

B&M Kingstone, LLC v Mega Intl. Commercial Bank, Ltd.
2014 NY Slip Op 33549(U)
September 16, 2014
Supreme Court, New York County
Docket Number: 158577/2014
Judge: Geoffrey D. Wright
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEOFFREY D.S. WRIGHT PART 47

Justice

**B&M KINGSTONE, LLC, As Assignee Of Super
Vision International, Inc., A Florida Corporation,
Plaintiff**

INDEX NO. 158577/14

- v -

MOTION DATE _____

**MEGA INTERNATONAL COMMERCIAL BANK CO., LTD,
f/k/a International Commercial Bank Of China,
Defendants**

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to 4 were read on this motion to/for order of contempt and turnover of assets

<u>NUMBERED</u>	<u>PAPERS</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits _____	<u>2,3,4</u>
Replying Affidavits _____	<u>-</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion by Petitioner to hold the Respondent in contempt for failing to comply with an information subpoena and directing the restraint of assets of Samson Wu, a judgment debtor is granted solely to the extent of directing the Respondent to respond to the information subpoena, a/p/o.

Dated: Sept. 15, 2014


GEOFFREY D. WRIGHT
A JSC J.S.C.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 47

-----X
B&M KINGSTONE, LLC, As Assignee Of Super
Vision International, Inc., A Florida Corporation,
Plaintiff-Petitioner(s),

Index #158577/14
Motion Cal. #
Motion Seq. #
DECISION/ORDER
Pursuant To Present:
Hon. Geoffrey Wright
Judge, Supreme Court

-against-

MEGA INTERNATIONAL COMMERCIAL
BANK, LTD., f/k/a International Commercial
Bank Of China,
Defendants.

-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of
this Motion to: restrain bank accounts and compel response to subpoena *duce tecum*

PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	2,3,4
Replying Affidavits & Exhibits Annexed	
Other (Cross-motion) & Exhibits Annexed	
Supporting Affirmation	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Petitioner is the assignee of a judgment creditor that, in the State of Florida, was awarded a judgment against Jack Caruso, Samson Wu, Thomas Wu, Ruby Lee, OpticpTech International Corporation, Shanghai Quialong Optic-Tech International, Marsam Trading Corporation, Marsam Trading Corporation (HK) Ltd. and Travis Pochintesta. The judgment was for \$39,240,275.57. This proceeding focuses on the assets of Judgment Debtor Samson Wu, who executed an instrument directed to any bank where he was authorized to draw, that instructed such bank(s) to disclose to the attorneys for the original judgment creditors "all information and deliver copies of all documents of every nature in your possession or control which relate to said bank account..."

In this proceeding, the Petitioner is seeking disclosure and seizure of the assets of Samson Wu, who has accounts, and/or the authority to draw with Respondent Mega International Commercial Bank ("Mega"). Pursuant to the authority of Art. 52, of the CPLR,


the Petitioner has served information subpoenas and restraints on the bank. Although it does not appear that Mr. Wu has an account in the New York branch of Mega, but Mega does, apparently have the ability to access information, at least as to accounts in its other branches throughout the world. I make this deduction because the bank, in submitting opposing papers, does not deny such access.

The Petitioner invokes the Court of Appeals decision in the case of *KOEHLER v. BANK OF BERMUDA LTD.*, 12 N.Y.3d 533, 883 N.Y.S.2d 763, 911 N.E.2d 825 (2009). While at first glance the case is compelling, there are significant differences that require the denial of so much of the petition as demands the turn over of assets. First and foremost, *KOEHLER* stands for the proposition that a court may direct the disclosure of information and the turn over of assets when a New York court “had personal jurisdiction over the defendant”. [*GRYPHON DOM. VI, LLC v. APP INTL. FIN. CO., B.V.*, 41 AD3d 25, 836 N.Y.S.2d 4, 2007 N.Y. Slip Op. 03209 [1st Dept.2007], lv. denied 10 NY3d 705 [2008]], as recognized even in *KOEHLER*, which cited *GRYPHON*. However, subsequent to *KOEHLER*, the Court of Appeals said “No case supports the Commonwealth's attempt to broadly construe *Koehler* and require that a garnishee be compelled to direct another entity, which is not subject to this state's personal jurisdiction, to deliver assets held in a foreign jurisdiction.” [*COMMONWEALTH OF NORTHERN MARIANA ISLANDS v. CANADIAN IMPERIAL BANK OF COMMERCE*, 21 N.Y.3d 55, 990 N.E.2d 114, 967 N.Y.S.2d 876, 2013 N.Y. Slip Op. 03018].

The New York County Supreme Court, does not have jurisdiction over the judgment debtor in the underlying case. It does have jurisdiction over his property within the borders of the State. Therefore, the turn over aspect of the petition must be denied. However, the information subpoena must be honored. CPLR 5223 permits a judgment debtor to demand information from any person. I note here that the bank has merely opposed the motion, and has not sought a protective order.

Although the Respondent invokes local laws Taiwan, there is no specific citation that I can research. However, that is not dispositive, as Samson Wu, at least, has agreed, in writing to the disclosure of any accounts which he may own or use by virtue of having the right to draw. The opposing papers do not gainsay this waiver, and do not represent that a bank customer may not waive confidentiality. Therefore, the bank is hereby directed to respond to the information subpoena. The remaining relief seeking contempt and a restraint of assets located in a foreign branch of the Respondent is denied. The Respondent has not said that the information sought is not, and cannot be made available.

Dated: September 16, 2014



GEOFFREY D. WRIGHT

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