

**Wood v Pacific Telecom Communications Group**

2013 NY Slip Op 32767(U)

June 13, 2013

Sup Ct, Westchester County

Docket Number: 55539/2012

Judge: Linda S. Jamieson

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp \_\_\_\_\_ Dec x Seq. Nos. 5-6 Type misc.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**PRESENT: HON. LINDA S. JAMIESON**

-----X  
MICHAEL R. WOOD,

Plaintiff,

-against-

Index No. 55539/12

DECISION AND ORDER

PACIFIC TELECOM COMMUNICATIONS GROUP,  
STEVE HAMILTON, MANCHESTER SERVICES,  
INC., VALBUENA, et. al,

Defendants.

-----X

The following papers numbered 1 to 5 were read on these motions:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affidavits, Affirmation and Exhibits	1
Notice of Motion, Affidavit and Exhibits	2
Affidavit and Exhibits in Opposition	3
Memorandum of Law	4
Reply Affirmation	5

There are two more motions before the Court in this case involving allegations of abuse of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"). Plaintiff is a lawyer, ordinary cell phone owner and New York resident who has received numerous sales calls and solicitations on his cell phone. He complains that these calls violate the TCPA. The two

defendants at issue in these motions are F. Antone Accuardi and International Telephone Corporation ("ITC").

The first motion, filed by Accuardi, seeks (1) dismissal of the amended complaint because of lack of jurisdiction, and (2) in the alternative, a more definite statement as to the basis for jurisdiction over Accuardi. The second motion, filed by plaintiff, seeks to have the Court issue an order directing the method of service of the supplemental summons and second amended complaint as to ITC.

Turning first to plaintiff's motion, the Court finds that plaintiff's proposed order makes sense in the circumstances. The Court will thus sign the order, with some minor changes.

Next, the Court has reviewed all of the parties' arguments about personal jurisdiction over Accuardi. While it may well be true, as Accuardi vociferously argues, that the Court ultimately does not have personal jurisdiction over him pursuant to CPLR §§ 302(a)(1) or (3), plaintiff here has alleged enough facts to warrant further investigation. As the Second Department recently held in the case of *Doe v. McCormack*, 100 A.D.3d 684, 953 N.Y.S.2d 666 (2d Dept. 2012), "the party seeking to assert personal jurisdiction . . . bears the ultimate burden on this issue. However, in opposing a motion to dismiss pursuant to CPLR 3211(a)(8) on the ground that discovery on the issue of personal jurisdiction is necessary, plaintiffs need not make a prima facie showing of jurisdiction." The Court went on to state that all

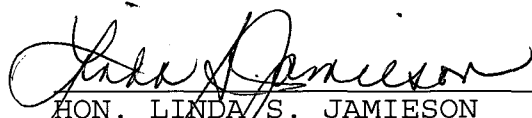
that a plaintiff need do is "set forth a sufficient start, and show their position not to be frivolous. The jurisdictional issue is likely to be complex. Discovery is, therefore, desirable, indeed may be essential, and should quite probably lead to a more accurate judgment than one made solely on the basis of inconclusive preliminary affidavits."

That is exactly the case here. Plaintiff has alleged that ITC has a "fully empowered Network Operations Center" "located in Staten Island, New York," and that Accuardi is ITC's "Vice President and General Counsel." While Accuardi asserts that these assertions are based on nothing, because the first assertion is based on a "no-longer-existent web page," and the second is based on a "blank form" on which "some unknown person" placed Accuardi's name, these bits of evidence beg the question of who created, and then deleted, the web page, and who created this "blank form" using Accuardi's name. The Court finds that limited discovery on whether Accuardi has any contacts with New York is appropriate before the Court will make a final determination about personal jurisdiction. Accordingly, the Court denies Accuardi's motion to dismiss the complaint. (The request for a more definite statement is now moot, since plaintiff has set forth his basis in his opposition papers.) The parties may make further motions once discovery has been completed.

As the Court said in its prior jurisdictional Decision and Order in this case, "as a practical matter, given the amount of expense that this discovery will entail, perhaps it makes sense for the parties to attempt to settle this matter. Plaintiff does not seek substantial damages and, if [defendants] have never made any calls to plaintiff, it should not be difficult for them to agree not to call plaintiff in the future."

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York  
June 13, 2013

  
HON. LINDA S. JAMIESON  
Justice of the Supreme Court

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