Alavi v Resource Furniture LLC
2023 NY Slip Op 32238(U)
July 5, 2023
Supreme Court, New York County
Docket Number: Index No. 152602/2022
Judge: Dakota D. Ramseur

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAKOTA D. RAMSEUR** **PART** **34M**

Justice

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ZAHRI ALAVI, FIROOZ NAZEM,

Plaintiff,

- v -

RESOURCE FURNITURE LLC,L.F. WOODWORKERS INC.,CLEI S.R.L., BEHZAD SEJADI, DONYANAZ NAZEM,

Defendant.

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INDEX NO. 152602/2022

MOTION DATE 03/07/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISMISS.

In March 2022, plaintiffs Zahri Alavi and Firooz Nazem commenced the instant personal injury and products liability action against defendants Resource Furniture LLC (hereinafter, "Resource"), L.F. Woodworkers Inc., CLEI S.r.1. ("CLEI"), Behzad Sejadi, and Donyanaz Nazem. In this motion sequence (001), CLEI moves to dismiss pursuant to CPLR 3211 (a) (2) and (a) (8), alleging that, respectively, the Court lacks subject matter over plaintiffs' causes of action and personal jurisdiction over defendant. Both plaintiffs and Resource have interposed oppositions. (NYSCEF doc. no. 34, Plaintiff's affidavit in opposition, NYSCEF doc. no. 41, Resource's affidavit in opposition.) For the following reasons, CLEI's motion to dismiss is denied in its entirety.[1]

In the complaint, plaintiffs allege that defendants Sejadi and Nazem purchased a "LGM Tavolo"—a multipurpose piece of furniture with a bookshelf, hidden wall bed, and desk all in one—from Resource that collapsed or came apart while Alavi was laying on the wall bed section. Relevant to this motion, Resource is a New York-based limited liability company that delivered the LGM Tavolo to Sejadi and Nazem in New York (NYSCEF doc. no. 1 at 1, 5-6, complaint; NYSCEF doc. no. 45, Nazem purchase order). CLEI is an Italian-based company with no physical connections to New York, meaning it manufactures all its products in Italy, is headquartered in Como, Italy, and does not directly sell to New York consumers (NYSCEF doc. no. 27 at 2-5.) Pursuant to a Sales Representative Agreement and a Business Cooperation Agreement between Resource and CLEI, Resource purchases furniture, including LGM Tavolos, from CLEI that it then ships to its storerooms in New York. (NYSCEF doc. no. 43 at 1, Sales

[1] Though CLEI's notice of motion identifies CPLR 3211 (a) (1) and CPLR 3211 (a) (7) as additional grounds for dismissal, CLEI does not advance arguments under these provisions. As such, the Court only considers the motion under (a) (2) and (a) (8).

Representative Agreement; NYSCEF doc. 44 at 1, Business Cooperation Agreement; NYSCEF doc. no. 27 at 2-3, Colombo affidavit).

The Sales Agreement between Resource and CLEI notes that CLEI "is a leading company in design, production, and sale of transformable furniture," that Resource is authorized to "actively engage as a [CLEI] Sales Representative" in the United States, and that Resource is "engaged in direct sales of home furniture to consumers…in its capacity as exclusive dealer in the state of New York." (NYSCEF doc. no. 43 at 1.) Likewise, the Business Cooperation Agreement provides that CLEI is based in Italy, Resource in New York, and that CLEI "in the Territory [i.e., New York State] covered by this agreement, undertakes to sell its products only to Resource Furniture." (NYSCEF doc. no. 44 at 1.) This agreement requires Resource to purchase a minimum quantity of CLEI products every year, to be agreed upon at the beginning of each year. (*Id.*) In 2011, the first year of the agreement, the parties agreed that Resource would purchase at a minimum €500,000 in CLEI furniture. The two agreements also contain identical arbitration clauses that provide: "Any dispute, controversy or claim arising out or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration…The seat of arbitration shall be in Lugano [Switzerland]." (*Id.* at 3.)

CLEI contends that, since it does not have a physical presence in New York, it has not purposefully availed itself of the protections and benefits of New York law and, consequently, the "minimum contacts" test through which the Court must analyze whether it can assert jurisdiction over CLEI has not been met. Further, CLEI contends that the Court lacks subject matter jurisdiction[2] over the instant action since its two contracts with Resource requires disputes to be arbitrated in Lugano, Switzerland. Neither argument has merit.

DISCUSSION

In New York, specific personal jurisdiction is obtained through New York's long-arm statute CPLR 302.

CPLR 302 (a) (1) provides:

> "(a) [A]s to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary… who… (1) transacts any business within the state or contracts anywhere to supply goods or services in the state." (CPLR 302 [a] [1]; *Aybar v US Tires & Wheels of Queens, LLC*, 211 Ad 3d 40, 48-49 [2d Dept 2022].)

In analyzing whether a court has specific personal jurisdiction over the defendant, the first inquiry is whether the defendant has conducted sufficient activities to have transacted business or supplied goods or services in the state, and if so, the second inquiry is whether the

[2] The Court notes that arbitration clauses on their own do not deprive the Court of subject matter jurisdiction. (*See* CPLR 7503 (a) ["If an issue claimed to be arbitrable is involved in an action pending in a court *having jurisdiction* to hear a motion to compel arbitration, the application shall be made by motion"].) Nonetheless, the Court will address CLEI's argument that Resource's cross claims must be dismissed given the arbitration clauses.

claims arise from those transactions. (*Rushaid v Pictet & Cie*, 20 NY3d 316, 323 [2016].) As the Court of Appeals has explained, "jurisdiction is proper even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted." (*Id.*) In turn, "purposeful activities" are those activities with which a defendant, through volitional acts, avails itself of the privilege of conducting activities within New York, thus invoking the benefits and protections of its laws. (*Id.*; *D&R Global Selections, S.L v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 298 [2007] ["Purposeful availment occurs when the non-domiciliary 'seeks out and initiates contact with New York, solicits business in New York, and establishes a continuing relationship [with a New York corporation] (citation omitted)".)

Here, the Sales Representative Agreement and Business Cooperation Agreement conclusively establish the type of purposeful activities in New York that render specific personal jurisdiction over CLEI proper. Again, the two agreements establish that Resource was CLEI's sole sales representative in New York (demonstrating that CLEI knew and expected its products to be marketed and sold in New York) and that Resource was required to purchase a minimum amount in furniture each year (approximately € 500,000) to be shipped and sold to consumers in New York. CLEI's various arguments in opposition—that it has no physical presence in New York, that it does not market its products to distributors in New York, that it has Resource's representatives travel to Italy to place the orders, that Resource arranges and pays for shipping from CLEI's warehouse in Italy (purportedly signaling CLEI has limited to no knowledge of where the products are being sent)—are, in the Court of Appeal's words, "immaterial" to the Court's analysis since personal jurisdiction does not require a physical presence in New York and CLEI has on its own initiative "project[ed] itself into this state to engage in a sustained and substantial transaction of business." (*Fischbarg v Doucet*, 9 NY3d 375, 382 [2007].) As to the second inquiry, plaintiffs' strict products liability cause of action clearly has an "articulable nexus" or "substantial relationship" with CLEI's business transactions in New York. (*Aybar*, 211 AD3d at 48-49.)

Neither of the two cases upon which CLEI primarily relies—*Ortiz v Food Mach. of Am., Inc.* (2014 NY Slip Op. 31868[U] [Bronx Ct. Sup. Ct. 2014], *affd* 125 AD3d 507 [1st Dept 2015]) nor *Cortland Racquet Club v Oy Saunatec* (978 F. Supp 520, 523-524 [SDNY 1997])—are instructive here. In *Ortiz*, La Minerva, the equipment manufacturer in Italy who objected to personal jurisdiction, was at least four transactions removed from the injured plaintiff in New York and did not have the equivalent of a Sales Representative Agreement or Business Cooperation Agreement with a distributor in New York. (*Ortiz,* 2014 Slip Op 31868 [U], *2.) The court found that La Minerva had no knowledge of the third-party defendant OMCAN's (a Canadian company) intentions to transport the allegedly defective product to New York. Instead, the only plausible connection between La Minerva and New York was an interactive website, but the website did not target a specific audience in New York, which the court determined was not a purposeful act. (*Id.* at *9-10.) And in *Cortland*, the SDNY Court found that, pursuant to CPLR 302 (a) (3),[3] the defendant EGO Inc. manufactured the defective product in Germany, then sold it

[3] CPLR 302 (a) (3) provides for personal jurisdiction where the defendant commits a tortious act in another forum that causes injury to person or property in New York if the defendant "regularly does or solicits business, or engages in a persistent course of conduct or derives substantial revenue from goods used or consumed in the state" or if the

to a Swiss company, who sold it to its Norwegian subsidiary. (*Cortland*, 897 F Supp at 525.) From there, the Norwegian subsidiary sold the product to Finnish corporation that installed it into its own designed product in Finland. It is only then, after being installed in the Finnish product, that the defective product "found its way" to New York. (*Id.*) Since the mere happenstance that a product sold outside the state later makes its way into the state is not sufficient to establish personal jurisdiction,[4] this circuitous route from the manufacturer in Germany to market in New York (with no way for the German manufacturer to know where the product would ultimately make its way to) meant that EGO could not foresee that its product would have consequences in New York. (*Id.*) To reiterate, here, the opposite is true: since CLEI had two contracts with its distributor in New York, CLEI did indeed know, or should have known, that any defect in its products would be felt by consumers in New York.

Since exercising long-arm jurisdiction over CLEI is proper under CPLR 302 and CLEI has not advanced any arguments as to why personal jurisdiction would offend traditional notions of fair play and substantial justice (*see Williams v Beemiller*, 33 NY3d 523, 526 [2019]), thereby denying it due process, the Court finds that it has personal jurisdiction over CLEI.

CLEI's remaining contention is that its two agreements with Resource have mandatory arbitration clauses that require Resource and CLEI to submit to arbitration in Switzerland. Per the agreements, the arbitration clauses apply to "any dispute, controversy or claim arising out or in relation to this contract, including the validity, invalidity, breach or termination thereof." While CLEI argues that the dispute between Resource and CLEI "relates" to the contract, and that an issue under the contract concerns the "delivery" of their product, this is not entirely true.[5] Resource has not asserted a cause of action that puts the delivery of the LGM Tavolo to either it or plaintiffs at issue. (*See* NYSCEF doc. no. 11, Resource's Answer with Cross claims.) Indeed, plaintiffs' personal injury and strict products liability causes of action do not raise this as an issue. (NYSCEF doc. no. 1.) More importantly, Resource's cross claims against CLEI for contribution and common-law indemnity, the only two asserted cross claims, are not based on either the Sales Representative Agreement or the Business Cooperation agreement. Instead, in the cross claims, Resource asserts that, should plaintiff obtain a favorable judgment against it in the future for causing their alleged injuries, CLEI is also liable under principles of tort-law. In other words, CLEI's potential liability to Resource does not "arise" from the terms of two

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defendant "expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce." It should be noted that personal jurisdiction over CLEI is also proper under this rule. The alleged tortious act—the defective design and manufacture of the product—occurred in Italy, the alleged injury occurred in New York, defendant should reasonably have expected any defects to have consequences in the state since CLEI new its sole distributor operated in New York, and CLEI derives substantial revenue from its business with Resource.

[4] In its reply affirmation, CLEI contends that personal jurisdiction over CLEI is foreclosed by *J McIntyre Mach., Ltd v Nicastro* (564 US 873 [2011]) because the Supreme Court "did away with" the stream of commerce theory of personal jurisdiction. However, CLEI misconstrues the basis upon which personal jurisdiction is asserted here. The Court is not holding that personal jurisdiction is proper because CLEI put its product into a stream of commerce that eventually made its way to New York. Rather, the Court recognizes that "sometimes a defendant [submits to the jurisdiction of the Court] by sending its goods rather than its agents. The defendant's transmission of goods permits the exercise of jurisdiction only where defendant can be said to have targeted the forum." (*Id.* at 882.) As the Court's discussion above demonstrated, CLEI's business arrangements meet this target-forum requirement.

[5] The arbitration agreement does not have a clause that requires the arbitrator to determine threshold arbitrability questions.

contracts but rather the finding that Resource and CLEI committed a tort that injured a New York plaintiff. The Court, therefore, finds it inappropriate to dismiss Resource's cross claims against CLEI.

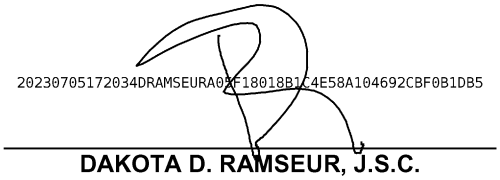
Accordingly, for the foregoing reasons, it is hereby

ORDERED that defendant CLEI S.r.l's motion to dismiss plaintiffs' complaint pursuant to CPLR 3211 (a) (8) for lack of personal jurisdiction and pursuant to the arbitration agreement is denied; and it is further

ORDRED that parties appear at 60 Centre Street, Courtroom 341 at 10 a.m. on July 25, 2023, for a status conference with the Court; and it is further

ORDERED that counsel for Resource Furniture LLC serve a copy of this order, along with notice of entry, on all parties within twenty (20) days of entry.

This constitutes the Decision and Order of the Court.



7/5/2023
DATE

DAKOTA D. RAMSEUR, J.S.C.

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