

**Mancini Earth & Pipe LLC v Seamless Capital Group,
LLC**

2023 NY Slip Op 33250(U)

September 12, 2023

Supreme Court, Kings County

Docket Number: Index No. 517042/2022

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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MANCINI EARTH & PIPE, LLC, MANCINI
DEVELOPMENT CORP, MANCINI FIGHT CLUB, LLC,
MANCINI HEAVY HAULING, LLC, MANINCI
MARITIME INVESTMENTS, LLC, MANCINI
PROMOTIONS, LLC, MANCINI RIVALTA FIGHT
CLUB, LLC, SOUTH END CIVIL HOLDINGS, LLC,
SOUTH END CIVIL, INC., A.B.B. INVESTMENT
GROUP, LLC, ANYTIME FITNESS WESTCHASE INC.,
MANCINI COMPANIES, MANCINI CONCRETE AND
MASONRY, INC., BRITCO, LLC, FGG, LLC, LOR/MAR
ENTERPRISES, INC., and MARTIN MANCINI,

Plaintiffs, Decision and order

- against -

Index No. 517042/2022

SEAMLESS CAPITAL GROUP, LLC and HARBOR
INTERNATIONAL, LLC,

Defendants, September 12, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The defendant Harbor International LLC has moved pursuant to CPLR §3211 seeking to dismiss the complaint on the grounds of lack of jurisdiction and for the failure to state any cause of action. The plaintiffs have opposed the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

According to the complaint on April 14, 2023 the defendant Harbor International LLC purchased approximately \$900,000 of plaintiff's future receivables for \$600,000. The complaint alleges that although the agreement is not characterized as a loan in fact the agreement was a usurious loans. The complaint alleges two causes of action, one for breach of contract and one

for violations of 18 USC §1343, the Federal wire fraud statute. As noted the defendant has filed a motion to dismiss. The defendant argues that Harbor International is an Idaho entity with its sole member residing in Florida and the plaintiffs are all Florida residents. Thus, this lawsuit has no connection to New York. Further, the defendant argues that pursuant to BCL §1314 foreign entities may not sue other foreign entities in New York except under certain exceptions not applicable here. Lastly, the defendant argues that in any event the complaint does not allege any valid causes of action. As noted the plaintiffs oppose the motion.

Conclusions of Law

"[A] motion to dismiss made pursuant to CPLR §3211[a][7] will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law" (see, AG Capital Funding Partners, LP v. State St. Bank and Trust Co., 5 NY3d 582, 808 NYS2d 573 [2005]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, EBC I, Inc. v. Goldman Sachs & Co., 5 NY3d 11, 799 NYS2d 170 [2005]).

It is well settled that the parties to an agreement may freely select any forum to resolve any disputes regarding the interpretation or performance of the agreement. (Brooke Group v. JCH Syndicate 488, 87 NY2d 530, 640 NYS2d 479 [1996]). Further, a forum selection clause is prima facie valid "unless it is shown by the challenging party to be unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or it is shown that a trial in the selected forum would be so gravely difficult that the challenging party would, for all practical purposes, be deprived of its day in court" (see, Stravalle v. Land Cargo Inc., 39 AD3d 735, 835 NYS2d 606 [2d Dept., 2007]). In this case the agreement states that "any suit, action or proceeding arising hereunder, or the interpretation, performance or breach of this Agreement, shall, if Buyer so elects, be instituted in any court sitting in NY" (see, Agreement for the Purchase and Sale of Future Receipts, ¶20 [NYSCEF Doc. No. 18]). Thus, by its very terms the agreement only requires the buyer, the defendant in this case to commence any action in New York. There is no similar language authorizing the seller plaintiff to utilize New York courts pursuant to the forum selection clause. The fact the clause is non-mutual does not render it invalid (Medoil Corp., v. Citicorp., 729 F.Supp 1456 [S.D.N.Y. 1990]). Therefore, the plaintiffs cannot avail themselves of the forum selection clause and will be required to

demonstrate jurisdiction utilizing the long arm statute.

In Johnson v. Ward, 4 NY3d 516, 797 NYS2d 33 [2005] the court held that "long-arm jurisdiction over a nondomiciliary exists where (i) a defendant transacted business within the state and (ii) the cause of action arose from that transaction of business. If either prong of the statute is not met, jurisdiction cannot be conferred under CPLR 302(a)(1)" (id). In Agency Rent A Car System Inc., v. Grand Rent A Car Corp., 98 F3d 25 [2d Cir. 1996] the court explained that "the question of whether an out-of-state defendant transacts business in New York is determined by considering a variety of factors, including: (i) whether the defendant has an on-going contractual relationship with a New York corporation... (ii) whether the contract was negotiated or executed in New York, and whether, after executing a contract with a New York business, the defendant has visited New York for the purpose of meeting with parties to the contract regarding the relationship... (iii) what the choice-of-law clause is in any such contract... and (iv) whether the contract requires franchisees to send notices and payments into the forum state or subjects them to supervision by the corporation in the forum state... Although all are relevant, no one factor is dispositive. Other factors may also be considered, and the ultimate determination is based on the totality of the circumstances" (id). Thus, a non-domiciliary may be subject to the jurisdiction of New York courts

where that individual "transacts any business within the state or contracts anywhere to supply goods or services in the state" (CPLR §302(a)). "Although it is impossible to precisely fix those acts that constitute a transaction of business" case law has established that "it is the quality of the defendants' New York contacts that is the primary consideration" (see, Fischberg v. Doucet, 9 NY3d 375, 849 NYS2d 501 [2007]).

In this case the agreement was not negotiated in New York, does not involve any performance in New York, no business was transacted in New York and there was never any physical presence in New York. Rather, the plaintiffs argue that since the agreement requires payment to be received in New York and a forum selection clause mandates the seller commence any action in New York therefore the plaintiffs transact business in New York. However, "the requirement that freight payments be made to another party's New York bank account does not provide an adequate basis for personal jurisdiction" (see, Transatlantic Schiffahrtsgesellschaft GmbH v. Shanghai Foreign Trade Corp., 996 F.Supp. 326 [S.D.N.Y. 1998]). Again, in First City Federal Savings Bank v. Dennis, 680 F.Supp. 579 [S.D.N.Y. 1988] the court explained that "it is well-settled that the mere designation of New York as the site for payment on a promissory note is insufficient to confer jurisdiction over a nonresident defendant" (id). Consequently, the mere fact the payments were required to

be made and received in New York does not confer jurisdiction upon the defendant. Moreover, although it is curious the agreement would require a cause of action to be filed in New York that does not mean, in the totality, that any business was transacted in New York. Indeed, as noted, no business was transacted in New York at all.


Further, pursuant to BCL §1314(b) (1) a nonresident may not maintain an action against a foreign corporation. The statute does enumerate five exceptions, namely (1) the action is brought to recover damages arising from the breach of a contract made or to be performed in New York; (2) the subject matter of the litigation is within New York; (3) the cause of action arose within New York; (4) the non-domiciliary would be subject to personal jurisdiction under CPLR §302; and (5) the defendant is a foreign entity doing business or authorized to do business in New York. Thus, none of those exceptions permit the plaintiff to file suit in New York.

Therefore, based on the foregoing, the motion seeking to dismiss the complaint based upon lack of jurisdiction is granted.

So ordered.

ENTER:

DATED: September 12, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC