

CORPORATE LITIGATION

When Is Out-of-State Out-of-Reach? Recent Application of NY's Long-Arm Statute

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In this article, we examine *Reveam v. Taylor Freres Capital Markets*, No. 655074/2021, 2023 WL 9018613 (N.Y. Dec. 29, 2023), a recent decision from the New York Supreme Court applying New York's long-arm statute to assess specific personal jurisdiction over a non-resident defendant.

In recent years, decisions from both the New York Court of Appeals and the First Department have highlighted that a broad scope of conduct and activities can support the exercise of personal jurisdiction by New York courts. See, e.g., *State v. Vayu*, 39 N.Y.3d 330 (2023) (holding that a company's use of phone calls and emails to negotiate contract terms with contacts in New York and the hosting of two in-person meetings within the state established a clear intent to form a substantial ongoing business relationship and constituted the purposeful activities required to establish jurisdiction);

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People v. JUUL Labs, 212 A.D.3d 414 (1st Dep't 2023) (highlighting marketing strategy targeting New York, hosting New York-based social events and advertising in New York as sufficient in-person activities within New York State to support the exercise of personal jurisdiction); *4069 Rosen Associates v. Tournamentone*, 206 A.D.3d 464, 2022 N.Y. Slip Op 03864 (1st Dep't June 14, 2022) (finding personal jurisdiction due to defendant's in-person negotiation

of loan agreements, defendant's retention of a local law firm and the establishment of an ongoing business relationship with New York plaintiffs).

In *Reveam*, however, Justice Joel Cohen of the Commercial Division held that a non-New York resident lacked sufficient contacts within the state to warrant the court's exercise of personal jurisdiction under New York Civil Practice Law §302(a)(1) or (3), and that

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exercising jurisdiction would fail to comply with due process.

Pursuant to CPLR §302(a), New York state courts can exercise personal jurisdiction over non-New York residents (also called non-domiciliaries) if such jurisdiction *both* aligns with the due process requirements established by the U.S. Constitution *and* the action is permissible under New York's long-arm statute itself.

Specifically, CPLR §302(a) grants jurisdiction where the non-domiciliary (1) transacts business within the state, (2) commits a tortious act within the state or (3) commits a tortious act outside of the state but causes injury to person(s) or property within the state. See *Williams v. Beemiller*, 33 N.Y.3d 523, 528 (N.Y. 2019); see also *International Shoe v. Washington*, 326 U.S. 310, 316 (1945).

Reveam pitted plaintiff/counterclaim-defendant *Reveam* against a financial advisor, Taylor Freres Capital Markets LLC (Taylor Freres), which served as *Reveam*'s financial advisor and banking provider from 2009 to 2012 and acquired shareholder status during this initial engagement.

Despite receiving shares and fees, Taylor Freres maintained that it was not fully compensated per the terms of a 2009 agreement. Several years later, *Reveam* engaged Taylor Freres again, pursuant to alleged letter agreements that, in lieu of payment of certain fees and to make Taylor Freres whole for the cash and equity still owed, converted outstanding fees and shares into a senior equity interest in *Reveam*. But in 2017, *Reveam*'s chief financial officer, H. Martin Rice, wrote a letter to Taylor Freres denying the issuance of any shares.

In 2021, *Reveam* filed the instant case alleging illegality, forgery and fraud against Taylor Freres, and challenging the legitimacy and enforceability of certain agreements. Following dismissal of *Reveam*'s original claims, Taylor Freres filed counterclaims alleging that as part of a scheme to deceive and avoid payment. *Reveam* and Rice wrote the 2017 letter and embarked on a three-year campaign to exclude Taylor Freres from communications sent to shareholders.

Reveam and Rice subsequently moved to dismiss and Cohen granted the motion as to Rice, finding that he, as a Georgia resident who worked for *Reveam* in Georgia-transacted business within New York, did not have

sufficient contacts with New York to establish personal jurisdiction.

To assess whether the sufficiency of Rice’s contacts with New York supported jurisdiction, Cohen began by analyzing CPLR §302(a)(1). Under CPLR §302(a)(1), a court may exert specific personal jurisdiction over a non-domiciliary if they have “transacted business” in New York—which requires an articulable nexus between the business transacted and the cause of action sued upon. The ultimate burden of proving a basis for personal jurisdiction rests with the party asserting jurisdiction. *Fischbarg v. Doucet*, 9 N.Y.3d 375, 379 (2007).

Because the July 2017 letter was written in Georgia and was sent to a Taylor Freres office in Georgia, it lacked a substantial connection to New York.

Thus, where a defendant, as in this case, moves to dismiss a proceeding for lack of personal jurisdiction, “the plaintiff must come forward with sufficient evidence, through affidavits and relevant documents, to prove the existence of jurisdiction.”

Section 302(a)(1) is also considered a “single act statute,” whereby “proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York...” *Deutsche Bank Securities v. Montana Board of Investments*, 7 N.Y.3d 65, 71 (2006); see also *Vayu*, 39 N.Y.3d at 336 (noting that “a solitary business meeting conducted for a single day in New York may supply the

minimum contacts necessary to subject a nonresident participant to the jurisdiction of our courts”).

Despite this relatively lenient threshold, Taylor Freres failed to present enough evidence to establish that Rice engaged in the requisite business transactions within New York. For example, even though an affidavit submitted by Rice mentioned two business trips to New York, the court determined that the trips were unrelated to Taylor Freres-related business and the counterclaimants were unable to show, beyond a mere inference, that Rice made any statements about Taylor Freres during his visits. Consequently, the court found that Taylor Freres failed to establish personal jurisdiction under CPLR §302(a)(1).

Next, under CPLR §302(a)(3), Cohen assessed whether Rice, directly or through an agent, committed a tortious act causing injury in New York. *Reveam*, 2023 WL 9018613 at *4. Even though Taylor Freres alleged fraud based on the alleged falsehoods included in Rice’s July 2017 letter, the court determined that the injury’s situs is where “the critical events associated with the dispute took place.”

Thus, because the July 2017 letter was written in Georgia and was sent to a Taylor Freres office in Georgia, it lacked a substantial connection to New York. The court also found it unavailing that Taylor Freres maintained a New York office until 2018 or 2019, deeming the connection too attenuated to the allegations at issue.

Finally, Cohen held that even if Taylor Freres could establish an injury in New York, it still failed to demonstrate the applicability of subsections (i) or (ii) of CPLR § 302(a)(3). Those subsections require that a non-domiciliary (1) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (2) expects or should reasonably expect the act to have consequences in the state and derive substantial revenue from interstate or international commerce.

Here, Taylor Freres argued that a Reveam press release in which the company acknowledged that it conducted business in various states and Rice's role as an officer and shareholder meant that it satisfied §302(a)(3)(i). But, as the court noted, while the press release listed other states, it *excluded* New York. The court further explained that Rice's connections

with New York were too tenuous to satisfy the standards of fairness and due process.

Personal jurisdiction demands foreseeability and that defendants reasonably expect to face legal action in the forum. Reveam's connections to New York stemmed only from New York choice of law provisions within the compensation agreements in question, and these agreements were in place before Rice's alleged wrongdoing and first date of employment at Reveam. Moreover, Rice's sporadic communications with the Taylor Freres's New York office were unrelated to the allegations underlying the suit and did not establish a sufficient nexus with the forum.

The decision in *Reveam* reinforces that whether or not personal jurisdiction exists remains a highly fact-intensive inquiry and that courts will continue to closely examine whether or not a party asserting personal jurisdiction can meet its burden once challenged.