

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ZIM INTEGRATED SHIPPING SERVICES
LTD.,

Plaintiff,
- against -

BELLWETHER DESIGN TECHNOLOGIES
LLC,

Defendant
and Third
Party
Plaintiff,
- against -

PEI PREMIER EXPEDITERS INC,

Third Party
Defendant
and Fourth
Party
Plaintiff.
- against -

A&A TRANSFER, INC.,

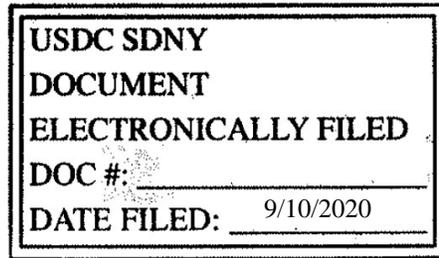
Fourth Party
Defendant.

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Appearances:

Garth S. Wolfson
Mahoney & Keane, LLP
New York, NY
Counsel for Plaintiff

Richard Leigh Furman
Furman Law Offices, LLC
Woodbury, NY
Counsel for Defendant and Third Party Plaintiff



19-cv-3444 (VSB)

OPINION & ORDER

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Barry N Gutterman & Associates, P.C
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VERNON S. BRODERICK, United States District Judge:

Before me is Fourth Party Defendant A&A Transfer, Inc.’s (“A&A” or “Fourth Party Defendant”) motion to dismiss Third Party Defendant and Fourth Party Plaintiff PEI Premier Expeditors Inc.’s (“PEI”) First Amended Fourth Party Complaint, or in the alternative to transfer the case. (Docs. 51, 52.) Because PEI has failed to properly allege that personal jurisdiction exists over A&A, A&A’s motion to dismiss the First Amended Fourth Party Complaint is GRANTED.

I. Factual Background¹

On or about January 20, 2017, Zim Integrated Shipping Services Ltd. (“Zim” or “Plaintiff”), as a carrier, and Defendant Bellwether Design Technologies, LLC (“Bellwether” or “Defendant”), as consignee and merchant, entered into a Bill of Lading² for the ocean carriage of

¹ This factual background is derived from the allegations in PEI’s First Amended Fourth Party Complaint. (Doc. 47 (the “FAFPC”).) I assume the allegations set forth in the FAFPC to be true for purposes of this motion. *See Kassner v. 2nd Ave. Delicatessen Inc.*, 496 F.3d 229, 237 (2d Cir. 2007); *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002) (A complaint is “deemed to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference.”); Fed. R. Civ. P. 10(c) (“A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.”) At times, I also refer to allegations in the other complaints filed in this action, and exhibits appended thereto. However, my references to allegations should not be construed as a finding as to their veracity, and I make no such findings in this Opinion & Order. In addition, in deciding whether there is personal jurisdiction over A&A, I rely on the affidavits and exhibits submitted by the parties in connection with A&A’s motion to dismiss. *See DiStefano v. Carozzi N. Am., Inc.*, 286 F.3d 81, 84 (2d Cir. 2001) (a court may rely on pleadings and affidavits at the pleadings stage to determine if plaintiff has made a prima facie showing of personal jurisdiction).

² “Bill of Lading” refers to the Bill of Lading between Plaintiff Zim and Defendant Bellwether, appended as Exhibit 2 to the Declaration of Garth Wolfson in opposition to A&A’s motion to dismiss. (Doc. 44-2.)

a container-load of laminated glass from Barcelona, Spain to Norfolk, Virginia. (Zim Compl. ¶ 7.)³ Zim is a corporation organized under the laws of Israel, with its principal place of business in Haifa, Israel. (Zim Compl. ¶ 2.) Bellwether is a Limited Liability Company organized under the laws of the Commonwealth of Massachusetts, with its principal place of business in Biddeford, Maine. (Bellwether Compl. ¶ 1.)⁴ The Bill of Lading’s “Law and Jurisdiction” clause, however, selected the United States District Court for the Southern District of New York as the appropriate forum for any claims and/or disputes arising under the Bill of Lading. (Bill of Lading § 22.2.)

