

Pegasus Fund, LLC v Kolonich

2024 NY Slip Op 34399(U)

December 12, 2024

Supreme Court, New York County

Docket Number: Index No. 652299/2024

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

-----X

PEGASUS FUND, LLC,

Plaintiff,

- v -

JONATHAN KOLONICH, ROBERT ROSSANO, P.A.,
ROBERT ROSSANO,

Defendant.

-----X

INDEX NO. 652299/2024

MOTION DATE 05/31/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 31, 33, 34, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendants’ motion to dismiss for lack of personal jurisdiction is granted and plaintiff’s cross-motion for summary judgment is denied.

Background

Pegasus Fund, LLC (“Plaintiff”) is a litigation funding entity that was contacted in April of 2022 by Jonathan Kolonich (“Kolonich”) about obtaining financing for a personal injury case in Florida. Plaintiff is a Delaware LLC with an Agent for Service of Process located in New York. Kolonich was represented in the Florida case by Robert Rossano, P.A. (“Law Firm Defendant”). Plaintiff entered into a series of financing contracts (the “Loan Agreements”) with Kolonich. Pursuant to which, Law Firm Defendant, and Robert Rossano, Esquire (“Attorney Defendant”, collectively with Law Firm Defendant the “Legal Defendants”) agreed to pay monies owed to Plaintiff directly out of any judgment or settlement. At some point, the Attorney Defendant informed Plaintiff that he and his firm no longer represented Kolonich. There was a

settlement in the Florida case and Plaintiff claims that they have been unsuccessful in recovering their portion owed from the settlement monies, despite several attempts.

In May of 2024, Plaintiff filed suit in New York, seeking a declaratory judgment stating that Plaintiff is entitled to know certain details about the settlement. They have also pled breach of contract and breach of the covenant of good faith and fair dealing against all defendants, and breach of fiduciary duty against the Legal Defendants. Kolonich failed to appear in this case, and on August 23, 2024, Plaintiff obtained a default judgment against him.

Discussion

The Legal Defendants have brought the present motion to dismiss for lack of personal jurisdiction, or, in the alternative, an order transferring the case to Miami-Dade County. Plaintiff opposes and has cross-moved for summary judgment on their claims against the Legal Defendants.

The Loan Agreements Did Not Contain a Choice of Venue Provision

Plaintiff first argues that the Loan Agreements provide personal jurisdiction because of the provision in Section 9, which states in its entirety: “Governing Law and Venue: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without regard to its choice of law provisions.” The body of the provision clearly only provides for choice of law, not choice of venue. While the header for the provision includes the word venue, this is irrelevant. Section 12 of the Loan Agreements states that “[t]he section headings contained in this Agreement are for reference only and shall not effect in any way the meaning or interpretations of this Agreement.”

Furthermore, a valid forum selection provision must designate either a jurisdiction (such as federal or state court system), or a venue within the state (such as a specific county). *Knight v.*

New York & Presbyt. Hosp., 2024 N.Y. LEXIS 1894, *4 (2024). Here, there is no mention of jurisdiction or venue in the relevant section, only what law a court hearing the case would apply, which does not on its own establish the forum. Florida courts, for example, are perfectly capable of applying New York law. Therefore, there is no choice of venue or forum-selection provision in the Loan Agreements that would grant this Court personal jurisdiction over the Legal Defendants, who are Florida residents.

The State Long-arm Statute Requirements Have Not Been Satisfied Here

Plaintiff also argues that the Legal Defendants are still subject to personal jurisdiction in New York under the long-arm statute. CPLR § 302(a)(1) states that a court may exercise personal jurisdiction over a non-resident who “transacts any business within the state or contracts anywhere to supply goods or services in the state.” Legal Defendants oppose, arguing that they did not transact any business within New York as contemplated by the statute, and that even if they did, the constitutional due process requirements are not met here.

In determining whether there is personal jurisdiction under the long-arm statute, “courts must ask whether *what the defendant did in New York* constitutes a sufficient ‘transaction’ to satisfy the statute” (emphasis in original). *State of New York v. Vayu, Inc.*, 39 N.Y.3d 330, 332 (2023). This analysis is “primarily a fact-based inquiry that requires an assessment of whether the non-domiciliary’s activities in the state were purposeful”, which is further defined as “volitional acts by which the non-domiciliary avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Id.* But “[n]ot all purposeful activity [] constitutes a transaction of business within the meaning of CPLR

§ 302(a)(1)” and the “quality of the defendants’ New York contacts [is] the primary consideration.” *Fischbarg v. Doucet*, 9 N.Y.3d 375, 380 (2007).

Plaintiff offers the following interactions by the Legal Defendants as purposeful activity: that they provided multiple status updates on the Florida case to Plaintiff after the Loan Agreements were entered into; that they called Plaintiff to “obtain the payoff amount and suggest a reduction in the lien”; and that they agreed pursuant to the Loan Agreements to pay Plaintiff at a New York address. The problem with these facts is that it was Kolonich who sought out a company based in New York to do business with, and not Legal Defendants. Legal Defendants never went to New York, never agreed to provide goods or services within New York, or do anything more than send some emails and phone call(s) to the company their client chose to conduct business with.

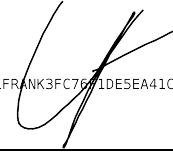
While courts have found long-arm jurisdiction over “commercial actors who [...] us[ed] electronic and telephonic means to project themselves into New York to conduct business transactions”, such a scenario does not apply to the present fact pattern. *Vayu*, at 334. The Legal Defendants did not, as in *San Ysidro Corp*, appear in New York in order to negotiate terms of an agreement. *San Ysidro Corp. v. Robinow*, 1 A.D.3d 185, 187 (1st Dept. 2003). Nor could they, like in *Deutsche Bank*, expect to have been haled into court in New York because they “knowingly enter[ed]” New York electronically in order to “negotiate and conclude a substantial transaction.” *Deutsche Bank Sec., Inc. v. Montana Bd. of Invs.*, 7 N.Y.3d 65, 72 (2006). Any electronic entrance into New York by Legal Defendants took place after Plaintiff and Kolonich negotiated and entered into the Loan Agreements. The emails and call(s) that Legal Defendants made to Plaintiff do not amount to purposeful activity as contemplated by CPLR § 302(a)(1). Because there is not personal jurisdiction over Legal Defendants under the state’s long-arm

statute, the Court does not need to address the constitutional due process arguments. And because there is no personal jurisdiction, the Plaintiff’s cross-motion for summary judgment against the Legal Defendants is moot. Accordingly, it is hereby

ORDERED that the complaint be dismissed as against defendant Robert Rossano, P.A. and Robert Rossano, Esq., for lack of personal jurisdiction; and it is further

ADJUDGED that plaintiff’s cross-motion is denied.

20241212115335LFRANK3FC7671DE5EA41CC9E581BF0F7EE993C



12/12/2024
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE