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# Court of Appeals Extends Reach of NY Long-Arm Statute

**Under § 302(a)(1) of the New York Civil Practice Law and Rules ("C.P.L.R."), non-domiciliary defendants are subject to personal jurisdiction in New York if (i) they transact any business within the state, (ii) the cause of action arises from that business transaction, and (iii) the exercise of jurisdiction comports with due process under the United States Constitution. In *State* v. *Vayu, Inc.*, 2023 WL 1973001 (N.Y. Feb. 14, 2023), the New York Court of Appeals — reversing the decision of a divided Third Department Appellate Division panel — held 5-1 that a contract between a Michigan-headquartered Delaware corporation and the State University of New York at Stony Brook ("SUNY Stony Brook"), to deliver medical supplies in Madagascar via drone, provided the contacts necessary to establish jurisdiction over the corporation in New York state court.**

**Before this decision, there had been an open question as to whether an out-of-state defendant's contacts, relating only to a single, already-consummated transaction in New York, would be sufficiently purposeful to confer personal jurisdiction. The Court of Appeals has now answered that important question in the affirmative, at least where such contacts also arguably relate to *future* New York transactions. This broadened application of New York's long-arm statute could result in significantly more cases moving past motions to dismiss and into discovery, increasing costs and burdens for out-of-state defendants in New York courts.**

## Factual and Procedural Background

Vayu, Inc. ("Vayu") is a Delaware corporation headquartered in Michigan that designs and manufactures unmanned aerial vehicles ("UAVs"), commonly known as drones. In 2013, Vayu's Chief Executive Officer, Daniel Pepper, contacted Dr. Peter Small, an epidemiologist who at the time worked for the Bill & Melinda Gates Foundation, about using drones to transport laboratory samples to underdeveloped countries. In 2015, after Dr. Small began working at SUNY Stony Brook as a professor of medicine, he contacted Pepper, seeking a business relationship between the university and Vayu for the development and use of drones to deliver medical supplies to remote areas in underdeveloped countries.

During the summer of 2016, following email and phone discussions among Pepper, Dr. Small, and other university representatives, Vayu and SUNY Stony Brook submitted a grant application to the United States Agency for International Development, seeking almost $200,000 for Stony Brook as part of an effort to supply ten drones to be used in Madagascar. The grant was approved, and the university purchased two drones from Vayu for $25,000 each.

Ultimately, the drones did not perform as expected, and in September 2017, Pepper and Dr. Small met face-to-face in New York, where they agreed that Vayu would replace the drones to the university's specifications. Vayu never did so, and the State of New York, on behalf of SUNY Stony Brook, sued Vayu for breach of contract in Albany County Supreme Court. Vayu moved to dismiss for lack of personal jurisdiction.

On January 23, 2020, the Albany County Supreme Court (Walsh, J.) granted Vayu's motion to dismiss for lack of personal jurisdiction, emphasizing that jurisdiction was lacking because it was Dr. Small (once he began employment with the state) who first contacted Pepper and Vayu's communications with SUNY Stony Brook were

"predominantly responsive in nature."[1] The court concluded that jurisdiction was lacking because, in light of the responsive nature of the communications, the defendant had not had sufficient contacts with New York.

The State appealed, and on June 24, 2021, a divided Third Department Appellate Division panel (Garry, P.J.) affirmed, finding that the "business transacted" by Vayu was "a one-time occurrence" initiated by Dr. Small after he "commenced employment with SUNY Stony Brook," through which Vayu did not "purposefully avail itself of the privilege of conducting activities within [New York]."[2] According to the Appellate Division panel, the 2017 face-to-face meeting was insufficient to confer jurisdiction because it concerned the "*completed* purchase of the UAVs, rather than [Vayu] seeking additional business" in New York.[3]

## New York Court of Appeals Decision

On February 14, 2023, the New York Court of Appeals (Garcia, J.) reversed, 5-1, finding that the "facts demonstrate[d] a clear intent by Vayu to engage purposefully in business activities within the meaning of CPLR 302(a)(1)."[4] The majority disagreed with the assessment of the lower courts that Vayu's communications with SUNY Stony Brook were merely "responsive in nature," characterizing them instead as an "active dialogue" and "ongoing negotiations over the original terms and subsequent modification of a contractual relationship."[5]

The majority emphasized that C.P.L.R. § 302 is a "single-act statute," under which "one transaction—albeit a purposeful transaction," may suffice to "confer jurisdiction in New York."[6] According to the court, the 2017 face-to-face meeting in New York between Pepper and Dr. Small could have, on its own, "suppl[ied] the minimum contacts necessary" to establish personal jurisdiction over Vayu, but "there was more than this bare minimum: the meeting was part of a far reaching and long-standing relationship."[7] It was not "determinative," moreover, that Dr. Small "initiated contact" in 2015 after gaining employment at SUNY Stony Brook; rather, courts should look to the "nature and quality of the contacts and the relationship established as a result."[8] The court also noted that, although Dr. Small was not yet employed at SUNY Stony Brook, it was in fact Pepper who first "reached out to Small in December 2013."[9]

In so holding, the court distinguished Vayu's contacts with New York from those at issue in *Paterno* v. *Laser Spine Inst.*, 24 N.Y.3d 370 (2014), in which the court found jurisdiction lacking under the New York long-arm statute where the plaintiff was injured in Florida during a medical procedure and then subsequently communicated with the Florida doctor from New York. In *Paterno*, the defendant's purported contacts with New York occurred after the alleged medical malpractice tort, whereas in *Vayu* the 2017 face-to-face meeting did not relate only to the completed drone purchase but also "led to modification of the agreement, including the agreement to replace the drones," which in turn provided the basis of the lawsuit because Vayu allegedly breached the terms governing the replacement drones.[10]

After finding that Vayu's contacts were sufficient to satisfy C.P.L.R. § 302(a)(1)'s "transacts any business" prong,[11] the court found the second and third prongs of the long-arm statute — that the cause of action must "arise

[1] *Vayu, Inc.*, 2023 WL 1973001, at *2.
[2] *State* v. *Vayu, Inc.*, 195 A.D.3d 1337, 151 N.Y.S.3d 206, 209-10 (3d Dep't 2021).
[3] *Id.* at 210 (emphasis in original).
[4] *Vayu, Inc.*, 2023 WL 1973001, at *2.
[5] *Id.* at *3-4.
[6] *Id.* at *3.
[7] *Id.* at *3.
[8] *Id.* at *3.
[9] *Id.* at *3.
[10] *Id.* at *3.
[11] Under C.P.L.R. § 302(a)(1), the first prong of New York's long-arm statute is also satisfied where the non-domiciliary defendant "contracts anywhere to supply goods or services in the state." The State did not assert that basis for personal jurisdiction, however, ostensibly because the drones were to be sent "directly from the factory floor [in Michigan] to Madagascar. *Id.* at *4 n.3.

from" the "relevant business transaction" and that the exercise of jurisdiction must "comport with due process" — also to be satisfied.[12]

Under the second prong, there must exist an "articulable nexus or substantial relationship between defendant's New York activities and the parties' contract, defendant's alleged breach thereof, and potential damages," which the court found "easily met" because the State's claims were "based on the sale of the two UAVs and Vayu's contacts in New York were directly related to efforts to resolve the dispute over operability of the purchased UAVs."[13] The court also found that exercising personal jurisdiction over Vayu comported with due process under the U.S. Constitution. That is, Vayu "should have reasonably anticipate[d] being haled into court" in New York because it "sought, negotiated, and then entered a contractual relationship with a New York State entity," a relationship Vayu furthered through "numerous telephonic and email communications with SUNY Stony Brook."[14]

The Honorable Judge Jenny Rivera, the sole dissenter, sided with the Albany Supreme Court and Third Department Appellate Division panel, agreeing that Vayu's contacts with New York were not sufficiently purposeful to establish personal jurisdiction under C.P.L.R. § 302(a)(1). According to the dissent, the court's exercise of jurisdiction over Vayu for a relatively small amount of business-related communication that was "predominantly responsive in nature," and for a meeting in New York that "occurred *after* the parties had already entered into the contractual relationship was initiated," was "an overly broad reading and unconstitutional extension" of the statute.[15] In Judge Rivera's view, personal jurisdiction in New York exists as to out-of-state defendants who "*transact business within* New York," but not as to defendants, like Vayu, "who happen to conduct some business with a party located in New York."[16]

## Implications

The court's decision in *Vayu* is significant because it highlights the relatively low bar for establishing personal jurisdiction over non-domiciliary defendants under New York law. Prior to this decision, it was unsettled whether an out-of-state defendant's contacts would be sufficiently purposeful to confer personal jurisdiction if they related only to a single transaction that had already been effectuated. *Vayu* tells us that, at least where such contacts also arguably relate to *future* New York transactions, courts may properly exercise personal jurisdiction. If courts continue to read New York's long-arm statute with such breadth, it will become much easier for plaintiffs suing out-of-state defendants to advance past the initial pleading stage and into costly discovery.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg (Partner) at 212.701.3120 or jkurtzberg@cahill.com; John MacGregor (Partner) at 212.701.3445 or jmacgregor@cahill.com; or Jason Rozbruch (Associate) at 212.701.3750 or jrozbruch@cahill.com; or email publications@cahill.com.

[12] *Id.* at *4.
[13] *Id.* at *4.
[14] *Id.* at *4.
[15] *Id.* at *5, *7 (Rivera, J., dissenting) (emphasis in original).
[16] *Id.* at *5 (Rivera, J., dissenting) (emphasis in original).