

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

785

CA 23-01880

PRESENT: WHALEN, P.J., CURRAN, OGDEN, DELCONTE, AND HANNAH, JJ.

---

APPLIED HEALTHCARE RESEARCH MANAGEMENT,  
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

KEMI R. IBRAHIM, DEFENDANT-APPELLANT.

---

CRISCIONE RAVALA, LLP, NEW YORK CITY (GALEN J. CRISCIONE OF COUNSEL),  
FOR DEFENDANT-APPELLANT.

KLOSS STENGER & GORMLEY LLP, BUFFALO (JEREMY A. COLBY OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

---

Appeal from an order of the Supreme Court, Erie County (Gerald J. Greenan, III, J.), entered October 30, 2023. The order denied the motion of defendant to dismiss the complaint.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by granting the motion in part and dismissing the first, third, and fourth causes of action, and as modified the order is affirmed without costs.

Memorandum: Plaintiff, a New York corporation, commenced this action seeking damages arising from defendant's alleged breach of the parties' consulting agreement and from allegedly defamatory letters defendant sent to two of plaintiff's clients. Defendant, an individual residing in Texas, moved to dismiss the complaint pursuant to CPLR 3211 (a) (8) on the ground that Supreme Court lacked personal jurisdiction over her or, in the alternative, pursuant to CPLR 3211 (a) (7) on the ground that the complaint failed to state a claim. The court denied the motion, and defendant appeals.

We reject defendant's contention that the court erred in denying her motion insofar as it sought dismissal of the complaint for lack of personal jurisdiction. Pursuant to New York's long-arm statute, "a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state" (CPLR 302 [a] [1]). Jurisdiction can attach on the basis of one transaction, even if the defendant never enters the state, " 'so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted' " (*Deutsche Bank Sec., Inc. v Montana Bd. of Invs.*, 7 NY3d 65, 71 [2006], cert denied 549 US 1095 [2006]; see *Fischbarg v Doucet*, 9 NY3d 375, 380 [2007]). Purposeful activities

are those by which a defendant, "through volitional acts, 'avails itself of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws' " (*Fischbarg*, 9 NY3d at 380; see *Cellino & Barnes, P.C. v Martin, Lister & Alvarez, PLLC*, 117 AD3d 1459, 1461 [4th Dept 2014], lv dismissed 24 NY3d 928 [2014]). Such acts may be contrasted with "random, fortuitous, or attenuated contacts, . . . [or] the unilateral activity of another party or a third person" (*Burger King Corp. v Rudzewicz*, 471 US 462, 475 [1985] [internal quotation marks omitted]; see generally *LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 216-217 [2000]).

Here, the parties' contract called for defendant to provide data models for plaintiff's clients. Although defendant never physically entered New York as part of her relationship with plaintiff, she purposefully entered into a months-long contract with plaintiff that required her to project herself into New York to retrieve digital files from plaintiff's New York-based server, including software, proprietary data, and examples of prior work. Moreover, the fact that defendant would be required to project herself into New York and transmit files to and from plaintiff's server was explicit in the contract, which stated that "[a]ll communication will be through [plaintiff's] email server, phone and intranet." Defendant was thereby enabled to transact business within the state, "without physically entering" the state (*Deutsche Bank Sec., Inc.*, 7 NY3d at 71), by means of " 'the knowing and repeated transmission of computer files over the [i]nternet' " to and from New York (*Best Van Lines, Inc. v Walker*, 490 F3d 239, 251 [2d Cir 2007]; see *Centrifugal Force, Inc. v Softnet Communication, Inc.*, 2009 WL 1059647, \*5 [SD NY, Apr. 17, 2009, No. 08 Civ. 5463(CM)(GWG)]; see also *Grimaldi v Guinn*, 72 AD3d 37, 51-52 [2d Dept 2010]).

Moreover, plaintiff alleges that defendant breached the contract by failing to deliver to plaintiff the data models she created. Pursuant to the long-arm statute, "New York courts may . . . exercise jurisdiction over a nondomiciliary who contracts outside this State to supply goods or services in New York even if the goods are never shipped or the services are never supplied in New York, so long as the cause of action . . . arose out of that contract" (*Alan Lupton Assoc. v Northeast Plastics*, 105 AD2d 3, 6 [4th Dept 1984]; see generally *Island Wholesale Wood Supplies v Blanchard Indus.*, 101 AD2d 878, 880 [2d Dept 1984]). Whether the provision of those data models is considered "goods" or "services," defendant's failure to deliver them to New York constitutes a basis for personal jurisdiction (see *LHR, Inc. v T-Mobile USA, Inc.*, 88 AD3d 1301, 1302 [4th Dept 2011]; *Courtroom Tel. Network v Focus Media*, 264 AD2d 351, 353 [1st Dept 1999]).

Based on the totality of the circumstances in this case (see *Sager v City of Buffalo*, 151 AD3d 1908, 1909 [4th Dept 2017]; *Atwal v Atwal*, 24 AD3d 1297, 1298 [4th Dept 2005]), we conclude that defendant had the requisite " 'minimum contacts' with this state to warrant the exercise of long-arm jurisdiction pursuant to CPLR 302 (a) (1)" and "that the exercise of jurisdiction here comports with due process"

(*Cellino & Barnes, P.C.*, 117 AD3d at 1461; see generally *LaMarca*, 95 NY2d at 216).

Defendant further contends that the court erred in denying her motion insofar as it sought dismissal of the complaint for failure to state a cause of action. "When reviewing a defendant's motion to dismiss a complaint for failure to state a cause of action, a court must give the complaint a liberal construction, accept the allegations as true and provide plaintiff[ ] with the benefit of every favorable inference . . . Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 38 [2018] [internal quotation marks omitted]). Here, the complaint, with its attached exhibits, adequately sets forth causes of action for breach of contract and defamation, and defendant's contentions to the contrary raise issues of fact and do not warrant relief under CPLR 3211 (a) (7) (see generally *Tower Broadcasting, LLC v Equinox Broadcasting Corp.*, 160 AD3d 1435, 1436 [4th Dept 2018]).

We agree with defendant, however, that the first cause of action, for declaratory judgment, should be dismissed because there is no need for declaratory relief "where the issues concern the merits of the breach of contract cause[] of action" (*Burgdorf v Kasper*, 83 AD3d 1553, 1555 [4th Dept 2011]; see generally *James v Alderton Dock Yards*, 256 NY 298, 305 [1931], rearg denied 256 NY 681 [1931]). Declaratory relief is " 'unnecessary and inappropriate' " under the circumstances of this case because " 'plaintiff has an adequate, alternative remedy' " in the breach of contract cause of action (*Main Evaluations v State of New York*, 296 AD2d 852, 853 [4th Dept 2002], appeal dismissed & lv denied 98 NY2d 762 [2002]; see *Niagara Falls Water Bd. v City of Niagara Falls*, 64 AD3d 1142, 1144 [4th Dept 2009]). We therefore modify the order accordingly.

Finally, plaintiff has consented in its brief on appeal to the dismissal of the third and fourth causes of action, for tortious interference with contract and tortious interference with business relations, respectively, and we therefore further modify the order accordingly (see *Harris v Rome Mem. Hosp.*, 217 AD3d 1412, 1413 [4th Dept 2023]; see also *Sochan v Mueller*, 162 AD3d 1621, 1622 [4th Dept 2018]).