In or about January 2017, Bellwether engaged PEI—a Georgia corporation with its principal place of business in Stockbridge, Georgia—to provide and arrange transport and logistical services for the movement of the Zim ocean container from its temporary location at the port of Norfolk, Virginia, to Bellwether’s customer’s construction job site located in Washington, D.C. (Bellwether Compl. ¶ 5.) PEI then arranged for an authorized motor carrier to deliver the cargo to A&A—a Virginia corporation with its principal place of business in Chantilly, Virginia—who was to remove the cargo from the shipping container. (FAFPC ¶¶ 10–12.) Once the container was delivered to A&A, A&A indicated that it was unable to remove the cargo from the container, and insisted that the container be left at its location in its possession. (*Id.* ¶ 12–13.) After inquiries regarding the location of the cargo, A&A eventually represented that it could not find the container, and refused repeated demands to relinquish possession of the container until first being paid. (*Id.* ¶ 15–16.)

³ “Zim Compl.” refers to the first party complaint in this action. (Doc. 1.)

⁴ “Bellwether Compl.” refers to the third party complaint in this action. (Doc. 20.)

II. Procedural History

Zim filed the Complaint in this action on April 18, 2019. (Doc. 1.) Bellwether then filed a Third Party Complaint impleading PEI on October 17, 2019. (Doc. 20.) On December 5, 2019, PEI filed a Fourth Party Complaint impleading A&A, (Doc. 35), and A&A moved to dismiss the Fourth Party Complaint on January 6, 2020, (Docs. 41, 42). Zim opposed A&A's motion on January 8, 2020. (Docs. 44, 45.) On January 23, 2020, PEI filed a memorandum of law in opposition to A&A's motion, (Doc. 48), and also filed the First Amended Fourth Party Complaint against A&A, (Doc. 47), which mooted A&A's motion to dismiss, (Doc. 50).

On February 6, 2020, A&A filed the instant motion, supported by a memorandum of law and the Supplemental Declaration of Maroon Ohanian ("Ohanian Decl."). (Docs. 51, 52.) On the same day, Zim filed a memorandum of law in opposition to A&A's motion, incorporating its previous opposition at Documents 44 and 45. (Doc. 53.)⁵ On February 10, 2020, Defendant Bellwether filed the Declaration of Richard Furman, which joined Zim's opposition to A&A's motion. (Doc. 54 ("Furman Decl.")). On February 20, 2020, PEI filed its memorandum of law in opposition to A&A's motion, incorporating arguments previously made at Document 48, and making new arguments. (Doc. 57.) This motion became fully briefed on February 27, 2020, when A&A filed its reply memorandum of law. (Doc. 58.)

III. Legal Standard – Personal Jurisdiction

"[A] federal court generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction) and the parties (personal jurisdiction)." *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S.

⁵ As stated in its papers, "Zim takes no position with regard to A&A's motion insofar as it seeks dismissal or transfer on grounds of lack of personal jurisdiction, forum non conveniens, or improper venue only of the fourth-party action." (Doc. 45, at 7.)

422, 430–31 (2007) (citing *Steel Co. v. Citizens For A Better Env't*, 523 U.S. 83, 93–102 (1998)). On a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), the “plaintiff bears the burden of demonstrating personal jurisdiction over a person or entity against whom it seeks to bring suit.” *Penguin Grp. (USA) Inc. v. Am. Buddha*, 609 F.3d 30, 34 (2d Cir. 2010) (citing *In re Magnetic Audiotape Antitrust Litig.*, 334 F.3d 204, 206 (2d Cir. 2003) (per curiam)); see also *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 171 F.3d 779, 784 (2d Cir. 1999) (“When responding to a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that the court has jurisdiction over the defendant.”). To defeat a jurisdiction-testing motion, the plaintiff’s burden of proof “varies depending on the procedural posture of the litigation.” *Dorchester Fin. Sec., Inc. v. Banco BRJ, S.A.*, 722 F.3d 81, 84 (2d Cir. 2013) (quoting *Ball v. Metallurgie Hoboken–Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990)). At the pleading stage, a plaintiff need only make a prima facie showing that jurisdiction exists, and that showing may be established solely by allegations. See *id.* at 84–85; see also *Eades v. Kennedy, PC Law Offices*, 799 F.3d 161, 167–68 (2d Cir. 2015) (“In order to survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must make a prima facie showing that jurisdiction exists.” (quoting *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 167 (2d Cir. 2013))).

Courts may rely on materials outside the pleadings in considering a motion to dismiss for lack of personal jurisdiction. See *DiStefano v. Carozzi N. Am., Inc.*, 286 F.3d 81, 84 (2d Cir. 2001). If the court considers pleadings and affidavits submitted by the parties, the plaintiff’s prima facie showing “must include an averment of facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the defendant.” *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013) (quoting *Chloé v. Queen Bee of Beverly Hills, LLC*,

616 F.3d 158, 163 (2d Cir. 2010)). “The allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant’s affidavits.” *MacDermid, Inc. v. Deiter*, 702 F.3d 725, 727 (2d Cir. 2012) (quoting *Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 989 F.2d 572, 580 (2d Cir. 1993)). If the parties present conflicting affidavits, however, “all factual disputes are resolved in the plaintiff’s favor, and the plaintiff’s prima facie showing is sufficient notwithstanding the contrary presentation by the moving party.” *Seetransport Wiking*, 989 F.2d at 580 (citation omitted).

Under the law of both the Second Circuit and the Federal Circuit, in diversity cases “involving a non-consenting, out-of-state defendant, [courts] must ask first whether the defendant is subject to the forum state’s long-arm statute, and second whether the exercise of personal jurisdiction would comport with due process.” *Arcadia Biosciences, Inc. v. Vilmorin & Cie*, 356 F. Supp. 3d 379, 389 (S.D.N.Y. 2019) (citing *Hildebrand v. Steck Mfg. Co.*, 279 F.3d 1351, 1354 (Fed. Cir. 2002)). The due process test involves a two-part inquiry: (i) the minimum contacts test, and (ii) the reasonableness inquiry.

IV. Discussion

A&A moves to dismiss the First Amended Fourth Party Complaint for lack of personal jurisdiction under Rule 12(b)(2). In opposition, PEI posits three arguments in support of personal jurisdiction over A&A: (1) that A&A is subject to general personal jurisdiction in New York pursuant to N.Y. C.P.L.R. § 301, based on A&A’s appointing an agent for service of process in New York, and A&A’s business conduct in New York, (Doc. 48, at 3–4); (2) that A&A’s business contacts in New York make it subject to specific personal jurisdiction pursuant to N.Y. C.P.L.R. § 302(a)(1), (Doc. 57, at 4–5); and (3) that the New York forum selection

clause in the operative Bill of Lading establishes personal jurisdiction, (Doc. 57, at 2). Each of these arguments fails to establish personal jurisdiction.

PEI's First Amended Fourth Party Complaint makes only the following allegations in support of asserting personal jurisdiction over A&A:

This Court has personal jurisdiction over A&A Transfer because, upon information or belief, A&A Transfer maintains at least minimum contacts with the State of New York through its work as an interstate motor carrier by using the highways of New York, and as industrial rigger by conducting rigging operations in New York. For example, and without limitation, A&A Transfer transported an exhibit for the National Museum of the United States Marine Corps to New York City and set up the exhibit at the Federal Hall. A&A Transfer has also done business with New York-based companies, such as Imperium Insurance company and Time Warner Cable and has an agent for service of process in New York for the transactions conducted in the State.

(FAFPC ¶ 3.) In response, A&A avers, through a declaration submitted by its general manager, that “[a]t all relevant times to the events at issue in this dispute, none of A&A’s employees resided in New York or worked from New York-based offices,” that “A&A has not maintained any offices, telephone directory listings, or mailing addresses in New York,” that “A&A was not registered to do business in New York nor is it currently registered,” and that, “[a]t all relevant times to the events at issue in this dispute, A&A did not conduct any business in New York nor does it currently conduct any business in New York.” (Ohanian Decl. ¶¶ 4–8.) However, A&A admits that it did conduct two shipments unrelated to this dispute in New York in 2016 and 2019, but has not otherwise transacted any business in New York since 2015, and that its contact with New York prior to 2015 was “isolated in nature . . . and merely consisted of shipments to New York addresses.” (*Id.* ¶ 8.)

A. N.Y. C.P.L.R. § 301

“General personal jurisdiction in New York is governed by N.Y. C.P.L.R. § 301, which allows a court to exercise ‘such jurisdiction over persons, property, or status as might have been

exercised heretofore.” *Chufen Chen v. Dunkin’ Brands, Inc.*, 954 F.3d 492, 498 (2d Cir. 2020) (quoting N.Y. C.P.L.R. § 301). Under Section 301, a court may exercise personal jurisdiction over any nondomiciliary defendant that is “engaged in such a continuous and systematic course of doing business [in New York] as to warrant a finding of its presence in this jurisdiction.” *Landoil Res. Corp. v. Alexander & Alexander Servs., Inc.*, 918 F.2d 1039, 1043 (2d Cir. 1990) (internal quotation marks and citations omitted). To comport with due process, the defendant’s contacts with New York must be “so ‘continuous and systematic,’ judged against [its] national and global activities, that it is ‘essentially at home’ in th[e] state.” *Gucci Am., Inc. v. Li*, 768 F.3d 122, 135 (2d Cir. 2014) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014)). Thus, “[a]side from ‘an exceptional case,’ . . . a corporation is at home . . . only in a state that is the company’s formal place of incorporation or its principal place of business.” *Id.* (quoting *Daimler*, 571 U.S. at 139 & n.19).

Based on PEI’s allegations, A&A is not subject to general jurisdiction in New York State. PEI alleges that A&A is a Virginia corporation with a principal place of business in Chantilly, Virginia. (FAFPC ¶ 1.) Additionally, the contacts PEI alleges that A&A has had with New York are too sparse and sporadic—amounting to only a few contacts over the course of many years—to establish contacts so “continuous and systematic” as to subject A&A to general personal jurisdiction. *Cf. Herod’s Stone Design v. Mediterranean Shipping Co. S.A.*, 434 F. Supp. 3d 142, 153–54 (S.D.N.Y. 2020) (contracting to deliver goods to New York sufficient for specific personal jurisdiction in a case arising from the agreement but insufficient to demonstrate general personal jurisdiction). Finally, PEI’s argument that A&A is subject to general personal jurisdiction because it has an agent for service of process in New York is contrary to the law since the Second Circuit has held “that a foreign corporation does not consent to general personal

jurisdiction in New York by merely registering to do business in the state and designating an in-state agent for service of process.” *Chufen Chen*, 954 F.3d at 499. Accordingly, PEI’s allegations are insufficient to establish general personal jurisdiction under N.Y. C.P.L.R. § 301.

B. N.Y. C.P.L.R. § 302(a)(1)

“To determine the existence of jurisdiction under section 302(a)(1), a court must decide (1) whether the defendant transacts any business in New York and, if so, (2) whether th[e] cause of action arises from such a business transaction.” *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 246 (2d Cir. 2007) (quotations and alteration omitted). In construing section 302(a)(1)’s “transacts business” language, “[t]he overriding criterion’ necessary to establish a transaction of business is ‘some act by which the defendant purposefully avails itself of the privilege of conducting activities within New York.’” *Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501, 508 (2007) (quoting *McKee Elec. Co. v. Rauland–Borg Corp.*, 20 N.Y.2d 377, 382 (1967)). “Purposeful activities are those with which a defendant, through volitional acts, ‘avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” *Fischbarg v. Doucet*, 9 N.Y.3d 375, 380 (2007) (quoting *McKee*, 20 N.Y.2d at 382). Such acts may be contrasted with “random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person.” *Burger King Corp.*, 471 U.S. at 475 (internal quotation marks and citations omitted). “A connection that is merely coincidental is insufficient to support jurisdiction.” *Best Van Lines, Inc.*, 490 F.3d at 249 (internal quotation marks omitted). Further, “[w]here a defendant’s interactions with New York residents is not distinguishable from [the defendant’s] interaction with those located in any other jurisdiction, the allegations are insufficient because they lack the traditional indicia of purposeful availment.” *Royalty Network Inc. v. Dishant.com, LLC*, 638 F. Supp. 2d 410, 421 (S.D.N.Y. 2009) (internal quotation marks omitted). “While the Court must look to the ‘totality of the circumstances’ to

determine whether this standard is met, even a single New York business transaction may be sufficient, provided the cause of action arises ‘out of the subject matter of the transaction.’” *Warner Bros. Entm’t Inc. v. Ideal World Direct*, 516 F. Supp. 2d 261, 266 (S.D.N.Y. 2007) (quoting *Viacom Int’l, Inc. v. Melvin Simon Prods.*, 774 F. Supp. 858, 862 (S.D.N.Y. 1991)); *see also Realuyo v. Abrille*, 93 F. App’x 297, 299 (2d Cir. 2004) (summary order) (“As a specific jurisdiction statute, section 302(a)(1) authorizes New York courts to exercise personal jurisdiction over a foreign defendant only if the cause of action asserted against it is one arising from the transaction of such business.” (internal quotation marks omitted)); *Citigroup Inc. v. City Holding Co.*, 97 F. Supp. 2d 549, 564 (S.D.N.Y. 2000) (“Section 302(a)(1)] requires a strong nexus between the plaintiff’s cause of action and the defendant’s in state conduct.”) (internal quotation marks omitted). “New York courts have held that a claim arises from a particular transaction when there is some articulable nexus between the business transacted and the cause of action sued upon, or when there is a substantial relationship between the transaction and the claim asserted.” *Best Van Lines, Inc.*, 490 F.3d at 249 (internal quotation marks omitted).

Although PEI identifies certain contacts between A&A and New York, including previous shipments that A&A delivered in New York, none of these contacts gives rise to PEI’s cause of action. Indeed, none of the contacts PEI identifies has anything to do with this dispute other than generally involving A&A’s business, which involves shipping on behalf of clients. However, conducting business on behalf of other entities, such as the National Museum of the United States Marine Corps, Imperium Insurance company, and Time Warner Cable, does not suffice to establish specific personal jurisdiction in this case, which requires a connection between A&A’s New York transactions and PEI’s claims. Accordingly, because PEI has failed to demonstrate the required nexus between A&A’s New York activities and its cause of action,

PEI has failed to properly plead specific personal jurisdiction under section 302(a)(1).

Because I find that New York's long-arm statutes do not subject A&A to personal jurisdiction, I need not and do not decide whether exercising personal jurisdiction over A&A would be consistent with the due process test.

C. *Consent & the Bill of Lading*

A court may also exercise personal jurisdiction over a defendant who has consented to jurisdiction, *see Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 625 (2d Cir. 2016), and, “[p]arties can consent to personal jurisdiction through forum-selection clauses in contracts,” *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 103 (2d Cir. 2006). “While the Second Circuit has not yet weighed in on this question, *see Magi XXI, Inc. v. Stato della Città del Vaticano*, 714 F.3d 714, 723 n.10 (2d Cir. 2013), courts in this Circuit have held that parties to a contract that includes a forum-selection clause may invoke that clause to establish personal jurisdiction over a defendant that is not party to the contract but that is closely aligned with a party.” *Ramiro Aviles v. S & P Glob., Inc.*, 380 F. Supp. 3d 221, 258 (S.D.N.Y. 2019). However, the “constitutional requirements [of personal jurisdiction] caution against a liberal application of forum selection clauses to non-signatory defendants,” and such application is inappropriate where enforcement is not “foreseeable by virtue of the relationship between the signatory and the [non-signatory] sought to be bound.” *Arcadia Biosciences, Inc.*, 356 F. Supp. 3d at 395 (quoting *Metro-Goldwyn-Mayer Studios Inc. v. Canal & Distribution S.A.S.*, No. 07 Civ. 2918 (DAB), 2010 WL 537583, at *5 (S.D.N.Y. Feb. 9, 2010)); *see also Marano Enterprises of Kansas v. Z-Teca Restaurants, L.P.*, 254 F.3d 753, 757 (8th Cir. 2001) (holding that defendants could enforce a forum selection clause against a non-signatory plaintiff who was “closely related to the disputes arising out of the agreements,” meaning it was “foreseeable that [the non-signatory would] be bound” to the agreements); *Lipcon v. Underwriters at Lloyd’s, London*, 148 F.3d 1285, 1299

(11th Cir. 1998) (“In order to bind a non-party to a forum selection clause, the party must be ‘closely related’ to the dispute such that it becomes ‘foreseeable’ that it will be bound.” (quoting *Hugel v. Corporation of Lloyd’s*, 999 F.2d 206, 209 (7th Cir. 1993) (quoting *Manetti–Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514 n. 5 (9th Cir. 1988)))). “[T]he enforcement of the forum selection clause against the non-party must have been foreseeable prior to suit, which implies that the non-signatory must have been otherwise involved in the transaction in some manner.” *Recurrent Capital Bridge Fund I, LLC v. ISR Sys. & Sensors Corp.*, 875 F. Supp. 2d 297, 307–08 (S.D.N.Y. 2012) (wherein an officer and shareholder of a closely held corporation was “closely related” to the corporation such that he could be held to a subscription agreement’s forum selection clause); *see also LaRoss Partners, LLC v. Contact 911 Inc.*, 874 F. Supp. 2d 147, 156–57 (E.D.N.Y. 2012) (non-signatory to a contract estopped from repudiating forum selection clause for purposes of personal jurisdiction when the non-signatory “directly benefitted from the Agreement”); *In re Refco Inc., Sec. Litig.*, No. 07-MDL 1902(JSR), 2009 WL 5548666, at *11 (S.D.N.Y. Nov. 16, 2009) (concluding that a non-signatory “was closely related to the dispute such that it was foreseeable that [the non-signatory] would be bound by the forum selection clauses,” because the party was “intertwined” with a signatory “and was responsible for carrying out their operations, including . . . the execution of relevant documents”).

However, in an admiralty case such as this one, “it is well established that a forum selection clause in a contract between a shipper and a carrier pursuant to [the Carriage of Goods by Sea Act] does not operate as consent to personal jurisdiction for subcontractors” *Herod’s Stone Design*, 434 F. Supp. 3d at 153 n.7 (citing *Mar. Ins. Co. v. M/V “Sea Harmony”*, No. 97 Civ. 3818, 1998 WL 214777, at *2 (S.D.N.Y. May 1, 1998) (declining to enforce forum selection clause in maritime bill of lading against subcontractor on subcontractor’s motion to

dismiss for lack of personal jurisdiction)); *see also Fed. Ins. Co. v. M/V CMA CGM MARLIN*, No. 09 CIV. 1409 (GBD), 2010 WL 727217, at *2 (S.D.N.Y. Feb. 23, 2010) (refusing to enforce Bill of Lading’s forum selection clause against a non-signatory in part because there was “no evidence that the forum selection clause . . . was reasonably communicated to [the non-party]”). In this case, it is undisputed that neither PEI nor A&A is a party to the Bill of Lading, and A&A was contracted by PEI, not by Zim nor Bellwether—the actual parties to the Bill of Lading. PEI has not even made a showing that A&A was aware of the Bill of Lading’s forum selection clause, or even that it attempted to communicate the Bill of Lading’s forum selection clause to A&A prior to contracting A&A’s services. “[T]he foreseeability that is critical to due process analysis . . . is that the defendant’s conduct . . . [is] such that he should reasonably anticipate being haled into court” in the relevant forum, but PEI has alleged no facts suggesting that A&A’s conduct would foreseeably subject it to the Bill of Lading’s forum selection clause. *Burger King Corp.*, 471 U.S. at 474 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Therefore, the forum selection clause in the Bill of Lading does not subject A&A to personal jurisdiction.

Accordingly, I find that I cannot exercise personal jurisdiction over A&A, and grant A&A’s motion to dismiss the First Amended Fourth Party Complaint pursuant to Rule 12(b)(2). Additionally, I exercise my discretion to deny PEI’s request for jurisdictional discovery regarding personal jurisdiction over A&A, as PEI has not made the requisite showing that such discovery is warranted. Although PEI argues that A&A admitted to conducting two shipments to New York in 2016 and 2019, and that A&A “also has not responded to the facts PEI set forth . . . in which A&A transported for the National Museum of the United States Marine Corps an Exhibit at Federal Hall in New York City, and also conducted business with New York based

companies such as Imperium Insurance Company and Time Warner Cable,” (Doc. 57, at 4), as discussed above, even taking PEI’s allegations as true, these contacts do not suffice to establish a prima facie case of personal jurisdiction. *See Haber v. United States*, 823 F.3d 746, 753 (2d Cir. 2016) (noting that jurisdictional discovery is inappropriate where requesting party has not shown how the requested discovery would produce facts necessary to withstand dismissal); *see also Best Van Lines, Inc.*, 490 F.3d at 255 (“[T]he district court acted well within its discretion in declining to permit discovery because the plaintiff had not made out a prima facie case for jurisdiction.”). Because I find that I cannot exercise personal jurisdiction over A&A, and therefore grant A&A’s motion to dismiss, I do not consider whether this case should be transferred to the Eastern District of Virginia.

V. Conclusion

For the foregoing reasons, A&A’s motion to dismiss, (Docs. 51, 52), Third Party Defendant and Fourth Party Plaintiff PEI’s First Amended Fourth Party Complaint is GRANTED. The Clerk of Court is directed to terminate the open motion at Document 51, dismiss the First Amended Fourth Party Complaint in this case at Document 47, and terminate Fourth Party Defendant A&A Transfer, Inc. The remaining parties shall file a status update within thirty days of this Opinion & Order.

SO ORDERED.

Dated: September 10, 2020
New York, New York


Vernon S. Broderick
United States District Judge