USA Sevens LLC v United States of Am. Rugby Football Union
2019 NY Slip Op 33017(U)
October 10, 2019
Supreme Court, New York County
Docket Number: 651937/2019
Judge: Barry Ostrager
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER **PART** IAS MOTION 61EFM

Justice

----------X

USA SEVENS LLC, AMERICAN INTERNATIONAL MEDIA LLC, and UNITED WORLD SPORTS LLC,

Plaintiffs,

- v -

UNITED STATES OF AMERICA RUGBY FOOTBALL UNION, WORLD RUGBY LIMITED, and WORLD RUGBY TOURNAMENTS LIMITED,

Defendants.

----------X

INDEX NO. 651937/2019

MOTION DATE 09/23/2019

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 43, 44, 45, 46, 47, 48, 49, 50, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 81, 82

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

OSTRAGER, BARRY R., J.S.C.:

Before the Court is the pre-answer motion by defendants World Rugby Limited ("World Rugby") and its subsidiary World Rugby Tournaments Limited ("World Rugby Tournaments") to dismiss this action pursuant to CPLR 3211(a)(1), (7) and (8) based on documentary evidence, failure to state a cause of action, and lack of personal jurisdiction. Pursuant to CPLR 3211(a)(5), the moving defendants seek in the alternative to stay this action should the Court order that the claims against their co-defendant United States of America Rugby Football ("USA Rugby") be sent to arbitration. By decision dated October 2, 2019, this Court did grant the motion by USA Rugby to compel arbitration of the claims asserted by plaintiffs against that defendant only (NYSCEF Doc. No. 86), and the Court stated there, and reiterates here, that the Court in its

discretion declines to stay the balance of the action as the delay would undermine the Court's policy to foster the expeditious resolution of disputes.

The background for this dispute is detailed in the October 2 decision. Simply stated, plaintiffs claim that defendants unlawfully interfered with plaintiffs' right to host seven-on-seven rugby tournaments in the United States. The specific causes of action asserted against the moving defendants are: (1) common law fraud against World Rugby;[1] (3) conspiracy to commit fraud against all defendants; (4) USA Sevens' claim against World Rugby for breach of the contract for hosting rights; (5) tortious interference with contractual relations asserted by USA Sevens against both moving World Rugby defendants; (6) a claim by all plaintiffs USA Sevens LLC, American International Media LLC (AIM) and United World Sports LLC ("UWS") against both moving World Rugby defendants for breach of contract related to sponsorship rights; and (7) USA Sevens' claim against World Rugby for breach of the covenant of good faith and fair dealing.

As jurisdiction is a threshold issue, the Court will address that issue first. The Complaint alleges that defendant World Rugby is a private company based in Dublin, Ireland and the "self-proclaimed world governing body for the sport of rugby." (NYSCEF Doc. No. 1, ¶11). Defendant World Rugby Tournaments is also a private company based in Dublin and a wholly-owned subsidiary of World Rugby "and the entity through which World Rugby sanctions the tournament at issue in this litigation." (*Id.* at ¶12). The Complaint alleges various grounds for personal jurisdiction over the moving defendants. Specifically, the Complaint alleges that jurisdiction over defendants is proper "pursuant to CPLR § 302 because they [defendants]

[1] The second cause of action is against USA Rugby only for aiding and abetting fraud and is not at issue here. Nor is mention included here of USA Rugby in some other causes of action.

committed tortious acts within the State of New York and tortious acts without the State of New York causing injury to persons within the State of New York. Personal jurisdiction over World Rugby … is additionally proper because [that defendant] transacted business with [plaintiffs] UWS and USA Sevens within the State of New York." (*Id.* at ¶13). As an alternative ground for jurisdiction over World Rugby, plaintiffs correctly allege jurisdiction over USA Rugby based on express provisions in the Purchase Agreement consenting to New York jurisdiction, and they allege that the jurisdiction over USA Rugby should extend to World Rugby because "USA Rugby is an alter ego of World Rugby." (*Id.* at ¶14).

Defendants World Rugby and World Rugby Tournaments vigorously disagree with the claimed jurisdiction. In support of their motion defendants submit the Declaration of Robert Brophy, Chief Financial Officer and Company Secretary of both World Rugby and World Rugby Tournaments (NYSCEF Doc. No. 45). Brophy explains that both defendants World Rugby Limited and World Rugby Tournaments Limited are wholly-owned subsidiaries of World Rugby (the "Association"), an unincorporated entity that "sits at the top of this corporate group." According to Brophy, the Association is the "international governing and law-making body for the sport of rugby union" and its only office is in Dublin, Ireland . (*Id.* at ¶3). Defendant World Rugby Limited is the operating company of the Association headquartered in Dublin with a subsidiary in Tokyo. World Rugby Tournaments Limited is also headquartered in Dublin and maintains its only office there. (*Id.* at ¶4).

