

Batts v LVNV Funding LLC
2022 NY Slip Op 34185(U)
December 9, 2022
Supreme Court, New York County
Docket Number: Index No. 153884/2022
Judge: Mary V. Rosado
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MARY V. ROSADO

PART

33M

Justice

-----X

BRENISHA DANIELLE BATTS,

Plaintiff,

- v -

LVNV FUNDING LLC, PORTFOLIO RECOVERY
ASSOCIATES, L.L.C., MEDICAL DATA SYSTEMS, INC.

Defendant.

-----X

INDEX NO. 153884/2022MOTION DATE 12/01/2022MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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

Upon the foregoing documents, and there being no opposition, Defendant LVNV Funding LLC's ("LVNV") motion to dismiss Plaintiff Brenisha Danielle Batts' ("Plaintiff") Complaint for lack of personal jurisdiction, and failure to state a claim is granted.

I. Procedural and Factual Background

Plaintiff filed her Summons and Complaint on May 4, 2022 (NYSCEF Doc. 1). In her Complaint, which is only one page long, Plaintiff alleges that Defendants LVNV, Portfolio Recovery Associates, L.L.C. ("Portfolio"), and Medical Data Systems, Inc. ("Medical Data") (collectively "Defendants") have attempted to collect debts totaling \$903, \$959, and \$3,279 in violation of the Fair Debt Collection Practices Act (*id.* at ¶¶ 4-8). Plaintiff alleges these acts, including the reporting of allegedly mistaken debts to consumer reporting agencies, make the Defendants liable to Plaintiff for defamation, negligence, and negligence *per se* (*id.* at ¶ 8). Plaintiff fails to plead in her Complaint where she is domiciled and where Defendants are domiciled.

Plaintiff never filed affidavits of service on any of the Defendants. On November 16, 2022, LVNV filed the instant motion to dismiss (NYSCEF Doc. 3). In support of its motion, LVNV

provided a notice of service of process from its designated agent in Albany, New York (NYSCEF Doc. 8). That document shows that LVNV was served on October 28, 2022 (*id.*). Plaintiff has filed no opposition in response, and to date, has not filed on NYSCEF any affidavit of service as to any of the Defendants. On November 17, 2022, Defendant Portfolio filed its Answer (NYSCEF Doc. 11). Defendant Medical Data has not answered or otherwise appeared.

II. Discussion

Pursuant to CPLR § 306-b, “service of the summons and complaint shall be made within one hundred twenty days after the commencement of the action or proceeding”. Further, CPLR § 306-b provides that “[i]f service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service.”

According to the service of process documents provided by LVNV, service was not made until October 28, 2022 even though this action was commenced on May 4, 2022 (NYSCEF Doc. 8). Plaintiff served Defendant 177 days after the commencement of her action and is therefore in violation of CPLR § 306-b. Moreover, Plaintiff never sought an extension of time to serve LVNV, nor has she even opposed this motion (*see Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 106 [2001]; *see also Goldstein Group Holding, Inc. v 310 E. 4th St. Hous. Dev. Fund Corp.*, 154 AD3d 458, 458-459 [1st Dept 2017] [Plaintiff’s complaint properly dismissed where service was made after 120 days expired and Plaintiff failed to establish good cause or that an extension of time to serve would be in the interests of justice]). Therefore, the Complaint against LVNV should be dismissed for lack of personal jurisdiction.

Besides CPLR § 306-b, Plaintiff also suffers from another personal jurisdiction obstacle. Indeed, based on the bareboned allegations in the Complaint, and the papers submitted in support

of LVNV's motion, this Court cannot exercise personal jurisdiction over Plaintiff. According to an affidavit executed by Patricia Sexton, LVNV is incorporated in Delaware and has its sole office in Las Vegas, Nevada (NYSCEF Doc. 7 at ¶¶ 6-7). LVNV is registered in New York as a foreign limited liability company and is therefore not domiciled in New York (*id.* at ¶ 8). Thus, this Court may not exercise general jurisdiction over LVNV, but can only exercise specific jurisdiction (*English v Avon Products Inc.*, 206 AD3d 404 [1st Dept 2022]). In order to exercise specific jurisdiction, a defendant must have conducted business within this state, and the plaintiff's claims must arise from the business defendant conducts in New York (*Matter of New York City Asbestos Litig.*, 206 AD3d 442, 443 [1st Dept 2022]). A corporate defendant's registration to do business in a forum state, and the designation of the Secretary of State to accept service of process in the state, does not, without more, constitute sufficient nexus to confer this Court with personal jurisdiction over a corporate defendant (*Fekah v Baker Hughes Inc.* 176 AD3d 527, 528 [1st Dept 2019]).

Further, on a motion to dismiss for lack of personal jurisdiction, the plaintiff has the burden of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate jurisdiction (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485, 486 [1st Dept 2017]). Notably, the Complaint is silent as to where Plaintiff resides or where the alleged collection attempts took place (NYSCEF Doc. 1). Plaintiff has not provided any opposition to LVNV's motion asserting that this Court may not exercise personal jurisdiction over LVNV, nor are there any affidavits or even allegations that would support this Court exercising personal jurisdiction over LVNV. Plaintiff has clearly fallen short of its burden to demonstrate jurisdiction. Moreover, LVNV has demonstrated via Patricia Sexton's affidavit that LVNV is not domiciled in New York and all collection attempts which ostensibly gave rise to Plaintiff's claims have been made at Plaintiff's addresses in Illinois and Georgia (NYSCEF Doc. 7 at ¶ 10).

Thus, because LVNV is not domiciled in New York, LVNV has submitted an affidavit showing Plaintiff's claims against LVNV arose out of LVNV's actions in Illinois and Georgia, Plaintiff has not claimed to be a citizen of New York, and because Plaintiff has failed to meet her burden of showing how this Court may exercise jurisdiction over LVNV, Plaintiff's Complaint against LVNV must be dismissed for lack of personal jurisdiction. As this Court may not exercise personal jurisdiction over LVNV, the Court need not reach whether Plaintiff has sufficiently stated a claim against LVNV.

Accordingly, it is hereby,

ORDERED that Plaintiff Brenisha Danielle Batts' Complaint against Defendant LVNV Funding LLC is dismissed in its entirety; and it is further

ORDERED that within thirty days of entry, counsel for Defendant LVNV Funding LLC shall serve a copy of this Decision and Order with notice of entry upon all parties to this action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

12/9/2022
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

☐

CASE DISPOSED

☒

GRANTED

☐

DENIED

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE