

Environmental Appraisers & Bldrs. LLC v Stamford Plaza Hotel & Conference Ctr.
2024 NY Slip Op 35621(U)
December 18, 2024
Supreme Court, Westchester County
Docket Number: Index No. 67543/2024
Judge: Thomas Quiñones
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER – I.A.S. PART

PRESENT: HON. THOMAS QUIÑONES, J.S.C.

ENVIRONMENTAL APPRAISERS
AND BUILDERS LLC,

Plaintiff(s)

-against-

STAMFORD PLAZA HOTEL & CONFERENCE CENTER D.B.A.
THE ARMON HOTEL, ROSDEV HOTEL MANAGEMENT
SERVICES INC., D.B.A THE ARMON HOTEL and
STAMFORD HOSPITALITY LP,

Defendant(s).

DECISION AND ORDER

Index No. 67543/2024
Motion Sequence No. 1

The following papers were filed to the New York State Court Electronic Filing System (NYSCEF) as NYSCEF Doc. 8-23 and read on Defendant's motion for a court order (i) pursuant to CPLR § 3211(a)(2) dismissing the complaint against Defendants for lack of subject matter jurisdiction; and (ii) pursuant to CPLR § 3211(a)(8) dismissing the complaint against Defendants for lack of personal jurisdiction.

Upon the foregoing papers, the motion is determined as follows:

Plaintiff ENVIRONMENTAL APPRAISERS AND BUILDERS LLC ("EAB") commenced by Summons and Complaint filed on August 20, 2024 asserting causes of action for breach of contract; breach of the covenant of good faith and fair dealing; unjust enrichment; conversion; stated account; and diversion of trust funds. The following factual allegations are asserted in the Plaintiff's complaint.¹ On or about April 13, 2023, a fire broke out in the Defendant's garage wherein as many as eight cars went up in flames. Firefighters immediately stretched multiple hose lines and began extinguishing the vehicles while also trying to cool the structural supports for the garage. While performing an on-site assessment of the incident, a Stamford Fire Department Safety Officer noticed that the structure had become compromised and ordered all firefighters out of the parking garage

¹ NYSCEF Doc. 1, Verified Complaint.

while evacuating all hotel guests away from the area. Firefighters continued pouring water and foam onto the vehicles from outside the parking structure. Defendant engaged the services of Plaintiff to provide emergency shoring. Specifically, an agent of Defendant Armon Hotel entered into a Services Agreement (the “EAB Services Agreement”) as well as executed a corresponding Direction to Pay / Letter of Satisfaction (the “Direction of Payment to EAB”) on April 13, 2023 (the “EAB Services Agreement” and “Direction of Payment to EAB” collectively referred to herein as the “Armon Agreements”). Pursuant to the Armon Agreements, Plaintiff provided emergency shoring services to Defendant Armon Hotel from April 13, 2023, through June 2024 (collectively the “Plaintiff’s Emergency Services”). The price for Plaintiff’s Emergency Services was \$84,763.18. Despite completion of Plaintiff’s Emergency Services, Plaintiff has not received any payment for the emergency work performed in April 2023 which was critical to Defendant Armon Hotel’s business inclusive of the ability to reopen its garage and monetize the property as “a deluxe getaway hotel befitting celebratory events, weekend conventions, mid-week getaways, and business gatherings”.²

Defendants’ Motion:

Defendants filed the instant motion for a court order (i) pursuant to CPLR § 3211(a)(2) dismissing the complaint against Defendants for lack of subject matter jurisdiction; and (ii) pursuant to CPLR § 3211(a)(8) dismissing the complaint against Defendants for lack of personal jurisdiction.

First, defense counsel contends that this Court lacks subject matter jurisdiction over this action because none of the events giving rise to this action occurred in the State of New York, the only connection to New York is that it is the place where Plaintiff was formed, Defendants lack the capacity to maintain an action in New York, and therefore this Court does not lack subject matter jurisdiction over the issues presented in this case. Defense counsel notes that the EAB Services Agreement contains no venue provision that would authorize the filing of the above-captioned action in New York.³

Second, defense counsel contends that this Court lacks personal jurisdiction over Defendants in the State of New York because none of the events giving rise to this action occurred in the State of New York and no provision of New York’s long arm statute can support personal jurisdiction over Defendants. Specifically, jurisdiction does not rise from CPLR § 302(a)(1) [“transacts any business within the state or contracts anywhere to supply goods or services in the state”], nor based on CPLR § 302(a)(3) [“commits a tortious act without the state, causing injury to person or property within the state . . . 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

² *Id.* at Complaint ¶15.

³ See NYSCEF Doc. No. 3 (EAB Service Agreement) at Ex. B; see also NYSCEF Doc. 10 (Rosenberg Aff. at ¶ 21).

substantial revenue from interstate or international commerce.”]. In that regard, defense counsel argues, amongst other arguments, that the EAB Service Agreement has no venue provision, and all services were rendered in Connecticut.

Plaintiff's Opposition:

Plaintiff filed opposition. As to jurisdiction, Plaintiff's counsel contends that venue is proper in this Court because Plaintiff's principal place of business is in the County of Westchester and a substantial part of the communications and witnesses giving rise to this action occurred in Westchester County.

First, Plaintiff contends that this Court has personal jurisdiction over this matter, citing CPLR §302(3)(ii) which provides:

“Personal jurisdiction by acts of non-domiciliaries. (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:

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 (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.” (*Id.*)

Plaintiff argues that each of the five elements necessary to confer jurisdiction under this section are present in the instant matter: (1) the defendant's commission of a tortious act outside New York; (2) the plaintiff's cause of action arises from that act; (3) the defendant's act caused injury to the plaintiff in New York; (4) the "defendant expected or should reasonably have expected the act to have consequences in the State"; and (5) the "defendant derived substantial revenue from interstate or international commerce". (*LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000]).

Notably, Plaintiff's Complaint states that “[t]his Court has subject matter jurisdiction over this dispute pursuant to NY CPLR 301 and 302 because the action arises out of conduct that took place in the State of New York and the County of Westchester.”⁴ Plaintiff also points to the Fourth Cause of Action for Conversion and Sixth Cause of Action for Diversion of Trust Funds which allege Defendants' violation of laws of the State of New York - specifically, NY Lien Law § 72. In that regard, the Complaint alleges the Defendants received insurance proceeds in the wake of an April 13, 2023 fire; and Defendants misappropriated the insurance payments made by their carrier on that policy, thereby “stealing the proceeds from a Plaintiff statutorily entitled to them for emergency

⁴ NYSCEF Doc. 1 ¶2 (Verified Complaint's “Jurisdiction and Venue” provision).

services rendered in connection with that very same casualty loss”.⁵ Contrary to Defendants’ contentions, Plaintiff argues that Defendants reached into the State of New York when securing Plaintiff’s emergency services, entering into the EAB Services Agreement with Plaintiff (a New York domiciliary) to engage such services, and entering into the “Direction of Payment to EAB” agreement authorizing the payment(s) from Defendants’ insurance carrier to Plaintiff (a New York domiciliary). Plaintiff further alleged that this litigation in New York was also foreseeable to Defendants based upon their misappropriation for funds earmarked for Plaintiff for emergency services rendered, and such acts or omissions of Defendants would likely result in consequences (or litigation) within the State of New York.

Second, as it relates to subject matter jurisdiction, Plaintiff’s counsel cites to New York LLC Law § 304(a), which provides that “[i]n any case in which a non-domiciliary would be subject to the personal or other jurisdiction of the courts of this state under article three of the civil practice law and rules, a foreign limited liability company not authorized to do business in this state is subject to a like jurisdiction.” Plaintiff concludes that, insofar as the Defendants are subject to the personal jurisdiction of the courts of New York as detailed above, this Court maintains subject matter jurisdiction over this action.

This Court notes that all other arguments raised on the motion and evidence submitted by the parties in connection thereto have been considered by this Court, notwithstanding the specific absence of reference thereto.

Upon due consideration of the motion record before the Court, and all arguments raised therein, it is hereby

ORDERED that, Defendant’s motion for a court order (i) pursuant to CPLR § 3211(a)(2) dismissing the complaint against Defendants for lack of subject matter jurisdiction; and (ii) pursuant to CPLR § 3211(a)(8) dismissing the complaint against Defendants for lack of personal jurisdiction is DENIED.

Plaintiff has sufficiently established jurisdiction in this venue. CPLR §302 provides:

“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 ... who ...:

“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 ...

“(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce” (CPLR §302[a][3][ii]).

⁵ NYSCEF Doc. 12, Varbero Aff. at ¶13.

The conferral of jurisdiction under this provision rests on five elements: First, 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. (See generally, *LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000], *Aybar v US Tires and Wheels of Queens, LLC*, 211 AD3d 40 [2d Dept. 2022]).

Plaintiff sufficiently alleged that Defendants allegedly committed a tortious act of misappropriation of insurance funds earmarked to pay Plaintiff for emergency services rendered for Defendants' out-of-state premises which caused injury within the State of New York to Plaintiff (a New York domiciliary), and Defendants derived revenue from interstate commerce as demonstrated by Defendant's website soliciting business, in part, by advertising its close proximity to New York (*see*, Defendants' NY marketing-related materials filed as NYSCEF Doc. 16-22). Accordingly, having considered such factors and having balanced same against notions of due process, fair play, and substantial justice, this Court determines that jurisdiction in New York is appropriate and comports with such traditional notions of due process, fair play, and substantial justice.

It is further

ORDERED that, Judge's Court Clerk will issue a separate court notice for case scheduling purposes.

The foregoing constitutes the Decision and Order of this Court.

Dated: December 18, 2024
White Plains, New York

ENTER :



HON. THOMAS QUINONES, J.S.C.

TO: *Filed to NYSCEF*