

KS Trade LLC v International Gemological Inst., Inc.
2020 NY Slip Op 31775(U)
June 5, 2020
Supreme Court, New York County
Docket Number: 656713/2016
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SALIANN SCARPULLA PART IAS MOTION 39EFM

Justice

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KS TRADE LLC,

Plaintiff,

- v -

INTERNATIONAL GEMOLOGICAL INSTITUTE, INC.,ROLAND LORIE, JERRY EHRENWALD, DAVID WEINSTEIN, MARC BRAUNER, KAREN WEINSTEIN, BROWDY/COPELAND, INC.,HATTRON (INDIA) LTD., INTERNATIONAL GEMOLOGICAL INSTITUTE DMCC (DUBAI), INTERNATIONAL GEMOLOGICAL INSTITUTE PVT. LTD. (INDIA), VAZON INVESTMENTS S.A., THE ISRAELI DIAMOND EXCHANGE

Defendant.

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INDEX NO. 656713/2016
MOTION DATE
MOTION SEQ. NO. 013

DECISION + ORDER ON MOTION

HON. SALIANN SCARPULLA

In this action, inter alia, to recover damages for breach of contract, defendants International Gemological Institute DMCC (Dubai) ("IGI Dubai") and International Gemological Institute Pvt. Ltd. (India) ("IGI India") move to dismiss the amended complaint insofar as asserted against them pursuant to CPLR Sections 3211(a)(7) and (8).¹

KS Trade LLC ("KS") is a New York based jewelry designer and manufacturer. According to the allegations of the amended complaint, International Gemological Institute, Inc. ("IGI NY") is a corporation that grades diamonds and precious stones, and

¹ Hattron (India) Ltd. and Vazon Investments S.A were also movants, however, in a stipulation dated May 12, 2020, all claims asserted against them were dismissed.

appraises jewelry. Roland Lorie (“Lorie”) and Jerry Ehrenwald are the directors of IGI NY. IGI NY, IGI Dubai, and IGI India are all part of the IGI Group, a corporate group that operates diamond grading and appraisal companies all over the world.

In the amended complaint, KS alleged that the defendants engaged in a scheme to create “illicit profits for itself and its accomplices at the expense of diamond dealers, jewelry manufacturers and the ultimate end-user consumers who purchase the jewelry.” KS claimed that defendants systematically over-graded diamonds at their overseas branches, and then sold these diamonds with false certificates, to U.S. based jewelry manufacturers. To be able to sell these diamonds, New York manufacturers had to obtain a New York conforming certification, which IGI would only provide if the manufacturers paid it illicit “fees.” If the fees were paid, the diamonds were then passed off to consumers as higher quality goods with fraudulent appraisals and certificates. KS alleged that it refused to pay the illicit fees and then was left with diamonds with no New York grading certificates and was unable to complete sales to its customers.

As against IGI Dubai and IGI India, the amended complaint stated that they (1) violated General Business Law Section 349 by over-grading diamonds and issuing false certificates and appraisals; (2) violated the Donnelly Act; (3) committed fraud; and (4) conspired to commit fraud.

IGI Dubai and IGI India now move to dismiss the complaint insofar as asserted against them pursuant to CPLR Sections 3211(a)(7) and (8).² They first argue that the

² At oral argument on January 22, 2020, I dismissed the causes of action alleging conspiracy and violation of the Donnelly Act insofar as asserted against movants.

court lacks personal jurisdiction over them pursuant to CPLR 302(a)(3)(ii) because there are no factual allegations that they committed any “tort without the state,” or that they foresaw, or should have foreseen that any alleged acts performed overseas would have consequences in New York. Further, there are no allegations that IGI Dubai or IGI India engaged in any “laundering,” rather, the complaint only states that IGI NY engaged in laundering. In addition, IGI Dubai and IGI India also have no control of whether reports they issue will be given to a New York entity or an entity anywhere else.

IGI Dubai and IGI India note that there are no factual allegations that they tried to serve the New York market, rather, it was merely a likelihood that their reports could end up in New York. There are only general, conclusory statements that movants knew of and intentionally participated in a larger scheme where they issued false grading reports for diamonds that would be sold in New York, and that IGI NY would then seek “illicit fees to replicate those false certificates.” In addition, an exercise of jurisdiction here would violate the due process clause of the Constitution because movants have had no relevant contacts with New York.

IGI Dubai and IGI India next argue that the complaint specifically states that KS purchased diamonds with grading reports issued by “IGI Group laboratories located in India, Israel and Belgium” but does not mention Dubai. Therefore, IGI Dubai could not have caused any of KS’s alleged injuries. Further, the General Business Law Section 349

claim must be dismissed because the complaint does not allege that movants engaged in any deceptive trade practices in New York.³

In opposition, KS argues that it can establish jurisdiction under CPLR Sections 302(a)(1), (a)(2) and (a)(3)(ii). With regard to CPLR Section 302(a)(1), KS maintains that the movants were all alter egos of Lorie, who availed himself of the privilege of conducting business in New York. As such, because there is personal jurisdiction over Lorie, there is personal jurisdiction over IGI Dubai and IGI India as well. KS explains that Lorie indirectly owns 60% of the shares of movants and he controlled them. He also served as officer and director and appointed and controlled the other officers and directors. According to Marc Brauner (“Brauner”), part owner in the IGI Group, Lorie essentially controlled IGI Group and all of its entities and used the companies as “his personal piggy bank” to effectuate a “worldwide fraud.” For example, Lorie allegedly told Brauner that he took more than \$7.1 million from IGI Dubai and transferred that money to his personal account. Also, Lorie directed Hattron to bill \$4 million in consulting fees to IGI India, which then transferred \$4 million to Hattron, even though it had done no such work.

KS next maintains that jurisdiction can be established under CPLR Section 302(a)(2) because IGI Dubai and IGI India participated in a fraudulent conspiracy that included overt acts in New York.

³ Movants do not argue for dismissal of the fraud cause of action.

Further, KS can establish jurisdiction pursuant to CPLR Section 302(a)(3)(ii) because movants committed torts out of the state that caused injury in the state, they knew or should have known that those acts would have consequences in the state, and they derive substantial revenue from international commerce. According to KS manager Yoni Mizrahi (“Mizrahi”), upon information and belief, movants were active participants in IGI Group’s fraudulent scheme and “helped to conceal and launder the illicit profits that flowed from the scheme by participating in fraudulent payments amongst the members of the IGI Group, fraudulent loans, and fabricated third-party vendor transactions.” The scheme was directed at New York and the goal of the scheme was to extort illicit fees from those jewelry manufacturers who were required to get certifications from IGI in New York. Mizrahi maintains that KS purchased diamonds that were graded by IGI India and IGI Dubai and at least one of the stones purchased by KS that IGI later refused to regrade had a fraudulent certificate from IGI Dubai. IGI Dubai and IGI India had reason to expect consequences in New York because that was how the scheme was designed. Mizrahi also contends that Lorie entirely controlled IGI Dubai, IGI India and IGI, Inc. and all had no corporate formalities. He moved money between the entities to hide illicit profits, and also transferred money to himself. Mizrahi based his beliefs on discussions with diamond dealers who tried to recruit KS into the scheme, as well as conversations with Lorie, Brauner and other IGI employees.

Further, an exercise of jurisdiction would not violate due process because IGI India and IGI Dubai were Lorie’s alter egos, and he had sufficient minimum contacts with New York. In any event, even if they were not Lorie’s alter egos, their participation

in this scheme, where overt acts were committed in New York, is sufficient to satisfy due process.

Finally, KS contends that its GBL Section 349 claims should not be dismissed because the conduct alleged involved the creation and distribution of fraudulent certificates by IGI, Inc., IGI India, IGI Dubai, and other IGI Group laboratories, as part of the fraudulent scheme. The deception of New York consumers was the end goal.

Discussion

If a defendant moves to dismiss pursuant to CPLR Section 3211(a)(8), the plaintiff, "[a]s the party seeking to assert personal jurisdiction . . . bears the ultimate burden of proof on this issue." *Doe v. McCormack*, 100 A.D.3d 684, 684 (2d Dept. 2012) (citation and internal quotations omitted). In opposing the motion, the plaintiff must demonstrate that facts may exist to predicate the exercise of personal jurisdiction, or make a sufficient start in demonstrating a basis for personal jurisdiction to warrant further discovery. *See Peterson v. Spartan Industries, Inc.*, 33 N.Y.2d 463 (1974); *HBK Master Fund L.P. v. Troika Dialog USA, Inc.*, 85 A.D.3d 665, 666 (1st Dept. 2011) (citations omitted).

Pursuant to CPLR § 302(a)(3)(ii), jurisdiction exists if five elements are satisfied:

[f]irst, that defendant committed a tortious act outside the State; second, that the cause of action arises from that act; third, that the act caused injury to a person or property within the State; fourth, that defendant expected or should reasonably have expected the act to have consequences in the State; and fifth, that defendant derived substantial revenue from interstate or international commerce. *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 214 (2000).

"Where personal jurisdiction exists over a defendant, jurisdiction over his alter-ego is proper as well." *Transasia Commodities Ltd. v. NewLead JMEG, LLC*, 45 Misc.3d 1217(A), (Sup. Ct. N.Y. Co. 2014). To state a claim for alter-ego liability, a "plaintiff is generally required to allege 'complete domination of the corporation. . . in respect to the transaction attacked' and 'that such domination was used to commit a fraud or wrong against plaintiff which resulted in plaintiff's injury.'" *Baby Phat Holding Co., LLC v Kellwood Co.*, 123 A.D.3d 405, 407 (1st Dept. 2014).

Here, KS has made a sufficient start of demonstrating New York's jurisdiction over movants under CPLR 302(a)(3)(ii) and the alter ego theory to warrant denial of the motion pending jurisdictional discovery. The allegations in the complaint and this motion, coupled with the affidavits presented, are a sufficient start to permit jurisdictional discovery. *See generally Renewable Energy Trust Capital, Inc. v PV2 Energy, LLC*, 2018 N.Y. Slip. Op. 31449(U) (N.Y. Sup. Ct., January 31, 2018). KS stated facts that may exist, but are not in its possession, that could support an exercise of jurisdiction over the movants. *See generally Peterson v. Spartan Industries, Inc.*, 33 N.Y.2d 463 (1974). "Discovery is, therefore, desirable, indeed may be essential, and should quite probably lead to a more accurate judgment than one made solely on the basis of inconclusive preliminary affidavits." *Expert Sewer & Drain, LLC v New England Mun. Equip. Co., Inc.*, 106 A.D.3d 775, 776 (2nd Dept. 2013)(internal quotations and citations omitted).

General Business Law Section 349 provides that "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state" are "unlawful." This statute requires a showing that defendant is engaging in a

consumer-oriented act or practice that is deceptive or misleading in a material way, and that plaintiff has been injured by reason thereof. *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A.*, 85 N.Y.2d 20, 25 (1995). The conduct, as alleged here, is sufficiently stated as a "deceptive act or practice" to mislead the public interest in New York within the meaning of the statute.


In accordance with the foregoing, it is hereby

ORDERED that defendants International Gemological Institute DMCC (Dubai) and International Gemological Institute Pvt. Ltd. (India)'s motion to dismiss the amended complaint insofar as asserted against them pursuant to CPLR 3211(a)(7) is granted only to the extent that the cause of action for conspiracy and the cause of action for violation of the Donnelly Act are dismissed; and it is further

ORDERED that defendants International Gemological Institute DMCC (Dubai) and International Gemological Institute Pvt. Ltd. (India)'s motion to dismiss the amended complaint insofar as asserted against them pursuant to CPLR 3211(a)(8) is denied without prejudice to renew upon completion of jurisdictional discovery.

This constitutes the decision and order of the court.

6/5/2020
DATE


SALIANN SCARPULLA, J.S.C.

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