

<b>Casinathen v TerrAscend USA Inc.</b>
2022 NY Slip Op 33007(U)
September 8, 2022
Supreme Court, New York County
Docket Number: Index No. 150366/2022
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN PART 58

Justice

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INDEX NO. 150366/2022

DHARSHINI CASINATHEN

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION + ORDER ON MOTION

TERRASCEND USA INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for DISMISSAL.

In this employment discrimination and breach of contract action, defendant TerrAscend USA Inc. moves, pursuant to CPLR 3211(a)(1), (2), and (8), for an order dismissing the complaint. Plaintiff Dharshini Casinathen opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, defendant's motion is decided as follows.

Factual and Procedural Background

Plaintiff is a former Senior Vice President of defendant, a company that grows and sells cannabis products (Doc No. 1 at 1). Plaintiff commenced this action after defendant terminated her employment in April 2021 (Doc No. 1 at 10). Plaintiff's first cause of action was for breach of contract, and the second and third causes of action sounded in gender discrimination and retaliation in violation of the New York Human Rights Law and the New Jersey Law Against Discrimination, respectively (Doc No. 1 at 12). Plaintiff alleged, among other things, that her termination was retaliatory since it occurred after she lodged a formal sexual harassment complaint against one of defendant's other employees (Doc No. 1 at 10-11). She further alleged

that her termination resulted from gender discrimination given a pattern of women in leadership positions being replaced by male colleagues (Doc No. 1 at 10-11).

Defendant now moves, pursuant to CPLR 3211(a)(1), (2), and (8) for an order dismissing plaintiff's complaint, arguing that this Court does not have personal jurisdiction over it and that this Court does not have subject matter jurisdiction over plaintiff's New York Human Rights Law claim (Doc Nos. 5-6). Plaintiff opposes the motion on the grounds that defendant is subject to personal jurisdiction in New York and that this Court has subject matter jurisdiction over the gender discrimination claim (Doc No. 20).

### Legal Conclusions

#### Defendant's Request for Dismissal Pursuant to CPLR 3211(a)(2)

“Whether New York courts have subject matter jurisdiction over a nonresident plaintiff's claims under the [Human Rights Law] turns primarily on [his or] her physical location at the time of the alleged discriminatory acts, and not on [his or] her taxpayer status” (*Benham v eCommission Solutions, LLC*, 118 AD3d 605, 606 [1st Dept 2014]; see *Wolf v Imus*, 170 AD3d 563, 564 [1st Dept 2019], *lv denied* 34 NY3d 907 [2019]). Nonresidents must allege and demonstrate that the discriminatory acts occurred within New York and that such acts “had an impact in New York” (*Hoffman v Parade Pubs.*, 15 NY3d 285, 291 [2010]; see *Hardwick v Auriemma*, 116 AD3d 465, 466-467 [1st Dept 2014], *lv denied* 23 NY3d 908 [2014]). To sufficiently demonstrate impact, a plaintiff must specifically allege *how* the alleged discriminatory act negatively affected “the terms, conditions or extent of [his or] her employment” within New York (*Hardwick*, 116 AD3d at 467-468; accord *Jarusauskaite v Almod Diamonds, Ltd.*, 198 AD3d 458, 459 [1st Dept 2021], *lv denied* 38 NY3d 904 [2022]). “The fact that the alleged discriminatory acts and unlawful decision to terminate plaintiff's

employment occurred in New York is insufficient to plead impact in New York” (*Pakniat v Moor*, 192 AD3d 596, 597 [1st Dept 2021] [citations omitted], *lv denied* 37 NY3d 917 [2022]; *see Jarusauskaite*, 198 AD3d at 459). Further, “[w]ithout more, [a] plaintiff’s mere employment in New York does not satisfy the impact requirement” (*Hardwick*, 116 AD3d at 467 [internal quotation marks omitted]).

Because plaintiff worked in New York, she was subject to the protections of the New York Human Rights Law (*see Griffin v Sirva, Inc.*, 29 NY3d 174, 188 [2017]; *Iwankow v Mobil Corp.*, 150 AD2d 272, 273 [1st Dept 1989]; *Matter of Walston & Co. v New York City Commn. on Human Rights*, 41 AD2d 238, 241 [1st Dept 1973]). However, plaintiff is clearly a nonresident, since she admits that she resided in New Jersey when defendant terminated her employment (Doc No. 1 at 10-11; Doc No. 12 at 5). Therefore, she must demonstrate that the discriminatory acts occurred within New York and impacted her in the state as well (*see Hoffman*, 15 NY3d at 291). Yet, in her complaint and affidavit in opposition to defendant’s motion, she does not identify where defendant’s discriminatory acts occurred. She only indicates that she was fired in an April 2021 meeting with two of defendant’s corporate officers (Doc No. 1 at 10-11; Doc No. 12). She also fails to assert any factual allegations that defendant’s discriminatory acts impacted her in New York (Doc No. 1 at 9-12; Doc No. 12). Thus, this Court has no subject matter jurisdiction over her New York Human Rights Law claim against defendant (*see Pakniat*, 192 AD3d at 597; *Hardwick*, 116 AD3d at 467-468).<sup>1</sup>

Defendant’s Request for Dismissal Pursuant to CPLR 3211(a)(8)

As the party seeking to assert jurisdiction over defendant, plaintiff bears the burden of demonstrating that defendant is subject to personal jurisdiction in New York (*see Cotia (USA)*

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<sup>1</sup> Defendant does not raise the issue of whether this Court has subject matter jurisdiction over plaintiff’s New Jersey Law Against Discrimination claim (Doc No. 1 at 12; Doc No. 6 at 25-27).

*Ltd. v Lynn Steel Corp.*, 134 AD3d 483, 484 [1st Dept 2015]). However, she “need not present definitive proof of personal jurisdiction, but only make a sufficient start in demonstrating such jurisdiction by reference to pleadings, affidavits, and other suitable documentation” (*Avilon Auto. Group v Leontiev*, 168 AD3d 78, 89 [1st Dept 2019] [internal quotation marks and citations omitted]; see *Matter of James v iFinex Inc.*, 185 AD3d 22, 30 [1st Dept 2020]).

“CPLR 302(a)(1) permits a court to exercise [specific] personal jurisdiction over any nondomiciliary who . . . transacts any business within the state or contracts anywhere to supply goods or services in the state” (*Magwitch, L.L.C. v Pusser’s Inc.*, 84 AD3d 529, 531 [1st Dept 2011] [internal quotation marks and citation omitted], *lv denied* 18 NY3d 803 [2012]). “[This] jurisdictional inquiry is twofold: . . . the defendant must have conducted sufficient activities to have transacted business in the state, and . . . the claims must arise from the transactions” (*Rushaid v Pictet & Cie*, 28 NY3d 316, 323 [2016]; see *Paterno v Laser Spine Inst.*, 24 NY3d 370, 376 [2014]). “Once both [of] those prongs are satisfied, there is a further inquiry to determine whether the exercise of personal jurisdiction comports with traditional notions of fair play, substantial justice, and due process” (*English v Avon Prods., Inc.*, 206 AD3d 404, 406 [1st Dept 2022]; see *Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 466-467 [1988]).

Plaintiff has made a prima facie showing that defendant is subject to specific personal jurisdiction in New York. In opposition to defendant’s motion, plaintiff submits, among other things, an affidavit discussing her employment with defendant, her employment offer letter, her pay stubs, and her W-2 tax form (Doc Nos. 12, 15, 18-19). In her affidavit, she avers that she witnessed and interacted with two of defendant’s CEOs who were based in New York City (Doc No. 12 at 2-5). Plaintiff’s offer letter indicates that she was to work in the New York office or

remotely from her home (Doc No. 15 at 1). Her pay stubs and W-2 form also list Manhattan addresses for defendant (Doc Nos. 18-19).

Viewing this information collectively, accepting all of the allegations in plaintiff's complaint and affidavit as true, and drawing inferences in her favor (*see Wilson v Dantas*, 128 AD3d 176, 182 [1st Dept 2015], *aff'd* 29 NY3d 1051 [2017]), plaintiff has made a prima facie showing that defendant transacted business in New York (*see C. Mahendra (NY), LLC v National Gold & Diamond Ctr., Inc.*, 125 AD3d 454, 457 [1st Dept 2015]; *cf. Minella v Restifo*, 124 AD3d 486, 486 [1st Dept 2015]). Additionally, plaintiff has demonstrated that there is a substantial relationship between those transactions and her claims, because the alleged breach of contract and discrimination involved her employment with defendant in New York (*see New York Helicopter Charter, Inc. v Borneman*, 168 AD3d 509, 509 [1st Dept 2019]; *Wilson*, 128 AD3d at 184-185).

This Court's exercise of personal jurisdiction over defendant also comports with due process. Plaintiff's prima facie showing demonstrates that defendant had a New York office at the time it terminated plaintiff's employment (Doc Nos. 12, 15, 18-19). Therefore, defendant should have reasonably anticipated being sued in New York, because it purposefully availed itself of the privileges that come with conducting business within the state (*see English*, 206 AD3d at 407; *Brax Capital Group, LLC v WinWin Gaming, Inc.*, 83 AD3d 591, 592 [1st Dept 2011]).

Because defendant is subject to specific personal jurisdiction in New York, there is no need to address whether it is also subject to general personal jurisdiction in the state. The parties' remaining contentions are either without merit or need not be addressed given the findings set forth above.

Accordingly, it is hereby:

ORDERED that the branch of defendant’s motion seeking dismissal of plaintiff’s claim for violation of the New York Human Rights Law is granted, and plaintiff’s second cause of action is dismissed, and the motion is otherwise denied; and it is further

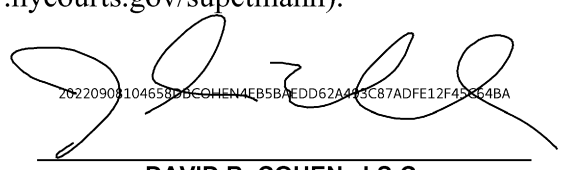
ORDERED that the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff’s second cause of action against defendant for violation of the New York Human Rights Law is severed, and the remainder of the action shall continue against defendant; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after plaintiff’s service of a copy of this order with notice of entry upon defendant; and it is further

ORDERED that counsel for the moving parties 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); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Case* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).



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DAVID B. COHEN, J.S.C.

9/8/2022  
DATE

CHECK ONE:

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

APPLICATION:

CHECK IF APPROPRIATE: