Biz2Credit, LLC v IFMR Trust
2010 NY Slip Op 30362(U)
February 23, 2010
Supreme Court, New York County
Docket Number: 109792/2009
Judge: Carol R. Edmead
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SCANNED ON 2/24/2010

[* 1]

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

PRESENT: HON. CAROL EDMEAD, Justice

PART 35

Index Number : 109792/2009
BIZ 2 CREDIT, LLC
vs.
IF MR TRUST
SEQUENCE NUMBER : 001
DISMISS LACK OF PROSECUTION

INDEX NO. ______

MOTION DATE 12/22/09

MOTION SEQ. NO. ______

MOTION CAL. NO. ______

this motion to/for ______

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

Cross-Motion: ☐ Yes ☑ No

FILED
FEB 24 2010
NEW YORK COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion

In accordance with the accompanying Memorandum Decision, it is hereby

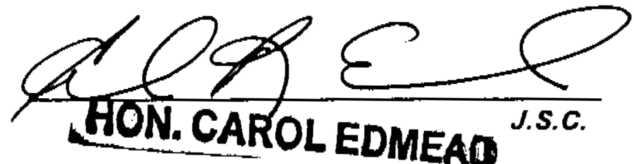
ORDERED that the motion by defendants IFMR Trust and Bindu Ananth, pursuant to CPLR §3211(a)(8) to dismiss the complaint of plaintiff Biz2Credit, LLC for lack of personal jurisdiction, is granted; and it is further

ORDERED that defendants shall serve a copy of this order with notice of entry upon plaintiff within 20 days of entry.

This constitutes the decision and order of the Court.

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

Dated: 2/23/2010



HON. CAROL EDMEAD J.S.C.

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

---X

BIZ2CREDIT, LLC,

Index No. 109792/2009

Plaintiff,

-against-

IFMR TRUST & BINDU ANANTH,

Defendants.

---X

HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

In this breach of contract action, the defendants, IFMR Trust and Bindu Ananth ("Ananth") (collectively, "defendants"), move to dismiss the complaint of the plaintiff, Biz2Credit, LLC, ("plaintiff") for lack of personal jurisdiction pursuant to CPLR §3211(a)(8).

FILED
FEB 24 2010
NEW YORK COUNTY CLERK'S OFFICE

Background

Plaintiff is a company with offices in New York. Ananth is the president of IFMR Trust, which is a private trust registered in Chennai, India. In or about early 2009, plaintiff entered into discussions of a potential business relationship with IFMR Trust in connection with the use of plaintiff's technology for IFMR Trust's online microfinance service (the "project"). As part of the project, plaintiff sent its consultants to India to conduct the study of the parties' needs for the project. According to plaintiff, the estimated cost of the project was approximately $25,000, 50% of which was to be paid by defendants up-front and the remaining 50% at the completion of the project. Additionally, IFMR Trust was to pay the out-of-pocket expenses associated with the consultant's travel and lodging. In response to plaintiff's email of February 7, 2009, outlining

the terms of the project, Ananth replied "Confirmed. The outcomes and deliverables of this partnership to be specified in the [memorandum of understanding]" (exhibit A-2 to Chaubey affirmation).

After the completion of the project by plaintiff, IFMR Trust paid only the cost of the consultant's out of pocket expenses to plaintiff, but failed to pay the sum of $25,000. Plaintiff's served defendants with a demand for payment, but defendants refused to pay. After receiving the notice of demand for payment, Ananth began, allegedly by using her connections and influence in business circles, pressuring "some institutions in India, including [. . .] ICICI Bank and Indiamart, with which plaintiff had [a] contractual relationship or was in the process of negotiating business agreements," to force plaintiff to discontinue the law suit against IFMR Trust or risk losing business relationships with said institutions. As a result of such conduct by Ananth, plaintiff alleges, it sustained damages. The instant action for a permanent injunction, breach of contract, recovery of money and tortious interference ensued.

In their motion, defendants argue that plaintiff cannot demonstrate that IFMR Trust, a foreign corporation, is subject to the general personal jurisdiction of the Court (CPLR §301) or specific jurisdiction under the long-arm statute (CPLR §302). Additionally, defendants contend that an assertion of personal jurisdiction under CPLR §302 would violate the Due Process Clause of the Constitution.First, defendants assert that they are not doing business in New York under CPLR §301 because IFMR Trust does not have an office and is not registered to conduct business in New York. Defendants contend their contacts with New York do not rise to the level of "permanent" and "continuous" as required by CPLR §301 because the few contacts they had with New York were through emails or by telephone. Defendants further assert that Biz2Credit

contacted IFMR Trust in January 2009, proposing the discussion of the potential business relationship. Thereafter, the parties discussed the terms of a possible partnership in developing lending services. After the January telephone discussion, plaintiff sent an email to defendants, listing the services to be provided by plaintiff and a draft of the memorandum of understanding ("MOU"), as stated by defendants, "for further discussion of the terms" (defendants' opposition brief, at 4). Asserting that no agreement was reached as to the terms or conditions of the project, on or about March 24, 2009, plaintiff sent an invoice to defendants for $2,897 for plaintiff's travel to India and lodging expenses, which defendants paid. Thereafter, defendants received invoices from plaintiff for a total of $25,000 which defendants refused to pay.

Further, defendants contend that plaintiff's general allegations against Ananth do not establish that she had any contacts with New York. As stated in Ananth's affidavit, she does not reside in and does not regularly visit New York; she does not own property and has no bank accounts or a mailing address in New York. Over the past several years, Ananth traveled to New York on several occasions, with an average length of stay of two weeks per year. Further, that she is IFMR Trust's president, does not render her IFMR Trust's agent. She was served with the papers pertaining to the present litigation in India. Requiring Ananth to defend herself in New York would be an unfair burden on her.

Further, defendants argue, the only conclusory allegation in the complaint regarding defendants' New York contacts is that defendants agreed to the terms of the agreement through the email and such allegation is insufficient to establish personal jurisdiction over defendants pursuant to CPLR §302, *i.e.*, it does not establish that defendants "transacted business" in New York and even if they did, there is no "substantial relationship" between such transaction and

plaintiff's claim (defendants' brief in support of motion, at 8). In support of this argument, defendant points to the fact that the services rendered by plaintiff to defendants were undertaken in India, and that the complaint does not allege that any business was transacted in New York.

Next, defendants argue that, even if the Court were to conclude that personal jurisdiction over defendants exists, such exercise of the jurisdiction would violate the Due Process Clause because plaintiff's allegations do not establish that defendants had minimum contacts with New York, *i.e.*, that they "purposefully availed" themselves of the privilege of doing business in New York and could have foreseen being "haled into court" in New York.

Finally, defendants contend that, if this complaint is dismissed, plaintiff will still have a convenient and effective relief since, according to plaintiff's website, Biz2Credit has an office with an address in India and Indian courts have jurisdiction over the parties.

Plaintiff opposes the dismissal of the complaint, arguing that personal jurisdiction over defendants exists even though they do not have physical presence in New York and the parties discussed the terms of the project by means of email and telephone. To begin with, plaintiff contends that defendants' motion is defective because it is not supported either by an attorney affirmation or by defendants' affidavit.[1]

Plaintiff contends that the Court can exercise personal jurisdiction over defendants because they have minimum contacts with New York. First, defendants availed themselves of

---

[1] Defendants' motion papers include an affirmation of Bindu Ananth, an individual defendant in this action who is not an attorney. While it is not notarized as required by CPLR §2309, and thus, has no probative value (*Slavenburg Corp. v Opus Apparel, Inc.*, 53 NY2d 799 [1981]), defendants corrected this procedural error by attaching a properly notarized affidavit by Ananth to their reply papers and to disregard it would be improper (*The New York Center for Neuropsychology & Forensic Behavioral Science v Rubenstein,* 17 Misc3 1127 (A), 851 NYS2d 71, [NY City Civ Ct 2007]; *see Lauer v Rapp*, 190 AD2d 778 [2d Dept 1993]).

the benefits of the forum by using plaintiff's consulting services, knowledge and the unique automated profile-matching algorithms program developed by plaintiff. In support of its contention, plaintiff points out that the need analysis report was prepared in New York. Further, plaintiff submits a copy of the article from *The Wall Street Journal* co-authored by Ananth, which refers to the development by IFMR Trust of microfinance services in India (Opposition, exhibit B).

Next, plaintiff contends that, defendants hold recruiting information sessions and speaking engagements at the New York University Stern School of Business (*id.*, exhibit C). Additionally, in late 2008, Ananth held a presentation at Columbia Business School about IFMR Trust's efforts in bringing financial services to rural population in India. Additionally, in the early 2009, IFMR Trust's corporate and investors relations manager came to New York to speak at the microfinance investment conference at The Harmonie Club.

Plaintiff asserts that defendants solicit and receive substantial financial grants from American institutions including the Bill and Melinda Gates Foundation, the Ford Foundation and the New York University Financial Access Initiative and Legatum Institute and Foundation. Additionally, plaintiff contends that it will not have a convenient and effective relief because, the alleged office with an address in India belongs to an entity (Sakshay Web Technologies Pvt Ltd.) to which plaintiff outsources certain jobs (see Arora affidavit, ¶7). Plaintiff asserts that all the witnesses, *i.e.*, the employees who worked on the project, and the evidence is located in New York.[2]

---

[2] Plaintiff's arguments with respect to New York Business Corporation Law §1314 and *forum non-convenience* are not relevant and insufficient to establish personal jurisdiction over the defendants, and therefore will not be addressed by the court.

[* 7]

In their reply, defendants reiterate that neither the subject matter of the litigation nor the cause of action arose in New York, because even if a contract existed, it was made or performed in India. And even though Ananth responded "Confirmed" to the terms proposed by plaintiff in its February 8, 2009 email, defendants intended those terms to be further clarified in the MOU, to be signed in India, but the MOU was never signed.

Further, defendants assert that plaintiff cannot prove defendants' minimum contacts with New York pursuant to CPLR §302(a), as (1) the alleged tortious conduct - tortious interference with a contract - did not occur in New York, (2) defendants do not regularly solicit or do business in New York, and (3) there is no nexus between defendants' activities in New York and the cause of action. Defendants point out that Ananth's article in *The Wall Street Journal*, her networking and speaking engagements and the recruitment efforts by IFMR Trust are defendants' "limited activities in the U.S.," and that the Court's exercise of personal jurisdiction cannot be based on such "random," "fortuitous" and "attenuated" contacts.

As to "purposeful availment," defendants maintain that it was plaintiff who contacted defendants proposing to do business with defendants, and, as such, defendants did not avail themselves of the privilege of the services in New York. Defendants contend that, exchanging e-mails, faxes and telephone conversations do not constitute "transacting business" without additional activities by defendants in New York, and, to satisfy due process, plaintiff cannot show that any of the mentioned above New York activities were substantially related to the cause of action. Thus, defendants conclude, their contacts with New York are insufficient to subject them to personal jurisdiction in New York.

Discussion

It appears that based on the arguments set forth, plaintiff seeks to establish long-arm jurisdiction over defendants under CPLR §301 and §302(a). The burden of proving jurisdiction is upon the party asserting it, and when challenged on jurisdiction, such party must sustain that burden by preponderating proof (*Saratoga Harness Racing Assn. v Moss*, 20 NY2d 733, 283 NYS2d 55 [1967]; *Jacobs v Zurich Ins. Co.*, 53 AD2d 524, 384 NYS2d 452 [1st Dept 1976]).

CPLR §301

"A foreign corporation is amenable to suit in New York courts under CPLR §301 if it has engaged in such a continuous and systematic course of 'doing business' here that a finding of its 'presence' in this jurisdiction is warranted. . . . The test for 'doing business' is a 'simple [and] pragmatic one,' which varies in its application depending on the particular facts of each case. . . . The court must be able to say from the facts that the corporation is "present" in the State "not occasionally or casually, but with a fair measure of permanence and continuity" (*Landoil Resources Corp. v Alexander & Alexander Servs., Inc.*, 77 NY2d 28, 33-34, 563 NYS2d 739, 741 [1990] (internal citations omitted)). In order to establish that this standard is met, a plaintiff must show that a defendant engaged in "continuous, permanent, and substantial activity in New York" (*Landoil* at 95). A finding of "doing business" under CPLR §301 is dependent upon the existence of traditional *indicia* from which the court may conclude that the foreign defendant has sufficient contacts with New York to warrant a finding that it is present here (*Bossey ex rel. Bossey v Camelback Ski Corp.*, 21 Misc 3d 1116, 873 NYS2d 509 [Sup Ct New York County 2008]). Such *indicia* include whether the corporation has employees, agents, offices or property within the state; whether it is authorized to do business here and the volume of business which it conducts

with New York residents (*id., citing Laufer v Ostrow*, 55 NY2d 305 [1982]; *Frummer v Hilton Hotels Intl., Inc.*, 19 NY2d 533, 281 NYS2d 41 [1967]). At the pretrial stage, plaintiff may meet his burden by pleading in good faith sufficient allegations of jurisdiction (*In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000*, 230 FSupp2d 376 [SDNY 2002] *citing Jazini v Nissan Motor Co.*, 148 F3d 181, 184 [2d Cir 1998] and *Koehler v Bank of Bermuda, Ltd.*, 101 F3d 863, 865 [2d Cir 1996]).

It is undisputed that defendants do not have any employees, agents, offices or telephone listings in New York, they are not authorized to do business in New York and do not own or lease any real property in New York. Further, even assuming that they entered into a contract with the New York plaintiff, plaintiff failed to allege facts to show that, by so doing, defendants engaged in continuous and systematic course of "doing business" here. Thus, a finding of its "presence" in this jurisdiction is not warranted.

Further, even assuming that defendants solicited plaintiff's expertise and program in New York, which is not clearly established in the record, such activity amounts to mere solicitation of business and the solicitation of business alone is not sufficient to establish "presence" for purposes of CPLR §301 (*Atlantic Veal & Lamb, Inc. v Silliker, Inc.*, 11 Misc 3d 1072, 816 NYS2d 693 [Sup Ct Kings County 2006] citing *Chamberlain v Jiminy Peak*, 176 AD2d 1109, 1110 [3d Dept 1991]. Moreover, although a "solicitation-plus" analysis is warranted where, as here, additional activities on the part of the corporation appear to exist within New York, such activities must be continuous and of substance to warrant a finding of the requisite jurisdictional "presence" in the State (*Atlantic Veal & Lamb, Inc.*). Here, defendants' recruitment efforts, speaking engagements, and article appearing in a New York based newspaper were infrequent and sporadic,

and thus lack the continuity and substance required for jurisdictional purposes (*see Atlantic Veal & Lamb, Inc.*) (concluding that the presentation of a seminar in New York City and performance of seven audits in New York during an approximately six-year period, were sporadic and seemingly occasional audits and do not represent the type of systematic presence and purposeful availment of New York law that CPLR §301 requires for jurisdictional purposes)).

CPLR §302(a) Long-Arm Jurisdiction

Although plaintiff quotes CPLR §302(a) and does not specify the subsection on which it relies, plaintiff's arguments appear to be based upon CPLR §302(a)(1) (transaction of business in the state), or CPLR §302(a)(3)[3] (committing a tortious act without the state that caused injury within the state).

