

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

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

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FARYL ROBIN, LLC

Plaintiff,

- v -

BILLDON, LLC D/B/A BILLY FOOTWEAR,

Defendant.

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INDEX NO. 152170/2023

MOTION DATE 04/19/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 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 were read on this motion to/for DISM ACTION/INCONVENIENT FORUM.

The instant action arises out of an alleged breach of contract¹. Defendant, Billdon, LLC d/b/a Billy Footwear, moves to dismiss the complaint pursuant to CPLR § 3211(a)(8), CPLR § 3211(a)(4), and CPLR § 327(a). Plaintiff opposes the instant motion. For the forthcoming reasons, the motion to dismiss the complaint is granted.

Factual Background

The instant action was commenced by plaintiff as a result of the alleged non-payment of invoices sent to defendant. Plaintiff is a limited liability company with its principal place of business located in New York. *See* Complaint, NYSCEF Doc. 1, ¶ 1. Defendant is a Washington limited liability company domiciled in Washington. *Id* at ¶ 2.

Plaintiff sold, and arranged for delivery, shoes to the defendant between December 2021 and July 2022. Defendant allegedly made only partial payments on the shoes alleging that the goods were defective. Plaintiff alleges damages in the amount of \$397,947.03.

¹ The Court would like to thank Bani Bedi for her assistance in this matter.

Legal Standard

A motion to dismiss must be granted if the court does not have jurisdiction over the defendant. CPLR § 3211(a)(8). Pursuant to CPLR § 302(a)(1), a court may only exercise specific jurisdiction over a non-resident defendant who “transacts business within” New York and where the cause of action “aris[es] from” the transaction of such business. CPLR § 301(a)(1). Personal jurisdiction over a party is satisfied when 1) the party’s activities in the state are purposeful and 2) there is a substantial relationship between the activities and the claim. *Kreutter v. McFadden Oil Corp.*, 71 NY2d 460 [1988].

A defendant has acted purposefully when they volitionally avail of the state’s resources and forum by projecting themselves into it. *Fischbarg v Doucet*, 9 NY3d 375 [2007]. However, unilateral activity in New York by the plaintiff is insufficient to constitute purposeful activity. *Id.* Assessing the totality of circumstances of the parties’ activity in New York determines whether they were purposeful. *Catauro v Goldome Bank for Sav.*, 189 AD2d 747 [2d Dept 1993]. It is the plaintiff’s burden to present sufficient facts to assert personal jurisdiction. *Cotia (USA) Ltd. v Lynn Steel Corp.*, 134 AD3d 483, 484 [1st Dept 2015]. Moreover, “the purchase and sale transaction, whereby this in-state plaintiff shipped goods to the out-of-state defendants, who then failed to fully pay for the goods, is “[t]he classic instance in which personal jurisdiction is found *not* to exist.”” *Id.*

Discussion

Defendant contends that because it is not incorporated in New York and does not have its principal place of business in the state, it must possess extensive contacts in the state rendering it “essentially at home” in New York, for the court to have general jurisdiction, and defendant avers no such contacts exist.

In opposition, plaintiff argues that defendant's attendance at trade shows in New York and its partnership with a New York non-profit organization are sufficient contacts to establish general jurisdiction in New York.

General jurisdiction is only proper when an out-of-state entity has "continuous and systematic" contacts with New York such that it is essentially "at home" in the state. See, e.g., *Aybar v Aybar*, 169 AD 137, 144 [2d Dept 2019] (citing *Daimler AG v. Bauman*, 134 S. Ct. 746, 748, 571 U.S. 117 (2014)).

The defendant has not projected itself into New York's forum through this sale agreement. It is undisputed that defendant has neither an office in New York nor any employees based in New York.

In opposition, the plaintiff argues that the negotiations for the transaction occurred over telephone, video conference, and email, and the purchase orders to the plaintiff's New York office continued over a period of months. James Biolos Aff. ¶ 9. However, the defendant conducted all these activities while based in Washington. There were no visits to New York during these negotiations or during the fulfillment of the purchase orders. The First Department has previously found such telephone or similar communication generally insufficient to constitute purposeful activity. *C. Mahendra (NY), LLC v. Nat'l Gold & Diamond Ctr., Inc.*, 125 AD3d 454 [1st Dept 2015]. Thus, the Court finds that defendant's attenuated contact with New York does not constitute purposeful activity.

Assessing the totality of circumstances, the defendant did not conduct activities purposefully availing of the New York forum, thus, the Court finds that there is no basis for general jurisdiction over defendant in New York. Further, the Court finds that there is no specific personal jurisdiction over defendant in New York for this action either. As this is a case

concerning sale of goods and it is not a tort or real property case, CPLR § 302(a)(1) is applicable. CPLR § 302.

The First Department has held that when a payment issue arises with an in-state plaintiff who shipped goods to an out-of-state defendant, there will generally be no personal jurisdiction over the case in New York. *Cotia (USA) Ltd. v. Lynn Steel Corp.*, 134 AD3d 483, 484 [1st Dept]. Here, an in-state plaintiff was working to fulfill purchase orders which were being shipped from China to Washington state. The Court agrees with the defendant that personal jurisdiction does not exist in these circumstances.

The Court finds that there is no sufficient legal basis upon which to assert personal jurisdiction over defendant in New York. Thus, the defendant’s motion to dismiss is granted due to lack of personal jurisdiction and the Court does not reach other potential grounds for dismissal. Accordingly, it is hereby

ORDERED that the plaintiff’s complaint against the defendant BILLY is dismissed pursuant to CPLR § 3211(a)(8).

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LYLE E. FRANK, J.S.C.

8/4/2023
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

CHECK IF APPROPRIATE: