

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Daniel Patrick Moynihan
3 United States Courthouse, 500 Pearl Street, in the City of
4 New York, on the 17th day of May, two thousand ten.
5

6 PRESENT: DENNIS JACOBS,
7 Chief Judge,
8 RALPH K. WINTER,
9 JOSEPH M. McLAUGHLIN,
10 Circuit Judges.
11

12 - - - - -X
13 Stanton Sterling Schultz,
14 Plaintiff-Appellant,
15

16 -v.- 09-1671-cv

17
18 Safra National Bank of New York, Banco
19 Safra, S.A.,
20 Defendants-Appellees.
21 - - - - -X
22

23 FOR APPELLANT: Stanton Sterling Schultz, pro se,
24 Denver, CO.

25
26 FOR APPELLEE: Barry R. Fischer, Fischer & Mandell,
27 LLP, New York, NY.
28

1 Appeal from a judgment of the United States District Court
2 for the Southern District of New York (Berman, J.; Mass, Mag.).

3 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
4 **DECREEED** that the judgment of the district court be **AFFIRMED**.

5 Appellant Stanton Sterling Schultz, pro se, appeals the
6 district court's grant of the Defendants' Fed. R. Civ. P.
7 12(b)(2) motion, dismissing his complaint for lack of personal
8 jurisdiction. We assume the parties' familiarity with the
9 underlying facts, the procedural history of the case, and the
10 issues on appeal.

11 Schultz raises no challenge on appeal to the district
12 court's denial of his cross-motion to join Joseph Safra as a
13 defendant; the denial of his application for discovery; and the
14 dismissal of his claims against Safra National Bank of New York.
15 We decline to review those issues. See LoSacco v. City of
16 Middletown, 71 F.3d 88, 92-93 (2d Cir. 1995) (when a litigant,
17 pro se or not, raises an issue before the district court but does
18 not raise it on appeal, it is abandoned). The only issue raised
19 by Schultz on appeal is whether the district court had personal
20 jurisdiction over Banco Safra, S.A. ("Banco Safra"), a Brazilian
21 bank.

22 We review de novo a district court's dismissal of a
23 complaint under Fed. R. Civ. P. 12(b)(2) for lack of personal
24 jurisdiction. See Metro. Life Ins. Co. v. Roberson-Ceco Corp.,
25 84 F.3d 560, 567 (2d Cir. 1996). To survive a Rule 12(b)(2)
26 motion, a plaintiff has the burden of demonstrating that
27 jurisdiction exists, see Robinson v. Overseas Military Sales
28 Corp., 21 F.3d 502, 507 (2d Cir. 1994), and where, as here, the
29 district court did not conduct "a full-blown evidentiary hearing
30 on the motion, the plaintiff need only make a prima facie showing
31 of jurisdiction," Marine Midland Bank, N.A. v. Miller, 664 F.2d
32 899, 904 (2d Cir. 1981). In order to resolve a motion to dismiss
33 for lack of personal jurisdiction, a district court must
34 "determine whether there is jurisdiction over the defendant under
35 the relevant forum state's laws." Bank Brussels Lambert v.
36 Fiddler Gonzalez & Rodriguez, 171 F.3d 779, 784 (2d Cir. 1999).
37 Therefore, under New York law, Schultz had to demonstrate either
38 that Banco Safra was "present" and "doing business" within the
39 meaning of New York Civil Procedure Law and Rules ("CPLR") § 301,
40 or that it committed acts within the scope of New York's long-arm
41 statute, CPLR § 302.

42 Under CPLR § 301, "[a] corporation is 'doing business' and
43 is therefore 'present' in New York and subject to personal
44 jurisdiction with respect to any cause of action, related or
45 unrelated to the New York contacts, if it does business in New

1 York not occasionally or casually, but with a fair measure of
2 permanence and continuity." Wiwa v. Royal Dutch Petroleum Co.,
3 226 F.3d 88, 95 (2d Cir. 2000) (internal quotation marks omitted)
4 (defining the circumstances pursuant to which a defendant can be
5 subject to general personal jurisdiction under CPLR § 301). New
6 York courts have focused on several factors to support a finding
7 that a defendant was "doing business," including "the existence
8 of an office in New York; the solicitation of business in New
9 York; the presence of bank accounts or other property in New
10 York; and the presence of employees or agents in New York."
11 Landoil Res. Corp. v. Alexander & Alexander Serv. Inc., 918 F.2d
12 1039, 1043 (2d Cir. 1990). Solicitation alone will not
13 ordinarily show that a defendant is "doing business" in New York,
14 but where combined with evidence that the defendant "engages in
15 other activities of substance in the state, then personal
16 jurisdiction may properly be found to exist." Id. at 1043-44.

17 As the district court determined, Schultz had at best
18 alleged only that certain banking institutions owned by a non-
19 bank holding company--which, through a subsidiary, may also have
20 owned Banco Safra--solicited business in the United States.
21 Schultz readily admitted that Banco Safra had no office,
22 employees, accounts, or property in the State of New York, and,
23 given this absence of other substantial activities in New York,
24 Schultz's speculative assertion that Banco Safra engaged in
25 solicitation in that state through various other companies was
26 insufficient to vest the district court with personal
27 jurisdiction under CPLR § 301.

28 Additionally, under CPLR § 302(a)(1), a court may exercise
29 personal jurisdiction over a defendant if it (1) "transacts any
30 business" in New York and (2) the plaintiff's cause of action
31 arises from the business transaction. See Best Van Lines, Inc.
32 v. Walker, 490 F.3d 239, 246 (2d Cir. 2007). Under CPLR
33 § 302(a)(3), a district court may also exercise personal
34 jurisdiction over a defendant if it commits a tortious act
35 outside the state that causes injury to a person within the
36 state, provided that the defendant "regularly does or solicits
37 business, or engages in any other persistent course of conduct,
38 or derives substantial revenue from goods used or consumed or
39 services rendered, in the state."

40 As the district court determined, neither of these sections
41 afforded personal jurisdiction over Banco Safra. Because Schultz
42 conceded that his claims arose from alleged transaction by Banco
43 Safra in Brazil, jurisdiction was not available under
44 § 302(a)(1). Moreover, given our discussion above, Schultz could
45 not show that Banco Safra regularly and consistently engaged in
46 any business in the State of New York so as to create
47 jurisdiction pursuant to § 302(a)(3). Accordingly, Schultz's

1 complaint was properly dismissed for lack of personal
2 jurisdiction.

3 We have considered all of Schultz's remaining claims of
4 error and determined them to be without merit. For the foregoing
5 reasons, the judgment of the district court is hereby **AFFIRMED**.

6
7
8 FOR THE COURT:
9 CATHERINE O'HAGAN WOLFE, CLERK
10