

**CF Dynamic Advances LLC v TechDev Holdings,
LLC**

2019 NY Slip Op 32068(U)

June 27, 2019

Supreme Court, New York County

Docket Number: 655047/2018

Judge: Andrea Masley

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48**

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CF DYNAMIC ADVANCES LLC and DBD CREDIT
FUNDING, LLC,

Plaintiffs,

- v -

TECHDEV HOLDINGS, LLC and
THE SPANGENBERG FAMILY
FOUNDATION FOR THE BENEFIT OF
CHILDREN'S HEALTHCARE AND
EDUCATION,

Defendants.

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INDEX NO. 655047/2018
12/13/2018,
12/17/2018,
MOTION DATE 03/26/2019
MOTION SEQ.
NO. 001 004 005

DECISION + ORDER ON MOTION

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 86

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 26, 27, 28, 29, 30, 31, 38, 39, 40, 41, 42, 43, 61, 82

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115

were read on this motion to/for INTERIM RELIEF

In Motion Sequence Number (Motion) 001, defendants move, pursuant to CPLR 3211 (a) (8), to dismiss the complaint for lack of personal jurisdiction. In Motions 004 and 005, plaintiffs move, pursuant to CPLR 7503, to "dismiss" the arbitration proceeding filed by defendants in Texas (Motion 004) and to stay that arbitration proceeding pending resolution of Motion 001 (Motion 005).

Background

The facts are taken from plaintiffs' complaint and attached exhibits except as noted.

Plaintiff CF Dynamic Advances LLC (CF Dynamic), a Delaware LLC with its principal place of business in New York, is the designee of plaintiff DBD Credit Funding, LLC (DBD), which allegedly obtained exclusive rights to enforce U.S. Patent No. 7,177,798 (Patent), and designated those rights to CF Dynamic. DBD obtained the Patent license through a series of agreements (together, DBD Agreements) with non-party Marathon Patent Group, Inc. and its affiliates (Marathon) by which DBD issued a \$15 million loan to Marathon that was securitized by certain of Marathon's patent portfolios, including the Patent at issue here. When Marathon defaulted under the DBD Agreements, DBD and Marathon executed the First Amendment to the Revenue Agreement (Restructuring Agreement) by which the Patent license was ultimately transferred to CF Dynamic. DBD is also a Delaware LLC with its principle place of business in New York; plaintiffs do not allege where Marathon or its affiliates were formed or are domiciled (*see* NYSCEF Docs [NYSCEF] 1-7 [complaint and exhibits]; 18 [same]).

In May 2014, Marathon obtained the exclusive license to the Patent through a series of agreements (Marathon Agreements) with defendants TechDev Holdings, LLC (TechDev)—a company formed under the laws of Texas with no offices in New York—and The Spangenberg Family Foundation for the Benefit of Children's Healthcare and Education (Foundation)—a non-profit organized under the laws of Texas. Non-party DA LLC was owned in whole by defendants at the following relevant times: when DA LLC obtained the exclusive license to enforce the Patent from non-party Rensselaer Polytechnic Institute (RPI), a New York State institution; when DA LLC twice commenced litigation for infringement of the Patent (with RPI as co-plaintiff) against Apple,

Inc. (Apple) in Northern District of New York (NDNY) Federal Court; and when DA LLC (including its patent assets) was sold to Marathon (NYSCEF 1, ¶¶ 1-38).

One of the Marathon Agreements includes a provision prohibiting Marathon from assigning its rights under that agreement and/or selling, assigning, or transferring any interest in DA LLC (including the Patent) without defendants' prior written consent (NYSCEF 1, ¶ 22; NYSCEF 3, § 9.3). Another of the Marathon Agreements, the "Pay Proceeds Agreement" (Proceeds Agreement), entitled defendants to a share of possible future payments resulting from Marathon's monetization DA LLC patents, including the Patent at issue (NYSCEF 1, ¶ 24; NYSCEF 19).

In January 2015, Marathon executed the DBD Agreements to obtain a loan secured by Marathon's patent portfolios, including the Patent here. After Marathon's default under those agreements, amended agreements, including the Restructuring Agreement, were executed by DBD and Marathon throughout 2017 and, ultimately, DBD acquired and obtained the Patent license (which it designated to CF Dynamic) in October 2017.

In September 2018, CF Dynamic and RPI commenced an action to enforce the Patent in NDNY against Amazon, Inc. (Amazon). Four months later, plaintiffs allege they were "approached" by defendants "through counsel" who "represented that Erich Spangenberg was reaching out on" defendants' behalf (NYSCEF 1, ¶¶ 39-40; *see id.* ¶ 4 [alleging that defendants stated they "never consented to Plaintiffs acquiring rights in the . . . Patent, and that, by implication, CF Dynamic [] lacked standing to file and prosecute the Amazon litigation"]¹). Specifically, defendants stated that Marathon's transfer of the Patent license to plaintiffs "was not properly effectuated" absent defendants' written consent, "refused" plaintiffs' "good faith" "attempt[s] to resolve the dispute" after "a number of discussions," and, instead, defendants "demanded a lump-sum payout"

¹ Plaintiffs allege that defendants "are controlled by . . . Spangenberg" through other entities Spangenberg owns.

(NYSCEF 1, ¶¶ 40-42). Plaintiffs allege that defendants' "allegations, interference with . . . the [] Patent, and implied threats to interfere with . . . the ongoing Amazon litigation" demonstrate that there is "an actual case or controversy" between the parties (*id.* ¶ 43).

Plaintiffs' Complaint and Defendants' Motion to Dismiss (Motion 001):

Plaintiffs subsequently commenced this action, by filing their October 10, 2018 complaint, in which they assert four declaratory judgment claims. Three of those claims seek a declaration that plaintiffs have the exclusive license to the Patent by: (1) operation of law as obtained through the Restructuring and DBD Agreements which do not implicate the Marathon Agreements; (2) consent as defendants' 2015 letter to Marathon (2015 Letter) authorized Marathon to execute the DBD Agreements and obtain the loan; and (3) estoppel/waiver as defendants acquiesced to the transfer by failing to challenge it earlier. Plaintiffs' fourth claim seeks a declaration that (4) the Proceeds Agreement does not apply to plaintiffs (*see* NYSCEF 1, 18).

Defendants move, pursuant to CPLR 3211 (a) (8) in Motion 001, to dismiss the complaint for lack of personal jurisdiction as to each defendant entity.

In the complaint, plaintiffs assert that personal jurisdiction under CPLR 302 (a) is satisfied as to defendants because they "continuously and systematically transact business within the State of New York, or contract anywhere to provide goods and services in the State of New York, including with New York residents, and the Plaintiffs' claims arise from the transaction of such business or contracts" (NYSCEF 18, ¶ 15). Further, "on information and belief, [defendants] have substantial connections to the State of New York" (*id.* ¶¶ 14-16). Plaintiffs assert that defendants, "through . . . agents, negotiated multiple agreements with RPI and/or other residents of this State," "previously asserted the [] Patent in litigation in this State against Apple," and Spangenberg—the alleged person who controls defendants, their alter egos, and agents had some involvement with the second Apple action (he was listed as a fact witness in public filings, but not trial was ever held) (*id.*

¶ 16; *see id.* ¶¶ 13-14 [alleging DA LLC “was an alter ego of (defendants),” and all entities were controlled as one by Spangenberg]).

Defendants submit Spangenberg’s affidavit, in his capacity as an “authorized representative” of defendants (NYSCEF 16), in which he states:

- TechDev is a Texas LLC that was owned from its formation until November 2018 by another Texas entity, Acclaim Financial Group, LLC (Acclaim); TechDev was a holding company for Acclaim’s investments, including DA LLC;
- Spangenberg “never had a management role or direct or indirect ownership interest in TechDev or [Acclaim]”; Acclaim’s majority owner and managing member was, since formation in 2006, Audrey Spangenberg (Spangenberg’s former spouse);
- The Foundation is a Texas non-profit formed in 2008 that donates money to universities, schools, and hospitals world-wide; Spangenberg was a Vice President of, and one of three Board Members, of the Foundation prior to 2015;
- Spangenberg is a citizen of the United States who has lived in France since 2017 and previously resided in Florida and Texas; Spangenberg has not resided in New York in over 40 years, and he has no bank accounts, addresses, telephone numbers, or employees in New York;
- Spangenberg founded and served as CEO of IP Navigation Group, LLC (IP Nav), “a company based in Texas,” which provided strategic advisory services to clients, including TechDev and DA LLC; however, he states that IP Nav was “only a strategic advisor” that “never acted as a principal for” or “own[ed] or h[eld] any type of officer or director or [] executive position with” defendants or DA LLC; further, neither IP Nav nor Spangenberg owned any interest in defendants or DA LLC;
- IP Nav “was an outside strategic advisor” to TechDev and DA LLC “pursuant to a signed written” retainer agreement; IP Nav had no business relationship with the Foundation;
- IP Nav, also a Texas entity, “was an independent contractor” that “maintained separate corporate management, records and bank accounts” from those of its clients;
- during the relevant periods of time, DA LLC had “independent management” through which it made business decisions; prior to DA LLC’s sale to Marathon, DA LLC “had its own

separate corporate existence" and was owned by TechDev and the Foundation, though the Foundation owned a membership interest of less than 1%;

- Neither Spangenberg nor IP Nav has ever held an officer or director position with DA LLC; Spangenberg never "worked for or with" DA LLC in his personal capacity, including "commercialization" activities performed by DA LLC; DA LLC was "operated by a manager, a position held by two persons, Fiona Chaney and Dave Krueger," "maintained separate books and records and had its own bank account; and did not co-mingle funds with any other entity;
- Spangenberg "never provided services to TechDev" or the Foundation "in [his] individual capacity"; all the services provided to TechDev were provided through IP Nav pursuant to the entities' written advisor agreement;
- Any acts Spangenberg performed for the Foundation were done in Spangenberg's capacity as a Vice President and/or one (of three) of the Foundation's Board Members, and the relationship between TechDev and Spangenberg was limited to the advisor-client agreement between IP Nav and TechDev.

(*id.* ¶¶ 1-10).

Spangenberg further states that neither TechDev nor the Foundation had contacts with, or business in, New York: defendants did not have bank accounts, offices, staff, or registered agents in New York; further, TechDev never negotiated any agreements in New York—including the RPI agreement underlying the Patent license—or otherwise contracted for goods or services in New York, and neither has the Foundation (*id.* ¶¶ 12-13). Spangenberg states that his communications with RPI regarding the Patent were performed through IP Nav as "the retained advisor" (*id.* ¶ 13). Spangenberg also states that his involvement in the settled Apple litigation would have been in his capacity as a representative of IP Nav regarding IP Nav's business relationship with DA LLC, and Spangenberg was in New York to prepare for that trial on only one occasion in 2013 (*id.* ¶ 15).

Discussion

Before the court at this juncture are the following issues: whether each defendant is subject to general or specific jurisdiction directly; whether defendants are subject to general jurisdiction

under an alter-ego/veil-piercing theory; and whether the factual allegations and submissions adequately establish specific jurisdiction against each defendant as to the transactions underlying the claims at issue in the action.

1. *General Jurisdiction Under CPLR 301*

To adequately state a basis for general jurisdiction under the CPLR, a plaintiff must allege and defend a motion pursuant to CPLR 3211 (a) (8) such that due process protections under the United States Constitution are not violated (*see e.g. International Shoe Co. v State of Wash., Office of Unemployment Compensation and Placement*, 326 US 310, 316 [1945]). On this motion to dismiss, it is plaintiffs' burden to establish that jurisdiction is appropriate (*Stewart v Volkswagen of America, Inc.*, 81 NY2d 203, 207 [1993] ["[P]laintiffs have the burden of proving satisfaction of statutory and due process prerequisites"]).

As the United States Supreme Court ruled in *Daimler AG v Bauman* (571 US 117 [2014]), all-purpose general jurisdiction can be established by "only a limited set of affiliations with a forum"; thus, with a business entity, the forum in which general jurisdiction is appropriate is typically that in which the entity is "fairly regarded as at home," such as the forum in which it was formed or that in which it maintains its principal place of business (*see id.* at 137).

Under *Daimler* and subsequent New York jurisprudence, the court is constrained to find that plaintiffs have not satisfied their burden of establishing general jurisdiction under CPLR 301 over TechDev or the Foundation. Apart from plaintiffs' conclusory allegations that defendants have continuous and systematic contacts and business transactions in the State, the only transactions, business, or other contacts alleged as to TechDev and the Foundation that are supported with specific facts are those surrounding those parties' ownership and sale of the subsidiary, DA LLC (*see* NYSCEF Doc 18, ¶¶ 14-16), which is the entity that contracted with RPI and enforced its rights under the Patent license against Apple in NDNY—there are no facts establishing

that defendants' had any involvement in those matters. There are also no facts demonstrating that either defendant has offices, bank accounts, agents, or employees in New York, and neither defendant was formed under New York law. While plaintiffs allege that defendants, through counsel, contacted plaintiffs in New York (by an unspecified means) regarding the transfer of the Patent, but that instance and plaintiffs' assertion that "numerous discussions" followed are unsupported in the complaint or submissions. The nonconclusory factual allegations involving transactions or contacts with/involving New York relate, almost entirely, to the acts of nonparty subsidiary DA LLC. Plaintiffs' conclusory and unsupported allegations as to each defendants' involvement in any of the matters undergirding their declaratory judgment claims are insufficient to establish general jurisdiction under CPLR 301, and nothing in plaintiffs' submissions in opposition to Motion 001 permit the court to find any basis upon which to find general jurisdiction exists against each defendant directly.

As to plaintiffs' veil-piercing/alter-ego theory, the court is again constrained to find that plaintiffs have not met their burden of establishing that either defendant is subject to general jurisdiction in New York as the alter-ego or agent of non-party Spangenberg or his alleged collection of shell companies and other entities.

"Alter ego liability and the related doctrine of piercing the corporate veil involve the abuse of the corporate form to the detriment of third parties" (*Gliklad v Deripaska*, 55 Misc 3d 1213(A), [Sup Ct, NY County April 25, 2017]). Generally, piercing the corporate veil requires a showing that the owner exercised complete domination of the entity with regard to the challenged transaction(s) and that the domination was used to commit a fraud or wrong that injured the plaintiff (see *Matter of Morris v New York State Dept. of Taxation and Fin.*, 82 NY2d 135, 140-143 [1993] ["While complete domination of the corporation is the key to piercing the corporate veil, especially when the owners use the corporation as a mere device to further their personal rather

than the corporate business, such domination, standing alone, is not enough.”)]. The plaintiff must allege a wrong or unjust act caused by the asserted domination (*id.*).

Plaintiffs do not challenge any of the executed transactions here; for example, the Marathon or DBD Agreements. Rather, plaintiffs seek declaratory judgments to protect their perceived Patent-enforcement rights from collateral attack in the ongoing Amazon action (for instance, a challenge to standing with respect to the transfer) and to prevent or inhibit potential future claims that defendants are entitled to a share of successful Patent-monetization efforts under the Marathon Agreements. Plaintiffs allege no fraud; the only acts they assert that can be construed as “wrongful” are defendants’ extra-judicial communications, through counsel, challenging the transfer and vague assertions that the parties negotiated, plaintiffs’ unspecified offer was “refused,” and defendants sought an unspecified lump-sum payment.

