Morgulas v Universal Health Servs.
2017 NY Slip Op 31556(U)
July 24, 2017
Supreme Court, New York County
Docket Number: 153148/2016
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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AMARA MORGULAS,

Plaintiff,

- v -

UNIVERSAL HEALTH SERVICES, FOUNDATIONS BEHAVIORAL HEALTH, INC., MICHAEL D -LAST NAME UNKNOWN

Defendants.

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DECISION & ORDER
Index No. 153148/2016

Mot. Seq. 001

The motion by defendants to dismiss this action for *inter alia* lack of proper service and lack of personal jurisdiction is granted.

Background

This action arises out of plaintiff's attendance at a school for special-needs students operated by defendants located in Doylestown, Pennsylvania. Plaintiff is a resident of New York City. Plaintiff alleges that she was subject to multiple physical assaults by other students at the school and that a staff member employed by the school, Michael D, broke plaintiff's right arm on January 13, 2016.

Defendants[1] move to dismiss on numerous grounds. Defendants claim that the summons and complaint was served improperly because defendants were only served via registered mail. Defendants also claim that the action must be dismissed because there is a lack of personal jurisdiction over the

[1]For purposes of this motion, "defendants" refer to all defendants except for defendant Michael D, whose identity is unknown to plaintiff and was not served with the summons and complaint.

defendants. Defendants insist that U.S. Supreme Court precedent bars bringing the instant lawsuit in New York. Defendants also observe that the Court lacks specific jurisdiction over defendants because the instant action concerns alleged tortious conduct arising in Pennsylvania. Defendants also contend that plaintiff's complaint fails to state a cause of action upon which relief can be granted.

In opposition, plaintiff stresses that New York City students are placed in schools, such as the one at issue here, when the City's Department of Education determines that a special-needs student cannot be properly educated at a school in New York City. Plaintiff maintains that the New York City Department of Education pays the tuition at these schools and that defendants have submitted to the jurisdiction of New York. Plaintiff insists that his failure to file an affidavit of service is not fatal and that he served defendants at the correct address.

In reply, defendants note that plaintiff's affirmation in opposition is unsigned and should be disregarded by the Court. Defendants also urge this Court to disregard a supplementary affidavit submitted by plaintiff (NYSCEF Doc. No. 20).[2] Defendants argue that the Court should ignore plaintiff's request to accept a late filing of the affidavit of service because plaintiff did not make a cross-motion or otherwise move for such relief.

Service

As an initial matter, plaintiff did not serve the summons and complaint properly. Defendants claim that plaintiff attempted to serve the summons and complaint by registered mail (defendants' affirmation in support, exh J ¶ 16). The affidavit of Ms. Meloni (*see id.*) establishes that the defendants

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[2]The Court will not consider plaintiff's supplementary affidavit (NYSCEF Doc. No. 20) or plaintiff's sur-reply (NYSCEF Doc. No. 39) as both were filed without the Court's permission.

in this action are foreign entities and plaintiff failed to show that she complied with the proper service requirements (*see e.g.*, CPLR 311; CPLR 311-a; CPLR 312-a; Business Corporation Law § 307). In fact, plaintiff admits attempting to serve defendants via registered mail and plaintiff's attorney claims that he was told by the "Department of State of Pennsylvania" that this "was the correct procedure to follow" (affirmation in opposition, ¶ 20). Unfortunately for plaintiff's attorney, he was given the wrong information and plaintiff's failure to properly effectuate service within 120 days after commencement of the action requires this Court to dismiss this case (CPLR 306-b).

Personal Jurisdiction

In order to establish general jurisdiction over defendants, they must either be incorporated or have their principal place of business in New York (*see Magdalena v Lins*, 123 AD3d 600, 601, 999 NYS2d 44 [1st Dept 2014] citing *Daimler AG v Bauman*, 571 US –, 134 S Ct 746, 760 [2014]).

Here, defendant Universal Health Services (UHS) is a Delaware corporation with its principal place of business in Pennsylvania (defendants' affirmation in support, exh J ¶ 4). Defendants claim that UHS of Delaware, Inc. and UHS of Doylestown, LLC, both of which comprise the defendant sued in this action as Foundations Behavioral Health, Inc., are also foreign corporations organized under Delaware law with principal places of business in Pennsylvania (*id.* ¶¶ 5-6). Therefore, pursuant to *Daimler*, this Court does not have general jurisdiction over defendants.

The Court must then consider whether there is jurisdiction over defendants pursuant to CPLR 302, New York's long arm statute. CPLR 302(a) provides that "a court may exercise personal jurisdiction over any non-domiciliary . . . who in person, or through an agent: (1) transacts any business within the state or contracts anywhere to supply goods or services in the state . . ."

"Whether a non-domiciliary is transacting business within the meaning of CPLR 302(a)(1) is a fact based determination and requires a finding that the non-domiciliary's activities were purposeful and established a substantial relationship between the transaction and the claim asserted. Purposeful activities are volitional acts by which the non-domiciliary avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws" (*Paterno v Laser Spine Inst.*, 24 NY3d 370, 376, 998 NYS2d 720 [2014] [internal quotations and citations omitted]). "More than limited contacts are required for purposeful activities sufficient to establish that the non-domiciliary transacted business in New York . . . [A] non-domiciliary transacts business when on his or her own initiative the non-domiciliary projects himself or herself into this state to engage in a sustained and substantial transaction of business" (*id.* at 376-77).

The Court must "conduct a twofold jurisdictional inquiry. First, the defendant must have purposefully availed itself of the privilege of conducting activities within the forum State by either transacting business in New York or contracting to supply goods or services in New York. Second, the claim must arise from that business transaction or from the contract to supply goods and services" (*D & R Global Selections, SL v Bodega Olegario Falcon Pineiro*, – NE3d –, 2017 WL 2466661, 2017 NY Slip Op 04494 [2017] [internal quotations and citation omitted]). "In addition, the plaintiff's cause of action must have an 'articulable nexus' or 'substantial relationship' with the defendant's transaction of business" (*id.* [citation omitted]).

Here, the Court finds that it lacks jurisdiction pursuant to New York's long arm statute. The allegations in plaintiff's complaint detail torts allegedly committed by students at the school and by a member of the school's staff. All of these purported occurrences took place in Pennsylvania. To the

extent that plaintiff is alleging a cause of action for misrepresentations made by defendants or a breach of contract by defendants because they did not provide a safe school environment (*see e.g.*, complaint ¶¶ 7-11), all parties were clearly aware that any obligations would be fulfilled (or not) in Pennsylvania. Further, defendants' duty of care arose in Pennsylvania, not in New York (*see Arroyo v Mountain Sch.*, 68 AD3d 603, 605, 892 NYS2d 74 [1st Dept 2009]).

Defendants do not maintain any offices in New York nor is there any evidence that they offer any services in New York. Certainly, defendants have interaction with the New York City's Department of Education and undoubtedly receive payments for tuition from New York taxpayers. But plaintiff is not alleging, for example, that defendants failed to perform on a contract with the City of New York that required defendants to perform certain obligations in New York. Plaintiff alleges that certain services were not provided to her in Pennsylvania and that she was the victim of multiple assaults in Pennsylvania. The relationship to New York is too attenuated to merit a finding of specific jurisdiction over defendants.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted and the clerk is directed to enter judgment accordingly.

This is the Decision and Order of the Court.

Dated: July 24, 2017
New York, New York

ARLENE P. BLUTH, JSC