

**Bank United, N.A. v Okapi Taxi Inc.**

2017 NY Slip Op 32642(U)

November 6, 2017

Supreme Court, Richmond County

Docket Number: 151156/2017

Judge: Philip G. Minardo

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

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BANK UNITED, N.A.

DCM 6  
Philip G. Minardo, J.S.C.

Plaintiff,

Index No.: 151156/2017  
DECISION  
AND ORDER

-against-

OKAPI TAXI INC., ZORY GORBAN and  
VLADIMIR FISH,

Motion No.: 001

Defendants.  
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The following papers were marked fully submitted:

Papers	Numbered
Notice of Motion of Defendant Vladimir Fish with supporting Papers and Exhibits (dated July 18, 2017).....	1
Bank United’s Memorandum of Law in opposition to the Motion to Dismiss of Vladimir Fish (dated August 16, 2017).....	2
Affirmation of Stephan E. Hornung in Support of Bank United’s Opposition (dated August 16, 2017).....	3
Defendant Vladimir Fish’s Reply in Support of the Motion to Dismiss (dated September 8, 2017).....	4

Defendant Vladimir Fish moves this court pursuant to CPLR 3211(a)(8) to dismiss the complaint of Bank United, N.A. (“Bank United”) for lack of personal jurisdiction.

Bank United filed this action on May 22, 2017 to enforce a debt, evidenced by a note and accompanying loan documents, against all defendants in the aggregate amount of \$1,737,937.50. Defendant Fish filed his pre-answer motion on July 18, 2017, while defendants Okapi Taxi, LLC

("Okapi") and Gorban joined issue by filing their answers with affirmative defenses and counterclaims.

On May 28, 2013, defendants Fish and Gorban authorized their closely held corporation Okapi, a New York entity with its principal place of business in the county of Richmond, New York, to borrow \$1.5 million from Pearl G, LLC, ("Pearl G"), Bank United's predecessor in interest. Both individual defendants own 50% of Okapi. Gorban is Okapi's president. Fish is Okapi's secretary.

The \$1.5 million loan is an interest-only loan that accrues interest at a rate of 3.5% per annum. All principal, interest and other sums due under the notes and loan documents were payable in full on June 1, 2016. The loan was secured by two New York City taxi medallions within New York City, that were intended to be purchased by Okapi. Okapi was then to lease the taxi medallions. Both defendants Fish and Gorban personally appeared in the state of New York to execute the loan documents on behalf of codefendant Okapi and themselves at the offices of counsel for Pearl G in New York. Each individual defendant also received more than \$40,000 in cash from the loan.

The loan was governed by agreements executed in the state of New York and governed by New York law. Each individual defendant also personally guaranteed Okapi's payment obligations under the loan documents, all of which were required to be made in New York. Fish and Gorban also executed affidavits for judgment by confession which authorized Pearl G and its successors to enter judgment against the individual defendants in Supreme Court if the loan was in default.

On August 2, 2016, Pearl G assigned all of its rights, title, and interest in the loan

agreement, notes, guarantee, and other loan documents to Bank United. It is alleged that Okapi did not repay the loan before the maturity date and by letter dated June 15, 2016, Pearl G demanded repayment of the loan.

On October 19, 2016, Bank United provided a second and final notice to Okapi that all amounts outstanding were immediately due and payable. This action was later filed.

Under a CPLR 3211 (a)(8) motion to dismiss, the plaintiff must only make a *prima facie* showing that the facts “may exist to exercise jurisdiction.” *Daniel B. Katz & Associates Corp. v. Midland Rushmore, LLC*, 90 A.D.3d 977, 978, 937 N.Y.S.2d 236, 2011 N.Y. Slip Op. 09584 (2d Dept. 2011) (holding that phone calls and emails to offices in New York concerning the out of state shopping centers at issue were not enough to submit the out of state defendants to personal jurisdiction). The motion must be construed in a light most favorable to the plaintiff.

Under CPLR 302(a)(1), personal jurisdiction over a non-domiciliary may be exercised, when in person or through an agent, that non-domiciliary “transacts any business within the state or contracts anywhere to supply goods or services in the state” and the cause of action arises out of those acts. “An individual cannot be subject to jurisdiction under CPLR 301 unless he is doing business in New York as an individual rather than on behalf of a corporation.” *Brinkmann v. Adrian Carriers, Inc.*, 29 A.D.3d 615, 617, 815 N.Y.S.2d 196. (2d Dept. 2006). CPLR 302(a)(1) is a single-act statute and allows the exercise of jurisdiction over one transaction if that offender’s activities herein are purposeful and there is a substantial relationship between the transaction and the claim asserted, even if that offender does not enter New York. *Daniel B. Katz & Associates Corp., supra* at 978, *Kimco Exch. Place Corp. v. Thomas Benz, Inc.*, 34 A.D.3d 433, 434, 824 N.Y.S.2d 353 (2d. Dept. 2006) “Purposeful 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' ” *Daniel B. Katz & Associates Corp., supra* at 978 (quoting *Fischbarg v. Doucet*, 9 N.Y.3d 375, 380, 849 N.Y.S.2d 501, 880 N.E.2d 22, quoting *McKee Elec. Co. v. Rauland-Borg Corp.*, 20 N.Y.2d 377, 382, 283 N.Y.S.2d 34, 229 N.E.2d 604).

Fish asserts that he has been a citizen of New Jersey since 1987. He claims he holds no office, mailing address, or phone number in the state of New York, does not conduct any business in New York, and does not own any real or personal property in New York. Fish also asserts that any meetings or discussions he had concerning the loan were with codefendant Gorban and were conducted in the state of New Jersey.

Defendant Fish also claims that he did not discuss the terms of the loan with any representative of Pearl G and/or plaintiff at any time prior to the execution date. Further, Fish claims that Pearl G demanded both individual defendants appear in person at their attorneys’ office on May 20, 2013 to execute the loan documents. Fish asserts that Pearl G and/or its successors in interest, Bank United, did not present or disclose any of the loan documents prior to the execution date. Thus, the first time Fish was able to review the document was at the May 28, 2013 meeting. Finally, Fish alleges that the loan was presented as a “take it or leave it” document and he was coerced into guaranteeing the Okapi loan and executing the judgment of confession.

Although this recitation of facts is intriguing, it is not enough to avoid this Court’s exercise of jurisdiction. The relevant uncontroverted facts are that defendant Fish was the 50% owner of a New York small corporation, Okapi. That corporation’s purpose was to purchase New York City taxi medallions and lease those medallions within the City of New York. The loan at issue herein was to finance the purchase of those medallions. Fish discussed the loan with the other corporate shareholder, Gorban. Fish may not have been able to review the loan documents prior to the

signing, but he was aware of the loan closing. He affirmatively entered the state of New York to execute the documents at the office of Pearl G's counsel's office. Moreover, the loan itself is the subject of the cause of action.

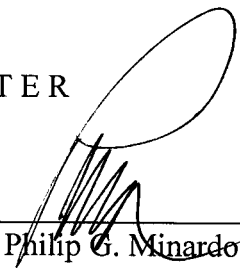
Fish attempts to liken his New York appearance to a single transaction, a fleeting moment within which he appeared in the confines of the State of New York for the loan closing. However, Fish fails to admit the correlation between the appearance and his other purposeful activity in the state, such as, his 50% ownership of a small corporation in New York, who does business in New York, for whom Fish executed this particular loan and judgment of confession.

Moreover, as noted *supra*, even a single purposeful act is enough. If Fish did not want to submit to jurisdiction or the loan documents, he could have simply walked out of the meeting on May 20, 2013. He affirmatively came to the jurisdiction to contract to fund his New York based corporation, therefore, the notion of "fair play and substantial justice" that permits a state to enforce its obligations, that Chief Justice Stone wrote of in *International Shoe Co. v State of Washington*, 66 S. Ct. 154, (1945) is not offended by the exercise of jurisdiction over defendant Fish herein.

Accordingly, it is hereby

ORDERED, that the CPLR 3211 (a) (8) motion of defendant Vladimir Fish is denied.

ENTER

  
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Hon. Philip G. Minardo, J.S.C

NOV. 6, 2017