

Global Bank Corp. v Intercom UK, Ltd.

2008 NY Slip Op 31868(U)

June 27, 2008

Supreme Court, New York County

Docket Number: 0602534/2007

Judge: Marilyn Shafer

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

PRESENT: HON. MARILYN SHAFER, JSC

PART 8

Index Number : 602534/2007

GLOBAL BANK CORP.

vs

INTERCOM UK, LTD.

Sequence Number : 001

DISMISS LACK OF PROSECUTION

INDEX NO. _____

NOTION DATE _____

NOTION SEQ. NO. _____

NOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided pursuant to attached

FILED

JUL - 2 2008

NEW YORK COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 6/27/08

MARILYN SHAFER
J.S.C.

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: I.A.S. PART 8

-----X
 GLOBAL BANK CORPORATION,

Plaintiff,

-against-

Index No. 602534/07
DECISION AND ORDER

INTERCOM UK, LTD., INTERCOM, LTD.,
 INTERCOM UK, GEORGE FRANK,
 ALVERA SILVA SANTISTEBAN FERRARO
 and VEGA ROYO-VILLANOVA,

Defendants.

-----X

MARILYN SHAFER, J:

Defendants move, pursuant to CPLR 3211 (a) (8), to dismiss the action for lack of in personam jurisdiction over the defendants.

Plaintiff, Global Bank Corporation (Global), brings the within action to recover damages for breach of contract. Global is a commercial bank located in the City and Country of Panama. Defendant Intercom UK, Ltd. (Intercom) is an international media communications agency based in London, England. In July 2006, Global and Intercom negotiated and entered into a written contract in Panama (the Contract), which called for Intercom to create and publish a special advertising supplement which would promote Global and the expanding commerce of Panama. The supplement was to be inserted in two publications, The International Herald Tribune and the New York Times Electronic Edition. Global alleges that it paid Intercom \$46,500.00 as provided under the terms of the Contract, but that Intercom failed to publish the supplements by December 26, 2006 as it had promised. Global further alleges that four months later, on April 12, 2007, it had its attorneys notify defendants that they were in breach of the Contract and that they were to

return the \$46,500.00. Global alleges that it was not until after defendants received this communication that the supplements were inserted into the two publications.

Defendants move to dismiss on the grounds that neither Intercom, nor any of the individuals named as defendants, has any meaningful contacts within the State of New York. Intercom states that it is not authorized to do business in the State of New York, it does not have a place of business within the state, and neither it, nor any of the individual defendants, own, use or possess real property or any other assets within the state. The Contract, which is the subject of this action, was negotiated in Panama City among representatives for Intercom and Global. Intercom asserts that it performed all acts necessary to create and procure publication of the advertisement at its offices in London or at the International Herald Tribune's offices in Paris.

In opposition to the motion, Global asserts that since the terms of the Contract provide for defendants to provide media services in the International Herald Tribune and the New York Times, both of which are located in New York, defendants are subject to jurisdiction within New York.

CPLR 302 (a) (1) provides, in part, that: “[a]s to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . contracts anywhere to supply goods or services in the state.” “By this ‘single act statute’ . . . proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant’s activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted” (Deutsche Bank Securities, Inc. v Montana Bd. of Investments, 7 NY3d 65, 71 [2006], quoting Kreutter v McFadden Oil Corp., 71 NY2d 460, 467

[1988]; see also Courtroom Television Network v Focus Media, Inc., 264 AD2d 351 [1st Dept 1999]).

In Courtroom Television Network, the First Department held that the defendant, a non-domiciliary advertising firm, was subject to New York jurisdiction because it had created and placed advertisements with a New York-based television network, which were to be broadcast from New York. The Court found that the defendant was more than a passive buyer of a New York product or service and that it had played a crucial role in creating the substance of the transaction, amounting to doing business in New York.

Here, Intercom acknowledges that it created the advertising supplement, and that it was placed in the New York Times Electronic Edition, which is a digital publication of the New York Times, a New York-based newspaper. However, the supplement was not placed in the New York Times itself and thereby published in New York. Rather the digital edition is available everywhere there is computer access. Further, even if there was any indication that Intercom had contact with a New York based entity in placing the advertisement, and there is none, there are insufficient grounds upon which to base jurisdiction. Unlike the facts in Courtroom Television Network, here there is no purposeful connection with the State of New York. Jurisdiction cannot be maintained over the defendant Intercom merely because it purchased advertising space from an entity whose corporate headquarters is in New York.

As to the individual defendants, they assert that none of them has been properly served, and that none acted in his or her individual capacities in New York, whether in connection with the Contract, or otherwise. Global has not challenged these assertions. Accordingly, the court does not have jurisdiction over these defendants.


Based upon the foregoing, it is

ORDERED that defendants' motion to dismiss the action as to each of the defendants for lack of jurisdiction is granted and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: June 27, 2008

ENTER:


Marilyn Silver
J.S.C.

J.S.C.

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COUNTY CLERK'S OFFICE