

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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| BRILLIANT COLORS DIGITAL, PTE. LTD., |) | Case No. 12-00594 SC |
| |) | |
| |) | ORDER DENYING MOTION TO |
| Plaintiff, |) | DISMISS FOR LACK OF PERSONAL |
| |) | <u>JURISDICTION</u> |
| v. |) | |
| |) | |
| CENTURION ART DEVELOPMENT, LLC, |) | |
| RUSSELL DWAYNE MASON, and LEON |) | |
| GUOLIANG WANG, |) | |
| |) | |
| Defendants. |) | |
| |) | |

Plaintiff Brilliant Colors Digital, Pte. Ltd. ("Plaintiff") brings this action in its own right and as assignee of the rights and claims of Massive Black, Inc. ("MB"). ECF No. 1 ("Compl.") ¶ 4. MB produces concept art, 2- and 3-dimensional illustrations, and animation for the entertainment industry, and has a production studio in Shanghai, China ("MB Shanghai"). Id. ¶¶ 10, 11. Plaintiff alleges that Defendant Leon Goliang Wang ("Wang") was MB Shanghai's director and manager. Id. ¶ 18. Plaintiff further alleges that, in 2011, Wang and Defendant Russell Mason secretly formed a new business, Defendant Centurion Art Development, LLC, to seize MB's assets and opportunities. Id. ¶ 28.

1 Wang now moves to dismiss for lack of personal jurisdiction,
2 pursuant to Federal Rule of Civil Procedure 12(b)(2). ECF No. 25
3 ("MTD"). The motion is fully briefed, ECF Nos. 33 ("Opp'n"), 37
4 ("Reply"), and appropriate for resolution without oral argument.
5 For the reasons set forth below, the Court DENIES Wang's motion.

6 On a Rule 12(b)(2) motion such as this, "plaintiffs bear the
7 burden of demonstrating that jurisdiction is appropriate." Dole
8 Food Co., Inc. v. Watts, 303 F.3d 1104, 1108 (9th Cir. 2002).
9 Where, as here, the motion is based on written materials rather
10 than an evidentiary hearing, the Court must determine whether the
11 plaintiff's pleadings and affidavits make a prima facie showing of
12 personal jurisdiction. Id. "[U]ncontroverted allegations in the
13 complaint must be taken as true," and "conflicts between parties
14 over statements contained in affidavits must be resolved in the
15 plaintiff's favor." Id.

16 The Court finds that Plaintiff has satisfied its prima facie
17 burden here. Wang argues that the Court lacks jurisdiction because
18 he resides exclusively in the People's Republic of China, does not
19 conduct business in California, does not own property in
20 California, does not pay taxes in California, and has never owned
21 an office in California. MTD at 7. However, these facts are not
22 dispositive since (1) Wang was personally served with process in
23 California; and (2) Wang contractually agreed to be subject to
24 jurisdiction in this forum.

25 With respect to the first point, Wang was personally served in
26 San Francisco, California on March 8, 2012. ECF No. 8 ("Proof of
27 Service"). Under prevailing Supreme Court precedent, in-state
28 personal service is sufficient to establish personal jurisdiction.

1 Burnham v. Super. Ct., 495 U.S. 604, 619 (1990); see also Water
2 Wheel Camp Recreational Area, Inc. v. LaRance, 642 F.3d 802, 819
3 (9th Cir. 2011). Wang concedes that he was served in San Francisco
4 while attending a multi-day conference, but he argues that his
5 "presence in California is limited and attenuated such that the
6 exercise of jurisdiction would be unreasonable." Reply at 4. The
7 Supreme Court considered and rejected a similar argument in
8 Burnham:

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10 The short of the matter is that jurisdiction based on
11 physical presence alone constitutes due process because
12 it is one of the continuing traditions of our legal
13 system that define the due process standard of
14 "traditional notions of fair play and substantial
15 justice." That standard was developed by analogy to
16 "physical presence," and it would be perverse to say it
17 could now be turned against that touchstone of
18 jurisdiction.

19 495 U.S. at 619. Accordingly, the Court finds that the exercise of
20 personal jurisdiction is proper because Wang was served in the
21 forum.

22 The exercise of personal jurisdiction is also appropriate
23 because Wang entered into a "Confidentiality and Invention
24 Assignment Agreement" (the "Confidentiality Agreement") with MB
25 which provides for exclusive jurisdiction in California:

26 Any dispute that arises under or relates to this
27 Agreement (whether contract, tort, or both) shall be
28 resolved in Federal or State court with jurisdiction for
the County of San Francisco, State of California, and the
parties expressly waive any right they may otherwise have
to cause any such action or proceeding to be brought or
tried elsewhere.

ECF No. 34 Ex. B. ¶ 14. Forum selection clauses, such as the one
in the Confidentiality Agreement, are presumptively valid and
evidence consent to personal jurisdiction in the forum selected.

1 Craigslist, Inc. v. Naturemarket, Inc., 694 F. Supp. 2d 1039, 1052
2 (N.D. Cal. 2010). "The party disputing the validity of a forum
3 selection clause bears the burden of proving the clause is
4 unenforceable." Id.

5 Wang argues that his contract for services with MB was illegal
6 under Chinese law and, therefore void. Reply at 2. Specifically,
7 Wang contends that, as a foreign business holding a resident
8 representative office in China, MB could not legally employ Chinese
9 citizens, such as Wang, to perform any profitable development work
10 in China. Id. However, Wang has failed to point to any Chinese
11 authority which would support this contention. Instead, he merely
12 cites to his own declaration. Wang is not a lawyer and, in any
13 event, his legal opinions are not binding on this Court. Further,
14 even if MB and Wang's employment relationship were illegal, it is
15 unclear why that would affect the enforceability of the
16 Confidentiality Agreement. Accordingly, the Court finds that Wang
17 has failed to meet his burden of proving that the forum selection
18 clause in the Confidentiality Agreement is unenforceable.

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20 For the foregoing reasons, the Court DENIES Defendant Leon
21 Goliang Wang's motion to dismiss for lack of personal jurisdiction.

22
23 IT IS SO ORDERED.

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25 Dated: December 5, 2012


UNITED STATES DISTRICT JUDGE