CLP Luminex Holdings, LLC v Global Consumer Acquisition LLC
2024 NY Slip Op 31395(U)
April 17, 2024
Supreme Court, New York County
Docket Number: Index No. 650842/2023
Judge: Margaret A. Chan
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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CLP LUMINEX HOLDINGS, LLC, LUMINEX HOME DECOR AND FRAGRANCE HOLDING CORP.,

Plaintiffs,

- v -

GLOBAL CONSUMER ACQUISITION LLC, ROHAN AJILA, and GAUTHAM PAI

Defendants.

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INDEX NO. 650842/2023

MOTION DATE 12/13/2023

MOTION SEQ. NO. MS 003

DECISION + ORDER ON MOTION

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In this action arising out of a failed special purpose acquisition transaction, defendants Rohan Ajila and Gautham Pai move to vacate a default judgment against them pursuant to CPLR 5015 [a] [4] for failure to serve. Plaintiffs oppose the motion. For the reasons below, the motion is granted.

Background

Rohan Pai and Gautham Ajila are two businessmen from India who decided to "take advantage of the boom in special purpose acquisition vehicles [SPACs]" (NYSCEF # 58, Pltf's Opp at 1). SPACs are public companies that raise investor funds and then purchase private companies, thereby making the private companies public (*id.*; *see also* NYSCEF # 2, Complaint, ¶¶ 25-28). To this end, Pai and Ajila formed Global Consumer Acquisition Corporation (GACQ) in Delaware in December 2020. As alleged in the complaint, Pai and Ajila are directors of GACQ (NYSCEF # 55, Pai aff ¶ 8; NYSCEF # 56, Ajila aff, ¶ 8). The sponsor of the SPAC, GACQ is defendant Global Consumer Acquisition LLC (Sponsor), which was formed in January 2021 (NYSCEF # 2 ¶¶ 29-30). Allegedly, Pai and Ajila have a managerial role at the Sponsor (*id.* ¶ 30).

Non-party GACQ entered into a contract to buy plaintiff Luminex Home Décor and Fragrance Holding Corp. ("Luminex"). Over time, however, GACQ was unable to make required the payments or get approval for the merger and eventually became insolvent (*id.* ¶ 39; NYSCEF # 58 at 1-2). Plaintiffs tried to force Pai, Ajila, and defendant Sponsor to pay a small amount of the damages and even

threatened to file suit, but Pai and Ajila, who reside in India, asserted that jurisdiction would be difficult to acquire (NYSCEF # 58 at 2).

Plaintiffs sued anyway, bringing this case on February 14, 2023, against Ajila, Pai, and Sponsor (NYSCEF # 1, Summons). Plaintiffs attempted to utilize a Delaware service statute, Delaware Code Title 10 § 3114 [a] (Delaware Code § 3114 [a]), which provides that non-resident directors of Delaware corporations are deemed to have "consented to the appointment of the registered agent of such corporation" as their own agent for service of process in cases related to the corporation (Del Code Ann Title 10 § 3114 [a]). Plaintiffs allege that under this statute, Pai and Ajila, by becoming (non-resident) directors of non-party GACQ, had thereby consented to make GACQ's agent in Delaware their own (NYSCEF # 16, Walters aff, ¶ 6). Plaintiffs therefore served Pai and Ajila through GACQ's agent, Corporate Creations Network Inc. (CCN), a Delaware corporation located in Wilmington, Delaware whose main business is to accept service on behalf of corporations (*id.*; NYSCEF # 52, Def's MOL, at 2). Plaintiffs' affidavits of service state that they served both Individual Defendants "c/o GLOBAL CONSUMER ACQUISITION CORP." (the non-party), and that CCN's managing agent, Curt Sweltz, said he could accept service on Pai and Ajila's behalf (NYSCEF # 9, aff of service on Pai; NYSCEF # 10, aff of service on Ajila). Plaintiffs also served defendant Sponsor through the same agent (NYSCEF # 8, aff of service on Sponsor).

None of the defendants (including Sponsor) appeared, answered, or moved to dismiss, even though plaintiffs and defendants were communicating about the case both before and after the commencement of this action (NYSCEF # 38, Inquest Tr, at 3:16–4:5 [plaintiffs' counsel "had been speaking with [defendants' counsel] before filing" and "since filing to keep him apprised of certain key things, such as the entry of [] default judgment, other filings [plaintiffs'] made and, of course, this hearing [inquest]"]). This court granted plaintiffs' motion for default judgment on September 28, 2023 (NYSCEF # 26, order); an inquest for damages on November 2, 2023 (NYSCEF # 38). Counsel for Pai and Ajila attended the inquest despite not filing an appearance and requested an adjournment, which was denied (NYSCEF # 38 at 3:2-9; 10:6-8). Eventually, Pai and Ajila brought the present motion to vacate the default judgment for improper service.

Pai and Ajila initially argued that serving CCN was improper because they were not directors of defendant Sponsor, and therefore, the Delaware statute did not apply to them (NYSCEF # 52 at 10). They further argued that CCN's address was not Pai and Ajila's "actual place of business" for the purpose of New York's CPLR 308 [2] or [4] (*id.* at 5-8).

Plaintiffs respond that neither of Pai and Ajila' arguments made sense because plaintiffs were serving them as directors of *non-party* GACQ pursuant to

CPLR 308 [3], using the procedures set out in Delaware Code § 3114 [a] (NYSCEF # 58 at 4-6, 10-11). Plaintiffs make this argument in two parts: [1] service is proper under Delaware law; [2] service is proper under New York law.

In reply, Pai and Ajila first argue that plaintiffs are attempting to serve them as directors to a non-party corporation, which clearly is not allowed under Delaware Code § 3114 [a]. Second, they argue that none of the cases plaintiffs cited are applicable because none of them relate to New York law. Third, Pai and Ajila did not owe plaintiffs any duty and therefore cannot base any claims on fiduciary duties. Finally, Pai and Ajila argue that the defect in service is not "technical" under CPLR 2001 because it was not "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" (*id.* at 6-8, quoting *Ruffin v Lion Corp.*, 15 NY3d 578, 582-583 [2010]).

Discussion

The individual defendants, Pai and Ajila, move to vacate default judgment pursuant to CPLR 5015 [a] [4] for lack of personal jurisdiction due to failure to serve.

Relevant Statutes

The CPLR dictates methods of proper service within New York State (*see e.g.* CPLR 308; CPLR 311). For people and entities served *outside* New York, like Pai and Ajila in India, service is proper if they are subject to New York's long-arm jurisdiction and served "in the same manner as service is made within the state" (CPLR 313). The statute thus "has both the intention and effect of 'removing state lines, and the plaintiff is to use the service methodologies of CPLR 308, 309, 310, 311, and 312–a, etc. wherever the defendant (or person authorized to accept service on defendant's behalf) may be found" (*Morgenthau v Avion Resources Ltd.*, 11 NY3d 383, 389 [2008], quoting Siegel, N.Y. Prac. § 100, at 168 [3d ed. 1999]).

The relevant statute here is CPLR 308, which dictates how to serve "natural person[s]" like Pai and Ajila. The statute sets out five methods of service, only one of which is relevant here: (3) "by delivering the summons within [or without, CPLR 313] the state to the agent for service of the person to be served *as designated under [CPLR] rule 318*" (CPLR 308 [3] [emphasis added]). Rule 318 in turn requires agents to be designated "in a writing, executed and acknowledged in the same manner as a deed, with the consent of the agent endorsed thereon" (Rule 318). The writing must then be "filed in the office of the clerk of the county in which the principal to be served resides or has its principal office" (*id.*).

Propriety of Service

Plaintiffs claim that under *Breer v Sears, Roebuck and Co.* (184 Misc 2d 916, 926 [Sup Ct, Bronx County 2000]), CPLR 313 leads us to a two-part inquiry: "first, whether the defendants were properly served under the law of the state where the summons was delivered; and second, whether such service was consistent with New York law" (NYSCEF # 58 at 4).

As an initial matter, this two-prong *Breers* analysis arguably does not apply as *Breers* involved a plaintiff's service on a *corporate* defendant, not an individual (*Breers*, 184 Misc 2d at 917). Service on corporations is covered by CPLR 311, which allows a much broader range of acceptable service than CPLR 308 [3]).

Nevertheless, even assuming the analysis set out by *Breers* applies, plaintiffs' argument still fails on the second prong—compliance with New York law.[1] Plaintiffs argue that they could properly serve Pai and Ajila through GACQ 's Delaware registered agent because New York allows service on agents appointed "by contract or statute," and thus, agents designated by Delaware Code § 3114 [a] are proper targets for service.[2] In other words, any agent designated pursuant to another state's laws is a proper service target for individual defendants in New York court.

But nothing in the actual text of the service statutes supports this argument. Under CPLR 313, service outside New York must comply with New York's service statutes. Agents of individuals must be served in compliance with CPLR 308 [3], which in turn requires defendants to appoint the agent through the process set out in Rule 318. Finally, Rule 318 lays out an appointment process that requires putting the agent designation in writing with the agent's consent and then filing the writing in a specific county. Nowhere do these statutes say that plaintiffs may serve an agent designated solely by operation of another state's law.

Plaintiffs counter that despite the text of CPLR 308 [3], Rule 318 is now "entirely 'optional'" under the case law, and instead, they can serve any agent appointed "by contract or statute," even statutes of a foreign jurisdictions (NYSCEF # 58 at 10-11, quoting *Orix Fin. Services v Kielbasa*, 2009 WL 579468, *1 [2d Cir, Mar. 4, 2009, No. 08-0042-CV], and citing *Natl. Equip. Rental, Ltd. v Szukhent*, 375 US 311, 314 [1964], and NY BCL 306 [6]). Plaintiffs argue, in particular, that under the *Breers* case, "service upon an agent *'designated by appointment or by law'* in a foreign jurisdiction [is] valid, provided that such service [is] 'accomplished in the same manner as service within New York State'" (*id.*, quoting *Breers*, 184 Misc 2d at 926 [emphasis added]).

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[1] The court declines the invitation to rule whether service was proper under Delaware law.

[2] Plaintiffs do not argue that Delaware's § 3114 [a] resembles any specific statutes in New York, and the court is not aware of any.

As mentioned earlier, *Breers* is inapposite because it relates to service on a *corporation* pursuant to a *different statute*—CPLR 311 (*Breers*, 184 Misc 2d at 917). Moreover, the language that plaintiffs focus on—"designated by appointment or by law"—was not an invention by the *Breers* court but a direct quote from CPLR 311 (*see* CPLR 311 [a] [1] [service on corporations can be accomplished by serving "any other agent authorized *by appointment or by law* to receive service"] [emphasis added]). In contrast, "there is no such comparable provision in CPLR 308 which would allow such service to be deemed personal service upon a natural person" (*see Espy v Giorlando*, 85 AD2d 652, 653 [2d Dept 1981] [discussing service on a managing agent], *affd,* 56 NY2d 640 [1982]).

However, plaintiffs are at least partly correct that Rule 318 is no longer the exclusive way to appoint an agent under New York law. While some courts have required strict compliance with Rule 318 (*see e.g. Howard B. Spivak Architect, P.C. v Zilberman*, 59 AD3d 343, 344 [1st Dept 2009] [defendants did not designate attorney pursuant to Rule 318]; *Espy*, 85 AD2d at 652 [no designation of doctor]), a different line of cases holds that parties *to a contract* include a contract term to select agents to accept service for issues arising from the contract without following Rule 318's procedures (*see e.g. Szukhent*, 375 US at 314 [expressly analyzing service under New York's laws]; *Orix Fin. Services, Inc. v Baker*, 1 Misc 3d 288, 291 [Sup Ct, NY County, 2003]). Some of those cases additionally require that the contractually-selected agent "promptly accept[] the summons or process, and promptly transmit it or notice thereof to the principal" (*Baker*, 1 Misc 3d at 291).

Plaintiffs claim that *Szukhent* also extends to agents appointed by other states' statutes, but none of the cases they cite, and addressed here, stand for that proposition. *Szukhent* and *Kielbasa* deal with agents appointed by contract. *Breers*, as already noted, involves service on a corporation. *Morgenthau v Avion Resources Ltd.*, another case cited by plaintiffs, does not discuss agents of individuals at all, except insofar as the court expressly allowed alternative service on defendants' lawyers pursuant to CPLR 308 [5] (*Morgenthau v Avion Resources Ltd.*, 11 NY3d 383, 391 [2008]).

Similarly, the court has not found a single case (a) extending *Szukhent* to agents appointed via foreign statutes or (b) discussing Delaware Code § 3114 [a] in a New York case. Because there is no basis in New York law to allow service on Pai and Ajila via GACQ's registered agent, service is improper. Given that plaintiffs failed to comply with the basics of service here, the defect is not technical under CPLR 2001 (*see Baker*, 1 Misc 3d at 291 [due process is not satisfied "when no effort is made to serve the summons on the defendant, and plaintiff does not attempt service specified under the CPLR or seek court approval of service by other means"]). Accordingly, this court does not have personal jurisdiction over the individual defendants, Ajila and Pai; only Global Consumer Acquisition LLC remains as defendant in this action.

Conclusion

Based on the foregoing, it is

ORDERED that defendants' motion to vacate default judgment as against the individual defendants only, Rohan Ajila and Gautham Pai, is granted; and it is further

ORDERED that the Decision and Order (NYSCEF # 26) dated September 28, 2023, and filed October 2, 2023, as against the individual defendants only, Rohan Ajila and Gautham Pai, is vacated, annulled, and rescinded; and it is further

ORDERED that the individual defendants, Rohan Ajila and Gautham Pai, shall serve a copy of this order, along with notice of entry, on plaintiff within ten (10) days of this order.

04/17/2024
DATE

MARGARET A. CHAN, J.S.C.

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