

V6CO LLC v Business Advocate Law PLLC
2022 NY Slip Op 31579(U)
May 13, 2022
Supreme Court, New York County
Docket Number: Index No. 653405/2021
Judge: Joel M. Cohen
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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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V6CO LLC,

Plaintiff,

- v -

BUSINESS ADVOCATE LAW PLLC, JOSEPH DANIEL
BARIAULT, WASTE MANAGEMENT SOLUTION LLC,
WMS SUPPLIES LLC, DIANA GLENN, ATHENA
BIOHEALTH LLC, DIVA LAUREN, FIRST DEFENSE
INTERNATIONAL GROUP, INC., FIRST DEFENSE
INTERNATIONAL SECURITY SERVICES CORP.,
HAROLD W. WILLIAMS, JR.

Defendants.

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INDEX NO. 653405/2021

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to DISMISS.

Upon the foregoing documents, and for the reasons stated on the record following oral argument on May 12, 2022, it is

ORDERED that the motion of defendants Joseph Daniel Bariault and Business Advocate Law PLLC (collectively, “Bariault”) to dismiss the complaint is **granted** on the ground that this Court lacks personal jurisdiction over those defendants. The dismissal is without prejudice to Plaintiff pursuing its claim against Bariault elsewhere.

A court in New York may exercise personal jurisdiction over a non-domiciliary defendant where (i) the court has long-arm jurisdiction over the defendant under CPLR 302, and (ii) the exercise of such jurisdiction comports with due process (*Williams v Beemiller, Inc.*, 33 NY3d 523,

528 [2019]). Plaintiff failed to establish that Defendant transacts business or committed a tort in New York under CPLR 302 or that exercising jurisdiction over Bariault would comply with due process.

Defendant is a Seattle-based lawyer. He submitted evidence showing that his Washington IOLTA Trust Account was opened in Washington (NYSCEF 66). Although Plaintiff concedes that it had no communication with Bariault, Plaintiff argues that Bariault “represented” in an escrow agreement (to which Plaintiff was not a party) that he had a bank account in New York. While the escrow agreement (governed by Colorado law and providing for exclusive jurisdiction in Colorado) does list a New York address for Bank of America wire transfers, that does not mean that this out-of-state lawyer’s IOLTA account (subject to regulation under Washington law) itself was opened or located in New York and there is no evidence to suggest it was. It is well established that “indirect use of the New York banking system does not constitute the transaction of business in New York pursuant to CPLR 302 (a) (1). Nor does it constitute the commission of a tort within New York pursuant to CPLR 302 (a) (2)” (*Bluewaters Communications Holdings, LLC v Ecclestone*, 122 AD3d 426, 427 [1st Dept 2014] [internal citations omitted]).

Indeed, if the Court were to hold otherwise, every wire transfer made through a Bank of America account opened anywhere in the United States (or perhaps the world) that is effected by the bank in New York would confer jurisdiction upon this Court. Exercising personal jurisdiction in such circumstances “would not satisfy the well-established principles of due process, which require that defendants could ‘reasonably foresee’ facing suit in the forum” (*State v First Abu Dhabi Bank PJSC*, 2022 NY Slip Op 22113 [Sup Ct, NY County 2022], citing *Copp v Ramirez*, 62 AD3d 23, 30-31 [1st Dept 2009]).

The bottom line is that Bariault, a sole practitioner in Seattle, does not conduct business in New York, does not operate offices in New York, does not have any employees in New York, and did not “purposefully avails [himself] of the privilege of conducting activities within the forum State” (*Beemiller*, 33 NY3d at 528 [citation omitted]). Bariault’s extremely limited contacts with New York are too attenuated to satisfy due process requirements (*Walden v Fiore*, 571 US 277, 283-284 [2014]).

It is further ORDERED that the complaint is dismissed without prejudice as against Defendants Joseph Daniel Bariault and Business Advocate Law PLLC, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

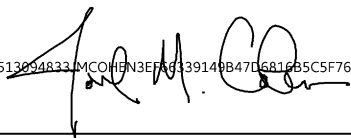
ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that the parties upload a transcript of the proceedings to NYSCEF upon receipt.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

5/13/2022

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE