

Bruno v GPE Holdings, Inc.

2017 NY Slip Op 30695(U)

April 10, 2017

Supreme Court, New York County

Docket Number: 651550/2014

Judge: Jeffrey K. Oing

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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: IAS PART 48

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 FRED BRUNO,

Plaintiff,

-against-

GPE HOLDINGS, INC., GRAMERCY MILLENNIUM
 GROUP, GRAMERCY GROUP, GRAMERCY PRIVATE
 EQUITY HOLDINGS, GRAMERCY VENTURE
 ADVISORS, INC., GRAMERCY COMMODITIES,
 MICHAEL J. GALE, AMY SWARTZ, and AMY
 GALE,¹

Defendants.

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DECISION AND ORDER

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JEFFREY K. OING, J.:

Plaintiff Fred Bruno moves, pursuant to CPLR 4403, to reject the report of Special Referee Lancelot Hewitt entered on January 30, 2017.

Procedural History

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Defendants collectively moved, pursuant to CPLR 3211(a)(8), to dismiss this action for lack of personal jurisdiction. This Court, in a decision and order dated February 17, 2015, referred this matter to a Special Referee/Judicial Hearing Officer to conduct a traverse hearing and to report with recommendations as to whether the defendants are subject to personal jurisdiction pursuant to CPLR 301 and/or 302. The Court denied without

¹Defendant Amy Swartz is defendant Michael Gale's wife. She is named in the caption as Amy Swartz and Amy Gale.

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prejudice to renewal defendants' motion seeking dismissal on the basis of CPLR 3211(a)(1), (a)(5) and (a)(7) to allow for the threshold issue of personal jurisdiction to be decided in the first instance.

Special Referee Proceedings

This matter was assigned to Special Referee Hewitt on February 10, 2016. The parties stipulated that the jurisdictional issue constituted a legal question rather than a factual one. The parties were given the opportunity to submit legal memoranda and documentary evidence in support of their respective positions. Special Referee Hewitt issued a report dated January 24, 2017, finding that, "the documentary evidence submitted by Bruno fails to demonstrate that the court has personal jurisdiction over the corporate defendants in the instant action" because the corporate defendants are neither incorporated in New York nor maintain a principal place of business in New York (NYSCEF Doc. 108, pp. 6-7). Additionally, Referee Hewitt found that the affidavits submitted by Bruno in support of jurisdiction "are insufficient to demonstrate that the corporate defendants are 'at home' in New York state," and to establish any "continuous and systematic" contact with the state (Id., p. 7). With regard to alter ego liability or jurisdiction over the corporate defendants based on service on Gale within New

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York, the Referee found no evidence that "the corporate defendants are alter ego^s and/or shell entities controlled by [individual defendants] Gale and Swartz" (Id.).

Turning to the individual defendants, Referee Hewitt concluded that the jurisdictional issue was moot "given that such claims alleged by Bruno against these defendants pertain to their alleged activities as principals in the corporate defendants" (Id., p. 8). Based on this finding, Referee Hewitt recommended that the claims against the individual defendants be dismissed.

Discussion

Having reviewed the report and the evidence submitted before the Special Referee, the Court finds that Referee Hewitt's recommendation and findings with respect to the corporate defendants are amply supported by the record and should not be disturbed (Yahudaii v Baroukhian, 89 AD3d 557 [1st Dept 2011]).

With respect to the Referee's conclusion concerning the individual defendants, that recommendation exceeded the scope of this Court's reference. As indicated, supra, the Court referred only the issue of jurisdiction to the Special Referee, without determining whether plaintiff sufficiently pleaded a claim against defendants, both corporate and individual. Whether or not the complaint fails to state a cause of action against the individual defendants based on the fact that they are not

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individually liable for the wrongs alleged therein is not an issue of personal jurisdiction. The only question that needs to be decided is whether this Court may exercise personal jurisdiction over defendants Swartz and Gale.

Here, the record clearly demonstrates that Gale and Swartz are California residents -- both have proffered their driver's licenses and utility bills, among other items, as proof. Further, the record indisputedly established that neither was at any relevant time a New York resident. That record also indicates that Bruno's basis for jurisdiction over Swartz is virtually the same as his basis for jurisdiction over the corporate defendants. As such, that ground to support personal jurisdiction over Swartz is unavailing for the reasons noted with respect to the corporate defendants.

With respect to Gale, defendants concede that he was served in New York while at a hotel that Bruno lists as both Gale and Swartz's residence in the state (Gale Aff., ¶ 6, NYSCEF Doc. No. 10). Although the hotel is plainly not his legal residence, personal jurisdiction over Gale indisputably exists based on the service on him within the state (CPLR 301).

Accordingly, it is

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ORDERED that the branch of plaintiff's motion to reject the report of Special Referee Hewitt is granted in part and denied in part; and it is further

ORDERED that the report is hereby confirmed insofar as it finds that personal jurisdiction does not exist over the corporate defendants, and the action is dismissed against these corporate defendants; and it is further


ORDERED that the report is hereby confirmed insofar as the claims against defendant Amy Swartz a/k/a Amy Gale are hereby dismissed for lack of personal jurisdiction for the reasons set forth in this decision, and the claims against this defendant are dismissed; it is further

ORDERED that the report is hereby rejected with respect to defendant Gale, and personal jurisdiction over Gale exists based on the service on him within the state; and it is further

ORDERED that defendant Gale serve an answer or make a motion with respect to the complaint within twenty (20) days after service of a copy of this order with notice of the entry.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 4/10/17



HON. JEFFREY K. OING, J.S.C.
JEFFREY K. OING
J.S.C.