

**J.S. v Thrillz, LLC**

2020 NY Slip Op 32221(U)

July 8, 2020

Supreme Court, New York County

Docket Number: 162580/2019

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

JS, AN INFANT UNDER THE AGE OF 14 YEARS, BY HER FATHER AND NATURAL GUARDIAN AMIDOU SAMASSI, AMIDOU SAMASSI, INDIVIDUALLY, Plaintiff,

INDEX NO. 162580/2019
MOTION DATE N/A
MOTION SEQ. NO. 001

- v -

THRILLZ, LLC., HARLEM CHILDREN'S ZONE, INC., PROMISE ACADEMY II MIDDLE SCHOOL, NEW YORK CITY DEPARTMENT OF EDUCATION, NEW YORK CITY BOARD OF EDUCATION, CITY OF NEW YORK

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISS

Defendant Thrillz LLC (Thrillz), a Connecticut corporation with its principal place of business in Connecticut, moves for dismissal on the grounds that this court lacks personal jurisdiction over it. All parties to this action have opposed the motion. For the foregoing reasons, the defendant's motion is granted.

I. Facts

This action arises out of the alleged injury of the infant plaintiff while on a field trip to Thrillz High Flying Adventure Park organized by Harlem's Children Zone and Promise II Academy. Thrillz High Flying Adventure Park, located in Danbury, Connecticut, describes itself on its website as "the WORLD'S FIRST indoor wipeout-style action adventure park!"

1 The Court would like to thank Kevin Mills for his assistance in this matter.

asserts that because it is a Connecticut corporation with its principal place of business in Connecticut, solicits no business in or conducts any business in New York, and neither owns nor utilizes any property in New York, this court lacks personal jurisdiction over it. Both plaintiff and codefendants argue that because this trip was booked online in New York, and payment was sent from New York, that personal jurisdiction exists either under CPLR § 302(a)(1) or § 302(a)(3)(ii). The opposing parties also argue that because Thrillz must have understood that Harlem's Children Zone's visit would mean busloads of children from New York, it effectively availed itself of New York. Plaintiff also urges the court to exercise jurisdiction out of a concern that it will be difficult to bring this lawsuit elsewhere.

## *II. Discussion*

Because neither plaintiff nor codefendants contend that general jurisdiction exists, the court will only address the possibility of specific jurisdiction. New York's long-arm statute permits jurisdiction over Thrillz in two possible ways. § 302(a)(1) could permit jurisdiction over Thrillz if it "transacts any business within the state or contracts anywhere to supply goods or services in the state." Alternatively, § 302(a)(3)(ii) could permit jurisdiction over Thrillz if it "commits a tortious act without the state causing injury" to a person in the state and "expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce."

Aside from a receipt and a purchase order generated by Harlem Children's Zone, plaintiff and co-defendants have yet to produce anything which would indicate that a transaction occurred in New York or that Thrillz contracted to supply goods or services in New York. In its

affirmation in opposition to the motion, codefendants allege that an email exchange occurred, however this is not reflected in the record. While Thrillz may have been well aware that it was dealing with a New York entity, not all purposeful activity “constitutes a “transaction of business” within the meaning of CPLR 302(a)(1).” (*Fischbarg v. Doucet*, 9 N.Y.3d 375). Mere awareness that a customer is from out of state does not make it foreseeable that one will be haled into court out of state. Further, Thrillz emailing a receipt to Harlem Children’s zone is not the type of “sustained and substantial transaction of business” via electronic communications that New York courts have held to be sufficient for jurisdiction under § 302(a)(1). (*Parke-Bernet Galleries v. Franklyn*, 26 N.Y.2d 13). Therefore, jurisdiction over Thrillz cannot be sustained under § 302(a)(1).

Jurisdiction under § 302(a)(3)(ii) is permitted only if two conditions are met. First, the defendant must “expect or reasonably expect the act to have consequences in the state.” Whether or not this condition has been satisfied need not be discussed because the second condition has not been. The latter part of § 302(a)(3)(ii) is a requirement that the defendant “derives substantial revenue from interstate or international commerce.” In *Ingraham v. Carroll* (90 N.Y.2d 592), this phrase was characterized as narrowing jurisdiction to nonresidents who are engaged in extensive interstate commerce. Moreover, The Court of Appeals expressed that this requirement is intended to “preclude the exercise of jurisdiction over nondomiciliaries who might cause direct, foreseeable injury within the state” but whose business is essentially of a local character. (*id.*) Based on the record, Thrillz’s business operations can fairly be characterized as local. The Yelp reviews and other documents produced by the opposing parties demonstrate that Thrillz is a local operation that has the occasional New York customer, not that it “derives substantial revenue” from or is “engaged in extensive” interstate commerce. (*id.*)

Finally, as for plaintiff's prediction that this court is the only court where this lawsuit will work, this hypothetical has no bearing on the central question of whether this court can exercise jurisdiction over Thrillz, which it cannot. Based on the foregoing, it is hereby

ORDERED that the motion of defendant THRILLZ, LLC to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

7/8/2020  
DATE

  
LYLE E. FRANK  
**HON. LYLE E. FRANK**  
**J.S.C.**

CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION  
 GRANTED  DENIED  GRANTED IN PART  OTHER



APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE