

**Quizhpi v Ortega**

2024 NY Slip Op 35053(U)

December 10, 2024

Supreme Court, Westchester County

Docket Number: Index No. 57719/2024

Judge: Paul I. Marx

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
HON. PAUL I. MARX, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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JONNATHAN MATEO QUITO QUIZHPI,

Plaintiff,

Index No.: 57719/2024

-against-

**DECISION AND ORDER**

Motion Sequence # 1

JHOANA F. ORTEGA; VANESSA BARROS JIMENEZ; AMAZON.COM LLC; AMAZON.COM SERVICES, LLC; AMAZON.COM SALES, INC.; LASERSHIP INC.; ONTRAC LOGISTICS, INC.; LASERSHIP d/b/a ONTRAC LOGISTICS, INC.; "JOHN DOE," said name being fictitious, "JANE DOE," said name being fictitious and intended to be the owner/operator of any third parties that may be responsible for hiring, delegating, forwarding, and or deliveries for AMAZON.COM LLC, and/or AMAZON.COM SERVICES, LLC, and/or AMAZON.COM SALES, INC., and/or LASERSHIP, INC., and/or ONTRAC LOGISTICS, INC.; and/or LASERSHIP d/b/a ONTRAC LOGISTICS, INC.,

Defendant.

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The papers filed electronically on NYSCEF numbered 12 through 29 were read on the motion of Defendant OnTrac Logistics, Inc. ("OnTrac Logistics") to dismiss the Complaint against it pursuant to CPLR §§3211(a)(1), (7) and (8).

Upon the foregoing papers, it is ORDERED that the motion is disposed as follows.

**BACKGROUND**

This action arises out of an automobile accident that occurred in Connecticut on April 25, 2023, when a vehicle operated by Defendant Vanessa Barros Jimenez and owned by Defendant Jhoana F. Ortega, spun out of control and struck a rock and then a tree. Plaintiff Jonnathan Mateo

Quito Quizhpi was a passenger in Barros Jimenez's vehicle, who was seriously injured in the accident.

Plaintiff alleges that Barros Jimenez was delivering packages "on behalf of LaserShip, Inc., and/or [OnTrac]; and/or LaserShip d/b/a OnTrac Logistics Inc.," on April 25, 2023. Complaint at ¶ 29. The Complaint alleges that Barros Jimenez was operating the vehicle "in her capacity as an agent, assign, representative, employee and/or independent contractor of" OnTrac. *Id.* ¶ 83. Plaintiff alleges that Barros Jimenez told him that she was delivering packages for LaserShip, which had changed its name to OnTrac.

## DISCUSSION

### *Personal Jurisdiction*

Defendant OnTrac Logistics moves to dismiss on the ground that the Court does not have personal jurisdiction over it because it is a foreign corporation which is not authorized or registered to transact business in New York, and it has no connection to the underlying accident. OnTrac Logistics asserts that most of Plaintiff's allegations simply lump it together with its parent company, Defendant LaserShip, Inc., by linking their names with "and/or" without alleging distinct jurisdictional facts. OnTrac Logistics argues that its parent-subsidiary relationship with LaserShip is not sufficient to exercise jurisdiction over it because it is a separate and distinct legal entity. OnTrac Logistics asserts that it had no direction or control over Barros Jimenez, the operator of the vehicle involved in the accident, or Jhoana Ortega, the owner of the vehicle, as neither was an employee, subcontractor or independent contractor of the company. OnTrac Logistics asserts that it had no connection to the delivery services Barros Jimenez provided on the day of the accident.

OnTrac Logistics submits the affidavit of Alex Velazquez, its Director of Delivery Network Operations, in support of its motion. Velazquez attests that OnTrac Logistics is a foreign corporation and a wholly owned subsidiary of LaserShip. Velazquez states that neither Barros Jimenez or Ortega has ever been an employee, subcontractor, or independent contractor of OnTrac Logistics. Velazquez describes OnTrac Logistics as a federally licensed freight broker that provides transportation services by contracting with regional service providers; however, it does not provide such services in New York. He asserts that OnTrac Logistics had no contractual relationship with either Barros Jimenez or Ortega to provide delivery services. Further, Velazquez

asserts that OnTrac Logistics did not direct or instruct either Barros Jimenez or Ortega in the provision of delivery services and it had no connection to the accident.

In opposition, Plaintiff asserts that OnTrac's website lists several locations in New York for which it has posted jobs for various positions, including Logistics General Manager, Warehouse General Manager and Package Handler positions. Plaintiff provides printouts from OnTrac's website, Indeed.com, and the Better Business Bureau to support its contention that OnTrac Logistics has connections to New York. Plaintiff provides an article from March 2023, which announced that LaserShip and OnTrac Logistics were launching a new brand identity under the name "OnTrac", and they would be under shared ownership. The article touted OnTrac as providing coast-to-coast "last-mile e-commerce deliveries." Opposition, Exhibit H.

In reply, OnTrac Logistics submits a supplemental affidavit of Alex Velazquez, acknowledging that LaserShip and OnTrac Logistics market under the brand name "OnTrac", but he attests that the companies operate as separate, distinct corporate entities. He attests that the webpage and the video on OnTrac's homepage are marketing materials under the brand name. He states that hiring for OnTrac Logistics occurs in California, whereas a person hired to work in New York would become an employee of LaserShip, Inc. d/b/a OnTrac Final Mile. Velazquez states that the offices and warehouses in New York under the OnTrac brand name are not operated by and/or leased by OnTrac Logistics. He asserts that "OnTrac Logistics does not own, operate, lease or control any office, warehouse, or other real property in New York ... does not have any employees or independent contractors in New York ... and does not own, operate, possess, or control trucks operating in New York ... and does [not] employ delivery drivers." Velazquez Declaration dated July 18, 2024, NYSCEF Doc # 28.

CPLR §302, which provides New York courts with long-arm jurisdiction, states, in pertinent part:

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent:

"1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or

...

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce ...

To determine whether the Court has jurisdiction over a non-domiciliary, it must look to see whether the defendant transacts business in the State by “ ‘purposefully avail[ing]’ itself of the benefits and privileges of conducting business in New York.” *America/Intl. 1994 Venture v Mau*, 146 AD3d 40, 52 [2<sup>nd</sup> Dept 2016]. The number of contacts the defendant has with the forum is not determinative; it is “ ‘the quality of the contacts’ ”. *Id.* (citing *Paterno v Laser Spine Inst.*, 24 NY3d 370, 378 [2014]).

Plaintiff bears the “ ‘ultimate burden of proof’ ” on a motion to dismiss for lack of personal jurisdiction pursuant to CPLR §3211(a)(8) “to establish a basis for such jurisdiction”. *America/Int’l, supra 1994 Venture v Mau*, 146 AD3d at 51 (citing *Daniel B. Katz & Assoc. Corp. v Midland Rushmore, LLC*, 90 AD3d 977, 978, quoting *Cornely v Dynamic HVAC Supply, LLC*, 44 AD3d 986, 986). “However, to successfully oppose such a motion, the plaintiff need only make a prima facie showing that the defendant was subject to the personal jurisdiction of the court”. *America/Int’l, supra 1994 Venture v Mau, supra* (citing *Jacobs v 201 Stephenson Corp.*, 138 AD3d 693, 693-694 [2016]; *Whitcraft v Runyon*, 123 AD3d 811, 812 [2014]; *Daniel B. Katz & Assoc. Corp. v Midland Rushmore, LLC*, 90 AD3d at 978; *Cornely v Dynamic HVAC Supply, LLC*, 44 AD3d at 986). The Court must accept as true Plaintiff’s allegations set forth in the Complaint and opposition papers and give him the benefit of every favorable inference.

The evidence presented by Plaintiff raises significant factual issues related to OnTrac Logistics’ transaction of business in New York. The OnTrac website lists several office locations in New York. A Facebook page for OnTrac states that LaserShip and OnTrac have merged and that “LaserShip/OnTrac have launched a transcontinental delivery service”. NYSCEF Doc # 26. A Better Business Bureau profile for OnTrac lists its headquarters in Albany, New York.

OnTrac Logistics has not sufficiently rebutted Plaintiff’s evidence with Velazquez’s belated assertions in the Reply papers, which are not supported by any documentary evidence.

OnTrac promotes itself as a company that provides nationwide package delivery rather than a brand name for marketing purposes only. Further clarification of OnTrac Logistics' legal status awaits discovery.

*Failure to State a Claim*

Defendant moves to dismiss Plaintiff's sixth cause of action, which is the sole cause of action in the Complaint alleged against OnTrac Logistics. In that cause of action, Plaintiff alleges that Defendant Barros Jimenez and Ortega were employees, agents, assigns, and or independent contractors of OnTrac Logistics. Plaintiff alleges that Barros Jimenez and Ortega were negligently hired, trained and/or supervised or instructed in the delivery of goods and packages by OnTrac Logistics. Defendant asserts that neither Barros Jimenez nor Ortega was employed by OnTrac Logistics. The same factual issues regarding personal jurisdiction apply to this cause of action.

Accordingly, the Court denies Defendant OnTrac Logistics' motion to dismiss the sixth cause of action pursuant to CPLR 3211(a)(7).

**CONCLUSION**

It is ORDERED that Defendant's motion to dismiss is denied in its entirety.

The foregoing constitutes the Decision and Order of the Court.

Dated: December 10, 2024  
White Plains, New York

E N T E R



HON. PAUL I. MARX, J.S.C.