

**Club-M Yachting Ltd. v Goldsworthy**

2020 NY Slip Op 31369(U)

May 14, 2020

Supreme Court, New York County

Docket Number: 156097/2019

Judge: Kathryn E. Freed

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

**PRESENT:** HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

*Justice*

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CLUB-M YACHTING LTD., CLUB M LLC, NAFTALI GROUP  
LLC, MIKI NAFTALI

Plaintiff,

- v -

SCOTT GOLDSWORTHY,

Defendant.

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**INDEX NO.** 156097/2019

**MOTION DATE** 03/21/2020

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21

were read on this motion to/for

DISMISS

In this declaratory judgment action, defendant Scott Goldsworthy (“Goldsworthy”) moves, pursuant to CPLR 3211(a)(8) and 327, to dismiss the complaint based on lack of personal jurisdiction and/or based on the doctrine of forum non conveniens (Doc. 3). Plaintiffs Club-M Yachting Ltd. (“Club-M Yachting”), Club M LLC (“Club M”), Naftali Group LLC (“Naftali Group”) and Miki Naftali (“Naftali”) (collectively “plaintiffs”) oppose the motion (Doc. 9-17). After oral argument and a review of the parties’ papers, as well as the relevant statutes and case law, the motion is decided as follows.

**FACTUAL AND PROCEDURAL HISTORY:**

In June 2019, plaintiffs commenced the instant action by filing a summons and complaint against Goldsworthy (Doc. 1). In the complaint, plaintiffs alleged that, in or about 2016, Goldsworthy, a yacht broker, tried to convince Naftali to purchase a tri-deck motor yacht that was

over 40 meters in length (Doc. 1 ¶ 13). During the course of their negotiations, Naftali and Goldsworthy attended several meetings with various shipyards in the United States and abroad (Doc. 1 ¶ 15). At the Miami boat show, in February 2016, Goldsworthy presented Naftali with the option of purchasing a tri-deck motor yacht that was 40 to 45 meters long (“the tri-deck yacht”), which could be built by Baglietto S.p.A (“Baglietto”), a well-known Italian shipbuilding company (Doc. 1 ¶ 17-18). Discussions with Baglietto regarding Naftali’s potential purchase of the tri-deck yacht continued for several months, with several meetings taking place in Florida and culminating with a meeting in June 2016 in New York between Goldsworthy, Naftali and Michele Gavino (“Gavino”), Baglietto’s chief executive officer (Doc. 1 ¶ 19). Although Naftali and Goldsworthy attended the Monaco boat show in September 2016 to further assess whether Naftali would buy the tri-deck yacht, in or about October 2016, Naftali decided against making the purchase (Doc. 1 ¶ 20-21). Plaintiffs alleged that, from that point on, Naftali ceased his working relationship with Goldsworthy concerning the potential acquisition of the tri-deck yacht from Baglietto (Doc. 1 ¶ 21).

Although Gavino allegedly contacted Naftali in June 2017 to discuss different projects that were taking place at the shipyard, Naftali informed Gavino that he was considering a different project with another Italian shipping company, called Rossinalvi, for the construction of a smaller motor yacht, which would be approximately 35 to 37 meters in length (“the smaller yacht”) (Doc. 1 ¶ 24-25). Negotiations with Rossinalvi for the construction of the smaller yacht commenced in October 2017; however, in November 2017, Rossinalvi attempted to renegotiate the price for the construction of the smaller yacht, prompting Naftali to instead enter into negotiations with Baglietto to build the same model (Doc. 1 ¶ 29-30). In January 2018, Club M, the holder of 100%

of Club-M Yachting's interests, executed an agreement with Baglietto for the construction of the smaller yacht (Doc. 1 ¶ 31).

Plaintiffs alleged two causes of action: (1) a declaratory judgment declaring that Goldsworthy is not entitled to a sales commission related to the construction of the smaller yacht; and (2) “[Goldsworthy] intentionally and unjustly interfered with or otherwise disrupted the business relationship by claiming [that] he is entitled to a commission as a result of [p]laintiffs' construction of [the smaller yacht]” (Doc. 1 at 8). In the complaint, plaintiffs claim that Florida law governs this action insofar as that state has the greatest connection to this dispute given that Goldsworthy is licensed in Florida as a licensed yacht salesperson and that the dispute concerns the construction of the smaller yacht (Doc. 1 at 4).

In August 2019, Goldsworthy commenced a similar action against Naftali and Baglietto in Florida seeking, *inter alia*, a judgment declaring that he is owed 5% commission from the sale of the smaller yacht (Doc. 15).

On August 1, 2019, Goldsworthy filed the instant motion (Doc. 3). He argues, *inter alia*, that the complaint must be dismissed because this Court lacks personal jurisdiction over him under New York's long-arm statute (Doc. 4 at 3). Specifically, he contends that CPLR 302(a)(1) does not apply under these circumstances because the only relevant meeting in New York was “an isolated occurrence over the parties' two year history with this deal” that is “indirectly involved” with plaintiffs' claims (Doc. 4 at 5). Additionally, claims Goldsworthy, his yacht brokerage business is located in Florida and he has never received any benefits or protection from the application of New York's laws during his professional career (Doc. 4 at 5-6).

In support of his motion, Goldsworthy furnishes an affidavit in which he avers, *inter alia*, that his principal place of business and permanent residence are in Fort Lauderdale, Florida (Doc.

5 ¶ 1). Goldsworthy further represents that, for six years, he has served as Naftali's broker for the purchase and sale of yachts (Doc. 5 ¶ 4). From 2016 through the fall of 2017, Goldsworthy served as Naftali's broker in connection with the purchase of a new custom yacht, and he avers that they agreed that his commission would be 5% of the gross sales price (Doc. 5 ¶ 6). Goldsworthy asserts that the criteria, design, quality specifications, price point, and their selection of possible shipyards took place in Florida; that a meeting with Naftali and Gavino took place in Florida in 2016 to discuss the tri-deck yacht, at which time they discussed Goldsworthy's 5% commission; and that the parties had over a dozen meetings with Naftali in Florida (Doc. 5 ¶ 7, 9).

Goldsworthy maintains that, although two of his meetings with Naftali took place in New York, "only one pertained to the Baglietto deal at issue in this case" (Doc. 5 ¶ 10). Moreover, Goldsworthy asserts that the New York meetings were unrelated to his commission for serving as Naftali's broker; that they occurred only after Naftali had retained Goldsworthy in Florida to represent him with respect to the construction of a yacht and after Gavino and Naftali had agreed that Goldsworthy's compensation would be 5% of the gross sales price; and that the meetings took place only after there were substantial discussions in Florida regarding the design and construction of a new yacht (Doc. 5 ¶ 12).

Goldsworthy avers that, during the meetings in Florida, he recommended the naval architect, the interior designer, and Baglietto, the yacht manufacturer, all of which were used by Naftali in the construction of the smaller yacht (Doc. 5 ¶ 13). He claims that "[d]espite being continuously involved in Naftali's [tri-deck yacht], in the fourth quarter of 2017, Naftali and Baglietto collectively decided [that Goldsworthy] was not going to receive a commission on the [smaller yacht]," and he was excluded as a broker from their contract (Doc. 5 ¶ 15).

Further, Goldsworthy affirms that, “[i]f this case proceeds in New York, it will cause a significant hardship on [him], both in terms of time and financial commitment. Substantially all of the documents that are at issue in this case are located in Florida, and, other than Naftali, substantially all of the potential witnesses that have knowledge about this matter are located outside of New York” (Doc. 5 ¶ 18).

In opposition to the motion, plaintiffs argue, *inter alia*, that this Court has personal jurisdiction over Goldsworthy because, as he conceded in his motion papers, there was at least one meeting in New York (Doc. 9 at 6). Additionally, Goldsworthy’s brokerage firm at the time, as well as his current firm, both maintain offices in the state (Doc. 9 at 6). Plaintiffs claim that these facts demonstrate that Goldsworthy purposefully and regularly availed himself of the protections of New York such that it would not be unfair or inconvenient for him to maintain a suit in the state (Doc. 9 at 6). Plaintiffs urge that they should be allowed to conduct jurisdictional discovery and that Goldsworthy should be required to disclose all his contacts in New York before the motion is decided (Doc. 9 at 7).

Naftali submits an affidavit in which he affirms, *inter alia*, that Goldsworthy has several contacts to New York (Doc. 10 ¶ 7). First, Naftali claims that, in or about 2016, Goldsworthy worked for Campers and Nicholsons International which, according to its website (Doc. 12), maintained an office in New York, New York (Doc. 10 ¶ 9). Second, Goldsworthy currently works for Allied Marine, which also maintains an office in Sag Harbor, New York (Docs. 10 ¶ 10-11; 13-14). Naftali disputes that there were only two meetings in New York; instead, he contends that there were three meetings (Doc. 10 ¶ 13).

Naftali maintains that New York is not an inconvenient forum because, among other things, Goldsworthy has traveled to New York to conduct business; Naftali Group’s documents are

located in New York;<sup>1</sup> it will be easier for potential witnesses from Baglietto to travel to New York instead of Florida since there are no direct flights from Milan, Italy to Fort Lauderdale, Florida; and Goldsworthy will not suffer any economic hardship because his firm was retained on a contingency basis (Doc. 10 ¶ 20-25).

### LEGAL CONCLUSIONS:

“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. [However,] [t]he statute applies where the defendant's New York activities were purposeful and substantially related to the claim” (*C Mahendra [N.Y.], LLC v National Gold & Diamond Center, Inc.*, 125 AD3d 454, 457 [1st Dept 2015] [internal quotation marks and citations omitted]). “Essential to the maintenance of a suit against a nondomiciliary under CPLR 302[(a)(1)] is the existence of some articulable nexus between the business transacted and the cause of action sued upon” (*McGowan v Smith*, 52 NY2d 268, 272 [1981] [citation omitted]; *see Fischbarg v Doucet*, 38 AD3d 270, 273 [1st Dept 2007], *affd* 9 NY3d 375 [2007]).

“On a motion to dismiss pursuant to CPLR 3211(a)(8), the plaintiff has the burden of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate jurisdiction” (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485, 486 [1st Dept 2017] [citations omitted]). This Court finds that plaintiffs have failed to establish that Goldsworthy, a

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<sup>1</sup> Naftali Group is an LLC with its principal place of business in New York County. It is the holder of 100% of Club M’s interests (Doc. 1 ¶ 3).

resident of Florida, is subject to New York's long-arm jurisdiction pursuant to CPLR 302(a)(1). Although plaintiffs rely on several meetings in New York in 2016 to argue that this Court has personal jurisdiction over Goldsworthy, their failure to describe the substance of the meetings and their connection to the specific claims asserted renders the complaint jurisdictionally defective (*see Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d at 488; *C-Life Group v Generra Co.*, 235 AD2d 267, 267 [1st Dept 1997]). Of the three meetings which allegedly took place in New York, Naftali only affirms that the first, to discuss the potential purchase of the tri-deck yacht, occurred at Naftali Group; that the second meeting was a dinner meeting with the CEO of Baglietto; and that there was a third meeting between Naftali, Goldsworthy, and Horacio Bozzo, a naval architect that was being considered for the tri-deck yacht (Doc. 10 ¶ 14-16). Naftali does not claim that Goldsworthy's commission was negotiated, or even discussed, during these meetings, or that Goldsworthy's alleged tortious interference took place during the same (*see Biz2Credit, Inc. v Kular*, 2015 WL 2445076, \*6 [SDNY 2015]; *Presidential Realty Corp. v Michael Sq. W.*, 44 NY2d 672, 673 [1978]; *compare Lazard Freres & Co., LLC v. West\*Group Prop., LLC*, 3 AD3d 351, 351-352 [1st Dept 2004]). "Meetings that do not result in the execution of a contract or are not essential to or do not substantially advance the business relationship rarely provide the basis for jurisdiction pursuant to . . . [CPLR] 302(a)(1)" (*Biz2Credit, Inc. V Kular*, 2015 WL 2445076 at 6) and, thus, under these circumstances, this Court finds that these three isolated meetings in New York are insufficient to establish personal jurisdiction.

Plaintiffs' argument regarding Goldsworthy's former and current employer is also insufficient to confer jurisdiction. Goldsworthy was sued in his individual capacity, and he affirms that "at no time did [he] utilize a New York office of any brokerage firm, or meet with any New York broker or office staff about the [the tri-deck yacht]"; instead, he "worked on the project

exclusively, with assistance from [his] staff in Fort Lauderdale, Florida” (Doc. 21 ¶ 4). Thus, this Court finds that such employment is irrelevant to the instant inquiry. Based on the foregoing, Goldsworthy’s motion is granted and the complaint is dismissed.

The remaining arguments are either without merit or need not be addressed given the findings above.

Therefore, in accordance with the foregoing, it is hereby:

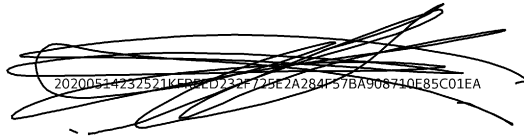
**ORDERED** that defendant Scott Goldsworthy’s motion, pursuant to CPLR 3211 (a) (8), to dismiss the complaint based on lack of personal jurisdiction is granted and the complaint is dismissed; and it is further

**ORDERED** that, within 20 days after this order is uploaded to NYSCEF, counsel for defendant shall serve a copy of this order, with notice of entry, on all plaintiffs, as well as on the County Clerk (60 Centre Street, Room 141 B), in accordance with the e-filing protocol, who is directed to enter judgment accordingly; and it is further

**ORDERED** that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.govisupctmanh](http://www.nycourts.govisupctmanh)); and it is further

**ORDERED** that this constitutes the decision and order of the Court.

5/14/2020  
DATE



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KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE