

Prosperum Capital Partners LLC v CHC Assets LLC

2024 NY Slip Op 32335(U)

July 1, 2024

Supreme Court, Kings County

Docket Number: Index No. 513014/2022

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 18th day of July 2024.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

Index No: 513014/2022

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PROSPERUM CAPITAL PARTNERS LLC D/B/A
ARSENAL FUNDING,

Plaintiff,

ORDER

-against-

CHC ASSETS LLC D/B/A FLORIDA TOW and CARLOS
CABALLERO,

Defendants.
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<u>The following NYSCEF Docs. # were considered herein:</u>	<u>NYSCEF Nos.:</u>
Notice of Motion/Affirmation in Support/Affidavits Annexed	3-5
Exhibits Annexed/Reply.....	17-18
Affirmation in Opposition/Memorandum of Law/Exhibits Annexed.....	14-16

In this action, CHC Assets LLC D/B/A Florida Tow (“CHC”), and Carlos Caballero (“Caballero”) (collectively, “Defendants”) filed a pre-answer motion to dismiss Prosperum Capital Partners LLC D/B/A Arsenal Funding (“Plaintiff’s”) complaint pursuant to CPLR 3211(a)(2) on the grounds that the court lacks subject matter jurisdiction.

This matter arises out of a contractual dispute between Plaintiff and Defendant about a Standard Merchant Cash Advance Agreement (“the Agreement”)¹, entered into on or about November 11, 2021, wherein Plaintiff agreed to purchase all rights of Defendant’s future receivables valued at \$22,485.00. The purchase price for the receivables was \$15,000.00. Additionally, Defendant Caballero personally guaranteed any and all amounts owed to Plaintiff from Defendant, upon a breach of performance. In the complaint, Plaintiff alleges that on or about

¹ The record in the current matter as of June 26, 2024 still does not contain a copy of the Agreement for the court to review. It remains unclear where the contract was entered into, and where the contract would be executed.

December 17, 2021, Defendant breached the Agreement by blocking and depriving Plaintiff of its withdrawals from the specified bank account while still conducting regular business operations. Plaintiff claims that Defendant owes Plaintiff a balance in the amount of \$28,198.22.

Defendants now move to dismiss Plaintiff's complaint, arguing that under Business Corporation Law §1314(b), this court lacks subject matter jurisdiction because this action was brought by a foreign entity against another foreign entity (i.e., Plaintiff is not a resident of New York, and Defendants are residents of Florida).

In his memorandum of law in opposition, Plaintiff argues that it is a limited liability corporation not a corporation or foreign corporation as defined by the Business Corporation Law, therefore Business Corporation Law §1314(b) is inapplicable. Further, Plaintiff argues that Defendants have not identified any provision of the Limited Liability Company Law that precludes the Court's exercise of subject matter jurisdiction, and that, even if BCL 1314 was applicable, the court would still have subject matter jurisdiction.

Plaintiff also submits an affidavit signed by Marlen Kruzhkov, Managing Director of Plaintiff wherein he states that he reviewed Plaintiff's books and businesses records that are "annexed to this affidavit." No such records were included in the record.

In their Reply Affirmation, Defendants reiterate the argument that the BCL applies by referencing cases that utilized the Business Corporation Law over the Limited Liability Company Law. However, Defendants do not address the Plaintiff's arguments in opposition to the motion.²

Subject matter jurisdiction relates to the court's power to adjudicate (*Matter of Fry v. Village of Tarrytown*, 89 NY2d 714 [1997]). This court, as a court of general jurisdiction, is presumed to have subject matter jurisdiction unless the contrary plainly appears (*Condon v. Associated Hosp Servs*, 287 N.Y. 411 [1942]). A case can only be dismissed for lack of subject matter jurisdiction when it appears that Plaintiff cannot present evidence that would support jurisdiction (*Holmes v. United States*, US Dist Ct, SD NY, 04 Civ 7652, Daniels, J., 2005).

Business Corporation Law §1314 holds:

(b) Except as otherwise provided in this article, an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any type or kind or by a non-resident in the following cases only:

² Reply papers should be used to address arguments in opposition of the position taken by movant (*Harleysville Ins. Co. v. Rosario*, 17 A.D.3d 677 [2d Dep't 2005]).

- (1) Where it is brought to recover damages for the breach of a contract made or to be performed within this state, or relating to property situated within this state at the time of the making of the contract.
 - (2) Where the subject matter of the litigation is situated within this state.
 - (3) Where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state.
 - (4) Where, in any case not included in the preceding subparagraphs, a non-domiciliary would be subject to the personal jurisdiction of the courts of this state under section 302 of the civil practice law and rules.
 - (5) Where the defendant is a foreign corporation doing business or authorized to do business in this state.
- (c) Paragraph (b) does not apply to a corporation which was formed under the laws of the United States and which maintains an office in this state.

Limited Liability Company Law 802(a)(ii)(1), provides that foreign LLC's must apply for authority to do business in a state by submitting a completed application of authority to the department of state. Limited Liability Company Law 808(a) states that a foreign limited liability company doing business in a state without the application of authority may not maintain any action or suit in that state. However, Limited Liability Company Law 808(b) states that a foreign limited liability company that fails to comply with the provisions of this chapter does not affect the validity of contracts. Also, CPLR § 301 notes that for a foreign corporation to be "doing business" in New York, the business must engage in systematic and continuous business activities within New York.

Business Corporation Law §1314 applies to corporations only, not limited liability companies³ (*Pinnacle Bus. Funding, LLC v Muharib*, NY Slip Op 33680(U) [Sup Ct, Kings County 2023]; *Libertas Funding, LLC v Travelland RV, Inc.*, Sup Ct, Kings County, Feb. 15, 2024, Ruchelsman, J., index No. 533254/2023; *Capybara Cap., LLC v. Dixie Home Sols., Inc.*, Sup Ct, Monroe County, Mar. 8, 2024, Doyle, J., index No. E2022008946). Therefore, Business Corporation Law §1314 does not apply since Plaintiff is a limited liability company, so Defendants' subject matter jurisdiction argument is meritless.

³ In *Pinnacle Bus. Funding, LLC v Muharib*, this court previously rejected arguments made by defendant's counsel, Amos Weinberg, Esq., regarding subject matter jurisdiction arguments in a prior case with similar facts.

Assuming arguendo that Business Corporation Law §1314(b) did apply, this section provides that a foreign corporation may maintain an action against another foreign corporation only under certain circumstances. Business Corporation Law §1314(c), however, states that “Paragraph (b) does not apply to a corporation which was formed under the laws of the United States and which maintains an office in this state.”

In this case, Plaintiff is a limited liability company formed under the laws of the United States (specifically, Delaware). Plaintiff also maintains an office in New York. Pursuant to Limited Liability Company Law 802(a)(ii)(1), Plaintiff submitted an application of authority in New York on May 31, 2018⁴. Furthermore, Limited Liability Company Law 808(b) provides that the validity of the contract at issue is not dependent upon the application of authority.

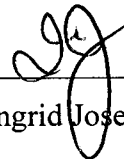
After review of this demand, documents submitted, and oral argument, this Court finds that Defendant has failed to establish lack of subject matter jurisdiction.

Accordingly, it is hereby

ORDERED that Defendants CHC Assets LLC D/B/A Florida Tow and Carlos Caballero’s motion to dismiss Plaintiff Prosperum Capital Partners LLC D/B/A Arsenal Funding’s complaint for lack of subject matter jurisdiction is denied; and is further

ORDERED that an Answer shall be filed within 30 days of service of an order with notice of entry.

This constitutes the decision and order of the court.



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**

⁴ The New York Department of State, Division of Corporations website confirms that Plaintiff submitted an application of authority on May 31, 2018.