

Umami Labs, LLC v Erisman

2023 NY Slip Op 33202(U)

September 14, 2023

Supreme Court, New York County

Docket Number: Index No. 651407/2023

Judge: Margaret A. Chan

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN PART 49M

Justice

-----X INDEX NO. 651407/2023

UMAMI LABS, LLC,

Plaintiff,

03/24/2023,
06/06/2023,
06/07/2023,
06/07/2023

- v -

MOTION DATE

MICHAEL ERISMAN, M.E.V. HOLDINGS, LLC,
JEFFERSON CHANG, BASE32 LIMITED, ED HINCHLIFFE,
STEVEN TABARRINI, and ALEXANDER GOLUBITSKY

MOTION SEQ. NO. 001 002 003
004

Defendants.

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 59

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

The following e-filed documents, listed by NYSCEF document number (Motion 002) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 90, 91

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 003) 77, 78, 85, 94, 95, 96

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 004) 79, 80, 81, 82, 83, 84, 86, 87, 88, 89, 92, 93, 97, 98, 99, 100, 101, 102

were read on this motion to/for DISCONTINUE

Plaintiff Umami Labs, LLC brings this action against defendants, who are its former officers, for breach of contract, tortious interference with contract, conversion, defamation per se, and civil conspiracy. Now before the court are four motions: (MS 001) plaintiff's motion for a preliminary injunction against (i) its former Chief Technical Officer, Michael Erisman, who contracted with plaintiff through M.E.V. Holdings, LLC (MEV); (ii) its former Chief of Staff, Jefferson Chang (Chang); (iii) its former provider of senior front-end development resources, Ed Hinchliffe, who contracted with Umami Labs through Base32 Limited (Base); and (iv) former DeFi Strategist, Steven Tabarrini II (collectively, the Team Members); (MS 002) defendant Alexander Golubitsky's motion to dismiss (Golubitsky is

plaintiff's former Chief Legal Officer); (MS 003) the Team Members' motion to dismiss; and (MS 004) plaintiff's motion to discontinue this action.

BACKGROUND¹

This dispute involves a blockchain project called the Umami Protocol, which is a decentralized finance protocol comprised of software codes that allow users to directly engage in financial transactions on public blockchain network, as opposed to transacting through a traditional centralized intermediary (NYSCEF # 58 — Amended Compl or AC, ¶ 25). The Umami Protocol maintains a treasury (Umami Treasury), which consists of several multi-signature wallets (Multisig Wallets) that hold digital assets on blockchain (AC, ¶¶ 25, 26; NYSCEF # 18 – Erisman Aff, ¶ 5). Umami Treasury's Multisig Wallets are managed by six authorized signatories, and at least three of them must sign for any transaction to take place (NYSCEF # 3 at 4). Users of the Umami Protocol can contribute digital assets into Multisig Wallets in exchange for the \$mUMAMI cryptocurrency token (Umami Token) (AC, ¶ 26). Additionally, Umami Token holders can “stake” by entering their Umami Tokens into Umami's “marinate” program (Marinate Program) to receive rewards generated by the Umami Protocol's blockchain products (NYSCEF # 18, ¶ 3).

The Umami Token holders formed a decentralized autonomous organization (Umami DAO) to manage the Umami Protocol (NYSCEF # 18, ¶ 4). This bottom-up entity structure allows the Umami Token holders to make key decisions for the Umami Protocol by voting on the Umami Token (*id.*, ¶ 4). Over time, a smaller team of Umami Token holders started actively running the Umami DAO, they included Erisman from Missouri, Tabarrini from Florida, and Carl Alexander O'Donnell from New York (*id.*, ¶¶ 1, 2; NYSCEF # 29, ¶¶ 1, 2; NYSCEF # 6 – O'Donnell Aff, ¶ 4). In February 2022, Umami Token holders selected O'Donnell as a leader (AC, ¶ 30). A few months later, Chang from California and Hinchliffe from England, UK joined the managing team (NYSCEF # 22, ¶¶ 1, 2; NYSCEF # 28, ¶¶ 1, 2).

At first, the Umami DAO and Umami Treasury “existed without any formal legal or governance structure” (NYSCEF # 6, ¶ 6). In the summer of 2022, O'Donnell engaged Golubitsky, an attorney in Virginia, to put into place the current legal structure for the Umami DAO and form three corporate entities: (i) Umami Labs, (ii) Umami DAO Foundation, and (iii) and Umami Holdings, LLC (Umami Holdings) (AC, ¶¶ 34-41, 51; NYSCEF # 7, Exh 1, 2, 7). Of relevance here, Umami DAO Foundation is an Exempted Limited Guarantee Foundation Company incorporated in Cayman Island, and plaintiff Umami Labs, LLC (Umami Labs) is a Delaware limited liability companies (NYSCEF # 7, Exh 1, 2). Golubitsky was told that Umami Labs “had no formal address,” so Golubitsky used his home address in Richmond, Virginia as Umami Labs' business address (NYSCEF # 31 at 4; NYSCEF

¹ Except for facts related to Umami Labs, LLC and Umami Holdings' resolutions on March 9, 2023, all the following facts are taken from both the AC and evidence records. For purposes of defendants' motions to dismiss (MS 002, MS 003), the allegations in the AC are accepted as true unless contradicted by documentary evidence.

66 — Umami Labs’ IRS Form 8832). It is undisputed that Umami Labs’ official address remained Golubitsky’s home in Virginia at least until February 7, 2023 (AC, ¶ 56; NYSCEF # 18, ¶ 16).

Under this legal structure, O’Donnell, Golubitsky (through Alex Golubitsky, PLLC), Erisman, and Chang owned all the membership interests in Umami Holdings, which, in turn, controlled Umami Labs as its sole member. Umami Labs employed personnel to perform consulting and managing services for a flat monthly fee for Umami DAO Foundation (NYSCEF # 7, Exh 3 – Foundation Services Agreement; Exh 14 – Invoice). Umami DAO Foundation held and oversaw Umami Treasury (NYSCEF # 6, ¶ 9). Notably, Umami Labs managed Umami Treasury for Umami DAO Foundation, but did not own Umami Treasury (NYSCEF # 6, ¶¶ 9, 10). To perform such services, Umami Labs contracted with Erisman (through MEV), Tabarrini, Chang, and Hinchliffe (through Base), namely the Team Members, to formalize their service roles (NYSCEF # 6, ¶ 13; NYSCEF # 7, Exh 8-11 – Labs Services Agreements).² Umami Labs concurrently executed multi-signature code of conduct agreements with Erisman and Tabarrini (NYSCEF # 7, Exh 12, 13 – Multisig Agreements). Meanwhile, O’Donnell served as Umami Labs’ Chief Executive Officer and sole manager; Golubitsky served as Umami Labs’ Chief Legal Officer (AC, ¶ 44; NYSCEF # 6, ¶¶ 11, 12). Ultimately, Umami Labs’ management team was scattered geographically, with members in Virginia, Missouri, California, Florida, New York, and England (AC, ¶¶ 15-20).

Around January 2023, a dispute between O’Donnell and Golubitsky erupted (AC, ¶ 52). O’Donnell proposed to restructure the legal framework of Umami Protocol, but Golubitsky opposed, arguing that O’Donnell’s proposal included transferring ownership of Umami Treasury from Umami DAO Foundation to Umami Labs, which would go “against all of our planning up to this point” (NYSCEF #s 70, 71). Because of this disagreement, on January 27, 2023, O’Donnell “relieved Golubitsky of his duties as Chief Legal Officer of Umami Labs” (AC, ¶ 54). On February 8, 2023, all the Team Members resigned from Umami Labs, referencing Golubitsky’s statement that O’Donnell attempted to unilaterally control Umami Treasury in violation of his fiduciary duties to Umami Labs and Umami Holdings (NYSCEF # 7, Exh 15-17; NYSCEF # 6, ¶ 29; NYSCEF # 73 at 1). Before the Team Members resigned, the six individuals holding signing authority over Umami Treasury’s Multisig Wallets were O’Donnell, the Team Members, and non-party Harjot Dosanjh (NYSCEF # 6, ¶ 24).

On or about February 9, 2023, the Team Members, while retaining their signing authority, removed O’Donnell’s signing authority for Multisig Wallets in response to Umami Token holders’ concern and to prevent O’Donnell from stealing the funds in Umami Treasury for himself (AC, ¶ 58; NYSCEF # 18, ¶¶ 5, 28, 29; NYSCEF # 28, ¶ 10). On February 17, 2023, O’Donnell wrote to the Team Members,

² Under the Labs Services Agreements, Erisman served as Umami Labs’ Chief Technical Officer, Chang as Chief of Staff, and Tabarrini as DeFi Strategist; Umami Labs also contracted with Base for Hinchliffe to provide senior front-end development resources.

asserting that their retention of signing authority over Umami Treasury's Multisig Wallets was in breach of their contracts with Umami Labs (NYSCEF # 7, Exh 19).

On March 9, 2023, Umami Holdings and Umami Labs passed a series of resolutions (NYSCEF # 42 – Resolutions). Umami Holdings appointed Golubitsky and Erisman (through MEV) as additional managers of Umami Labs—so Umami Labs had three managers: O'Donnell, Golubitsky, and Erisman (*id.* at 2-4). On the same day, Golubitsky and Erisman, as Umami Labs' majority of managers, passed resolutions to (i) settle the alleged breach-of-contract claims against the Team Members and (ii) terminate the attorney O'Donnell retained to pursue these claims, Ievgeniia P. Vatrengo³ (*id.* at 7-8, 24-25). Nevertheless, O'Donnell and Vatrengo disputed the validity of the Resolutions and filed this action on behalf of Umami Labs on March 19, 2023 (NYSCEF # 1). Two days later, on March 21, 2023, Umami Labs made an initial filing with New York Department of State to register to do business in New York (NYSCEF #s 30, 33).

On March 22, 2023, plaintiff moved by order to show cause for injunctive relief (NYSCEF # 2 – MS 001). This court declined to grant a temporary restraining order at a hearing on March 28, 2023 (NYSCEF #s 37, 59). Plaintiff amended the complaint in April 2023, asserting eighteen causes of action, including breach of contracts, tortious interference with contracts, defamation, and civil conspiracy (AC at 16-35). Defendants moved to dismiss the AC in May 2023 (NYSCEF #s 76, 78 – MS 002, 003). Subsequently, plaintiff moved to withdraw this action (NYSCEF # 84 – MS 004).

DISCUSSION

Personal Jurisdiction (MS 001, 002, 003)

Defendants argue that this court lacks personal jurisdiction over them in response to plaintiff's motion for injunctive relief (MS 001) and in support of defendants' respective motions to dismiss (MS 002, 003). As a threshold matter, the issue of personal jurisdiction is addressed first.

On a motion for a preliminary injunction, the “party seeking the drastic remedy of a preliminary injunction must . . . establish a clear right to that relief under the law and the undisputed facts” (*1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d 18, 23 [1st Dept 2011] [internal citation and quotation omitted]). Without personal jurisdiction, courts will not entertain a plaintiff's application for a preliminary injunction (*Koob v IDS Fin. Services, Inc.*, 213 AD2d 26, 36 [1st Dept 1995] [vacating a preliminary injunction because entertaining plaintiff's application for injunctive relief is “inimicable to criteria supporting the exercise of in personam jurisdiction”]; *Abrams, Fensterman, Fensterman, Flowers & Eisman, LLP v Alpern*, 20 AD3d 497 [2d Dept 2005] [vacating a preliminary injunction insofar as asserted against defendants over whom the court lacked personal jurisdiction]).

³ Ievgeniia P. Vatrengo, Esq. represents plaintiff Umami Labs, LLC in this lawsuit.

On a motion to dismiss for lack of personal jurisdiction, plaintiff as “the party asserting jurisdiction” has the burden to demonstrate the “satisfaction of statutory and due process prerequisites” (*James v iFinex Inc.*, 185 AD3d 22, 28-29 [1st Dept 2020] [internal citation omitted]). “When determining a motion to dismiss, the court must accept the facts as alleged in the complaint as true” (*Goldman v Metro. Life Ins. Co.*, 5 NY3d 561, 570 [2005] [internal quotation and citation omitted]), unless plaintiff’s “factual allegations are flatly contradicted by documentary evidence” (*Morgenthau & Latham v Bank of New York Company, Inc.*, 305 AD2d 74, 78 [1st Dept 2003] [internal citation and quotation omitted]). When a non-domiciliary defendant timely asserts the defense of lack of personal jurisdiction, “a New York court may not exercise personal jurisdiction over a non-domiciliary unless . . . the action is permissible under the long-arm statute (CPLR 302) and the exercise of jurisdiction comports with due process” (*Williams v Beemiller, Inc.*, 33 NY3d 523, 528 [2019]).

