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Majority Opinion >

SUPREME COURT OF NEW YORK, SUFFOLK
COUNTY

Black Diamond Aviation Group LLC, Plaintiff(s), against
Spirit Avionics, Ltd., Defendant(s).

601994/2020

December 10, 2020, Decided

THIS OPINION IS UNCORRECTED AND SUBJECT
TO REVISION BEFORE PUBLICATION IN THE
PRINTED OFFICIAL REPORTS.

For Plaintiff: Judd A. Lindenfeld, Esq., ZAIGER, LLC,
New York, NY.

For Defendant: BRIAN K. BERNSTEIN, ESQ., Fort
Lee, NJ.

HON. JAMES HUDSON, Acting Justice of the
Supreme Court.

JAMES HUDSON

James Hudson, J.

The greatest power the bench possesses is the *auctoritas* to compel obedience to its mandates. The law reveals its symmetry, however, by limiting the application of this vast power of constraint. The object of the Court's succor, or rebuke, is confined to those who are properly before it. This Decision attempts to answer the question of jurisdiction over an unwilling litigant.

The case at bar is a Declaratory Judgment Action. Although not specified in a separate Cause of Action, however, the Plaintiff also seeks damages, predicated

on a breach of contract.

The Plaintiff, Black Diamond Aviation Group, LLC ("Black Diamond") is a Company which provides airplanes, such as jets, for private charter. Although it was organized under the Laws of Delaware, its principle place of business is in Greenwich, Connecticut. The Defendant, Spirit Avionics Ltd. ("Spirit"), is a limited liability company organized and headquartered in Ohio. Its business consists of performing aircraft maintenance and refurbishment.

Plaintiff contends that in December of 2018, it approached the Defendant to arrange for modifications for Black Diamond's Dassault Falcon 7X Jet ("Falcon 7X"). The work was to include "...installation of a speaker system, WIFI system, and USB outlets, and modifications to cabin windows and doors." (Verified Complaint, para 8).

The negotiations proved fruitful and on January 7th, 2019, the Parties signed a proposal for the anticipated work. This document " included estimated prices for engineering services to be performed by subcontractors on a "time and materials" basis. (Verified Complaint, para 9). The subcontractor contemplated by the proposal was Aircraft Engineering Solutions LLC ("ASES"). Like the Plaintiff and Defendant, ASES is not a New York company. It is domiciled and located in the State of Illinois.

This January Agreement was modified on May 23rd, 2019 wherein Spirit agreed to provide specified services for a fixed price of \$91,000 dollars. The agreed upon terms were that Spirit would install a speaker system, WIFI system, USB outlets and modifications to the cabin windows and doors as well as any work that required Federal Aviation Administration certifications and approvals. Spirit used ASES as the subcontractor to perform the tasks required under the Contract.

Plaintiff alleges that while the work was started in Columbus, Ohio, it became apparent that some of the modifications needed to be performed at Islip MacArthur Airport in Suffolk County, New York. Spirit agreed to fly the Falcon 7x to MacArthur Airport upon the condition that Black Diamond would pay, prior to the flight, [*2] half of the agreed upon price of \$91,000 dollars. Further, when the work was completed in New York, Black Diamond would pay the other half of the

\$91,000. Black Diamond agreed to this condition and Spirit brought the Falcon 7x to Islip-MacArthur Airport. The modifications took several months. Following the completion of the work agreed upon in the May 23rd, 2019 Agreement, Black Diamond paid Spirit the remaining balance of the \$91,000 dollars.

In October 2019, Black Diamond approached Spirit about additional work for the Falcon 7x that was not part of the May 23rd, 2019 Agreement. Spirit informed Black Diamond that if they wished to have the additional work completed, they should engage ASES directly. Black Diamond was given a cost estimate invoice (the "October 23rd Estimate") that included both the new work and the tasks that were performed under the May 23rd, 2019 Agreement. ASES acknowledged that the invoice included an overlap of the duties from the earlier arrangement. In November, Black Diamond paid ASES an advanced payment of \$23,214 dollars covering a majority of the new work outlined in the October 23rd Estimate. In January, when ASES sent a final invoice for \$59,903 dollars to Black Diamond for the remainder of the new work agreed upon in the October 23rd estimate, Black Diamond refused to pay ASES and stated that Spirit was responsible for the payment because of the May 23rd Agreement.

On February 3rd, 2020, the Plaintiff filed their Summons and Complaint in Suffolk County. The Plaintiff seeks a declaration from the Court that the May 23rd, 2019 Agreement obliges the Defendant to pay ASES for work that was performed by ASES on Black Diamond's Falcon 7x Aircraft in October of 2019.

The Defendant has filed a Motion to Dismiss predicated on several grounds, namely: lack of jurisdiction on the basis of documentary evidence; and failure to state a Cause of Action; *Forum Non Conveniens*; and that the Plaintiff is not permitted to do business in New York and is therefore barred from commencing the instant action (CPLR 3211[a][1] , [3] , [7] and [10] ; CPLR §327[a] , BCL §1312). Those arguments necessary to resolve this motion will be considered in turn.

In claiming that the Court has both subject matter and *in personam* jurisdiction, the Plaintiff's Complaint (at paragraphs 5 and 6) states:

"5. This Court has subject matter jurisdiction over

this case, which arises out of services that Spirit and ASES, on behalf of Spirit, performed for Black Diamond Aviation in substantial part in Ronkonkoma, New York; and

6. This Court has personal jurisdiction over Spirit under NY CPLR§302 as Spirit has purposefully availed itself of the privilege of transacting business in New York in connection with the facts and circumstances underlying this cause of action."

Since it is uncontroverted that the Defendant is a foreign Corporation, the initial question for the Court is whether the Plaintiff has properly invoked the Long Arm Statute (CPLR § 302).

This Statute reads in salient part:

"(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a [*3] court may exercise personal jurisdiction over any non-domiciliary who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state "

In the oft-cited *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 , 100 S. Ct. 559 , 62 L. Ed. 2d 490 (1980) it was recognized that the Court may exercise jurisdiction over a defendant only when there are sufficient contacts with the forum state and substantial evidence that the foreign defendant purposely availed themselves of the protections of the forum state. When examining whether jurisdiction is proper over a foreign defendant, there must be a fact-based inquiry that considers the constraints of the Due Process Clause of the Fourteenth Amendment . (*See, Id* at 295).

In the case of *Daimler AG v. Bauman*, 571 U.S. 117 , 134 S. Ct. 746 , 187 L. Ed. 2d 624 (2014), the Court analyzed when the assertion of jurisdiction over a foreign corporation is proper. In that case, the Plaintiffs, residents of Argentina, brought suit against Daimler Chrysler in the United States District Court for the Northern District of California. (*Id.* at 120-121). In the Complaint, the Plaintiffs alleged that a subsidiary of Daimler collaborated with forces in Argentina to kidnap

and torture workers during a time of war. Daimler was a German Company, and the alleged actions took place outside of the United States. Plaintiffs' claimed jurisdiction on the basis of Daimler's subsidiary being incorporated in Delaware and having a principal place of business in New Jersey. In dismissing the Complaint, the Court held that in order for jurisdiction to be proper over a foreign corporation, the corporation's association with the forum state must be "so continuous and systematic as to render the corporation at home in the state." (*Id.* at 139).

Daimler articulated several additional factors in determining if jurisdiction is appropriate for a particular forum. The reviewing Court should consider: the burden on the defendant; the forum state interest; the plaintiffs interest in litigating in the forum; the efficient resolution of controversies and finally; the shared interest of the several states in furthering fundamental substantive policies. (*Id.* at 139).

Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773 , 198 L. Ed. 2d 395 (2017), provided further guidance from the High Court. In addition to the criteria articulated above, *Bristol-Myers Squibb* opined that when a state court seeks to assert jurisdiction over a defendant there must be a strong affiliation between the specific claim that is at issue in the case and the forum state. In *Bristol-Myers*, the alleged tort victims asserted claims against the Squibb Company (BMS) alleging that a drug they manufactured caused them serious injury. BMS was a Delaware Corporation and their principal place of business was in New York. Plaintiffs were residents of California and several other States. The drug in question during the dispute was neither produced, manufactured or developed in California (*Id.* at 1778). The Supreme Court held that California lacked personal jurisdiction over the out of state Defendants because [*4] there was no connection to the forum state. (*Id.* at 1780).

We find that the principles delineated in *Daimler* and *Bristol-Myers Squibb* are applicable to the matter at hand. The Defendant Spirit has no connection with New York State. The work performed by Spirit on Black Diamond's Falcon 7x Aircraft was performed solely in Columbus, Ohio. The only connection that Spirit has to New York State is the fact they agreed to release the Aircraft from their care to Long Island MacArthur Airport upon Plaintiffs request to be worked upon by ASES. Spirit did not send any staff to work on the

Aircraft in New York State. Therefore, there is no specific jurisdiction over Spirit in this case because there is no strong affiliation with the forum state.

Plaintiff's contention that CPLR 302(a)(1) establishes New York jurisdiction over the Defendant is unpersuasive. In the case of *Licci v. Lebanese Canadian Bank*, 20 NY3d 327 , 984 N.E.2d 893 , 960 N.Y.S.2d 695 (2012), the Court extensively discussed personal jurisdiction under CPLR 302(a)(1) . In *Licci*, several dozen Plaintiffs who were citizens of the United States, Canada and Israel (all residing in Israel) filed suit for injuries from an alleged rocket attack during the Second Lebanon War in 2006. The Plaintiffs filed suit against Lebanese Canadian Bank alleging aid from co-Defendant American Express Bank claiming that they assisted in committing these illegal attacks by facilitating millions of dollars of money transactions funding the rocket attacks. The Plaintiffs asserted personal jurisdiction was proper over the Defendants based on the Long Arm Statute. The basis for personal jurisdiction was the existence and maintenance of a corresponding American Express Bank account where money transfers had been made. Although the case was initially filed in State Supreme Court, the Action was removed to the Federal District Court which dismissed the Complaint. The 2nd Circuit certified questions relating to Long Arm jurisdiction under CPLR 302(a)(1) to the New York Court of Appeals.

In discussing the obligations of the trial judge, the learned Court stated:

"The jurisdictional inquiry under CPLR 302(a)(1) necessarily requires examination of the particular facts in each case. And although determining what facts constitute 'purposeful availment' is an objective inquiry, it always requires a court to closely examine the defendant's contacts for their quality" (*Id.* at 338 citing *Fischbarg v Doucet*, 9 NY3d 375 , 380 , 880 N.E.2d 22 , 849 N.Y.S.2d 501 [2007]).

The facts in this case lend themselves to a less than favorable analysis under the rule in *Licci*. There was no "course of dealing" or repeated use of New York facilities for maintenance of the Airplane that could allow us to invoke CPLR 302 (a)(1) . (*Id.* at 338).

Moreover, when a contract is negotiated *via* e-mail or telephone and no business is performed within

the forum state, the foreign defendant is not subject to personal jurisdiction, (*AM Pitt Hotel, LLC v. 400 5th Ave., L.P.*, 2019 [2019 BL 100259], N.Y.Misc. LEXIS 1139 [2019]). We remind the Plaintiff that the Contract (*i.e.* the May 23rd, 2019 Agreement) created the mutual obligations in this business relationship. The entirety of this Agreement was negotiated and agreed upon [*5] between Spirit's office space in Ohio and the Plaintiff's office in Connecticut. The bargained for work pursuant to that Contract did not take place in New York.

The question of sufficient contacts with the forum state was also reviewed in *Pichardo v. Zayas*, 122 AD3d 699 [2nd Dept.2014], 996 N.Y.S.2d 176 . The Defendants were a husband and wife who resided in New Jersey and the Plaintiff brought suit for an injury that occurred while cutting a piece of plywood while doing work on their home. (*Id.* at 699). The Plaintiff stated the basis for jurisdiction was the couple's affiliation with a Church in Brooklyn, New York. The Appellate Court discussed whether personal jurisdiction was present and stated that there must be an "articulable nexus" or "substantial relationship" in light of all the relevant circumstances. (*Id.* at 701). Further, there must be some " relatedness between the transaction and the legal claim at issue." (*Id.* at 701). The Court stated that there was no relationship between the Church that the couple attended in New York and the purported injury that occurred in New Jersey. Jurisdiction was not obtained and the Complaint was dismissed. (*Id.* at 702).

Similarly, in the present case, the Defendant Spirit does not have an office in New York State and does not have any employees or property in New York State. Further, Spirit does not solicit business in New York and does not maintain a bank account or pay taxes in New York. In an Affidavit in Support of the Motion to Dismiss, the Chief Executive Officer of Spirit, Mr. Eric Ochs, further acknowledged that Spirit does not have an office, employees or property in New York. Furthermore, Mr. Ochs states that there are no parties, witnesses, evidence or transactions that occurred or are present in New York. The work that was agreed upon between Spirit and Black Diamond took place in Columbus, Ohio. Only upon request from Black Diamond did Spirit release the Aircraft to New York where the work was completed. Spirit Avionics did not avail itself the protections of the New York nor does it have sufficient contacts within New York. In this light, personal jurisdiction cannot be properly asserted over

Spirit under the standards articulated in *Licci v. Lebanese Canadian Bank* and *Pichardo v. Zayas*.

Lacking *in personam* jurisdiction, the Court is obliged to dismiss the Complaint.

In that the Court has determined the question of jurisdiction in favor of the Movant, it is not necessary for the Court to consider the Defendant's remaining arguments in favor of dismissal.

Accordingly, it is

ORDERED, that the Defendants motion for an Order pursuant to CPLR 301 , 302, 3211[a][1] dismissing the Plaintiff's Complaint is granted; it is further

ORDERED that Plaintiff Black Diamond Aviation Group, LLC's Complaint is dismissed in its entirety as against the Defendant Spirit Avionics Ltd.

This Memorandum also constitutes the Order of the Court.

Dated: December 10, 2020

RIVERHEAD, NY

HON. JAMES HUDSON

Acting Justice of the Supreme Court