

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JENNIFER G. SCHECTER PART IAS MOTION 54EFM

Justice

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INDEX NO. 650858/2021

SOL GLOBAL INVESTMENTS CORP., SOL VERANO
BLOCKER 2 INC.,

MOTION SEQ. NO. 001

Plaintiffs,

- v -

**DECISION + ORDER ON
MOTION**

1235 FUND LP, MM ASSET MANAGEMENT INC.,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for

DISMISS

This action, which concerns amounts allegedly owed under a debenture governed by Ontario law related to a going-public transaction in Canada, is the subject of another action in Ontario, Canada. There are no allegations in the complaint justifying the imposition of general or specific jurisdiction over defendants. Plaintiffs' reliance on a security agreement in which one of the plaintiffs--the "Grantor," SOL Verano Blocker 2 Inc. (Blocker 2)--submitted to exclusive jurisdiction in New York in actions pertaining to the security agreement between it and defendant 1235 Fund LP (Dkt. 21 at 11), is misplaced. Though Blocker 2 broadly submitted to this court's jurisdiction, only it, and not defendants, did so. Had the parties intended that all of them submit to New York jurisdiction, they easily could have stated "the parties consent and agree" rather than "Grantor consents and agrees" (*compare* Dkt. 21 ¶ 21 with ¶ 22 ["the parties hereto waive all right to trial by jury"][emphasis added]). These sophisticated parties' agreed-upon forum selection clause must be enforced as written. That agreement very specifically provides that only Blocker 2 agreed, consented and submitted to jurisdiction in New York. Only it waived objections based on lack of personal jurisdiction, improper venue or forum non conveniens. 1235 Fund LP, in contrast, never agreed to do so. It instead opted to bring an action in Ontario, consistent with the choice of law and forum selection clauses in the other governing agreements, and nothing precluded or limited its logical choice.

When parties contract for a one-sided submission to jurisdiction, their negotiated agreement will be enforced (*159 MP Corp. v Redbridge Bedford, LLC*, 33 NY3d 353, 356 ["agreements negotiated at arm's length by sophisticated, counseled parties are generally enforced according to their plain language pursuant to our strong public policy favoring freedom of contract"]; *see Greenfield v Philles Records, Inc.*, 98 NY2d 562, 570 [2002])

["a court is not free to alter the contract to reflect its personal notions of fairness and equity"]]).

In the end, defendants never consented to personal jurisdiction in New York or waived the objection; thus, this action is dismissed. Moreover, jurisdictional discovery is unwarranted because the complaint does not make a sufficient start at suggesting there could even possibly be a basis for New York jurisdiction (*Stern v Four Points*, 133 AD3d 514, 515 [1st Dept 2015]).

Accordingly, it is ORDERED that defendants' motion to dismiss the complaint for lack of personal jurisdiction is GRANTED and the Clerk is directed to enter judgment dismissing the action without prejudice.

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6/3/2021
DATE

JENNIFER G. SCHECTER, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/> DENIED		<input type="checkbox"/> OTHER