

**Helmer v A.J. Capital Partners, L.P.**

2023 NY Slip Op 32150(U)

June 28, 2023

Supreme Court, New York County

Docket Number: Index No. 154564/2022

Judge: Lori S. Sattler

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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 02TR

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MARTIN HELMER,

Plaintiff,

- v -

A.J. CAPITAL PARTNERS, L.P., UNIVERSITY INN  
PROPERTY, LLC C/O MADDUX HOTEL CORPORATION  
AND, GRADUATE HOTEL MINNEAPOLIS, GRADUATE  
MINNEAPOLIS OWNER, LLC, GRADUATE MINNEAPOLIS  
LESSEE, LLC., D/B/A GRADUATE HOTEL  
MINNEAPOLIS, A.J. CAPITAL PARTNERS

Defendant.

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INDEX NO. 154564/2022

MOTION DATE 04/06/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

HON. LORI S. SATTLER:

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

were read on this motion to/for DISMISSAL.

In this premises liability action, Graduate Minneapolis Owner, LLC and Graduate Minneapolis Lessee, LLC (“Moving Defendants”)<sup>1</sup> move for an order pursuant to CPLR 3211(a)(8) dismissing all claims against them for lack of personal jurisdiction. Plaintiff Martin Helmer (“Plaintiff”) opposes the motion.

The Verified Amended Complaint (“Complaint”) alleges that Plaintiff, while a guest at the Graduate Hotel Minneapolis in Minneapolis, Minnesota, slipped and fell, suffering injuries (NYSCEF Doc. No. 5, Complaint ¶ 52). Plaintiff commenced this negligence action against the hotel owners and other related entities. The Complaint alleges that Moving Defendants are incorporated in Minnesota. The Complaint does not allege a basis for jurisdiction and venue, and the Summons provides that the basis of venue is “Defendant’s residence.”

<sup>1</sup> Counsel for movants also represent A.J. Capital Partners, however the motion papers do not seek any relief on that Defendant’s behalf.

Moving Defendants now seek dismissal pursuant to CPLR 3211(a)(8). A plaintiff bears the burden of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate jurisdiction (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485 [1st Dept 2017]). However, on a motion to dismiss, a plaintiff need only make a “sufficient start” in demonstrating jurisdiction “since facts relevant to this determination are frequently in the exclusive control of the opposing party and will only be uncovered during discovery” (*Matter of James v iFinex Inc.*, 185 AD3d 22, 30 [1st Dept 2020], citing *Peterson v Spartan Indus.*, 33 NY2d 463, 466-467 [1974]).

Moving Defendants submit documentation showing that they are both incorporated in Delaware (NYSCEF Doc. Nos. 10, 11). They argue they are not subject to general jurisdiction pursuant to CPLR § 301 since they are neither incorporated in nor do they have their primary place of business in New York. They further contend they are not subject to specific jurisdiction under CPLR § 302(a)(1) because the cause of action did not arise from their acts within New York State sufficient to establish a substantial relationship between their activity in New York and the alleged injury.

In opposition, Plaintiff submits an affirmation of counsel. The affirmation does not dispute that the Court lacks general jurisdiction over Moving Defendants. As to specific jurisdiction, Plaintiff argues there is an articulable nexus between Moving Defendants’ New York business transactions and Plaintiff’s alleged injuries. He relies on the fact that he reserved his hotel room on the hotel’s website while he was in New York. He further contends that the “Graduate Hotel transacts considerable business within New York State” because there is a Graduate Hotel New York, however the affirmation does not point to any business transacted

specifically by Moving Defendants, Graduate Minneapolis Owner, LLC and Graduate Minneapolis Lessee, LLC, in connection with the New York location.

“To be subject to general jurisdiction under CPLR § 301, a defendant corporation must either be incorporated in New York or have its principal place of business in New York” (*Brocco v Eastern Metal Recycling Terminal LLC*, 211 AD3d 628 [1st Dept 2022], citing CPLR § 301; *Daimler AG v Bauman*, 571 US 117 [2014]). Here, it is undisputed that Moving Defendants are neither incorporated in New York nor is their principal place of business in New York. Accordingly, the Court does not have general jurisdiction over Moving Defendants.

New York can nevertheless have specific jurisdiction over a nondomiciliary pursuant to CPLR § 302(a)(1). In determining whether such jurisdiction exists, a court must decide “(1) whether the defendant ‘transacts any business’ in New York and, if so, (2) whether the cause of action ‘arises from’ such a business transaction” (*Brocco*, 211 AD3d 638, citing *Licci v Lebanese Canadian Bank*, 673 F3d 50, 60 [2d Cir 2012]; *Storch v Vigneau*, 162 AD2d 241, 242 [1st Dept 1990]). There must be a “substantial relationship” or “articulable nexus” between a defendant’s transactions within the State and the claim asserted (*Seger v Amchem Prods, Inc.*, 206 AD3d 442, 443 [1st Dept 2022]). A non-domiciliary must commit an act by which it purposefully avails itself of the privilege of conducting activities in New York (*Paterno v Laser Spine Inst.*, 24 NY3d 370, 377 [2014] [citations omitted]). A “remote and indirect relationship” such as unrelated business activities is not a sufficient basis for jurisdiction under CPLR § 302(a)(1) (*Storch*, 162 AD2d at 242).

Plaintiff first argues that the fact that he was able to reserve his hotel room using a website while in New York State constitutes a business transaction sufficient to establish jurisdiction. However, the Court has specifically held that reserving a hotel room while in New

York is “too remote to support the exercise of long-arm jurisdiction” where the injury occurred at a hotel out of state (*Peldman v Kalahari Resorts, LLC*, 208 AD3d 1107 [1st Dept 2022]; see also *Stern v Four Points by Sheraton Ann Arbor Hotel*, 133 AD3d 514 [1st Dept 2015]).

Plaintiff also argues that the presence of another Graduate Hotel in New York is sufficient to survive this motion to dismiss. Yet Plaintiff presents no evidence that Moving Defendants have any relationship with the Graduate Hotel that operates in New York, other than using the same name and website. Those connections alone are too remote and indirect to establish a substantial relationship between the negligence causes of action based on a fall in Minnesota and any business transactions in New York (see *Leuthner v Homewood Suites by Hilton*, 151 AD3d 1042, 1044 [2d Dept 2017] [“Contrary to the plaintiffs’ contention, even if there were other, separate hotels operating in New York under the licensed or franchised name Homewood Suites by Hilton, the plaintiffs failed to demonstrate that the defendants purposefully availed themselves of the privilege of conducting business in New York.”]).

Plaintiff further fails to raise any facts that would necessitate jurisdictional discovery. The case Plaintiff relies on in support of its contention that additional discovery is needed was a medical malpractice action involving a medical provider in New Jersey which had at some point identified itself as having a principal place of business in New York, touted its proximity to New York in advertising, and had an agreement with New York City hospitals for the referral of patients to its facility (*Robins v Procure Treatment Ctrs., Inc.*, 157 AD3d 606 [1st Dept 2018]). That case is inapposite to the facts presented here.

Accordingly, for the reasons set forth herein, the Court finds that Plaintiff fails to make a “sufficient start” in demonstrating jurisdiction and it is hereby:

ORDERED that the motion of defendants Graduate Minneapolis Owner, LLC and Graduate Minneapolis Lessee, LLC to dismiss the Verified Amended Complaint herein is granted and the pleading is dismissed in its entirety as against said defendants 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 movants shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein.

This constitutes the Decision and Order of the Court.

6/28/2023  
DATE

  
LORI S. SATTLER, J.S.C.

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