

**Schultz v Ahuja**

2020 NY Slip Op 35193(U)

February 3, 2020

Supreme Court, Westchester County

Docket Number: Index No. 59650/2019

Judge: Charles D. Wood

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

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**JOSEPH SCHULTZ,**

Plaintiffs,

-against-

**DECISION & ORDER  
Index No. 59650/2019  
Sequence Nos. 1&2**

**AJAY S. AHUJA, M.D., NEBIL B. AYDIN M.D., RICHARD HUYNH D.O., JOHN NOWAKOWSKI M.D., RANDY A. GOLDBERG M.D., TEJINDERPAL SINGH M.D., ERIC WOLD M.D., EDWARD JARVIS M.D., TINA COCUZZA M.D., IMMEDIATE MEDICAL CARE CENTER, AYDIN PLASTIC SURGERY PROFESSIONAL ASSOCIATION, WESTCHESTER MEDICAL CENTER ADVANCED PHYSICIAN SERVICES, P.C. A/K/A ADVANCED PHYSICIAN SERVICES P.C., AND WESTCHESTER COUNTY HEALTH CARE CORPORATION D/B/A WESTCHESTER MEDICAL CENTER,**

Defendants.

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**WOOD, J.**

New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 24-37, were read in connection with Motion Seq 1 by defendant Ajay S. Ahuja, M.D. pursuant to CPLR 3211(a)(7)(8), 301, 302(a), 308 and 3013, to dismiss complaint for lack of personal jurisdiction; and Cross Motion Seq 2 by plaintiff to extend time for Alternate Service as for Dr. Ahuja.

NOW based upon the foregoing, the motions are decided as follows:

In the instant motion, Dr. Ahuja contends that plaintiff cannot justify general or specific jurisdiction over him in New York.

To gain personal jurisdiction over a non-domiciliary, there are two major categories, first, a court may assert general all-purpose jurisdiction by New York's general jurisdiction statute, CPLR 301, and second, pursuant to specific jurisdiction, which is sometimes referred to as the long arm statute, CPLR 302(a), for specific conduct-linked jurisdiction over a particular defendant.

“A court with general jurisdiction may hear any claim against that defendant, even if all the incidents underlying the claim occurred in a different State” (Aybar v Aybar, 169 AD3d 137, 142–43 [2d Dept 2019], leave to appeal dismissed, 33 NY3d 1044 [2019]). CPLR 301 provides that a court “may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore,” and does not give New York courts “all jurisdiction over persons which they might exercise in a manner consistent with due process” (Pichardo v Zayas, 122 AD3d 699, 702 [2d Dept 2014]).

Dr. Ahuja established that he has no contacts with New York, let alone continuous and systematic contacts to warrant obtaining general jurisdiction over him in New York. Additionally, plaintiff has not alleged facts in opposition which would support the exercise of personal jurisdiction under New York's general jurisdiction statute, CPLR 301, over Dr. Ahuja who was not domiciled in New York. (Qudsi v Larios, 173 AD3d 920, 922 [2d Dept 2019]).

Turning to New York's long-arm statute, CPLR § 302, states:

§ 302. Personal jurisdiction by acts of non-domiciliaries

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or
2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
  - (I) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
  - (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or
4. owns, uses or possesses any real property situated within the state.

“[P]roof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted” (Am./Int'l 1994 Venture v Mau, 146 AD3d 40, 51–52 [2d Dept 2016]). When a motion is made to dismiss an action for lack of personal jurisdiction, the plaintiff bears the ultimate burden of proving a basis for such jurisdiction over a defendant (Waggaman v Arauzo, 117 AD3d 724 [2d Dept 2014]).

When evaluating whether long arm jurisdiction is applicable in a case, the Court of Appeals found that<sup>1</sup>:

“Whether a non-domiciliary is transacting business within the meaning of CPLR 302(a)(1) is a fact based determination, and requires a finding that the non-domiciliary's activities were purposeful and established “a substantial relationship between the transaction and the claim asserted” Purposeful activities are volitional acts by which the non-domiciliary “ ‘avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws’ ” More than limited contacts are required for purposeful activities sufficient to establish that the non-domiciliary transacted business in New York. The lack of an in-state physical presence is not dispositive of the question whether a non-domiciliary is transacting business in New York. Indeed, “[w]e have in the past recognized CPLR 302(a)(1) long-arm jurisdiction over commercial actors ... using electronic and telephonic means to project themselves into New York to conduct business transactions”

(Paterno v Laser Spine Inst., 24 NY3d 370, 375–76, [2014]).

Here, Dr. Ahuja argues that the court could not exercise long-arm jurisdiction over him,

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<sup>1</sup>Internal citations omitted.

because he had not transacted any business within the state that would satisfy the requirements of CPLR 302. In his affidavit, Dr. Ahuja attests that: he never has been licensed to practice medicine in New York, where this action was commenced; did not maintain an office in New York; does not transact business or own property in New York; did not treat any patient in New York; never advertised his services in New York; did not regularly do or solicit business in New York not affiliated with any hospital, consortium practice group or medical office in New York; and maintains no other contacts with New York which would support the exercise of long-arm jurisdiction over him. Additionally, Dr. Ahuja states in his affidavit that he is a physician, and is licensed to practice medicine in Connecticut.

Based upon this record, plaintiff failed to show that Dr. Ahuja, as a non-domiciliary, committed an act by which Dr. Ahuja purposefully avails himself of the privilege of conducting activities within New York.

For the foregoing reasons, there is no basis to impose New York's long-arm jurisdiction over Dr. Ahuja. This Court finds that plaintiff has failed to satisfy the elements required to support jurisdiction under CPLR 302 .

Accordingly, as stated above, it is hereby

ORDERED, that the motion (Seq 1) by defendant Ajay S. Ahuja, M.D., for an order pursuant to CPLR 3211 (a)(8) dismissing the action for lack of personal jurisdiction, as against him is granted, and plaintiff's complaint is dismissed as against Ajay S. Ahuja, M.D.; and it is further

ORDERED, that the cross-motion (Seq 2) for leave to extend time for alternate service against Dr. Ahuja is denied as moot; and it is further

ORDERED, that the parties are directed to appear in the Preliminary Conference Part, Room

811, on *Monday Feb. 24* 2020, at *9:30 AM*, at the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd. White Plains, New York 10601.

This constitutes the decision and order of the court.

All matters not specifically addressed are herewith denied.

Dated: **February 3, 2020**  
**White Plains, New York**



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**HON. CHARLES D. WOOD**  
**Justice of the Supreme Court**

To: All parties' counsel by NYSCEF