CPLR §302(a)(1): Transacts Business or Contracts to Supply Goods/Services in New York

CPLR §302(a)(1) provides in relevant part: "As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . transacts any business within the state or contracts anywhere to supply goods or services in the state." Thus, under CPLR §302(a)(1) a court may exercise personal jurisdiction over a non-domiciliary who "transacts any business" within the State, provided that the cause of action arises out of the transaction of business (*Lebel v Tello*, 272 AD2d 103, 707 NYS2d 426 [1st

[3] Pursuant to CPLR §302(a)(2), a court may exercise personal jurisdiction over any non-domiciliary which commits a tortious act within the state. Plaintiff does not allege any facts showing that IFMR Trust committed a tortious act in New York. On the contrary, the complaint clearly alleges that Ananth interfered with plaintiff's business relationship in India, *i.e.*, using her connections and influence in business circles in India, pressured "some institutions in India, with which plaintiff had [a] contractual relationship or was in the process of negotiating business agreements," into convincing plaintiff to discontinue the law suit against IFMR Trust or risk losing business relationships with said institutions (complaint, ¶17-18). Therefore, personal jurisdiction pursuant to CPLR §302(a)(2) is not claimed or applicable.

Dept 2000]).

The first requirement is that there be a transaction of business *within* New York (*see Ferrante Equip. Co. v Lasker-Goldman Corp.*, 26 NY2d 280, 284 [1970]). For "transacting business," "a single act" will suffice, as long as there is a substantial relationship between that transaction and the alleged injury (*Reiner & Co. v Schwartz,* 41 NY2d 648 [1977]; *Bunkoff v State Auto. Mut. Ins. Co.,* 296 AD2d 699 [2002]; *Lebel v Tello*, 272 AD2d 103, 707 NYS2d 426 [1st Dept 2000]; *Opticare Acquisition Corp. v Castillo*, 25 AD3d 238, 806 NYS2d 84 [2d Dept 2005]; *see also Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467, 527 NYS2d 195 [1988] [one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, provided the defendant's activities here were purposeful, and there is a substantial relationship between the transaction and the claim asserted]).

To determine whether a party has "transacted business" in New York a court must consider "the totality of circumstances when determining the existence of purposeful activity" (*SAS Group, Inc. v Worldwide Inventions, Inc.,* 245 FSupp 2d 543, 548 [SDNY 2003]). Thus, it has been held that the statutory test may be satisfied by a showing of other purposeful acts performed by the defendant in New York in relation to the contract, albeit preliminary or subsequent to its execution, even when the last act marking the formal execution of a contract may not have occurred within New York (*see Longines-Wittnauer Watch Co. v Barnes & Reinecke, Inc.*, 15 NY2d 443, 457, 261 NYS2d 8 [1965], *cert denied* 382 US 905).

Such purposeful acts may include contract negotiations between the parties, meetings at which the defendant was present, or letters sent and phone calls made by the defendant to the plaintiff (*see Scholastic, Inc. v Stouffer*, 2000 US Dist LEXIS 11516 [SDNY 2000]). Although

[* 12]

limited contacts through telephone calls, mailings, and by facsimile, on their own are usually insufficient to confer personal jurisdiction under CPLR §302(a)(1) (*see International Customs Assoc., Inc. v Ford Motor Co.*, 893 FSupp 1251, 1261 [SDNY 1995]; *Granat v Bochner*, 268 AD2d 365 [1st Dept 2000]), such contacts may provide a basis for jurisdiction where the defendant "projected" himself by those means into New York in such a manner that he "purposefully availed himself. . . 'of the benefits and protections of its laws'" (*Fischbarg v Ducet,* 38 AD3d 270 [1st Dept 2007] (negotiation and execution of contracts by mail and telephone with persons residing in New York is not generally a sufficient basis for personal jurisdiction over non-domiciliaries); *Wilhelmshaven Acquisition Corp. v Asher,* 810 FSupp 108 [SDNY 1993]; *Parke-Bernet Galleries,* 26 NY2d 13, 19 [1970], quoting *Hanson v Deckla,* 357 US 235, 253 [1958]).

The Court must consider various factors in determining whether a non-domiciliary has transacted business, including: (1) whether the defendant has an ongoing contractual relationship with a New York corporation; (2) whether the defendant negotiated or executed a contract in New York, and whether the defendant visited New York after executing the contract for the purpose of meeting with the parties to the contract regarding the relationship; and (3) what the choice of law is in any such contract (*Agency Rent a Car SYS., Inc. v Grand Rent a Car Corp.*, 98 F3d 25, 29 [2d Cir 1996] [court also considering whether the contract requires franchisees to send notices and payments into the forum state or subjects them to supervision by the corporation in the forum state]). A defendant may not be subject to jurisdiction based on "random," "fortuitous," or "attenuated contacts" (*Burger King v Rudzewicz,* 471 US 462, 475 [1985]). The contacts must provide a fair warning to defendant of the possibility of being haled into court in the forum state (*Spencer Trask Ventures, Inc. v Archos S.A.*, 2002 WL 417192, at *3 [SDNY Mar. 18, 2003];

Kreutter, 527 NYS2d at 198).

Once a court determines that defendant has transacted business pursuant to CPLR §302(a)(1), then it must determine whether the exercise of jurisdiction comports with due process (*International Finance B.V. v National Reserve Bank,* 98 NY2d 238, 746 NYS2d 631 [2002]; *LaMarca v Pak-Mor Manufacturing Co.*, 95 NY2d 210, 713 NYS2d 304 [2000]). Due process is not offended "[so] long as the party avails itself of the benefits of the forum, has sufficient minimum contacts with it and, should reasonably expect to defend its action there [. . .] even if not present in the state (*McGee v International Life Ins. Co.*, 355 US 220, 222-223 [1957]). To satisfy the minimum contacts requirement, it is essential that there be "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" (*Hanson v Deckla*, 357 US 235, 253 [1958]).

Here, the factual allegations are insufficient to establish that defendants transacted business in New York. First, plaintiff has not demonstrated that defendants have an ongoing contractual relationship with a New York corporation. Next, there is nothing in the record to show that the parties had any meetings in New York or that the contract negotiations took place in New York. Plaintiff offers no information as to where and how the alleged first conversation with defendants occurred besides stating that all negotiations were conducted by phone and email. Significantly, plaintiff does not contest Ananth's assertion in her affidavit that it was plaintiff who initiated the contact with defendants in India in January 2009 for the purpose of exploring the possibility of business relationship (*see Arouh v Budget Leasing, Inc.*, 63 AD3d 506 [1st Dept 2009], *citing Granat v Bochner*, 268 AD2d 365 [1st Dept 2000] (defendant's negotiation of the

potential purchase of an automobile via email and telephone, which was initiated by plaintiff . . . is insufficient to constitute the "transaction" of business within New York)). Therefore, on these facts, the court cannot conclude that defendants "projected" themselves by [the telephone and email communications] into New York in such a manner that they "purposefully availed themselves of the benefits and protections of its laws" (*Fischbarg v Ducet,* 38 AD3d 270, *supra*; *Berkshire Capital Group, LLC v Palmet Ventures, LLC,* 307 Fed Appx 479 [2d Cir 2008]).

Further, even assuming that the negotiations were conducted in New York, or that the parties entered into an agreement by virtue of defendants' email messages sent or telephone calls made to plaintiff in New York, the court must consider "the totality of circumstances," and "other purposeful acts performed by the defendant in New York in relation to the contract" (*see Longines-Wittnauer Watch Co. v Barnes & Reinecke, Inc.*, 15 NY2d 443, 457, 261 NYS2d 8 [1965], *cert denied* 382 US 905). "The mere fact that an out of state defendant enter[ed] into a contract with a New York [. . .] company, does not establish the requisite minimum contacts unless that contract 'projects [the defendant] into the New York market'" (*Navaera Sciences LLC v Acuity Forensic Inc.*, 2009 WL 3617580 [SDNY 2009], *citing Spencer Trusk Ventures, Inc. v Archos S.A.*, 2002 WL 417192, at *4 [SDNY 2002]).

