

**Chardno Chemrisk, LLC v Foytlin**

2014 NY Slip Op 32548(U)

September 29, 2014

Supreme Court, New York County

Docket Number:

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 61

-----X  
CHARDNO CHEMRISK, LLC,

Plaintiff,

-against-

CHERRI FOYTLIN and KAREN SAVAGE,

Defendants.  
-----X

DECISION AND  
ORDER

Index No. 153472/2014  
Mot. Seq. 002

HON. ANIL C. SINGH, J.:

This is a defamation action brought by plaintiff Chardno ChemRisk, LLC (ChemRisk) alleging that defendants Cherrri Foytlin and Karen Savage posted a defamatory article regarding plaintiff on The Huffington Post website. Defendants, pro se, move to dismiss the defamation claim for lack of personal jurisdiction. In opposition, plaintiff first seeks by order to show cause pursuant to CPLR 2214 (d) and CPLR 3211 (d), to conduct jurisdictional discovery in order to respond to defendants' motion to dismiss. The court will address the order to show cause for jurisdictional discovery herein.

*Background*

It is undisputed that neither defendants nor plaintiff is located in New York. ChemRisk is a Delaware limited liability company headquartered in California. Defendant Foytlin resides in Louisiana and defendant Savage resides in Massachusetts. Instead, plaintiff brings the action in New York on the basis that (1) defendant Foytlin had a presence in New York pursuant to CPLR 301, and that (2) defendants transacted business in New York pursuant to CPLR 302 (a)(1), mainly by posting the subject article on the website of The Huffington Post, a New York corporation.

Plaintiff argues that this court has jurisdiction over defendant Foytlin because she has published about eleven articles with The Huffington Post, communicated with the company, and traveled to New York to promote her activist cause. Plaintiff also points out that defendant Foytlin owns a blog, <http://bridgethegulfproject.org/>, funded by Rockefeller Philanthropy Advisors, Inc. which has its principal place of business in New York. According to plaintiff, defendant Savage has contributed to defendant Foytlin's blog and to the subject article. Plaintiff asserts that by publishing the subject article in The Huffington Post and by promoting their article to New Yorkers on The Huffington Post, Twitter, Facebook, and email, they transacted business in New York.

#### *Discussion*

In order to obtain jurisdictional discovery, plaintiff must make a "sufficient start" demonstrating that a long-arm jurisdiction may exist over defendants. (See American BankNote Corp. v. Daniele, 45 AD3d 338, 340 [1st Dept 2007] (holding that plaintiff's pleadings and affidavits alleging that the non-domicile defendants used their New York bank accounts to further their misdeeds, contracted to provide goods for New York clients, and traveled to New York for business was a sufficient start to warrant jurisdictional discovery)). The court ultimately has the discretion to grant jurisdictional discovery, but plaintiff must still make a threshold showing that there is some basis for jurisdiction. (See Royalty Network v. Dishant.com, 638 F.Supp.2d 410, 425 [SDNY 2009]).

#### *CPLR 301 Presence*

CPLR 301 provides that the court "may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore." The New York courts have exercised general jurisdiction over an entity that engaged in "a continuous and systematic

course of doing business,” such that it may be said to have “presence” in the state. (See Biro v. Condé Nast, 2012 US Dist LEXIS 113188 [SDNY 2012] citing Landoil Resources Corp. v. Alexander & Alexander Servs., 77 NY2d 28, 33 [1990]). The activities in New York must be permanent and continuous, and not occasional or causal. (See Haber v. Studium, Inc. 2009 NY Slip Op 50368(U) [Sup. Ct, NY County 2009] citing Spencer Trask Ventures, Inc. v. Archos S.A., 2002 US Dist LEXIS 4396 [SDNY 2002](holding that a non-domiciliary is not “present in New York simply because its subsidiary sells its product through a New York distributor”)).

In totality, plaintiff has not alleged the possible existence of sufficient jurisdictional facts that would show a continuous and systematic course of doing business in New York to warrant jurisdictional discovery.

#### *CPLR 302(a)(1) Transaction of Business*

CPLR 302 (a)(1) provides that a court may exercise the long-arm statute in defamation cases against a non-domiciliary who transacted any business within the State. (See Johnson v. Ward, 4 NY3d 516, 519 [2005]). To determine jurisdiction under 302(a)(1), a court must decide whether defendant “transacts business” in New York, and if so (2) whether this cause of action arises from such transaction. (Best Van Lines, Inc. v. Walker, 490 F.3d 239, 246 [2d Cir 2007]; see also Deer Consumer Prods., Inc. v. Little, 938 NYS2d 767 [Sup. Ct, NY County 2012]). The test looks to the defendant’s activities to determine some purposeful activities within the state and some articulable nexus between the business transacted and the cause of action. (See SPCA of Upstate N.Y., Inc. v. Am. Working Collie Ass’n, 18 NY3d 400, 404 [2012]).

However, the New York long-arm statute has limited applicability in defamation cases to avoid disproportionate inhibitions on freedom of speech or press. (Id. citing Legros v. Irving, 38 AD2d 53, 55 [1st Dept 1971] lv dismissed 30 NY2d 653 [1972]). The Second Circuit has observed that New York courts construe “transacts any business” more narrowly in defamation cases than in other contexts. (See Best Van Lines, 490 F3d 239, 248 (holding that a single act of uttering defamation is not a transaction of business and that more than distribution of libelous statement must be made within state to establish long arm jurisdiction)). Furthermore, jurisdiction is not justified where the relationship between the claim and transaction is too circumscribed and not directly related to the defamatory statement. (See SPCA, 18 NY3d at 404-405 citing Copp v. Ramirez, 62 AD3d 23 [1st Dept 2009], lv denied 12 NY3d 711 (holding that there is insufficient nexus over non-domiciliaries who allegedly made defamatory statements in New Mexico to New York reporters three years after spending time at Ground Zero)).

Internet defamation is treated no differently. (See SPCA, 18 NY3d at 404-406 (Mere defamatory utterances posted on the non-domiciliary’s website sent into the state are insufficient to satisfy “transacting business” requirement)). Jurisdiction will lie if the posts are intended to target internet users in New York. (See Best Van Lines, 490 F.3d at 249 (New York courts have found jurisdiction where defamatory statements were “projected into New York and targeting New Yorkers, but only where the conduct also included something more”).

Here, plaintiff attempts to impute specific jurisdiction over the defendants based on the fact that defendants chose to post the subject article on The Huffington Post. However, this is insufficient to demonstrate transaction of business because virtually all the substantial work for publishing the subject article did not take place in New York.

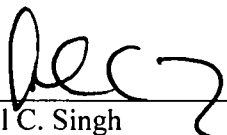
Even assuming that defendants were “transacting business” in New York by posting on The Huffington Post, plaintiff has not alleged jurisdictional facts that would constitute purposeful activity to warrant jurisdictional discovery. (See Best Van Lines, 490 F.3d at 246). Plaintiff does not put forward any compelling reason why discovery should be allowed or identify any particular facts that would be disclosed by the expansive discovery requests. It is well established that a “plaintiff cannot put defendant through costly process of discovery, even discovery limited to jurisdictional matters, simply because it thinks that it can probably show significant contact with the State of New York.” (See Royalty Network, Inc., 638 F.Supp. 2d at 425 citing Bellepoint, Inc. v. Kohl’s Dep’t Stores, 975 F.Supp 562, 564 [SDNY 1997]). In short, plaintiff has not alleged sufficient facts to set forth a sufficient start to warrant jurisdictional discovery.

Accordingly, it is

ORDERED that the Plaintiff’s Motion to Compel Jurisdictional Discovery is denied; and it is further

ORDERED that pursuant to the parties’ Stipulation dated July 10, 2014, Defendant’s Motion to Dismiss is adjourned to November 19, 2014 at 10:30 AM in Part 61. Plaintiff shall file and serve opposition papers on or before October 30, 2014. Defendants may file reply and serve reply papers on or before November 15, 2014.

Date: September 29, 2014  
New York, New York

  
Anil C. Singh

**HON. ANIL C. SINGH**  
**SUPREME COURT JUSTICE**