

Pearl Beta Funding, LLC v Elegant Trio Colors Corp

2023 NY Slip Op 31936(U)

June 8, 2023

Supreme Court, Queens County

Docket Number: Index No. 706306/2022

Judge: Pam Jackman Brown

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This opinion is uncorrected and not selected for official publication.

**NEW YORK STATE SUPREME COURT
COUNTY OF QUEENS - IAS Part 19**

SHORT FORM ORDER

**Present: HONORABLE PAM JACKMAN BROWN
Justice**

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PEARL BETA FUNDING, LLC.,

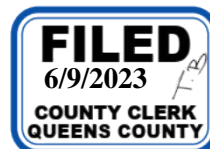
Index #706306/2022

Plaintiff,

Mot Seq 001

-against -

**ELEGANT TRIO COLORS CORP DBA
JAZZY FRANCE and
LEILA TOLENTION CRISTOBAL,**



Defendants.

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The following numbered papers read on this motion by Defendants to dismiss the action for lack of subject matter jurisdiction pursuant to CPLR 3211(a)(2).

E-filed Papers Numbered

- Notice of Motion - Affidavits - Exhibits 4 - 8
- Answering Affidavits - Exhibits10 - 13
- Reply Affidavits14 - 15

Upon the foregoing papers it is ordered that the motion is determined in accordance with this Decision/Order.

Business Corporation Law § 1314 governs actions or proceedings against foreign corporations and specifies what actions over which New York State courts have subject matter jurisdiction. In this case, Plaintiff is a Delaware entity authorized to do business in New York State, Defendant Leila Tolentino Cristobal (hereinafter referred to as “Cristobal”) is an individual residing in California, and Defendant Elegant Trio Colors Corp d/b/a Jazzy France (hereinafter referred to as “Elegant”) is a California State entity. Therefore, BCL § 1314(b) is applicable here as it enumerates five categories in which New York State courts have subject matter jurisdiction over actions brought by foreign

corporations or non-residents against other foreign corporations. These limited categories include: (1) “[w]here it is brought to recover damages for the breach of a contract made or to be performed within this state, or relating to property situated within this state at the time of the making of the contract;” (2) “[w]here the subject matter of the litigation is situated within this state;” (3) “[w]here the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state;” (4) [w]here, in any case not included in the preceding subparagraphs, a non-domiciliary would be subject to the personal jurisdiction of the courts of this state under section 302 of the civil practice law and rules;” and (5) “[w]here the Defendant is a foreign corporation doing business or authorized to do business in this state” (BCL § 1314 [b][1]-[5]). It is noted that Plaintiff relies on BCL §§ 1314(b)(1) and (4) as the basis for jurisdiction over Defendants and, thus, each will be addressed in turn.

Based on a careful review of the parties’ contentions and the evidence in the record, BCL § 1314(b)(1) does not afford subject matter jurisdiction to this Court under the circumstances of this case. In an affidavit submitted in support of Defendants’ motion, Cristobal, the owner and operator of Elegant, averred that the subject contract was not made, signed, or to be performed within New York State, and that the agreement was signed in West Covina, California and transmitted by internet. Additionally, Adnan Arbar, Plaintiff’s funding manager, stated in his affidavit that, on behalf of Plaintiff, he countersigned the subject agreement via DocuSign at his office located in Queens, New York on December 29, 2021. He further indicated that some of the funds at issue were subsequently transferred through a New York bank, but no such evidence was presented on Plaintiff’s opposition papers. As such, there is insufficient evidence demonstrating that the contract between the parties was made or intended to be performed within New York State.

The Court also lacks subject matter jurisdiction over this action under BCL § 1314(b)(4). Specifically, BCL § 1314 (b)(4) provides for subject matter jurisdiction in cases against a non-domiciliary where such foreign Defendant would be subject to personal jurisdiction under New York’s long arm statute, CPLR 302. Here, Plaintiff argues that long arm personal jurisdiction exists over Defendants pursuant to CPLR 302(a)(1) because Defendants transacted business in New York and/or had a contract to supply goods or services to Plaintiff in New York. However, as discussed above, Plaintiff’s submissions do not establish that a sufficient nexus exists between this State and Defendants or the transaction at issue in the litigation. Moreover, contrary to Plaintiff’s contention, the forum selection clause contained in the parties’ contract indicating that the parties agreed to bring any actions arising out of the agreement in New York is insufficient to confer jurisdiction over Defendants. While New York recognizes consent as a basis for personal jurisdiction, it does not recognize consent as a basis for long arm jurisdiction (*see Techo-TM, LLC v Fireaway, Inc.*, 123 AD3d 610 [1st Dept

2014]). Therefore, absent personal jurisdiction under CPLR 302, this Court lacks subject matter jurisdiction over Defendants under BCL § 1314(b)(4).

Accordingly, the motion made by Defendants is granted in the entirety.

Movant must serve a copy of this Order with Notice of Entry on Plaintiff by NYSCEF and regular mail with 10 days of Entry.

The above constitutes the Decision and Order of the Court.

Dated: June 8, 2023
Jamaica, NY



Hon. Pam Jackman Brown, J.S.C.

