

Nick v Schneider

2014 NY Slip Op 33902(U)

December 3, 2014

Supreme Court, Nassau County

Docket Number: 011894-13

Judge: Timothy S. Driscoll

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SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER

Present:

HON. TIMOTHY S. DRISCOLL

Justice Supreme Court

-----x
NORMAN NICK, individually, and as President
of The Ashley Group, THE ASHLEY GROUP and
THE MAST GROUP INC.,

Plaintiffs,

-against-

IRWIN N. SCHNEIDER, JOEL C. SCHNEIDER,
ESQ., ESTATE OF HERBERT H. SOMMER, ESQ.,
Deceased, and SOMMER & SCHNEIDER, P.A.,

Defendants.
-----x

TRIAL/IAS PART: 15
NASSAU COUNTY

Index No: 011894-13
Motion Seq. No. 1
Submission Date: 11/12/14

The following papers having been read on this motion:

- Notice of Motion, Affirmation in Support,
- Affidavit in Support and Exhibits.....X
- Memorandum of Law in Support.....X
- Affidavit in Opposition and Exhibits.....X
- Memorandum of Law in Opposition.....X
- Reply Affidavit in Support and Exhibits.....X
- Reply Memorandum of Law in Support.....X
- Supplemental Affirmation in Support and Exhibits.....X
- Supplemental Affirmation in Opposition and Exhibits.....X

This matter is before the Court for decision on the motion by Defendant Irwin N. Schneider ("Irwin" or "Moving Defendant") filed December 17, 2013 and initially submitted February 7, 2014. By prior Order ("Prior Order") dated April 3, 2014, the Court reserved decision on the motion and permitted discovery on the issue of personal jurisdiction so that the parties could submit supplemental papers in support of their respective positions on the motion.

Pursuant to the Prior Order, discovery was conducted and counsel for Plaintiffs and counsel for Moving Defendant submitted supplemental affirmations in support of their respective positions. For the reasons set forth below, the Court grants the motion and dismisses the Verified Complaint as asserted against Moving Defendant Irwin N. Schneider.

BACKGROUND

A. Relief Sought

Moving Defendant moves for an Order, pursuant to CPLR §§ 3211(a)(8), 301 and 302, dismissing the Verified Complaint (“Complaint”) against Moving Defendant on the grounds of lack of personal jurisdiction.

Plaintiffs Norman Nick, Individually, and as President of the Ashley Group, The Ashley Group and The Mast Group, Inc. (“Plaintiffs”) oppose the motion.

B. The Parties’ History

The Court outlined the parties’ history in detail in the Prior Order and the Court incorporates the Prior Order by reference as if set forth in full herein. As noted in the Prior Order, Plaintiffs allege that Defendants induced Plaintiff Norman Nick (“Nick”) to deposit monies in their attorney escrow account and made false and fraudulent representations that they would use the funds to make investments in legitimate business ventures. Plaintiffs allege that Nick deposited the “investment” money in the Defendant Sommer & Schneider LLP (“Sommer & Schneider”) escrow account and the proceeds of the investments were used by the Defendants for personal obligations. Defendants have allegedly refused to provide Plaintiffs with an accounting or to return any money to the Plaintiffs, except for the sum of \$22,000 that was returned by Defendant Joel Schneider on or about March 14, 2012.

As also noted in the Prior Order, Irwin was, and continues to be, a resident of the State of Florida. The Complaint alleges that Irwin was previously an attorney admitted to practice in New York and before the Securities and Exchange Commission, who was suspended from the practice of law in 1989 as a result of his conviction for a felony and was convicted again in 1999 of conspiracy to violate securities laws. Defendants Joel Schneider (“Joel”) and Herbert F. Sommer (“Sommer”), now deceased, the son and son-in-law respectively of Irwin, were attorneys who engaged in the practice of securities law. Joel was and is, and Sommer was, a resident of New York. Defendant Sommer & Schneider is a New York partnership that

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maintains an office for the practice of law in Garden City, New York.

In the Prior Order, the Court reserved decision on the motion, noting that:

The Court cannot conclude, based on the record before it, that there clearly exists a basis for the exercise of personal jurisdiction over Irwin in New York, in light of the issues raised by Irwin in his motion papers regarding whether, and the extent to which, Irwin was transacting business in New York and/or engaged in conduct that warrants the exercise of jurisdiction over him in New York. The Court also concludes, however, that Plaintiffs have established that discovery on the issue of personal jurisdiction over Irwin in New York is necessary, by setting forth a sufficient start, and showing that their position is not frivolous. Plaintiffs have alleged that Irwin, a disbarred attorney from New York whose son and son-in-law resided and practiced law in New York during the time period alleged in the Complaint, made use of the co-defendants' New York bank accounts to perpetrate the fraud alleged in the Complaint, and the evidence provided by Nick, including numerous emails between Irwin and Nick, arguably corroborates Plaintiffs' allegations in this regard. Moreover, on the issue of whether the exercise of jurisdiction over Irwin in New York comports with due process, the Court notes that Irwin has provided no documentation in support of his allegations regarding his medical and financial difficulties. Under these circumstances, the Court concludes that discovery on the issue of personal jurisdiction over Irwin in New York is necessary, reserves decision on the motion and will permit discovery on the issue of personal jurisdiction so that the parties may submit supplemental papers in support of their respective positions on the motion.

Plaintiffs subsequently filed a motion for an Order, pursuant to CPLR § 3124, compelling Irwin to comply with certain of Plaintiffs' discovery demands. By decision dated September 25, 2014 ("Prior Discovery Decision"), the Court denied Plaintiffs' motion ("Plaintiffs' Prior Motion") based on its conclusion that Plaintiffs had received extensive discovery which, by their own admission, contained information that supported their position that the Court has personal jurisdiction over Irwin. The Court, concluding that Defendants had complied with their discovery obligations, denied Plaintiffs' Prior Motion.

In his supplemental affirmation in opposition to the motion to dismiss, counsel for Plaintiffs outlines events that have occurred since the issuance of the Prior Order. On August 14, 2014, Plaintiffs conducted a deposition of Joel "on the limited issue of jurisdiction over [Irwin] and to explore his claim that the outlook program in his computer crashed on or about March 2011" (Weber Supp. Aff. at ¶ 7). Plaintiffs provide the transcript of that deposition (Ex. 3 to Weber Supp. Aff.) at which Joel testified that his entire hard drive crashed some time after March 2011 and he no longer had hard copies of documents demanded by Plaintiffs.

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Plaintiffs also provide an August 25, 2014 letter from Ricki M. Sommer, widow of Herbert Sommer (“Herbert”), to counsel for Plaintiffs (Ex. 4 to Weber Supp. Aff.). In that letter, Ms. Sommer states *inter alia* that “the only thing I lost as a result of Hurricane Sandy was my electricity” and that her home and its contents “sustained no damage.” Plaintiffs submit that Ms. Sommer’s letter contradicts Joel’s testimony that all hardcopy files, including Sommer & Schneider files, were destroyed by Hurricane Sandy.¹

Plaintiffs’ counsel also affirms that the parties, including Irwin who is proceeding *pro se*, appeared before the Court on August 19, 2014 for a conference. At that conference, Irwin stated under oath, in support of his motion to dismiss, that his doctor prohibits him from flying as a result of his cancerous condition, and that he is unable to afford a caretaker while in New York. Irwin advised the Court that he drove alone from Boca Raton to New York and was staying at his daughter’s home in Bellmore, New York. Plaintiffs note, and the Court also made reference to this fact in its Prior Order, that Irwin has failed to submit any documentation in support of his claim that he is unable to fly, and has medical and financial difficulties.

Plaintiffs’ counsel, while maintaining that Defendants have not produced adequate discovery, submits that the discovery produced by Defendants supports the court’s exercise of personal jurisdiction over Irwin in New York. Plaintiffs provide a summary of that discovery (Ex. 6 to Weber Supp. Aff.) and outlines how the documentation produced establishes that Irwin was engaged in purposeful business activities in New York. Plaintiffs submit that these documents establish *inter alia* that 1) Irwin solicited several proposals and completed business transactions involving Bee Yoo and Grandall Solutions, as well as PetCore Inc. and DynaPep; 2) Joel disbursed checks relating to Plaintiffs’ \$80,000 wire transfer into the Sommer & Schneider escrow account in August of 2011, including payments to Irwin, Sommer & Schneider, and Joel, which, Plaintiffs contend, contradicts Joel’s testimony that he never spoke to his father about the escrow account until after Herbert’s death several months later; 3) Defendants never paid Plaintiffs for the loans/investment that they made in Petcore while, at

¹ Ms. Sommer also advised Plaintiffs’ counsel that she was neither a principal nor employee of Sommer & Schneider and therefore had no information regarding the manner in which they operated, and that if she received any further communication from Plaintiffs’ counsel she would “deliver same to my attorney with a request that he consider filing a complaint with the Bar Association, based on the threats of a frivolous lawsuit against me personally.”

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the same time, taking legal and finder fees from the proceeds; 4) the Petcore Escrow Agreement (Ex. 17 to Weber Supp. Aff.) contains provisions supporting the conclusion that Irwin engaged in substantial business activities in New York, including but not limited to the fact that Irwin was described as the designated agent of the Depositors and Pet Core, and that the Escrow Agent agreed to hold \$180,000 deposited by the Depositors and to release the monies in accordance with written directions from Irwin; and 5) as evidenced *e.g.* by Irwin's May 11, 2011 email to Joel regarding "speedfry due diligence" and July 29, 2011 email to Joel "re Global," Irwin used Joel to solicit business.

In his supplemental affirmation in support of the motion, Irwin makes reference to the affidavits of Martin Zoyes ("Zoyes") and Peter Ruggeri ("Ruggeri") (Exs. B and C to Supp. Irwin Aff.), which he submitted in opposition to Plaintiffs' Prior Motion. In those affidavits, Zoye and Ruggero affirm that, at all relevant times, they were the Chief Financial Officers of Hi Score Corporation, a Florida corporation. Zoyes and Ruggero affirm that 1) they have never spoken with or consulted Irwin in any business or personal capacity; 2) they do not know, and have never met Irwin; 3) Irwin has never provided Zoyes, Ruggero or Hi Score Corporation with legal services, business services or consulting services, and Zoyes, Ruggero and Hi Score Corporation have never had business dealings with Irwin; 4) at all relevant times, Hi Score's corporate counsel was Joel Schneider, Esq. of Sommer & Schneider; and 5) it has always been their understanding that, even when Joel's law partner Herb Sommer was alive, Joel performed all of his legal work by himself.

Irwin also disputes Plaintiffs' contention that the documentation produced by Defendants establishes a business relationship between Irwin and Joel. Irwin contends that this documentation, instead, establishes that "a very strained Father/Son relationship was and still is in play" (Irwin Supp. Aff. at ¶ 6). Irwin addresses many of the documents on which Plaintiffs rely, and disputes the conclusions that Plaintiffs draw from that documentation. Irwin also makes reference to the following deposition testimony of Joel (Tr. at p. 97):

Q: And there's an email dated July 20, 2012 from Irwin Schneider to Joel Schneider, subject: Intocell/DynaPep. Were you talking to your father during that period?

A: I never responded to that email. I wasn't talking to him. He was trying to talk to me.

Irwin disputes Plaintiffs' contention that Irwin's transmission of documents to Joel establishes that Irwin was doing business in New York. Irwin affirms that he "knew from continued experience that if I sent something to Joel, regarding a potential "deal" it would be stonewalled and the file discarded in the wastebasket" (Irwin Supp. Aff. at ¶ 13) and submits that he transferred files to Joel "because I wanted to talk to him" (*id.*). Irwin affirms that he was not seeking funding for the transactions to which Plaintiffs refer because the necessary funding was already in place, and submits that a review of the documentation on which Plaintiffs rely confirms that fact.

Irwin also disputes the account of Plaintiffs' counsel regarding what occurred at the conference before the Court on August 19, 2014. Irwin affirms that, prior to the conference, he merely said hello to Plaintiffs' counsel. After the conference, Plaintiffs' counsel and Irwin left the courtroom together and, after counsel for the other Defendants left, Irwin realized that Plaintiffs' counsel did not have a car and inquired whether he needed a ride. Plaintiffs' counsel asked Irwin to drive him to the train station and Irwin agreed and they chatted briefly during that ride. Irwin affirms that "[n]othing was said about always driving up or always staying with my daughter because that simply [is] not true" (Irwin Supp. Aff. at ¶ 17).

C. The Parties' Positions

Irwin submits that he does not have the required presence in New York within the meaning of CPLR § 301 to warrant the exercise of jurisdiction over him in light of the fact that Irwin 1) does not live in New York; 2) does not work in New York; 3) does not maintain offices, record, bank accounts or telephone listings in New York; 4) does not own real estate in New York; 5) does not file taxes in New York; 6) does not solicit or advertise business in New York; and 7) does not transact business in New York.

Moreover, Irwin argues, 1) the exercise of jurisdiction over Irwin in New York, pursuant to CPLR § 302(a)(1), is not warranted because Irwin did not engage in purposeful activity in New York, and Plaintiffs' claims do not have the required relationship to New York; 2) Irwin is not subject to jurisdiction in New York, pursuant to CPLR § 302(a)(2) because the Complaint does not allege, and the Court cannot infer, that Irwin committed a tort against Nick while physically in New York; 3) Irwin is not subject to jurisdiction in New York, pursuant to CPLR § 302(a)(3) because, even assuming *arguendo* that Irwin engaged in tortious conduct, the injury from such conduct would have been caused in Florida, where Nick is domiciled and doing business; and 4) there is no basis for exercising jurisdiction over Irwin in New York, pursuant to

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CPLR § 302(a)(4), because the instant action does not concern real property in New York, and Irwin does not own, use or possess real property in New York.

Irwin argues, further, that New York's exercise of jurisdiction over him would violate due process. Irwin submits that there would be a substantial burden on him if this matter were litigated in New York in light of his age, the fact that relevant evidence and documents are in Florida, and the fact that prospective witnesses reside in Florida. Irwin submits that New York has no interest in this dispute, in light of the fact that 1) it involves two Florida residents; 2) Nick is not organized under New York law or doing business here; 3) the people and businesses affected by this lawsuit are not in New York; and 4) the conduct complained of occurred, if at all, in Florida, which is the only jurisdiction with an interest in this dispute.

In opposition, Plaintiffs submit that 1) the Court has personal jurisdiction over Irwin, pursuant to CPLR § 302(a)(1), in light of the allegations in the Complaint that Irwin used the co-defendants, residents of New York, to conduct his investment business, using their office, bank accounts and escrow accounts, and in consideration of the fact that New York, not Florida, has the stronger interest in regulating the conduct of its attorneys, including Irwin who used the Escrow Account to commit tortious acts;² 2) the Court has personal jurisdiction of Irwin, pursuant to CPLR § 302(a)(2), in light of the Nick affidavit and supporting documentation which establish that Irwin "regularly conducted a substantial investment enterprise" (Ps' Memo. of Law at p. 14) through the co-defendants, who resided and worked in New York; 3) if the Court deems the basis for personal jurisdiction pursuant to CPLR § 301 or 302, is insufficient, the Court should provide Plaintiffs with the opportunity to conduct discovery pursuant to CPLR § 3211(d); 4) the exercise of jurisdiction over Irwin in New York does not offend due process as the facts alleged in the Complaint, coupled with the Nick affidavit and supporting exhibits, satisfies the "minimum contacts" requirement, and it would be reasonable to exercise jurisdiction over Irwin in New York in light of the fact that a) Irwin has provided no medical records or other documentation in support of his medical claims and lack of financial resources; b) five (5) of the witnesses to whom Nick refers are not relevant to the substantive allegations in the Complaint, as their names were mentioned in the Complaint solely in relation to their prior dealings with Irwin; c) for years, Irwin has used his New York contacts, knowing that conduct might subject him to jurisdiction in New York; d) New York is the center of the escrow transactions, as the

² Without conceding lack of jurisdiction pursuant to CPLR § 301, Plaintiffs' memorandum of law discusses CPLR §§ 302(a)(1) and (2) (Ps' Memo. of Law in Opp. at p. 5).

bank institutions where the escrow accounts were maintained and disbursed were located in New York; e) relevant evidence, including bank records and the co-defendants who controlled the escrow accounts, is in New York; and f) concluding that Irwin is subject to jurisdiction in New York will not erode any shared social policies of New York and Florida.

In reply, Irwin submits *inter alia* that 1) Plaintiffs' opposition papers do not contain any argument supporting general jurisdiction pursuant to CPLR § 301 and, therefore, the Court should conclude that there exists no general jurisdiction over Irwin pursuant to CPLR § 301; 2) Plaintiffs have failed to allege facts demonstrating that Irwin is subject to jurisdiction in New York pursuant to CPLR § 302(a)(1) or 302(a)(2); Plaintiffs have not provided the requisite connection to New York simply by alleging that the defendants are co-conspirators, as the Complaint does not demonstrate, and Plaintiffs have not offered credible evidence demonstrating, that such a conspiracy existed; and 3) as Plaintiffs' opposition papers do not address Irwin's arguments with respect to CPLR § 302(a)(3) or 302(a)(4), the Court should conclude that Plaintiffs have conceded that jurisdiction under those sections does not exist.

The parties have provided supplementary submissions, pursuant to the Prior Order. As outlined herein, Plaintiffs and Irwin have provided conflicting interpretations of the documentation provided during discovery in support of their respective positions.

RULING OF THE COURT

CPLR § 302(a) provides as follows:

- (a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:
1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or
 2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
 3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
 - (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

- (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

4. owns, uses or possesses any real property situated within the state.

Pursuant to § 302(a), New York courts are authorized to exercise jurisdiction over a non-domiciliary of New York State for tort and contract claims arising from the defendant's transaction of business in this state. *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460 (1988). Proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted. *Id.* at 467. So long as a party avails itself of the benefits of the forum, has sufficient minimum contacts with it, and should reasonably expect to defend its actions there, due process is not offended if that party is subjected to jurisdiction even if not present in the state. *Deutsche Bank Securities, Inc. v. Montana Bd. of Investments*, 7 N.Y.3d 65, 71 (2006), *cert. den.*, 549 U.S. 1095 (2006), quoting *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d at 466.

Personal jurisdiction over a defendant that engages in purposeful activity is proper because the defendant has invoked the benefits and protections of New York laws. *Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501, 508 (2007). Thus, a defendant may transact business in New York and be subject to personal jurisdiction even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted. *Fischbarg v. Doucet*, 9 N.Y.3d 375, 380 (2007). Not all purposeful activity, however, constitutes a transaction of business within the meaning of CPLR § 302(a)(1). Although it is impossible to precisely fix those acts that constitute a transaction of business, it is the quality of the defendant's New York contacts that is the primary consideration. *Id.* at 380. Thus, whether a defendant has engaged in sufficient purposeful activity in New York to confer jurisdiction in this state requires an examination of the totality of the circumstances. *Farkas v. Farkas*, 36 A.D.3d 852, 853 (2d Dept. 2007); *Multi-Modal Intern., Inc. v. Anglia North America, Inc.*, 227 A.D.2d 600 (2d Dept. 1996). A non-domiciliary transacts business under CPLR § 302(a)(1) when he purposefully avails himself of the privilege of conducting activities within New York thus invoking the benefits and protections of its laws. No single event or contact connecting defendant to the forum state need be demonstrated.

Rather, the totality of all of defendant's contacts must indicate that the exercise of jurisdiction would be proper. *CutCo Industries, Inc. v. Naughton*, 806 F.2d 361, 365 (2d Cir. 1986).

The overriding criterion to establish a transaction of business is some act by which the defendant purposefully avails himself of the privilege of conducting activities within New York State. *Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501, 508 (2007), citing *McKee Elec. Co. v. Rauland-Borg Corp.*, 20 N.Y.2d 377, 382 (1967), quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), *reh. den.*, 358 U.S. 858 (1958). Although it is impossible to precisely fix those acts that constitute a transaction of business, the Court of Appeals' precedents establish that it is the quality of the defendant's New York contacts that is the primary consideration. *Grimaldi v. Guinn*, 72 A.D.3d 37, 44 (2d Dept. 2010), quoting *Fischbarg*, 9 N.Y.3d at 380.

If the court determines that a defendant has transacted business pursuant to CPLR § 302(a)(1), then it must further ascertain whether the exercise of that discretion comports with due process. *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 214 (2000). Due process is not satisfied unless a non-domiciliary has minimum contacts with the forum state. The test has come to rest on whether a defendant's conduct and connection with the forum state are such that it should reasonably anticipate being haled into court there. *Id.*, quoting *World-Wide Volkswagen, Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

To satisfy the minimum contacts requirement, it is essential that there be some act by which defendant purposefully avails himself of the privilege of conducting activities within the forum state, thus invoking the benefit and protection of the law. *Hanson v. Denckla*, 357 U.S. at 253. The ultimate burden of proof on the issue of personal jurisdiction rests with the party asserting jurisdiction. *Shore Pharmaceutical Providers, Inc., v. Oakwood Care Center, Inc.*, 65 A.D.3d 623, 624 (2d Dept. 2009). That burden, however, does not entail making a *prima facie* showing of personal jurisdiction; rather, the plaintiff need only demonstrate that facts may exist to exercise personal jurisdiction over the defendant. *Ying Jun Chen v. Lei Shi*, 19 A.D.3d 407, 408 (2d Dept. 2005), citing *Peterson v. Spartan Indus.*, 33 N.Y.2d 463, 467 (1974). Moreover, the evidence presented by the parties must be viewed in the light most favorable to the plaintiff. *Cornely v. Dynamic HVAC Supply, LLC*, 44 A.D.3d 986, 987 (2d Dept. 2007).

Where jurisdiction is predicated upon the commission of a tortious act within the state, plaintiff must make a showing that at least part of the misconduct charged took place in New

York. *Roddy v. Schmidt*, 57 N.Y.2d 979, 982 (1982). To commit a tortious act within New York, defendant must be “physically present” in the state either personally or through an agent. *Maranga v. Taj Maran Intn'l*, 386 F. Supp. 2d 299, 310 (S.D.N.Y. 2005).

Where jurisdiction is predicated upon the commission of a tortious act without the state causing injury within the state, plaintiff must make a showing that defendant had “sufficient economic contact” with the state. *McGowan v Smith*, 52 N.Y.2d 268, 273 (1981). The term “tortious act without the state” is broadly defined to encompass types of injury not recognized in New York, provided our public policy and notions of fairness are not offended. *Sung Hwan Co. v. Rite Aid Corp.*, 7 N.Y.3d 78, 85 (2006).

Here, none of the provisions of CPLR 302(a) discussed above warrant exercising personal jurisdiction over Irwin in a New York State court. Plaintiff's submissions do not establish that Irwin knowingly participated with defendants Joel, Herbert and/or Sommer & Schneider in the fraud that is the basis of the Complaint., beyond the bare-bones assertions that Irwin and the other Defendants conspired with each other in committing a fraud on Plaintiffs, and that Joel and Herbert “have and continue to engage in a continuing conspiracy to enable said Defendant [Irwin] to conduct his fraudulent business practices.” Complaint at para. 21. The record before the Court, however, merely establishes that Irwin sent numerous communications to Joel. It does not establish that Irwin participated in any alleged wrongdoing in New York State with Joel, Herbert or Sommer & Schneider. Under these circumstances, the Court cannot conclude that Irwin was transacting business in New York, or otherwise participated in conduct that would make it appropriate to exercise jurisdiction over Irwin in New York. Accordingly, the Court grants the motion and dismisses the Complaint as asserted against Defendant Irwin Schneider.

All matters not decided herein are hereby denied.

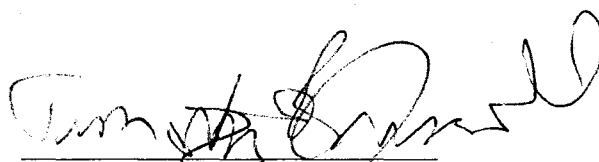
This constitutes the decision and order of the Court.

The Court reminds counsel for the remaining parties of their required appearance before the Court for a Preliminary Conference on February 10, 2015 at 9:30 a.m.

ENTER

DATED: Mineola, NY

December 3, 2014



HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED

DEC 08 2014

NASSAU COUNTY
COUNTY CLERK'S OFFICE