

JTS Trading Ltd. v Afin Asesores

2018 NY Slip Op 32286(U)

September 14, 2018

Supreme Court, New York County

Docket Number: 653239/2015

Judge: Saliann Scarpulla

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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: PART IAS MOTION 39EFM

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JTS TRADING LIMITED,	INDEX NO. <u>653239/2015</u>
Plaintiff,	MOTION DATE <u>05/29/2018</u>
- v -	MOTION SEQ. NO. <u>001</u>
AFIN ASESORES, CKD INFRAESTRUCTURA MEXICO S.A. DE C.V., EDUARDO RAMOS,	
Defendants.	

DECISION AND ORDER

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HON. SALIANN SCARPULLA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158

were read on this motion to/for DISMISS

In an action arising from an alleged breach of a non-disclosure agreement (“NDA”), defendants Afin Asesores (“Afin”), CKD Infraestructura Mexico S.A. de C.V. (“CKD”), and Eduardo Ramos (“Ramos”) move, pursuant to CPLR 327 (a), CPLR 3211 (a)(1), and CPLR 3211 (a)(7), to dismiss the complaint.

Background

Plaintiff JTS Trading Limited is a Hong Kong corporation with its principal place of business in Kowloon, Hong Kong. Plaintiff is in the business of managing various commercial ventures and development projects.

Afin is a Mexican entity with a principal place of business in Mexico City, Mexico. Afin is an advisory firm specializing in Mexican infrastructure project financing. CKD is a Mexican corporation with a principal place of business in Mexico.

CKD is in the business of managing commercial ventures and infrastructure projects.

Ramos is a Mexican citizen who owns and operates Afin and CKD.

According to the complaint, plaintiff and Afin initially started communicating in November 2014 to explore potential business ventures. On December 16, 2014, plaintiff and Afin executed the NDA in Mexico, and Ramos signed the NDA on behalf of Afin. The NDA contained a “Non-Circumvention” provision.

After executing the NDA, plaintiff alleges that it introduced Ramos and Afin to non-party Empresas ICA (“ICA”), a Mexican company. On January 23, 2015, Ramos and plaintiff met with ICA in Mexico to discuss a development project in Mexico. Although Ramos subsequently informed plaintiff that he was unable to work on the ICA project, plaintiff alleges that Ramos instead registered CKD to circumvent the NDA and transact with ICA.

Ramos was served with a summons and verified complaint at a conference he attended in New York, NY. The complaint asserts two causes of action: (1) breach of the NDA against Afin; and (2) unfair competition against Ramos, Afin, and CDK.

Defendants now move for dismissal on, among other things, *forum non conveniens* grounds.

Discussion

“The movant seeking dismissal has a ‘heavy burden’ of establishing that New York is an inconvenient forum and that a substantial nexus between New York and the action is lacking” *Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 208 (1st Dep’t 2013).

“The factors in weighing such a motion to dismiss include the burden on New York courts, potential hardship to the defendant, the unavailability of an alternate forum, the residence of the parties, and the location of the events giving rise to the transaction at issue in the litigation, with no one factor controlling” *Elmaliach*, 110 AD3d at 208.

Here, no party resides or has its principal place of business in New York. Plaintiff is a Hong Kong corporation, and Afin and CDK are Mexican entities with principal places of business in Mexico. Ramos is a citizen of Mexico.

Plaintiff submits an affidavit in opposition to dismissal from Daniel C. Young (“Young”),¹ who is plaintiff’s Project Development Director. The only connection to New York that Young raises in his affidavit is that he was initially introduced by email to non-party Sergio Sanz (“Sanz”) who resides in New York. According to Young, Sanz represented himself as the “head” of Afin’s New York office, and both discussed potential business opportunities and exchanged a non-disclosure agreement.

However, even if Sanz worked for Afin and had introductory conversations with Young from New York, that is not sufficient for New York courts to retain this action. *See Spindler v Fast*, 65 A.D.2d 746, 746 (1st Dep’t 1978) (affirming dismissal when the “only connection with New York lies in the fact that some of the negotiations leading up to the subject agreement took place here and that provision is made for New York law to apply.”).

¹ Young is a citizen of Australia.

Instead, the key events underlying plaintiff's claims took place entirely in Mexico. As Young attests, he met Ramos to further discuss potential business opportunities in Mexico. The parties thereafter signed the NDA in Mexico to explore potential business ventures in Mexico. Meetings regarding those opportunities took place in Mexico. The conduct giving rise to the alleged breach occurred in Mexico, which relates to defendants transacting with ICA, a non-party Mexican entity.

It is also undisputed that Mexican law applies,² and that Mexico is an adequate alternative forum to resolve commercial disputes. Moreover, relevant witnesses are in Mexico, including defendants and non-party ICA. Although plaintiff notes that other witnesses are located elsewhere, this factor, at best, is neutral.

After review of the relevant factors, and particularly because New York has very little nexus to this action and there are adequate alternative fora with substantial connections to the parties and their dispute, I find that the action should be dismissed on *forum non conveniens* grounds.³ See *Norex Petroleum Ltd. v Blavatnik*, 151 A.D.3d 647, 648 (1st Dep't 2017) (“[O]ur courts should not be under any compulsion to add to their heavy burdens by accepting jurisdiction of a cause of action having no substantial nexus with New York”). Because I dismiss the entirety of the complaint pursuant to CPLR 327

² The NDA contains a choice of law provision stating, “This Agreement shall be interpreted and enforced in accordance with the laws of the United States of America and or the United States of Mexico.” Notably absent is the selection of New York law.

³ Mexico, for example, is forum with a much more substantial connection to these parties and their dispute.

(a), I do not address defendants' additional arguments for dismissal pursuant to CPLR 3211 (a)(1) and CPLR 3211 (a)(7).

In accordance with the foregoing, it is

ORDERED that the motion of defendants Afin Asesores, CKD Infraestructura Mexico S.A. de C.V., and Eduardo Ramos to dismiss this action on the ground that New York is an inconvenient forum is granted, the complaint is dismissed in its entirety, and the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

9/14/18
DATE

Saliann Scarpulla
SALIANN SCARPULLA, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: