APL 2021-00148

To be argued by:
DUSTIN J. BROCKNER
Time Requested:
10 MINUTES

Court of Appeals of the State of New York

STATE OF NEW YORK,

Plaintiff-Appellant,

-against-

VAYU, INC.,

Defendant-Respondent.

BRIEF FOR APPELLANT STATE OF NEW YORK

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PRELIMINARY STATEMENT

Defendant Vayu, Inc. ("Vayu") is a company that designs and makes unmanned aerial vehicles ("UAVs" or "drones"). In 2016, after months of negotiations, Vayu entered into an agreement with the State University of New York at Stony Brook ("SUNY Stony Brook" or "Stony Brook") to sell and service two drones for use in Stony Brook's global health program. After Vayu delivered defective drones, the State of New York, on behalf of Stony Brook, sued for breach of contract, among other claims. Supreme Court, Albany County, granted Vayu's motion to dismiss for lack of personal jurisdiction, holding that jurisdiction was lacking under New York's long-arm statute, C.P.L.R. 302(a)(1), which creates jurisdiction over any non-resident who, directly or through an agent, "transacts any business" within the State. The Third Department, Appellate Division, affirmed Supreme Court's order over a two-justice dissent.

This Court should reverse. When all inferences are made in favor of the State as the non-moving party, the activities of Vayu occurring in or directed at New York constitute the transaction of business here within the meaning of the long-arm statute. Through its CEO, Vayu

repeatedly projected itself into the State—through phone calls and emails—over a two-year period to create an ongoing business relationship with Stony Brook, an arm of the State. In addition to selling two drones to the university, Vayu agreed to provide training, product upgrades, and ongoing technical support; Vayu also sought to sell Stony Brook more drones. When a dispute arose over the two drones, Vayu's CEO met with a Stony Brook employee in New York and agreed to terms to resolve that dispute. Lastly, there is a substantial connection between Vayu's New York contacts and this lawsuit: All claims arise from or directly relate to the parties' agreement.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal under C.P.L.R. 5601(a). The Third Department's order was issued over a two-justice dissent on a question of law and finally determined this action. That order affirmed an order of Supreme Court that had granted Vayu's motion to dismiss for lack of personal jurisdiction under C.P.L.R. 3211(a)(8).

The question of law is preserved. It was briefed in Supreme Court by the parties (Record on Appeal ["R."] 28-33, 50-58) and ruled on by that court and the Appellate Division (R. 8-17, 203-210).

QUESTION PRESENTED

Whether Vayu's motion to dismiss for lack of personal jurisdiction should be denied where Vayu, acting through its CEO, repeatedly projected itself into New York through phone calls and emails to create an ongoing business relationship with an arm of the State and visited New York to further that relationship.

STATEMENT OF THE CASE

A. Vayu's Business Relationship with the State

SUNY Stony Brook is a public university located in Stony Brook, New York. (R. 50.) From 2015 to 2018, Dr. Peter Small was a professor there and resided in New York; he also ran Stony Brook's Global Health Institute ("GHI"), an interdisciplinary program that focused on improving access to health care in developing countries. (R. 50-52.) One GHI project sought to use UAVs to deliver medical supplies to remote areas in such countries, including Madagascar. (R. 51.)

In 2015, as part of that project, Dr. Small contacted Vayu, a company that designs and makes drones that provide "medical aid to inaccessible areas." (R. 30, 51.) Vayu was based in Michigan and incorporated under Delaware law. (R. 32.) Dr. Small was aware of Vayu

because its founder and CEO, Daniel Pepper, had contacted him in 2013 (before Dr. Small began working at Stony Brook) about using drones to transport laboratory samples. (R. 30, 51.)

Over the following months, Vayu—through its CEO, Pepper—repeatedly contacted Dr. Small and other Stony Brook employees to negotiate the terms of Vayu designing and producing drones for use in Stony Brook's GHI. (R. 51.) These Vayu-initiated contacts entailed numerous phone calls made to New York phone numbers and emails sent to Stony Brook email addresses. (R. 51-52.)

The parties' negotiations contemplated a continuous business relationship. (R. 52-53.) In addition to making and delivering UAVs, Vayu was expected to train Stony Brook employees on how to operate them, as well as provide ongoing technical support and product upgrades. (R. 53.)

In mid-2016, as negotiations continued, Vayu conducted for Stony Brook a test flight of two drones in Madagascar. The drones performed poorly; one crashed and the other failed to perform as expected. (R. 52.) Over the following weeks, the parties continued their negotiations. Vayu

promised that it could make drones that would meet Stony Brook's specifications. (R. 52-53.)

Around September 2016, as a result of the negotiations, Stony Brook agreed to pay Vayu $50,000 for two drones that Vayu would deliver to Madagascar. (R. 53.) Vayu's invoice to Stony Brook billed a New York address. (R. 53, 63-64.) Stony Brook wired the payment to Vayu. (R. 53, 66.)

Throughout the parties' negotiations, Vayu made clear that it aimed to sell many more drones to the university. At the same time it was negotiating the sale of the two drones, Vayu partnered with Stony Brook on a grant proposal that sought $900,000 from the U.S. Agency for International Development ("USAID") to fund the use of drones to deliver medical supplies in developing countries. (R. 53.) The proposal touted Stony Brook as one of Vayu's "[i]mplementing partners." (R. 84, *see* R. 73.). The proposal also explained that Vayu planned to use part of the grant money to maintain the two drones at issue and pay for additional drones for GHI's work in Madagascar. (R. 53-54; *see* R. 73-74.) While preparing the proposal, Vayu repeatedly communicated with Stony Brook employees by email and phone. (R. 53-54.) Although USAID

approved the grant, Vayu unilaterally decided not to use any of the funds to support the parties' joint work. (R. 54.)

In November 2016, Vayu delivered the two drones to Madagascar. They were defective and inoperable. (R. 54-55; *see* R. 122-142.) Vayu contacted Stony Brook by email and phone to discuss repairing or replacing the drones. (R. 55.) Among other things, Vayu reiterated that it wanted to expand the parties' business dealings. Its CEO, Pepper, wrote that he hoped that the parties could continue to "work collectively" and "plan future work" in Madagascar. (R. 146-47.) He explained that Vayu valued Stony Brook's "expertise and perspective to define the next steps for the larger-scale implementation in Madagascar." (R. 147.) Pepper proposed scheduling a call "to tackle the many hurdles we have to be successful in the next steps of this work." (R. 148.)

B. The Parties' Meeting in New York

The parties' dispute over the defective drones continued into 2017. In September 2017, Pepper asked Dr. Small to meet him that month in New York to discuss the issues surrounding the drones and the Madagascar project. (R. 56.)

Two days before the meeting, Pepper emailed Dr. Small to acknowledge that "[o]ur shared vision ha[d] hit a wall in Madagascar, where we had high hopes for a large, extensive, and integrated [drone delivery] network." (R. 154.) Nonetheless, Pepper explained: "We want to keep working you with you." (R. 155.) Dr. Small likewise noted that "this is a long and meaningful relationship in which shared passion and mutual trust has benefited both of us." (R. 156.) He was therefore "hopeful" that the parties could "find a win win solution." (R. 156.)

At the meeting, held in Port Jefferson, New York, the parties agreed to terms to resolve their dispute. (R. 56.) Stony Brook would ship, at its own expense, the defective drones from Madagascar to Vayu in Michigan. In return, Vayu would send replacements to Madagascar and also train a Stony Brook employee on how to fly them. (R. 56.) At the meeting, Pepper also raised the possibility of the parties working together on other projects. (R. 56; *see* R. 155-56.)

Afterwards, Dr. Small and Pepper exchanged emails that memorialized the terms on which they had agreed in New York and that addressed the "next steps" in their work together. (R. 56-57; *see* R. 159, 164-66, 171-74.) As Pepper explained, "we're now in a better position than

ever before to realize our common goals. We want this to be successful for the long-term in Madagascar." (R. 159.)

Around January 2018, Stony Brook effectuated the return of the two defective drones. Vayu refused to replace them as agreed, however. Nor did it refund Stony Brook for the drones or pay for the cost of their return. (R. 57-58.)

C. This Proceeding and the Decisions Below

In November 2018, the State of New York, acting on Stony Brook's behalf, sued Vayu in Supreme Court, Albany County. (R. 18-26.) The first claim—for breach of contract—alleges that Vayu had breached its agreement with Stony Brook by providing defective drones and failing to replace those drones within a reasonable time. That claim seeks $51,065.46 in damages, plus interest, which equals the drones' purchase price plus the cost that Stony Brook had incurred to return them to Vayu. (R. 19-21.) The complaint also asserts claims for breach of warranty, conversion, unjust enrichment, and misappropriation of public property based on the parties' transaction. (R. 22-25.)

Vayu moved to dismiss the complaint under C.P.L.R. 3211(a)(8) for lack of personal jurisdiction. (R. 28.) In opposing the motion, the State

submitted an affidavit from Dr. Small detailing Vayu's numerous New York contacts. (R. 50-174.) Supreme Court granted the motion and dismissed the complaint. (R. 8-17.) It held that the activities of Vayu's employees in or directed at New York did not amount to "transact[ing] any business" here under the long-arm statute, C.P.L.R. 302(a)(1). (R. 14-15.)

The State appealed. (R. 3-4.) Vayu did not file a responding brief or appear in the Third Department.[1]

In a 3-2 decision, the Third Department affirmed Supreme Court's order. (R. 203-210.) The majority held that Vayu "did not purposefully avail itself of the privilege of conducting activities within New York by transacting business in New York," as required to establish personal jurisdiction under C.P.L.R. 302(a)(1). (R. 206 [alterations and internal quotation marks omitted].) According to the majority, "the business transacted—specifically the sale of the UAVs to SUNY Stony Brook for

[1] As of this brief's filing, the undersigned has not been able to identify any counsel currently representing Vayu. The counsel who represented Vayu in Supreme Court withdrew as counsel in that court, and, since then, the undersigned has not received any response to the multiple letters and filings that have been sent to Vayu's known addresses.

use in Madagascar—was a one-time occurrence that resulted" after Dr. Small contacted Pepper in 2015. (R. 206.) Regarding the parties' in-person meeting in New York, the majority observed that its purpose was "discussing issues regarding the *completed* purchase of the UAVs, rather than seeking additional business from SUNY Stony Brook or other entities in New York." (R. 206.) Regarding Vayu's numerous New York-directed calls and emails, the majority observed that they "did not result in more sales in New York or seek to advance [Vayu's] business contacts within New York." (R. 205.)

The two-justice dissent reasoned that, contrary to the majority's holding, Vayu had "purposefully availed itself of the privilege of conducting activities in New York." (R. 208.) The dissent explained that Vayu's New York contacts, including its CEO's in-state meeting, demonstrated that the "sales transaction was not simply a 'one-time occurrence.'" (R. 208.) Rather, it was "contemplated as part of an ongoing business relationship between SUNY Stony Brook and [Vayu] that was intended to blossom into further business relations involving, among other things, expanded UAV sales and applications, ongoing UAV technical support and flight training services." (R. 208-09.)

The dissent further explained that the State had met the other two requirements for personal jurisdiction (R. 209), which neither Supreme Court nor the Third Department majority had addressed (R. 13-16, 206) First, there was a sufficient nexus under the long-arm statute between Vayu's contacts and this lawsuit: Vayu's "contacts in this state were directly and substantially related to the sale of the two UAVs that are the subject of this litigation." (R. 208.) Second, the exercise of jurisdiction comported with federal due process. The dissent explained that Vayu had "cultivated an ongoing business relationship with SUNY Stony Brook that was aimed at mutually raising the profile of both [GHI's] and [Vayu's] business portfolio under the auspices that it would transform into a 'large, extensive, and integrated [drone delivery] network.'" (R. 209.) Thus, the dissent concluded, Vayu "cannot reasonably claim that, given the nature of its contacts and the resulting business relationship, it did not anticipate being haled into a New York court in the event disputes arose between the parties." (R. 209.)

The State appeals as of right under C.P.L.R. 5601(a). (R. 201-202.)

ARGUMENT

SUPREME COURT HAS PERSONAL JURISDICTION OVER VAYU

To defeat a defendant's motion to dismiss a complaint for lack of personal jurisdiction, a plaintiff "must come forward with sufficient evidence, through affidavits and relevant documents, to prove the existence of jurisdiction." *Fischbarg v. Doucet*, 9 N.Y.3d 375, 385 n.6 (2007) (internal quotation marks omitted). In reviewing that motion, a court must accept as true the facts asserted in the complaint and the plaintiff's affidavits opposing the motion; it must also accord the plaintiff "the benefit of every possible favorable inference." *Rushaid v. Pictet & Cie*, 28 N.Y.3d 316, 327 (2016) (internal quotation marks omitted). Here, the State has shown that exercise of jurisdiction is proper under New York's long-arm statute and comports with federal due process.

A. Jurisdiction is proper under New York's long-arm statute.

New York's long-arm statute gives courts personal jurisdiction over any non-resident who "through an agent . . . transacts any business within the state." C.P.L.R. 302(a)(1). This provision sets forth a "liberal" standard that can be satisfied by a "single transaction in New York." *Longines-Wittnauer Watch Co. v. Barnes & Reinecke*, 15 N.Y.2d 443, 456

(1965); *see, e.g.*, *Parke-Bernet Galleries v. Franklyn*, 26 N.Y.2d 13, 16 (1970). Specifically, jurisdiction is proper so long as (i) the "defendant's activities here were purposeful" and (ii) "there is a substantial relationship between the transaction and the claim asserted." *Rushaid*, 28 N.Y.3d at 323 (quoting *Fischbarg*, 9 N.Y.3d at 380). The State has satisfied both requirements.

1. Vayu engaged in numerous purposeful activities in or directed at New York.

Turning to the first requirement, purposeful activities are those "with which a defendant, through volitional acts, avails itself of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws." *Id.* (quoting *Fischbarg*, 9 N.Y.3d at 380). A defendant may "engage in extensive purposeful activity here without ever actually setting foot in the State." *Parke-Bernet Galleries*, 26 N.Y.2d at 17. Thus, this Court has repeatedly recognized long-arm jurisdiction over commercial actors "using electronic and telephonic means to project themselves into New York to conduct business transactions." *Deutsche Bank Sec., Inc. v. Montana Bd. of Invs.*, 7 N.Y.3d 65, 71 (2006) (citing cases); *see, e.g.*, *Fischbarg*, 9 N.Y.3d at 380.

Further, as this Court explained in its seminal decision in *Longines*, where a suit arises from a contract, jurisdiction may be predicated on purposeful acts "performed by the [defendant] in this State in relation to the contract, albeit preliminary or *subsequent* to its execution" or formation. 15 N.Y.2d at 457 & n.5 (emphasis added); *see, e.g.*, *D&R Global Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 9 N.Y.3d 292, 298 (2017). Ultimately, "although it is impossible to precisely fix those acts that constitute a transaction of business," the "primary consideration" is "the quality of the defendant['s] New York contacts." *Fischbarg*, 9 N.Y.3d at 380.

Vayu's New York contacts, taken together, establish that Vayu purposely engaged in a New York business transaction. To start, Vayu transacted not just with a party that happened to be located in the State. Rather, it transacted with an arm of the State itself, SUNY Stony Brook. *See* Education Law § 352; *State Univ. of N.Y. v. Syracuse Univ.*, 285 A.D. 59, 61 (3d Dep't 1954). And beginning in 2015, Vayu—through its CEO—repeatedly projected itself into New York over a two-year period by calling and emailing Stony Brook employees, including Dr. Small, who lived in New York. Vayu initiated these contacts by calling New York

phone numbers and emailing Stony Brook addresses. (R. 51-52.) Making all inferences in the State's favor, that evidence shows that the Stony Brook employees were in New York when they received these communications.

