

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: Trial Term Part 35 \_\_\_\_\_ x

HARPER ADVANCE,

Plaintiff,

-against-

Index No.: 522065/2020

DECISION AND ORDER

CHANCE REYNOLDS TRUCKING LLC and CHANCE  
ROLAND REYNOLDS,

Defendants.

\_\_\_\_\_ x

Recitation as required by CPLR § 2219(a) of the papers considered in this motion,

<u>Papers</u>	<u>NYSCEF Doc. Nos.</u>
Order to Show Cause/Motion and Affidavits Annexed	18-29
Cross-motion and supporting papers	
Answering Affidavits	30-35
Memorandum of Law	

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

In this action to recover damages resulting from a breach of contract, defendants CHANCE REYNOLDS TRUCKING LLC and CHANCE ROLAND REYNOLDS move for an order (1) vacating the default judgment against defendants pursuant to CPLR 5015 (a)(1), (3), and (4), and 317; and (2) dismissing the action for lack of subject-matter jurisdiction pursuant to Business Corporation Law (BCL) § 1314 and General Obligations Law (GOL) § 5-1402.

In November 2020, plaintiff, a foreign limited liability company formed under the laws of California authorized to do business in the State of New York, commenced this action to recover monies owed pursuant to an agreement for the purchase and sale of future receivables against defendants. Defendant Chance Reynolds Trucking LLC [CRT] is a foreign limited liability company located in New Mexico; defendant Chance Roland Reynolds is a foreign resident. In April 2021, the County Clerk entered a default judgment against defendants in the amount of \$25,780.50, plus interests and costs, totaling \$27,169.95. Defendants now move, pursuant to CPLR 5015(a)(1), (3), and (4), and 317, to vacate the judgment, and to dismiss the action for lack of subject-matter jurisdiction pursuant to BCL § 1314 and GOL § 5-1402.

BCL § 1314 governs actions or proceedings against foreign corporations and specifies what actions the Court has subject-matter jurisdiction over. As plaintiff and defendants are foreign companies and residents, BCL § 1314(b), rather than BCL § 1314(a) which is applicable only to residents or domestic corporations of this state, governs, and the action must fall within one of the categories listed under BCL § 1314(b) or within the statutory exception to BCL § 1314 found in GOL § 5-1402.

Under BCL § 1314(b), an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any type or kind or by a non-resident in the following cases only:

- (1) Where it is brought to recover damages for the breach of a contract made or to be performed within this state, or relating to property situated within this state at the time of the making of the contract.
- (2) Where the subject matter of the litigation is situated within this state.
- (3) Where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state.
- (4) Where, in any case not included in the preceding subparagraphs, a non-domiciliary would be subject to the personal jurisdiction of the courts of this state under section 302 of the civil practice law and rules.
- (5) Where the defendant is a foreign corporation doing business or authorized to do business in this state.

Here, BCL §1314(b) does not afford subject-matter jurisdiction to this Court as the instant matter does not fall under any of the aforementioned categories. BCL § 1314(b)(1) – (3) provides jurisdiction in actions in which the property or subject-matter of the litigation is located within New York, the underlying contract was made in New York or calls for performance in New York, or the cause of action arises in New York. In an affidavit submitted in support of their motion, defendant Chance Reynolds states that the contract was not made, signed, or to be performed within New York as the agreement was signed in the State of New Mexico and transmitted by internet. Furthermore, Reynolds states that CRT was never registered or authorized to do business in New York, which is required to invoke § 1314(b)(5). Plaintiff's chief executive officer, Moshe Dov Hershberg, does not address this within his affidavit.

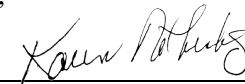
Additionally, absent personal jurisdiction under CPLR 302, the Court is deprived of subject-matter jurisdiction under BCL § 1314(b)(4). While New York recognizes consent as a basis for personal jurisdiction, it does not recognize consent as a basis for long-arm jurisdiction (*see Techo-TM, LLC v Fireaway, Inc.*, 123 AD3d 610 [1st Dept 2014]), and the Court otherwise lacks personal jurisdiction over defendants under CPLR 302. Finally, GOL § 5-1402 is not implicated here as the instant matter does not involve at least one million dollars.

Accordingly, defendants' motion is granted. The default judgment entered by the County Clerk on April 1, 2021, is hereby vacated, and the instant action is dismissed in its entirety.

This constitutes the decision and order of the Court.

Dated: March 20, 2023

Enter,



Hon. Karen B. Rothenberg  
J.S.C.