Here, in MS 001, plaintiff moves for injunctive relief that requires the Team Members to “return to Umami Labs its confidential information and property, including control of the Umami treasury” (NYSCEF # 2).⁴ In response, the Team members argue that this court lacks personal jurisdiction over them (NYSCEF # 17 — MS 001 Opp at 16-17).⁵ After hearing the parties at oral argument, this court denied plaintiff’s request for a temporary restraining order given plaintiff’s unlikelihood of success for lack of personal jurisdiction (NYSCEF #s 37, 59). Plaintiff then amended its complaint to assert personal jurisdiction under “CPLR § 302(3)(ii)” (AC, ¶ 23).

Subsequently, in MS 002 (by Golubitsky) and MS 003 (by the Team Members), defendants move, *inter alia*, to dismiss all of plaintiff’s claims in the AC for lack of personal jurisdiction pursuant to CPLR 3211(a)(8). On this ground, defendants first point out that CPLR 302(a)(3)(ii) is not a viable basis for plaintiff’s non-tort claims because it only applies to tort claims (NYSCEF # 78 – MS 003 MOL at 8; NYSCEF # 76 – MS 002 MOL at 15-16). Further, defendants assert that plaintiff has not met the prerequisites of CPLR 302(a)(3)(ii) because (1) the alleged injury did not occur in New York by virtue of plaintiff’s post-litigation relocation to New York, and (2) defendants did not purposefully avail themselves of New York laws and could not reasonably expect that their dealings with Umami Labs to have consequences in New York (NYSCEF # 78 at 9-13; NYSCEF # 76 at 16-21).

⁴ Plaintiff’s motion for a preliminary injunction (MS 001) is against the Team Members; plaintiff did not move against Golubitsky in MS 001.

⁵ In their opposing papers, the Team Members contested plaintiff’s allegation in the original complaint that “[t]his Court has *subject matter* jurisdiction over Defendants to this action pursuant to U.S. Const. Amend. XIV and CPLR § 302” (NYSCEF # 1 – Original Compl, ¶ 22) (emphasis added). Subsequently, plaintiff amended its complaint to correct that it asserts personal jurisdiction, not subject matter jurisdiction, under CPLR 302 (AC, ¶ 23 [“[t]his Court has jurisdiction over out-of-state Defendants pursuant to CPLR § 302(3)(ii)”]).

In opposition to the Team Members' motion to dismiss (MS 003), plaintiff argue that the injury occurred in New York because at the time of the Team Members' tortious conduct, Umami Labs' "managerial and administrative activities took place only in New York"; and the Team Members should have expected their dealings with Umami Labs to have consequences in New York because O'Donnell is a New York resident (NYSCEF # 85 – MS 003 Opp at 7). Alternatively, should the court find that CPLR 302(a)(3)(ii) does not apply, plaintiff resorts to CPLR 302(a)(1) for personal jurisdiction and posits that the Team Members have transacted business in New York by virtue of their employment with Umami Labs (*id.* at 9). Further, plaintiff asserts that exercising personal jurisdiction comports with due process because the Team Members knew that Umami Labs' Chief Executive Officer O'Donnell is a New York resident (*id.* at 10).⁶ To the latter argument, the Team Members argue that jurisdiction does not exist under CPLR 302(a)(1) as they did not transact business in New York or purposefully avail themselves of such benefits (NYSCEF # 96 – MS 003 Reply at 2-4).

Here, the records show that defendants have timely contested the personal jurisdiction issue by raising it in opposition to plaintiff's motion for a preliminary injunction and moving to dismiss the AC for lack of personal jurisdiction (*Bank Hapoalim, B.M. v Kotten Mach. Co. of Brooklyn, Inc.*, 151 AD2d 374, 376 [1st Dept 1989] [where the defendant interposed the defense of lack of personal jurisdiction in the first papers filed on his behalf, his subsequent participation in the action was not a waiver of his jurisdictional defense]). None of the defendants are New York domiciliaries as they reside in Virginia, Missouri, California, Florida, and England, UK (NYSCEF #'s 18, 22, 28, 29, 64; AC, ¶¶ 16-20). Therefore, exercising personal jurisdiction over defendants must comport with a New York long-arm statute and the due process clause (*Williams*, 33 NY3d at 528 [New York courts may not assert jurisdiction over non-domiciliaries if "either the statutory or constitutional prerequisite is lacking"]).

For the reasons below, the court concludes that it lacks personal jurisdiction over defendants under New York long-arm statute (CPLR 302) and constitutional due process clause. As such, plaintiff's motion for a preliminary injunction (MS 001) is denied and defendants' motions to dismiss (MS 002, 003).

New York Long-Arm Statute: CPLR 302(a)(3)(ii)

New York long-arm statute CPLR 302(a)(3)(ii) allows a court in New York to exercise personal jurisdiction over an out-of-state defendant who committed torts outside of New York with an expectation to cause direct injury in New York (*Penguin Group (USA) Inc. v Am. Buddha*, 16 NY3d 295, 302 [2011]). To establish personal jurisdiction under CPLR 302(a)(3)(ii), a plaintiff must show that

⁶ Plaintiff did not address Golubitsky's jurisdictional arguments in MS 002, claiming the issue moot given plaintiff's motion to withdraw (NYSCEF # 90 – MS 002 Opp). In reply, Golubitsky argues that plaintiff has conceded the personal jurisdiction issue (NYSCEF # 91 – MS 002 Reply at 10).

“(1) the defendant committed a tortious act outside New York; (2) the cause of action arose from that act; (3) the tortious act caused an injury to a person or property in New York; (4) the defendant expected or should reasonably have expected the act to have consequences in New York; and (5) the defendant derived substantial revenue from interstate or international commerce.”

(CPLR 302(a)(3)(ii).

The injury element of CPLR 302(a)(3)(ii) requires a determination of the locus of injury. A commercial injury does not necessarily occur in the place of residence of the injured party (*Sybron Corp. v Wetzel*, 46 NY2d 197, 205 [1978] [“remote injuries located in New York solely because of domicile or incorporation here do not satisfy CPLR 302[a][3]”). To find injury in New York, plaintiff’s in-state residence is a factor courts consider, but is not a sufficient basis in and of itself (*Penguin Group (USA) Inc.*, 16 NY3d at 303 [explaining that jurisdiction under CPLR 302[a][3][ii] only exists where plaintiff’s claim for personal jurisdiction “was based on more than just its in-state domicile”]; *Fantis Foods, Inc. v Std. Importing Co., Inc.*, 49 NY2d 317, 326 [1980] [“the residence or domicile of the injured party within a State is not a sufficient predicate for jurisdiction”]). To establish personal jurisdiction under CPLR 302(a)(3)(ii), a plaintiff must demonstrate that it not only resides in New York but has sustained a “sufficiently direct injury” that is “something more than [an] indirect financial loss” in New York (*Penguin Group (USA) Inc.*, 16 NY3d at 303-305). Where a plaintiff sustains only an indirect financial loss in the state of its residence, “[t]he situs of the injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff” (*Fanelli v Latman*, 202 AD3d 758, 759-60 [2d Dept 2022] [internal citation omitted]).

In the current case, plaintiff has failed to satisfy CPLR 302(a)(3)(ii)’s injury element. Plaintiff alleges that Umami Labs relocated to New York immediately after February 7, 2023; and that at the time of defendants’ tortious conduct Umami Labs’ “managerial and administrative activities took place only in New York” (AC, ¶¶ 23, 56, 57; NYSCEF # 85 at 7). Plaintiff further claims that defendants’ tortious act “chok[ed] Umami Labs financially” and “deprived [Umami Labs] of the benefits of its commercial agreement,” namely, the monthly fees to which Umami Labs was entitled under its contract with Umami DAO Foundation (NYSCEF # 85 at 5, 7). Even assuming these allegations as true, the injury alleged is an indirect financial loss, which originated from defendants’ alleged tortious acts in their out-of-state residences, not New York. “That the plaintiff[] felt economic injury in New York, alone, is an insufficient basis to confer jurisdiction under CPLR 302 (a)(3)” (Fanelli, 202 AD3d at 760). Without a more direct injury in New York, plaintiff’s purported residence in New York itself is not sufficient to satisfy the injury element of CPLR 302(a)(3)(ii) (*Penguin Group (USA) Inc.*, 16 NY3d at 303-307).

More importantly, the records reveal that plaintiff did not reside in New York when any alleged torts that caused plaintiff economic injury took place – plaintiff

only manufactured its New York residence after-the-fact. It is well settled that “the relevant inquiry under CPLR 302” is the parties’ connections with New York “at the time the action was brought” (*see Edelman v Taittinger, S.A.*, 8 AD3d 121 [1st Dept 2004]). Here, however, plaintiff’s own submission shows that Umami Labs did not make an initial registration with New York Department of State until March 21, 2023, two days after plaintiff began this action by filing a complaint, and at least a month after any alleged torts against Umami Labs took place in January and February 2023 (NYSCEF # 33).⁷ Such post-litigation contacts with New York should not be considered for personal jurisdiction purposes (*see AllStar Mktg. Group, LLC v Ali Dropshipping Support Store*, 2022 WL 814007, at *1 [SDNY Mar. 17, 2022, 21 CIV. 333 (PGG)] [courts cannot consider “conduct that occurred after the filing of the Complaint” in assessing personal jurisdiction]).

In any event, jurisdiction does not exist under CPLR 302(a)(3)(ii) because plaintiff has not satisfied the expectation element. This element of CPLR 302(a)(3)(ii) requires a defendant to expect its conducts to have “direct consequences in New York” (*LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000] [internal citation omitted]). It “is intended to ensure some link between a defendant and New York State to make it reasonable to require a defendant to come to New York to answer for tortious conducts committed elsewhere” (*id.*).

Here, plaintiff has not adequately alleged a link between non-resident defendants and New York that would allow defendants to expect their conducts to have direct results in New York, or expect themselves to defend a suit in New York (*id.*). Plaintiff’s only allegation of defendants’ link to New York is that defendants committed torts “against Umami Labs, a company with its principal place of business in New York” (AC, ¶ 23). However, documentary evidence shows that when the alleged torts against Umami Labs took place in January and February 2023, Umami Labs was a Delaware company based in Virginia (NYSCEF #s 33, 67). And defendants aver that they did not know that Umami Labs registered to do business in New York or “ever doing anything in New York” (NYSCEF # 18, ¶ 16; NYSCEF # 22, ¶ 16). As such, defendants could not expect their dealings with Umami Labs to have direct consequences in New York.

Therefore, jurisdiction is lacking under CPLR 302(a)(3)(ii) as plaintiff has satisfied neither the injury element nor the expectation element.

New York Long-Arm Statute: CPLR 302(a)(1)

CPLR 302(a)(1) provides for personal jurisdiction over a non-domiciliary defendant who “transacts any business” in New York if (1) defendant has “purposefully availed itself of the privilege of conducting activities within the

⁷ O’Donnell alleges that he registered “a digital mailbox” with a New York address for Umami Labs in January 2023, but this alone, without registration with New York Department of State or the Internal Revenue Service, does not relocate Umami Labs to New York (NYSCEF #s 30, 32). In fact, a notice from the Internal Revenue Service to Umami Labs dated March 13, 2023 still has Umami Labs’ address as in Virginia (NYSCEF # 67).

forum State” (*D & R Glob. Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 297 [2017]) and (2) plaintiff’s claim arises from defendant’s business transaction in New York (*McGowan v Smith*, 52 NY2d 268, 272 [1981]). Importantly, the inquiry of CPLR 302(a)(1) focuses not on the quantity of a defendant’s in-state activities, but the purposefulness of the defendant’s acts, as a defendant can be deemed as transacting business in New York “so long as the defendant’s activities here were purposeful” (*Fanelli*, 202 AD3d at 760).

In the case at bar, plaintiff’s resort to CPLR 302(a)(1) is unavailing. Defendants’ activities, as alleged in the AC, were insufficient to demonstrate that they purposefully availed themselves of the privilege of conducting activities in New York. Managing a decentralized blockchain project on internet from defendants’ residences in Virginia, Missouri, Florida, California, and England, UK is not an activity specially directed towards New York for purposes of CPLR 302(a)(1) (*see Peldman v Kalahari Resorts, LLC*, 208 AD3d 1107, 1107 [1st Dept 2022] [“defendants’ operation and maintenance of an interactive website . . . was too remote to support the exercise of long-arm or specific jurisdiction over them”]; *see Fanelli*, 202 AD3d at 760 [finding it not a sufficient basis for imposing New York’s long-arm jurisdiction that a defendant “advertises its services nationwide through a website that is not specifically directed toward New York residents or businesses”]). And when dealing with Umami Labs, defendants did not know that Umami Labs registered to do business in New York or “ever doing anything in New York,” so they could not have purposefully availed themselves of the privilege of conducting business in New York (NYSCEF # 18, ¶ 16; NYSCEF # 22, ¶ 16).

Accordingly, the AC must be dismissed because jurisdiction over defendants does not have a basis in New York long-arm statute (*Peldman*, 208 AD3d at 1107 [affirming dismissal of the complaint for lack of personal jurisdiction under CPLR 302[a][1] and 302[a][3]]).

Jurisdiction on Due Process Grounds

Plaintiff argues that it has satisfied the “minimum contacts” and “fair play and substantial justice” requirements of the Due Process Clause (NYSCEF # 85, MOL at 10). The court disagrees.

An action may not proceed if due process prerequisite is lacking (*Williams*, 33 NY3d at 528). Due process is satisfied when (1) a foreign entity has “minimum contacts” with New York State and (2) exercising jurisdiction does not “offend traditional notions of fair play and substantial justice” (*James*, 185 AD3d at 29 [1st Dept 2020], citing *Intl. Shoe Co. v State of Wash.*, 326 US 310, 316 [1945]).

Minimum contacts exist if a non-domiciliary defendant “purposefully avails itself of the privilege of conducting activities within the forum State,” and thus may reasonably foresee the prospect of defending a suit there (*LaMarca*, 95 NY2d at 216 [internal quotations and citations omitted]). Importantly, “it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction,” not “contacts between the plaintiff (or third parties) and

the forum State” (*Williams*, 33 NY3d at 529, citing *Walden v Fiore*, 571 US 277, 284-285 [2014]). Ultimately, “[d]ue process requires that a defendant be haled into court in a forum State based on [defendant’s] own affiliation with the State,” not based on defendant’s interactions “with other persons affiliated with the State” (*id.*). If the conduct that forms the basis for plaintiff’s claims “takes place entirely out of forum, and the only relevant jurisdictional contacts with the forum are the harmful effects suffered by the plaintiff, a court must inquire whether the defendant ‘expressly aimed’ its conduct at the forum” (*Deutsche Bank AG v Vik*, 163 AD3d 414, 416 [1st Dept 2018], citing *Charles Schwab Corp. v Bank of Am. Corp.*, 883 F3d 68, 87 [2d Cir 2018]).

In determining whether New York courts’ exercise of jurisdiction comport with “traditional notions of fair play and substantial justice,” a court must consider “the burden on the defendant, the interests of the forum State, and the plaintiff’s interest in obtaining relief,” as well as “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies” (*Copp v Ramirez*, 62 AD3d 23, 31 [1st Dept 2009], citing *Asahi Metal Indus. Co., Ltd. v Superior Ct. of California, Solano County*, 480 US 102, 113 [1987] and *World-Wide Volkswagen Corp. v Woodson*, 444 US 286, 292 [1980]).

Under these standards, defendants lack minimum contacts with New York. Due process requires that personal jurisdiction be based on defendants’ contacts with New York, not Umami Labs’ contacts (*Walden*, 571 US at 284-286 [“plaintiff cannot be the only link between the defendant and the forum”]). But instead of alleging that defendants had any conduct that formed a minimum affiliation with New York, plaintiff bases its assertion of personal jurisdiction entirely on Umami Labs’ purported presence in New York by virtue of O’Donnell’s New York residence and Umami Labs’ after-the-fact relocation. In fact, defendants’ conducts that form the basis of plaintiff’s claim—namely, removal of O’Donnell’s signing authority over Multisig Wallets while retaining such signing authority for themselves—took place entirely outside of New York. Since “the only relevant jurisdictional contacts with [New York] are the harmful effects suffered by” Umami Labs, personal jurisdiction does not exist unless defendants “expressly aimed” their tortious conducts at New York (*Deutsche Bank AG*, 163 AD3d at 416).

Here, defendants could not have expressly aimed their conduct at New York because their employment at Umami Labs was for managing a decentralized blockchain project (AC, ¶ 56); and when dealing with Umami Labs, a Delaware company based in Virginia throughout defendants’ employment, defendants did not know that Umami Labs “ever doing anything in New York” or later relocated to New York (NYSCEF #’s 33, 67; NYSCEF # 18, ¶ 16; NYSCEF # 22, ¶ 16). Hence, defendants did not expressly aim their conducts at New York or purposefully avail themselves of the privilege of conducting activities in New York.

Further, subjecting defendants to a suit in New York would not comport with the traditional notions of fair play and substantial justice. Defendants are scattered geographically, residing in Virginia, Missouri, Florida, California, and England.

Haling defendants to a New York court would place a substantial burden on them. New York does not have a strong interest in adjudicating this action because not only the alleged torts occurred outside New York, but Umami Labs' blockchain business is decentralized (as opposed to being centered in New York) and Umami Labs only manufactured its location in New York after the action began. Since the present action, O'Donnell has brought a related action based on similar facts in the Delaware Court of Chancery (NYSCEF # 99 – Petition in Delaware Chancery Court). Thus, the interstate judicial system's interest in efficiently resolving controversies also favors dismissing the current action for lack of personal jurisdiction while the related action is pending in a Delaware court.

Therefore, exercising jurisdiction over defendants would not comport with due process or the traditional notions of fair play and substantial justice. The present action may not proceed in this court (*Williams*, 33 NY3d at 528 [an action may not proceed if “either the statutory or constitutional prerequisite is lacking”]; *Deutsche Bank AG*, 163 AD3d at 415 [“even if the elements of CPLR 302 [a][3][ii] have been met, asserting personal jurisdiction would not comport with due process”]). Accordingly, defendants' motions to dismiss (MS 002, 003) are granted for lack of personal jurisdiction, and plaintiff's motion for injunctive relief (MS 001) is denied. Plaintiff's motion for injunctive relief could not be granted in any event because it is questionable whether O'Connell had the authority to bring this action after Erisman and Golubitsky were appointed managers of Umami Labs. Further, the majority managers of Umami Labs have resolved to cause such claims to be settled (*id.* at 7-8; NYSCEF # 3 at 10-12).

Remaining Issues (MS 002, 003, 004)

In MS 002, 003, defendants invoke additional grounds for dismissal under CPLR 3211(a)(7) and CPLR 3211(g). Defendants also seek to recover their attorneys' fees under New York's anti-Strategic Lawsuit Against Public Participation statute (anti-SLAPP statute), Civil Rights Law § 70-a(1). In MS 004, plaintiff seeks to withdraw this action (NYSCEF # 84 – MS 004 MOL at 6). Defendants respond that if the action were to be withdrawn, defendants should be rewarded their attorney's fees (NYSCEF #s 86, 89 – MS 004 Opp).

The court, upon finding itself lacking personal jurisdiction, declines to (i) address defendants' other bases for dismissal or (ii) consider defendants' requests for attorneys' fees in MS 002, 003 (*see Pramer S.C.A. v Abaplus Intern. Corp.*, 76 AD3d 89, 93, 95-98 [1st Dept 2010] [not reaching CPLR 3211[a][7] discussion for defendants over whom the court lacked personal jurisdiction]; *Vuzix Corp. v Pearson*, 2019 WL 5865342, at *2 [SDNY Nov. 6, 2019] [not addressing defendant's anti-SLAPP claims upon finding a lack of personal jurisdiction]).

As to MS 004, the court exercises its discretion to deny plaintiff's request to withdraw the action (*see Tucker v Tucker*, 55 NY2d 378, 383 [1982] [it is within courts' sound discretion to deny a motion to discontinue]). Plaintiff once had defendants' consent to withdraw this action before motions to dismiss were filed

(NYSCEF # 81 at 8). However, plaintiff only seeks withdrawal after this court denied its request for a temporary restraining order and after defendants moved to dismiss the AC. Plaintiff cannot withdraw the action now to avoid an adverse decision (*Baltia Air Lines, Inc. v CIBC Oppenheimer Corp.*, 273 AD2d 55, 57 [1st Dept 2000] [affirming the denial of motion to discontinue “since such relief was plainly sought in order to avoid an adverse decision on the merits”]). Plaintiff’s motion to discontinue this action (MS 004) is therefore denied.

CONCLUSION

In view of the above, it is hereby

ORDERED that plaintiff Umami Labs, LLC’s motion for a preliminary injunction (MS 001) is denied; and it is further

ORDERED that defendants Michael Erisman, M.E.V. Holdings, LLC, Jefferson Chang, Base32 Limited, Ed Hinchliffe, Steven Tabarrini, and Alexander Golubitsky’s motions to dismiss (MS 002, 003) the amended complaint (NYSCEF # 58) in its entirety for lack of personal jurisdiction are granted; and it is further

ORDERED that plaintiff’s motion to discontinue this action (MS 004) is denied; and it is further

ORDERED that defendants are to serve a copy of this order together with a notice of entry upon plaintiff and the Clerk of the Court within 10 days of this order.

09/14/2023
DATE


MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: