NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

VINCENT CREPY Plaintiff	:	SUPERIOR COURT OF NEW JERSEY
v.	:	ESSEX COUNTY DOCKET NO.: ESX-L-730-15
RECKITT BENCKISER, LLC, RECKITT GROUP PLC, RECKITT BENCKISER CORPORATE SERVICES, LTD., AND DOES 1-25 Defendants	:	**OPINION**

Hearing Held: June 12, 2015
Decided: July 14, 2015

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By: Stephanie A. Mitterhoff, J.S.C

BACKGROUND

This case arises out of a dispute over Plaintiff's employment at Reckitt Benckiser ("RB"). Plaintiff Vincent Crepy has at all times maintained French citizenship, was a former resident of New Jersey, and is currently domiciled in California. In 2007, Plaintiff began employment in

Parsippany, New Jersey, for Defendant RB LLC. The terms of that employment agreement stated that RB LLC could not terminate Plaintiff's employment without providing six months' notice. However, the employment contract also allowed RB LLC to immediately terminate Plaintiff if he engaged in "gross misconduct," or was "guilty of any fraud, dishonesty, or such other conduct."

Specifically, Plaintiff alleges that on November 28, 2011, Amadeo Fasano ("Fasano"), Executive Vice President of Defendant Reckitt Beckiser Corporate Services Ltd. ("RBCS") and Plaintiff's boss, reached out to Plaintiff via videoconference while Plaintiff was living and working in New Jersey to inform him that although the Plaintiff's New Jersey position was being made redundant, he would be offered a position in Singapore. By November 30, Plaintiff e-mailed Fasano back to indicate that he had not yet decided whether he would accept the offer or not, but was leaning toward accepting. Simon Nash ("Nash"), Senior Vice President of RBCS, began negotiations allegedly on behalf of RB LLC and Defendants Reckitt Benckiser Group, plc ("RB Group") on December 1, exchanging multiple e-mails with Plaintiff about a job that would require him to move to Singapore. After consulting with his family and some further negotiations, Plaintiff signed the final offer (Letter of Intent, "LOI") on December 9, 2011.

Prior to moving to Singapore, Plaintiff inquired about the status of his United States green card with a New York City immigration lawyer, Ted Chiappari ("Chiappari"), who worked for both parties in this action. Plaintiff alleges that Chiappari informed him that as long as Plaintiff's wife maintained her green card, Plaintiff's children would be able to work and attend college in the United States. Chiappari testified that he laid out three options for Plaintiff and his family (everyone in the family keeps their green cards, everyone surrenders them, or Plaintiff individually surrenders his and the rest of his family retain theirs, with the chance for some slight variations on those basic options), and that Plaintiff understood the options and risks involved

with each and would think it over. Plaintiff notified senior RB management of his intention to surrender his green card on January 31, 2012. The LOI also contained a section identical to the RB LLC employment agreement immediate termination provision allowing Plaintiff's position to be terminated without compensation or notice for misconduct.

Plaintiff alleges that Bev Wilen ("Wilen"), RB LLC's most senior HR employee, acted on behalf of RB Group to urge Plaintiff to accept the Singapore position. Nash testified that Wilen was not involved in the negotiation and that he did not rely on her to get the Plaintiff to sign the Letter of Intent. Plaintiff accepted the final offer on December 9, 2011. RB Group allegedly authorized Plaintiff to continue to work in New Jersey until the Singapore government had finalized Plaintiff's employment paperwork, and authorized RB LLC to pay Plaintiff while he continued to work in New Jersey. Plaintiff was living in New Jersey when he accepted the Singapore position, and had begun the process of selling his New Jersey home.

In February of 2012, Nash summoned Plaintiff to London for a meeting. Plaintiff alleges that Nash and Fasano, acting on the orders of Rakesh Kapoor ("Kapoor"), Chief Executive Officer of RB Group, told Plaintiff that he had been dishonest in failing to disclose his intention to surrender his green card in order to receive additional compensation during negotiations for the Singapore position and avoid tax liability. When asked whether he thought Plaintiff had been dishonest when intending to surrender his green card, Nash testified "I concluded that it was very likely [Plaintiff] had been dishonest and in my thinking he had been dishonest…the key fact is he did not tell me he intended to surrender his green card and yet he understood clearly that the offer had been made for Singapore was inflated by a substantial number of dollars because we had taken on the assumption he would be taxed as a US resident."

Plaintiff alleges Chiappari disclosed the advice to RB, which RB then used to justify Plaintiff's termination. Chiappari testified that to his knowledge he never had a conflict of interests between the two parties. Chiappari further testified that he did not reach out to RB. However, Chiappari admitted to talking with Nash and Fasano on February 6, 2012, about Plaintiff's tax status. In a letter signed by Nash, dated February 7, 2012, RB terminated Plaintiff's position.

Plaintiff alleges that RB LLC acted at the behest of its parent companies, defendants RB Group and RBCS, in wrongfully terminating him. According to Plaintiff, executives at RB Group and RBCS created the Singapore position as a pretext to have Plaintiff fired from RB LLC in New Jersey and engaged in a series of fraudulent and wrongful acts to achieve that end. Plaintiff alleges that his termination under the LOI was unjustified as his actions did not rise to the level of "misconduct" and that he was responsible under Section 15.02 of the LOI for his own tax arrangements. Alternatively, Plaintiff alleges defendants justified this termination under the employment agreement with RB LLC, even though it had expired and Plaintiff was formally working for RB Singapore.

In sum, Plaintiff asserts that the Defendants never intended to continue employing him after eliminating his position at RB LLC and Defendants engaged in a "bait-and-switch" designed to terminate his employment without paying him out. Plaintiff argues that the Singapore position was created as a pretext to justify firing him from RB LLC without six months' notice or compensation, and thus save costs as part of a corporate restructuring. Plaintiff is seeking damages under theories of fraud, breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and tortious interference.

Plaintiff filed a complaint against Defendant RB LLC on April 30, 2012 in the United States District Court for the District of New Jersey while he was still residing in New Jersey. On February 18, 2014, the court dismissed Plaintiff's complaint due to lack of diversity of citizenship. On February 10, 2014, Plaintiff filed suit against RB LLC and RB Group in the Superior Court of California. On June 20, 2014, the California court dismissed Plaintiff's claims against RB Group for lack of personal jurisdiction, holding that it should be treated as legally separate and distinct from RB LLC. On January 28, 2015, the California court on RB LLC's motion for reconsideration dismissed Plaintiff's complaint against RB LLC for lack of personal jurisdiction in the State of California.

On February 12, 2014, two days after Crepy filed the California action and while it was still pending, RB LLC sued Crepy in the Chancery Division, Morris County, seeking specific performance compelling Crepy to return certain intellectual property that Crepy allegedly had stored on his computer, and also seeking an injunction restraining Crepy from giving RB documents and information to any competitors like his new employer, Ventura Foods. RB LLC also sought a declaratory judgment seeking to declare that Crepy had no right to use or disclose RB information. Count III of the declaratory judgment action sought a judicial finding that the former "Employment Agreement does not authorize Crepy to make misrepresentations as a means of negotiating a higher compensation package, and declaring that Crepy has no right to further payments under the Employment Agreement." Judge Hansbury later dismissed the allegations in Count III as constituting an improper attempt to "anticipate the validity of a defense" to Crepy's wrongful termination claims. The Chancery Division in Morris County dismissed RB LLC's declaratory judgment claim, and the parties then entered into a Consent

Order resolving the rest of RB LLC's New Jersey claims. The deadline for an appeal of the dismissed count has expired, and the Morris County action has concluded.

THE INSTANT MOTIONS

RB Group and RBCS move for dismissal pursuant to R. 4:6-2(b), contending that this court lacks jurisdiction. The movants contend that the Plaintiff has failed to meet his burden to establish that the moving Defendants have purposefully availed themselves of the State of New Jersey. Additionally, Defendants argue that Plaintiff is precluded from arguing this issue as he already tried and failed in California. Alternatively, Defendants move for forum non conveniens pursuant to R. 4:4-4, arguing that England is a better forum to hear the case.

RB LLC also moves to dismiss, arguing that because Plaintiff's claims in this action should have been brought in the Morris County lawsuit, and therefore should be dismissed under the entire controversy doctrine.

Defendant RB Group, a publicly traded UK-registered company, is the parent company of RBCS, another UK company, and RB LLC, a Delaware company with its principal place of business in New Jersey. Plaintiff alleges that RB Group "dominates and controls" the other RB entities and that RBCS provides management and supervisory services to RB LLC.

RB Group never employed the Plaintiff. It has two employees, both of whom work in England in RB Group's only office. Its shares are publically traded on the London Stock Exchange and not on any exchange in the United States. "In 2014, the many separate companies in the Group…[totaled] 1.2% of their sales [] in New Jersey." RB Group does not have any trading sales, marketing, advertising, purchasing, distributing or manufacturing operations. Its sole business is investing in its subsidiaries. It does not have any offices, facilities, real estate

leases or ownership, or bank accounts in New Jersey. It does not file tax returns in New Jersey and is not registered to do business in New Jersey.

RBCS is a UK-registered company with all of its offices in England. It employed Plaintiff in England from 2001-2004, but never again after that. RBCS does not have an office, sales, employees, bank accounts, or registered agents in New Jersey. RBCS does not have any New Jersey offices, real estate leases or ownership, bank accounts, or employees in New Jersey. It does not file tax returns in New Jersey, and is not registered to do business in New Jersey. RBCS does not make or sell any products and therefore has no sales in New Jersey. RBCS provides consulting services to companies within the Group, and does not have any direct or indirect ownership interest in RB LLC.

When Plaintiff's position with RB LLC was going to be terminated, he was approached by RBCS employees about a position working for a separate RB entity in Singapore. Negotiations lasted for 11 days, and the RBCS employees were at all times outside of the United States when they negotiated with Plaintiff. Defendants argue that Plaintiff's allegation that he entered into the Singapore position with RBCS and RB Group while living in New Jersey is insufficient to establish jurisdiction in New Jersey, particularly because the Singapore job was not intended to have continued contact with New Jersey.

Plaintiff argues that New Jersey is an appropriate place for the case to be tried because RB LLC, the subsidiary of Defendants RB Group and RBCS's subsidiary, has its principal place of business in Parsippany, New Jersey. In addition, Plaintiff argues that Defendants RB Group and RBCS substantially availed themselves of New Jersey. Plaintiff further argues that this court has specific jurisdiction over the moving Defendants because their subsidiary RB LLC acted at their behest and with their active participation and consent, causing foreseeable injury to Plaintiff

while he was in New Jersey. Plaintiff argues that he was in New Jersey when all negotiations took place for the Singapore position, as the negotiations occurred over videoconference, telephone calls, and emails. Plaintiff further alleges that Wilen, the human resource director for RB LLC, was acting as an agent of RB Group and RBCS in the fraudulent plot to wrongfully terminate him. Plaintiff alleges that Wilen helped persuade the Plaintiff to take the Singapore position while they both were in New Jersey. Plaintiff further argues that he spent a month working in New Jersey on behalf of RB Group prior to moving to Singapore. Ultimately, Plaintiff was fired while he was still a New Jersey resident.

DISCUSSION

I. Due Process

New Jersey courts may exercise jurisdiction on any basis not inconsistent with the U.S. Constitution. R. 4:44-4(b)(1); Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971). Under the Due Process clause of the Fourteenth Amendment, a state court cannot assert personal jurisdiction over a defendant unless the defendant has sufficient minimum contacts with the forum state such that the exercise of jurisdiction "does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Wash., 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102. (1945) (citations and internal quotation marks omitted).

II. General Jurisdiction

The Supreme Court of the United States has declared that "[A] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." Daimler AG v. Bauman, 134 S.Ct. 746, 754, 187 L.Ed. 2d 624, 633 (2014).

In the instant case, Plaintiff concedes New Jersey does not have general jurisdiction over Defendants RB Group or RBCS.

III. New Jersey Has Specific Jurisdiction Over RB Group and RBCS.

Specific jurisdiction does not exist unless the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2853, 186 L.Ed. 2d 796, 806 (2011) (internal quotes omitted). The policy underlying the purposeful availment standard is to ensure that defendants can avoid being subjected to personal jurisdiction based on "random, fortuitous, or attenuated contacts." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed. 2d. 528, 542 (1985). Thus, the analysis looks to the defendant's contacts with the forum itself, rather than contact with someone who resides in the forum. Walden v. Fiore, 134 S. Ct. 1115, 1122, 188 L.Ed. 2d 12, 21, (2014). The Supreme Court has made clear that "the plaintiff cannot be the only link between the defendant and the forum." Ibid.

Foreseeability that injury would occur in the forum state does not establish jurisdiction when the defendant's conduct was not aimed at the forum. Instead, the defendant's conduct must be in some way directed at the forum. World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295, 100 S.Ct. 559, 566, 62 L.Ed. 2d 490, 500 (1980). Thus, in World Wide Volkswagen, the fact that the plaintiffs had a car accident in Oklahoma after buying a car from the defendant in New York was insufficient to establish jurisdiction in Oklahoma over the New York Defendant. In contrast, in Calder v. Jones, 465 U.S. 783, 788-89 (1984), California could assert jurisdiction over the editor and author of a Florida newspaper article when the newspaper's "allegedly libelous story concerned the California activities of a California resident. It impugned

the professionalism of an entertainer whose television career was centered in California. The article was drawn from California sources, and the brunt of the harm, in terms both of respondent's emotional distress and the injury to her professional reputation, was suffered in California." The United States Supreme Court concluded that "In sum, California is the focal point both of the story and of the harm suffered." Id. at 789. Similarly, the Third Circuit has held that individualized communications soliciting a forum state plaintiff can support the exercise of jurisdiction. O'Connor v. Sandy Lane Hotel Co., 496 F.3d 312, 318 (3d Cir. 2007) (holding that out of state hotel's mailings and individualized phone calls to the forum state plaintiff established jurisdiction); Colvin v. Van Wormer Resorts, Inc., 417 F. App'x 183, 186-87 (3d Cir. 2011) (holding that confirmation communication sent to forum state plaintiff was sufficient to assert jurisdiction over a Mexican resort when the plaintiff suffered a slip and fall at the resort).

In contrast, impersonal generalized solicitations of the public do not establish jurisdiction even though a forum state plaintiff was included in the communications. Rocke v. Pebble Beach Co., 541 F. App'x 208, 211 (3d Cir. 2013). Similarly, when the plaintiff creates the relationship by initiating communication with an out of state defendant, jurisdiction may not lie. See Central Va. Aviation, Inc. v. N. Am. Flight Servs., 23 F. Supp. 3d 625 (E.D. Va. 2014) (holding that the Virginia District Court lacked jurisdiction over a New York seller who had posted a boat for sale on eBay in New York when the Virginia plaintiff travelled to New York to purchase it and the New York seller reneged on the deal); Baanyan Software Services, Inc., v. Kuncha, 433 N.J. Super. 466 (App. Div. 2013) (holding that the New Jersey plaintiff who solicited an Illinois defendant who never lived or worked in New Jersey was insufficient to establish jurisdiction in New Jersey); Timberstone Management LLC, v. Idaho Golf Partners, 2014 U.S. Dist. LEXIS

158414 (N.D. Ill. November 6, 2014) (when alleged copyright infringement occurred in Idaho, communications initiated by the plaintiff in Illinois was insufficient to establish jurisdiction over defendant in Illinois).

The foregoing principles have been affirmed by New Jersey cases. "Where a defendant knowingly sends into a state a false statement, intending that it should then be relied upon to the injury of a resident of that state, he has, for jurisdictional purposes, acted within that state." Lebel v. Everglades Marina, Inc., 115 N.J. 317, 326, (1989) (internal citations and quotes omitted) (upholding jurisdiction over a Florida seller who knowingly made multiple calls to negotiate with a New Jersey buyer who was allegedly defrauded); see also Accura Zeisel Machinery Corp. v. Timco, Inc., 305 N.J. Super. 559 (App. Div. 1997) (upholding jurisdiction over a Tennessee defendant who knowingly negotiated with a New Jersey plaintiff for three days and allegedly induced a fraudulent sale); Vedicsoft Solutions, Inc, v. Millennium Consulting Inc., 2010 N.J. Super. Unpub. LEXIS 2558 (App. Div. October 22, 2010), cert. denied 205 N.J. 272 (upholding jurisdiction over a Rhode Island corporation where it contacted the New Jersey plaintiff to establish the contractual relationship at issue).

The court finds that although the Defendants were located overseas, New Jersey was the "focal point" of the alleged tortious conduct underlying the Plaintiff's complaint. See Calder, supra, 465 U.S. at 789. Defendants RB Group and RBCS solicited a New Jersey resident concerning the Singapore position, allegedly as a ruse to terminate him, and negotiated with him for eleven days. The Plaintiff continued to work at the Defendants' subsidiary in New Jersey, allegedly performing work for the Singapore position while he was there. The parent companies allegedly used a provision in the subsidiary company's contract as a pretext to fire the Plaintiff. After the alleged wrongful termination, the Plaintiff suffered harm in New Jersey. According to

Plaintiff's allegations, these wrongful acts were not random or fortuitous but were in fact directed at a New Jersey resident.

The court finds that the allegations made by the Plaintiff, including the solicitation and negotiations by the Defendants to a New Jersey resident while he was in New Jersey, the presence of the Defendants' subsidiary in New Jersey, the physical presence of the alleged agent in New Jersey, the possibility that the Plaintiff could have been terminated under a New Jersey Employment Agreement, and the fact that the Plaintiff suffered foreseeable harm in New Jersey, when taken as a whole, establish that the Defendants purposefully availed themselves of New Jersey. Therefore, Plaintiff's allegations, if true, would establish sufficient minimum contacts with the state of New Jersey for this court to assert jurisdiction over them.

The court finds Enutroff, LLC v. Epic Emergent Energy, Inc., 2015 U.S. Dist. LEXIS 11666 (D. Kan. February 2, 2015) to be analogous to the instant action. The Defendants rely on Enutroff for the proposition that phone calls alone are insufficient to establish jurisdiction over them. However, the Enutroff court did find that phone calls may be significant in upholding jurisdiction over a defendant who used those calls to solicit the plaintiff. Enutroff, the plaintiff, was an investment company organized under Nevada law with its principal place of business in Kansas. Enutroff was solicited by a Texas start-up company, defendant Epic Emergent Energy, Inc. The parties reached an agreement, and Enutroff invested $100,000 in Epic. However, Enutroff did not receive the promised stock because one of Epic's stockholders refused to allow stocks to be transferred to Enutroff. Thereafter, Enutroff sued in the District Court for the District of Kansas seeking repayment of the $100,000. The District Court of Kansas upheld jurisdiction over the Epic, the Texas start-up company, but not its individual members, stating:

> The Court finds that Enutroff has established sufficient minimum contacts with regard to Defendant Epic. Enutroff alleges that its first contact with Epic was when [Epic's agent]

> called [plaintiff's sole member] in Kansas in early 2014. **Courts consider a defendant's solicitation to be a significant factor in determining minimum contacts** with the state of Kansas. According to Enutroff, it was Epic, not Enutroff who initiated contact between the parties and asked Enutroff if it wanted to learn more about Epic's business opportunities and technology. **Enutroff also alleges that Epic engaged in a series of conference calls and emails with Enutroff, during which Enutroff was located in Kansas, to negotiate the Consulting and Loan Agreements.** And finally, with regard to the Settlement Agreement, Enutroff alleges that it was Epic who initiated the initial settlement offer through an email directed to Enutroff in Kansas. Taken as a whole, these allegations establish that Epic purposefully availed itself of Kansas, so that it has sufficient minimum contacts with the forum state.
> [Id. *15-17 (emphasis added)].

This case is analogous to the case at bar because the Defendants in this case also solicited the Plaintiff and engaged in a series of calls and emails with the Plaintiff while he was in New Jersey. The purpose of these contacts was to negotiate the terms of the very contract at issue in this case. Furthermore, the Plaintiff was working in some capacity at the Defendants' subsidiary before and after the parties reached an agreement, and Defendants allegedly terminated the Plaintiff under the terms of a contract signed by their subsidiary.

Defendants rely heavily on Walden v. Fiore, 134 S.Ct. 1115, 188 L.Ed. 2d 12 (2014) for the proposition that this court does not have jurisdiction over RB Group and RBCS. In Walden, the defendant, a deputized agent of the DEA, searched plaintiffs' carry-on bags at a Georgia airport and found more than $90,000 in cash. The plaintiffs explained that they were professional gamblers en route to Las Vegas and had legally obtained all of the money. The agent seized the money and offered to give it back only if the plaintiffs could prove they had a legitimate reason for having all of the cash. The agent did not return the money. The defendant DEA agent knew the plaintiffs were en route to Nevada, but the tortious conduct occurred only in Georgia and the agent otherwise had no contact whatsoever with Nevada. The plaintiffs sued in the United States District Court for the District of Nevada. The District court held that there was no jurisdiction, and a divided panel for the United States Court of Appeals of the Ninth Circuit reversed,

upholding jurisdiction over the Georgian defendant. The Supreme Court granted certiorari and reversed. The Supreme Court found that Nevada lacked jurisdiction, stating "The defendant had no other contacts with Nevada [other than knowing plaintiffs were heading there], and [] a plaintiff's contacts with the forum State cannot be 'decisive in determining whether the defendant's due process rights are violated.'" Id. at 134 S. Ct. 1115, 1119, 188 L. Ed. 2d 12, 17.

The Defendants argue that Walden had a great impact on specific jurisdiction jurisprudence. Whatever the merits of this claim are, the court finds the facts in the instant case distinguishable from those in Walden. None of the tortious conduct at issue in Walden occurred in Nevada; whereas in the current case, the specific conduct at issue primarily occurred in and was directed toward Plaintiff while he was located in New Jersey. The Plaintiff worked for and continued to work at the Defendants' subsidiary in New Jersey. The Defendants reached out to and solicited the Plaintiff while he was in New Jersey. The Defendants performed extensive negotiations with him while he was a New Jersey resident. Albeit via teleconference, telephone, or email, the negotiations took place over an extended period of time. Wilen, the alleged agent of RB Group and RBCS, was working in New Jersey when she allegedly persuaded Plaintiff on behalf of her principals to accept the Singapore position. The Plaintiff continued to work for a period of time in New Jersey after reaching an agreement for the Singapore position. The Defendants allegedly worked in concert to terminate the Plaintiff under a New Jersey contract. The court finds that these facts amply distinguish the case at bar from Walden.

Jackson v. Dean, 2015 Tex. App. LEXIS 349 (Tex. App. January 15, 2015), which held that Alabama lacked jurisdiction over a Texas defendant, is also distinguishable because it involved an individual defendant who never personally solicited plaintiff in Alabama. Although there was some communication with the Alabama resident, the Texas appellate court in Jackson

explicitly held that the plaintiff failed to show that "a substantial connection existed between [defendant's] occasional, business-related contacts with [plaintiff] on behalf of Infinity and [plaintiff's] tort claims." Id. at 18-19. Here, in contrast, Plaintiff can show the a substantial connection because he alleges that he was defrauded by Defendants' solicitation of him in New Jersey and did so in part by acting through Wilen, a New Jersey employee.

Defendants rely on Burger King v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed. 2d 528 (1985), arguing Plaintiff's contract claims are insufficient for this court to establish jurisdiction over them. The Burger King Court explained that for contract disputes, "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing – [] must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum." Id. at 471 U.S. 462, 479, 105 S. Ct. 2174, 2185, 85 L. Ed. 2d 528, 545. However, the Burger King Court also stated that "parties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other State for the consequences of their activities." Id. at 471 U.S. 462, 473, 105 S. Ct. 2174, 2182, 85 L. Ed. 2d 528, 541.

Plaintiff alleges that the Defendants directed their subsidiary to wrongfully terminate the Plaintiff. The Defendants solicited the Plaintiff to sign the LOI after informing him that his RB LLC Employment would be made redundant. The LOI negotiations were between the Plaintiff and both Defendants. After the LOI had been signed, the Plaintiff actually continued to work at the New Jersey subsidiary before he had the chance to move to and begin work in Singapore. Although the Defendants summoned the Plaintiff to England to inform him of the employment termination, Plaintiff alleges that Defendants' intentional actions ultimately resulted him losing his job in New Jersey. In sum, Defendants allegedly "reach[ed] out beyond [the United

Kingdom] and create[d] continuing relationships and obligations with" Plaintiff in New Jersey. Based on these allegations, the court finds that Plaintiff's contract claims arise out of Defendants' purposeful availment of New Jersey.

The other contract cases the Defendants cite are also not on point. These cases also lack the solicitation by a defendant to a plaintiff in the forum. Reynolds v. Int'l Amateur Athletic Fed., 23 F.3d 1110 (6th Cir. 1994), cert. denied 155 S.Ct. 423 (refusing to uphold jurisdiction over foreign defendant where the plaintiff had unilaterally contacted the defendant for information and the claims against the defendant did not arise out of any action in Ohio); Cote v. Wadel, 796 F.2d 981 (7th Cir. 1986) (unsolicited letters and phone calls between defendants and the plaintiff was insufficient to establish jurisdiction); Milky Whey, Inc. v. Dairy Partners, LLC, 342 P. 3d 13, (MT 2015) (plaintiff's solicitation of defendant located in Minnesota where there was no work to be done in Montana pursuant to the transaction was insufficient to uphold jurisdiction in Montana); Far West Capital, Inc. v. Towne, 46 F.3d 1071 (10th Cir. 1995) (plaintiff's unilateral choice to place escrow account in Utah, solicitation by defendant occurring in first round of negotiations as opposed to the third round at issue that occurred three years later, an alleged agent who was simply a messenger picking up messages, the fact that negotiations took place in Nevada and the contract was intended to be performed in Nevada was insufficient to uphold jurisdiction in Utah).

For the foregoing reasons, Defendants' motion to dismiss for lack of jurisdiction is denied.

IV. Plaintiff's Complaint Should Not Be Dismissed for Forum Non Conveniens.

"The doctrine of forum non conveniens, an equitable principle, is firmly embedded in the law of this State… a court may decline jurisdiction whenever the ends of justice indicate a trial

in the forum selected by the plaintiff would be inappropriate." D'Agostino v. Johnson & Johnson, Inc., 225 N.J. Super. 250, 258 (App. Div. 1988), affirmed 115 N.J. 491 (1989).

> The choice of forum must be demonstrably inappropriate. Whether or not the doctrine should be applied depends on the facts and circumstances of each case. Since the doctrine is equitable in nature, ordinarily the matter is left to the sound discretion of the trial judge. An appellate court should not substitute its judgment for that of the trial judge unless there is a showing of clear abuse of that discretion.
> [Civic Southern Factors Corp. v. Bonat, 65 N.J. 329, 333 (1974).]

