amount of \$500, pursuant to CPLR § 8501(a) in that the Plaintiff is an unlicensed foreign corporation not authorized to do business in the State of New York; and staying all proceedings until such time as Plaintiff posts such bond.

Upon the foregoing papers, the Court now rules as follows:

Factual Allegations

This action was commenced by Plaintiff on October 17, 2023, with the filing of the Summons and Complaint on the NYSCEF system. Plaintiff Stennis in the business of purchasing accounts receivable from sellers of various goods and providing the seller with immediate funds. This action seeks to collect the sum of \$70,400.00 related to the sale of fish goods, originally sold to Defendant by Plaintiff's Assignor, Hainan Xiangtai Fishery Co., Ltd.

On November 21, 2023, Defendant timely moved for an Order, pursuant to CPLR § 3211(a)(3) and (7), to dismiss the complaint and/or require Plaintiff to post a bond. Defendant asserts that the Complaint must be dismissed, pursuant to § 3211(a)(3), because the Plaintiff is without legal capacity to sue in the State of New York, More specifically,

Defendant alleges that Plaintiff is an unlicensed foreign corporation not authorized to do business in the State of New York and has commenced the instant action in violation of Business Corporation Law § 1312(a). Defendant asserts that Plaintiff is an unlicensed foreign entity, incorporated under the laws of the United Kingdom, who transacts business within the State with multiple entities and operates through a network of New York-based brokers to solicit customers for its trade receivables business. Defendant also argues that Plaintiff's Complaint, consisting of a total of six paragraphs, is bare bones and fails to state a claim pursuant to CPLR 3211(a)(7).

In opposition thereto, Plaintiff submits the affirmation of Michael Tenitsky, Chief Legal Officer of Plaintiff, who states that Plaintiff is a British Private Limited Company, located in London, and is the Assignee of Hainan Xiangtai Fishery Co., Ltd. He further states that Plaintiff does not transact within the United States and does not conduct or transact business within the State of New York. Rather Stenn purchases accounts receivable and conducts all activities with respect to its transactions from its office in London. Plaintiff does not employ any brokers in the State of New York, nor does it have any employees located in the State of New York.

Plaintiff argues that it is not "doing business" in New York and is therefore not required to register with the New York Secretary of State. It notes that in order for a court to find that a corporation is doing business in New York within the meaning of BCL § 1312(a), the corporation must be engaged in a regular and continuous course of conduct in the State and further notes that the statute requires a greater amount of local activity by a foreign corporation than the "doing business" standard applicable to New York's Long Arm Statute relating to personal jurisdiction. While Plaintiff concedes that it does engage with third-party brokers from its offices in England to solicit business in New York, the mere solicitation of sales in New York does not constitute "doing business" within the meaning of BCL § 1312(a).

With regard to that portion of Defendant's motion to dismiss the action for failure to state a cause of action, Plaintiff notes that its first cause of action is for the goods sold and delivered by Plaintiff's Assignor through 17, 2022 in the amount of \$70,400 and a second cause of action for an account stated. Plaintiff submits that the Complaint specifically identifies the transactions between the parties, the amounts incurred by Defendant pursuant to those transaction sand the dates said amounts were due.

Legal Analysis

A defendant seeking dismissal of a complaint on the grounds that the plaintiff does not have legal capacity to sue has the initial burden of proof. With respect that portion of the motion which seeks to dismiss the action for lack of capacity, Defendant's motion is denied. BCL § 1312(a) provides that:

A foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and it has paid to the state all fees and taxes imposed under the tax law or any related statute, as defined in section eighteen hundred of such law, as well as penalties and interest charges related thereto, accrued against the corporation."

The party seeking to impose the statutory barrier to the foreign corporations right to bring suit must rebut the presumption that the corporation does business in the state of incorporation rather than New York and has the burden of proving that the foreign corporation's activity in New York is systematic and regular. *Airtran New York, LLC v. Midwest Air Group, Inc.*, 46 A.D.3d 208, 214, 844 N.Y.S.2d 233 (1st Dept. 2007). "Absent sufficient evidence to establish that a plaintiff is doing business in this state, 'the presumption is that the plaintiff is doing business in its State of incorporation...and not in New York.'" *Highfill, Inc. v. Bruce & Iris, Inc.*, 50 A.D.3d 742, 743-744 (2d Dept. 2008).

In the instant matter, Defendant has failed to satisfy its prima facie burden under BCL § 1312(a). The affidavit of Aaron Gancfired, President of Defendant Idanim Food,

Inc., who states that he was introduced to Plaintiff through a licensed New York broker named Menashe Rosenberg who operates out of New York, and his belief that Plaintiff employs a number of New York-based brokers like Mr. Rosenberg, to solicit clients, fails to demonstrate that Plaintiff has systematic and regular business in New York. Moreover, where a foreign corporation's activities are limited to solicitation of business and facilitating the sale and delivery of its merchandise incidental to its business in interstate and international commerce, such activities do not constitute "doing business in this state" within the contemplation of section 1312 of the Business Corporation Law. *Uribe v. Merchants Bank of New York*, 266 A.D.2d 21, 22, 697 N.Y.S.2d 279 (1st Dept. 1999). At best, Plaintiff's actions amount to mere solicitation of business in New York and therefore need not register to do business pursuant to BCL Sec. 1312.

On a motion to dismiss for failure to state a cause of action [§ 3211(a)(7)], the Court initially must accept the facts alleged in the complaint as true and then determine whether those facts fit within any cognizable legal theory, irrespective of whether the plaintiff will likely prevail on the merits. *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 318, 631 N.Y.S.2d 565 (1995); *Leon v. Martinez*, 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972 (1994); *People v. New York City Transit Authority*, 59 N.Y.2d 343, 348, 465 N.Y.S.2d 502 (1983); *Morone v. Morone*, 50 N.Y.2d 481, 429 N.Y.S.2d 592 (1980); *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 274-275, 401 N.Y.S.2d 182 (1977); *Cavanaugh v. Doherty*, 243 A.D.2d 92, 98, 675 N.Y.S.2d 143 (3d Dept. 1989); *Klondike Gold, Inc. v. Richmond Associates*, 103 A.D.2d 821, 478 N.Y.S.2d 55 (2d Dept. 1984).

The complaint must be given a liberal construction and will be deemed to allege whatever cause of action can be implied by fair and reasonable reading of same. *Shields v. School of Law of Hofstra University*, 77 A.D.2d 867, 431 N.Y.S.2d 60 (2d Dept. 1980); *Penato v. George*, 52 A.D.2d 939, 383 N.Y.S.2d 900 (2d Dept. 1976). "However, bare legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true

on such a motion. *Palazzolov. Herrick, Feinstein, LLP*, 298 A.D.2d 372, 751 N.Y.S.2d 401 (2d Dept. 2002); *Barker v. Amorini*, 121 A.D.3d 823, 995 N.Y.S.2d 89 (2d Dept. 2014). In assessing a motion to dismiss for failure to state a cause of action, the court may freely consider affidavits submitted by plaintiff to remedy any defects in the complaint. *Leon v. Martinez*, 84 N.Y.2d 83, 88, 614 N.Y.S.2d 972 (1994).

In the instant matter, while the Complaint is itself indeed vague on details, it nonetheless alleges that on September 17, 2022, Plaintiff's Assignor sent a statement of account to the Defendant evidencing the indebtedness of \$70,400.00, for goods sold and delivered through September 17, 2022, and not paid for. In opposition to the motion, Plaintiff cured any defects in pleading by virtue of the affidavit of Michael Tenitsky, who provides further details and documentary support with respect to the transactions giving rise to Plaintiff's claims. As such, the Court finds that Defendant's motion to dismiss the Complaint pursuant to CPLR § 3211(a)(7) also requires denial.

Accordingly, it is hereby

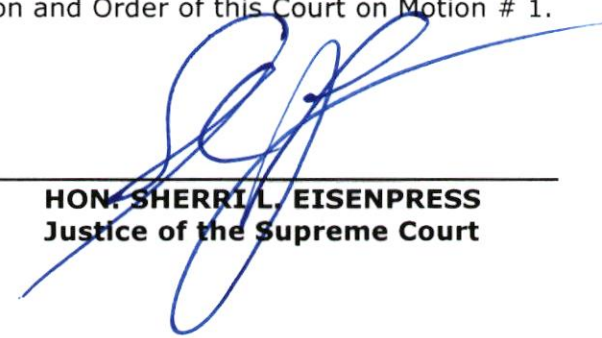
ORDERED that Defendant's Notice of Motion for an Order against Plaintiff dismiss the complaint is DENIED in its entirety; and it is further

ORDERED that Defendant may interpose an Answer to the Complaint within twenty (20) days of the date of this Order; and it is further

ORDERED that all parties shall appear for Preliminary Conference on this matter on **May 3, 2024, at 9:40 a.m. via Microsoft Teams**, link to be provided at a later date.

The foregoing constitutes the Decision and Order of this Court on Motion # 1.

Dated: New City, New York
March 1, 2024



HON. SHERRIL L. EISENPRESS
Justice of the Supreme Court

TO: All counsel via NYSCEF