

**Franklin Capital Funding, LLC v Fora Fin. Advance  
LLC**

2022 NY Slip Op 33015(U)

September 8, 2022

Supreme Court, New York County

Docket Number: Index No. 153741/2022

Judge: Barry R. Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

FRANKLIN CAPITAL FUNDING, LLC,

Plaintiff,

- v -

FORA FINANCIAL ADVANCE LLC; FORWARD FINANCING LLC,

Defendants.

INDEX NO. 153741/2022

MOTION DATE

MOTION SEQ. NOS. 001 and 002

DECISION + ORDER ON MOTIONS

HON. BARRY R. OSTRAGER

The Court heard oral argument on September 8, 2022 via Microsoft Teams on the following motions: the motion by plaintiff Franklin Capital Funding, LLC ("Franklin") by Order to Show Cause for a preliminary injunction, with a cross-motion by defendant Fora Financial Advance LLC for sanctions (seq. 001); and the motion by defendant Forward Financing LLC ("Forward") for an order, pursuant to CPLR 3211(a)(1), (7) and (8), dismissing the claims against it (seq. 002). Some preliminary discussion was also held related to the motion by defendant Fora Financial Advance LLC ("Fora ") for an order, pursuant to CPLR 3211(a)(7), dismissing the claims against it and for sanctions against Franklin. In accordance with the September 8, 2022 transcript of proceedings, as summarized below, the motions are determined as follows.

Franklin's motion for a preliminary injunction to enjoin defendants Forward and Fora from taking any funds from the accounts of nonparty The Conjure, LLC aka Conjure Hoodoo ("Conjure") is denied (seq. 001). Passing the issue of likelihood of success on the merits, which may be discussed more fully in connection with the motions to dismiss, plaintiff Franklin has failed to establish irreparable injury if a preliminary injunction is not granted. Plaintiff seeks

injunctive relief to better secure its ability to recover money from the nonparty debtor Conjure, claiming that defendants here debited money from the Conjure accounts that will leave Conjure with no assets to pay plaintiff, the senior creditor. But plaintiff has not cited any cases for the proposition that the diminished ability to enforce a money judgment constitutes irreparable injury. Moreover, plaintiff's claim that Conjure has limited income and assets and will be unable to pay plaintiff absent an injunction is not supported by any evidence. Defendant Fora's cross-motion for sanctions is denied. Contrary to defendant's claim, plaintiff's claims are not wholly frivolous. Various issues have been raised by both sides. No basis for sanctions has been stated based on the prevailing law.

The Court grants the motion by Forward to dismiss the claims against it pursuant to CPLR 3211(a)(8) for lack of jurisdiction (seq. 002). It is undisputed that Forward is a Delaware company with its sole office in Boston, MA. The funds at issue were debited from the account of nonparty Conjure, which is a Georgia entity with its principal place of business in Georgia. Plaintiff has not alleged a single fact to support long-arm jurisdiction under CPLR 302.

Forward does not transact business in New York and does not own, use, or possess real property in New York. Forward is not alleged to have committed a tortious act in New York or to have caused any injury in New York to plaintiff Franklin, a Delaware entity with its principal place of business in Michigan. Nor is Forward registered to do business in New York. Any agreements between Forward and nonparty Conjure, which is a Georgia entity with its principal place of business in Georgia, had no connection to New York. Franklin is a stranger to Forward, which did not enter into any Agreements with plaintiff nor receive any benefit from plaintiff. Plaintiff's claim that some of the funds at issue were transferred through a New York bank was orally argued based on recently discovered evidence, but no such evidence was included in the

motion papers. Such a connection would not, in any event, be sufficient to form a basis for jurisdiction as any such contact to New York and any nexus to the claims is minimal, at best. Thus, the Court lacks personal jurisdiction over Forward.

It further appears that the Court lacks subject matter jurisdiction. Under Business Corporation Law (BCL) § 1314(b), a plaintiff such as Franklin that is not a resident of New York cannot maintain an action in New York against a foreign business such as Forward unless: 1) the action is brought to recover breach of contract damages where the contract was made or is to be performed in New York or relates to property that was in New York at the time the contract was entered into; 2) the subject matter of the litigation is in New York; 3) the cause of action arose within New York; 4) the nondomiciliary defendant business entity is subject to personal jurisdiction under CPLR § 302; or 5) the defendant is a foreign corporation doing business in New York or authorized to do business in New York. Plaintiff has failed to demonstrate that any of these criteria apply, particularly in light of the affidavit on personal knowledge from Forward's representative.

With respect to the motion by Fora (seq. 003), plaintiff acknowledged during oral argument the pendency of a related case in Georgia that addresses the same issues as those raised in this case and agreed that the issues should not be litigated in two separate courts. This Court therefore directed, and plaintiff's counsel agreed, that plaintiff should consult counsel in the Georgia action and advise this Court in a letter efiled by September 12, 2022 at 5:00 p.m. whether plaintiff agrees to withdraw this action without prejudice to the Georgia action in light of the dismissal of the claims here against Forward for lack of jurisdiction.

Oral argument on motion sequence 003 is rescheduled for September 15, 2022 at 2:00 p.m. via Microsoft Teams using the same appearances as today. If plaintiff withdraws this action,

the oral argument will be cancelled and this action will be marked disposed and the motion will be rendered moot.

Dated: September 8, 2022

  
BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/>	<input type="checkbox"/> OTHER
	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART		
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE