

**Mensah v Kalkoran**

2009 NY Slip Op 31383(U)

June 23, 2009

Supreme Court, New York County

Docket Number: 102406/09

Judge: Doris Ling-Cohan

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

PRESENT: Hon. Doris Ling-Cohan

PART 36

Justice

Index Number : 102406/2009

**MENSAH, SETH A.**

VS.

**KALKORAN, IRA J., PROFESSOR**

SEQUENCE NUMBER : # 001

DISMISS COMPLAINT

INDEX NO. 102406-09

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. #001

MOTION CAL. NO. \_\_\_\_\_

were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1, 2, 3

4

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits none

Cross-Motion:      Yes       No

Upon the foregoing papers, it is ordered that this motion to dismiss by defendant  
Lockheed Martin Corp is granted in accordance  
with the attached memorandum decision.

**FILED**

JUN 26 2009

COURT CLERK

**HON. DORIS LING-COHAN**

Dated: 6/23/09

[Signature]

J.S.C.

Check one:      FINAL DISPOSITION       NON-FINAL DISPOSITION

Check if appropriate:      DO NOT POST

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

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

PRESENT: Hon. DORIS LING-COHAN, Justice

PART 36

SETH A. MENSAH,

Plaintiff,

- v -

PROF IRAJ KALKORAN, LOCKHEED MARTIN CORPORATION, and EUROPEAN SPACE AGENCY,

Defendants.

INDEX NO. 102406/09  
MOTION DATE  
MOTION SEQ. NO. 001  
MOTION CAL.NO.

The following papers, numbered 1 to 3 were read on this motion to/for : dismiss complaint.

Papers

Notice of Motion/Order to Show Cause - Affidavits - Exhibits	Numbered	1,2
Answering Affidavits - Exhibits (Memo) <sup>1</sup>		3
Replying Affidavits (Reply Memo)		4
Cross Motion: [ ] Yes [X] No		

**FILED**  
JUN 26 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Upon the foregoing papers, it is ordered that this motion is granted, as set forth below.

Background

Defendant Lockheed Martin Corp. ("Lockheed Martin") moves to dismiss the complaint by plaintiff Seth A. Mensah, with prejudice, pursuant to CPLR 3211(a)(7) and (a)(8) and for costs and attorney's fees. Lockheed Martin asserts that this Court has no personal jurisdiction over it because plaintiff failed to effectuate proper service of the summons and complaint under New York law (Lockheed Memo in Support, 2). Lockheed Martin also contends that even if service was proper, plaintiff's case has no merit because the complaint fails to state a cause of action or any elements of a proper claim.

Plaintiff claims that in September of 2006, while he was allegedly a student at New York

Institute of Technology, he sent one of his professors, defendant Prof. Iraj Kalkoran<sup>1</sup>, two project designs which were supposedly used by Lockheed Martin in the production and manufacture of its SR-71 BLACKBIRD and F-22 aircrafts (Gehring Affirm., Exh. 1, 6). Lockheed Martin claims that plaintiff has placed various harassing calls, emails, and correspondence “seeking damages in the sum of millions” (Lockheed Memo in Support, 1), for Lockheed Martin’s use of these designs. In response to this motion to dismiss, plaintiff denies every allegation in the motion, alleging that service was proper and that the complaint states a cause of action.

### Discussion

A defendant is entitled to a “judgment dismissing one or more causes of action asserted against him on the ground that ... the court has not jurisdiction of the person of the defendant” *Bank Hapoalim, B.M. v. Kotten Mach. Co. of Brooklyn, Inc.*, 151 A.D.2d 374 [1<sup>st</sup> Dept 1989]; see CPLR 3211(a)(8). “Notice received by means other than those authorized by statute cannot serve to bring a defendant within the jurisdiction of the court” *Meyer v. Volkswagen of America, Inc.*, 92 A.D.2d 488 [1<sup>st</sup> Dept 1983]. Although plaintiff mailed a summons and complaint to Lockheed Martin’s headquarters in Bethesda, Maryland ( Gehring Affirm., Exh. 1), this means of service *alone* does not constitute sufficient notice as authorized by statute. *See* CPLR 311 (in person service upon a corporation); CPLR 312 (a) (service by mail must contain a statement of service and acknowledgment of receipt); BCL 306 (service of process on a registered agent or the secretary of state); BCL 307 (service of process on an unauthorized foreign corporation; proof of service requires filing an affidavit of compliance and a return receipt, or other official proof of delivery). Plaintiff failed to complete proper service upon Lockheed Martin; therefore, this Court does not have personal jurisdiction over Lockheed Martin and plaintiff’s complaint must be dismissed.

Even if this court had jurisdiction, dismissal is warranted pursuant to CPLR 3211 (a)(7) for

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<sup>1</sup> By order dated May 21, 2009, this case was dismissed as against defendant Professor Iraj Kalkoran.

failure to state a cause of action. The standard for determining a motion to dismiss pursuant to CPLR 3211 (a)(7) is whether the allegations in the four corners of the complaint, liberally construed, state any cognizable cause of action (*see Leon v. Martinez*, 84 NY2d 88 [1994]; *Guggenheimer v. Ginzburg*, 43 NY2d 268, 274-275 [1977]; *Scott v. Bell Atl. Corp.*, 282 AD2d 180, 183 [1<sup>st</sup> Dept 2001]). The exception to the general principle that on a motion to dismiss, pursuant to CPLR 3211 (a)(7), the facts alleged in the complaint are assumed to be true and are accorded every favorable inference, is that “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration” *Gertler v. Goodgold*, 107 AD2d 485 [1<sup>st</sup> Dept 1985]; *quoted in Maas v. Cornell Univ.*, 94 NY2d 91 [1999].

Here, plaintiff’s complaint consists of an array of incomprehensible assertions regarding the nature of his claim which fail to state a cognizable cause of action. Although plaintiff provided Lockheed Martin with documents consisting of a series of numbers to support his claim, these documents do not adequately express any legal cause of action (McGowan Affirm., Exh. 4). Furthermore, to support its assertion that plaintiff’s allegations are “historically impossible” (Gehring Affirm., 4), Lockheed Martin has provided public documents maintained by the Smithsonian Institution, the United States Air Force, the National Air and Space Administration (NASA), and Lockheed Martin which indicate that the first SR-71 Blackbird aircraft took flight on December 22, 1964 (Gehring Affirm., Exh. 4), more than thirty years before plaintiff allegedly submitted his design, and the last flight of the SR-71 Blackbird aircraft was in 1999, at which time all operational use of the aircraft was terminated (Gehring Affirm., Exh 2). Further documentary evidence supplied by Lockheed Martin indicate that the concept for the F-22 aircraft began “in the early 1980s” (Gehring Affirm., Exh. 7), and the first F-22A aircraft was introduced in 1997, over ten years before plaintiff purportedly submitted his designs. Accordingly, as plaintiff’s complaint does not state a cognizable cause of action and as the allegations in the

complaint are significantly contradicted by documentary evidence, plaintiff is precluded from bringing this action against Lockheed Martin.

Accordingly, it is

ORDERED that defendant Lockheed Martin Corporation's motion for an order, pursuant to CPLR 3211 (a)(7) and (a)(8), dismissing the complaint with prejudice is granted and; it is further

ORDERED that within 30 days of entry, Lockheed Martin shall serve on all parties a copy of this decision and order, together with notice of entry and; it is further

ORDERED that upon proof of service of a copy of this order and notice of entry upon all parties, the Clerk of this Court is directed to enter judgment dismissing the complaint in its entirety and any cross-claims as against Lockheed Martin Corporation, with costs and disbursements and; it is further

ORDERED that the caption of this case is amended to reflect the within dismissal and the May 21, 2009 dismissal to read as follows:

**Seth A. Mensah**  
-v-  
**European Space Agency**

This constitutes the Decision and Order of the Court.

Dated: 6/23/09

ENTER: [Signature],  
Doris Ling-Cohan, JSC

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if Appropriate:  DO NOT POST  REFERENCED

J:\Dismiss\Mensah-motiontodismiss,granted.wpd

**FILED**  
JUN 26 2009  
COUNTY CLERK'S OFFICE  
NEW YORK