

Ahmad v UI Haq

2021 NY Slip Op 30057(U)

January 4, 2021

Supreme Court, Kings County

Docket Number: 518116/2020

Judge: Loren Baily-Schiffman

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 4th day of January, 2021.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

EJAZ AHMAD and
EJAZ AHMED
Plaintiffs,
- against -
TAUQEER UL HAQ and
FAROOQ MIRZA
Defendants.

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Motion Seq. # 1 & 2

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Order to Show Cause, Affidavits, Affirmation and Exhibits	1
Memorandum of Law in Support of Order to Show Cause	2
Notice of Cross-Motion, Affidavits, Affirmation and Exhibits	3
Plaintiffs' Affirmation in Opposition to Cross-Motion	4

Upon the foregoing papers Ejaz Ahmad and Ejaz Ahmed ("Plaintiffs"), move this Court — by Order to Show Cause — for an Order pursuant to CPLR § 6301 and this Court's inherent equitable authority, granting Plaintiff a preliminary injunction that (a) directs Taqueer Ul Haq and Farooq Mirza ("Defendants") to permanently delete three allegedly defamatory statements from all social media and other platforms where these statements were published; and (b) enjoins Defendants from publishing any further communications accusing Plaintiffs of spying for the United States of America or India, or otherwise accusing Plaintiffs of violating United States or Pakistani law. Defendants cross-move for an Order (a) pursuant to CPLR § 510(1) changing the venue from Kings County to Bronx County, or in the alternative pursuant to CPLR §§ 3211(a)(1) and (10), dismissing Plaintiffs' first and third causes of action against

Defendant HAQ; and (b) pursuant to CPLR § 3211(a)(8) dismissing the Complaint against Defendant Mirza for lack of jurisdiction.

Background

This is a defamation case. Plaintiffs allege that on or about August 18, 2020, September 1, 2020 and September 16, 2020 Defendants posted text and articles on WhatsApp accusing Plaintiffs of several crimes, including running a “spy network,” and claiming Plaintiffs were detained by the NYPD. The text and articles in question refer to one Ejaz or Ijaz Shahid, which Plaintiffs allege is a pseudonym for one or both of the Plaintiffs. As a result of the alleged defamation, Plaintiffs allege that they and their families were threatened and their jointly held pharmacy was vandalized.

Discussion

Dismissing Mirza

Defendant Farooq Mirza cross-moves to dismiss the complaint against him for lack of jurisdiction. Upon a motion to dismiss for lack of personal jurisdiction, it is the plaintiff who bears the “ultimate burden of proof” to establish a basis for such jurisdiction. ***America/Intl. 1994 Venture v. Mau, 146 A.D.3d 40, 51 (2d Dep’t 2016)***. “[A] New York court may not exercise personal jurisdiction over a non-domiciliary unless two requirements are satisfied: the action is permissible under the long-arm statute (CPLR 302) and the exercise of jurisdiction comports with due process.” ***Williams v. Beemiller, Inc., 130 N.Y.3d 523, 528 (2019)***. Under the Due Process clause of the United States Constitution, a state may only exercise personal jurisdiction over a defendant when the defendant has established “minimum contacts” with the forum

state. *International Shoe Co. Washington, 326 U.S. 310, 316 (1945)*; *Schultz v. Hyman, 201 A.D.2d 201 (4th Dep't 1994)*.

In the instant case, Mirza submitted evidence that proves he is domiciled in New Jersey. Specifically, Mirza attached a copy of his driver license and two bills which all use the same New Jersey address. Plaintiffs concede that Mirza is domiciled in New Jersey and do not explain how Mirza has minimum contacts with New York sufficient to satisfy the *International Shoe* standard. Plaintiffs merely argue that Mirza is subject to New York's jurisdiction because he transacts business in New York, pursuant to CPLR § 302(a)(1). However, in order for a New York court to exercise jurisdiction under CPLR § 302(a)(1), the defendant must have conducted sufficient activities to have transacted business in New York and the claims must arise from those transactions. *Al Rushaid v. Picket & Cie, 28 N.Y.3d 316, 323 (2016)*. Here, Plaintiffs do not even allege that their claims arise out of Mirza's New York business transactions. Accordingly, Plaintiffs have neither established that Mirza has minimum contacts with New York nor that he is covered under CPLR § 302. The branch of the motion that seeks to dismiss the Complaint against Mirza is, therefore, granted.

Changing Venue

Defendant Taqueer Ul Haq cross-moves to change venue from Kings County to Bronx County where Defendant Haq resides. Under CPLR § 503(a) "[e]xcept where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; [or] the county in which a substantial part of the events or omissions giving rise to the claim occurred." "For venue purposes, a residence is where a party stays for some time with a bona fide intent to retain the place as a residence for some length of time

and with some degree of permanency." *Deas v Ahmed*, 120 AD3d 750 (2d Dep't 2014). Under CPLR § 511(a) a demand to change venue "on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served."

In the present case, Plaintiffs do not contend that Kings County is the proper venue. Plaintiffs seem to have placed venue in Kings County because of an errant address for Defendant Mirza. Plaintiffs argue that since Defendants failed to serve them with a demand to change venue, Plaintiffs are no longer entitled to change venue. However, Plaintiffs omitted from the Summons the basis for placing the venue in Kings County. The Appellate Division, Second Department has held that when Plaintiffs fail to specify in the Summons the basis for placing venue in a county, and Defendants subsequently fail to demand to change venue, the motion court should address a motion to change venue as a matter of discretion. *See, Accardi v. Kaufman*, 82 A.D.3d 803 (2d Dep't 2011) holding that the Nassau County Supreme Court providently exercised its discretion in changing venue in a such a case; and *Brash v. Richards*, 87 A.D.3d 556 (2d Dep't 2011) holding that the Kings County Supreme Court improvidently exercised its discretion by failing to do so. Accordingly, this Court will review the motion as a matter of discretion. The Court notes that Defendant Haq is pro se. The Court also notes that venue in Kings County is improper. Therefore, the branch of the cross-motion to change venue from Kings County to Bronx County is granted.

Order to Show Cause/Injunctive Relief

As the Court has dismissed the Complaint against Mirza and granted the cross-motion to change venue to Bronx County, the Court will not entertain the underlying Order to Show Cause. It is Hereby

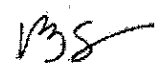
ORDERED that the branch of the cross-motion dismissing the Complaint against Farooq Mirza is GRANTED; and it is further

ORDERED that the branch of the cross-motion to change venue from Kings County to Bronx County is GRANTED; and it is further

ORDERED that the Kings County Clerk, upon service of a copy of this Order with Notice of Entry and payment of required fees, if any, is directed to transfer all papers filed in this action to the Bronx County Clerk for filing and assignment.

This is the Decision and Order of the Court.

ENTER



LOREN BAILY-SCHIFFMAN
JSC

KINGS COUNTY CLERK
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