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SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NASSAU

PRESENT:

Hon. Burton S. Joseph,

Justice.

MERIDIAN TECHNOLOGIES, INC.,

Plaintiff,

- against -

Trial/IAS Part 19
Index No. 9203/2001
Motion No. 001
Motion Date 8/24/2001

E. ROBERT KLEIN, BELLA TSUKERMAN,
ZONG HAO JIN a/k/a HOWARD JIN, NEWTEK
CORP., NTK NEWTEK TELECOM, and
JEFFREY Z. LIU,

Defendants.

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Upon the foregoing papers, the motion by Defendants NewTek Corp., NTK NewTek Telecom and Jeffrey Z. Liu (hereinafter collectively "NewTek"), for a dismissal of the complaint, is granted to the extent provided herein.

This is an action to recover for, *inter alia*, theft of trade secrets, breach of fiduciary duties and unfair competition. Defendants E. Robert Klein, Bella Tsukerman and Zong Hao Jin are allegedly former high-ranking employees of the Plaintiff Meridian Technologies, Inc., a manufacturer of fiber-optic equipment located in Elmont, New York; Defendant Liu is the president of Defendant NewTek Corporation and the sole member of Defendant NTK NewTek, LLC, sued herein as Defendant NTK NewTek Telecom. In its complaint, Plaintiff alleges that the Defendants conspired to and in fact did take and misuse its trade secrets in fiber-optics.

By Notice of Motion, returnable August 23, 2001, the NewTek Defendants move for an order pursuant to CPLR 3211(a)(8), dismissing the complaint against them for lack of personal jurisdiction. In support of the motion, Defendant Liu avers that he doesn't live or work in New York and that he does not own property here. He further states that he has not personally conducted or solicited business here and he denies receiving revenue from New York. The Defendant corporations allege that their principal offices are in New Jersey and that they do not have employees, offices or property here. Defendant NewTek Corporation alleges that it doesn't solicit let alone actually do any business here and NTK NewTek Telecom alleges that it also does no business here nor does it "regularly solicit" business. Both corporations allege that they derive no revenue from New York.

Under CPLR 301, this Court is permitted to exercise jurisdiction over corporate defendants who are found to be "doing business" in New York State (*Frummer v. Hilton Hotels, Int., Inc.*, 19 NY2d 533, 536). Such jurisdiction is based solely upon the fact that the corporate defendant is "engaged in such a continuous and systematic course of 'doing business' here as to warrant a finding of its 'presence' in this jurisdiction" (*Simonson v. International Bank*, 14 NY2d 281, 285). Moreover, "while it has been held that a non-resident individual, like a corporation, can be deemed present for jurisdictional purposes by virtue of 'doing business' in this state, even as to causes of action unrelated to the business done within the state (*ABKCO Industries, Inc. v. Lennon*, 52 AD2d 435, *but see, Nilsa BB v. Blackwell*, 84 AD2d 295), the individual cannot be subject to such jurisdiction unless doing business here individually, rather than on behalf of the corporation (*Laufer v. Ostrow*, 55 NY2d 305, 313)" (*Lancaster v. Colonial Frgt.*, 177 AD2d 152).

Applying these principles to the matter at bar, the NewTek Defendants' motion

must be granted as they do not conduct any business or have any presence in New York. As for Defendant Liu, it is undisputed that he is not a domiciliary of this State and there is no evidence that he personally conducted any business here as an individual. Nor are there any other grounds for exercising jurisdiction over him. The complaint against him is accordingly dismissed pursuant to CPLR 3211(a)(8) (*see, Laufer v. Ostrow, supra; Lancaster v Colonial Frgt. v. First Bank of Maury County*, 143 AD2d 63; *Friedson v. Lesnick*, 1992 WL 51543).

A similar conclusion must be reached with respect to Defendants NewTek Corp. and NTK NewTek, LLC as there appears to be no basis whatsoever for exercising jurisdiction over them. The motion to dismiss the complaint against them pursuant to CPLR 3211 (a)(8) is accordingly granted as well. Although the Plaintiff makes much of the fact that a company named NTK (NewTek) Company, LLC, incorporated by Liu, is authorized to and does business in New York, that corporation is not one of the named corporate Defendants herein but a separate and distinct entity from them. Indeed, NTK (NewTek) Company, LLC does not appear to be in the business of fiber-optics, but rather sells life, property and health insurance over the Internet. As such, the evidence of Liu's participation with that company is irrelevant to the instant action.

Accordingly, the NewTek Defendants' motion is denied and the complaint is hereby dismissed as against Defendants Liu, NewTek Corp. and NTK NewTek Telecom. The Plaintiff's request for sanctions is not made in the proper form (*see*, CPLR 2214[a]), and is also denied. This constitutes the decision, order and judgment of the Court.

ENTER:

Dated: Mineola, New York
October 10, 2001

ENTERED

Burton S. Joseph
J.S.C.

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COUNTY CLERK'S OFFICE