

MEMORANDUM

SUPREME COURT : QUEENS COUNTY  
IA PART 2

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BRIAN VOLPE,

Plaintiff,

-against-

HENRY SUN, individually, Henry Sun d/b/a HENRY SUN, HENRY SUN, under the assumed name, "NATALIE COHEN", HOWARD SUN, individually, HOWARD SUN d/b/a HENRY SUN, HOWARD SUN, under the assumed name "NATALIE COHEN", "JOHN DOE", being and intended to be any individual or business entity, unnamed, but utilized by defendants; and NETWORK SOLUTIONS, a duly formed Virginia Corporation, duly authorized to conduct business in New York, and BREANNA WYATT, as an agent, servant, and or employee of the Defendant, NETWORK SOLUTIONS, and LEGAL MEDICAL WEB, INC.,

Defendants.

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INDEX NO. 2838/05

BY: WEISS, J.

DATED: January 13, 2006

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Defendant Network Solutions, LLC ("NSL") and defendant Breanna Wyatt have moved for an order dismissing the complaint against them pursuant to CPLR 3211(a)(1), (2), (7), and (8).

NSL, an accredited domain name registrar, provides domain name registration and other Internet related services. A registrant chooses a unique domain name and enters into a commercial contract with a registrar to associate that domain name with an Internet Protocol address, the method by which one computer

or network connected to the Internet can identify and exchange information with another.

On or about October 23, 2003, Legal Medical Web, Inc., acting through its agent, plaintiff Brian Volpe, entered into a contract with VeriSign, Inc., a domain name registrar, renewing the registration for the domain name "<legalmedicalweb.com>." Volpe renewed the registration online by clicking on the appropriate icon. Paragraph 1 of the contract made the agreement binding upon the agents of Legal Medical Web, Inc. Paragraph 21(a) of the contract provided in relevant part: "You and we each agree to submit to exclusive subject matter jurisdiction, personal jurisdiction, and venue of the United States District Court for the Eastern District of Virginia, Alexandria Division for any disputes between us under or arising out of this Agreement. If there is no jurisdiction in the United States District Court for the Eastern District of Virginia, Alexandria Division, for any disputes between us or arising out of this Agreement you and we agree that jurisdiction shall be in the courts of Fairfax County, Fairfax, Virginia."

NSL, an affiliate of VeriSign, Inc., acquired the contract and performed Internet services for Volpe. NSL provided registrants with a domain name account that could be accessed by means of a password, and the password could also be used to make modifications to the registration. On June 7, 2004, the

registration for the domain name "<legalmedicalweb.com>" was transferred to Henry Sun after someone gained password authenticated access online to the account. Volpe alleges that someone made the transfer fraudulently, and he brought the matter to the attention of NSL. Defendant Breanna Wyatt, a "dispute specialist" with NSL, decided that the registrar could not determine if the transfer had been made fraudulently since someone had used the correct password to gain access to the account. NSL "locked" the domain name to prevent it from being further transferred and advised Volpe that legal action would be necessary to resolve his dispute with Henry Sun. After six months of inaction by Volpe, the registrar removed the "lock" and deleted the domain name for non-payment of a renewal notice.

On February 4, 2005, Brian Volpe, acting pro se, brought this action against NSL and its agent, Breanna Wyatt, among others, alleging against the defendant registrar causes of action for, inter alia, breach of contract and tortious interference with business relationships.

That branch of the motion by defendant NSL which is for an order pursuant to CPLR 3211(a)(1) dismissing the complaint against it is granted. In order to prevail on a CPLR 3211(a)(1) motion, the documentary evidence submitted "must be such that it resolves all the factual issues as a matter of law and conclusively and definitively disposes of the plaintiff's claim\*\*\*." ([Fernandez](#)

v Cigna Property and Casualty Insurance Company, 188 AD2d 700, 702;  
Vanderminden v Vanderminden, 226 AD2d 1037; Bronxville Knolls, Inc.  
v Webster Town Center Partnership, 221 AD2d 248.) The documentary  
evidence relied upon by defendant NSL is dispositive of plaintiff  
Volpe's action brought in this court. Paragraph 1 of the relevant  
contract made the agreement binding upon the agents of  
Legal Medical Web, Inc. Paragraph 21(a) of the contract provides  
that disputes arising under the agreement shall be resolved in the  
federal or state courts situated in Virginia. "It is the policy of  
the courts of this State to enforce contractual provisions for  
choice of law and selection of a forum for litigation\*\*\*." (Koob  
v IDS Financial Services, Inc., 213 AD2d 26, 33; see, Matter of  
Smith Barney, Harris Upham & Co. v. Luckie, 85 NY2d 193; Boss v  
American Exp. Financial Advisors, Inc., 15 AD3d 306.) Forum  
selection clauses in domain name contracts have been enforced by  
courts of other jurisdictions. (See, e.g., DeJohn v The .TV Corp.  
Intern., 245 F Supp 2d 913; Kilgallen v Network Solutions, Inc.,  
99 F Supp 2d 125.) The court notes that defendant NSL has  
registered millions of domain names for a small fee for registrants  
located throughout the world, and the registrar would be prejudiced  
if the forum selection clause in its contract is not enforced.

Those branches of the motion which are for an order  
pursuant to CPLR 3211(a)(1) and (8) dismissing the complaint  
against defendant Breanna Wyatt are granted. Although defendant

Wyatt was a nonsignatory to the agreement, it was reasonably foreseeable that she would seek to enforce the forum selection clause given the close relationship between herself and her employer. (See, [Dogmoch Intern. Corp. v Dresdner Bank AG, 304 AD2d 396.](#)) American courts will enforce forum selection clauses in favor of non-parties "closely related" to a signatory. (See, [Frietsch v Refco, Inc., 56 F3d 825.](#)) In any event, the plaintiff did not properly serve Wyatt with the summons and complaint. (See, CPLR 308.) Even a pro se litigant must comply with jurisdictional requirements. (See, [Goldmark v Keystone & Grading Corp., 226 AD2d 143.](#))

Short form order signed herewith.

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J.S.C.