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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

APL CO. PTE, LTD.,
Plaintiff,
v.
INTERGRO INC,
Defendant.

Case No. 14-cv-00488-JD

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

Re: Dkt. No. 14

Plaintiff APL Co. Pte, Ltd. (“APL”) is an international shipping corporation that is incorporated in Singapore and registered to conduct business in California. Defendant Intergro, Inc. (“Intergro”) is a Florida corporation that has its principal place of business in Clearwater, Florida. This dispute arises out of defendant’s alleged breach of contract. Pending before the Court is defendant’s motion to dismiss for lack of personal jurisdiction or improper venue, or alternatively to transfer venue to the Middle District of Florida. Dkt. No. 14. The Court grants defendant’s motion and orders the case transferred to the Middle District of Florida.

BACKGROUND

Plaintiff alleges as follows. In 2009, APL entered into a contract with Intergro “whereby APL agreed to transport and convey wood sticks from Honduras into the United States, on behalf of, and at the request of, Intergro.” Dkt. No. 1 ¶ 6. Intergro expressly agreed to a “Minimum Volume Commitment,” specifically “a minimum quantity of carriage of 600 freight equivalent units (“FEU”) before the contract expiration date of January 31, 2010.” *Id.* ¶¶ 7-8. APL alleges that Intergro violated this contract by shipping only 251 FEUs of cargo, and that under the contract Intergro is now obligated to pay APL a liquidated damages charge of \$122,150. *Id.* ¶ 11.

1 § 410.10. Consequently, the jurisdictional analyses under California state law and federal due
2 process “are the same,” and the Court may exercise personal jurisdiction over a nonresident
3 defendant so long as the defendant “ha[s] at least ‘minimum contacts’ with the relevant forum
4 such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and
5 substantial justice.’” *Schwarzenegger*, 374 F.3d at 800-01 (quoting *Int’l Shoe Co. v. Washington*,
6 326 U.S. 310, 316 (1945)).

7 Although the Court can exercise general jurisdiction or specific jurisdiction, APL argues
8 here only for the latter. In our Circuit, courts apply a three-part test to determine whether specific
9 jurisdiction comports with due process:

- 10 (1) The defendant must have done some act by which he
11 purposefully avails himself of the privilege of conducting activities
12 in the forum, thereby invoking the benefits and protections of its
13 laws; (2) the claim must arise out of the defendant’s forum-related
14 activities; and (3) the exercise of jurisdiction must be reasonable.

15 *Fireman’s Fund Ins. Co. v. Nat’l Bank of Cooperatives*, 103 F.3d 888, 894 (9th Cir. 1996).

16 In evaluating the first prong -- purposeful availment -- in contract cases, the Supreme
17 Court has instructed that “[i]f the question is whether an individual’s contract with an out-of-state
18 party *alone* can automatically establish sufficient minimum contacts in the other party’s home
19 forum, we believe the answer clearly is that it cannot.” *Burger King Corp. v. Rudzewicz*, 471 U.S.
20 462, 478 (1985) (emphasis in original). Instead, to determine whether the defendant purposefully
21 established minimum contact within the forum, the court must analyze “these factors -- prior
22 negotiations and contemplated future consequences, along with the terms of the contract and the
23 parties’ actual course of dealing.” *Id.* at 479.

24 ANALYSIS

25 Plaintiff does not dispute that the Court does not have general personal jurisdiction over
26 defendant. Dkt. No. 18 at 3. Rather, plaintiff argues that the Court has specific jurisdiction over
27 defendant for matters arising out of the contract. *Id.*

28 Beginning with an analysis of the first prong, then, plaintiff argues that an examination of
the four factors set forth in *Burger King* all weigh in favor of finding purposeful availment.
Significantly, plaintiff’s arguments on all four of the factors -- prior negotiations, contemplated

1 future consequences, terms of the contract and the parties' actual course of dealings -- all hinge on
2 the forum selection clause in the contract. Dkt. No. 18 at 4-6. Plaintiff's arguments rely in
3 particular on the language that "the parties may agree to resolve disputes by arbitration in San
4 Francisco, California" as well as the parties' agreement that the Northern District of California
5 court has personal jurisdiction for the purposes of enforcing an arbitrator's award. Plaintiff argues
6 that through this clause, "Intergro has availed itself of the benefits and protections of California's
7 laws." *Id.* at 5. APL also claims, citing *Fireman's Fund Ins.*, 103 F.3d at 893, that "[b]y
8 consenting to personal jurisdiction in California by agreeing in the contract to arbitration in San
9 Francisco, and enforcement of any award in the Northern District, Intergro 'has waived its right to
10 object to personal jurisdiction in this litigation.'" *Id.*

11 But this takes *Fireman's Fund* too far. In *Fireman's Fund*, the party challenging
12 jurisdiction -- and over whom the court ultimately concluded jurisdiction was proper -- had
13 actually submitted to arbitration in the forum state, as opposed to merely having such an
14 agreement in its contract. *See* 103 F.3d at 894 ("Aldus *did* enter California to arbitrate its dispute
15 with Lawrence/XLS."). Not only that, the arbitration resulted in an award for Aldus, and Aldus
16 "also participated in adversarial bankruptcy proceedings against Lawrence/XLS in the U.S.
17 Bankruptcy Court for the Northern District of California," which resulted in an injunction. *Id.*
18 Against that backdrop, the Circuit concluded that "[c]learly, Aldus not only has taken advantage of
19 services offered in California, it also has created 'continuing obligations' between [it]self and
20 residents of the forum.'" *Id.* (quoting *Burger King*, 471 U.S. at 476).

21 Neither *Fireman's Fund* nor any subsequent decision by our Circuit holds that an
22 agreement to arbitrate disputes in a certain forum by itself constitutes consent to personal
23 jurisdiction in that forum for other litigation arising out of the same contract. *See, e.g., Foster v.*
24 *Device Partners In'l LLC*, No. C 12-02279 (DMR), 2012 WL 6115618 (N.D. Cal. Nov. 21, 2012),
25 *report and recommendation adopted*, No. 12-02279 SC, 2012 WL 6479235 (N.D. Cal. Dec. 10,
26 2012). District courts and other circuits have consistently held that such an agreement constitutes
27 only consent to personal jurisdiction if it is in the limited context of enforcing an arbitration
28 agreement or award. *See id.* at *4 (collecting cases).

1 Nor has plaintiff identified other contacts between Intergro and California that can be said
 2 to constitute purposeful availment. APL alleges that its contract administration office in Oakland,
 3 California “had to approve and conduct the final negotiations of all of the terms therein.” Dkt.
 4 No. 18 at 2. But that is not enough. Even if APL had alleged, which it does not, that Intergro’s
 5 agent was physically present in Oakland to negotiate or sign the contract, such an allegation would
 6 be irrelevant. *See Fed. Deposit Ins. Corp. v. British-Am. Ins. Co., Ltd.*, 828 F.2d 1439, 1443 (9th
 7 Cir. 1987). APL’s allegations that “[t]he final negotiations and approval . . . were conducted via
 8 email and telephone, with signatures exchanged via facsimile,” Dkt. No. 18 at 2, do not support a
 9 finding of personal jurisdiction either. *See, e.g., Thomas P. Gonzalez Corp. v. Consejo Nacional*
 10 *de Produccion de Costa Rica*, 614 F.2d 1247, 1252 (9th Cir. 1980) (“When a California business
 11 seeks out purchasers in other states . . . [and] deals with them only by out-of-state agents or by
 12 interstate mail and telephone, it is not entitled to force the customer to come to California to
 13 defend an action on the contract.”) (quoting *Interdyne Co. v. SYS Computer Corp.*, 31 Cal. App.
 14 3d 508, 510, 107 Cal.Rptr. 499 (1973)). The Ninth Circuit has concluded that ordinarily the “use
 15 of the mails, telephone, or other international communications simply do not qualify as purposeful
 16 activity invoking the benefits and protection of the [forum] state.” *Peterson v. Kennedy*, 771 F.2d
 17 1244, 1262 (9th Cir. 1985) (citation and internal quotation marks omitted).

18 Furthermore, nothing in the contract suggests that the parties contemplated future
 19 consequences in California. The contract was for shipments between Honduras and Miami,
 20 Florida. *See* Dkt. No. 18-1 at 9. And beyond preserving the possibility that the parties may
 21 choose to arbitrate in San Francisco, there are no further references to California in the contract,
 22 and no part of the contract was to be performed in California. Intergro also did not contemplate
 23 future consequences within the state of California “[b]y opening an office in California.” *Id.* at 4.
 24 Among other things, it is undisputed that defendant’s California subsidiary, Intergro West, was not
 25 established until 2012, three years after the contract was signed. *Id.*; *see also* Dkt. No. 20 at 8.

26 The Court consequently finds that plaintiff has not made a prima facie showing that
 27 defendant has “done some act by which [it] purposefully avail[ed] [itself] of the privilege of
 28 conducting activities in the forum, thereby invoking the benefits and protections of its laws.”

1 *Fireman's Fund*, 103 F.3d at 894.

2 Even if it had, APL has also wholly failed to satisfy the second prong which requires it to
3 show that the lawsuit "arises out of" Intergro's forum-related activities. APL's argument on this
4 prong is two sentences long and entirely conclusory: "Here's [*sic*] APL seeks a remedy against
5 Intergro for breaching a contract that Intergro agreed would provide a forum for dispute resolution
6 in the Northern District of California. The requisite nexus is present." Dkt. No. 18 at 6. This is
7 nothing more than an argument that Intergro's contract with APL "*alone* can automatically
8 establish sufficient minimum contacts in" California," which is an argument that has flatly been
9 rejected by the Supreme Court. *See Burger King*, 471 U.S. at 478.

10 Finding plaintiff to have failed to satisfy the first two prongs of the governing three-part
11 test, the Court finds it unnecessary to reach the third (*i.e.*, whether the exercise of jurisdiction
12 would be reasonable).

13 **CONCLUSION**

14 The Court concludes that it lacks personal jurisdiction over defendant Intergro. 28 U.S.C.
15 Section 1631 provides that "[w]hen a civil action is filed in a court . . . and that court finds
16 that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such
17 action or appeal to any other such court in which the action or appeal could have been brought at
18 the time it was filed or noticed" Both parties agree that this case could have been filed in
19 Florida. Consequently, the Court finds it appropriate to order the case transferred in the interest of
20 justice, and hereby transfers the case to the Middle District of Florida district court.

21 **IT IS SO ORDERED.**

22 Dated: September 22, 2014

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25 JAMES DONATO
26 United States District Judge
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