New Jersey courts have adopted the Supreme Court of the United States' approach of weighing public and private interest factors approach to determine whether to a grant a motion of forum non conveniens. See Gore v. U.S. Steel Corp., 15 N.J. 301 (1954), citing Gulf Oil Corporation v. Gilbert, 330 U.S. 501, 67 S. Ct. 839, 91 L.Ed. 1055 (1947).

> The private-interest factors include "the relative ease of access to sources of proof"; the "availability of compulsory process"; the cost of obtaining the attendance of witnesses; the ability to view an accident scene, if that would be beneficial to the factfinder; the enforceability of a judgment; and "all other practical problems that make trial of a case easy, expeditious and inexpensive… The public-interest factors include consideration of trial delays that may occur because of backlogs in a jurisdiction; whether jurors should be compelled to hear a case that has no or little relationship to their community; the benefit to a community of "having localized controversies decided at home"; and whether the law governing the case will be the law of the forum where the case is tried. [Yousef v. General Dynamics Corp., 205 N.J. 543, 558 (2011), citing Gulf, supra 330 U.S. 501, 508-09, 67 S.Ct. 843, 91 L.Ed. at 1062-1063 (1947).]

The court finds that New Jersey is an acceptable forum. Almost everyone has been deposed other than Wilen, who is a citizen of the United States and can be compelled for deposition. There is no accident scene in this case that might necessitate a trial being located elsewhere. Modern technology facilitates testimony from international defendants. As the Appellate Division stated, "Even assuming [Mexican corporation defendant] cannot transport these [Mexican] witnesses to New Jersey, our Court Rules permit the use of deposition and videotaped testimony at trial. See R. 4:11-4, 11-5, 12-3." Madan Russo v. Posada, 366 N.J.

Super. 420, 429 (App. Div. 2004), cert. denied 180 N.J. 448 (rejecting Mexican company's motion to dismiss for forum non conveniens). Depositions from the federal action were already taken. Moreover, New Jersey residents have an interest in upholding New Jersey contracts like the one the Plaintiff was allegedly terminated under. The majority of the counts will be tried under American laws. Therefore, the court finds that the Gulf private and public interest factors weigh in favor of the Plaintiff.

Defendants argue that Plaintiff should not be afforded deference in his selecting a forum because he is no longer a New Jersey resident. However, in contractual disputes, a plaintiff is afforded significant deference in a choice of forum. "In actions based on contract, plaintiff's selection of forum will not be disturbed except in the most exceptional of circumstances, in recognition of the fact that such transactions have evidential roots in several jurisdictions." Star Video Entertainment, L.P., v. Video USA Associates 1 L.P., 253 N.J. Super. 216, 226-227 (App. Div. 1992) (internal quotes and citations omitted).

In the case at bar, Plaintiff resided in New Jersey during the alleged incidents that brought rise to this cause of accident; Plaintiff had lived in New Jersey for five years, including during the time of the cause of this complaint, and at all times has maintained a green card. As the Star court noted, contractual disputes such as the alleged wrongful termination at bar tend to have their evidential roots in multiple jurisdictions. The LOI has at least some evidential root in New Jersey as the Plaintiff continued to perform and receive payment therein, and at no time actually worked or resided in Singapore.

The court finds this sufficiently ties all parties to the state. Though Plaintiff is no longer a New Jersey resident, it would be unfair to punish him for this in the instant case when he was domiciled in New Jersey when the events at issue took place, and in fact filed suit in the District

Court while he was a New Jersey resident. See Smith v. Life Ptnrs., Inc., 2007 N.J. Super Unpub. LEXIS 472 (App. Div. October 3, 2007) (upholding jurisdiction over Texas defendant when plaintiff no longer resided in New Jersey but was a resident at the time of signing the contract in dispute and the parties had previously litigated in New Jersey). Therefore, the court shall give deference to Plaintiff's choice of forum, and the Defendants' motion for forum non conveniens is denied.

V. RB LLC'S Motion to Dismiss on Entire Controversy Doctrine Grounds is Denied.

Defendant RB LLC moves for dismissal pursuant to R. 4:6-2(e) arguing that the Plaintiff has failed to state a claim, and that Plaintiff's claims are barred by the Entire Controversy Doctrine. RB LLC argues that because Plaintiff's claims in this action arise from the same facts or same transaction or series of transactions as the Morris County action, which was resolved, and because Plaintiff failed to assert counterclaims against RB LLC in that action, his complaint against RB LLC should be dismissed.

A. Rule 4:6-2(e) Standard

R. 4:6-2 states that:

> If, on a motion to dismiss based on the defense numbered (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion.

On a R. 4:6-2(e) motion,

> A trial court should grant a dismissal in only the rarest of instances. A court's review of a complaint is to be undertaken with a generous and hospitable approach, and the court should assume that the nonmovant's allegations are true and give that party the benefit of all reasonable inferences.
> [NCP Litigation Trust v. KPMG LLP, 187 N.J. 353, 364, (N.J. 2006).]

B. Plaintiff's Complaint is Not Barred by the Entire Controversy Doctrine.

The entire controversy doctrine is codified by R. 4:30A, which states:

> Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine, except as otherwise provided by R. 4:64-5 (foreclosure actions) and R. 4:67-4(a) (leave required for counterclaims or cross-claims in summary actions).

The entire controversy doctrine embodies the principle that adjudication of a legal controversy should occur in one litigation in only one court. Wadeer v. New Jersey Mfrs. Ins. Co., 220 N.J. 591, 595 (2015). However, the entire controversy doctrine does not apply to claims that are "unknown, unarisen, or unacrrued at the time of the original action." K-Land Corp. No. 28 v. Landis Sewerage Auth., 173 N.J. 59, 74 (2002). It also does not apply when the claims do not share the same "core set of facts" as the previous litigations. DiTrolio v. Antiles, 142 N.J. 253, 267-68 (1995). "The boundaries of the entire controversy doctrine are not limitless. It remains an equitable doctrine whose application is left to judicial discretion based on the factual circumstances of individual cases. Thus, equitable considerations can relax mandatory-joinder requirements when joinder would be unfair." Oliver v. Ambrose, 152 N.J. 383, 394 (1998) (internal quotes and citations omitted). "In considering fairness to the party whose claim is sought to be barred, a court must consider whether the claimant has had a fair and reasonable opportunity to have fully litigated that claim in the original action." Gelber v. Zito Partnership, 147 N.J. 561, 565 (1997). The entire controversy doctrine "is intended to be applied to prevent a party from voluntarily electing to hold back a related component of the controversy in the first proceeding by precluding it from being raised in a subsequent proceeding thereafter." Oltremare v. ESR Custom Rugs, Inc., 330 N.J. Super. 310, 315 (App. Div. 2000). "[T]he doctrine is not to be rigidly applied and [] case-by-case evaluation is the only appropriate methodology for ascertaining its proper scope". Prevratil v. Mohr, 145 N.J. 180, 206 (1996) (Stein, J., dissenting).

Two lawsuits involving the same parties and same claims being litigated elsewhere will not preclude a New Jersey action. The Appellate Division declared that:

> The fact that an action pending in another state involves the same parties and the same or substantially similar claims does not bar prosecution of a subsequent action here in New Jersey. However, the New Jersey action may, as a matter of sound discretion, be stayed by our courts until the prior action has been adjudicated.
> [American Home Products Corp. v. Adriatic Ins. Co., 286 N.J. Super. 24, 33 (App. Div. 1995)]

In that case, American Home Products Corp. ("AHP") was a manufacturer and distributor incorporated in Delaware with its corporate headquarters in New York. AHP initially filed suit in Delaware seeking a declaratory judgment and damages against over seventy insurers. Two months later, one of the defendants filed suit against AHP in New York seeking a declaratory judgment, which the New Jersey Appellate Division noted was "essentially identical to the Delaware action". Id. at 31. The defendants in the Delaware suit moved for forum non conveniens, which was granted, and the New York trial court denied AHP's motion to dismiss. AHP then filed suit in New Jersey, and moved for forum non conveniens in the New York suit. The New York Appellate Division denied plaintiff's motion, and the New York Court of Appeals refused to review the decision. AHP conceded that "any claims it may have against any of the parties here are pending in or could be joined in the action in New York" Ibid. However, the New Jersey Appellate Division refused to apply the entire controversy doctrine, stating that "We reject the [defendants'] alternative theory for dismissal, the bar of the entire-controversy doctrine, see R. 4:30A, as clearly without merit. R. 2:11–3(e)(1)(A) and (E). This case involves concurrent and duplicative, not fragmented, litigation." Id. at 42.

When Plaintiff moved to stay the Morris County lawsuit pending the resolution of the California case, RB LLC successfully argued that the lawsuits could proceed separately because

the claims were dissimilar. In RB LLC's memorandum of law in opposition to Crepy's motion to stay the proceedings, RB LLC's present counsel wrote: "A stay of the NJ State Lawsuit is not proper for the additional reason that regardless of which party filed first, the claims and issues in the California Lawsuit are not substantially similar to those in the NJ State Lawsuit." Bishop Cert. Ex. 14. At trial during the Morris County action, RB LLC's present counsel argued:

> There is no substantially similar claim in California. In addition, we are seeking enforcement of unjust enrichment. We are seeking return of a benefit that Mr. Crepy wasn't entitled to receive. That claim is not in California. So as to whether or not there is substantial similarity between this case and the California case, that's not true.
> [Avallone Cert. Ex. 31.]

The court holds that it need not apply the entire controversy doctrine for several reasons. The court first notes that the defendant is judicially estopped from arguing that the current action arises out of the same transaction or occurrence as the Morris County action based on its statements in the Morris County lawsuit that the claims were not similar . Furthermore, there was a judicial finding that the California action could proceed separately from the Morris County litigation based on RB LLC's current's counsel assertions. "The judicial determination does not have to be in favor of the party making the assertion. If a court has based a final decision, even in part, on a party's assertion, that same party is thereafter precluded from asserting a contradictory position." Cummings v. Bahr, 295 N.J. Super. 374, 387-388, (App. Div. 1996).

As in American Home Products, supra, the current action concerns concurrent and similar lawsuits; Plaintiff filed suit in one state and Defendant filed suit in another state asserting claims arising from a similar factual nexus. The court finds that Crepy need not have brought the instant claims in the Morris County case. It would have been duplicative and inefficient to do so because the parties were already litigating those claims in California which initially upheld jurisdiction over RB LLC. Further, the parties entered into the Consent Order on January 7, 2015, which

resolved the Morris County lawsuit prior to the California court's dismissal for lack of jurisdiction. The court finds that because the California court initially upheld jurisdiction, Crepy was induced not to file the claims in the instant case during the Morris County action. If this court were to apply the entire controversy doctrine after the California court's subsequent dismissal, Plaintiff would suffer substantial prejudice. Though litigation is currently not pending in another state, this action has in effect replaced the California action.

At no time in any of the prior lawsuits were the Plaintiff's claims addressed on the merits. The amount the parties settled for in the Morris County lawsuit ($26,871.40) is disproportionate to the amount being sought here.

> Defendants could receive a 'windfall' by being permitted to escape any potential liability for any design defects because [Plaintiff] dismissed the claim against them for negligent supervision. The entire controversy doctrine should not be deployed under the circumstances here to bar [Plaintiff's] claims, which were never adjudicated on the merits.
> [Hillsborough Tp. Bd. of Educ. v. Faridy Thorne Frayta, P.C., 321 N.J. Super. 275, 287 (App. Div. 1999)]

For all of the foregoing reasons, the defendant's motion to dismiss for failure to state a claim is denied.

C. Some Counts are Sufficiently Plead.

1. Plaintiff Sufficiently Alleges Reliance to Support His Claims for Fraud, Fraud in the Inducement, and Promissory Estoppel.

Count One (common law fraud), Count Seven (fraud in the inducement), and Count Nine (promissory estoppel), all require a showing of reliance. Though not addressed in any briefing papers, the Defendants objected to these counts at oral argument, claiming that the Plaintiff cannot satisfy the reliance element required by each of the three counts. Triffin v. Automatic Data Processing, Inc., 394 N.J. Super. 237, 246 (App. Div. 2007) (common law fraud); Guido v. Guido, 2014 NJ Super Unpub. LEXIS 2110, *20 (App. Div. August 27, 2014) (fraudulent

inducement); Pop's Cones, Inc., v. Resorts Intern, Hotel, Inc., 307 N.J. Super. 461, 469 (App. Div. 1998).

Viewing the allegations in the manner most favorable to the Plaintiff, the court finds that reliance has been sufficiently plead as to all three Defendants. RB Group and RBCS allegedly made a material misrepresentation by offering the Plaintiff a position knowing that they would not employ the Plaintiff there. The Plaintiff allegedly relied on the offer for the Singapore position by travelling to and from Singapore, putting his New Jersey house up for sale, doing some work for the Singapore position at RB LLC, and travelling to England immediately prior to his alleged wrongful termination. Moreover, Plaintiff relied on the Singapore offer in consulting Chiappari about his green card and deciding to surrender it, and Defendants allegedly used this intent to surrender as a pretext to have him terminated, ultimately resulting in the loss of employment. Therefore, viewing the facts in the matter most favorable to the plaintiff, the reliance element may be satisfied, and these counts have been sufficiently plead. The court also notes that Judge Martini in the federal action upheld the Plaintiff's complaint as being plead with enough sufficiency to state a claim. See Crepy v. Reckitt Benckiser, LLC, 2013 U.S. Dist. LEXIS 1963 (D.N.J. January 7, 2013).

2. Count Six: Breach of Contract of the Long-Term Incentive Plan and Restricted Share Plan.

Prior to being employed at RB LLC, the Plaintiff signed two long-term benefit plans that have either a choice of law provision or forum selection provision. Paragraph 14 of the LTIP states "English law governs the Plan and all Awards and their construction. The English Courts have non-exclusive jurisdiction in respect of disputes arising under or in connection with the Plan or any Award." Paragraph 1.3 of the Restricted Share Plan states: "Unless the Rules say otherwise, this Plan and any award granted under it are governed by English law."

The Plaintiff's Employment Agreement with RB LLC stated:

> This agreement shall be governed by and construed under New Jersey law. . .The only exception to this provision relates to any dispute arising out of or in connection with any Benefits Plan (including the Company's Annual performance Plan and Long Term Incentive Plans of a Group company). . . Any such Plan shall be governed by and construed exclusively under the law and jurisdiction of the country specified in the Plan, and the courts of that country shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with that Plan. . . and it is a condition of participation in any such Plan that the Executive accept and submit to such exclusive jurisdiction.

Forum selection clauses generally are not considered to be against public policy. Caspi v. Microsoft Network, L.L.C., 323 N.J. Super. 118, 123 (App. Div. 1999), cert. denied 162 N.J. 199 (1999). However, although the New Jersey Employment Agreement explicitly names the Long Term Incentive Plan as being subject to exclusive law and jurisdiction of the country specified in the Plan, the LTIP itself states that "English courts shall have **non-exclusive** jurisdiction…" It is basic principle of contract interpretation that "The general words are controlled by the specific." George M. Brewster & Son v. Catalytic Const. Co., 17 N.J. 20, 35 (1954). Here, the New Jersey Employment Agreement sets forth the general principle that the country whose law governs a benefits plan also has exclusive jurisdiction over disputes arising out of that plan. However, the LTIP specifically provides that English courts have non-exclusive jurisdiction over disputes arising under the LTIP. The court finds that the LTIP's specific language controls the general language in the Employment Agreement. Ibid. Therefore, claims arising out of the LTIP may be brought in this action.

However, any claims arising from the Restricted Share Plan must be litigated in England, as it is clearly a "Plan" under the New Jersey Employment Agreement and it specifies that English law governs. There is no allegation that the forum selection clause in the Restricted Share Plan was signed due to fraud, undue influence, or overweening bargaining power, nor is the clause in any way unreasonable or in violation of public policy. Kubis & Perszyk Associates,

Inc. v. Sun Microsystems, Inc, 146 N.J. 176, 198 (1996) (Garibaldi, dissenting). Therefore, Count Six is dismissed without prejudice to the extent it alleges breach of the RSP, but it is upheld to the extent it alleges breach of the LTIP.

CONCLUSION

The Defendants' motion to dismiss is denied except with respect to Count Six. Count Six is dismissed without prejudice to Plaintiff's ability to bring this claim in England.