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

NOREX PETROLEUM LIMITED, Plaintiff, v. LEONARD BLAVATNIK; VICTOR VEKSELBERG; SIMON KUKES; ACCESS INDUSTRIES, INC.; ALFA GROUP CONSORTIUM; RENOVA, INC.; OAO TYUMEN OIL COMPANY; TNK-BP LIMITED, and BP PLC, Defendants.	Index No. 650591/2011 Motion Sequence No. 11

DEFENDANTS OAO TYUMEN OIL COMPANY AND TNK-BP LIMITED'S MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF NOREX PETROLEUM LIMITED'S COMPLAINT FOR LACK OF PERSONAL JURISDICTION

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Defendants OAO Tyumen Oil Company and TNK-BP Limited (the "TNK Defendants") respectfully submit this memorandum of law in support of their motion to dismiss with prejudice the Revised First Amended Complaint ("Complaint" or "Compl.") of Norex Petroleum Limited ("Norex") under Business Corporation Law ("BCL") § 1314(b) and Civil Practice Law and Rules ("CPLR") §§ 302(a) and 3211(a)(8). For the convenience of the Court, the TNK Defendants also have joined in the Joint Motion to Dismiss and Joint Memorandum of Law filed by other Defendants under CPLR § 3211(a)(1), (5) and (7).[1] That joint motion would entirely dispose of Norex's Complaint.

PRELIMINARY STATEMENT

This Court lacks personal jurisdiction over the TNK Defendants for Norex's alleged loss of majority control of Yugraneft—a Russian oil company doing business in Russia. The TNK Defendants and Norex are foreign companies. Norex has failed to—and cannot—allege that the TNK Defendants reside in New York, transact business in New York, committed a tort in New York, or committed a tort outside of New York that caused injury to Norex in New York. Thus, the only basis for personal jurisdiction over the TNK Defendants is Norex's allegations regarding tortious acts by other Defendants as co-conspirators of the TNK Defendants.

Norex's Complaint, however, is devoid of the "specific allegations" required under BCL § 1314(b) and CPLR § 302(a) to establish personal jurisdiction based on conspiracy. New York courts have consistently held that cursory allegations of conspiracy or the wiring of funds by co-

[1] The Joint Memorandum of Law, and the accompanying affirmation of Milana Salzman and affidavits of Dmitry Dyakin, Boris Karabelnikov, and Bradley Nemetz, were submitted by the TNK Defendants on behalf of Leonard Blavatnik, Victor Vekselberg, Simon Kukes, Access Industries, Inc., Alfa Group Consortium, and Renova, Inc. (collectively, the "Defendants"). The Salzman Affirmation contains Norex's Complaint, copies of the underlying federal decisions and miscellaneous other unpublished pleadings and decisions cited in both the Joint Memorandum of Law and this memorandum of law in support of the TNK Defendants' motion to dismiss for lack of personal jurisdiction.

conspirators, such as Norex's here, fail to establish the requisite "substantial connection" between the alleged tortious conduct and New York.

FACTS

This case arises from economic injuries allegedly suffered by Norex, a foreign company, in Russia as a result of its loss of majority control over a Russian company – Yugraneft. Norex is a Cypriot corporation headquartered in Canada. See Norex Petroleum Ltd. v. Access Indus. Inc., 416 F.3d 146, 150 (2d Cir. 2005); Compl. ¶ 4.[2] The TNK Defendants are also foreign companies – OAO Tyumen Oil Company is a Russian company and TNK-BP Limited is a British Virgin Islands company. Compl. ¶¶ 17, 20. A complete history of the 11 years of litigation in Russian and U.S. federal courts involving Norex's efforts to gain and maintain control of Yugraneft is set forth at pages 2-8 of Defendants' Joint Memorandum of Law in Support of the Motion to Dismiss, dated September 16, 2011. That history shows that all of the acts relevant to Norex's claimed shareholder rights occurred in Russia, under Russian law, with respect to a Russian company and business interests located in Russia.

As its sole basis for this Court's jurisdiction, Norex alleges that one or more Defendants "and their co-conspirators" wired funds from New York for the purpose of bribing unnamed Russian officials to influence a Russian court case regarding Norex's shareholdings in Yugraneft. Compl. ¶ 43. The bribes allegedly were part of a "conspiracy" to takeover Yugraneft in Russia which was "orchestrated" by Defendants Blavatnik and Vekselberg "from their offices in New York." Compl. ¶ 3. No specific instances of "orchestrating acts" are alleged. Norex

[2] Norex's federal complaint was averred, and its admissions in the federal action are binding here. See Matter of Union Idem. Ins. Co. of N.Y., 89 N.Y.2d 94, 103 (1996) ("[a]n admission in a pleading in one action is admissible against the pleader in another suit, provided it is 'shown by the signature of the party, or otherwise, that the facts were inserted with his knowledge, or under his direction, and with his sanction'") (citation omitted); Kaisman v. Hernandez, 61 A.D.3d 565, 566 (1st Dep't 2009) (plaintiff's admission in an affidavit in a prior lawsuit was properly considered on a motion to dismiss) (citation omitted).

alleges that the TNK Defendants were owned and controlled by various shareholders named in the Complaint. Compl. ¶18. Id. Allegedly, these shareholder co-conspirators "used TNK" in Russia to "further their agreement to amass oil assets" there. Norex does not allege that the TNK Defendants were ever present in New York or committed any tortious acts here. Norex's Complaint also ignores most of the Russian litigation regarding its claims to ownership of the shares of Yugraneft. Tellingly, on these facts, the Second Circuit Court of Appeals held that Norex had failed to plead a domestic RICO complaint (based on sufficient U.S. – as opposed to just New York – connections). See Norex Petroleum Ltd. v. Access Indus. Inc., 631 F.3d 29, 33 (2d Cir. 2010).

ARGUMENT

I. THIS COURT SHOULD DISMISS FOR LACK OF PERSONAL JURISDICTION

BCL § 1314(b) "reflect[s] this State's policy against lending its courts to the resolution of disputes between nonresident parties…."[3] Simonson v. Int'l Bank, 14 N.Y.2d 281, 285 (1964) (citation omitted). A court may, however, exercise jurisdiction over a nondomiciliary if the plaintiff alleges that the nondomiciliary or his agent committed a tortious act within New York State. CPLR § 302(a)(2). An "agent" may include co-conspirators of the nondomiciliary. JPMorgan Chase Bank v. Baird, 2006 NY Slip Op 30274(U), *12 (2006); Small v. Lorillard Tobacco Co., 252 A.D.2d 1, 17 (1st Dep't 1998).

To sustain its Complaint, Norex must plead not only a tortious act in New York, but also a prima facie case of conspiracy and sufficient facts warranting the inference that the defendant was a member of that conspiracy. Glenn v. SBPartners LLC, 18 Misc.3d 1123(A), 2008 NY Slip

[3] Under BCL § 1314(b)(4), a foreign corporation may bring an action against another foreign corporation where "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."

Op 50163(U), *7 (2008); Small, 252 A.D.2d at 17. This includes facts showing that the co-conspirators in New York acted for the benefit and with the consent and knowledge of the out-of-state conspirators, De Capriles v. Lugo, 293 A.D.2d 405, 406 (1st Dep't 2002) (citation omitted), appeal dismissed, 98 N.Y.2d 717 (2002), and establishing that those out-of-state conspirators knew that their conduct would have an affect in New York, Pramer S.C.A. v. Abaplus Int'l Corp., 76 A.D.3d 89, 97 (1st Dep't 2010) (citing Marie v. Altshuler, 30 A.D.3d 271 (1st Dep't 2006).

Moreover, under CPLR § 302(a)(2), Norex must make "specific allegations" that tortious conduct relating to the conspiracy occurred in New York. KDDI Am., Inc. v. Elec. & Unit Recorder Data Ctr., Inc., 2007 NY Slip Op 32648(U), *14 (2007) (denying jurisdiction where plaintiff failed to specify how a defendant conspired or colluded to commit fraudulent inducement in New York). The plaintiff must allege "specifics as to who benefitted, or specifics on what was agreed between whom and where, to support her conspiracy theory" that a tortious act was committed within New York. Marie v. Altshuler, No. 104381/2004, 2005 WL 5417581, *12 (Sup. Ct. N.Y. Co. Apr. 25, 2005) (emphasis added), aff'd, 30 A.D.3d 271 (1st Dep't 2006) (denying jurisdiction under CPLR § 302(a)(2)). "Bland assertions" and mere conclusions of conspiracy are not enough. Glenn, 2008 N.Y. Slip Op 50163(U), *10 (citing Lehigh Valley Indus., Inc. v. Birenbaum, 527 F.2d 87, 93-94 (2d Cir. 1975)); Pramer S.C.A., 76 A.D.3d at 97 (citing Lamarr v. Klein, 35 A.D.2d 248 (1st Dep't 1970), aff'd 30 N.Y.2d 757 (1972)).

These specific allegations also must show a "substantial connection" between the tortious conduct and New York. De Capriles, 293 A.D.2d at 406. Conclusory allegations of conspiracy will fail to establish personal jurisdiction if in "common sense and reality," the tort

occurred outside of New York. Kramer v. Vogl, 17 N.Y.2d 27, 31 (1966) (denying jurisdiction under CPLR § 302(a)(2) because defendants' tortious acts occurred in Europe, not New York).

A. An Allegation That Some New York Defendants "Orchestrated" A Conspiracy Does Not Plead Personal Jurisdiction Under CPLR § 302(a)(2)

Norex's conclusory allegations that some New York Defendants negotiated and/or consummated a conspiracy in New York do not establish a "substantial connection" with the State where the undisputed facts show that the alleged tort and other wrongs occurred abroad—in Russia.[4] De Capriles v. Lugo, Sup. Ct. N.Y. Co., June 21, 2001, Moskowitz, J.S.C., index No. 604059/99, *7. In De Capriles, a case on nearly all fours with the present action, plaintiff-minority shareholders of the corporate defendants alleged that individual defendants had "negotiated and/or consummated" transactions in New York to fraudulently divert the corporate defendants' assets in Venezuela with the assistance of a New York bank. Id., *4-5. All the relevant parties were Venezuelan. Id., *1. For five years prior to the New York litigation, plaintiffs had been unsuccessfully challenging decisions of Venezuelan courts holding that the individual defendants were majority owners of the corporate defendants and were free to decide on the disposition of assets. Id., *2, 6. In the New York proceedings, the plaintiffs claimed that the Venezuelan proceedings had been corrupted and that jurisdiction over the defendants under CPLR § 302(a)(2) could be based on an alleged conspiracy between the Venezuelan defendants and the New York bank. Id., *4-5.

Dismissing for lack of personal jurisdiction, the Supreme Court held that "even if...the Venezuelan [court] decisions were procured by fraud…[,] all the evidence still establishes that

[4] Nor do meetings in New York constitute a "substantial connection" under CPLR § 302(a)(2) unless the plaintiff alleges specifically what was discussed, how the meetings advanced the conspiracy, and produces tangible evidence of those meetings. Norex does none of these things. See Semi-Tech Litig., L.L.C. v. Ting, No. 0604644/2002, 2004 WL 5359458 (Sup. Ct. N.Y. Co. Mar. 22, 2004), aff'd 13 A.D.3d 185 (1st Dep't 2004) (upholding jurisdiction where plaintiffs specifically alleged the purpose of meetings and what was discussed at them, which they supported with committee minutes).

the alleged fraud or wrongdoing occurred in Venezuela and caused the alleged injury in Venezuela." Id., *7. The First Department affirmed, holding that the plaintiffs failed to "make out the jurisdictionally requisite substantial connection between the alleged tortious conduct and New York." De Capriles, 293 A.D.2d at 406 (emphasis added). In particular, plaintiffs failed to plead facts showing that the New York bank "committed a tortious act in New York, for the benefit and with the consent and knowledge of defendants, and in furtherance of a conspiracy that included the foreign defendants." Id.

As in De Capriles, Norex's unsupported allegation that certain Defendants "orchestrated" the takeover of Yugraneft in Russia from "their offices in New York" does not establish a "substantial connection" with New York under CPLR § 302(a)(2). Norex has not pled any facts showing how or to what extent any Defendant orchestrated the alleged takeover in Russia from New York, nor has it presented any proof of meetings in New York that advanced the alleged conspiracy. Norex also has failed to plead facts showing that either man acted "for the benefit and with the consent and knowledge" of the TNK Defendants. Instead, it pleads the opposite – that Defendants "used TNK" to allegedly amass oil assets in Russia. Compl. ¶ 18. Norex also fatally omits any facts showing that the TNK Defendants knew that any alleged tortious conduct would have an affect in New York. See Pramer S.C.A., 907 N.Y.S.2d at 160. No such affect could exist here, given that all of the facts show that any alleged wrongdoing occurred in Russia—where it allegedly lost shareholder control of a Russian company.[5] Accordingly, as in

[5] Because Norex's cause of action arose in Russia, it cannot establish jurisdiction under BCL § 1314(b)(3). Under BCL § 1314(b)(3), the ability of a foreign corporation to bring an action against another foreign corporation hinges on where the cause of action arose, not where the alleged tortious conduct occurred. See GS Plasticos Limitada v. Bureau Veritas, 80 A.D.3d 511, 512 (1st Dep't 2011) (denying jurisdiction under BCL § 1314(b)(3) for plaintiff's claim for tortious interference with contractual relations because even though "the faulty testing that led to the loss of the contract occurred in New York, plaintiff had no cause of action until the contract was actually lost, i.e., until it was cancelled, and that cancellation occurred in Brazil"). Likewise, Norex's cause of action arose in Russia because, notwithstanding Norex's allegations of tortious conduct in New York, Norex had no cause of action until it allegedly lost shareholder control of a Russian company in Russia.

De Capriles, this Court should not "substitute its judgment for that of the [non-New York] courts," De Capriles, No. 604059/99, *2, and should dismiss Norex's claims for lack of personal jurisdiction.[6]

B. An Allegation That Some New York Defendants Wired Funds From New York In Support Of Alleged Bad Acts In Russia Also Does Not Plead Personal Jurisdiction Under CPLR § 302(a)(2)

The wiring of funds likewise does not establish a "substantial connection" with New York under CPLR § 302(a). See Citadel Mgmt. Inc. v. Hertzog, 182 Misc.2d 902, 905-06 (Sup. Ct. N.Y. Co. 1999) (refusing jurisdiction under CPLR §§ 302(a)(2) and (3) where a co-defendant wired funds from England to defendant's account in New York); Pramer S.C.A., 76 A.D.3d at 96-97; DirecTV Latin Am., LLC v. Park 610, LLC, 691 F. Supp. 2d 405, 424-26 (S.D.N.Y. 2010) (denying jurisdiction under CPLR § 302(a)(1) because "[e]ven if some individuals received kickbacks from cash wired into and out of a bank account at a New York bank, the payments to these persons could have been made anywhere and it would not have changed the nature of the plaintiffs' allegations") (citation omitted); Russeck Fine Arts Grp., Inc. v. Theodore B. Donson, Ltd., 20 Misc.3d 1119(A), 2008 N.Y. Slip Op. 51476(U), *4 (2008) (transfer of funds from New York to defendant's Swiss account, plus faxes and letters from New York, were not enough to support jurisdiction under CPLR § 302(a)(1)).[7]

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[6] This Court should also dismiss Norex's Complaint for lack of personal jurisdiction under CPLR § 302(a)(3). Under CPLR § 302(a)(3), a court may exercise jurisdiction over a non-domiciliary or his agent who commits a tortious act outside of New York that causes injury to person or property within the state if he (i) regularly conducts business in New York or (ii) expects the act to have consequences in the state when he derives substantial revenue from interstate or international commerce. "Where…commercial, non-physical losses are alleged, the situs of the injury [under § 302(a)(3)] is not where the losses are sustained, but where the critical events associated with the dispute took place." Benefits by Design Corp. v. Contractor Mgmt. Servs., LLC, 75 A.D.3d 826, 830 (3d Dep't 2010) (emphasis added) (citation omitted); Nat'l Union Fire Ins. Co. of Pittsburgh v. Davis, Wright, Todd, Reise & Jones, 157 A.D.2d 571, 572 (1st Dep't 1990). Here, for purposes of determining New York jurisdiction, Norex's "injury" under CPLR § 302(a)(3) is in Russia because the "critical events" of the Complaint took place there. Moreover, even assuming that any "critical events" took place in New York, Norex did not allege any injury here.

[7] Banco Nacional Ultramarino v. Chan, 169 Misc.2d 182 (Sup. Ct. N.Y. Co. 1996) is not to the contrary. There, the use of a New York bank account to receive and transfer stolen funds satisfied CPLR § 302(a)(2) because the New York account was the locus of the tort for money laundering and "the conduit through which the fraudulent scheme

The wiring of funds does not provide a basis for New York jurisdiction "especially when all aspects of the transaction occur out of state." Pramer S.C.A., 76 A.D.3d at 96-97 (emphasis added) (citation omitted). In Pramer S.C.A., the plaintiff alleged that one of the defendants deposited bribes into a New York bank account to support a subsequent corrupt contract abroad. Id. at 96. The court held that this was not enough to support jurisdiction under CPLR § 302(a)(1):

> [T]here is no reasonable basis to conclude that because one defendant made certain payments into a personal bank account…in New York, any or all defendants should have expected to be subjected to a lawsuit in New York by plaintiff over a foreign contract providing for foreign services involving parties who are all foreign to New York.

Id. at 96-97.

Similarly, Norex's conclusory allegation that certain Defendants wired funds from New York is not enough to confer jurisdiction over the TNK Defendants under CPLR § 302(a)(2) where the alleged purpose of the wires was for unnamed persons in Russia to bribe unnamed Russian officials to influence a Russian court case relating to a Russian company. As important, Norex's "bland assertions" fail to specifically allege who exactly sent the wire transfers, to whom they were sent, when they were sent, or from what accounts they were sent. See Pramer S.C.A., 76 A.D.3d at 97. As such, Norex has failed to allege specific facts that would warrant this Court exercising personal jurisdiction over the TNK Defendants.[8]

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advanced for two years." Id. at 187-88. By contrast, the locus of all the activity alleged in Complaint was Russia, where the company at issue and the legal proceedings as to Norex's shareholders were located.

[8] Given the inadequacy of its pleading, Norex also would not be entitled to jurisdictional discovery because it has not a made a "sufficient start" by alleging tangible evidence to support jurisdiction. See Peterson v. Spartan Indus., Inc., 33 N.Y.2d 463, 467 (1974); Granat v. Bochner, 268 A.D.2d 365 (1st Dep't 2000); Small v. Lorillard Tobacco Co., 252 A.D.2d 1, 17 (1st Dep't 1998).

C. Norex's Unjust Enrichment Claims Cannot Be Sustained Under CPLR § 302(a)(2) or (3) Because They Are Not Tort Claims

Norex pleads two counts in the Complaint which are based on unjust enrichment. Compl. ¶¶ 75-77 (Fifth Cause of Action: Unjust Enrichment Against All Defendants) and ¶¶ 78-80 (Sixth Cause of Action: Unjust Enrichment in Violation of Russian Law Against All Defendants). The only jurisdictional predicate cited, however, is CPLR § 302(a)(2). Norex cannot use that as a premise for jurisdiction on these counts, however, because Norex's claims for unjust enrichment are quasi-contractual and do not constitute "tortious acts" under CPLR § 302(a)(2). See Goldman v. Metro. Life Ins. Co., 5 N.Y.3d 561, 572 (2005); Pramer S.C.A., 76 A.D.3d at 100 (dismissing plaintiff's contract claims, including unjust enrichment, because jurisdiction under CPLR §§ 302(a)(2) and (3) are tort-based); Amigo Foods Corp. v. Marine Midland Bank-N.Y., 39 N.Y.2d 391 (1976) (dismissing breach of contract claim for same reason).

CONCLUSION

For the forgoing reasons, Norex's Revised First Amended Complaint should be dismissed with prejudice.

Dated: New York, New York
September 16, 2011

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