

**Felix v IMCMV Times Sq., LLC**

2025 NY Slip Op 34965(U)

December 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 507471/2023

Judge: Katherine A. Levine

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS – PART 92

-----X  
LYS FELIX,

Plaintiff,

Index No. 507471/2023

– against –

DECISION/ORDER  
Hon. Katherine A. Levine

IMCMV TIMES SQUARE, LLC,

Mot. Seq. 1

Defendant,

-----X  
IMCMV TIMES SQUARE, LLC,

Third-Party Plaintiff,

– against –

THREE PAGADOS, INC. d/b/a WHARTON HUNT  
INTERNATIONAL i/s/h/a WHARTON HUNT  
INTERNATIONAL,

Third-Party Defendant.

-----X  
The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion and

Affidavits (Affirmations) Annexed.....

14-27

Opposing Affidavit (Affirmations).....

31-35

Reply Affidavits (Affirmations).....

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**FACTUAL AND PROCEDURAL BACKGROUND**

In this third-party action arising from third-party defendant THREE PAGADOS, INC. d/b/a WHARTON HUNT INTERNATIONAL i/s/h/a WHARTON HUNT INTERNATIONAL’s (“Wharton Hunt”) allegedly faulty design and manufacture of furniture sold to primary defendant/third-party plaintiff IMCMV TIMES SQUARE, LLC (“IMCMV”), Wharton Hunt moves for dismissal pursuant to CPLR §§ 301 and 302, arguing that New York lacks personal jurisdiction over Wharton Hunt in this action. (Motion Sequence 1).

In November 2022, Lys Felix (“Mr. Felix,” the individual plaintiff in the primary action) went to sit down on a chair at a Manhattan rooftop bar called 5 O’Clock Somewhere, located

within the Margaritaville New York – Times Square resort (“Margaritaville Resort”), when one of the legs of the chair broke. Mr. Felix fell to the ground, allegedly suffering injuries as a result.

The physical and commercial journey of the chair which allegedly caused Mr. Felix’s injury is a complicated one. Third-party defendant Wharton Hunt, a Minnesota entity, is a custom furniture designer that was initially approached about creating the chairs, among other furniture items, by a Vermont-based designer who was working on the 5 O’Clock Somewhere project. Subsequently, Wharton Hunt received a purchase order for the furniture forwarded to them by Flintlock Construction Services, LLC, a New York-based construction company also working on the Margaritaville Resort, on behalf of 560 7<sup>th</sup> Avenue Owner Primary LLC (“560 7<sup>th</sup> Avenue”), a buyer entity for the Margaritaville Resort. 560 7<sup>th</sup> Avenue intended to purchase the custom chairs to eventually be used at 5 O’Clock Somewhere. Wharton Hunt contracted with 560 7<sup>th</sup> Avenue, and thereafter, the chairs, like most of the furniture custom-designed by Wharton Hunt for the project, were manufactured to order in Valencia, Spain.

The chairs and other items were arranged to be delivered to a shipping location called All Seasons Warehouse in Kearny, New Jersey, before eventually being driven to their final destination in Manhattan. On June 3, 2021, Kori Yoran, General Manager of Margaritaville Resort, confirmed in an email to Kerry Hunt, a partner at Wharton Hunt, that “[A]ll [S]easons” received the shipment and that it would be delivered to 5 O’Clock Somewhere two days later.

Plaintiff’s accident took place on November 6, 2022, and in March 2023, he brought an action against IMCMV, owner of the premises where 5 O’Clock Somewhere is located, seeking damages. Shortly after filing, on April 22, 2023, Michael Roberts, General Manager of the Margaritaville Resort, sent an email to, among others, Jessica Lotner of the McBride Company, a design firm acting as a liaison between Margaritaville Resort and Wharton Hunt, complaining about photos attached to the email of now-broken furniture which had been part of the large Wharton Hunt order. Ms. Lotner forwarded that email to Ms. Hunt on April 24 with images of the damaged furniture, stating that most of the pictured furniture had come from Wharton Hunt. Ms. Hunt replied that same day stating, “[t]his is surprising to see.”

One year later, in March 2024, IMCMV filed a third-party complaint against Wharton Hunt. In May 2024, Wharton Hunt filed the instant motion seeking dismissal of the third-party complaint on multiple grounds, including that New York lacks personal jurisdiction over Wharton

Hunt under CPLR 301 and 302. IMCMV opposed the motion, arguing in favor of both general and specific, long-arm jurisdiction over Wharton Hunt. Wharton Hunt then replied.

### LEGAL STANDARD

A court may assert either general, all-purpose personal jurisdiction, or specific, conduct-linked, personal jurisdiction, over a particular defendant. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

General personal jurisdiction, codified at CPLR 301, refers to a New York court's power to adjudicate disputes regarding a natural person or business entity in New York, regardless of where the actions underlying the claim occurred. To comport with due process, however, the defendant's contacts with New York must be "so 'continuous and systematic,' judged against [its] national and global activities, that it is 'essentially at home' in th[e] state." *Lowy v. Chalkable, LLC*, 186 A.D.3d 590, 591-92 (2d Dept. 2020) (quoting *Daimler AG, supra*, 571 U.S. at 139).

Specific personal jurisdiction, codified at CPLR 302, and sometimes labeled "long-arm" jurisdiction, refers to jurisdiction over an individual or entity for the purpose of adjudicating a particular controversy that arises from the entity's contacts with the forum state. *Mejia-Haffner v. Killington, Ltd.*, 119 A.D.3d 912, 913 (2d Dept. 2014).

CPLR 302(a)(1), a section of New York's long-arm statute, grants New York courts jurisdiction over non-domiciliaries or out-of-state defendants when the action arises out of the non-domiciliaries' "transact[ion of] any business within the state or contract [ ] . . . to supply goods or services in the state." (Emphasis added). To warrant personal jurisdiction under this provision, (a) the defendant must have conducted sufficient activities to have transacted business in the state and (b) the claims must arise from those transactions. *State of New York v. Vayu, Inc.*, 39 N.Y.3d 330, 336 (2023). The first prong of that analysis requires a court to first determine if the defendant purposefully availed itself of "the privilege of conducting activities" in the state by transacting business in New York. *D&R Global Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 29 N.Y.3d 292, 297-98 (2017). A non-domiciliary defendant transacts business in New York when "on his or her own initiative[,] the non-domiciliary projects himself or herself into this state to engage in a sustained and substantial transaction of business." *Id.*

Exercise of personal jurisdiction under CPLR 302(a)(1) must also comport with federal due process. *Id.* at 299. Federal due process requires first that a defendant have "minimum contacts" with the forum state such that the defendant "should reasonably anticipate being haled

into court there.” *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 216 (2000) (internal quotation marks omitted). Second, federal due process requires that the prospect of the defendant having to defend a suit in New York comports with “traditional notions of fair play and substantial justice.” *Id.* (internal quotation marks omitted).

When a defendant objects to the court’s exercise of general or specific personal jurisdiction, the ultimate burden of proof rests upon the plaintiff. *Skutnik v. Messina*, 178 A.D.3d 744 (2d Dept. 2019). However, “[i]n opposing a motion to dismiss the complaint on the ground of lack of personal jurisdiction, a plaintiff need only make a prima facie showing that such jurisdiction exists.” *Id.* at 744-745 (internal quotation marks omitted); *Lowy v. Chalkable, LLC*, 186 A.D.3d 590, 591 (2d Dept. 2020).

### ANALYSIS

Here, third-party plaintiff IMCMV has made a prima facie showing that New York has specific personal jurisdiction over third-party defendant Wharton Hunt pursuant to CPLR 302(a)(1), because of Wharton Hunt’s transaction within New York in its sale of furniture that was ultimately delivered to a major Times Square restaurant, and because the claims at issue in this case arose from one of the transacted and delivered products. Wharton Hunt’s motion to dismiss argues that none of CPLR 302(a)’s sections are applicable to the facts of the case, specifically addressing each section. In response, IMCMV argues that jurisdiction over Wharton Hunt is proper pursuant to all of the sections. As the court finds that IMCMV has satisfied the criteria for jurisdiction under CPLR 302(a)(1), it need not address the parties’ remaining arguments for and against jurisdiction pursuant to the other sections of CPLR 302(a).

IMCMV asserts that jurisdiction is proper pursuant to the first prong of the CPLR 302(a)(1) analysis because Wharton Hunt’s “substantial and sustained business transactions within the state, as evidenced by their notable projects, including the Neiman Marcus store in New York City, demonstrate a deliberate and strategic effort to engage in commerce within this jurisdiction.” The court agrees that this would satisfy Second Department case law which holds that a non-domiciliary defendant must engage in “purposeful” activities in the state to establish that it has conducted “sufficient activities to have transacted business in New York.” *See Vayu, Inc., supra*, 39 N.Y.3d at 332.

Wharton Hunt’s single large sale and delivery of custom furniture to third-party plaintiff IMCMV’s New York location clears this threshold. The project names on the quote and freight

estimate for the purchase order specifically referenced “NYC” numerous times, the order acknowledgement and sales agreement stated that the bill would be sent to an address in New York, and the email signature of the Margaritaville Resort employee who confirmed receipt of the furniture in an email to Wharton Hunt partner Kerry Hunt specifically listed an address in New York. It was easily foreseeable to Wharton Hunt that the chair at issue would ultimately land in New York, to be used for a New York-based project.

In moving to dismiss, Wharton Hunt argues that it did not purposefully avail itself of conducting activities in New York, given that IMCMV learned about Wharton Hunt through a Vermont designer and then submitted a purchase order to buy furniture. However, Wharton Hunt’s engagement with its customer in New York, through the purchase order, order acknowledgement, and email correspondence, meet the criteria for “purposeful activities” under the first prong of the court’s inquiry. This is particularly the case given that CPLR 302 requires just one “purposeful transaction” to confer jurisdiction in New York. *See, Vayu, Inc., supra*, 39 N.Y.3d at 335. Further, the New York Appellate Division has held, “it is not necessarily who initiated contact that is determinative, but rather, the nature and quality of the contacts and the relationship established as a result.” *Grimaldi v. Guinn*, 72 A.D.3d 37, 51 (2d Dept. 2010). Regardless of the fact that it was a Vermont-based designer that reached out to Wharton Hunt first, Wharton Hunt certainly reciprocated and commenced a months-long course of conduct to transact with a New York entity for delivery of goods to a New York destination.

Under the second prong, IMCMV argues that their “claims for negligence, common law indemnity and contribution, products liability, and breach of express warranty stem from Wharton Hunt’s provision of custom hospitality furniture and related services.” This court agrees. The pleadings clearly establish “an articulable nexus or substantial relationship between the [third-party] defendant’s New York activities” and the [third-party] plaintiff’s claims. *See D & R Glob. Selections, S.L.*, 29 N.Y.3d at 299. Movant’s papers do not convince the court otherwise.

Lastly, Wharton Hunt argues that New York’s exercise of personal jurisdiction would offend due process. IMCMV counters, asserting that New York’s exercise of personal jurisdiction over Wharton Hunt “comports with traditional notions of fair play, substantial justice, and due process,” given not just their contacts based on the furniture transaction, but also their “deliberate and consistent business activities in New York,” as evidenced by their numerous other New York-based design projects that Wharton Hunt itself advertised on their webpage. The court is satisfied

that these pleadings establish that Wharton Hunt has the requisite “minimum contacts with [New York] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” See *International Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940). Indeed, the Supreme Court has more recently held that “if the sale of a product of a manufacturer or distributor ... is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Wharton Hunt’s business activity in New York, both in relation to the Margaritaville Resort but also in its other advertised New York projects, is more than sufficient to meet the federal standard.

The exercise of personal jurisdiction over Wharton Hunt also comports with applicable New York case law regarding traditional notions of fair play, substantial justice, and due process. In *Grimaldi*, the Second Department found these elements were met where the non-domiciliary defendant “affirmatively attempted to establish a relationship with the plaintiff” by agreeing to install equipment in the plaintiff’s automobile. See *Grimaldi, supra*, 72 A.D.3d at 51. The defendant “purposefully created a continuing relationship with the plaintiff centered on the project at issue,” given phone calls and e-mails over several months between the two parties. *Id.* at 52. These contacts are similar to the correspondence between IMCMV and Wharton Hunt representatives.

#### CONCLUSION

IMCMV has shown, as a matter of law, that New York has personal jurisdiction over third-party defendant Wharton. Wharton Hunt’s motion to dismiss the third-party complaint is DENIED.

Dated: 12/12/2025

KAL KATHERINE A. LEVINE  
Hon. Katherine A. Levine, J.S.C.