

**Five Star Logistics LLC v Innovasian Cuisine Enters.
Inc.**

2022 NY Slip Op 33977(U)

November 22, 2022

Supreme Court, New York County

Docket Number: Index No. 653357/2022

Judge: Arlene P. Bluth

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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: PART 14

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FIVE STAR LOGISTICS LLC	INDEX NO.	<u>653357/2022</u>
Plaintiff,	MOTION DATE	<u>11/18/2022</u>
- v -	MOTION SEQ. NO.	<u>001</u>
INNOVASIAN CUISINE ENTERPRISES INC.		
Defendant.		

**DECISION + ORDER ON
 MOTION**

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
 were read on this motion to/for DISMISS.

Defendant’s motion to dismiss is granted.

Background

This action arises out of a breach of contract. Plaintiff, a Florida logistics company, provided “carriage and transportation services” to defendant, a Washington based corporation selling Asian food products to grocery and convenience stores (NYSCEF Doc. No. 5). It is unclear to the Court where these stores were located. Plaintiff brought suit alleging defendant failed to pay for plaintiff’s services for which defendant owes \$29,100.00 to plaintiff.

Defendant moves to dismiss the action, claiming that this Court cannot assert personal jurisdiction over defendant. Defendant claims the agreement between the parties contains only a choice of law provision for the agreement, not a forum selection clause. Furthermore, defendant contends that its principal place of business is Washington state, defendant neither owns nor

leases property in New York, conducts no advertising in New York, has never paid taxes in New York, derived only 1.7% of sales revenue in 2021 in New York, and has never engaged in business or taken any other affirmative act in New York. Defendant contends plaintiff cannot assert that its claims arise out of any business conducted in New York. Furthermore, defendant claims it was never properly served and only received a summons with no complaint attached.

In response, plaintiff contends defendant's motion is premature because the complaint was only filed on September 14, 2022 and plaintiff has 120 days to serve defendant, meaning plaintiff has until January 12, 2023 to adequately serve defendant. Additionally, plaintiff claims the choice of law provision provides that New York law applies to the dispute and New York courts are best equipped to decide matters under New York law.

In reply, defendant asserts a choice of law provision is insufficient to assert personal jurisdiction under New York law. Defendant contends that plaintiff has not alleged any additional facts demonstrating a nexus between the business transacted in New York and plaintiff's cause of action. Defendant also claims that plaintiff's claim to perfect service of process does not remedy the issue of personal jurisdiction and this issue should be decided now.

Discussion

"CPLR 302(a)(1) of New York's long-arm statute provides, in relevant part, '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 ... transacts any business within the state or contracts anywhere to supply goods or services in the state.' The CPLR 302(a)(1) jurisdictional inquiry is twofold: under the first prong the defendant must have conducted sufficient activities to have transacted

business in the state, and under the second prong, the claims must arise from the transactions.”
(*Al Rushaid v Pectet & Cie*, 28 NY3d 316, 323, 45 NYS3d 376 [2016]).

“The agreement specifies that any disputes thereunder are to be resolved pursuant to New York law...[a] choice of law clause...absent more, is insufficient to warrant a finding of long-arm jurisdiction pursuant to CPLR 302(a)(1)” (*Peter Lisec Glastechnische Indsutrie GmbH v Lenhardt Maschinenbau GmbH*, 173 Ad2d 70, 72, 577 NYS2d 803 [1st Dept 1991]).

The Court finds plaintiff has failed to demonstrate that this Court has personal jurisdiction over defendant. Plaintiff alleges a breach of contract but does not illustrate how that breach of contract relates to New York. There is no evidence that the products were sent to New York, that the contracts were negotiated in New York or what relation this case has to New York outside of the choice of law provision.

Plaintiff does not point to a causal nexus between the alleged breach and its decision to file suit in New York. Furthermore, plaintiff did not even attempt to demonstrate a “minimum contacts” analysis wherein defendant’s conduct and connection with New York would put defendant on notice that it could be sued in New York. Defendant admits to a certain percent (albeit extraordinarily low) of revenue out of New York state, but plaintiff did not indicate whether that creates a basis for personal jurisdiction over defendant. (*See also Muse Collections, Inc. v Carissima Bijoux, Inc.*, 86 AD3d 631, 632, 927 NYS2d 389 [2nd Dept 2011] [finding that without substantial revenue from conducting interstate commerce in New York, there is no personal jurisdiction over the defendant]). Instead, plaintiff focused on a timeline to complete service despite the fact the defendant is already making motions before this Court.

Plaintiff points to the choice of law provision, claiming that it grants jurisdiction over defendant; plaintiff is mistaken. Choice of law and forum selection (or even jurisdiction) are not

the same thing. The parties agreed that New York Law would apply but they never agreed to litigate in New York Courts. Even if defendant were properly served, because it never agreed to litigate in New York and there is no basis to assert long arm jurisdiction over it, the case is dismissed for lack of jurisdiction.

Accordingly, it is hereby

ORDERED that defendant’s motion to dismiss is granted, the complaint is dismissed and the Clerk is directed to enter judgment accordingly in favor of defendant and against plaintiff along with costs and disbursements upon presentation of proper papers therefor. This is without prejudice to bring this claim in the proper forum.

11/22/2022
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: