

Linacre Media LLC v One Media Corp, Inc.
2019 NY Slip Op 31840(U)
June 26, 2019
Supreme Court, New York County
Docket Number: 650906/2017
Judge: Anthony Cannataro
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANTHONY CANNATARO PART IAS MOTION 41EFM

Justice

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LINACRE MEDIA LLC,

Plaintiff,

- v -

ONE MEDIA CORP, INC. D/B/A ONE WORLD SPORTS, ELEVEN
SPORTS NETWORK, LTD. D/B/A ELEVEN SPORTS, ASER
MEDIA US, LLC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 110

were read on this motion to/for DISMISS.

In this action to collect a money judgment, defendants Eleven Sports Network, Ltd. d/b/a Eleven Sports (“ESN”) and Aser Media US, LLC (“Aser”) move to dismiss the first supplemental and amended verified complaint, dated June 30, 2017, as against them, pursuant to CPLR 3211 (a)(8), for lack of personal jurisdiction and pursuant to CPLR 306-b for improper service of process. Plaintiff Linacre Media, LLC (“Linacre”) opposes and cross-moves for default judgments against each defendant or, in the alternative seeks a traverse hearing and an order directing additional, related discovery prior to such hearing.

“Eleven Sports” is a brand name used by a multi-national network of companies engaged in the business of sports and entertainment broadcasting. ESN is the owner of the brand and trademark “Eleven Sports,” which it licenses to affiliated entities around the world. ESN is a United Kingdom based company with its only office in London. Aser is the sole ESN affiliate in the United States licensed to use the trade name “Eleven

Sports.” Aser is a Delaware limited liability company with offices in North Haven and Hamden, Connecticut. It has a sole member which is a Delaware corporation.

One Media Corp., Inc d/b/a One World Sports (“OWS”) was in the business of providing a video sports programming service. In March 2017, defendant Aser, agreed to acquire certain distribution agreements and hardware from OWS and to assume some of OWS’ liabilities related to the distribution agreements, but to exclude certain other liabilities.

Linacre entered into a written production services agreement with OWS on or about September 1, 2016 pursuant to which Linacre produced and delivered recordings of football games, which OWS transmitted on its cable television channel. Linacre commenced this action against OWS and ESN on February 22, 2017 asserting breach of the production services agreement and seeking the amount due under it.

On May 18, 2019 this Court granted Linacre’s motion for a default judgment against OWS for the full amount claimed and for additional time to serve ESN. However, on May 19, 2017 OWS filed for bankruptcy. On June 28, 2017 Linacre filed an amended complaint naming Aser as an additional defendant. Linacre undertook various attempts to serve both ESN and Aser between June and October 2017.

ESN and Aser assert that they are not subject to jurisdiction in New York and that they did not have any involvement in the facts giving rise to this action. Defendants further argue that even if they were subject to jurisdiction in New York, neither defendant has been properly served and the time to do so has expired.

Linacre alleges that ESN and Aser are interrelated companies liable under the theory of successor liability for OWS’ failure to pay the amount due under the production services agreement. Linacre argues that defendants are subject to jurisdiction in New York as they are in the business of distributing and exhibiting

sports programming to people throughout the State. Linacre also asserts that both defendants were properly served, repeatedly, with process.

On a motion to dismiss pursuant to CPLR 3211, the pleadings are to be afforded a liberal construction, the facts alleged in the complaint are to be accepted as true, the non-movant is to be accorded the benefit of every possible favorable inference, and a determination is to be made only as to whether the facts alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). On a motion to dismiss pursuant to CPLR 3211 (a)(8) plaintiff bears the burden of establishing jurisdiction.

“The CPLR 302(a)(1) jurisdictional inquiry is twofold: under the first prong the defendant must have conducted sufficient activities to have transacted business in this state, and under the second prong, the claims must arise from the transactions” (*Al Rushaid v Pictet & Cie*, 28 NY3d 316, 323 [2016]). “[J]urisdiction is proper so long as the defendant’s activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted” (*id.* [citations omitted]). “[P]urposeful activities are those with which a defendant, through volitional acts, avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws” (*id.* [citations omitted]).

