

NEW YORK COURT OF APPEALS ROUNDUP

NONDOMICILIARY'S ACTIONS IN NY SUFFICIENT TO ESTABLISH PERSONAL JURISDICTION PURSUANT TO LONG-ARM STATUTE

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The Court of Appeals remains a six-member court after Chief Judge Janet DiFiore's Aug. 31, 2022, resignation. Gov. Kathy Hochul nominated Presiding Justice of the Appellate Division, Second Department, Hector D. LaSalle as chief judge but, in an unprecedented action, the state Senate rejected the nomination. The Commission on Judicial Nominations has restarted its process and is currently considering applications to fill the chief judge vacancy. Judge Anthony Cannataro continues to serve as acting chief judge until a successor is named by Hochul and confirmed by the state Senate. Until then, the court appears to be taking a measured approach. The court has issued approximately 37 decisions since DiFiore's resignation and in all but three of those decisions as of the date this column was drafted, the court was unanimous or 5-1 in its voting.

In one of those 5-1 decisions, the Court of Appeals last month reversed a divided Appellate Division, Third Department and held that a nondomiciliary's actions in New York were sufficient to establish personal jurisdiction pursuant to New York's long-arm statute. In *State of New York v. Vayu*, a decision written by Judge Michael J. Garcia and joined by Acting Chief Judge Cannataro and Judges Rowan Wilson, Madeline Singas and Shirley Troutman, the court determined that a Delaware corporation's calls, emails, and an in-person visit with the plaintiff in New York in order to establish a substantial ongoing business relationship were sufficiently purposeful activities to hold that the Delaware corporation subjected itself to personal jurisdiction in New York.

In 2015, Dr. Peter Small, a professor of medicine and director of the Global Health Institute at plaintiff the State University of New York at Stony Brook (SUNY Stony Brook), contacted Daniel Pepper, defendant Vayu, Inc.'s (Vayu) chief executive officer, seeking a business relationship between Vayu and SUNY Stony Brook for the development and use of unmanned aerial vehicles (UAVs) to deliver medical supplies to remote areas in underdeveloped countries. For two years, the parties communicated via telephone and emails and later had an in-person meeting in New York to discuss the development of UAVs to be sold to SUNY Stony Brook, as well as broader business opportunities. In 2016, SUNY Stony Brook purchased two UAVs from Vayu for use in Madagascar. Vayu sent the invoice to SUNY Stony Brook in New York, and Vayu accepted a wire payment from SUNY Stony Brook that originated in New York. The UAVs were shipped from Vayu directly to Madagascar. Shortly thereafter, it was determined that the UAVs were not operating properly. The parties attempted to resolve the performance issues by telephone, email and another in-person meeting in New York. At the in-person meeting, the parties agreed to terms for moving forward and discussed ongoing and future business opportunities. When Vayu allegedly did not abide by the terms of the new agreement, SUNY Stony Brook filed the breach of contract action in Supreme Court, Albany County.

The Supreme Court granted Vayu's motion to dismiss for lack of personal jurisdiction. Index No. L-00058-18, NYSECF Doc. No. 2 at 9 (N.Y. Sup. Ct. Jan. 27, 2020). The court emphasized that it was SUNY Stony Brook who initially reached out to Vayu to propose a business relationship and that Vayu's later communications were mostly responsive to that initial request. The Appellate Division, Third Department affirmed in a split decision concluding that the relationship was a single transaction initiated by SUNY

Stony Brook where the parties' communications were limited to discussing the ongoing issues related to the UAVs that did not result in more sales in New York or seek to advance Vayu's business contacts in New York. 195 A.D.3d 1337, 1339 (3d Dep't. 2021). The Court of Appeals reversed because "the reasoning of both courts is inconsistent with the record and our precedent."

New York's long-arm statute provides, in relevant part, that "a court may exercise personal jurisdiction over any nondomiciliary ... who in person or through an agent ... transacts any business within the state." CPLR 302(a)(1). According to the majority, the examination of a defendant's actions in New York is "primarily a fact-based inquiry that requires an assessment of whether the nondomiciliary's activities in the state were purposeful." Activities count as purposeful where they are "volitional acts by which the nondomiciliary avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. Although determining what facts constitute 'purposeful availment' is an objective inquiry, it always requires a court to closely examine the defendant's contacts for their quality."

The Court of Appeals rejected the lower court's narrow view of the parties' interactions. After reiterating that "CPLR 302 is a single-act statute requiring but one transaction—albeit a purposeful transaction—to confer jurisdiction in New York," the majority held that the parties' communications related not only to a single purchase of UAVs, but also to furthering a continuing business relationship involving active dialogue between principals. Next, the majority acknowledged that "a defendant's initiation of contact with New York is a relevant factor in the purposeful availment analysis," but explained that "it is not determinative." When the Third Department discounted the in-person meeting in New York because it was for the purpose of discussing issues regarding the prior purchase of the UAVs as opposed to new business opportunities, 195 A.D.3d at 1339, the court's majority reiterated that "the nature and purpose of 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," and held that the in-person meeting was not as limited as the Third Department observed; rather, the meeting was part of a far reaching and long-standing relationship. Based on SUNY Stony Brook's allegations, the parties' initial agreement concerning the UAVs was renegotiated at the in-person meeting, the parties followed up for weeks exchanging emails and calls to memorialize the renegotiated agreement, and it was Vayu's breach of its obligations under the renegotiated contract that led to the filing of this action. According to the majority, this activity was sufficient to establish purposeful contact with New York for purposes of the long-arm statute.

The second prong of New York's long-arm analysis requires that the cause of action arise from a defendant's relevant business transaction in the state. And the third prong requires that the exercise of jurisdiction must comport with due process, requiring that a defendant have minimum contacts with New York such that the defendant should reasonably anticipate being hauled into court here and the prospect of having to defend a suit in New York comports with traditional notions of fair play and substantial justice. The court found that the second and third prongs were easily met because SUNY Stony Brook's claims are based on the purchase of UAVs from Vayu via a contract negotiated with a New York entity, Vayu had numerous telephone and email communications in New York that were directly related to efforts to sell and resolve disputes concerning the operability of the purchased UAVs, and Vayu personnel had an in-person meeting in New York concerning these issues and additional potential business opportunities with SUNY Stony Brook. Under these circumstances, the majority held that Vayu should reasonably have anticipated litigation in New York and that the exercise of personal jurisdiction accordingly comported with due process.

In a sole dissent, Judge Jenny Rivera agreed with the Third Department majority that contact was initiated by SUNY Stony Brook and the later contacts between the parties were merely "responsive in nature" as opposed to ongoing negotiations over the initial terms of the agreement and the modifications needed to address the UAVs' operational issues. Rivera also agreed with the Third Department majority that the in-person meeting was to discuss concerns regarding the already completed purchase as opposed to opportunities for new business in New York. Rivera also points out that the UAVs were for use in Madagascar. But the majority responds by saying the fact that persons located in Madagascar might

benefit from the UAVs does not mean that SUNY Stony Brook would not reap a benefit from the success of their program, including, for example, by enhancing the program's reputation and making it possible for SUNY Stony Brook to expand the program to serve other populations in need.

The decision demonstrates that a majority of the Court of Appeals takes a broad view of New York's long-arm jurisdiction statute where a commercial, nondomiciliary defendant negotiates an agreement and communicates with a plaintiff in New York via email and telephone, especially where there are in-person interactions concerning the subject of the parties' negotiations for current and potential future business opportunities. As the dissent noted, parties can avoid similar personal jurisdiction disputes by requiring a forum selection clause in their contracts.

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