In the context of veil-piercing for the purposes of general jurisdiction, a plaintiff must submit sufficient evidence of control and domination to disregard the separate legal existence of the entities in question. There must be a showing of “complete domination of one entity by the other with respect to the transaction being challenged to justify piercing the veil, and that such domination was used to perpetrate a wrong against the plaintiff causing the plaintiff’s injury [such that the dominating party] abused the privilege of doing business in the corporate form to perpetrate the harm” (*Shaltiel v Wildenstein*, 288 AD2d 136, 137 [1st Dept 2001] [internal citation omitted]; see *Gliklad*, 55 Misc 3d 1213(A) [“[T]he First Department will not allow a plaintiff to pierce the corporate veil as a basis for personal jurisdiction over a defendant unless there is some evidence that the defendant used the corporate form to harm or defraud a party.”]).

Accordingly, even assuming that the entities at issue here, including defendants and DA LLC, were or are alter egos of Spangenberg or his advisory entity, IP Nav, without any will or control of their own, there is no basis for general jurisdiction absent allegations or submissions that

establish that such control or domination was used to defraud or unjustly wrong the plaintiffs. Absent such allegations or submissions, plaintiffs' veil-piercing/alter-ego theories of general jurisdiction cannot stand.

Finally, plaintiffs' arguments and cited authority regarding specific jurisdiction analyses in Federal patent-infringement actions do not compel an alternative result. This action is based in contract law, not patent law. Plaintiffs' arguments misconstrue general and specific jurisdiction, sidestep the United States Supreme Court's rulings in *Daimler*, and treat personal jurisdiction in this action as may be applicable in Federal actions for declaratory judgments as to a parties' infringement or non-infringement of a patent. Plaintiffs' cited patent cases are distinguishable.

The court recognizes that some of the entities here involved, such as DA LLC and TechDev, are or were in the business of patent-monetization, an industry in which income may be generated through cease and desist letters and patent litigation. Such activities relating to patent-enforcement can constitute business transactions under some circumstances, particularly in Federal actions involving infringement/non-infringement of patents. Nevertheless, plaintiffs fail to allege that Spangenberg, defendants, or any purported alter egos/agents acted with any intent to harm plaintiffs. Instead, plaintiffs allege with conclusory statements only that defendants, through counsel, made "false allegations" that the Patent rights were not properly transferred under the Marathon Agreements and then declined to accept plaintiffs' undisclosed offer to resolve the dispute. Those vague and/or conclusory statements are insufficient to establish intent to commit fraud or cause an undue wrong to plaintiffs and there is no allegation that plaintiffs were harmed.

Plaintiffs' reliance on *Ivoclar Vivadent, Inc. v Hasel* (2003 WL 21730520, 2003 U.S. Dist. LEXIS 12611, No. 02-CV-0316E(F) [WDNY June 30, 2003]), a patent case in Federal Court, is misplaced. There, "at least ten letters[] . . . to three different companies . . . to enforce and license [the defendant's] patents," and making "numerous phone calls to [the] plaintiff in New York to

negotiate a possible license, soliciting fees and reiterate[ing] its infringement claims" adequately satisfied New York's "doing business" test under CPLR 301 (*id.* at *12-14). However, that federal patent action pre-dates *Daimler* and is contextually distinguishable as a non-infringement declaratory judgment action, not an action seeking declaratory judgments pertaining to commercial contracts under state law.

In any event, the court declines to apply patent-specific, federal personal jurisdiction law to this state declaratory judgment/contract action and finds no basis in the complaint or plaintiffs' submissions in opposition to Motion 001 to establish general jurisdiction over either TechDev or the Foundation directly or under a veil-piercing/alter-ego theory such that requisite protections of due process are not infringed under *Daimler* and its New York State progeny.

2. Specific/Long-Arm Jurisdiction Under CPLR 302 (a) (1)

"CPLR 302 (a) (1) authorizes the assertion of long-arm jurisdiction over a non-domiciliary who 'transacts any business within the state or contracts anywhere to supply goods or services in the state.' CPLR 302 (a) (1) is a 'single act statute'; accordingly, physical presence is not required and one New York transaction is sufficient for personal jurisdiction. The statute applies where the defendant's New York activities were purposeful and substantially related to the claim. 'Purposeful' activities are defined as 'those with which a defendant, through volitional acts, avails himself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws' "

(*Mahendra (NY), LLC v National Gold & Diamond Ctr., Inc.*, 125 AD3d 454, 457 [1st Dept 2015] [internal citations omitted]).

Plaintiffs allege that DA LLC's transactions with RPI, DA LLC's litigation activities against Apple in NDNY, and defendants' counsel's 2018 communications with CF Dynamic (a Delaware entity with its principle place of business in New York) regarding the Patent are all acts which constitute business transactions within the state/contracts anywhere to supply goods or services within the state sufficient to establish personal jurisdiction under CPLR 302 (a) (1).

Plaintiffs frame their claims here as a response to defendants' interference (or threat to interfere) with the ongoing 2018 Amazon litigation in Federal Court (NDNY) commenced by CF Dynamic and RPI. Defendants, on the other hand, frame the activities underlying the claims in this action as purely contractual as they surround only a dispute arising from the parties' interpretations of the Marathon, Proceeds, DBD, and Restructuring Agreements.

In their direct capacity, neither defendant purposefully transacted business or contracted for goods/services in New York. The alleged acts that are plainly New York-related transactions are those of the subsidiary and nonparty DA LLC, which contracted with RPI for the Patent license and litigated in NDNY against Apple to monetize its contractual patent rights. Defendants' submissions in support of Motion 001 establish that neither defendant was a party to, or controlled, DA LLC's transactions with RPI or either litigation with Apple in NDNY (NYSCEF 16). Plaintiffs' allegations and submissions in opposition to Motion 001 do not show that defendants were the true parties behind those transactions or that either TechDev or the Foundation exerted such dominion or control over DA LLC that DA LLC was effectively an agent. A subsidiary is not, by default, an agent of its parent or controlled by its parent. The sale of DA LLC to Marathon by defendants does not constitute a New York transaction of business sufficient to satisfy CPLR 302 (a) (1) simply because it involves the transfer of the RPI Patent license. The Marathon Agreements involved the sale of DA LLC and its various patent portfolios; while one of those patent licenses (the Patent at issue here) originated in New York through the RPI transaction, plaintiffs do not allege that the Marathon Agreements occurred in, or were specifically connected to, New York, involved/applied New York law, or was executed by New York entities. In fact, all the entities that executed the Marathon Agreements are non-domiciliaries, and those contracts specify Texas as the venue for disputes and the governing law.

The court disagrees with plaintiffs that CPLR 302 (a) (1) is satisfied and specific jurisdiction is appropriate because defendants' counsel "approached" plaintiffs in 2018, threatened to interfere with CF Dynamic's Patent rights and the related Amazon litigation, and "demanded" payment to remedy the dispute. The allegations for those acts are vague, unsupported, contradictory, and/or conclusory (non-specific 2018 communications, unspecified negotiations, vague statements that plaintiffs' unspecified offer was "refused" and defendants' counter-offer "demanded" an unspecified lump-sum payment, plaintiffs were "approached" by counsel on behalf of Spangenberg, not TechDev or the Foundation) and do not qualify as a "single act" to establish specific jurisdiction under CPLR 302 (a) (1).

Even assuming that the above acts qualify under CPLR 302 (a) (1), and that DA LLC's New York efforts and Spangenberg's/IP Nav's involvement with New York matters were to be deemed acts of defendants' alter-egos/agents, none of the transactions or contracts have a sufficient nexus with these declaratory judgment claims (*see Nelson v Wells Fargo Bank N.A.*, 2019 WL 2514229, at *8, 2019 U.S. Dist. LEXIS 101779, at *22 n 8 [SDNY June 18, 2019], citing *Associated Aviation Underwriters v DAP Holding, N.V.*, 2003 WL 21277148, at *3, 2003 U.S. Dist. LEXIS 9125, at *8-10 [SDNY May 30, 2003] [discussing New York State cases]).

To maintain an action against a nondomiciliary under CPLR 302 (a) (1), the plaintiff must establish "the existence of some articulable nexus between the business transacted and the cause of action sued upon." *Associated Aviation Underwriters*, 2003 WL 21277148, at *3, 2003 U.S. Dist. LEXIS 9125, at *8-10). Here, plaintiffs neither allege or submit in opposition to Motion 001 anything to establish that there is a substantial nexus between the DA LLC litigations and the current claims. Further, defendants' sale of DA LLC to Marathon is matter of contract law that does not involve any New York entities and was not allegedly negotiated or consummated in New York. That the Patent—one of many included in the DA LLC sale—originated in New York does not transform the

Marathon Agreements into New York-related transactions. The Patent is an instrument composed from Federal Law and can be enforced throughout all Federal District Courts in the United States, it is not limited to adjudication in New York District Courts. The court also finds that defendants' 2018 communications with plaintiffs regarding the Patent do not, themselves, constitute New York transactions sufficient to establish specific jurisdiction against defendants under CPLR 302 (a) (1). The communications are based on Marathon's transfer and the written consent required under the Marathon Agreements, which are not New York-related contracts and the sale of DA LLC was not a New York transaction within the scope of the statute under these circumstances.

While plaintiffs' claims here fail for lack of personal jurisdiction over the named defendants, there are other forums in which they are free to pursue these or other claims apart from the arbitration venue that is the subject of Motions 004 and 005, regardless whether the arbitrator there determines that the claims as filed are arbitrable or not. This court, however, declines to expand *Daimler* or pinch the protections of due process to permit these claims to survive Motion 001. Finally, the court declines to accommodate plaintiffs' request for a hearing on personal jurisdiction as such a hearing would seemingly waste client, counsel, and court resources.

Accordingly, it is

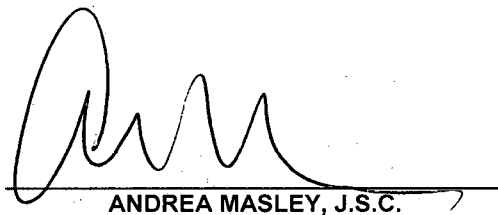
ORDERED that Defendants' motion to dismiss pursuant to CPLR 3211 (a) (8) filed as Motion Sequence Number 001 is granted and the complaint is dismissed against both defendants in its entirety; and it is further

ORDERED that Motion Sequence Number 004 is denied as moot; and it is further

ORDERED that Motion Sequence Number 005 is denied as moot.

Motion Seq. No. 001:

6/27/19
DATE


ANDREA MASLEY, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

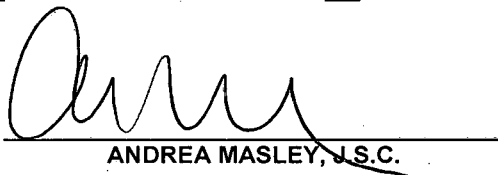
- NON-FINAL DISPOSITION
- GRANTED IN PART OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

Motion Seq. No. 004:

6/29/19
DATE


ANDREA MASLEY, J.S.C.

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APPLICATION:

CHECK IF APPROPRIATE:

Motion Seq. No. 005:

6/27/19
DATE


ANDREA MASLEY, J.S.C.

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APPLICATION:

CHECK IF APPROPRIATE: