

**BAA Capital Ventures, LLC v Toscani**

2023 NY Slip Op 34467(U)

December 22, 2023

Supreme Court, Saratoga County

Docket Number: Index No. EF20232/1112

Judge: Richard A. Kupferman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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  
COUNTY OF SARATOGA

BAA CAPITAL VENTURES, LLC,

Plaintiff,

-against-

DINO TOSCANI AND DINO'S RESTAURANT  
AND SPORT'S BAR, LLC,

Defendants.

**DECISION AND ORDER**

**Index No.: EF20232111**

Appearances:

Mario D. Cometti, Esq.  
Cometti Law Firm  
PO Box 372  
Delmar, New York 12054  
*Attorneys for the Plaintiff*

Frank M. Putorti, Esq.  
Frank M. Putorti, Jr., P.C.  
1338 Union Street  
Schenectady, New York 12308  
*Attorneys for the Defendants*

KUPFERMAN, J.:

In August 2023, the plaintiff commenced this action seeking to recover monetary damages against the defendants in the amount of no less than \$80,000.00. The complaint asserts claims for breach of contract, conversion, and fraud, among other things. The crux of the complaint is that the defendants breached a joint venture agreement regarding the opening and operation of restaurants in the Virgin Islands and that the defendants used the plaintiff's investment funds for their own personal use rather than for legitimate business purposes.

The defendants have filed a motion seeking to dismiss the complaint pursuant to CPLR 3211 or, alternatively, CPLR 327. They contend, among other things, that the Court lacks personal jurisdiction over them based on their limited contacts with New York. They also contend that the claims should have been brought in the Virgin Islands rather than New York.

The defendants allege that they reside and work/operate in the Virgin Islands and that all the business dealings between the parties took place in the Virgin Islands. The defendants also allege that a written assignment at issue in this action expressly provides that the law of the Virgin Islands governs and that “any proceeding arising among the parties in any matter pertaining or related to this Agreement shall, to the extent permitted by law, be heard solely in the Territorial and/or Federal courts located in U.S. Virgin Islands.” The defendants also contend that the amount sought by the plaintiff (namely, \$80,000) is currently being held in escrow in the Virgin Islands. The defendants also disagree with the plaintiff regarding the reason for the assignment and raise several potential defenses and offsets regarding events that transpired in the Virgin Islands.

In opposition, the plaintiff alleges generally that “most of the incidents which gave rise to this lawsuit took place in New York and the misrepresentations ... took place in part and on occasion in the state of New York.” More specifically, the plaintiff alleges that the source of the funds for a certain promissory note (once owned by the plaintiff) originated from a bank account in this State; that the promissory note was executed in this State; and that the plaintiff eventually assigned its interest in the promissory note to the corporate defendant for use in the parties’ joint venture. The plaintiff further alleges that the parties conducted a meeting in New York in July 2022 during which time they allegedly discussed the terms of a joint venture agreement. The plaintiff also alleges that two subsequent meetings, apparently after the parties allegedly entered the joint venture agreement, also took place in New York on May 14, 2023 and on June 9, 2023.

The plaintiff alleges that the defendants made misrepresentations during these subsequent meetings in New York. The plaintiff also alleges that an unrelated motor vehicle action was filed against the individual defendant in this State and that the pleadings in the motor vehicle action alleged that the individual defendant resided in this State.

As a threshold matter, the action should be dismissed for lack of personal jurisdiction. Neither defendant is a New York resident. They reside and work/operate in the Virgin Islands. The alleged contract also concerns the lease and operation of restaurants in the Virgin Islands. The alleged misappropriation/conversion of the investment funds also allegedly occurred in the Virgin Islands (and/or Puerto Rico). The defendants also raise several potential offsets and defenses that concern the Virgin Islands.

The Court is not persuaded that one meeting in this State during the negotiations should subject the defendants to long-arm jurisdiction in this State under CPLR 302. Nor is the Court persuaded that the source of funding for the plaintiff's promissory note or the location of its execution has any relevance, especially as those matters were apparently undertaken by the plaintiff and others rather than the defendants. Moreover, when the promissory note was ultimately assigned to the corporate defendant, it was executed in the Virgin Islands and the parties expressly designated venue for disputes exclusively in the Virgin Islands.

Similarly, while the defendants allegedly made misrepresentations at subsequent meetings in New York, the plaintiff's allegations on this issue are scant and insufficient to support a finding that they committed a fraud/tort in New York (see CPLR 3016). The Court is also not persuaded that jurisdiction exists based on the individual defendant's failure to object to personal jurisdiction in the unrelated motor vehicle action. There, the individual defendant allegedly injured the plaintiff in that action in 2019, while operating a motor vehicle in this State. Obviously,

jurisdiction existed in that case based on the facts presented. Moreover, the fact that the pleadings filed by the plaintiff in the other action labeled the individual defendant as a New York resident is irrelevant, especially as those pleadings fail to identify the basis of knowledge for the allegations. Those pleadings were also filed in February 2022, approximately a year and a half prior to the commencement of this action.

Nor does the Court find it appropriate to conduct a hearing on the jurisdictional issue or to allow the plaintiff additional time to engage in discovery on the issue. Even if the plaintiff were successful in obtaining the facts necessary to exercise jurisdiction over the defendants, the Court would still dismiss the action pursuant to CPLR 327. As discussed above, there are few, if any, contacts between the defendants and New York. In contrast, virtually all the events relevant to the claims occurred in the Virgin Islands. The alleged contract concerns the leasing of space and the operation of restaurants in the Virgin Islands. The alleged misappropriation of funds also allegedly occurred in the Virgin Islands (and/or Puerto Rico). Moreover, the claims at issue are likely governed by the law of the Virgin Islands. In fact, the written assignment at issue expressly provides that it is governed by the law of the Virgin Islands and designates venue exclusively in the Virgin Islands. The plaintiff is also apparently attempting to recover funds (\$80,000.00) that are allegedly being held in escrow in the Virgin Islands. In addition, most, if not all, of the witnesses appear to be in the Virgin Islands. Based on these circumstances, it would be in the interest of substantial justice for the action to be heard in the Virgin Islands.

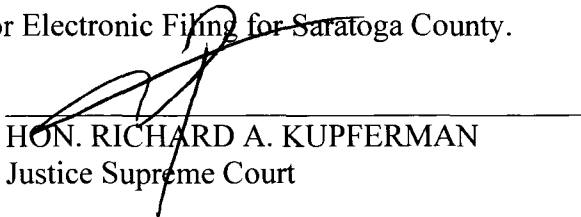
It is therefore,

**ORDERED**, that the defendants' motion seeking to dismiss the complaint is **GRANTED** and the action is **DISMISSED**, without prejudice; and it is further.

**ORDERED**, that the defendants' request for sanctions is **DENIED**.

This constitutes the Decision and Order of the Court. The Court is uploading the original for filing and entry. The Court further directs the parties to serve notice of entry of this Decision and Order in accordance with the Local Protocols for Electronic Filing for Saratoga County.

Dated: December 22, 2023  
at Ballston Spa, New York

  
HON. RICHARD A. KUPFERMAN  
Justice Supreme Court

Enter.