

**Turner v USBank**

2024 NY Slip Op 31585(U)

May 3, 2024

Supreme Court, New York County

Docket Number: Index No. 656502/2023

Judge: Louis L. Nock

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. LOUIS L. NOCK **PART** **38M**

*Justice*

-----X

JUDITH B. TURNER,

Plaintiff,

- v -

USBANK, U.S. BANK, U.S. BANKCORP, and MARIA SALAZAR,

Defendants.

-----X

**INDEX NO.** 656502/2023

**MOTION DATE** 03/04/2024

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13

were read on this motion to DISMISS.

LOUIS L. NOCK, J.S.C.

This action asserts various causes of action arising from purportedly unauthorized withdrawals from plaintiff’s account held at a branch of defendant U.S. Bank National Association, incorrectly sued herein as USBank and U.S. Bank (“U.S. Bank”,) located in Culver City, California. Defendants have moved to dismiss the complaint for lack of personal jurisdiction, failure to state a cause of action, and forum non conveniens. There is no opposition to the motion. Because the court lacks both general and specific personal jurisdiction over defendants, the motion is granted.

It is undisputed that none of the parties to this action are domiciled in New York. As alleged in the complaint, plaintiff is a resident of Culver City, California (complaint, NYSCEF Doc. No. 3, ¶ 1). As evidenced by the Form 10-K and entity data submitted by defendant U.S. Bancorp (incorrectly sued hereunder as USBank Corp) and defendant U.S. Bank, respectively, neither defendant is incorporated or headquartered in New York (NYSCEF Doc. Nos. 7, 8).

Defendant Maria Salazar is employed by U.S. Bank at its Culver City branch, and is a resident of California (Salazar aff., NYSCEF Doc. No. 9, ¶ 2). Moreover, none of the conduct alleged in the complaint took place in New York. To the contrary, plaintiff asserts that jurisdiction in New York is proper solely because defendants U.S. Bank and U.S. Bancorp “have places of business within the State of New York” (complaint, NYSCEF Doc. No. 3, ¶ 7).

On a motion to dismiss for lack of personal jurisdiction pursuant to CPLR 3211(a)(8), the plaintiff bears the burden of showing jurisdiction (*Wang v LSUC*, 137 AD3d 520, 521 [1st Dept 2016]). The court may assert personal jurisdiction over a non-domiciliary where the action is permissible under the long-arm statute (CPLR 302), and the exercise of jurisdiction comports with due process (*Williams v Beemiller, Inc.*, 33 NY3d 523, 528 [2019]). Due process requires that a nondomiciliary have “certain minimum contacts” with the forum state and “that the maintenance of the suit does not offend traditional notions of fair play and substantial justice” (*id.*, quoting *International Shoe Co. v Washington*, 326 U.S. 310, 316 [1945]).

As relevant to this matter, the long-arm statute provides that “a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state” (CPLR 302[a][1]). “Even one instance of purposeful activity directed at New York is sufficient to create jurisdiction, whether or not defendant was physically present in the State, as long as that activity bears a substantial relationship to the cause of action” (*Corporate Campaign v Local 7837, United Paperworkers Intl. Union*, 265 AD2d 274, 274-75 [1st Dept 1999]).

Here, none of the defendants have contacts with New York that bear “a substantial relationship to the cause of action” (*Corporate Campaign*, 265 AD2d at 274-275). Defendant Salazar has no contacts whatsoever. To the extent that U.S. Bank and U.S. Bancorp have offices

in New York, no activity related to the complaint is alleged to have taken place at those offices. Accordingly, the court cannot exercise jurisdiction based on the long arm statute.

As to general jurisdiction, CPLR 301 allows the courts to exercise general jurisdiction over a defendant only where it is either domiciled in New York or its contacts with New York “are so extensive as to support general jurisdiction notwithstanding domicile elsewhere” (*IMAX Corp. v The Essel Group*, 154 AD3d 464, 466 [1st Dept 2017]). A corporate defendant is domiciled in New York where it is either incorporated in New York or has its principal place of business within the State (*Okoroafor v Emirates Airlines*, 195 AD3d 540 [1st Dept 2021]). Here, none of the defendants are domiciled in New York, and to the extent any defendant has any contacts with New York, they are not so extensive that general jurisdiction would otherwise be justified (*id.* at 541 [“Although Emirates has an office in New York County, it cannot be said that Emirates is essentially at home in New York so as to support general jurisdiction”] [internal citations and quotation marks omitted]).

Because the court lacks jurisdiction over the defendants, the court declines to address defendants’ further arguments that New York is an inconvenient forum, or that plaintiff has failed to state a cause of action.

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendants dismissing the action against them, with costs and disbursements to defendants upon submission of an appropriate bill of costs.

This constitutes the decision and order of the court.

ENTER:



<u>5/3/2024</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE