

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

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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HOT PANCAKES LIMITED, CS&P, S.A., CARLO SCEVOLA

Plaintiffs,

- v -

PAYONEER GLOBAL INC., F/K/A PAYONNER, INC.,
AMBER MURPHY,

Defendants.

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INDEX NO. 157817/2021

MOTION DATE 11/03/2022,
11/03/2022,
11/04/2022

MOTION SEQ. NO. 001 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 32, 33, 35, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 91, 92, 93, 94, 95, 102

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 96, 97, 98, 99, 100, 103, 104, 105, 106, 107, 108

were read on this motion to/for DISMISS.

Upon the foregoing documents, the decision on plaintiff’s Order to Show Cause seeking to preliminarily enjoin pursuant to CPLR 6301 Defendant Payoneer Global Inc., f/k/a Payoneer, Inc. (“Payoneer”) and Amber Murphy, and any agents, from accessing, transferring, or withdrawing funds from any account opened in the name of Hot Pancakes Limited (“Hot Pancakes”) including, but not limited to the Account Holder Identification Number ending in “8601” and “6812;” and seeking leave pursuant to CPLR 308(5) to the summons and complaint upon Amber Murphy at the email addresses of slab@gmail.com and y109@gmail.com, Sandrine Giroud’s business email address, Swiss Counsel for Amber Murphy, and Jeremy E. Roller’s business email address, Seattle Counsel for Amber Murphy; the motion of Defendant – Payoneer Global Inc. f/k/a Payoneer, Inc.

to dismiss pursuant to CPLR 3211(a)(8); and the motion of Amber Louise Murphy to dismiss Plaintiff's Complaint (1) pursuant to CPLR 327(a), ii) "ongoing litigation in the Commonwealth of The Bahamas," and iii) pursuant to CPLR 3211(a)(8).

Plaintiff commenced the instant action by filing its summons and complaint on August 23, 2021. Defendants have not submitted an answer and appear through their respective motions to dismiss. Acceptance of service has been submitted by Jeremy E. Roller (see NYSCEF Doc. No. 26). A Virtual Microsoft Teams Oral Argument was held on November 3, 2021.

Plaintiff, Hot Pancakes is a limited liability company incorporated in Cyprus. Plaintiff CS&P, S.A. is incorporated in Panama. Plaintiff Carlo Scevola is an Italian national domiciled in the Dominican Republic, and sole shareholder of CS&P, S.A.

Defendant Payoneer is a financial services company that provides online money transfer and digital payment services with a principal place of business in New York. Defendant, Amber Louise Murphy, is a citizen of the United Kingdom and the Commonwealth of Dominica.

CPLR 3211(a)(8) states, "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that the court has not jurisdiction of the person of the defendant."

Per the affidavit of Carlo Scevola, "[Hot Pancakes] is in the business of publishing fiction books. The underlying dispute ... to certain books published by [Hot Pancakes] under the fictitious pen name 'Bella Forrest.' I coined the pen name 'Bella Forrest,' and it has been registered in the United States Patent and Trademark Office since 2013. I personally wrote on of the Bella Forrest Books, titled *The Gender Game*, and I hold the U.S. copyright registration for *The Gender Game* in my own name. The remainder of Bella Forrest Books have all been written by freelancers as

works-for-hire commissioned by [Hot Pancakes], which holds the copyrights for those books” (see NYSCEF Doc. No. 4 Pars. 13 – 16).

Plaintiffs submit a document that purports to give a Registration to the Gender Game but does not have a seal or signature (see NYSCEF Doc. No. 14). Said document does not appear to be authenticated.

Defendant Amber Louise Murphy submits an affidavit stating, “Hot Pancakes Limited, a publishing company that I formed in 2012. I have been [Hot Pancakes’] ‘ultimate beneficial owner’ since its founding in 2012. Since that time, I have overseen and managed all aspects of [Hot Pancakes’] day-to-day operations, including producing the intellectual property of [Hot Pancakes], which publishes fiction books for mainly a young female audience under the pen name ‘Bella Forrest’ that I coined. Scevola’s only involvement with [Hot Pancakes Limited] was through his company CS&P Fiduciaire SA. and/or CS&P SA, a so-called corporate fiduciary, which I hired in 2012 to provide back-end corporate, accounting and legal services for [Hot Pancakes]. This Affirmation sets out the facts regarding the Payoneer accounts – they are empty, and closed (as Plaintiffs already know) – and set forth my lack of personal contacts with New York. I was born in Great Britain on April 10, 1992, and currently hold dual English and Dominican nationalities. I cause [Hot Pancakes Limited] to transfer approximately \$30 million in total from its accounts at EFG Bank to Ansbacher in the Bahamas. The representation by Scevola that he ‘coined the pen name’ for Bella Forrest ... is an utter lie. I (not Scevola) created the pen name ‘Bella Forrest,’ under which the books published by [Hot Pancakes Limited] appear. I did not want to publish books under my own name to ensure my privacy.” (see NYSCEF Doc. No. 41 Pars. 3 4 8 9, 32)

The affidavit of Amber Louise Murphy continues, “I have never been to New York State or anywhere in the United States for that matter. I do not own any shares of any New York or U.S.

corporations or membership interests in LLCs. I do not have any personal bank accounts with New York banks. I do not own any property in New York or the U.S. I have never personally transacted any business within New York or contracted to supply goods or services into New York. I have not personally solicited business in New York or personally derived any revenue from the sale of goods or the provision of services in New York. I do not personally derive any revenue from international or interstate commerce. My only source of revenue is as the ultimate business owner of [Hot Pancakes Limited]” (see NYSCEF Doc. No. 41 Pars. 33, 71 – 77).

Plaintiffs bear the burden of proving, by a preponderance of the evidence, that personal jurisdiction exists over a defendant (see *Coast to Coast Energy, Inc. v. Gasarch*, 149 A.D.3d 485 [1st Dept. 2017]). General jurisdiction under CPLR 301 requires ‘continuous and systematic’ contacts with New York (see *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 [2017]). A defendant who did not reside in New York at any time when the alleged wrongful actions occurred, does not own property here, and does not conduct business or derive revenue in New York is not subject to general jurisdiction in New York Courts (see *Bookstaver v. Saintfort*, 10 A.D.3d 514 [1st Dept. 2004]).

New York’s long – arm statute permits the exercise of jurisdiction over a foreign defendant who transacts business within the State if the claims asserted arise from her business activity within the State (see CPLR 302(a)(1)). The Court of Appeals further explains long – arm jurisdiction in *Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501 [2007] “ [T]he over-riding criterion necessary to establish a transaction of business is some act by which the defendant purposefully avails itself of the privilege of conducting activities within New York.” Through her affidavit, Amber Murphy has established that she did not “purposefully avail [herself] of the privilege of conducting activities within New York.”

Defendants further raise the other argument of *forum non conveniens* as described in CPLR 327(a), and comity based upon “ongoing litigation in the Commonwealth of The Bahamas.”

Under the doctrine of *forum non conveniens*, codified in CPLR 327(a), New York Courts are permitted to dismiss an action properly subject to their jurisdiction where determined that, “in the interest of substantial justice[,] the action should be heard in another forum” (see CPLR 329(a); *Islamic Republic of Iran v. Pahlavi*, 62 NY2d 474, 478-79 [1984]).

A nonresident plaintiff “must demonstrate special circumstances which warrant the retention of the action in New York or risk dismissal of the action pursuant to the doctrine of *forum non conveniens*. Dismissal is warranted when it plainly appears that New York is an inconvenient forum and that another is available which will best serve the ends of justice and the convenience of the parties” (see *Economos v. Zizikas*, 18 A.D.3d 392, 393 [1st Dept. 2005]). As none of the parties are residents of New York nor did any of the activities occur in New York, dismissal on *forum non conveniens* grounds is warranted.

Defendants further provide analysis under the comity doctrine. “Under the principle of comity, American Courts generally defer to proceedings in foreign countries so long as the foreign court had proper jurisdiction and enforcement does not prejudice the rights of the United States citizens or violate domestic public policy” (see *Bertisch v. Drory*, 798 N.Y.S.2d 342 [Sup. Ct., N.Y. Cnty. 2004]). Defendants’ memorandum of law in support states, “[t]he parties are presently involved in multiple criminal and civil actions pending across various jurisdictions around the globe. In addition to the Bahamian Lawsuit (the first civil action filed), these include criminal complaints filed against Scevola in Italy, Switzerland, and Portugal, and civil complaints in Cyprus and Portugal” (see NYSCEF Doc. No. 67 P. 10). Defendants also provide a Declaration of Attack submitted to the Superior Court of Washington State (see NYSCEF Doc. No. 56), along with the

Complaint (see NYSCEF Doc. No. 64) in a matter which was dismissed shortly before the filing of the instant action.

Defendant Payoneer states, “Payoneer, Inc. is Payoneer’s licensed U.S. provider of payment services. Payoneer, Inc. is a wholly – owned subsidiary of Payoneer Global Inc. Payoneer Europe Limited, meanwhile, is an Irish e-money institution authorized by the Central Bank of Ireland to provide services to European Economic Area residents, such as [Hot Pancakes Limited] (a Cyprian company). The financial transfers at issue in this case occurred through an account provided by Payoneer Europe Limited. This Court does not have personal jurisdiction over defendant Payoneer because Plaintiffs have named and served the incorrect Payoneer entity as defendant. The Payoneer entity which provides the relevant [Hot Pancakes Limited] Account is Payoneer Europe Limited, an Irish Company headquartered in Dublin. Plaintiffs’ claims, and the injunctive and declaratory relief they seek, thus directly implicate Payoneer Europe Limited, not Payoneer Global Inc.” (see NYSCEF Doc. No. 39 P. 4 – 5, 7).

CPLR 1003 states, “[n]onjoinder of a party who should be joined under section 1001 is aground for dismissal of an action.” Here, Plaintiffs will not be able to continue their action against Payoneer because said action is premised upon allegations that they own and control Hot Pancakes. This question cannot be resolved without Defendant Amber Murphy.

As this court has read all the documents and exhibits submitted, personal jurisdiction of Defendant – Amber Louise Murphy has not been established. Defendants’ further arguments of *forum non conveniens* and comity are moot, as personal jurisdiction has not been established in this jurisdiction, however if the matter were not dismissed due to lack of personal jurisdiction same would be granted.

To be entitled to a preliminary injunction, the moving party must demonstrate 1) a likelihood of success on the merits, 2) irreparable injury if provisional relief is not granted and 3) that the equities are in his favor (see *J.A. Preston Corp. v. Fabrication Enterprises, Inc.*, 68 N.Y.2d 397 [1986]). As Plaintiff has not established personal jurisdiction over the defendants, their motion for a preliminary injunction cannot stand.

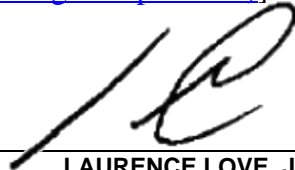
ORDERED that Plaintiffs' Order to Show Cause to preliminary enjoin, CPLR 6301, Defendant Payoneer Global Inc., f/k/a Payoneer, Inc. ("Payoneer") and Amber Murphy, and any agents, from accessing, transferring, or withdrawing funds from any account opened in the name of Hot Pancakes Limited ("Hot Pancakes") including, but not limited to the Account Holder Identification Number ending in "8601" and "6812;" and to authorize Plaintiff to serve, CPLR 308(5), the summons and complaint upon Amber Murphy at the email addresses of slab@gmail.com and y109@gmail.com, Sandrine Giroud's business email address, Swiss Counsel for Amber Murphy, and Jeremy E. Roller's business email address, Seattle Counsel for Amber Murphy is DENIED; and it is further

ORDERED that the motion of defendants Payoneer Global Inc. f/k/a Payoneer, Inc. and Amber Murphy to dismiss the complaint herein is GRANTED and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; 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).

4/26/2022
DATE


LAURENCE LOVE, J.S.C.

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