These New York-directed communications were integral to the parties' transaction. Vayu used them to negotiate the drone specifications and the ongoing services that it would provide to Stony Brook. (R. 51-56.) *See Deutsche Bank Sec.*, 7 N.Y.3d at 69, 71 (non-resident transacted business here by using instant messenger service to negotiate sale with New York plaintiff); *C. Mahendra (NY), LLC v. National Gold & Diamond Ctr., Inc.,* 125 A.D.3d 454, 456 (1st Dep't 2015) (same based on phone negotiations). Indeed, negotiating a transaction for drones that can deliver medical supplies "was a major aspect of [Vayu's] mission—'part of its principal reason for being.'" *Deutsche Bank Sec.*, 7 N.Y.3d at 72 (citation omitted).

In addition to entering New York by email and telephone to negotiate a business transaction, *see id.,* Vayu sent Stony Brook an invoice to its New York address and accepted a wire payment that originated from New York. (R. 53, 63-66.) *See, e.g.*, *Grimaldi v. Guinn*,

72 A.D.3d 37, 52 (2d Dep't 2010) (non-resident's New York activities included faxing an invoice into New York and soliciting payment from New York plaintiff); *Druck Corp. v. Macro Fund (U.S.) Ltd.*, 102 F. App'x 192, 194 (2d Cir. 2004) (non-resident's activities included accepting funds wired from New York). Further, after the parties entered into an agreement, Vayu continued to project itself into the State to discuss how to resolve the dispute over Vayu's delivery of defective drones and continue with the next steps of the transaction. (*See* R. 147-48.) *See Fischbarg*, 9 N.Y.3d at 383 (regularly communicating with New York plaintiff during contractual relationship is proper predicate for long-arm jurisdiction).

Equally important, Vayu's CEO traveled to New York to meet with Dr. Small to discuss their transaction. The "nature and quality" of this in-state meeting support long-arm jurisdiction. *George Reiner & Co. v. Schwartz*, 41 N.Y.2d 648, 653 (1977). As this Court has explained, "a solitary business meeting conducted for a single day in New York" can satisfy C.P.L.R. 302(a)(1). *Presidential Realty Corp. v. Michael Sq. W.*, 44 N.Y.2d 672, 672 (1978). This is so even if the meeting relates to a contract that the non-resident defendant performs entirely out-of-state. *See*

George Reiner & Co., 41 N.Y.3d at 653. And the meeting here was instrumental to the parties' transaction. As the dissent noted, the parties agreed during that meeting to terms that "would not only resolve their present sales dispute" but further "repair and secure their continuing business relationship." (R. 208.) In particular, Stony Brook agreed to pay for the return of the drones in exchange for Vayu providing replacements and flight training. (R. 56-57.)

Moreover, Vayu's numerous activities in or targeted at New York did not concern a one-off sale of a consumer good. Rather, they were directed toward, and resulted in, the "purposeful creation of a continuing relationship with a New York [entity]." *D&R Global Selections, S.L.*, 29 N.Y.3d at 298 (quoting *Fischbarg*, 9 N.Y.3d at 381). As part of the transaction, which concerned sophisticated machinery tailored to Stony Brook's needs, Vayu agreed to provide Stony Brook flight training, product upgrades, and ongoing technical support. (R. 53; *see, e.g.*, R. 156 [Dr. Small describing the parties' relationship as "long and meaningful"].) Indeed, Vayu intended this sale to be the first of many to Stony Brook. As Vayu CEO's explained, the goal was to develop "a large, extensive, and integrated [drone delivery] network." (R. 154.) To that

end, Vayu and Stony Brook worked closely on a grant proposal that sought funds that were intended to maintain the drones sold to Stony Brook and to pay for additional ones. (R. 53-54.) While these efforts did not come to fruition largely due to Vayu's conduct, they confirm that Vayu's contacts were purposefully designed to foster an ongoing business relationship.

In sum, Vayu purposefully availed itself of the privilege of conducting business here because—through numerous New York-directed contacts over the course of two years, including an in-state meeting—it cultivated a continuous business relationship with an arm of the State. Under the totality of the circumstances, Vayu's activities directed at the State constitute transacting business in New York under C.P.L.R. 302(a)(1).

In reaching a contrary conclusion, the Third Department majority misapplied this Court's precedent. To begin, it erred by discounting the jurisdictional significance of the parties' New York meeting. The majority found that the meeting did not support long-arm jurisdiction because "the purpose" of the meeting was to "discuss[] issues regarding the *completed*

purchase of the UAVs, rather than seek[] additional business from SUNY Stony Brook." (R. 207.)

This reasoning is mistaken. It is well-established that a defendant's in-state activity that is "in furtherance of" an already-formed contract can support the exercise of jurisdiction under C.P.L.R. 302(a)(1). *D&R Global Selections, S.L.*, 29 N.Y.3d at 298; *see, e.g.*, *Longines*, 15 N.Y.2d at 457 & n.5; *Paradigm Mktg. Consortium, Inc. v. Yale New Haven Hosp., Inc.*, 124 A.D.3d 736, 737 (2d Dep't 2015). Thus, contrary to the majority's reasoning, although Stony Brook had already agreed to purchase drones at the time of the in-state meeting, this fact is not determinative where, as here, the *performance* of the parties' contract was not yet complete.

Indeed, courts have repeatedly found that C.P.L.R. 302(a)(1) jurisdiction can be based on an in-state meeting that is intended to shore up or further an existing contractual relationship. For instance, this Court in *Longines* held that non-resident defendants had transacted business in New York where, among other things, their representatives visited plaintiff "on Long Island to discuss certain problems in connection with the performance of the contract" and entered into "a supplementary contract" in New York. 15 N.Y.2d at 456-57. The Appellate Division

likewise held that the transaction of business in New York could be established by, among other things, an in-state meeting at which the parties "negotiated and resolved" their differences over a sales dispute. *Atlantic Metal Prods. v. Blake Constr. Co.*, 40 A.D.2d 966, 966 (1st Dep't 1972); *see also, e.g.*, *CutCo Indus., Inc. v. Naughton*, 806 F.2d 361, 367 (2d Cir. 1986) (noting that meeting that "created the likelihood of a more solid business relationship" was "jurisdictionally significant"); *Gary Null & Assocs. Inc. v. DNE Nutraceuticals Inc.*, No. 18 Civ. 7169, 2018 WL 6991065, at *3 (S.D.N.Y. Dec. 20, 2018).

Similarly here, the parties' in-state meeting was meant to repair and further the parties' contractual relationship. Like the defendants in *Longines*, Vayu's CEO came to Long Island to discuss issues relating to the contract's performance. And, at that meeting, the parties settled on terms that supplemented their contract and would allow the parties' relationship to continue and, as Vayu hoped, grow.

The Third Department majority further erred when analyzing Vayu's phone calls and emails to Stony Brook employees over a two-year period. The State's evidence, which must be accepted as true, demonstrated that (i) Vayu initiated many of these communications;

(ii) they were made to and received by individuals in New York; and (iii) the parties engaged in substantive negotiations through these communications. Nonetheless, the majority held that these contacts cannot support the exercise of jurisdiction because they led to a "one-time" transaction and "did not result in more sales in New York or seek to advance [Vayu's] business contacts within New York." (R. 206.)

This conclusion misapprehends the inquiry under C.P.L.R. 302(a)(1). For one thing, "proof of one transaction in New York is sufficient to invoke jurisdiction" under this provision. *Deutsche Bank Sec.*, 7 N.Y.3d at 71 (internal quotation marks omitted). For another, the inquiry focuses on whether a defendant's contacts "were purposeful," *id.,* not whether they were successful—i.e., resulted in more sales. When all inferences are drawn in the State's favor, it is plain that these New York contacts were purposeful. Through them, Vayu cultivated an ongoing business relationship that, as the dissent noted, Vayu expected would "blossom into further business relations involving, among other things, expanded UAV sales and applications, ongoing UAV technical support and flight training services." (R. 208-09.) Indeed, even after the parties' dispute arose, Vayu made clear that it "want[ed] to keep working" with

Stony Brook and brought up the possibility of the parties working on additional projects. (R. 154.)

Further, and contrary to the trial court's reasoning (R. 14-15), that Dr. Small may have first contacted Vayu at the start of the negotiations in 2015 does not compel a different conclusion. As this Court's decision in *Parke-Bernet Galleries* makes clear, long-arm jurisdiction over a non-resident defendant based on a business transaction may be proper even if the plaintiff first solicited the defendant. In that case, the plaintiff, an art auctioneer, contacted an out-of-state defendant about an auction that plaintiff was holding in New York the following month. 26 N.Y.2d at 15. Although the defendant never visited New York, he "projected himself" into the State by participating in the auction via phone and successfully bidding on two paintings, which totaled $96,000. *Id.* at 16, 18. After the defendant allegedly failed to pay, the plaintiff sued for breach of contract, and this Court held that jurisdiction over the defendant existed under C.P.L.R. 302(a)(1). *Id.* at 16-17. As it explained, the defendant's "active participation in the bidding" by phone amounted to "the sustained and substantial transaction of business here." *Id.* at 18.

Other courts have similarly held that jurisdiction exists under C.P.L.R. 302(a)(1) even when, as in *Parke-Bernet Galleries*, the plaintiff initiated the contact that resulted in the subject transaction. *See, e.g.*, *Grimaldi*, 72 A.D.3d at 51; *Stardust Dance Prods., Ltd. v. Cruise Groups Intl., Inc.*, 63 A.D.3d 1262, 1262-63 (3d Dep't 2009); *Sterling Natl. Bank & Trust Co. of New York v. Fid. Mtge. Inv.*, 510 F.2d 870, 874 (2d Cir. 1975) (holding that although the plaintiff "first solicited" non-resident defendant, that defendant had transacted business here given the "totality" of contacts, including a single New York visit).

The same reasoning applies here. Even if it can be said that Dr. Small first contacted Vayu in 2015 (notwithstanding the fact that Vayu's CEO had earlier contacted Dr. Small), Vayu thereafter knowingly "projected [itself]" into the State through numerous phone calls and emails, as well as by having its CEO physically visit. *Parke-Bernet Galleries*, 26 N.Y.2d at 18. Through these New York contacts, Vayu engaged in a substantial business transaction that was more "sustained" than the one in *Parke-Bernet Galleries*: Vayu's activities took place over many months, and the resulting agreement required Vayu to provide continuing services to SUNY Stony Brook. *See supra* at 3-7.

Finally, the Third Department majority's reliance on this Court's decision in *Paterno v. Laser Spine Institute*, 24 N.Y.3d 370 (2014), is misplaced. (R. 206.) That case involved a New York resident who brought a medical malpractice action against Florida-based medical providers based on a back surgery they performed in Florida. 24 N.3d at 372, 375. It is distinguishable for three reasons.

First, the defendants in *Paterno* never physically entered New York in connection with the transaction. *Id.* Second, those defendants did not contemplate or seek to create a continuous relationship with the plaintiff. Rather, the one-time surgery was supposed to cure the plaintiff's back pain. *See id.* at 372-73. Third, the *Paterno* defendants' only New York-specific contacts—calls and emails directed here—concerned primarily "administrative matters" regarding plaintiff's arrival in Florida. *Id.* at 373. Those communications merely "served the convenience of plaintiff," and, thus, a finding of jurisdiction based on such limited contacts would "set a precedent for almost limitless jurisdiction over out-of-state medical providers." *Id.* at 378-79.

By contrast, Vayu's New York-directed contacts are far more substantial. During the parties' phone calls and emails, initiated by

Vayu's CEO, the parties discussed (i) the product and services that Vayu would provide, (ii) growing their relationship to include additional drones, and (iii) resolving a dispute over Vayu's performance. (R. 53-56.) Indeed, courts—before and after *Paterno*—have held that such substantive telephonic and electronic contacts can satisfy C.P.L.R. 302(a)(1). *See, e.g.*, *Fischbarg*, 9 N.Y.3d at 381-83; *Deutsche Bank Sec.*, 7 N.Y.3d at 69; *Grimaldi*, 72 A.D.3d at 51-52; *C. Mahendra (NY)*, 125 A.D.3d at 456.

The State has thus shown that Vayu's purposeful activities occurring in or directed to New York were sufficient to satisfy the first requirement of C.P.L.R. 302(a)(1)'s two-part test for jurisdiction.

2. The State's claims arise from Vayu's New York contacts.

Neither Supreme Court nor the Third Department addressed C.P.L.R. 302(a)(1)'s second requirement, which requires "a substantial relationship" between the New York-based transaction and the claims asserted. *Rushaid*, 28 N.Y.3d at 329. This standard is "relatively permissive" and "does not require causation." *Id*. Rather, a plaintiff's claims need only be "in some way arguably connected to the transaction." *Id.* (internal quotation marks omitted).

As the dissent explained, this requirement is easily met here. (R. 209.) The State's claims are directly connected to the parties' transaction involving the two drones: Those claims were the result of or arose from Vayu's New York contacts. Through numerous emails and phone calls directed at New York, Vayu induced Stony Brook to enter into an agreement to purchase drones. The parties also met in New York to resolve a dispute over those drones. *See D&R Global Selections, S.L*, 29 N.Y.3d at 299 (substantial relationship established where the defendant "engaged in activities in New York in furtherance of their agreement"). The State's damages include the costs to return the defective drones to Vayu—costs that Vayu induced Stony Brook to incur at the in-person meeting in New York. (*See* R. 20-21, 56.)

Thus, the State has shown that there is a "substantial relationship" between Vayu's New York activities, the parties' agreement, Vayu's alleged breach or disregard thereof, and potential damages. *See D&R Global Selections, S.L.*, 29 N.Y.3d at 299.

B. The exercise of personal jurisdiction comports with federal due process.

The exercise of personal jurisdiction must also comport with federal due process. *See Rushaid*, 28 N.Y.3d at 330. Although the long-arm statute and due process are "not coextensive," a case in which personal jurisdiction is permitted by statute but barred by due process would be "rare." *Id.* (internal quotation marks omitted). This is not one of those rare cases.

Federal due process requires that the defendant have "certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* at 331 (alteration omitted) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 [1945]).

Vayu had the requisite minimum contacts for the same reasons it has transacted business here under C.P.L.R. 302(a)(1). *See supra* at 13-25. Vayu "purposefully availed itself of the privilege of conducting activities within New York." *Rushaid*, 28 N.Y.3d at 330 (alterations and citations omitted). And this suit "arises out of or relates" to Vayu's contacts with New York. *Aybar v. Aybar*, 37 N.Y.3d 274, 288 (2021); *see Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026-

27 (2021). The fact that Vayu transacted with an arm of the State further defeats any assertion that Vayu should not have "reasonably foresee[n] having to defend a lawsuit in New York." *D&R Global Selections, S.L.*, 29 N.Y.3d at 300.

Nor would allowing this suit to proceed offend "traditional notions of fair play and substantial justice." *Id.* Where, as here, minimum contacts exist, the defendant must present a "compelling case" that the exercise of personal jurisdiction is "unreasonable." *Id.*; *see Rushaid*, 28 N.Y.3d at 331 (listing five factors to consider). In Supreme Court, Vayu failed to argue that there were compelling reasons why the exercise of jurisdiction would unreasonable. Nor could it make such a showing on this record. "[M]odern communication and transportation" minimize any burden on Vayu of defending the suit here, and the forum state, New York, has a strong interest in adjudicating a dispute in which an arm of the State is a party. *Rushaid*, 28 N.Y.3d at 331 (internal quotation marks omitted).

The State has thus carried its burden to show that the exercise of jurisdiction comports with federal due process.

CONCLUSION

The Appellate Division's order should be reversed and Vayu's motion to dismiss the complaint under C.P.L.R. 3211(a)(8) should be denied.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the body of the foregoing Brief for Appellant State of New York contains 5,423 words and thus complies with the word limit set by 22 N.Y.C.R.R. § 500.13(c)(1).

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