

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SECURITY NETWORKS, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2939-MG
	)	
ALARM ONE, INC. and	)	
PETER MALTBY,	)	
	)	
Defendants.	)	

MASTER’S REPORT  
(Motion to Dismiss)

Date Submitted: November 27, 2007  
Draft Report: May 2, 2008  
Final Report: October 14, 2008

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GLASSCOCK, Master

This is an action brought by Security Networks LLC (“Security”) against Alarm One, Inc. (“Alarm One”) and Peter Maltby (“Maltby”) to confirm an arbitration award against Alarm One and in favor of Security pursuant 10 Del. C. § 5713. The arbitration arose out of an agreement between Security and Alarm One in which Security agreed to purchase and Alarm One agreed to sell assets relating to their security alarm businesses. Specifically, Alarm One agreed to sell to Security all of Alarm One’s security alarm customer accounts in the State of Illinois. The purchase price was subject to computation through a formula set forth in the agreement between the parties, the Asset Purchase Agreement (the “APA”). Pursuant to the APA, disputes as to the computation of the purchase price were subject to binding arbitration by Benchmark Partners (“Benchmark”). Such a disagreement arose and was submitted to Benchmark, which issued an arbitration award in favor of Security. Security then sought to enforce the award in this Court. Alarm One removed the case to the District Court for the District of Delaware, which remanded the matter to this Court based on a procedural error in the removal notice. Alarm One seeks dismissal, alleging lack of personal jurisdiction over it. Maltby is a principal of Alarm One and a party to the APA, individually. He also seeks dismissal based on lack of personal jurisdiction.

## Background

Alarm One is an Illinois corporation with its principal place of business in California. Security is a Florida LLC. Neither company does business in the State of Delaware. According to counsel, Maltby is a resident of Utah. He holds a controlling interest in Alarm One. The parties negotiated the APA by telephone and electronic communication between Florida and California.

The APA provided a formula for computation of the purchase price to be paid by Security for Alarm One's Illinois security alarm accounts. Security was required to give Alarm One a "closing payment" of \$7,130,000 at closing, as a provisional purchase payment. Under Section 2.1(a) of the APA, the final purchase price would "equal a multiple of 31 times the Performing RMR [recurring monthly revenue] on the closing date, less the amount of the unearned revenue." Security was to deliver to the Alarm One an estimated purchase price as of the closing date together with supporting documentation. Within 120 days, Security was to compute a final closing adjustment together with supporting documentation. The APA provided that Alarm One then had an opportunity to dispute these adjustments. If such a dispute arose and was not resolved within 20 days "the parties agree to promptly engage [Benchmark] to resolve the dispute ... . [Benchmark's] determination will be final and binding on the parties." APA at Section 2.1(d).

The APA also contains a section dealing specifically with arbitration. Section 8.3 provides that

[e]xcept with respect to buyer electing to bring an action for specific performance of this agreement (which action will be commenced and settled in a court of competent jurisdiction) or dispute regarding the Final Purchase Price (which dispute will be settled by [Benchmark]), any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled by arbitration in Wilmington, Delaware, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”). Buyer and seller agree that such location is the most convenient forum for both parties . . . . Such arbitration will be final and binding on the buyer and seller, and no appeals may be taken therefrom, and judgment upon any award rendered may be entered into any court having jurisdiction therefore . . . .

The APA also imported Delaware law as the governing law of the agreement. Section 8.6 provides that “this Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of law provisions.”

A dispute arose between the parties over the amount of the final purchase price. Security sought an arbitration before the AAA in Wilmington, Delaware pursuant to Section 8.3 of the APA to resolve that dispute. Alarm One objected to that arbitration on the ground that, pursuant to the APA, disputes over the purchase price were specifically delegated to Benchmark for arbitration, not to the AAA. The AAA arbitration was stayed<sup>1</sup> and Benchmark was engaged as arbitrator for the purchase price issues.

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<sup>1</sup> According to counsel, the AAA arbitration remains pending but stayed.

Benchmark is located in Connecticut. The arbitration was conducted by telephone and e-mail. Benchmark issued a decision which Security seeks to enforce in this action.<sup>2</sup>

### Discussion

The plaintiff bears the burden to demonstrate that this Court has personal jurisdiction over each defendant. *E.g.*, Blue Ball Properties Inc. v McClain, Dist. Del., 658 F. Supp. 1310, 1314 (1987). Absent contractual consent or other waiver, Delaware jurisdiction over non-residents must be perfected pursuant to the Delaware long-arm statute, 10 Del. C. § 3104, and then only if sufficient contacts exist between the defendant and the state so that notions of due process are not offended. *E.g.*, World-wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291-92 (1980). Security does not argue that jurisdiction has been perfected over Alarm One and Maltby under the Delaware long-arm statute or that the minimum contacts of defendants with this jurisdiction required by notions of due process (apart from those created by the APA) have been demonstrated. Instead, Security argues that both Alarm One and Maltby consented to Delaware jurisdiction under the terms of the APA.

The right to assert lack of personal jurisdiction may be waived. *E.g.*, Burger King v. Rudzewicz, 471 U.S. 462, 473 n.14 (1985). Enforcement of a forum-selection agreement negotiated among the parties, where reasonable, is consistent with due process.

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<sup>2</sup> The arbitrator awarded Security \$1,133,042.

Id.; Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 704 (1982). The APA provides that Delaware law controls contractual issues arising under it. The fact that a contract provides that the law of a particular state shall apply to resulting disputes does not amount to a choice of forum; standing alone, such a provision is not sufficient to establish personal jurisdiction over the parties in that state. Burger King, 471 U.S. at 481-82.

The APA goes much further, however. Section 8.3 provides a specific choice of forum for arbitration: Wilmington, Delaware. It also states the parties understanding that Wilmington, Delaware is the most convenient forum for both parties. Conduct by the parties of an arbitration in Delaware confers jurisdiction upon this Court to enforce a resulting award. 10 Del. C. §§ 5701, 5702. Alarm One concedes that the APA provision choosing a Delaware forum for arbitration amounts to the choice of a Delaware forum for litigation concerning arbitration awards rendered here. *See* Insurance Corp. of Ireland, 456 U.S. at 704 (1982), *citing* Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes, 2d Dist. Cal., 336 F.2d 354 (1964)(holding that waiver of personal jurisdiction is inherent in choice of forum agreement). Thus, if an issue were arbitrated, as contractually required by the APA, in Wilmington before an AAA arbitrator, this Court would have jurisdiction over litigation concerning that arbitration. It is the statutory policy of this State to accept such a choice of forum in contract actions of this nature. *See* 6 Del. C. §2708. Alarm One argues strenuously, however, that because

the arbitration award resulted from a disagreement over purchase price which arose under Section 2.1(d), and not Section 8.3, this Court lacks personal jurisdiction over Alarm One. Section 2.1, which calls for arbitration before Benchmark, is silent as to the locus of that arbitration. In fact, the matter was arbitrated by telephone and e-mail before an arbitrator in Connecticut. Security argues that, reading the APA as a whole, it is clear that the parties were agreeing to a mutually convenient forum for arbitration and litigation: Wilmington, Delaware. Security contends that it would make nonsense of the arbitration provisions of the APA to find that arbitration and litigation for all contractual disputes *except* those involving the purchase price would occur in Wilmington, but that disputes over the purchase price would not be enforceable against Alarm One and Maltby here. The issue, then, is one of contract interpretation: have Alarm One and Maltby, through the APA, designated a choice of forum or waived jurisdictional requirements in favor of resolution of arbitration issues in this forum?

The APA makes it clear that with respect to arbitration of all issues arising from the contract (other than questions as to purchase price) the parties agreed to resolution by binding arbitration under AAA rules in Wilmington, Delaware; agreed that Wilmington, Delaware was the most convenient forum for resolution of such disputes; and agreed that Delaware law should govern the contract as well as the enforcement of any arbitration decision. Clearly, the parties consented to this Court's jurisdiction in the enforcement of such arbitrations. Counsel for Alarm One concedes that Benchmark was chosen to

arbitrate one contractual issue—purchase price—not because arbitration of that issue under the AAA in Delaware was inconvenient, but instead because Benchmark had expertise in the issues peculiar to computation of the purchase price. In other words, the parties agreed that all issues arising out of the contract would be subject to binding arbitration, and that such arbitration would take place and be enforced in Delaware by the AAA and this Court, with the sole exception that Benchmark would arbitrate issues relating to the purchase price because of Benchmark’s greater expertise with respect to that particular issue. Under the contract, Delaware law would still apply to the enforcement of Benchmark arbitration, and the contract was silent as to the choice of forum for the Benchmark arbitrations and the enforcement thereof.

Read as a whole, the contract is clear. Specific performance of the contract could be had in any court of competent jurisdiction. Disputes arising out of the contract, on the other hand, were subject to binding arbitration the locus of which was to be Wilmington, Delaware, the most convenient forum for the parties. A single issue—the one pertinent here—is to be referred to Benchmark rather than the AAA, but the contract is silent about the locus of such an arbitration. Nothing in the APA, including the reference of price issues to Benchmark for arbitration, disturbs the obvious contractual intent that Delaware be the forum for resolution of disputes arising under the contract. The parties have no connection to Delaware other than through their choice of Delaware law, arbitrators and courts for enforcement of their contractual provisions. They obviously chose a forum



equally convenient to each to resolve their disputes. It is most unlikely that the parties contemplated this jurisdiction as the most convenient forum for resolution of contract issues arising from the agreement, *except* confirmation of an arbitration award with respect to the purchase price. *See* Abry Partners V, L.P. v. F&W Acquisition LLC, Del. Ch., 891 A.2d 1032, 1048 n.25 (2006) (finding that applying choice-of-law provision to all issues arising under a contract likely complies with intent of rational parties who inserted the provision in the contract).

The confirmation of arbitration decisions under 10 Del. C. §5701 et seq. is a summary proceeding. In agreeing in the APA to arbitrate issues in Wilmington to be enforced under Delaware law, Alarm One has consented to jurisdiction here for purposes of resulting confirmation actions. *See* Insurance Corp. of Ireland, 456 U.S. at 704; 6 Del. C. §2708. Based on my reading of the contract as a whole, Maltby, as a guarantor under the APA, has similarly submitted to the jurisdiction of this Court.<sup>3</sup>

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<sup>3</sup> At first blush, Maltby appears to be in a stronger position to argue lack of personal jurisdiction than Alarm One, because of his limited endorsement of the contract. The APA provides that “the undersigned, as the majority shareholder of seller, hereby joins in this agreement, with respect to Section 2.1 hereof only, and all the covenants, agreements and obligations of seller pursuant to Section 2.1 will also be deemed to be made by the undersigned on a joint and several basis. [signed] Peter Maltby, individually.” Section 2.1 concerns computation of the purchase price and provides for arbitration by Benchmark. It does not contain the choice of law/choice of forum provision. Maltby argues that, since Section 2.1 does not refer to a choice of forum, he has not consented to any portion of the contract conceding Delaware jurisdiction. Section 2.1 cannot be understood in a vacuum, however. It is a basic premise of contract interpretation that the contract must be construed as a whole. E.g., AT&T Corp. v. Faraday Capital Ltd., Del. Supr., 918 A.2d 1104, 1198 (2007). As I have described in the body of this report, the contract, read as a whole, provides for arbitration enforcement to take place in this forum. Therefore, by consenting to be a party to the purchase price provisions of the APA, Maltby has consented to the jurisdiction of this Court over suits seeking confirmation of

Conclusion

Alarm One and Peter Maltby have consented to Delaware jurisdiction under the terms of the APA. Therefore, the motions of Alarm One and Peter Maltby to dismiss this matter for lack of personal jurisdiction must be denied.

/s/ Sam Glascock, III  
Master in Chancery

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arbitration awards arising out of those obligations.