

Rivera v USA Wine W., LLC

2024 NY Slip Op 33689(U)

October 17, 2024

Supreme Court, New York County

Docket Number: Index No. 150290/2024

Judge: James G. Clynes

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 22M

Justice

NANCY RIVERA,
-----X

Plaintiff,

- v -

USA WINE WEST, LLC, PECHOCHOS TRUCKING LLC,
HAMPTON WATER WINE CO., RUBEN NUNEZ, JONATHAN
NUNEZ, JOHN DOE

Defendants.

INDEX NO. 150290/2024
MOTION DATE 08/26/2024
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for DISMISS

Upon the foregoing documents, the motion by Defendant Pechochos Trucking, LLC to dismiss Plaintiff's Complaint against it pursuant to CPLR 3211 (a) (8) for lack of subject matter and personal jurisdiction over said Defendant and Plaintiff's cross-motion pursuant to CPLR 3025 for leave to file an Amended Complaint are decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of an August 2, 2023 motor vehicle accident between a vehicle owned by Defendant Pechochos and a vehicle owned by Defendant Ruben Nunez, operated by Defendant Jonathan Nunez, within which Plaintiff was a passenger.

Defendant Pechochos contends that Plaintiff has failed to establish a basis for a New York court to assert personal jurisdiction over Defendant Pechochos, a New Jersey entity, arising out of an accident taking place in New Jersey. Specifically, Defendant Pechochos contends that Plaintiff does not allege or prove (a) tortious conduct in New York, (b) that Defendant Pechochos transacted business in New York, or (c) that Defendant Pechochos owns, uses or possesses any real property

situated within New York and thus Plaintiff fails to establish a basis for specific jurisdiction under CPRL 302.

In opposition to Defendant Pechochos' motion, and in support of her motion for leave to file an Amended Complaint, Plaintiff contends that Defendant Pechochos is an interstate trucking business where it is at least alleged that they have done business within the State of New York. Plaintiff submits a Department of Transportation search, which Plaintiff contends, shows that Defendant Pechochos is a business involved in interstate commerce and as such, has conducted business within the State of New York. Plaintiff further contends that the proposed Amended Complaint attached to her motion papers includes additional jurisdictional allegations against Defendants.

In reply to Plaintiff's opposition, and in opposition to Plaintiff's cross-motion, Defendant Pechochos contends that the proposed Amended Complaint fails to satisfy the first requirements for jurisdiction under CPLR 302 (a) (3), Plaintiff has also failed to demonstrate a sufficient nexus to New York even if injury in New York had been demonstrated. Defendant Pechochos further contends that although Defendant Pechochos is licensed as an interstate carrier, the mere authority to participate in interstate commerce does not evidence actual transaction of business in New York State, or any contract to supply goods or services in the state.

Pursuant to CPLR 3211 (a) (8) a cause of action may be dismissed on the ground that the court lacks personal jurisdiction over the defendant. The court may exercise personal jurisdiction over a non-domiciliary of New York, who in person or through an agent, as pertinent here, transacts business within the state or contracts to supply services in the state or commits a tortious act within the state (CPLR 302 [a] [1] [2]). The court also has jurisdiction if the non-domiciliary commits a tortious act without the state causing injury to person or property within the state, if the

defendant regularly does or solicits business in the state, derives substantial revenue from services rendered in the state, or expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce (CPLR 302 [a] [3]).

If jurisdiction is challenged, the plaintiff bears the burden of establishing jurisdiction over the defendant (*Arroyo v Mtn. Sch.*, 68 AD3d 603 [1st Dept 2009]) and must come forward with sufficient evidence, through affidavits and relevant documents, to prove the existence of jurisdiction (*Fischbarg v Doucet*, 9 NY3d 375, 381 [2007]). Plaintiff need not demonstrate, prima facie, jurisdiction but only a “sufficient start,” showing that its position is not frivolous (*SNS Bank, N.V. v Citibank, N.A.*, 7 AD3d 352, 354 [1st Dept 2004]; *Skutnik v Messina*, 178 AD3d 744, 744 [2d Dept 2019]). When the plaintiff, in opposition to a motion pursuant to CPLR 3211 (a) (8), makes a “sufficient start” in establishing jurisdiction, the motion is to be denied without prejudice to renewal upon the completion of limited discovery on the issue of personal jurisdiction (*Lettieri v Cushing*, 80 AD3d 574 [2d Dept 2011]),

For solicitation within New York by a non-domiciliary to constitute a “transaction of business” for the purposes of CPLR 302 (a) (1), it must be accompanied by business transactions occurring in New York or by sufficient permanence and continuity in New York (*O'Brien v Hackensack Univ. Med. Ctr.*, 305 AD2d 199, 201 [1st Dept 2003]).

Here, Plaintiff failed to make a prima facie showing that personal jurisdiction over Defendant Pechochos existed under New York’s long-arm statute (*see* CPLR 302). The proposed Amended Complaint includes, among others, allegations that Defendant Pechochos maintained a principal place of business in New York, is the owner of real property in New York, and is involved in the business of interstate commerce in New York. The fact that Defendant Pechochos may have

participated in interstate commerce generally, as indicated by the Department of Transportation search printout, does not establish a prima facie showing that Defendant Pechochos was in fact involved in the business of interstate commerce in New York. Thus, the printout is not dispositive as to whether Defendant Pechochos actually has a tangible presence in New York. Further, even if Defendant Pechochos transacted business in New York, there is no allegation that Plaintiff's injury and the action based on that injury arose directly out of that transaction (*Arroyo v Mtn. Sch.*, 68 AD3d 603 [1st Dept 2009]). Similarly, the fact that Defendant Pechochos may have owned property in New York at some time does not establish jurisdiction under CPLR 302 where, as here, Plaintiff's cause of action against Defendant Pechochos did not arise out of such ownership of property, but rather the operation of their vehicle in New Jersey (*Johnson v Ward*, 4 NY3d 516 [2005]; *Hopstein v Cohen*, 143 AD3d 859 [2d Dept 2016]). It is also undisputed that the accident took place in New Jersey (CPLR 302 [a] [3] and [4]). The motion is granted. Accordingly, it is

ORDERED that the motion by Defendant Pechochos Trucking, LLC to dismiss Plaintiff's Complaint against it pursuant to CPLR 3211 (a) (8) for lack of subject matter and personal jurisdiction over said Defendant is granted and the complaint is dismissed in its entirety as against said Defendant; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of Defendant Pechochos; and it is further

ORDERED that the cross-motion for leave to file an Amended Complaint is denied as moot; and it is further

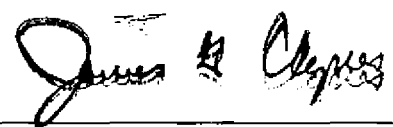
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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 moving party 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; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

10/17/2024
DATE


JAMES G. CLYNES, 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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE