

Runberg, Inc. v McDermott, Will & Emery LLP

2015 NY Slip Op 30739(U)

April 29, 2015

Supreme Court, New York County

Docket Number: 652543/2014

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

Maryland, and before the USPTO. At all relevant times, Codd was a partner of McDermott and was practicing law from McDermott's Washington, D.C. office.

On March 28, 2008, Runberg formally engaged McDermott to represent it in connection with the filing, maintenance, and prosecution of an invention that Runberg sought to have protected by a United States utility patent. Runberg alleges that the patent drafted by the defendants contained substantial errors that were a direct result of defective legal services rendered by the defendants.

Codd handled the day-to-day relationship with Runberg and drafted the patent that is the subject of this suit. As noted, Runberg is a New York corporation, and, at all relevant times, Runberg's principal place of business was either in New Jersey or Pennsylvania. Runberg does not allege that Codd ever communicated in any way with Runberg or any of its agents while Runberg or any of its agents were located in New York. Codd provided legal services to Runberg from Washington D.C. in connection with the patent application that was submitted to the United States Patent and Trademark Office in Virginia. The only in person meeting between Codd and Runberg took place in New Jersey. Over the past six years, Codd had four clients, separate from Runberg, that are located in New York.

Runberg brings this action against defendants alleging (i) legal malpractice, (ii) breach of fiduciary duty, (iii) breach of contract, and (iv) negligence arising out of defendants legal representation of Runberg in connection with the drafting, prosecution, and maintenance of U.S. Patent No. 8,216,021 B1. Defendants move to dismiss the complaint against Codd pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction. Defendants also move to dismiss Runberg's second, third, and fourth cause of action against the defendants pursuant to CPLR 3211 (a) (7) on

the basis that the claims are duplicative of the first cause of action, legal malpractice. For the reasons discussed below, both motions are granted.

Discussion

Jurisdiction

On a motion to dismiss for lack of personal jurisdiction over the defendant, the ultimate burden rests with the plaintiff, as the party who is asserting jurisdiction, to prove that personal jurisdiction exists over the defendant. *Copp v Ramirez*, 62 AD3d 23, 28-29 (1st Dept 2009). In opposition to a motion to dismiss under CPLR 3211 (a) (8); a plaintiff is not required to make a prima facie showing of jurisdiction but need only make a “sufficient start” establishing that personal jurisdiction may exist and that the basis for personal jurisdiction is not frivolous. *Shore Phram. Providers, Inc. v Oakwood Care Ctr., Inc.*, 65 AD3d 623, 624 (2d Dept 2009) (citing *Peterson v Spartan Indus.*, 33 NY2d 463, 467 (1974)).

CPLR 301

Under CPLR 301 a defendant is subject to jurisdiction in New York if the defendant is “engaged in such a continuous and systematic course of ‘doing business’ here as to warrant a finding of its ‘presence in this jurisdiction.’” *Lauffer v Ostrow*, 55 NY2d 305, 309-10 (1982) (quoting *McGowan v Smith*, 52 NY2d 268, 272 (1981)). Runberg alleges that McDermott is indisputably subject to jurisdiction in New York due to McDermott’s permanent New York office with numerous attorneys and McDermott’s significant regular presence in New York. Runberg then alleges that because general jurisdiction is appropriate over McDermott, general jurisdiction is appropriate over Codd because he is a partner at McDermott. Defendants correctly argue that the fact that Codd is a partner at McDermott is insufficient to establish jurisdiction under CPLR 301.

New York partnership law imposes liability on a partner of a foreign limited liability partnership only for acts in New York performed by that individual partner. “[E]ach partner, employee or agent of a foreign limited liability partnership who performs professional services in this state on behalf of such foreign limited liability partnership shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering such professional services in this state...” N.Y. Ptr. Law § 121-1502(1)(i).

Codd did not communicate with Runberg while Runberg was in New York. Codd also did not solicit Runberg’s business in New York. Instead, Codd provided legal services from Washington D.C. in connection with a patent application submitted to the United States Patent and Trademark Office in Virginia on behalf of a client whose principal place of business was located in Pennsylvania or New Jersey. Codd did not perform any of the alleged negligent acts in New York, as would be required by New York partnership law in order to establish liability over Codd.

Additionally, Runberg cites no case law concluding that jurisdiction is appropriate in New York over a partner of a limited liability partnership for acts performed outside of New York. Plaintiff only cites case law discussing jurisdiction over general partners, whose legal duties and obligations are far broader than those of limited liability partners. Therefore, general jurisdiction may not be established over Codd pursuant to CPLR 301.

CPLR 302

A court may assert personal jurisdiction over a non-domiciliary defendant under CPLR 302 (a) (1) where that defendant “transacts any business within the state” and the alleged cause of action arises from the business transaction within the state. NY CPLR 302. Runberg

alleges that Codd transacted business in New York by virtue of Codd's four clients located in New York and Codd's representation of Runberg who is a New York corporation.