Here, affording plaintiff's allegations every favorable inference, the court finds that defendants' dealings with plaintiff, conducted only by telephone and email, without more, are insufficient to confer jurisdiction of the New York court under CPLR §302(a). Plaintiff's contentions that defendants "availed themselves of the benefits of the forum by using plaintiff's consulting services, knowledge and the unique [automated profile-matching] algorithms [program developed by plaintiff] and that the need analysis report was prepared in New York," establish

plaintiff's contacts with New York, but have no bearing on *defendants'* contacts with this forum.

Further, despite plaintiff's allegations that defendants "regularly hold recruiting sessions in New York," the record shows that defendant visited New York four times in the course of two years. In 2008, defendants traveled to New York for a career information session at New York University Stern School of Business, a professional networking event at The Village Pourhouse and a speaking engagement at Columbia University, and in 2009, defendants participated in a microfinance conference at The Harmonie Club. None of these events, including the article published by Ananth in *The Wall Street Journal*, had any relation to the parties' agreement based on the project.

In *Kahn Lucas Lancaster, Inc. v Lark Intern. Ltd.* (956 FSupp 1131 [SDNY 1997]), the court declined to exercise jurisdiction over the defendant, holding that six meetings between plaintiff and foreign corporation over three years were not significant enough to exercise New York's long-arm jurisdiction where meetings were not essential to continuance or development of relationship between parties; meetings played no role in formation of relationship; maintenance of relationship was conducted largely through correspondence and over the telephone; and a meeting in New York between the parties that was intended to discuss current dispute was of no jurisdictional significance.

Similarly, here, defendants' few visits to New York were "not essential to continuation and development" of the business relationship between the parties as they were not related to the parties' agreement based on the project. Moreover, there are no allegations that defendants met with plaintiff in New York during any of these visits. This is not the case where the parties held "numerous telephone discussions and written correspondence concerning parties' various

[* 16]

agreements, the meetings in New York related directly to their [. . .] agreement, and all other meetings concerned their efforts to keep [the project] afloat" (*Klagsbrun v Ross*, 1995 WL 43664 [SDNY]).

Furthermore, the present case differs substantially from others, relied upon by plaintiff, in which the exercise of jurisdiction was warranted (*see Kreutter v McFadden Oil Corp.*, 71 NY2d 460 [1988] [defendant Texas oil company was present in New York by transacting business through its agent company]; *Courtroom Television Network v Focus Media, Inc.*, 264 AD2d 351[1st Dept 1999] [defendant took advantage of "New York's unique resources in the entertainment industry" by sending his advertisement video tapes to New York and intended the contract to be performed in New York]; *Corporate Campaign, Inc. v Local 7837, United Paper Workers International Union*, 265 AD2d 274 [1st Dept 1999][defendant made no less than 12 trips to New York to assist plaintiff in making contacts related to the contract executed by the parties]).

Finally, plaintiff's reliance on *Parke-Bernet Galleries* (26 NY2d 13, 19, 308 NYS2d 337, 340-41 [1970]), is equally misplaced. There, the court found that the defendant, a participant in an auction, "although never actually present in New York, projected himself [into the State] by receiving and submitting bids over the telephone with the help of the New York agent. Such active participation in the bidding which resulted in the painting being sold to him, amounted to [. . .] substantial transaction of business here."

In contrast, here, the four emails between the parties and four unrelated visits to New York in the course of two years are insufficient to establish substantial transaction of business by defendants in New York.

Therefore, plaintiff has failed to allege sufficient facts to establish that defendants'

[* 17]

conduct in New York evidences a level of purposeful involvement sufficient to satisfy CPLR §302(a)(1). Consequently, since plaintiff failed to establish that defendants "transacted business" in New York, the Court does not reach the issue of whether the exercise of jurisdiction comports with due process.

CPLR § 302(a)(3): Tort Outside New York/ Injury Inside New York

To establish jurisdiction under CPLR §302(a)(3), plaintiff must make a *prima facie* showing of the following: (1) that defendant committed a tortious act outside the state; (2) that the cause of action arises from that act; (3) that the act caused *injury to a person or property within the State*; and that defendant (i) regularly does or solicits business, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should have reasonably expected for the injury to have consequences in the state, and derived substantial revenue from interstate or international commerce (CPLR §302(a)(3)) (emphasis added). "[T]he situs of the injury for long-arm purposes is where the event giving rise to the injury occurred, not where the resultant damages occurred" (*Russeck Fine Art Group, Inc. v Theodore B. Donson, Ltd.*, 20 Misc 3d 1119, 867 NYS2d 20 [Sup Ct New York County 2008] citing *Marie v Altshuler*, 30 AD3d 271, 272-273, 817 NYS2d 261 [1st Dept 2006]). In "determining wether the injury in New York is sufficient to warrant jurisdiction under this section, the courts must apply a situs-of-injury test," which requires to locate the "original event" which caused the injury (*Bank Brussels Lambert v Fiddler Gonzalez & Rodriguez*, 171 F3d 779, 791 [2d Cir 1999]). New York courts generally hold that the situs of the injury for a tort is where the events giving rise to the injury occurred, and is not based upon the fact that a party who happens to incur an indirect financial loss is domiciled in New York (*Flamel Technologies v Soula*, 16 Misc 3d 1129, 847 NYS2d 901

[Sup Court New York County 2007] citing *Ingraham v Carroll*, 90 NY2d 592 [1997]).

Here, long-arm jurisdiction pursuant to CPLR §302(a)(3) is clearly unwarranted. First, assuming the tortious act occurred in India and that the cause of action arose from that act, plaintiff failed to establish that the act "caused injury to a person or property within the state."

According to the allegations in the complaint, the original events underlying plaintiff's claim of tortious interference are the "existing contracts" or "the agreements in the advanced stages of negotiation" with certain "institutions in India, including, [. . .] ICICI Bank and Indiamart" (complaint ¶17) and the alleged inducement to discontinue the litigation against IFMR Trust. The original events underlying plaintiff's claim of breach of contract, i.e., defendants' failure to pay the sum of $25,000, also did not occur in New York. Thus, there are no factual allegations that any of these "original events" occurred in New York.

Further, the complaint fails to allege any facts indicating that defendants in India expected or should have reasonably expected for the injury to have consequences in New York.

And, plaintiff's allegations that Ananth or IFMR Trust regularly solicit business in New York and receive substantial financial grants from the American foundations[4] are factually inaccurate and insufficient to establish the remaining elements under this subsection. Therefore, personal jurisdiction pursuant to CPLR §302(a)(3) is unwarranted.

---

[4] Plaintiff submits information from the IFMR website showing its funding partners, which include the Bill and Melinda Gates Foundation, the Ford Foundation and the New York University Financial Access Initiative and Legatum Institute and Foundation. However, this information appears to relate to IFMR, which is a different entity than IFMR Trust, one of the defendants in this action.

Based on the foregoing, motion pursuant to CPLR §3211(a)(8) for lack of personal jurisdiction is granted.

Conclusion

Accordingly, it is hereby

ORDERED that the motion by defendants IFMR Trust and Bindu Ananth, pursuant to CPLR §3211(a)(8) to dismiss the complaint of plaintiff Biz2Credit, LLC for lack of personal jurisdiction, is granted; and it is further

ORDERED that defendants shall serve a copy of this order with notice of entry upon plaintiff within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: February 23, 2010

Hon. Carol R. Edmead, J.S.C.

HON. CAROL EDMEAD

FILED
FEB 24 2010
NEW YORK
COUNTY CLERK'S OFFICE