

**Angelic Real Estate, LLC v Johnson Dev. Assoc.,
Inc.**

2015 NY Slip Op 31182(U)

July 8, 2015

Supreme Court, New York County

Docket Number: 653639/2014

Judge: Eileen A. Rakower

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

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ANGELIC REAL ESTATE, LLC

Plaintiff,

Index No.
653639/2014

**DECISION and
ORDER**

- against -

Mot. Seq. #001

JOHNSON DEVELOPMENT ASSOCIATES, INC.
and CAPLEASE, INC.,

Defendant.

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

Plaintiff, Angelic Real Estate, LLC (“Plaintiff” or “Angelic”), brings this action for breach of contract, account stated, *quantum meruit*, unjust enrichment and tortious interference with contract based on, *inter alia*, an alleged commission fee agreement (the “Agreement”) between Plaintiff and defendant, Johnson Development Associates, Inc. (“JDA”). Pursuant to the purported Agreement, Plaintiff allegedly agreed to identify potential sources of capital for JDA’s “build-to-suit” deals¹, in exchange for certain commission fees. Plaintiff claims to have identified defendant, Caplease, Inc. (“CapLease”) (and together with JDA, collectively, “Defendants”), as a capital source for such deals. Plaintiff claims that CapLease provided financing for two JDA projects and that JDA failed to pay Plaintiff’s commission fees for obtaining financing from CapLease as required under the Agreement.

JDA now moves for an Order, pursuant to CPLR § 3211(a)(8), dismissing Plaintiff’s complaint as against JDA for lack of personal jurisdiction. In support, Defendant submits: the attorney affirmation of Thomas A. Bizzaro, Jr. (“Bizzaro”);

¹ In “build-to-suit” deals, a developer builds a property to a tenant’s specifications, and the tenant leases the land and building from the developer, capital partner or landlord who retains ownership. (Compl. ¶ 8).

the affidavit of Jason C. Lynch (“Lynch”), JDA’s vice president; the affidavit of Garrett Scott (“Scott”), JDA’s former president; and, copies of the pleadings herein.

Plaintiff opposes and requests disclosure on the issue of personal jurisdiction. Plaintiff submits the affidavit of Gabriel Silverstein (“Silverstein”), Plaintiff’s president, dated March 12, 2015.

CPLR § 3211 provides, 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 over the person of the defendant;

In New York, jurisdiction over a defendant must be authorized under the CPLR and consistent with the Due Process Clause of the United States Constitution. In order to defeat a motion to dismiss for lack of personal jurisdiction, “the opposing party need only demonstrate that facts ‘may exist’ whereby to defeat the motion.” (*Peterson v. Spartan Industries, Inc.*, 33 N.Y.2d 463, 466 [1974]; *American BankNote Corp. v Daniele*, 45 A.D.3d 338, 340 [1st Dep’t 2007]; CPLR § 3211[d]). A prima facie showing of jurisdiction “simply is not required.” (*Peterson*, 33 N.Y.2d at 467). Additionally, where a plaintiff seeks disclosure on the issue of personal jurisdiction pursuant to CPLR § 3211(d), the plaintiff need only set forth a “sufficient start” and show that its position is “not frivolous.” (*Peterson*, 33 N.Y.2d at 467).

CPLR § 302 permits a court to exercise personal jurisdiction over a non-domiciliary who, in person or through an agent, transacts any business within the State, provided that the cause of action arises out of the transaction of business. (CPLR § 302 [a][1]; *Lebel v. Tello*, 272 A.D.2d 103, 103-04 [1st Dep’t 2000]). CPLR § 302(a)(1) is a “single act statute” and “proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, as long as the requisite purposeful activities and the connection between the activities and the transaction are shown.” (*Deutsche Bank Sec., Inc. v. Montana Bd. of Invs.*, 21 A.D.3d 90, 93-94 [1st Dep’t 2005]). For purposes of CPLR § 302(a)(1), “[p]urposeful activities are those with which a defendant, through volitional acts, ‘avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” (*Fischbarg v. Doucet*, 9 N.Y.3d 375, 380 [2007]). Alternatively, cumulative minor activities may provide sufficient

grounds for “transaction of business” jurisdiction, so long as the cumulative effect creates a “significant presence” in the State. (*O'Brien v. Hackensack Univ. Med. Ctr.*, 305 A.D.2d 199, 200 [1st Dep’t 2003]; CPLR § 302 [a][1]). The “test is whether the defendant has engaged in some purposeful activity in New York in connection with the matter in controversy.” (*Otterbourg, Steindler, Houston & Rosen, P.C. v Shreve City Apartments*, 147 A.D.2d 327, 331 [1st Dep’t 1989]).

Under the Due Process Clause, a nonresident generally must have “certain minimum contacts . . . such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” (*International Shoe Co. v. Washington*, 326 U. S. 310, 316, [1945]). In order for a state to exercise specific jurisdiction over a non-resident defendant consistent due process, the non-resident defendant’s “suit-related conduct” must create a “substantial connection” with the forum state. (*Walden v. Fiore*, 134 S. Ct. 1115, 1121 [2014]). This connection must arise from contacts that the “defendant *himself*” creates with the forum state. (*Id.* at 1122, quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 [1985]). The “minimum contacts” analysis looks to the defendant’s contacts with the forum state itself, not the defendant’s contacts with persons who reside there. (*Walden*, 132 S. Ct., at 1122).

JDA argues that JDA lacks sufficient “minimum contacts” with the State of New York to warrant this Court’s exercise of “long-arm” jurisdiction over JDA. In the affidavit of Lynch, Lynch avers that JDA is a South Carolina corporation with its principal place of business located in Spartanburg, South Carolina. (Lynch Aff. ¶ 3). Lynch avers that JDA does not maintain offices, employees, agents, a mailing address or a telephone number in New York. (*Id.* ¶¶ 6, 8). Lynch avers that JDA is not authorized to transact business in the State of New York, and that JDA is not registered with the New York Secretary of State. (*Id.* ¶ 7). Lynch avers that JDA “neither owns, controls nor leases any real or personal property or other assets in the State of New York, nor does JDA maintain any bank accounts in New York.” (Lynch Aff. ¶ 9). Lynch further avers that “JDA has not in the past engaged and does not presently engage in any business in the State of New York” and that, “JDA does not solicit business in New York or derive revenue from goods or services provided in the State of New York.” (Lynch Aff. ¶¶ 11-12).

In the affidavit of Scott, Scott avers that he served as president of JDA at the time of the alleged Agreement. (Scott Aff. ¶¶ 2-3). Scott further avers that the two real estate projects in issue involved the development of property located in Ashland, Virginia (the “Vitamin Shoppe Project”) and Columbia, South Carolina (the “MARS Petcare Project”), respectively. (Scott Aff. ¶¶ 5-6). Scott avers that he was “directly

involved with [JDA's] role as a fee developer for both the Vitamin Shoppe Project and the MARS Petcare Project" and that he "was also directly involved with and am familiar with the dealings/communications between JDA and Angelic." (*Id.* ¶¶ 7-8).

Scott further avers:

I only recall being involved with one (1) meeting in New York involving the Company, Angelic and CapLease. Specifically, I recall representatives from Angelic being present at a dinner meeting that I attended with representatives from CapLease. To the best of my recollection, the discussions during the dinner meeting were more general in nature (i.e., meet and greet), as opposed to substantive discussion about any particular project. At the time of the above-referenced dinner meeting, the Vitamin Shoppe Project and the MARS Petcare Project were not known to me.

(*Id.* ¶ 9). Scott avers that, "[w]hile one of the exhibits to the Complaint contains an email exchange which refers to a meeting scheduled for March 23, 2010, that meeting with Angelic was unrelated to CapLease and/or the Vitamin Shoppe Project and the MARS Petcare Project" and that Scott's initial contact person at Angelic worked out of Angelic's office in Florida. (*Id.* ¶¶ 10-11).

On the other hand, Plaintiff's complaint asserts that New York jurisdiction over JDA is proper pursuant to CPLR § 302(a)(1), based JDA's alleged business transactions here. (Compl. ¶ 6). Plaintiff's complaint alleges that Plaintiff is a Delaware corporation with its principal place of business in New York. (Compl. ¶ 2). Plaintiff argues that JDA requested that Angelic, which is located in New York (Silverstein Aff. ¶ 2), set up meetings between JDA and potential financial resources. Plaintiff further argues that, pursuant to the Agreement, Angelic set up multiple meetings in New York between JDA and potential funding sources, including CapLease. (*Id.* ¶¶ 9-13). Plaintiff argues that JDA attended such meetings in New York, and that these meetings were "critical" to the services that Plaintiff allegedly provided to JDA under the Agreement and essential to the business relationship between Plaintiff and JDA. (*Id.* ¶ 14). As a result, Plaintiff contends, the New York meetings—which Plaintiff claims to have arranged at JDA's request and which JDA allegedly attended—constitute "transacting business" in New York for purposes of CPLR § 302(a)(1). Plaintiff argues the instant dispute arises from JDA's business

transactions in New York because the meetings in question resulted in JDA's business relationship with CapLease, which, in turn, led to the financing transactions in issue.

Accordingly, Plaintiff makes a "sufficient start" toward demonstrating personal jurisdiction over JDA pursuant to CPLR § 302(a)(1), and additional disclosure is warranted to determine the issue of personal jurisdiction over JDA.

Wherefore it is hereby,

ORDERED that JDA's motion is denied without prejudice to renew upon the completion of discovery on the issue of personal jurisdiction; and it is further

ORDERED that Plaintiff is directed to conduct discovery limited to the issue of personal jurisdiction over defendant JDA pursuant to CPLR § 302(a)(1); and it is further

ORDERED that all parties are directed to appear for a conference at 71 Thomas Street, Room 205, on September 15, 2015, at 9:30 a.m. to set a discovery schedule for the limited issue of personal jurisdiction over defendant JDA pursuant to CPLR § 302(a)(1).

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

Dated: ~~July~~ 8, 2015

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Eileen A. Rakover, J.S.C.