

**ASC Regenity Inc. v Sylo, Inc.**

2024 NY Slip Op 34403(U)

December 12, 2024

Supreme Court, New York County

Docket Number: Index No. 652371/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M**

*Justice*

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ASC REGENITY INC.,

Plaintiff,

- v -

SYLO, INC., LUNA PARK DIGITAL, BRETT GARFINKEL,  
and ERICK SCHWAB,

Defendants.

-----X

INDEX NO. 652371/2023

MOTION DATE 07/06/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4-80, 88-103  
were read on this motion to/for DISMISSAL.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, defendants’ motion to dismiss the complaint based on documentary evidence (CPLR 3211 [a] [1]), for failure to state a cause of action (CPLR 3211 [a] [7]), and for lack of personal jurisdiction (CPLR 3211 [a] [8]) is granted as to the lack of personal jurisdiction, for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 5-8, 95-97) and the exhibits attached thereto, in which the court concurs, as summarized herein.

This action arises out of an agreement between plaintiff, a beauty products brand, and defendant Sylo, Inc. (“Sylo”), effective July 19, 2021 through December 31, 2021, to create a “brand ambassador platform” for plaintiff’s digital and influencer marketing efforts (statement of work, NYSCEF Doc. No. 9). Defendants Brett Garfinkel and Erick Schwab were co-founders and Chief Executive Officers of Sylo. Sylo eventually wound up its operations, at which time Garfinkel and Schwab established Luna Park Management LLC (“LPM”), doing business as

defendant Luna Park Digital (“LPD”) (certificate of formation, NYSCEF Doc. No. 45; LPM/LPD W9, NYSCEF Doc. No. 98 at 2).

Plaintiff commenced this action for breach of contract and various related commercial torts, alleging in principle that defendants collectively failed to complete the services provided for under the agreement between plaintiff and Sylo. Defendants are also alleged to have invoiced plaintiff following the end of the agreement’s term, which invoices were inadvertently paid, and which defendants refuse to refund. Defendants assert that the court lacks jurisdiction over them, and that the complaint fails to state a cause of action.

On a motion to dismiss for lack of personal jurisdiction pursuant to CPLR 3211(a)(8), the plaintiff bears the burden of showing jurisdiction (*Wang v LSUC*, 137 AD3d 520, 521 [1st Dept 2016]). The court may assert personal jurisdiction over a non-domiciliary where the action is permissible under the long-arm statute (CPLR 302), and the exercise of jurisdiction comports with due process (*Williams v Beemiller, Inc.*, 33 NY3d 523, 528 [2019]). Due process requires that a nondomiciliary have “certain minimum contacts” with the forum state and “that the maintenance of the suit does not offend traditional notions of fair play and substantial justice” (*id.*, quoting *International Shoe Co. v Washington*, 326 U.S. 310, 316 [1945]). As relevant to this matter, the long-arm statute provides that “a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state” (CPLR 302[a][1]). “Even one instance of purposeful activity directed at New York is sufficient to create jurisdiction, whether or not defendant was physically present in the State, as long as that activity bears a substantial relationship to the cause of action” (*Corporate Campaign v Local 7837, United Paperworkers Intl. Union*, 265 AD2d 274, 274-75 [1st Dept 1999]).

The court may also find that it has general jurisdiction over a defendant. CPLR 301 allows the courts to exercise general jurisdiction over a defendant only where it is either domiciled in New York or its contacts with New York “are so extensive as to support general jurisdiction notwithstanding domicile elsewhere” (*IMAX Corp. v The Essel Group*, 154 AD3d 464, 466 [1st Dept 2017]). A corporate defendant is domiciled in New York where it is either incorporated in New York or has its principal place of business within the State (*Okoroafor v Emirates Airlines*, 195 AD3d 540 [1st Dept 2021]).

Turning first to general jurisdiction, plaintiff alleges that Sylo’s principal place of business is in New York County (complaint, NYSCEF Doc. No. 1, ¶ 1). Sylo was a Delaware Limited Liability Company (certificate of dissolution, NYSCEF Doc. No. 19). Prior to the date of the agreement, Sylo moved its principal place of business to Texas (JustWorks email dated August 24, 2020, NYSCEF Doc. No. 11). Plaintiff asserts that Sylo remains listed as an active foreign corporation authorized to do business in New York (entity information, NYSCEF Doc. No. 90). However, the dissolution of a corporation in its home state also renders it defunct in other states (*Matter of Lehigh v 6th Ave. Bancorporation, Inc.*, 251 AD 391, 393 [1st Dept 1937]). Moreover, even were Sylo still operating, the mere authorization to do business in New York does not subject a corporate entity to general jurisdiction in New York (*Aybar v Aybar*, 37 NY3d 274, 283 [2021]). Thus, the court cannot exercise general jurisdiction over Sylo. LPM, similarly, is a Delaware Limited Liability Company, and plaintiff does not allege sufficient facts showing that its principal place of business was in New York. Garfinkel and Schwab are alleged to be domiciled in Florida and Texas, respectively, and therefore cannot be subject to general jurisdiction in New York.

As for personal jurisdiction under the long-arm statute, the complaint alleges that jurisdiction is proper under the long-arm statute because defendants “contracted to provide services to plaintiff, an entity based in New York” (complaint, NYSCEF Doc. No. 1, ¶ 6). As defendants point out, plaintiff’s public LinkedIn profile lists its headquarters as London, England (*see* Augustinus Bader, LinkedIn, <https://www.linkedin.com/company/augustinus-bader> [last accessed December 12, 2024]). Defendants, as established above, are not located in New York, and all of the employees of plaintiff who worked with defendants on the project are located outside of New York (Garfinkel aff., NYSCEF Doc. No. 6, ¶¶ 64-73). If no business was transacted in New York, then the court cannot exercise jurisdiction over defendants under the transacting business provision.

In opposition to the motion, plaintiff argues that Sylo invoiced it at a New York address, directed payment be sent to it at a New York bank account, and recruited a significant number of New York-based influencers to serve as plaintiff’s brand ambassadors. However, it is undisputed that plaintiff reached out to Sylo initially, and the agreement was neither negotiated nor executed in New York. The invoices were emailed to various of plaintiff’s employees rather than mailed to a New York address (Garfinkel aff., NYSCEF Doc. No. 6, ¶¶ 12-14, 16, 21, 24, 25, 31-37, 44-54, 57, 59, and emails cited therein). The spreadsheet submitted by defendants listing the influencers shows that they are based in multiple locations rather than solely in New York (spreadsheet, NYSCEF Doc. No. 12). Finally, the use of a New York bank account is not enough by itself to establish personal jurisdiction (*Fremay, Inc. v Modern Plastic Mach. Corp.*, 15 AD2d 235, 241 [1st Dept 1961] [“The existence of a bank account in New York by itself is not sufficient”]). *Rushaid v Pictet & Cie* (28 NY3d 316 [2016]), cited by plaintiff, is not to the contrary, as that case concerned the use of a New York correspondent bank account by a non-

domiciliary to facilitate allegedly improper financial transfers that were the subject of the action.

Here, by contrast, the only asserted link to New York is the bank account.

Based upon the foregoing, the court finds that it lacks personal jurisdiction over the defendants and dismisses the action on that basis. Lacking jurisdiction, the court does not address whether the complaint states a cause of action.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendants dismissing the action against them.

This constitutes the decision and order of the court.

<u>12/12/2024</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE