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| <b>Bruno v GPE Holdings, Inc.</b>                                                                                                                                                                                              |
| 2017 NY Slip Op 32587(U)                                                                                                                                                                                                       |
| December 11, 2017                                                                                                                                                                                                              |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: 651550/2014                                                                                                                                                                                                     |
| Judge: Andrea Masley                                                                                                                                                                                                           |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Andrea Masley PART 48  
Justice

FRED BRUNO, INDEX NO. 651550/2014  
Plaintiff, MOTION DATE: \_\_\_\_\_  
v MOTION SEQ. NO. 006

GPE HOLDINGS, INC., GRAMERCY MILLENNIUM  
GROUP, GRAMERCY GROUP, GRAMERCY  
PRIVATE EQUITY HOLDINGS, GRAMERCY  
VENTURE ADVISORS, INC., GRAMERCY  
COMMODITIES, MICHAEL J. GALE,  
AMY SCHWARTZ, AND AMY GALE,  
Defendants.

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

The following papers, numbered 1 to 2 were read on this motion to consolidate.

|                                                                   | PAPERS NUMBERED |
|-------------------------------------------------------------------|-----------------|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | <u>1</u>        |
| Answering Affidavits — Exhibits _____                             | <u>2</u>        |
| Replying Affidavits _____                                         |                 |

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is granted.

Procedural History:

At the beginning of this action, the captioned defendants collectively moved to dismiss for lack of personal jurisdiction pursuant to CPLR 3211 (a) (8), and also sought dismissal under the doctrine of forum non conveniens, among other grounds. The matter was referred to a Special Referee for a traverse hearing to determine whether the court had jurisdiction over each of the defendants under CPLR 301 and/or 302, and defendants' motion to dismiss was denied without prejudice to renewal pending resolution of the threshold jurisdiction issue. The Special Referee reported and recommended that jurisdiction was lacking as to the corporate defendants on the basis that plaintiff had failed to demonstrate that the corporate defendants are incorporated, or maintain a principal place of business, in New York; further, plaintiff's evidence failed to establish either that the corporate defendants were "at home" in New York or had "continuous and systematic" contact with the State. The court found that the Special Referee's findings with regard to the corporate defendants were "amply supported" by the record, and dismissed the action as against the corporate defendants (4/13/17 Decision and Order [Oing, J.] [NYSCEF Doc. No. 156] [containing additional factual and procedural history of this action]).

As for the individual defendants, Michael J. Gale and his wife, Amy Schwartz

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

(also denominated Amy Gale in the caption), the court found that the record "clearly demonstrates" that they "are California residents," and that neither was a New York resident at any time relevant to the complaint. The court dismissed the action against Amy Schwartz/Amy Gale, as she was not personally served in New York, and there was no other basis to establish jurisdiction over her person (*see id.*). The court declined to dismiss the action as against Mr. Gale, however, as he was personally served in New York while at a hotel (*id.*).

Mr. Gale, the sole remaining defendant, now renews his earlier motion to dismiss the complaint under the doctrine of forum non conveniens, as well as other grounds. Plaintiff—who relieved his counsel to represent himself pro se on May 2, 2017—opposes the motion on the basis that Mr. Gale is a transient world traveler "with no permanent U.S. residence," and that Mr. Gale has not met his burden of demonstrating that New York is an inconvenient forum for this matter. In its discretion, the court finds that dismissal under CPLR 327 is warranted because defendant has met his burden of demonstrating that this action bears no substantial nexus with New York, that California is a more appropriate forum, and that the balance of private and public interests favors dismissal.

#### Discussion:

"The doctrine of forum non conveniens, as codified under CPLR 327, permits a court to . . . dismiss an action 'where it is determined that the action, although jurisdictionally sound, would be better adjudicated elsewhere,' " and "[t]he doctrine rests on considerations of justice, fairness and convenience" (*Century Indem. Co. v Liberty Mut. Ins. Co.*, 107 AD3d 421, 423 [1st Dept 2013] [citations omitted], *quoting Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 [1984], *cert. denied* 469 US 1108 [1985]).

"The burden rests upon the defendant challenging the forum to demonstrate relevant private or public interest factors which militate against accepting the litigation[,] and the court, after considering and balancing the various competing factors, must determine in the exercise of its sound discretion whether to retain jurisdiction or not" (*Islamic Republic of Iran*, 62 NY2d at 479 [citations omitted]). "Among the factors to be considered are the burden on the New York courts, the potential hardship to the defendant, and the unavailability of an alternative forum in which plaintiff may bring suit," "[t]he court may also consider that both parties to the action are nonresidents and that the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction. No one factor is controlling" (*id.* [citations omitted]).

Here, defendant has demonstrated, and the court finds, that there is no "substantial nexus" between the allegations raised in the complaint and New York State (*see Banco Ambrosiano, S.P.A. v Artoc Bank & Tr. Ltd.*, 62 NY2d 65, 73 [1984]). As defendant argues, both plaintiff and defendant are California residents, as is defendant's wife, and each of the dismissed corporate defendants are located in California and incorporated outside of New York. Furthermore, all of the material acts and omissions alleged by plaintiff in the complaint occurred outside of New York, and nearly all of the relevant acts alleged took place in California. For instance, the consulting agreement between plaintiff and dismissed defendant GPE Holdings, Inc. (GPE) was negotiated and executed in California, as was the alleged oral contract to employ plaintiff. Additionally, all of the business records pertaining to the dismissed

corporate defendants that would support plaintiff's claims for fraud, breach of contract, breach of the duty of good faith and fair dealing, and so forth are in California, where those businesses are located. Those business records would be needed to demonstrate plaintiff's allegations that GPE or other dismissed corporate defendants failed to pay his salary and commission fees; moreover, those business records would be essential for plaintiff to establish, as alleged, that the business entities located in California served as the vehicles by which Mr. Gale purportedly engaged in fraudulent activities. The court further notes that the relevant consultation agreement executed by plaintiff and GPE specifies that California law controls the contract, and no contract or other document identified in this matter selects New York as the preferred forum.

The complaint contains only vague assertions that the dismissed corporations—over which this court does not have jurisdiction—"conduct business in the State of New York, retain 'management centers' in . . . New York," and breached unspecified contracts and "performed negligent acts" while in New York (Compl. ¶ 12). In his affidavit in opposition to the original motion to dismiss, plaintiff further alleges that he conducted some business, and attended "a series of meetings" in New York, pursuant to the written commission agreement and the purported oral employment agreement that existed between plaintiff and one or more of the dismissed corporate defendants.

In any event, defendant has demonstrated that none of the necessary witnesses are located in New York, none of the parties reside in New York, and all of the businesses that plaintiff claims to have been defrauded by are located in California and incorporated outside of New York. Plaintiff's own affiants with knowledge of the claims in the complaint reside outside of New York, and all of the entities that plaintiff allegedly introduced to Mr. Gale and the dismissed defendant corporations are located outside of New York, as well. That plaintiff contends some business meetings occurred in New York, and some business between entirely non-New York entities may have been transacted or facilitated in some way in New York, does not create a substantial nexus with the State.

The court finds that defendant has met his burden of demonstrating that New York does not have a substantial nexus to this action, and the balance of factors favors dismissal under CPLR 327. Here, the facts and claims establish, at best, a minimal connection to New York, and the more appropriate forum for this action is California, the state in which most of the relevant acts and omissions occurred. As New York's interest in, and connection to, this matter is minimal at best, the action is dismissed against the sole remaining defendant (*see Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Bros. Co.*, 23 NY3d 129, 138-139 [2014] [dismissing under forum non conveniens where alternative forum was available and "[n]o party is a New York resident; no relevant conduct apart from the execution of fund transfers occurred in New York; no party has identified any important New York witnesses or New York documents; New York law does not apply; no property related to the dispute is located in New York; no related litigation is pending in New York; and no other circumstance supports an argument that New York is an appropriate forum"]). Although plaintiff seeks, as alternative relief, that an order dismissing this action under CPLR 327 be conditioned upon Mr. Gale's acceptance of service of process in California, the court declines to so exercise its discretion.

NYSCEF DOC. NO. 169

Index No. 65150/2014, Motion No. 10  
 RECEIVED NYSCEF: 12/12/2017

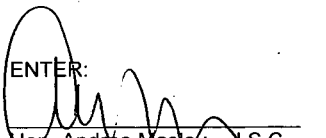
Accordingly, it is

ORDERED that the motion of defendant to dismiss this action on the ground that New York is an inconvenient forum is granted; and it is further

ORDERED that defendant shall file a copy of this order with notice of entry and proof of service of the foregoing on plaintiff, with the Clerk of the Part, and with the County Clerk (Room 141B); and it is further

ORDERED that, upon the filing of the foregoing, the County Clerk shall enter judgment dismissing the action.

Dated: 12/11/17

ENTER:  
  
 Hon. Andrea Masley, J.S.C.  
**HON. ANDREA MASLEY**

Check one: ☒ **FINAL DISPOSITION**      ☐ **NON-FINAL DISPOSITION**