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

PRESENT: HON. MILTON A. TINGLING Justice

PART 44

VF Sportswear

- v -

BLF New York

INDEX NO. 601695/08

MOTION DATE 3/12/08

MOTION SEQ. NO. 2

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision.

FILED
JUN 20 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/17/08

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

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

_____X

VF SPORTSWEAR, INC.,

Plaintiff,

-against- Index No. 601695/2007

BLT New York, Inc.,

Defendant.

_____X

Milton Tingling J.:

Defendant moves, pursuant to CPLR § 3211 (a)(8), for an order dismissing the third-party complaint. Third-party plaintiff opposes the motion.

Plaintiff brought this action to recover monetary damages for Breach of Contract, Breach of Implied Warranty of Merchantability and Breach of Implied Warranty of Fitness against the defendant, on behalf of the plaintiff, defective trim materials, namely defective back patches and rivets to be used by the third-party defendant in manufacturing plaintiff's Nautica brand jeans. Defendant impleaded the third-party defendant for contribution and/or indemnification contending that third-party defendant manufactured plaintiff's Nautica brand jeans defectively.

In support of their motion, moving defendant points out that this court cannot exercise long-arm jurisdiction over third-party defendant because it did not transact business within the state or contract to supply goods or services in the state causing injury within the state, and it did not own, use or possesses any real property situated within the state pursuant to CPLR § 302. Moving defendant purports that there is no articulable nexus between the business transacted and

the cause of action sued upon which is essential to the suit against a non-domiciliary. Moving defendant also contends that it was not engaged in such a continuous and systematic course of doing business as to warrant a finding of presence in this jurisdiction.

In opposition, BLT New York does not contend that long-arm jurisdiction cannot be exercised over third-party defendant. Third-party plaintiff argues that there is no fixed standard in measuring the minimum contacts required to sustain jurisdiction. Third-party plaintiff premises its argument on CPLR 302 (a)(1) as a single act statute asserting that proof of one transaction in New York is sufficient to confer jurisdiction even though defendant never enters New York. Third-party plaintiff contends that third-party defendant purposely availed itself of conducting activities through the forum state through its communications.

By way of reply, moving third-party defendant asserts that it has been held that sending faxes and making telephone calls to New York does not amount to transacting business within the meaning of the long-arm statute. Moving third-party defendant argues that the key inquiry for purposes of "transacting business" under New York's long arm statute is whether defendant purposely availed itself of the benefits of state's laws. Moving third-party defendant contends that the affidavit did not provide any proof that moving third-party defendant was attempting to reach a New York Market and that the affidavit does not provide a showing of purposeful availment. Moving third-party defendant further contends that the communications are not sufficient as a matter of law to confer jurisdiction over third-party defendant.

"The overriding criterion has been established by Hanson v. Denckla, 357 US 235 (S. Ct. 1958) which characterized the minimum contact as being some act by which the defendant

purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." McKee Electric Company, Inc. v. Rauland-Borg Corporation, 20 NY2d 377 (Court of Appeals 1967.)

> The courts of this state are authorized to exercise in personam jurisdiction over a nondomicilary if the cause of action at issue arose out of the transaction of business within the state. It is well established, however, that the long-arm authority conferred by this subdivision does not extend to nondomiciliaries who merely ship goods into the State without crossing its borders. In addition to the shipment of goods into the State, there must have been some purposeful actives within the state that would justify bringing the nondomicillary defendant before the New York courts. McGowan v. Elton Smith, et. al, 52 NY 2d 268 (Court of Appeals 1981).

A nonresident defendant who purposefully directs his activities toward the forum state or who purposefully avails himself of the privilege of conducting activities within the forum state can be said to have foreseen being sued there, for purposes of determining whether there are sufficient minimum contacts to allow assertion of personal jurisdiction. Black River Associates v. Newman, 218 AD2d 273 (4d Dept 1996).

Here, there is not a sufficient showing of purposeful availment as required to confer long-arm jurisdiction over the moving party, Border Apparel. Border Apparel is a non-domiciliary. Border Apparel did not transact business within the state or contract to supply goods or services in the state, it did not commit a tortious act within the state or a tortious act outside of the state causing injury within the state, and it did not own, use or possess any real property situated within the state as specified in CPLR §302. Third-party plaintiff shipped the back patches and rivets to the third-party defendant in Texas during 2005. Third-party plaintiff shipped the allegedly defective trim materials to the third-party defendant's location outside of New York.

Third-party defendant did not contract to supply trim materials in New York. Third-party defendant did not supply trim materials in New York (see Cervantes Affidavit).

The electronic mails and other communications are not sufficient to confer long arm jurisdiction as the appellate division has held. Granat v. Bocher, 268 A.D.2d 365 (1st Dept. 2000). Third-party defendant's contacts are not sufficiently considered projecting itself into business transactions in the forum state. Consequently, third-party defendant Border Apparel has shown no purposeful affiliation with the forum state of New York as required by law. Thus, third-party defendant has not purposefully availed itself of the benefits of the state's laws and long arm-jurisdiction can not serve as a basis to confer jurisdiction over the third-party defendant. Accordingly, the motion to dismiss the third-party complaint is granted and the complaint is hereby dismissed. The Clerk is directed to enter judgment accordingly. Therefore, the motion to dismiss the third-party complaint is granted.

Dated: 6/17/08

ENTER

J.S.C.