

CASE #96-285 K C
JANUARY 8, 1997 TERM

At a term of the Appellate Term of the
Supreme Court of the State of New York
for the 2nd and 11th Judicial Districts
held in Kings County, on

AUG 1 1997

PRESENT-HON.	<u>EDWIN J. KASSOFF</u>	PRESIDING JUSTICE
" "	<u>PHILIP J. CHETTA</u>	ASSOCIATE JUSTICE
" "	<u>MICHELLE WESTON PATTERSON</u>	ASSOCIATE JUSTICE

-----x
EXCEL FLOORING CORP.,

Respondent,

-against-

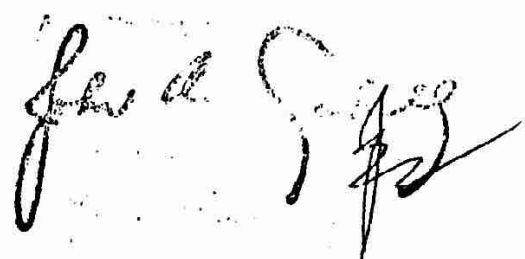
REGION ASSOCIATES, INC.,

Appellant.
-----x

The above named appellant having appealed to this court from an ORDER of the CIVIL COURT OF THE CITY OF NEW YORK, KINGS COUNTY entered on OCTOBER 31, 1995 and the said appeal having been argued by JOSEPH D. STIM, ESQ. for the appellant and submitted by JACK S. CHRISOMALIS, ESQ. for the respondent and due deliberation having been had thereon;

It is hereby ordered and adjudged that the order is unanimously reversed without costs and the complaint dismissed.

STIM & WARMUTH, ESQS.
83 PROSPECT STREET
HUNTINGTON, NY 11743



JOHN A. CAHILL
CHIEF CLERK
APPELLATE TERM

JACK CHRISOMALIS, ESQ.
9201 FOURTH AVENUE
BROOKLYN, NY 11209

Allyn-70

RE 5 28

0417x (7055T)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 2nd and 11th JUDICIAL DISTRICTS

PRESENT: KASSOFF, P.J., CHETTA and PATTERSON, JJ.

EXCEL FLOORING CORP.,
Respondent,

-against-

NO. 96-285 K C

DECIDED

REGION ASSOCIATES, INC.,
Appellant.

'AUG 1 1997

Appeal by defendant from an order of the Civil Court,
Kings County (V.C. Arniotes, J.) entered October 31, 1995,
which denied its motion to dismiss the complaint pursuant to
CPLR 3211(a) (8) and CCA 404.

Order unanimously reversed without costs and the
complaint dismissed.

Plaintiff, whose principal office is located in
Brooklyn, New York, commenced the instant action to recover
damages for breach of contract relating to the provision of
labor and materials for performance and completion of a

RE: EXCEL FLOORING CORP. v
REGION ASSOCIATES, INC.
NO. 96-285 K C

self-leveling floor underlayment work for a facility located in Suffolk County, New York. Defendant moved to dismiss the complaint pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction. The court denied the motion to dismiss finding that defendant's activities were sufficient to establish jurisdiction. We reverse.

It is well settled that negotiations conducted by mail, telephone or facsimile are insufficient to confer long-arm jurisdiction (see, Glassman v Hyder, 23 NY2d 354; Success Marketing Electronics, Inc. v Titan Security Inc., 204 AD2d 711; see also, Professional Personnel Management Corp. v Southwest Medical Associates, 216 AD2d 958; Paradise Products Corp. v Allmark Equipment Co., 138 AD2d 470; J.E.T. Advertising Associates v Lawn King Inc., 84 AD2d 744).

In the instant case, the preliminary negotiations pertaining to the agreement were entirely conducted by telephone and facsimile transmissions, and no meetings were held in New York City. The agreement was mailed by defendant to plaintiff's office in Brooklyn where it was accepted by plaintiff, and defendant's subsequent contacts were by telephone. Defendant's activities consisting entirely of communications by telephone, facsimile or mail, are clearly insufficient to satisfy the "minimum contacts" requirement

RE: EXCEL FLOORING CORP. v
REGION ASSOCIATES, INC.
NO. 96-285 K C

necessary to confer long-arm jurisdiction. Moreover, although plaintiff alleged that the materials were purchased and stored in New York City, these activities were performed by plaintiff and cannot be attributed to defendant (Success Marketing Electronics, Inc. v Titan Security, Inc. supra at 712). Under the circumstances we find that the defendant's activities are insufficient to subject it to the jurisdiction of the New York City Civil Court.