Brophy asserts that defendant World Rugby is not incorporated in New York, does not maintain a registered agent for service of process in NY, and does not now own, rent, lease, possess or maintain any real or personal property, an office, residence or place of business in New York, nor has it ever. Further, World Rugby does not maintain employees, bank accounts,

or even a telephone listing in New York. It has never filed a lawsuit here, nor paid any taxes in New York (*Id.* at ¶¶ 6-12).

As relevant to the alter ego dispute, Brophy explains (at ¶ 13) that USA Rugby is the "national governing body for the sport of rugby in the United States and is a member of the Association." World Rugby keeps its corporate records separate and independent from all member unions, including USA Rugby, and has adequate capitalization such that it does not use funds from USA Rugby nor contribute funds to it for the operation of World Rugby's business (*Id.* at ¶¶14-15). World Rugby and USA Rugby do "not share any ownership interests, officers, personnel, office space, addresses or telephone numbers" but they do have one director in common, Augustin Pichot, who is the Vice Chairman of World Rugby's Council and, since August 31, 2018, sits on the nine-member Board of Directors for USA Rugby as World Rugby's representative (*Id.* at ¶ 16). World Rugby is not involved in the business decisions of USA Rugby, nor does it share in the profits of USA Rugby, guarantee or pay any of its debts, or share in the ownership of real or personal property (*Id.* at ¶¶ 18-20).

Turning to the specifics of the parties' dispute here, Brophy confirms that World Rugby is not a party to any of the agreements through which USA Rugby assigned its hosting rights to plaintiff USA Sevens, and that World Rugby was not involved in the negotiation of the Assignment in any way, nor present in New York for the execution. (*Id.* at ¶ 25-28). World Rugby never came to New York in connection with the competitive process to host the 2020-23 tournaments.

Based on these factual assertions, defense counsel rejects plaintiffs' theory that World Rugby is the alter ego of USA Rugby subject to personal jurisdiction based solely on USA Rugby's written consent to New York jurisdiction in the Purchase Agreement. "In order to pierce

the corporate veil, a plaintiff must show that the dominant corporation [here World Rugby] exercised complete domination and control with respect to the transaction attacked, and that such domination was used to commit a fraud or wrong causing injury to the plaintiff." *Fantazia Intl. Corp. v CPL Furs N.Y., Inc.*, 67 AD3d 511, 512 (1st Dep't 2009), citing *Matter of Morris v Dept. of Taxation and Fin.*, 82 NY2d 135, 141 (1993). The relevant factors the court must consider "include the disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors and personnel; common office space or telephone numbers; the degree of discretion demonstrated by the allegedly dominated corporation; whether dealings between the entities are at arm's length; whether the corporations are treated as independent profit centers; and the payment or guaranty of the corporation's debts by the dominating entity." *Id.* Defendants assert that plaintiffs' allegations are too conclusory to rise to the level needed to establish alter ego liability, particularly in light of the detailed assertions by Patrick Brophy refuting any basis for plaintiffs' claim of an alter ego relationship.

Plaintiffs respond that the alter-ego analysis is fact-intensive and should not be rejected on a motion to dismiss. As evidence of domination, they argue World Rugby's loan of $10 million to USA Rugby proves that USA Rugby was undercapitalized, and the presence of a World Rugby Executive Committee member on the board of USA Rugby proves control. Defendants reply that these allegations cannot reasonably be construed in the manner plaintiffs claim and remain insufficient to support an alter ego theory of liability.

This Court agrees that plaintiffs' conclusory allegations are insufficient to withstand dismissal of the alter ego theory of jurisdiction. The detailed Brophy affidavit presents facts on personal knowledge that defeat plaintiffs' claim of domination and control. Neither an arm's length loan, nor the participation of a World Rugby representative on the USA Rugby board,

board, establishes domination and control. Considering the above-listed factors, the Court rejects the alter ego claim and will turn to the specific jurisdiction analysis under CPLR 302. No basis for general jurisdiction over the non-domiciliary defendants exists as it cannot be said that the moving defendants, who are based in Ireland, are engaged in a continuous and systematic course of doing business in New York to warrant a finding of their presence in this jurisdiction. *See Daimler AG v Bauman,* 571 U.S. 117 (2014).

Jurisdiction under CPLR 302(a)(1) exists only upon proof that defendants transacted business within New York or contracted anywhere to supply goods or services in the state. CPLR 302(a)(2) jurisdiction exists upon proof that defendants committed a tortious act within New York that caused injury to plaintiffs in New York. CPLR 302(a)(3) jurisdiction exists if defendants committed a tortious act without the state causing injury in the state, but only if defendants either regularly engage in business in the state, or derive substantial revenue from goods used or services rendered in the state, or should reasonably expect their acts to have consequences here and derive substantial revenue from interstate or international commerce. Although defendants may derive substantial revenue from commerce, the Brophy affidavit detailed above disputes any claim of business transacted in New York or of a tortious act within or without the state causing injury here.

Plaintiffs in opposition present their own affidavit on personal knowledge from Jonathan First, the president of plaintiff UWS (NYSCEF Doc. No. 60). First claims that World Rugby's representative Avan Lee came to UWS offices in New York to negotiate the terms of the 2014 host union agreement, and Murray Barnett and Brett Gosper of World Rugby came for a meeting in October 2014; Brett Gosper also came for a meeting in February 2013. First attaches to his affidavit emails confirming these meetings. Counsel argues that the various meetings, plus

telephone calls among the parties, establish that defendants transacted business in New York so as to provide a basis for jurisdiction under CPLR 302(a)(1). Further, plaintiffs' tort claims arise directly from World Rugby's misrepresentations and tortious interference with the Assignment Agreement, causing injury to the New York-based plaintiffs who allegedly invested millions to host a rugby tournament in the U.S., providing jurisdiction under CPLR 302(a)(2) or (3).

In reply Avan Lee, an employee of World Rugby Limited's successor from 2013 to 2015, acknowledges having attended the August 2014 meeting in White Plains, New York, at the request of First, but adds that the meeting did not lead to any agreement (NYSCEF Doc. No. 82). The November 6, 2014 Deed of Agreement that granted USA Rugby the right to host an event in the United States upon the expiration of the 2012 Host Union Agreement was not signed in New York. Counsel argues that plaintiffs have therefore failed to establish injury in New York for jurisdictional purposes. Relying on *Deutsche Bank AG v Vik*, 163 AD3d 414, 415 (1st Dep't 2018), quoting *CRT Invs., Ltd. v BDO Seidman,* 85 AD3d 470, 472 (1st Dep't 2011), defendants assert that: "In New York, 'the situs of commercial injury is where the original critical events associated with the action or dispute took place, not where any financial loss or damages occurred'."

The Court finds that the mere fact that plaintiffs are located in New York is insufficient to establish New York as the situs of injury. Nor are the few meetings sufficient to form a basis for the transaction of business. It was not until months after the last meeting that an agreement was reached, and neither the consummation nor the execution of that 2014 Agreement occurred in New York. The few meetings were too inconsequential to convey jurisdiction. *See Juron & Minzner v Dranoff & Patrizio*, 194 AD2d 402, 402-403 (1st Dep't 1993) (one visit to New York at plaintiff's specific request involving preliminary matters did not confer jurisdiction). Here,

plaintiffs allege only a single relevant meeting was held in New York with Lee, which did not produce an agreement, and two other two alleged meetings that appear unrelated to the dispute in this case, as well as vague reference to some telephone calls. Plaintiffs were participants in the alleged meetings and calls and were in a position to detail them in their opposition papers or discuss additional New York interactions with defendants, but they did not. Defendants' alleged contact with New York overall was minimal and not in any way sufficient to establish a continuous and systematic course of doing business in New York or any other basis to warrant a finding of jurisdiction in this State. The above analysis is consistent with the post-*Daimler* cases on the limits of CPLR 302 jurisdiction.

In sum, plaintiffs have failed to establish a basis for general or specific jurisdiction over the moving defendants. Therefore, the claims against the moving defendants must be dismissed for lack of jurisdiction, and the Court need not address those aspects of the motion seeking dismissal based on documentary evidence or failure to state a cause of action.

Accordingly, it is hereby

ORDERED that the motion is granted and the Clerk is directed to dismiss the claims against defendants World Rugby Limited and World Rugby Tournaments Limited for lack of personal jurisdiction.

10/10/2019
DATE

BARRY R. OSTRAGER, J.S.C.

BARRY R. OSTRAGER
JSC

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE