

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32926
C/ct

_____AD3d_____

Argued - October 20, 2011

THOMAS A. DICKERSON, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2011-00697

DECISION & ORDER

Gianfranco Iavarone, appellant, v Northpark Partners,
LP, respondent.

(Index No. 21890/10)

Farrauto, Berman & Slater, Yonkers, N.Y. (John P. Farrauto and Vincent Volino of counsel), for appellant.

Eckert Seamans Cherin & Mellott, LLC, White Plains, N.Y. (Riyaz G. Bhimani of counsel), for respondent.

In an action, inter alia, for a judgment declaring that the plaintiff's guarantee of a commercial lease is null and void, the plaintiff appeals from an order of the Supreme Court, Westchester County (Murphy, J.), entered November 30, 2010, which granted the defendant's motion pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction.

ORDERED that the order is affirmed, with costs.

The plaintiff, Gianfranco Iavarone, a resident of the State of New York, sought a judgment declaring that his personal guarantee of a commercial lease for retail space in the defendant's shopping center located in Dallas, Texas, is null and void. The defendant, Northpark Partners, LP, moved pursuant to CPLR 3211(a)(8) to dismiss the complaint, alleging, inter alia, that New York lacked personal jurisdiction over it under CPLR 302(a)(1).

It is undisputed that the defendant is a foreign limited liability partnership that is not authorized or registered to do business in New York, does not own or control any property in New

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York, does not maintain an office or business address in New York, does not employ any personnel in New York, and does not perform any services in this State. The only ground the plaintiff relies upon to support his contention that New York has jurisdiction over the defendant is the alleged solicitation of the tenant and alleged negotiations leading up to the execution of the lease and guarantee. The Supreme Court granted the defendant's motion, holding that the defendant's activities in New York were insufficient to confer personal jurisdiction over the defendant pursuant to CPLR 302(a)(1). We agree.

The Supreme Court properly determined that the number, nature, and quality of the defendant's contacts with New York, as alleged by the plaintiff, did "not evince purposeful activities by which they availed themselves of the benefits and protections of New York law" (*Muse Collections, Inc. v Carissima Bijoux, Inc.*, 86 AD3d 631, 631). Accordingly, the plaintiff failed to make a prima facie showing that the defendant is subject to the personal jurisdiction of the Supreme Court (see *Crystal Cove Seafood Corp. v Chelsea Harbor, LLC*, 47 AD3d 670, 670; *Cornely v Dynamic HVAC Supply, LLC*, 44 AD3d 986; *Opticare Acquisition Corp. v Castillo*, 25 AD3d 238, 243).

In light of our determination, we need not address the parties' remaining contentions.

DICKERSON, J.P., CHAMBERS, SGROI and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court