

Beijing Pangu Inv. Co., Ltd. v Alibaba Group, Inc.

2020 NY Slip Op 32747(U)

August 24, 2020

Supreme Court, New York County

Docket Number: 159567/19

Judge: Barry Ostrager

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW
YORK NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

-----X
BEIJING PANGU INVESTMENT CO., LTD.,

Plaintiff,

- v -

ALIBABA GROUP, INC., BBMG GROUP CO., LTD,
ABC CORPORATIONS "1" through "10" and JOHN and
JANE DOES "1" through "10",

Defendants.

INDEX NO.	159567/19
MOTION DATE	
MOTION SEQ. NO.	001

DECISION + ORDER ON MOTION

-----X
HON. BARRY R. OSTRAGER

This is a pre-Answer motion by defendant BBMG Group Co., Ltd. ("BBMG"), a Chinese company, to dismiss the complaint filed by Beijing Pangu Investment Co., Ltd. ("Pangu"), another Chinese company, on multiple grounds, including lack of jurisdiction, *forum non conveniens*, and failure to state a claim. The motion is granted pursuant to CPLR 3211(a)(8) because there is neither general jurisdiction nor specific jurisdiction over BBMG in New York.

The complaint alleges a seizure and sale to a Chinese company via auction of real property located in China that was allegedly owned by plaintiff Pangu, another Chinese company (NYSCEF Doc. No. 1). The property, known as Dragon's Head, is part of a five-building complex in Beijing, China. Plaintiff claims the successful bidder at the auction is an entity known as Beijing Yucheng Real Estate Co., Ltd, an alleged subsidiary of the moving defendant BBMG. Plaintiff further alleges that BBMG is controlled by Jiang Zemin, the former President of the People's Republic of China. In short, China is the situs of the real property at issue and all of the alleged wrongful conduct of BBMG, presumably Chinese law controls the rights and obligations of the parties, and it appears that most, if not all, relevant documents are written in Chinese and nearly all the witnesses would be testifying in Chinese.

Plaintiff asserts jurisdiction in this Court over BBMG, a Chinese conglomerate, on the grounds that BBMG conducts business in the United States and New York through a number of wholly owned subsidiaries, including Tiantin Furniture Co., Ltd., and because shares of BBMG are traded as American Depository Receipts. The Court rejects the claim.

Briefly stated, defendant BBMG is neither subject to general nor specific jurisdiction in New York. BBMG is a Chinese company neither headquartered in New York, nor with its principal place of business in New York. It is now well settled that courts may assert general jurisdiction over a foreign corporation “only when the corporation’s affiliations with the State in which suit is brought are so constant and pervasive ‘as to render [it] essentially at home in the forum State’.” *Daimler AG v. Bauman, et al.*, 571 U.S. 117, 122 (2014), *quoting Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

Manifestly, BBMG is not “essentially at home” in New York, even assuming, without deciding, that its furniture subsidiary Tiantin is at home in New York. It is equally clear that there is no basis for specific jurisdiction in New York which requires, like the New York long- arm statute CPLR Section 302, at a minimum, a substantial connection between the forum and the underlying controversy or transaction at issue.

This is a China-centric case with virtually no connection to New York. Most glaringly, plaintiff’s claim of long-arm jurisdiction pursuant to CPLR 302(a)(3) fails because, “[i]n New York, ‘the situs of commercial injury [for purposes of jurisdiction under 302(a)(3)] is where the original critical events associated with the action or dispute took place, not where any financial loss or damages occurred’.” *Deutsche Bank v Vik*, 163 AD3d 414, 415 (1st Dep’t 2018), *quoting CRT Invs., Ltd. v BDO Seidman, LLP*, 85 AD3d 470, 472 (1st Dept 2011) (Because the “original critical events” giving rise to plaintiff’s injury were

the 2012 and 2015 Transfers that occurred outside of New York and did not involve New York assets, the situs of injury was not in New York for purposes of long-arm jurisdiction). Nor has plaintiff even made a showing sufficient to entitle it to jurisdictional discovery. *See Greenbacker v Onerooft*, 174 AD3d 437 (1st Dep’t 2019) (Plaintiff failed to make a sufficient start on a showing of jurisdiction over defendant to entitle it to jurisdictional discovery where the conduct complained of involved the diversion of funds from outside New York to recipients outside New York, so that the “critical events” and thus the situs of injury were not in New York).

In the instant case, plaintiff Pangu was not, and could not have been, injured in New York. As previously noted, plaintiff is a Chinese real estate development and management company that is not incorporated in New York and does not have its principal place of business in New York that allegedly was wrongfully deprived by a Chinese company of property plaintiff allegedly owned in China. Plaintiff’s unsubstantiated and conclusory allegation that plaintiff has business interests in other parts of the world does not support injury and personal jurisdiction over defendant BBMG in New York.

Because there is no basis for personal jurisdiction over BBMG, the Court need not reach defendant’s alternative request for dismissal pursuant to CPLR 327 based on *forum non conveniens*. However, if the Court were to reach this issue, based on the parties and the record presently before the Court, the Court would be inclined to find that this is a textbook case for dismissal on *forum non conveniens* grounds. Both parties to this motion are non-residents domiciled in China, the acts complained of took place in China and involved real property in China, the parties are theoretically subject to jurisdiction in the Chinese courts, and Chinese law is undoubtedly the governing law. Plaintiff’s claim that a key non-party witness is a New York

resident who is unwelcome in China does not, in itself, require the Court to retain jurisdiction under the *forum non conveniens* analysis. *See Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 483 (1984). In any event, the plaintiff and the moving defendant are both Chinese corporations and, on the present record, plaintiff has failed to establish that China is not an available alternative forum.

Accordingly, it is hereby

ORDERED that the motion by defendant BBMG Group Co., Ltd. is granted and the claims against that defendant are severed and dismissed pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction. The claims against the remaining defendants shall continue. A preliminary conference is scheduled for December 2, 2020 at 10:00 a.m.

Dated: August 24, 2020



 BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE