SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 06/08/2017 TIME: 01:30:00 PM DEPT: C24

JUDICIAL OFFICER PRESIDING: Randall J. Sherman
CLERK: Jason Phu
REPORTER/ERM: (ACRPT) Jessica Davis CSR# 12646
BAILIFF/COURT ATTENDANT: Joseph Villegas

CASE NO: **30-2017-00910991-CU-MC-CJC** CASE INIT.DATE: 03/24/2017
CASE TITLE: **NNN Capital Fund I, LLC vs. Mikles**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

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EVENT ID/DOCUMENT ID: 72586826

EVENT TYPE: Motion to Quash Service of Summons
MOVING PARTY: Cottonwood Capital Management, Inc., Cottonwood Residential, O.P., LP, Daniel Shaeffer
CAUSAL DOCUMENT/DATE FILED: Motion to Quash Service of Summons, 05/09/2017

APPEARANCES
Ken Catanzarite, from Catanzarite Law Corporation, present for Plaintiff(s).
Stephen F. McAndrew, from Kaufman Miller & McAndrew, present for Defendant(s) telephonically.
Adam T Kent, from Adam T Kent, present for Defendant(s).
Henry Oh, from Shumener, Odson & Oh LLP, present for Defendant(s).

Tentative Ruling posted on the Internet .

The Court hears oral argument.

The Court confirms the tentative ruling as follows:

The motion of specially appearing defendants Cottonwood Residential O.P., LP ("CROP"), Cottonwood Capital Management, Inc. ("CCMI") and Daniel Shaeffer to quash service of summons is granted. Defendants' objections to portions of the declarations of Tye Wynfield and John Cadwell are sustained on hearsay grounds, with the exception of the objection to the FINRA Report. The objection to page 4, lines 15-22 is also sustained. The remaining objections to both declarations are overruled. Defendants' objections to the Declaration of Kenneth Catanzarite are all overruled. Plaintiffs' evidentiary objections are all overruled. Defendants' Request for Judicial Notice is granted.

CROP is a Delaware limited partnership and CCMI is a Delaware corporation, each with its principal place of business in Utah. Neither is licensed to do business in California nor has any agent for service of process, telephone listings, mailing addresses, bank accounts or other tangible property in California. Shaeffer lives and works in Utah. Thus, there is no basis for California to assert general jurisdiction over defendants. Daimler AG v. Bauman (2014) 134 S. Ct. 746, 760-62; Goodyear Dunlop Tires Operations, S.A. v. Brown (2011) 564 U.S. 915, 919.

EXHIBIT
T-102

Plaintiffs also have not met their burden of proof to support specific jurisdiction. Plaintiffs fail to show that defendants have purposefully availed themselves of the benefits of conducting business in California, or that defendants' contacts with California have a substantial connection to plaintiffs' claims. Defendants' alleged misrepresentations were made during a telephone call plaintiffs initiated. Plaintiffs' unilateral activity cannot satisfy the requirement of defendants' contact with the forum state. It is essential that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. Kulko v. Superior Court (1978) 436 U.S. 84, 93–94.

Further, defendants' alleged management of the properties at issue occurred in South Carolina and Georgia, and defendants' purchase of memberships in the properties' borrowers, Delaware entities, occurred in Utah. The fact that Capital Property Management II, LLC, a subsidiary of CROP, acted as manager of the two properties further supports defendants' arguments, since neither ownership nor control of a subsidiary corporation by a foreign parent, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business. Sonora Diamond Corp. v. Superior Court (2000) 83 Cal. App. 4th 523, 540.

Defendants' alleged California activities also are not sufficient to support specific jurisdiction, since those activities are not related to plaintiffs' claims in this litigation.

The Court declines to grant plaintiffs' request for additional time to conduct discovery into defendants' contacts with California. Plaintiffs have not shown that discovery is likely to lead to the production of evidence of facts establishing jurisdiction, or how defendants' employee compensation, employment policies, board meetings, minutes or compensation of board members will lead to the production of evidence establishing jurisdiction. In re Automobile Antitrust Cases I and II (2005) 135 Cal. App. 4th 100. Also, plaintiffs could not have been surprised by defendants' motion to quash given the litigation history between these parties. If plaintiffs believed that discovery could unearth additional evidence of defendants' California contacts, they should have served discovery sooner.

Moving parties are ordered to give notice of the ruling.