

IMG Universe, LLC v Invisi Smart Global, LLC

2023 NY Slip Op 30406(U)

February 6, 2023

Supreme Court, New York County

Docket Number: Index No. 655604/2021

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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IMG UNIVERSE, LLC,

Plaintiff,

- v -

INVISI SMART GLOBAL, LLC, INVISI SMART MASKS USA
LLC, INVISI SMART STRATEGIES LLC, INVISI SMART
TECHNOLOGIES UK LTD., SABA YUSSOUF, and LEON
SIKES,

Defendants.

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INDEX NO. 655604/2021

MOTION DATE 12/15/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 49, 50, 51, and 52

were read on this motion to DISMISS.

Upon the foregoing documents, it is ORDERED that defendants’ motion to dismiss the complaint is denied, without prejudice to renewal following jurisdictional discovery as set forth below. CPLR 3211(d) provides that “should it appear from affidavits submitted in opposition . . . that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion . . . or may order a continuance to permit . . . disclosure to be had and may make such other order as may be just.” In opposing a motion to dismiss for lack of personal jurisdiction, to be entitled to jurisdictional discovery a plaintiff need only make “a sufficient start, and [show] their position not to be frivolous” (*Peterson v Spartan Indus., Inc.*, 33 NY2d 463, 467 [1974]).

The contract between plaintiff and defendant Invisi Smart Global, LLC (“Global”), contains a New York forum selection clause (contract, NYSCEF Doc. No. 16, Appendix I, ¶ 12).

Plaintiff alleges that defendants Invisi Smart Masks USA LLC (“Masks”), Invisi Smart

Strategies LLC (“Strategies”), and Invisi Smart Technologies UK Ltd. (“UK Parent”), along with defendant Saba Yussouf (“Yussouf”), should be considered to be “closely related” to Global for purposes of determining personal jurisdiction (*Universal Inv. Advisory SA v Bakrie Telecom PTE, Ltd.*, 154 AD3d 171, 179 [1st Dept 2017] [“a signatory to a contract may invoke a forum selection clause against a non-signatory if the non-signatory is closely related to one of the signatories such that enforcement of the forum selection clause is foreseeable by virtue of the relationship between the signatory and the party sought to be bound”]). A finding of personal jurisdiction over non-signatories to a contract based on a forum selection clause may ultimately be proper where “the nonsignatory party has an ownership interest or a direct or indirect controlling interest in the signing party or the entities or individuals consulted with each other regarding decisions and were intimately involved in the decision-making process” (*id.*).

Plaintiff submits the affidavits of its Vice President of Business Development, Shawn McClain (NYSCEF Doc. No. 23), and its President, Paula M. Shugart (NYSCEF Doc. No. 30), in which they detail Yussouf’s extensive role in negotiating the agreement, the manner in which the agreement was not carried out solely by Global, and the delivery of masks manufactured outside of New York to plaintiff in New York pursuant to the contract. Moreover, the court notes the contract’s provision for Yussouf to appear as a judge for plaintiff’s Miss Universe competition (contract, NYSCEF Doc. No. 16, ¶¶ 2[b], 2[j][iv]), and, after Yussouf was unable to travel, her appearance in a video broadcast during the competition (video excerpt, NYSCEF Doc. No. 37). Further, and in relation to plaintiff’s claims that the defendants are all alter egos of each other, the complaint also reflects that Masks, Strategies, and Global all share the same business address (complaint, NYSCEF Doc. No. 1, ¶¶ 21, 26-27), which UK Parent lists on its website as its US office (*compare* contract, NYSCEF Doc. No. 16 at 1 *with* “Contact Us” page from

invisismart.com, NYSCEF Doc. No. 41). The true extent of the relationship among the defendant companies and Yussouf's degree of domination and control of them are facts known only to defendants themselves. Accordingly, the court finds that plaintiff has made a sufficient start towards establishing jurisdiction and has shown its position not to be frivolous (*Universal Inv. Advisory SA*, 154 AD3d at 179-80; *Expert Sewer & Drain, LLC v New England Mun. Equip. Co., Inc.*, 106 AD3d 775, 776 [2d Dept 2013] ["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"] [internal quotation marks and citations omitted]). Defendants, in their reply memorandum of law, also join in the request for jurisdictional discovery if the court were inclined to require it, which the court is inclined to do as stated above (def.'s memorandum of law, NYSCEF Doc. No. 49 at 3-4); and it is further

ORDERED that defendants' time to answer the complaint is stayed pending the completion of jurisdictional discovery; and it is further

ORDERED that the balance of the motion to dismiss for failure to state a cause of action, and upon documentary evidence, may also be renewed following the close of jurisdictional discovery; and it is further

ORDERED that the parties shall appear for a discovery conference in Room 1166, 111 Centre Street on February 22, 2023 at 10:00 AM. Prior to the conference, the parties shall meet and confer regarding discovery and, in lieu of appearing at the conference, may submit a proposed preliminary conference order, in a form that substantially conforms to the court's form Commercial Division Preliminary Conference Order located at

<https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/PCCD.pdf>, to the Principal Court

Attorney of this Part (Part 38) at ssyaggy@nycourts.gov.

This constitutes the decision and order of the court.



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| <u>2/6/2023</u> | | | <u>LOUIS L. NOCK, J.S.C.</u> |
| DATE | | | |
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| | <input type="checkbox"/> GRANTED | | <input type="checkbox"/> GRANTED IN PART |
| APPLICATION: | <input type="checkbox"/> SETTLE ORDER | | <input type="checkbox"/> OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> FIDUCIARY APPOINTMENT |
| | | | <input type="checkbox"/> REFERENCE |