

**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.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of September, two thousand twenty-six.

PRESENT:

REENA RAGGI,
MARIA ARAÚJO KAHN,
Circuit Judges,
JOHN P. CRONAN,
*District Judge.**

EVERYTHING YOGURT BRANDS, LLC, VILLA
PIZZA, LLC,

Plaintiffs-Appellants,

v.

No. 24-2282-cv

FRANCESCO BIANCO, LUCIANO BIANCO,
SALVATORE TINDARO VADALA, SALVATORE

* Judge John P. Cronan of the United States District Court for the Southern District of New York, sitting by designation.

ZAPPALA, SAITTA GAETANO MARTINO,
ROSARIO GRASSOB, DIEGO LOGIUDICE, SFE
S.R.L., OLTREIDEA S.R.L., SPE S.R.L.,
MANGIAMI S.R.L., ORION S.R.L., ROMA FOOD
S.R.L., RAVENNA FOOD S.R.L., DM DUE
S.R.L., FOOD GROUP SERVICE S.R.L.,

Defendants-Appellees.

FOR PLAINTIFFS-APPELLANTS:

Bob Kasolas, Brach Eichler LLC,
Roseland, NJ.

FOR DEFENDANTS-APPELLEES:

No appearance.

Appeal from a judgment of the United States District Court for the Southern
District of New York (Liman, J.).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,
ADJUDGED, AND DECREED** that the August 5, 2024 judgment of the district
court is **AFFIRMED**.

In this breach of contract dispute, Plaintiffs-Appellants Everything Yogurt
Brands, LLC and Villa Pizza, LLC (together, “Plaintiffs”) sued various Italian
companies and individuals (collectively, “Defendants”) for Defendants’ alleged
failure to make payments as stipulated in the parties’ franchise agreements.
Plaintiffs moved for default judgment when Defendants failed to respond to the
action. The district court, however, denied Plaintiffs’ motion and dismissed the

action, finding that it lacked personal jurisdiction over Defendants. Plaintiffs now ask us to reverse the judgment of the district court, arguing that Defendants consented to personal jurisdiction in New York in the parties' franchise agreements. We assume the parties' familiarity with the remaining facts, the procedural history of the case, and the issues on appeal, to which we refer only as necessary to explain our decision.

DISCUSSION¹

"We review de novo a district court's decision to dismiss a complaint for lack of personal jurisdiction." *Porina v. Marward Shipping Co.*, 521 F.3d 122, 126 (2d Cir. 2008). "In reviewing the dismissal, we construe the pleadings and affidavits in the light most favorable to plaintiffs, resolving all doubts in their favor." *Id.*

¹ We note that there is an unresolved question regarding subject matter jurisdiction in this case because Plaintiffs, two Delaware LLCs, failed to allege the citizenship of its members, and, for purposes of diversity jurisdiction under 28 U.S.C. § 1332, an LLC "takes the citizenship of each of its members." *Bayerische Landesbank v. Aladdin Cap. Mgmt. LLC*, 692 F.3d 42, 49 (2d Cir. 2012). Given that this is an action against only alleged foreign defendants, complete diversity would be lacking if any member of Plaintiffs' LLCs likewise is a foreign citizen. *See id.* (noting that "we do not have diversity jurisdiction over cases between aliens"). We decline to reach this issue because the lack of personal jurisdiction here is a non-merits grounds for dismissal, *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999), and "considerations of convenience, fairness, and judicial economy" weigh in favor of addressing the straightforward question of personal jurisdiction without the need for further development regarding subject matter jurisdiction, *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 423 (2007).

Plaintiffs seek to establish personal jurisdiction over Defendants based on consent. Indeed, “[p]arties can consent to personal jurisdiction through forum-selection clauses in contractual agreements.” *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 103 (2d Cir. 2006). To that end, Plaintiffs point to the parties’ franchise agreements, which contain identical arbitration clauses, providing, in relevant part, that “all controversies, disputes or claims arising between [the parties] . . . shall be settled by binding arbitration . . . in New York, New York, USA.” *E.g.*, App’x 167. The franchise agreements also contain New York choice-of-law clauses, providing that the agreements “shall be governed by and construed in accordance with the laws of the State of New York, USA.” *E.g.*, App’x 168. Plaintiffs maintain that by entering into these contractual terms, Defendants consented to personal jurisdiction in New York.

The district court properly rejected this argument. A party that consents to arbitration in New York necessarily consents to the jurisdiction of a court sitting in New York for the purpose of enforcing the arbitration agreement. *See Victory Transp. Inc. v. Comisaria Gen. de Abastecimientos y Transportes*, 336 F.2d 354, 363 (2d Cir. 1964) (“By agreeing to arbitrate in New York . . . the [defendant] must be deemed to have consented to the jurisdiction of the court that could compel the

arbitration proceeding in New York.”). However, as the district court aptly found, the “scope of the parties’ consent . . . can extend no further than what is implied by their agreement to arbitrate in New York, *i.e.*, that they agree to the jurisdiction of the New York courts on matters necessary to make the clause effective.” *Everything Yogurt Brands, LLC v. Bianco*, No. 23-CV-01161, 2024 WL 3497757, at *4 (S.D.N.Y. July 22, 2024); *see also Shalik v. Coleman*, 111 A.D.3d 816, 818 (N.Y. App. Div. 2013) (“Although an agreement to arbitrate disputes in New York constitutes consent to personal jurisdiction in New York, such consent is limited to enforcement of the arbitration award or other arbitration-related proceedings.” (citations omitted)). Because Plaintiffs do not seek to compel or enforce arbitration, they cannot rely on the arbitration clause and choice-of-law provision as a basis for consent to jurisdiction.

We are unpersuaded by Plaintiffs’ argument that this conclusion contravenes our decision in *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Lecopulos*, 553 F.2d 842 (2d Cir. 1977). To be sure, in *Lecopulos* we found that the parties’ “agreement to resolve disputes by arbitration in New York constituted consent to personal jurisdiction in New York.” *Id.* at 844. But *Lecopulos* concerned the district court’s jurisdiction to “stay [the] action pending arbitration.” *Id.* at 843. Indeed,

our holding was premised on the rule that an agreement “to arbitrate in New York” is deemed consent “to the jurisdiction of the court that could compel the arbitration.” *Id.* at 844 (quoting *Victory Transp. Inc.*, 336 F.2d at 363); *see also Kahn Lucas Lancaster, Inc. v. Lark Int’l Ltd.*, 956 F. Supp. 1131, 1139 (S.D.N.Y. 1997) (citing *Lecopulos* for the same proposition). *Lecopulos* does not extend personal jurisdiction beyond enforcement of the arbitration agreement.

Plaintiffs’ reliance on the franchise agreements’ New York choice-of-law provision is likewise unavailing. “[A] choice of law provision in a contract does not constitute a voluntary submission to personal jurisdiction.” *CutCo Indus., Inc. v. Naughton*, 806 F.2d 361, 366 (2d. Cir. 1986). And while Plaintiffs correctly note that a choice of law clause is due “some weight” in determining personal jurisdiction, Appellants’ Br. at 8 (quoting *CutCo Indus., Inc.*, 806 F.2d at 367), its relevance is in “determining whether a nondomiciliary ‘transacted business’” for the purpose of establishing specific personal jurisdiction under New York’s long-arm statute, *CutCo Indus., Inc.*, 806 F.2d at 367 (quoting N.Y. C.P.L.R. § 302(a)(1)). Plaintiffs’ argument thus misses the mark because they seek to establish jurisdiction based on consent, not specific jurisdiction under N.Y. C.P.L.R. § 302(a). And, in any event, there is no basis for specific jurisdiction here because

Defendants did not have any relevant contacts with New York, *see* N.Y. C.P.L.R. § 302(a), and “[a] choice of law provision in an agreement, while relevant, is insufficient by itself to confer personal jurisdiction over a defendant in New York under CPLR 302(a)(1).” *Am./Int’l 1994 Venture v. Mau*, 146 A.D.3d 40, 59 (N.Y. App. Div. 2016).

We have considered the remaining arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court