

Image Quest Worldwide, Inc. v KLM Group, Inc.

2008 NY Slip Op 32128(U)

July 28, 2008

Supreme Court, New York County

Docket Number: 0114594/2007

Judge: Barbara R. Kapnick

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

PRESENT: **HON. BARBARA R. KAPNICK**

PART 12

Index Number : 114594/2007
IMAGE QUEST WORLDWIDE, INC.
 VS.
KLM GROUP, INC.
 SEQUENCE NUMBER : 001
 DISMISS ACTION

INDEX NO. 114594/07
 MOTION DATE _____
 MOTION SEQ. NO. 001
 MOTION CAL. NO. _____

1 this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED
 JUL 30 2008
 COUNTY CLERK'S OFFICE
 NEW YORK

Dated: 7/28/08

[Signature]

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
 Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----X
IMAGE QUEST WORLDWIDE, INC.,

Plaintiff,

- against -

KLM GROUP, INC.,

Defendant.

-----X
BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 114594/07
Motion Seq. No. 001

FILED
JUL 30 2008
COUNTY CLERK'S OFFICE
NEW YORK

This action arises out of a service agreement by which plaintiff Image Quest Worldwide, Inc. ("Image Quest"), Nevada Corporation, agreed to provide credit card marketing services to Bank One Delaware N.A. ("Bank One") to promote the bank's credit card products to potential customers.

JPMorgan Chase Bank, N.A. ("Chase") subsequently purchased Bank One's credit card operations, and Chase assumed the terms and conditions of the agreement.

Plaintiff claims that Chase misled it into sharing its confidential business information with Chase who then shared this information with defendant KLM Group, Inc. ("KLM") with whom plaintiff claims Chase 'was surreptitiously negotiating to replace Image Quest'.

Plaintiff alleges that KLM then 'began recruiting Image Quest's employees at least ten days before Chase terminated Image Quest'. Plaintiff further claims that Chase's termination caused it to lose virtually its entire workforce to KLM and deprived it of the opportunity to replace the lost Chase business.

Plaintiff's Complaint seeks to recover compensatory and punitive damages against KLM for 'inducement of breach' (first cause of action) and 'interference with expectancy' (second cause of action).

Defendant now moves for an order dismissing the Complaint:

(1) pursuant to CPLR § 3211(a)(8) on the ground that the Court lacks personal jurisdiction over the defendant;

(2) pursuant to CPLR § 327(a) under the doctrine of forum non conveniens; and

(3) pursuant to CPLR § 3211(a)(7) on the ground that the Complaint fails to state a cause of action for which relief can be granted, i.e., plaintiff has not alleged that defendant was motivated by malice.

Defendant argues that plaintiff's Complaint fails to allege any connection between New York and the parties to this action, and

fails to provide the substance, date or location of the alleged tortious acts.

In addition, defendant, a Pennsylvania corporation, alleges that it does not maintain an office in New York, does not own real property in New York, does not maintain a bank account in New York, and does not negotiate agreements or advertise its services to clients in New York. It further denies that it ever committed a tort in New York or outside New York causing injury in New York. KLM is, however, willing to stipulate to jurisdiction for an action in Pennsylvania state or federal court.

Plaintiff argues in opposition to the motion that the Complaint sets forth a sufficient basis for this Court to exercise jurisdiction over the defendant since it alleges that defendant interfered with plaintiff's business relationship with Chase, including its New York market.

Plaintiff further argues that defendant has failed to make a sufficient showing as to why New York would be an inconvenient forum (i.e., arrangements can be made to copy any documents which may be located in Pennsylvania).

Based on the papers submitted and the oral argument held on the record on May 7, 2008, this Court finds that the Complaint in this action fails to allege any facts establishing a nexus to New York, or even to make any reference to New York.

Accordingly, the instant motion is granted to the extent of dismissing plaintiff's Complaint without prejudice and without costs or disbursements.

This constitutes the decision and Order of this Court.

Dated: July 28 , 2008



BARBARA R. KAPNICK
J.S.C.

BARBARA R. KAPNICK
J.S.C.

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COUNTY CLERK'S OFFICE
NEW YORK