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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 14-CV-80299/SEITZ

RETYP, LLC,

Plaintiff,

vs.

BOUNCE EXCHANGE, INC.,

Defendant.

Tuesday, August 12, 2014  
10:01 a.m.  
Miami, Florida

Pages 1 through 45

TRANSCRIPT OF SCHEDULING CONFERENCE and MOTION HEARING  
BEFORE THE HONORABLE PATRICIA A. SEITZ  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Kenneth R. Noble, Esq.  
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For the Defendant: Charles S. Marion, Esq.  
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STENOGRAPHICALLY REPORTED, COMPUTER-AIDED TRANSCRIPT

1 (Court was called to order.)

2 COURTRROOM DEPUTY: Calling Case No. 14-80299-CIV,  
3 RETYP, LLC, versus Bounce Exchange, Inc.

4 Counsel, please state your appearance for the record.

5 MR. NOBLE: Kenneth Noble on behalf of the plaintiff,  
6 RETYP, LLC.

7 THE COURT: Good morning, Mr. Noble.

8 MR. MARION: Morning, Your Honor. I'm Charles  
9 Marion, from Pepper Hamilton, on behalf of defendant, Bounce  
10 Exchange.

11 THE COURT: Mr. Marion, are you from out-of-town?

12 MR. MARION: I am. I am admitted to the Florida Bar,  
13 Your Honor, and to this court. I used to practice in South  
14 Florida, but I now live in Philadelphia, where I'm from,  
15 originally.

16 THE COURT: Sorry that you had to come down but,  
17 please have a seat.

18 I've read the parties' -- the defendant's motion to  
19 dismiss, and the plaintiff's response, and the alternative  
20 motion to -- the plaintiff's alternative motion to transfer  
21 venue to the Northern District of New York.

22 Let me cut to the chase. It sounds to me like the  
23 plaintiff is moving to transfer venue, then the bottom line is  
24 the plaintiff is tacitly acquiescing to go to New York.

25 MR. NOBLE: No, Your Honor. We responded to their

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1 motion to dismiss because their motion to dismiss wanted to  
2 have the case dismissed, and not brought up to New York.

3 In their motion to dismiss, they pled in the  
4 alternative that they would agree to go to New York.

5 We believe that venue is proper down here based on  
6 both specific and general jurisdiction. And we believe that  
7 it should be tried down here.

8 However, instead of dismissing the case in its  
9 entirety, if this Court believes that jurisdiction and venue  
10 is not proper down here, we are willing to move up to New  
11 York. But that is in the alternative.

12 THE COURT: Okay. As I see it, and I looked at the  
13 complaint, the complaint is very threadbare on the allegations  
14 of jurisdiction. The plaintiff has the responsibility to  
15 plead a prima facie case of jurisdiction.

16 The defendant has conceded that the facts that you --  
17 for the purposes of the motion, the facts that you have set  
18 out in your response to the motion to dismiss, that those  
19 constitute its, quote, "activities in the state of Florida."

20 And basically its position is, in reading the cases,  
21 particularly Red Wing Shoe Company, Breckenridge  
22 Pharmaceutical, and Avocent Huntsville Corp., that it would  
23 appear that just -- taking all of those facts, and accepting  
24 them as true for the purposes of this proceeding, and  
25 considering everything in the light most favorable to the

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1 plaintiff, I just don't have enough for either specific or  
2 general jurisdiction here.

3 MR. NOBLE: Well, Your Honor, we also had a -- have a  
4 pending motion to have a limited discovery, because we are  
5 very limited in the knowledge that we have of what activities  
6 that the defendant has down here.

7 We basically relied on their websites. We relied on  
8 my client's knowledge of the business. And we relied on what  
9 the defendant stated in their affidavit.

10 So, you know, we had very limited knowledge. But  
11 based on that knowledge, I think we presented a prima facie  
12 case. But even if we did not, I think case law gives us the  
13 opportunity to at least do -- perform limited discovery to see  
14 what type of business contacts they have down here.

15 Their company was just formed in July, 2013. They do  
16 have a lot of business down here that we're aware of, but  
17 we're not aware of all of their activities.

18 THE COURT: Okay. I -- I'm checking my -- trying to  
19 get onto my computer.

20 Did you file a reply to Bounce's Docket Entry 23?

21 MR. NOBLE: What was their 23rd entry?

22 THE COURT: It is Bounce's reply in further support  
23 of its motion to dismiss.

24 MR. NOBLE: No, we did not.

25 THE COURT: Okay. So...

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1 MR. NOBLE: We filed an affidavit on behalf of the  
2 president of RETYP that states the facts that he is aware of  
3 that would provide jurisdiction. Then, we've also filed the  
4 motion for discovery, limited discovery.

5 THE COURT: Okay. But as you see, when the motion  
6 for the limited discovery, what Bounce did, on page 4 of  
7 Docket Entry 23, Footnote 3, is that it assumes for the  
8 purposes of the motion to dismiss that all of the facts  
9 presented in your response are true.

10 MR. NOBLE: Right. But that still -- we are still  
11 limited to only the knowledge that we could glean from their  
12 website.

13 There are certain -- certainly information that we  
14 would not know of, therefore we could not have put into either  
15 our response motion or, more importantly, our affidavit. So  
16 --

17 THE COURT: Well, what type of information would you  
18 seek during jurisdiction? Usually when you have a plan -- "I  
19 need to take jurisdictional discovery, here is my  
20 jurisdictional plan and here's what I think that I can elicit  
21 to establish jurisdiction, and I need this amount of time."

22 MR. NOBLE: Well, for example --

23 THE COURT: No. That's usually what I need for the  
24 plaintiff to do, and all judges do, so you keep the case  
25 moving.

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