The cause of action in this case does not arise from the fact that Codd represented four clients, other than Runberg, who are located in New York. In this case, Codd provided legal services from Washington D.C. in connection with a patent application submitted to the United States Patent and Trademark Office in Virginia on behalf of a client whose principal place of business was located in Pennsylvania or New Jersey. Runberg does not allege that Codd ever communicated with Runberg in anyway while Runberg was located in New York. The cause of action against Codd did not arise out of any independent activities within New York, which would invoke long-arm jurisdiction under CPLR 302 (a) (1). Additionally, the fact that Runberg is a New York corporation is not enough to confer jurisdiction over Codd in this case. "A plaintiff may not rely [] on his own activities within the State, rather than on defendant's independent activities to invoke long-arm jurisdiction." *Fishcbarg v Doucet*, 9 NY3d 375, 383 (2007).

A court may assert personal jurisdiction over a non-domiciliary defendant under CPLR 302 (a) (3) where that defendant, under certain circumstances, "commits a tortious act without the state causing injury to person or property within the state." NY CPLR 302. The location of the injury for jurisdictional purposes is not merely the state in which the plaintiff resides but instead the injury is where "the critical events associated with the dispute took place." *Smith v Morris & Manning*, 647 F Supp 101, 103-04 (1986) (quoting *American Eutectic Welding Alloy Sales Co. v Dytron Alloys Corp.*, 439 F2d 428, 433 [2d Cir. 1971]).

Runberg alleges that Codd, through defective legal representation, deprived Runberg, a New York corporation, of a valuable asset (the patent) thereby causing injury in New York. It is

well settled that “the indirect financial loss resulting from the fact that the injured person resides or is domiciled in New York without more, is insufficient to confer jurisdiction under CPLR 302 (a) (3).” *Fantis Foods v Standard Importing Co.*, 49 NY2d 317, 326 (1980). In the instant case the critical events occurred in Washington D.C., New Jersey, and Virginia and the injury, therefore, did not occur within in New York.

Long-arm jurisdiction may not be established over Codd pursuant to CPLR 302.

Due Process

The court does not address the issue of due process because the law of New York bars the court’s exercise of personal jurisdiction. *Bensusan Restaurant Corp. v King*, 126 F3d 25, 27 (2d Cir. 1997).

Duplicative Causes of Action

Runberg alleges that defendants provided negligent legal services in the drafting of a patent and that Runberg suffered damages due to defendants negligence. Based on these allegations, Runberg has pleaded four causes of action: (i) legal malpractice, (ii) breach of fiduciary duty, (iii) breach of contract, and (iv) negligence. Defendants argue that because Runberg’s breach of fiduciary duty, breach of contract, and negligence causes of action are entirely duplicative of Runberg’s legal malpractice cause of action, they should be dismissed pursuant to CPLR 3211 (a) (7).

A cause of action for breach of fiduciary duty, breach of contract, or negligence arising out of the same underlying facts and seeking identical relief as a legal malpractice cause of action is duplicative. *Weil, Gotschal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267, 271 (1st Dept 2004); *Ulico Ca. Co. v Wilson, Elser, Moskowitz, Edelman & Dicker*, 56 AD3d 1, 8-9 (1st Dept 2008); *Conklin v Owen*, 72 AD3d 1006, 1007 (2d Dept 2010).

As the court stated in *Ulico Casualty Company v Wilson, Elser, Moskowitz, Edelman & Dicker*, “Because the attorney-client relationship is both contractual and inherently fiduciary, a complaint seeking damages alleged to have been sustained by a plaintiff in the course of such relationship will often advance one or more causes of action based upon the attorney’s breach of some contractual or fiduciary duty owed to the client ... courts normally treat the action as one for legal malpractice only.” 56 AD3d 1, 8-9 (1st Dept 2008). Runberg’s complaint sets forth the exact same facts and the exact same damages for each cause of action. Runberg’s second, third, and fourth causes of action are dismissed pursuant to CPLR 3211 (a) (7) as duplicative.

ORDERED that defendants’ motion to dismiss the complaint against Codd pursuant to CPLR 3211 (a) (8) for lack of personal jurisdiction is granted; and it is further

ORDERED that defendants’ motion to dismiss causes of action two, three, and four pursuant to CPLR 3211 (a) (7) for failure to state a cause of action is granted; and it is further

ORDERED that McDermott shall serve and file its answer within thirty days of today; and it is further

ORDERED that the parties shall appear for a preliminary conference to be held on

May 19, 2015, at 10 (AM/PM), at 60 Centre Street, Rm. 218.

Dated: April 29, 2015

ENTER:



ANIL C. SINGH