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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - CIVIL TERM - PART 53

-----X  
ILYA YUROV,

Plaintiff,

-against-

OTKRITIE HOLDING JSC, VADUM BELYAEV and  
RUBEN AGANBEGYAN,

Defendants.

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Index No. 656788/2016                      60 Centre Street  
New York, New York  
August 24, 2017

B E F O R E:

HONORABLE CHARLES E. RAMOS,  
Supreme Court Justice

A P P E A R A N C E S:

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BY: CHARLES A. MICHAEL, ESQ.

Angela Bonello, RPR  
Senior Court Reporter

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THE COURT: Before we get started, I know Defendants' motion. Plaintiff, why are we bringing this action in New York?

MS. BERGIN: Your Honor, I understand the Court's question. My opponent suggested Russia and London for an alternative forum. When my client's related entity MBT chose to sue my client, their choice of forum was observed in London. We believe there's enough of a connection to New York, specifically that Defendants hailed my client here to discuss their agreement, to talk about it, to further their relationship. They are founded here, they are based here. We think that New York is an appropriate forum.

THE COURT: But all the documents that I have seen relate to the Defendants being here relate to subsidiary entities that are apparently owned by the holding company. That doesn't put the holding company here.

MS. BERGIN: Well, Your Honor we think --we've argued in the briefs, which Your Honor may have read. I can explain the theory under general jurisdiction as well as-- actually Teitler has changed the law a little bit about what the subject act can be in order to haul them into Court. We set forth all the facts here, where the Defendants themselves have described this office as a New York business. They have held themselves out on financial statements and the website, the majority shareholder of the

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bank holds the position and comes to New York for business and held that out as his office to my client during their meeting in New York. There are disclosures that --

THE COURT: Where was the agreement made?

MS. BERGIN: The agreement was made in Russia. And Russia-- well, according to, obviously, Defendants --

THE COURT: Doesn't Russian law apply to it, too?

MS. BERGIN: So there's a question, I think --

THE COURT: In terms of you haven't made proper service, number one. You've got serious questions about having jurisdiction, personal jurisdiction. You've got what sounds like a breach of contract case and the cause of action in a \$50 million oral promise to pay a fee. Fifty million bucks oral promise? Holy moly. I mean, really, why should I bother myself with this case?

MS. BERGIN: Yes, Your Honor. There's no question that the parties discussed this agreement. There is no question that --

THE COURT: That doesn't establish jurisdiction. The agreement was made in Russia because they said don't worry, I'll pay you. It was a breach of contract. The contract was made in Moscow.

MS. BERGIN: There was significant discussion in New York about the terms of that contract. And also, there were misrepresentations made during the New York visit that

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the Defendants hailed my client here to discuss, namely, that the \$10 million which was the first tranche of the payment would be made by another minority shareholder of the bank, so there is that. And at that time, they induced my client into not taking further action so that they could continue their effort to --

THE COURT: I think I know why the action is being brought here, but that's besides the point. What kind of jurisdiction --you mail papers to a foreign entity and say you have jurisdiction?

MS. BERGIN: So we made service in a couple of ways; one, there was a mailing to Russia, but more so, the New York office, which the Russian entity held out as its own --

THE COURT: How does the Russian entity holding hold out the New York office as its office?

MS. BERGIN: Okay. In its financial statements, Exhibit 5 and Exhibit 18. Exhibit 5, page 11, so it's Plaintiff's Exhibit 5, the Dewey Affirmation.

THE COURT: This is Mr. Dewey's Affirmation?

MS. BERGIN: Yes. If you turn to that, it was certified by Aganbegyan. Page 5, Exhibit 5 is one of the individual Defendants, the director of the bank certified the financial statements, page 5, and if you turn to page 11 --

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THE COURT: This is Holding; right?

MS. BERGIN: Yes, this is Holding.

THE COURT: All right, page 5.

MS. BERGIN: Page 5 at the bottom you will see  
Mr. Aganbegyan's cert page.

THE COURT: Am I on the correct page?

MR. MICHAEL: Yes.

MS. BERGIN: Yes.

THE COURT: This is --

MS. BERGIN: Ruben Aganbegyan is the general  
director who's certified these financial statements, one of  
the defendants here, the director of the company.

THE COURT: This is done where, in Russia?

MS. BERGIN: These are Russian financial  
statements.

And then if Your Honor turns to page 11.

THE COURT: Okay.

MS. BERGIN: And there's note one, Principal  
Activities Continued, at the top of the page, Your Honor.

THE COURT: Principal Activities.

MS. BERGIN: Yes. And the second paragraph there,  
"The group", which is Holding, and "The group has a large  
network of offices in the Russian federation which comprises  
more than 600 offices --"

THE COURT: What's "the group"?

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2 MS. BERGIN: "The group" is defined as Holding, the  
3 Defendant here, as well as all its subsidiaries and  
4 affiliates.

5 THE COURT: You're not suing the group, you're suing  
6 Holding.

7 MS. BERGIN: This entity, JSC, is the same entity,  
8 Holding is the parent entity.

9 THE COURT: Yes, I know, but where is the  
10 definition of "the group" in this document?

11 MS. BERGIN: Page 3, E & Y.

12 THE COURT: Ernst & Young.

13 MS. BERGIN: The Ernst & Young report.

14 THE COURT: Condensed consolidated financial  
15 statements.

16 MS. BERGIN: Yes, of the Holding company together  
17 with its subsidiaries, defined by Ernst & Young as "the  
18 group".

19 THE COURT: So you're saying wherever "the group"  
20 is, the Holding is. That doesn't work.

21 MS. BERGIN: Well --

22 THE COURT: It doesn't.

23 MS. BERGIN: So Holding, JSC, this is unified  
24 financial statements, Your Honor, they disclose that the  
25 group's also represented an international --

26 THE COURT: The motion to dismiss on the basis of

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improper service is granted. The complaint is dismissed.

Thank you very much.

MR. MICHAEL: Thank you, Your Honor.

MS. BERGIN: Thank you.

\* \* \*

C E R T I F I C A T E

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.



ANGELA BONELLO

SENIOR COURT REPORTER

SUPREME COURT-NEW YORK COUNTY