

Cardno Chemrisk, LLC v Foytlin
2015 NY Slip Op 30488(U)
April 2, 2015
Sup Ct, New York County
Docket Number: 153472/2014
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
CARDNO CHEMRISK, LLC,

Plaintiff,

-against-

DECISION AND
ORDER

Index No. 153472/2014
Mot. Seq. 001

CHERRI FOYTLIN and KAREN SAVAGE,

Defendants.
-----X

HON. ANIL C. SINGH, J.:

In this defamation action, defendants Cherri Foytlin and Karen Savage, (“defendants”) move for an order dismissing plaintiff Cardno Chemrisk LLC’s (“ChemRisk”) complaint for lack of personal jurisdiction pursuant to CPLR §3211(a) (8) and for sanctions pursuant to NYCRR § 130-1.1. Plaintiff opposes.

Facts

Defendants wrote an article which appeared on the website the Huffington Post titled “ChemRisk, BP and Purple Strategies: A Tangled Web of Not-So-Independent Science.” The subject article was in regards to a 2011 ChemRisk study of the effects of certain chemicals on the health of offshore oil cleanup workers during the 2010 BP Oil spill in the Gulf of Mexico. Plaintiff alleges the subject article was false and defamatory.

ChemRisk is a Delaware Limited Liability Company headquartered in California. Defendant Foytlin resides in Louisiana and defendant Savage resides in Massachusetts. Plaintiff brings the action in New York on the basis that defendants transacted business in New York pursuant to CPLR 302 (a)(1), mainly by posting the subject article on the website of The Huffington Post, a New York corporation.¹

Plaintiff argues personal jurisdiction is established over defendant Foytlin who has published eleven articles with The Huffington Post, communicated with the company, and has a biography on the website. Plaintiff also contends personal jurisdiction is warranted over defendant Savage who contributed to the subject article.

By publishing the subject article in The Huffington Post and by promoting their article to New Yorkers on The Huffington Post, Twitter, Facebook, and email, plaintiff argues defendants transacted business in New York.

Discussion

When faced with a challenge to the court's ability to hear a case, the ultimate burden is upon the party asserting jurisdiction (Cornely v Dynamic HVAC Supply,

¹ Plaintiff has not advanced its argument that there is jurisdiction over defendant Foytlin pursuant to CPLR §301 in their opposition as was previously argued in its motion for jurisdictional discovery.

LLC, 44 AD3d 986, 986 [2d Dept 2007]). However, to defeat the motion to dismiss, Plaintiff need only make a *prima facie* showing that jurisdiction exists (*id.*). “The facts alleged in the complaint and affidavits in opposition to such a motion to dismiss are deemed true and construed in the light most favorable to the plaintiff, and all doubts are to be resolved in [plaintiff’s] favor.” (Weitz v Weitz, 85 AD3d 1153, 1153-54 [2d Dept 2011]).

Long Arm Jurisdiction pursuant to CPLR §302 (a)(1)

New York’s Long Arm Statute extends personal jurisdiction over any non-domiciliary who “transacts any business within the state or contracts anywhere to supply goods or services in the state.” (CPLR § 302(a) (1)). Plaintiff must establish (1) defendants’ purposeful transactions of business in New York; and/or (2) a causal link between this transaction of business and the claim alleged. (*Id.*; McGowan v Smith, 52 NY2d 268, 271 [1981]).

“New York courts construe ‘transacts any business within the state’ under the long arm statute more narrowly in defamation cases than they do in the context of other sorts of litigation.” (SPCA of Upstate New York, Inc. v Am. Working Collie Ass’n, 18 NY3d 400, 405 [2012]) (internal citations omitted). “[P]articular care must be taken to make certain that non-domiciliaries are not haled into court in a manner that potentially chills free speech.” (*Id.* at 405-06).

Plaintiff has failed to meet its burden warranting a finding of long arm jurisdiction. An internet post that is directed to a nationwide audience, which by happenstance includes a small New York constituent, is insufficient. (Best Van Lines, Inc. v Walker, 490 F3d 239, 250 [2d Cir 2007]) (there must be more than “defamatory utterances sent into the state”).

In support of their argument for jurisdiction, plaintiff relies upon Legros v Irving, 38 AD2d 53 [1st Dept 1971], which denied a motion to dismiss where “virtually all the work attendant upon publication of the book occurred in New York. The book was in part researched in this State by defendant Irving; negotiations with McGraw-Hill took place in New York; the contract with McGraw-Hill was executed in New York; the book was printed in New York.” (id. at 56). Plaintiff’s reliance on Legros is misplaced since the contacts establishing jurisdiction in Legros are simply not available in the instant matter.

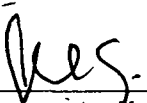
In contrast, here, the article was neither written nor researched in New York and there is no allegation that the contract between defendants and the Huffington Post was signed by defendants in New York. While plaintiff argues that “the article was vetted, processed, and possibly edited by Huffington employees in New York,” that does not indicate that defendants themselves conducted purposeful

transactions in New York. Likewise, it does not establish a causal link between defendants conduct when drafting the article and New York.

The content of the alleged defamatory article had no relation to New York. Nor did the other Huffington Post articles authored by defendant Foytlin have any relation to the instant action. While defendants did consent to a boilerplate user agreement with a New York choice of law clause, that third party agreement governed the service between defendants and the Huffington Post and does not reach the bar for jurisdiction in the instant action (see Strelnin v Barrett, 36 AD2d 923, 923 [1st Dept 1971]). Accordingly, defendants' motion to dismiss is granted.

The Court finds that this action is not frivolous within the meaning of 22 NYCRR § 130-1.1 *et seq.*, Thus, we decline to impose sanctions and/or attorney fees.

Date: April 2, 2015
New York, New York



Anil C. Singh