There is no basis for jurisdiction over ESN in New York. It is plaintiff’s burden to “present sufficient facts to demonstrate jurisdiction” and the existence of purposeful contacts in the State cannot be inferred based on speculation and nothing in the record (*Cotia [USA] Ltd. v Lynn Steel Corp.*, 134 AD3d 483, 484 [1st Dept 2015]). Here, the record establishes that ESN is a UK entity with no presence in the United States. ESN merely owns and licenses the trademark “Eleven Sports” to Aser, its sole affiliate in the United States. Importantly, as detailed in both ESN’s verified answer and in the Affidavit of Andrea Cerroni, ESN did not acquire any assets or liabilities of OWS which

could connect it to the claims asserted herein. Thus, as in *Fred Simcha Wang v LSUC*, Linacre failed to demonstrate that ESN “transacted significant business in New York, and to the extent any business was transacted, plaintiff failed to demonstrate any connection to the claims asserted in this case” (137 AD3d 520, 521 [1st Dept 2016]).

Further, Linacre suggests that as in *Explorers Club, In.c v Diageo PLC*, defendant ESN may be sued in New York based on its relationship with Aser given that “the relationship between the parent and the local subsidiary validly suggests the existence an agency relationship or the parent controls the subsidiary so completely that the subsidiary may be said to be simply a department of the parent” (Misc 3d 434, 443 [NY Sup 2014]). However, as explained in the affidavit of Andrea Cerroni and ESN’s moving papers, ESN does not have, and has never had, any direct or indirect ownership interest in Aser and the entities are not affiliates with respect to corporate control. Aser’s use of the name “Eleven Sports” in media reports and elsewhere does not implicate ESN, but rather demonstrates Aser’s use of the brand name it is licensed to use. Accordingly, jurisdiction over ESN cannot be found in New York based merely upon its alleged corporate affiliation with Aser.

Nevertheless, discovery should be permitted to determine whether there can be jurisdiction over Aser in New York. CPLR 3211 “protects the party to whom essential jurisdictional facts are not presently known, especially where those facts are within the exclusive control of the moving party” (*Peterson v Spartan Indus., Inc.*, 33 NY2d 463, 466 [1974]). “If a party demonstrates that facts may exist in opposition to a motion to dismiss, discovery is sanctioned” (*Amigo Foods Corp. v Mar. Midland Bank-New York*, 39 NY2d 391, 395 [1976]). In cases where one is seeking to confer jurisdiction under the long-arm statute, “the jurisdictional issue is likely to be complex” and discovery “may be essential, and should quite probably lead to a more accurate judgment than one made solely on the basis of inconclusive preliminary affidavits” (*Peterson* at 467).

Here, Linacre asserts that Aser purposefully transacts business in New York through broadcasting content and soliciting business, including advertisements and bids for production services, from New York entities. Specifically, plaintiff alleges that Aser transacts business in New York through carriage deals with cable channels that service New York, purchase of distribution agreements from companies operating in New York, broadcasting and holding exclusive rights to specific New York content, and conducting business with New York-based advertisers and service providers. The claim asserted by Linacre here is that Aser purchased OWS' assets and/or liabilities acquiring, among other things, programming content which OWS had contractual rights to distribute, including the content produced by Linacre pursuant to its agreement with OWS. Linacre asserts that the purchase of OWS' assets involved activities in this state and/or Aser's continuation of OWS' business takes place in New York. The veracity of these allegations and the extent of Aser's connection to this state can only be determined through further discovery on this issue.

Given that Aser was purportedly served with process pursuant to LLCL § 304, which requires a finding of jurisdiction, the issue of whether such service of process was properly effectuated is not yet ripe for review. Accordingly, it is

ORDERED that the branch of defendants' motion which seeks to dismiss the complaint is granted as against ESN and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

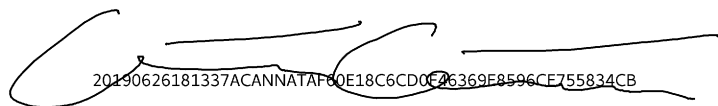
ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the remaining parties are to appear for a preliminary conference on July 17, 2019 in Room 490, 111 Centre Street, at 2:00PM.



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6/26/19
DATE

ANTHONY CANNATARO, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE