# DIPAOLO MACH. WORKS v. PRESTIGE EQUIP. CORP.

998 F. Supp. 229 (1998) | Cited 0 times | E.D. New York | April 24, 1998

MEMORANDUM & ORDER

JOHNSON, District Judge:

DiPaolo Machine Works, Ltd. ("Plaintiff" or "DiPaolo") filed suit in this diversity action pursuant to 28 U.S.C. § 1332 against Prestige Equipment Corporation ("Defendant" or "Prestige") for breach of contract and negligence for failing to properly arrange and provide for the transport of Plaintiff's boring mill from Monterrey, Mexico to Mississauga, Ontario. (Complaint PP 16, 19). Presently before this Court is Defendant's motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6). For the reasons stated herein, Defendant's motion is granted.

FACTUAL BACKGROUND

DiPaolo is a corporation organized and existing under the laws of the Province of Ontario, Canada. (Complaint P 1). Defendant Prestige is a New York corporation that does business in Texas. (Complaint P 2). On or about June 30, 1993, Plaintiff agreed to purchase a used boring mill from Prestige to be shipped and delivered from Monterrey, Mexico to Ontario, Canada. (Complaint P 10). Prestige's Invoice No. 11066 described the terms of the agreement and stated "F.O.B. Houston, Texas." (Appendix 3 to Def's Motion to Dismiss).

The boring mill was transported overland from Mexico to Canada via the United States. Trism Specialized Carriers was responsible for the transport of the boring mill from Monterrey, Mexico to Houston, Texas and then from Houston, Texas to Mississauga, Canada. (Complaint P 14). In Houston, the boring mill was unloaded by another party and stored in a warehouse. (Pl's Memo at 3). While the mill remained in storage, Prestige, after consulting with Plaintiff, made arrangements with Trism on behalf of Plaintiff to have Trism transport the mill from Texas to Canada. (Id.). Upon the arrival of the shipments to Mississauga on or about July 24, 1993, Plaintiff discovered that the boring mill had been damaged. (Complaint P 15).

Plaintiff commenced two prior actions against Defendant and other parties, one in Texas and another in Canada. (Def's Motion to Dismiss). The Texas action was voluntarily discontinued, and the Canadian action was dismissed on forum non conveniens grounds. Thereafter, on June 27, 1996, Plaintiff filed a complaint with this Court.

DISCUSSION

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I. 12(b)(6) Motion

The Federal Rules of Civil Procedure do not require a plaintiff to set out in detail the facts upon which a claim is based. All that is required is "a short plain statement of the claim" giving notice of the nature of the claim and the grounds upon which it rests. Leatherman v. Tarrant County Narcotics Intelligence & Coord. Unit, 507 U.S. 163, 164, 122 L. Ed. 2d 517, 113 S. Ct. 1160 (1993); Fed.R.Civ.P. 8(a)(2). When considering a defendant's motion to dismiss under Fed.R.Civ.P. 12(b)(6), the Court must accept as true factual allegations in the complaint and construe all reasonable inferences in the plaintiff's favor. Leatherman, 507 U.S. at 164; Hernandez v. Coughlin, 18 F.3d 133, 136 (2d Cir. 1994), cert. denied, 513 U.S. 836, 130 L. Ed. 2d 63, 115 S. Ct. 117 (1994). The complaint should be dismissed only "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957). A motion to dismiss for failure to state a claim upon which relief can be granted is addressed to the face of the pleading which, for the purpose of the motion, is deemed to include any document attached to it as an exhibit or any other document incorporated in it by reference. Goldman v. Belden, 754 F.2d 1059, 1065-1066 (2d Cir. 1985).

II. Negligence Claim

A federal court sitting in diversity must apply the substantive law of the forum, including the conflicts of law rules of the forum. See Erie Railroad Co. v. Tompkins, 304 U.S. 64, 82 L. Ed. 1188, 58 S. Ct. 817 (1938); Klaxon Co. v. Stentor Electric Manufacturing Co., 313 U.S. 487, 85 L. Ed. 1477, 61 S. Ct. 1020 (1941) (state's conflicts of law rules is part of substantive law of the state). In New York, the statute of limitations is considered procedural. See Martin v. Julius Dierck Equipment Co., 43 N.Y.2d 583, 588, 403 N.Y.S.2d 185, 374 N.E.2d 97 (1978); Elghanayan v. Elghanayan, 190 A.D.2d 449, 598 N.Y.S.2d 524, 527 (1st Dept. 1993). Thus, New York's applicable statute of limitations and borrowing statute applies to DiPaolo's negligence cause of action.

New York's borrowing statute provides that if a cause of action accrued outside of New York state, the defendant is amenable to suit in the state where the cause of action accrued, and that state has a shorter statute of limitations than New York, then the shorter statute of limitations will apply, notwithstanding the fact that the action was commenced in New York. [1]" See Callazo v. American Airlines, Inc., 919 F. Supp. 110, 112 (E.D.N.Y. 1996). The borrowing statute was primarily intended to prevent forum shopping by non-resident plaintiffs, as well as to afford resident defendants the benefit of the shortest limitations period. Besser v. E.R. Squibb & Sons, Inc., 146 A.D.2d 107, 539 N.Y.S.2d 734, 737 (1st Dept. 1989). See also Stafford v. International Harvester Co., 668 F.2d 142, 151 (2d Cir. 1981); Martin, 43 N.Y.2d at 588 (borrowing statutes adopted to temper rigid application of statute of limitations of forum state by allowing the application of the limitations law of state where action accrued if doing so would bar plaintiff's cause of action).

The question of where a cause of action accrued for purposes of New York's borrowing statute has

been the subject of considerable debate in judicial opinions and implicates an unsettled area of New York law. Courts have grappled with whether the accrual of a cause of action under the borrowing statute should be determined by the "grouping of contacts"/interests analysis approach or by the "place of injury" approach. See Martin, 43 N.Y.2d at 591 (although ostensibly relying on the "place of injury" test, court looked to "jurisdiction that had the greater interest in the litigation"); Braune v. Abbott Laboratories, 895 F. Supp. 530, 558 (E.D.N.Y. 1995)("dubitantly" applying the "place of injury" test after recognizing the conflict between the two tests); Maslan v. American Airlines, 885 F. Supp. 90, 93 (S.D.N.Y. 1995) (using both tests to reach same result, while recognizing that "New York has, as a general matter, adopted a version of interest analysis for resolving conflict of law issues").

District courts in the Eastern District of New York have applied the "grouping of contacts" test in airplane injury cases recognizing the inherent difficulty in determining the specific place of injury during airplane flights. See Callazo v. American Airlines, Inc., 919 F. Supp. 110, 114 (E.D.N.Y. 1996) (since following the "place of injury" test would not resolve the dispute, only the "grouping of contacts" analysis would yield "a framework in which to determine where the cause of action accrued"). See also Anderson v. Sam Airlines, 939 F. Supp. 167, 173 (E.D.N.Y. 1996) (resolution of conflicts of law issue by reliance on "situs of the tort" not appropriate in airplane crashes because the place of injury, if even ascertainable, is most often "fortuitous"). As with injury incurred during an airplane flight, ascertaining the exact place of damage to the boring mill in the instant case remains a difficult, if not wholly impossible, task.

In the case at bar, the damage to the boring mill may have occurred at any point along the travel route to Canada. Although Plaintiff asserts that additional discovery will reveal the exact place of damage to the boring mill, this Court disagrees. New York represents one of at least a dozen states where the damage may have potentially occurred, and the damage itself may have occurred during several phases, including the initial transport from Mexico to Texas, the unloading, the warehouse storage, the reloading, or en route from Texas to Canada. Additional discovery is unlikely to reveal the precise location, for several years have passed since the alleged damage occurred, and witnesses or parties to useful information may be unavailable or unable to recall the details of the transport. Furthermore, if the alleged damage occurred en route while in the carrier's possession, it is highly improbable for the carrier to know at exactly what point in the journey such damage occurred.

This Court also disagrees with DiPaolo's assertion that the information is exclusively within the reach of Prestige, for the invoice simply noted "F.O.B. Houston" and did not intimate that Prestige was responsible thereafter, while the boring mill was in the carrier's possession. Because the place of injury test seems fruitless, this Court will apply the "grouping of contacts" analysis to this case.

Under the "grouping of contacts" analysis, this Court finds Texas to be the state with the most significant contacts to the case at bar. A "grouping of contacts" or interest analysis "entails a substantive determination of which jurisdiction has the greatest interest in the litigation." Allen v. Handszer, 148 Misc. 2d 334 at 345, 560 N.Y.S.2d 593, citing O'Donnell v. NPS Corp., 133 A.D.2d 73,

518 N.Y.S.2d 418 (2d Dept. 1987). The boring mill was delivered F.O.B. Houston, where it was unloaded for storage and re-loaded for transport to Canada. The mill was stored in a Texas warehouse for an unspecified period of time, during which further arrangements were allegedly made to have it transported to Canada. In comparison, New York has only a slight, attenuated interest in the case. None of the significant events relating to transport occurred here, and it is virtually impossible to determine whether the damage to the mill occurred in New York en route to Canada. Furthermore, Prestige is amenable to suit in Texas, as it does business in Texas and has designated Houston as its port of delivery from Mexico. In addition, one New York court has held that where the place of injury is unidentifiable for purposes of the borrowing statute, the cause of action is deemed to have accrued in the jurisdiction with the shorter statute of limitations. See Allen v. Handszer and G.D. Searle & Co., 148 Misc. 2d 334, 560 N.Y.S.2d 593 (N.Y. Sup. Ct. 1990). Thus, this Court finds that the Texas statute of limitations should thus apply. Under Texas law, a negligence cause of action is governed by a two-year statute of limitations. Texas Civil Practice & Remedies § 16.003(a) (supp. 1996). Because Plaintiff filed its complaint in June, 1996, three years after the alleged damage, Plaintiff's negligence claim is therefore time-barred.

III. Breach of Contract Claim

DiPaolo's complaint fails to state a claim for breach of contract. To state a claim in federal court for breach of contract under New York law, a complaint must allege (1) the existence of an agreement, (2) adequate performance of the contract by the plaintiff, (3) breach of contract by the defendant, and (4) damages resulting from the breach. See Harsco Corp. v. Segui, 91 F.3d 337, 348 (2d Cir. 1996); Tagare v. Nynex Network Systems Co., 921 F. Supp. 1146, 1149-1150 (S.D.N.Y. 1996) (while each element does not need to be pleaded separately, the complaint must contain some allegation that the plaintiffs complied with its requirements under the contract).

DiPaolo's complaint lacks specific reference to provisions of any contract between Prestige and itself, nor does it allege that it fulfilled its obligation under the agreement. The only reference to a contract is the invoice, whose terms explicitly state "F.O.B. Houston, Texas." The invoice does not state a further obligation on Prestige's part to oversee the transport of the boring mill to Mississauga, Canada. DiPaolo's broad assertion that Prestige was obligated to oversee the transport pursuant to "further agreement" does not sufficiently allege the specifics of that agreement, the consideration for the agreement, or DiPaolo's fulfillment of its own obligations under the agreement. See Zaro Licensing, Inc. v. Cinmar, Inc., 779 F. Supp. 276, 286 (S.D.N.Y. 1991) (dismissing counterclaims of breach of contract when franchisees failed to set forth particular provisions of any agreement and failed to fulfill the basic requirement of pleading their own compliance with any contracts at issue).

Furthermore, DiPaolo's contract claim against Prestige merely restates its negligence claim. Although pleaded in the language of contract, DiPaolo's allegation that Prestige breached their contract by failing to properly provide for and oversee the transport of the boring mill sounds in

negligence. See Pullin v. Feinsod, 142 A.D.2d 561, 530 N.Y.S.2d 226 (2d Dept 1988) (the facts made out a cause of action for breach of contract, regardless of plaintiffs' mislabeling of their cause of action). Plaintiff's claim for breach of contract is therefore dismissed.

IV. New York's Savings Clause Does Not Apply to Plaintiff's Case

DiPaolo's further assertion that CPLR 205(a), the "Savings Clause," enables it to file this action in a timely fashion fails as well. Section 205(a) provides in relevant part that

If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, . . . or a final judgment upon the merits, the plaintiff . . . may commence a new action upon the same transaction or occurrence . . . within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period.

NY CPLR § 205(a). DiPaolo argues that since the Ontario action was timely commenced and dismissed on the grounds of forum non conveniens, the action presently before this Court is "saved" as a result of the language of Section 205(a). However, DiPaolo's argument lacks merit because CPLR 205(a) only applies to prior actions commenced in the state or federal courts of New York. Baker v. Commercial Travelers Mutual Accident Association, 3 A.D.2d 265, 161 N.Y.S.2d 332, 334 (4th Dept. 1957), appeal dismissed, 167 Misc. 848, 4 N.Y.S.2d 828 (1958).

CONCLUSION

Plaintiff has failed to state a claim upon which relief may be granted. Its negligence claim is time-barred under New York's borrowing statute, and its contract claim, which merely restates its negligence cause of action, fails to state a claim for breach of contract. Plaintiffs action is also not saved by New York's saving clause, which is applicable only to prior actions commenced in the state or federal courts of New York.

For the reasons set forth above, Defendant's motion to dismiss is GRANTED. Plaintiff's Complaint is hereby dismissed.

SO ORDERED.

Dated: April 24, 1998

Brooklyn, New York

Sterling Johnson, Jr.

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U.S.D.J.

1. NY CPLR § 202 states: An action based upon the cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.