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

PRESENT: LOUIS B. YORK J.S.C. Justice

PART _____

Bayles Jordan

- v -

Culvonetworks

INDEX NO. 114583/009

MOTION DATE _____

MOTION SEQ. NO. 002

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	

FILED
JUL 15 2010
COUNTY CLERK'S OFFICE
NEW YORK

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

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

Dated: 7/9/10

_____ J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/JUDG. ☐ SETTLE ORDER /JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

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ELIZABETH BAYLES JORDAN,

Index No.: 114583/2009

Plaintiff,

-against-

DECISION/ORDER

CARBONETWORKS,

Defendant.

----------x

LOUIS B. YORK, J.S.C.:

In the Complaint in this action, plaintiff pro se Elizabeth Bayles Jordan alleges that she contracted to provide services to defendant Carbonetworks between April 15 to October 15, 2009. Plaintiff alleges that defendant improperly terminated her by email on July 10, 2009. The termination was improper, she states, because it was without cause, and because defendant did not notify her pursuant to the terms of the contract. She acknowledges that defendant paid her final invoice – fr $3,375.00 plus $264.02 in expenses – on August 10, 2009. It is appears that this invoice covered plaintiff's work for June or July, 2009. However, plaintiff alleges that because the termination was improper and without cause, defendant remains indebted to plaintiff for the full term of the agreement. According to plaintiff, defendant owes her $26,635.00, along with costs, interest and attorney's fees. In addition, she estimates that she would have earned approximately $200,000 in commissions. She seeks only the lost wages, costs, interest and attorney's fees in her "wherefore" clause.

Currently, defendant moves to dismiss the complaint. Defendant claims that there is no personal jurisdiction. Defendant raises this as an alternative argument for

relief, but as it is a threshold issue the Court considers it first. See, e.g., National Union Fire Ins. Co. of Pittsburgh v. St. Barnabas Community Enter., 48 A.D.3d 248, 249, 851 N.Y.S.2d 473, 474 (2008); see also Elm Management Corp. v. Sprung, 33 A.D.3d 753, 754-55, 823 N.Y.S.2d 187, 188-89 (2nd Dept. 2006) (finding that trial court erred when it decided plaintiff's motion prior to resolution of personal jurisdiction argument). It claims that plaintiff contracted with Carbonetworks Canada but served Carbonetworks Delaware by its agent for service of process in California. Defendant argues that service was not sufficient to obtain long arm jurisdiction over the Delaware company. Among other things, defendant notes that plaintiff served the wrong company, as the Delaware company was not party to the contract. In addition, defendant asserts that even if the Delaware company were party to the contract, there are insufficient minimum contacts with New York.

In response, plaintiff argues that defendant should be subject to jurisdiction based on notions of fair play. Unfortunately, this is not a binding legal argument. She also states that the company has systematic and continuous contacts with New York, sufficient to subject it to jurisdiction. In particular, she states, (1) defendant does business with Omnibuild LLC, which is based in New York; (2) New York-based NGEN is a partner of and/or investor in defendant; and (3) members of NGEN live in New York. As plaintiff seeks to assert personal jurisdiction over defendant, she "bears the burden of proof on this issue" although it is defendant's motion. See Castillo v. Star Leasing Co., 69 A.D.3d 551, 551, 893 N.Y.S.2d 123, 124 (2nd Dept. 2010). To oppose the motion she must make a prima facie showing that jurisdiction exists. See Lang v. Wycoff Heights Medical Center, 55 A.D.3d 793, 794, 866 N.Y.S.2d 313, 313-14 (2nd

Dept. 2008).

As stated, plaintiff now asserts that defendant's presence in New York is consistent and continuous. To assert jurisdiction based on this argument she must show that defendant "has engaged in such a continuous and systematic course of "doing business" here that a finding of its "presence" in this jurisdiction is warranted. Landoil Resources Corp. v. Alexander & Alexander Services, Inc., 77 N.Y.2d 28, 33, 565 N.E.2d 488, 490, 563 N.Y.S.2d 739, 741 (1990). However, the complaint "does not allege that defendant engaged in a continuous and systematic course of doing business within New York" – indeed, the Court could find no basis for jurisdiction in the complaint – and therefore plaintiff cannot prevail on this argument. Bluman v. Labock Technologies, Inc., 13 Misc. 3d 1244(A), 831 N.Y.S.2d 358(table) (Sup. Ct. N.Y. County Dec. 5, 2006)(avail at 2006 WL 3500860, at *1). Moreover, the limited connections to New York which she mentions cannot, without more, create jurisdiction on this basis.

As the Court decides the motion on this basis, it need not reach the parties' other arguments. However, it notes that defendant's argument based on failure to state a claim is less successful. Defendant is correct that the contract, which plaintiff prepared, provides that both plaintiff and defendant had the right to terminate the agreement "at any time, for any reason, by giving thirty (30) days written notice to the other party." Contract at ¶ 5. However, as defendant terminated the contract in July, plaintiff arguably entitled to an additional month of pay – which, based on the evidence before the Court regarding two of plaintiff's three monthly bills, probably would have amounted to $3,500-4,500. She indicated that she would relinquish her claim if defendant paid her bill immediately, but as defendant apparently did not do so, defendant cannot now

allege that plaintiff waived all claims against it.

Finally, the Court notes that if it were not dismissing the case, it would have transferred the case to Civil Court pursuant to CPLR 325(d). In addition, the Court considered plaintiff's argument relating to improper service of the motion, but it appears to lack merit for the reason stated by defendant.

For the reasons set forth above, it is

ORDERED that the motion is granted and the case is dismissed.

ENTER:

Dated: 7/9/10

Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.

FILED
JUL 15 2010
COUNTY CLERK'S OFFICE
NEW YORK