

**John Wiley & Sons, Inc. v Glass**

2010 NY Slip Op 32634(U)

September 22, 2010

Supreme Court, New York County

Docket Number: 603709/09

Judge: Eileen A. Rakower

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

PRESENT: HON. EILEEN A. RAKOWER

PART 15

Index Number : 603709/2009

JOHN WILEY & SONS, INC.

VS

GLASS, DR. LILLIAN

Sequence Number : 002

DISMISS

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

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

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1, 2, 3

4, 5

6, 7

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

**FILED**

SEP. 23 2010

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 9/22/10

[Signature]  
**HON. EILEEN A. RAKOWER**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X  
JOHN WILEY & SONS, INC.,

Index No.  
603709/09

Plaintiff

**FILED**

- against -

**DECISION  
and ORDER**

DR. LILLIAN GLASS,

SEP. 23 2010

Mot. Seq.  
002

NEW YORK  
COUNTY CLERK'S OFFICE  
Defendants. -----X

-----X  
HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff brings this action for “breach of a contractual release . . . promissory estoppel; and for fraud in the inducement.” Defendant Dr. Lillian Glass moves to dismiss this action pursuant to CPLR 3211(8) for lack of personal jurisdiction. Plaintiff. Plaintiff submits an affirmation and a memorandum of law in opposition to the motion.

Dr. Glass, who resides in California, is an author of several books and is a self described “body language expert and media personality.” One of her most popular books is titled *Toxic People*. In late 2008, Dr. Glass became aware that Marsha Petrie Sue had written a book called *Toxic People: Decontaminate Difficult People at Work*. Dr. Glass discovered that Ms. Petrie Sue’s book was to be published by plaintiff, John Wiley & Sons, Inc. (“Wiley”).

Thereafter, Dr. Glass’ attorney informed Wiley of the alleged infringement and, according to the complaint, Wiley entered into settlement discussions with Dr. Glass’ attorney starting on or about September 17, 2009. Wiley alleges that a settlement was reached, which included an agreement to consider publishing one of Dr. Glass’ books, in exchange for the release of all claims related to Ms. Petrie Sue’s book. After considering and rejecting Dr. Glass’ book proposal, Dr. Glass commenced an action on November 20, 2009 against Wiley, Ms. Petrie Sue, and Six Voices, LLC. The action was commenced in the United States District Court Central District of California for, among other things, Copyright and Trademark

## Infringement.

Wiley, a New York corporation with its principal place of business in Hoboken, New Jersey, commenced the instant action on December 9, 2009 in Supreme Court, New York County. Wiley served Ms. Glass on January 15, 2010, by affixing a copy of the complaint to the door of Dr. Glass' mother's New York apartment. Dr. Glass claims that Wiley has not obtained personal jurisdiction over her because she does not reside in New York and does not conduct business in New York. Dr. Glass asserts that even though she makes television appearances, those shows are taped in Los Angeles, not New York. She states that she does not regularly promote books in New York, and that she does not regularly travel to New York for her business. Nor is there any contractual agreement between the parties designating New York as the proper venue for an action.

In its opposition, Wiley claims that the court has personal jurisdiction over Dr. Glass pursuant to CPLR §302(a)(3)(i). Wiley claims that jurisdiction over Dr. Glass lies because several of Dr. Glass's books (including those works which constitute the basis of her copyright claim) were published by New York publishing companies. In addition, Wiley states that Dr. Glass authored a book pursuant to a publishing contract with Wiley in 1999, when Wiley was headquartered in New York City. Wiley also notes that, by Dr. Glass's own admission, she has appeared in a number of publications and television shows, some of which are headquartered in New York. Wiley submits a printout from a listing from Barnes & Noble's website pertaining to a book by Dr. Glass that was published in 2003, which states that Dr. Glass "has bicoastal private practices in Beverly Hills, California, and in New York City..." Wiley also submits a printout from Dr. Glass's website listing her clients, and highlights that several clients are located in New York - these include the Community Bankers Association of New York State, Hearst Publications, The Learning Annex, New York Athletic Club, and National Academy of Recording Sciences, NY Chapter.

Dr. Glass submits a reply affirmation and a memorandum of law in further support of her motion to dismiss. Annexed to the affirmation as an exhibit is the Declaration of Dr. Glass, which was filed in the California action. In it, Dr. Glass states that, of all of the New York clients listed on her website, a free private lecture given to Hearst Publications in 2007 or 2008 was the only event she worked in New

York in the last decade, and that the other events took place in the 1990s.<sup>1</sup> She also states in her declaration that she had at one time maintained a place of residence in New York, but gave up her New York residence in 2001 or 2002.

CPLR §3211 states, in relevant part:

- (a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:
  - (8) the court has not jurisdiction of the person of the defendant

CPLR §302(a)(3)(i) authorizes New York courts to exercise long-arm jurisdiction over nondomiciliaries who

commit a tortious act within state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if [s]he... regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state.

Dr. Glass states that she had no contact with Wiley in New York in connection with any dispute alleged in the complaint. Rather, Dr. Glass states that she “visited plaintiff in its offices in Hoboken, New Jersey when [she] had to discuss business with them in person.”

Wiley’s complaint must be dismissed because the court does not have personal jurisdiction over Dr. Glass. First, CPLR §302(a)(3)(i), Wiley’s sole basis for exercising personal jurisdiction over Dr. Glass, is inapplicable to its causes of action for breach of the release agreement and promissory estoppel, which are contractual claims, rather than tort claims (*see Pramer S.C.A. v. Abaplus Int’l Corp.*, 2010 NY

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<sup>1</sup>She further states that the lecture for the Community Bankers Association of New York State actually took place in Puerto Rico.

Slip Op 4936, \*6 [1st Dept. 2010]).

Moreover, Wiley fails to demonstrate that it was injured within the State of New York for purposes of exercising long-arm jurisdiction over Dr. Glass. "[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" (*Uzan v. Telsim Mobil Telekomunikasyon Hizmetleri*, 51 A.D.3d 476, 478 [1st Dept. 2008])(quoting *Marie v Altshuler*, 30 AD3d 271, 272, 817 N.Y.S.2d 261 [1st Dept. 2006]). Here, Wiley relies on the fact that it is incorporated in New York, and it is clear from the record that none of the alleged conduct constituting Wiley's fraudulent inducement claim occurred inside New York. "The occurrence of financial consequences in New York due to the fortuitous location of plaintiffs in New York is not a sufficient basis for jurisdiction under CPLR §302(a)(3), where the underlying events took place outside of New York" (*Whitaker v. American Telecasting, Inc.*, 261 F.3d 196, 209 [2d Cir. 2001]; see also *Weiss v. Greenberg, Traurig, Askew, Hoffman, Lipoff, Quentel & Wolf, P.A.*, 85 A.D.2d 861, 862 [3rd Dept. 1981] ("it has been held that the situs of a nonphysical, commercial injury is where the critical events associated with the dispute took place")) (citation and quotations omitted).

Wherefore, it is hereby

ORDERED that the defendant's motion to dismiss this action is granted; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: September 22, 2010

  
**FILED** EILEEN A. RAKOWER, J.S.C.

**SEP 23 2010**  
**NEW YORK**  
**COUNTY CLERK'S OFFICE**