STATE OF NEW YORK
SUPREME COURT
COMMERCIAL DIVISION

COUNTY OF ALBANY

POWERFLEX SOLAR, LLC,

Plaintiff,

DECISION & ORDER

-against-

SOLAR PV PROS, LLC,
MEITUS ENERGY SERVICES, LLC,
and EOS ORGANIZATION, LLC,

Defendants.

Index No.: 905013-22

(Judge Richard M. Platkin, Presiding)

APPEARANCES:

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Hon. Richard M. Platkin, A.J.S.C.

PowerFlex Solar, LLC ("PowerFlex") sues defendant Solar PV Pros, LLC ("SPVP") for allegedly breaching three purchase order agreements to supply monocrystalline modules for use in solar projects. PowerFlex also seeks to recover damages from defendants EoS Organization, LLC ("EoS") and Meitus Energy Services, LLC ("Meitus") for their alleged breaches of agreements to supply SPVP with modules (or module components).

Pending before the Court is PowerFlex's motion to reargue its opposition to EoS and SPVP's dismissal motions to the extent that the Decision and Order dated December 22, 2022 (*see* NYSCEF Doc No. 32 ["Prior Decision"]) determined that the Court lacked personal jurisdiction over defendants with regard to contracts to supply goods to projects outside of the State of New York ("State") (*see id.*, pp. 8, 12).

BACKGROUND

"In November and December 2019, PowerFlex entered into purchase order agreements with SPVP for the purchase of monocrystalline modules" (NYSCEF Doc No. 1 ["Complaint"], ¶ 9). The agreements called for SPVP to supply modules to solar projects in three states: New York (*see* NYSCEF Doc Nos. 2, 24 ["Purchase Orders"], pp. 1-2); Rhode Island (*see id.*, pp. 3-4); and California (*see id.*, pp. 5-6; *see also* Complaint, ¶ 10).

According to PowerFlex, SPVP then "entered into an agreement with EoS," by which EoS was to "supply SPVP with necessary components of the modules PowerFlex had purchased" (Complaint, ¶ 11). However, the prior motion practice established that non-appearing co-defendant Meitus actually had contracted to *purchase* modules from EoS and deliver them to PowerFlex's New York, Rhode Island and California customers (*see* NYSCEF Doc No. 10, Green Aff., Exs. 1-3 ["EoS-Meitus Agreements"]; Prior Decision, pp. 3-4).

PowerFlex alleges that it "paid $1,158,383.26 to SPVP as an agreed-upon deposit on the module purchases" in late 2019, but "never received any of the modules ordered, or indeed any performance whatsoever under its purchase agreements with SPVP" (Complaint, ¶¶ 13-14). Additionally, a "significant portion" of PowerFlex's deposit payment to SPVP "was received by both EoS and Meitus" (*id.*, ¶ 15; *see also id.*, ¶ 16).

PowerFlex commenced this action on July 1, 2022, seeking to recover its deposit payment, together with the consequential damages sustained by reason of non-delivery of the modules to the three project sites. The Complaint alleges four causes of action: (1) breach of contract (SPVP); (2) unjust enrichment (all defendants); (3) breach of contract on the third-party beneficiary theory (EoS and Meitus); and (4) conversion (all defendants).

In lieu of answering, SPVP and EoS moved separately under CPLR 3211 (a) (8) to dismiss the Complaint for lack of personal jurisdiction.[1] As is pertinent here, the Court denied the motions "to the extent that PowerFlex's claims arise from defendants' agreements to supply goods in New York," but granted the motions "to the limited extent of dismissing PowerFlex's claims pertaining to the modules to be delivered to Rhode Island and California" (pp. 4-8).

PowerFlex now moves under CPLR 2221 (d) for leave to reargue the partial dismissal of its claims. EoS and SPVP (hereinafter, "defendants") oppose the motion.

DISCUSSION

A motion for leave to reargue "is properly granted upon a showing that the facts and/or law were overlooked or misapprehended by the court in determining the prior motion" (*Cascade Builders Corp. v Rugar*, 154 AD3d 1152, 1154 [3d Dept 2017]; *see* CPLR 2221 [d] [2]). The motion "'is addressed to the sound discretion of the court' and 'even in situations where the

[1] EoS alternatively moved under CPLR 3211 (a) (1) and (7) for dismissal of PowerFlex's contractual and conversion claims.

criteria for granting [such] motion are not technically met, courts retain flexibility to grant such a motion when it is deemed appropriate'" (*Davis v Zeh*, 200 AD3d 1275, 1279 [3d Dept 2021], quoting *Loris v S & W Realty Corp.*, 16 AD3d 729, 730 [2005]).

Initially, PowerFlex maintains that defendants' argument for the dismissal of claims involving the supply of goods to Rhode Island and California improperly was raised for the first time in a footnote in reply (*see* NYSCEF Doc No. 31, p. 1 n 2). Nonetheless, the jurisdictional issue appears on the face of the record (*see Harrington v Smith*, 138 AD3d 548, 548 [1st Dept 2016]; *Green v Fox Is. Park Autobody*, 255 AD2d 417, 418 [2d Dept 1998]), as the claimed basis for jurisdiction was defendants' contracts "to supply . . . modules for a solar project in New York" (Complaint, ¶ 6, citing CPLR 302), and two of the three "enforceable *contracts* for the provision of monocrystalline solar modules" (*id.*, ¶ 18 [emphasis added]) concerned the delivery of goods outside of New York. Nonetheless, the Court will grant reargument to consider the parties' briefing of the jurisdictional issue.

Under CPLR 302 (a) (1), the New York courts may exercise long-arm jurisdiction over "a cause of action arising from . . . any non-domiciliary . . . contract[ing] anywhere to supply goods or services in the state."

"CPLR 302 is a 'single-act statute'" (*Alan Lupton Assoc. v Northeast Plastics*, 105 AD2d 3, 5 [4th Dept 1984], quoting *Parke-Bernet Galleries v Franklyn*, 26 NY2d 13, 17 [1970]), and "proof of one transaction in New York is sufficient to invoke jurisdiction . . . , so long as the defendant's activities here were purposeful and there is a substantial relationship [or articulable nexus] between the transaction and the claim asserted" (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]; *see Licci v Lebanese Can. Bank, SAL*, 20 NY3d 327, 339 [2012]).

Thus, "CPLR 302 (a) (1) does not require that every element of the cause of action pleaded must be related to the New York contacts; rather, where at least one element arises from the New York contacts, the relationship between the business transaction and the claim asserted supports specific jurisdiction under the [long-arm] statute" (*Licci*, 20 NY3d at 341; *accord D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 299 [2017]).

As the party asserting jurisdiction, PowerFlex "bears the burden of proof to establish that jurisdiction is proper" with respect to each of its claims (*Archer-Vail v LHV Precast Inc.*, 209 AD3d 1226, 1227 [3d Dept 2022]; *see Nasso v Seagal*, 263 F Supp 2d 596, 612 [ED NY 2003]).

PowerFlex maintains that the Court may exercise jurisdiction over defendants as to all three contracts because "at least one element – that is, the New York purchase order component – of PowerFlex's [breach of contract and unjust enrichment claims] – arises from New York contacts" (NYSCEF Doc No. 42, p. 8 [internal quotation marks omitted]). The Court disagrees.

PowerFlex seeks to characterize its claims as alleging "a single transaction" with "global damages" (*id.*, pp. 1, 3), but the Complaint alleges *three* separate "purchase order agreements with SPVP," entered into on three separate dates over almost one month, "for the purchase of monocrystalline modules" to be "delivered to solar projects in [New York, Rhode Island and California]" (Complaint, ¶¶ 9-10).[2] Each of these "purchase order agreements" is a freestanding contract that specifies, among other things, the particular goods to be delivered by SPVP to a particular project site, and the sum to be paid to SPVP for the goods and the terms of payment (*see* Purchase Orders). Moreover, the purchase order agreements do not refer to one another or to any master agreement (*see id.*). The same is true of the EoS-Meitus Agreements.

[2] The purchase order agreement for the New York project is dated November 12, 2019, the California purchase order is dated November 27, 2019 and the Rhode Island purchase order is dated December 9, 2019.

PowerFlex has not cited any authority speaking directly to its contention that the Court may exercise personal jurisdiction over defendants regarding the Rhode Island and California contracts under the "supply[ing] goods" prong of CPLR 302 (a) (1).

EoS relies on *Neewra, Inc. v Manakh Al Khaleej Gen. Trading & Contr. Co.* (2004 WL 1620874, *1-2 [SD NY July 20, 2004, No. 3 CIV. 2936 (MBM)]), an unpublished decision from the Southern District of New York that analyzed multiple contracts between the same parties under CPLR 302 (a) (1)'s "transacting business" prong. At issue in *Neewra* were: (1) a contract for the defendant, a foreign consignee-bank, to deliver a product sample and collect a $2,500 payment from the purchaser, and (ii) a subsequent contract to deliver 1,000 units of the product and collect a $2.5 million payment. In concluding that it lacked jurisdiction over the claims involving the $2.5 million collection, the federal district court determined that plaintiff had "entered into two separate agreements with [the consignee-bank] to perform two separate collections on behalf of [plaintiff], and under these circumstances, [plaintiff's] cause of action arises only from transactions involving the second collection of $ 2.5 million and not out of transactions involving the first, successful collection of $ 2,500" (*id.* at *4).

In a motion for reconsideration, the *Neewra* plaintiff argued that the district court erred in concluding "that [defendant's] successful collection of $ 2,500 and its failed collection of $ 2.5 million were separate transactions for the purposes of N.Y. C.P.L.R. § 302 (a) (1)" (*Neewra, Inc. v Manakh Al Khaleej Gen. Trading & Contr. Co.*, 2004 WL 2813180, *5 [SD NY, Dec. 6, 2004, No. 03 CIV. 2936 (MBM)]). The district court rejected this argument because "the only facts alleged in the record show that [plaintiff's bank] made separate requests to [the defendant bank] to perform each collection, neither of which mentioned the other" (*id.*).

The *Neewra* court relied on an unpublished decision from the Eastern District of New York analyzing multiple contracts under the "supply[ing] goods" prong of CPLR 302 (a) (1) (*see Goldmark Plastics Intl., Inc. v Poly Line, Inc.*, 1998 WL 817693, *2 [ED NY Feb. 4, 1998, No. 97-CV-5568 (JG)]). Although the contract sued upon was not one to supply goods within the State, the *Goldmark* plaintiff sought to rely on other contracts that did involve the shipment of goods into New York. The district court rejected the argument, explaining:

> [Plaintiff] argues that long-arm jurisdiction nevertheless exists because, for a number of years, it and other New York corporations have done business with [defendant] pursuant to which [defendant] has shipped material into and out of New York State. [Plaintiff] further notes that, on November 20, 1996, "almost contemporaneously with the order that is the subject of this litigation," it entered into a contract with [defendant] pursuant to which [defendant] agreed to ship materials into Yonkers, New York."
>
> If proven, the foregoing facts would support a finding that, on certain occasions, [defendant] both has contracted to supply goods within New York and has performed acts which, perhaps, constitute the transaction of business in New York. In entering into the contract from which the instant dispute arose, however, [defendant] did neither. [Plaintiff] therefore has failed to assert facts which would support a finding that the instant cause of action arose either from a contract to supply goods within the state or from the transaction of business within the state. See *Fontanetta v. American Board of Internal Medicine*, 421 F2d 355, 359 [2d Cir.1970] [the written and oral parts of an examination for certification as a specialist in internal medicine are not part of the same transaction of business for purposes of § 302 (a) (1)]; *Body Beautiful v. Fred Hayman Beverly Hills, Inc.*, No. 96 Civ. 8541, 1997 WL 527784, at *6 [SD NY Aug. 25, 1997] [§ 302 (a)(1) jurisdiction could not be "based on . . . defendant's previous visits to plaintiff's showroom to order clothing" because "[p]laintiff ha[d] not shown how its cause of action ar[ose] out of any of defendant's other visits"]; *Mattgo Enterprises, Inc. v. Aaron*, 374 F Supp. 20, 23–24 [SD NY 1974] [finding that defendant had sufficient contacts with New York relating to the contract which was the basis of the lawsuit to justify the exercise of jurisdiction but, in so doing, refusing to consider an earlier contract between the parties) (*id.*).

Here, PowerFlex alleges the formation of three separate "enforceable contracts [with SPVP] for the provision of . . . solar modules" (Complaint, ¶ 18). The three contracts – formed through separate and independent "purchase order agreements" (*id.*, ¶ 9) that do not refer to one another or to a master agreement – called for the delivery of modules to three project sites, only one of which is in New York (*see id.*, ¶ 10; Purchase Orders).

And while the Complaint refers singularly to "an agreement" between EoS and Meitus (*see id.*, ¶ 12), this flawed characterization of the relationship between EoS and Meitus is conclusively defeated by the text of EoS-Meitus Agreements, which show three separate and independent contracts that do not refer to one another or to any master agreement.

The issue then becomes whether there is a "substantial relationship" or "articulable nexus" between a contract calling for the supply of goods into the State and other contracts between the same parties involving the shipment of goods outside the State. A causal relationship is not required, and the nexus "inquiry under [CPLR 302] is relatively permissive" (*Licci*, 20 NY3d at 339). There is no requirement that "all elements of the cause of action pleaded must [relate] to the New York contacts; rather, where at least one element arises from the New York contacts, the relationship between the business transaction and the claim asserted supports specific jurisdiction under [CPLR 302]" (*id.* at 341).

As defendants properly observe, their agreements to supply goods to New York are not an "element" of PowerFlex's claims under the Rhode Island or California contracts. PowerFlex tacitly concedes as much in the jurisdictional allegations of its Complaint, alleging only that "a large portion of plaintiff's damages arise from defendants' failure to satisfy those contractual agreements with respect to the New York project" (Complaint, ¶ 6).

And while PowerFlex argues that "general principles of contract law" call for "multiple transactions involving the same seller and purchaser [to] be sued on as a single cause of action" (NYSCEF Doc No. 42, n 5), these principles concerns installment contracts and other contracts calling for a series of performances. Indeed, the very treatise cited by Power Flex states that these general principles do "not apply to breaches of separate and independent contracts between the same parties" (2 Corbin on New York Contracts, § 53.06).

Accordingly, the Court adheres to its prior determination that it lacks jurisdiction under CPLR 302 (a) (1) over the parties' separate and independent contracts calling for the supply of goods to Rhode Island and California.[3]

CONCLUSION

Based on the foregoing, it is

ORDERED that PowerFlex's motion for reargument is granted; and it is further

ORDERED that, upon reargument, the Court adheres to its Prior Decision.

This constitutes the Decision & Order of the Court, the original of which is being uploaded to NYSCEF for entry by the Albany County Clerk. Upon such entry, counsel for EoS shall promptly serve notice of entry on all parties entitled to such notice.

Dated: Albany, New York
April 19, 2023

RICHARD M. PLATKIN
A.J.S.C.

04/20/2023

[3] The Court recognizes the economies that would flow from concentrating all of PowerFlex's claims into one action in this Court. But the Court also recognizes that contracting parties ordinarily avoid this problem by including appropriate dispute resolution provisions in their commercial agreements, such as forum selection clauses and consents to jurisdiction (*cf.* EoS-Meitus Agreements, § 12 [providing that the substantive laws of California will govern the agreements and that the parties "waive any objection or defense for laying of venue in Orange County, California, as an inconvenient forum"]).

Papers Considered:

NYSCEF Doc Nos. 41-43, 46-47, 50.[4]

[4] The Court takes judicial notice of the prior filings and proceedings in this action.