IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WILLIAM WEYGANDT and WILLIAMS AVIATION, INC.,	)	
Plaintiffs,	)	
v.	)	C.A. No. 4056-VCS
WECO, LLC a/k/a Weco, Inc. and DOES 1-20,	)	
Defendants.	)	
GULFSTREAM AEROSPACE CORP., GDAS-LINCOLN, INC., and WECO, LLC,	)	
Counterclaim and Third-Party Plaintiffs,	)	
v.	)	
WILLIAM WEYGANDT, WILLIAMS AVIATION, INC., and WEYGANDT AND ASSOCIATES,	)	
Counterclaim and Third-Party Defendants.	)	

MEMORANDUM OPINION

Date Submitted: April 7, 2009
Date Decided: May 14, 2009

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STRINE, Vice Chancellor.

The counterclaim and third-party plaintiffs in this case seek, among other relief, the rescission of two agreements — an agreement to purchase a business, and a related lease on the facilities where the business was operated — based on alleged misrepresentations about the health of the business. In this opinion, I address the motion brought by the third-party defendant lessor to dismiss the counterclaims and third-party claims against it for lack of personal jurisdiction. I hold that the lessor is bound to the forum selection clause in favor of Delaware contained in the agreement concerning the sale of the business, which the lessor did not execute but which, like the lease, was negotiated by the lessor's controller. The two agreements were closely related because the lease was only needed by the buyer if the sale of the business closed, the lease was specifically referenced as one of the transaction documents in the sale agreement, and it was foreseeable that the lessor would have to litigate issues that related to both agreements, such as this fraudulent inducement claim, in Delaware. The reason for that is obvious: the buyer only entered the lease on the assumption that the business it was to operate on the leased premises was in the condition represented by the seller, and if there were grounds for rescission of the business sale, the lessor should have reasonably expected to face a rescission suit, too. As a result, the lessor is bound by equitable estoppel to appear in Delaware.

I. Background

Before 2007, Weco, Inc. ("Weco-California")[1] owned and operated an FAA-certified aviation repair and overhaul business located in Lincoln, California (the "Repair Business"). The sole shareholder of Weco-California is William Weygandt.[2] Weygandt also controls Weygandt and Associates ("W&A"), which owns the building where the headquarters and main repair facilities for the Repair Business are located (the "Lincoln Facility").

A. The Sale Of The Repair Business And Lease Of The Lincoln Facility

In late 2006, Weygandt negotiated a sale of the Repair Business to Gulfstream Aerospace Corporation. On January 22, 2007, Weygandt and Weco-California executed an "Asset Purchase Agreement" with Weco, LLC ("Weco-Delaware"), a wholly owned subsidiary of Gulfstream Aerospace. The Asset Purchase Agreement contained a consent to jurisdiction clause (the "Consent Provision"): "Each party to this Agreement consents to submit to the exclusive personal jurisdiction of any state or federal court sitting in the State of Delaware in any action or proceeding arising out of or relating to this Agreement . . . ."[3]

As a condition of closing, the Asset Purchase Agreement also required that several related agreements be executed. One of these agreements was for Weco-Delaware to lease the Lincoln Facility from W&A (the "Lease Agreement"). Accordingly, W&A and Weco-Delaware executed the Lease Agreement, the form of which was an exhibit to the

[1] Weco-California has since changed its name to Williams Aviation, Inc.
[2] Counterclaim ¶ 10.
[3] Asset Purchase Agreement § 12.13.

Asset Purchase Agreement, as part of the Asset Purchase Agreement closing on March 2, 2007. The Lease Agreement did not contain a consent to jurisdiction clause.

The interdependence of the Asset Purchase Agreement and the Lease Agreement is evident from several provisions in the two documents. First, in § 6.6 of the Asset Purchase Agreement, Weco-California and Weygandt covenanted that they would "cause . . . [W&A] to enter into the . . . Lease Agreement."[4] In other words, Weco-California and Weygandt covenanted that they had the ability to cause W&A to enter into a contract that was a necessary component of the Repair Business sale. Relatedly, as noted above, a condition of closing under the Asset Purchase Agreement was that Weygandt and Weco-California deliver an executed copy of the Lease Agreement.[5]

And, § 12.7 of the Asset Purchase Agreement stated that "[t]his Agreement, the Disclosure Schedules, *the Transaction Documents* and the other documents referred to herein collectively constitute the entire agreement among the parties . . . ."[6] The Lease Agreement was one of the defined "Transaction Documents," and thus "constitute[d]" part of the "entire agreement" between Weco-California, Weygandt, and Weco-Delaware.

Finally, § 12 of the Lease Agreement referred back to the Asset Purchase Agreement, acknowledging that Weco-Delaware had acquired certain improvements under the Asset Purchase Agreement and preserving W&A's ability to use the improvements that were an integral part of the building.

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[4] Asset Purchase Agreement § 6.6(b).
[5] Asset Purchase Agreement § 8.6(d).
[6] Asset Purchase Agreement § 12.7 (emphasis added).

It is clear from these provisions that the sale of the Repair Business and the lease of the Lincoln Facility were mutually dependent aspects of the bargain Weygandt negotiated with Gulfstream. There was no reason for Gulfstream to lease the Lincoln Facility if it did not also purchase the Repair Business. As a result, if the Repair Business was not in the condition warranted, suffered a material adverse effect, or otherwise failed to meet a closing condition and Gulfstream therefore had grounds not to purchase the Repair Business, Gulfstream would have had no use for a lease on the Lincoln Facility. In essence, Gulfstream and Weygandt struck a bargain for Gulfstream to pay for its acquisition of the Repair Business in two ways — the up-front purchase price paid to Weco-California and the ongoing stream of lease of payments paid to W&A — and then divided the terms of those payments across two, interrelated agreements.

B. The Federal Investigation And Ensuing Litigation

A year after the sale of the Repair Business closed, in February 2008, FBI agents served a Grand Jury subpoena for certain records of the Repair Business. Weco-Delaware learned that the Department of Justice was investigating the Repair Business for pre- and post-sale violations of FAA regulations, including failure to perform mandated tests and procedures and use of unapproved parts and materials in repairs.

When Weco-California learned of the investigation, and of Weco-California's potential liability for the alleged pre-sale violations, it demanded that Weco-Delaware provide copies of certain books and records in order for Weco-California to prepare its defense. After Weco-Delaware refused, Weco-California and Weygandt brought suit in this court against Weco-Delaware asserting, among other things, breach of certain clauses

of the Asset Purchase Agreement requiring cooperation in defending against legal actions.

Weco-Delaware, along with Gulfstream Aerospace and another one of its subsidiaries (collectively, "Gulfstream"), then brought a counterclaim and third-party complaint (the "Counterclaim") against Weygandt, Weco-California, and W&A alleging, among other things, fraudulent inducement, equitable fraud, and civil conspiracy based on alleged misrepresentations in the Asset Purchase Agreement. W&A now seeks to dismiss the Counterclaim against it on the basis that this court lacks personal jurisdiction over W&A.

II. Analysis

On a Rule 12(b)(2) motion to dismiss, "the plaintiff bears the burden of showing a basis for the court's exercise of jurisdiction over the nonresident defendant."[7] All allegations of fact are presumed true unless contradicted by affidavit, and the court may look to pleadings, briefs, and affidavits to determine whether the plaintiff has met its burden of making a prima facie case establishing jurisdiction.[8]

Gulfstream's sole basis for asserting jurisdiction over W&A is the Consent Provision in the Asset Purchase Agreement. Gulfstream essentially raises two arguments as to why W&A is bound by that Provision even though W&A was not a party to Asset Purchase Agreement: 1) the Asset Purchase Agreement and the Lease Agreement, which

[7] *Werner v. Miller Tech. Mgmt., L.P.*, 831 A.2d 318, 326 (Del. Ch. 2003).
[8] *Crescent/Mach I Partners, L.P. v. Turner*, 846 A.2d 963, 974 (Del. Ch. 2000). The court may also exercise its discretion to otherwise craft an efficient procedure for determining the defendant's amenability to suit. *Hart Holding Co. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 539 (Del. Ch. 1991).

W&A did sign, were part of a single agreement, so W&A is bound by the terms of the Asset Purchase Agreement; and 2) W&A embraced the benefits of the Asset Purchase Agreement, so it is equitably estopped from denying the obligations imposed by the agreement. I address each of these arguments in turn.

A. Single Agreement

Gulfstream first argues that the Asset Purchase Agreement and the Lease Agreement are part of the same transaction, so W&A is bound to the Consent Provision under the general rule that agreements that are part of the same transaction are construed together.[9] But, Gulfstream has not demonstrated that under this rule of contract interpretation, a party can be bound to terms that are not in any of the agreements the party itself signed.

As a general rule, "only the formal parties to a contract are bound by its terms."[10] In some cases where the same parties have executed multiple, related agreements, the court will read all of the agreements together in order to determine the rights and obligations of the parties. For example, in *Simon v. Navellier Series Fund*,[11] this court held that a trustee was required to bring his indemnification claim in the venue the parties

[9] *See Simon v. Navellier Series Fund*, 2000 WL 1597890, at *7 (Del. Ch. Oct. 19, 2000) (noting that an "important principle of construction" is that contemporaneously executed documents executed by the same parties and dealing with related matters should be construed together); *Crown Books Corp. v. Bookstop, Inc.*, 1990 WL 26166, at *1 (Del. Ch. Feb. 28, 1990) ("[I]n construing the legal obligations created by [a] document, it is appropriate for the court to consider not only the language of that document but also the language of contracts among the same parties executed or amended as of the same date that deal with related matters . . . ."); *see also* RESTATEMENT (SECOND) OF CONTRACTS § 202(2) (1981) ("A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together.").

[10] *Alliance Data Sys. Corp. v. Blackstone Capital Partners V L.P.*, 963 A.2d 746, 760 (Del. Ch. 2009).

[11] 2000 WL 1597890 (Del. Ch. Oct. 19, 2000).

selected in an Indemnification Agreement even though the trustee's claim purported to be based entirely on a related Declaration of Trust, which did not contain a venue provision. But, in *Simon* the trustee had consented to the venue provision for at least some purposes by executing the Indemnification Agreement; the issue was the scope of that consent. Here, W&A did not execute any agreement containing a consent to jurisdiction in Delaware.

None of the cases cited by Gulfstream support the proposition that, under the single agreement theory, a party can be bound to terms not contained in any document the party executed.[12] And, doing so would be in conflict with Delaware's general policy of not extending the rights and obligations of contracts to parties that did not execute them, absent special circumstances. One of those special circumstances — equitable estoppel — may exist here, as discussed below. But, Gulfstream must press its claim through that doctrine, not through the single agreement theory.

B. Equitable Estoppel

Gulfstream's second argument is that W&A is bound by the Consent Provision because W&A received a direct benefit from the Asset Purchase Agreement. For this argument, Gulfstream relies primarily on *Capital Group Cos. v. Armour*,[13] which held

[12] Gulfstream claims this is what happened in *Res. Ventures, Inc. v. Res. Mgmt. Int'l, Inc.*, 42 F. Supp. 2d 423 (D. Del. 1999). But, in that case the court held that a signatory to an amendment was bound by the terms of the original agreement where the amendment expressly stated the original agreement remained in full force and effect. *Id.* at 432-33. Thus, the terms of the original agreement were expressly incorporated into the document the party signed, unlike here, where the Lease Agreement does not expressly incorporate the terms of the Asset Purchase Agreement.

[13] 2004 WL 2521295 (Del. Ch. Oct. 29, 2004). This court also recognized the applicability of equitable estoppel in the forum selection clause context in *Ishimaru v. Fung*, 2005 WL 2899680

that a non-signatory was bound by a forum selection clause after applying a three-step analysis adopted from the United States District Court for the District of Delaware's opinion in *Hadley v. Shaffer*[14]: "First, is the forum selection clause valid? Second, are the defendants third-party beneficiaries, or closely related to, the contract? Third, does the claim arise from their standing relating to the merger agreement?"[15]

(Del. Ch. Oct. 26, 2005). In that case, the plaintiff was attempting to reap the benefits of an agreement without submitting to its obligations. The *Ishimaru* plaintiff sued the subsidiary of a company with which the plaintiff had a contract. The plaintiff argued that the non-signatory subsidiary was so indistinct from its signatory parent that the subsidiary could be treated as a party to the agreement and be held liable itself for breaches of the agreement. But, the plaintiff argued, the non-signatory subsidiary was distinct enough from its parent that it could not enforce the agreement's arbitration clause against the plaintiff. *Id.* at *18. The factual situation here is not so stark, and here the question is of requiring a non-signatory defendant to appear in a forum chosen in an agreement executed by an affiliate rather than of allowing a non-signatory defendant to enforce a forum selection clause against a signatory plaintiff, but *Ishimaru* supports the basic principle of *Capital Group* that this court will use principles of equitable estoppel to determine when parties are bound to a forum.

[14] 2003 WL 21960406, at *4 (D. Del. Aug. 12, 2003).

[15] *Capital Group*, 2004 WL 2521295, at *5. The *Hadley* court phrased the third prong of this test as both "whether the present claim arises from [the Hadleys'] standing relating to the Merger Agreement" and "do the claims against the Hadleys arise from their status relating to the Merger Agreement?" *Hadley*, 2003 WL 21960406, at *4, *6. The *Hadley* court explained that the legal requirement underlying this prong was that "[i]n order for the Hadleys to be bound by the terms of the forum selection clause [in the Merger Agreement], the claims asserted must arise from the Merger Agreement at issue." *Id.* at *6. Similarly, the *Capital Group* court stated "[i]n order for Ritter to be bound by the terms of the forum selection clause [in the SRA], the claims asserted must arise from the SRA." 2004 WL 2521295, at *7.

Thus, as applied, the meaning of the third prong of the *Capital Group* test is that the agreement containing the forum selection clause must also be the agreement that gives rise to the substantive claims brought by or against a non-signatory in order for the forum selection clause to be enforceable against the non-signatory. This appears to be a way of cabining the number of forum selection clauses a party needs to worry about in a complex transaction by preventing a litigant from binding a non-signatory to an agreement that was part of the transaction at issue, but that was so unrelated to the non-signatory that no substantive claim against the non-signatory could arise from it.

Here, W&A does not dispute that the first and third elements of the *Capital Group* test are met,[16] so the operative question is whether W&A was "closely related" to the Asset Purchase Agreement. The holding in *Capital Group* is based on a body of law developed in the federal courts concerning the enforceability of forum selection clauses.[17] The rationale in these cases is based on the principle that a third-party beneficiary cannot enjoy the benefits of an agreement without accepting its obligations. The cases expand this principle to include not only third-party beneficiaries, but also parties who are "closely related" to the agreement at issue. For example, in *Capital Group*, the court found that a defendant was bound to an agreement that she did not sign and that expressly disclaimed any third-party beneficiaries because she was "closely related" to that agreement.

The cases suggest two ways a party can be closely related to an agreement: 1) she receives a direct benefit from the agreement;[18] or 2) it was foreseeable that she would be bound by the agreement.[19] Both ways are applicable here.

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[16] W&A has expressly said that the Consent Provision is valid. Rep. Br. at unnumbered 3. And W&A has not argued that the third element is not met. Nor would that be a persuasive argument. The core of Gulfstream's complaint is that the defendants failed to correct misrepresentations in the Asset Purchase Agreement, so the agreement that the claim arises under is the same agreement that contains the forum selection clause.

[17] *See Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349 (2d Cir. 1999); *Hugel v. Corp. of Lloyd's*, 999 F.2d 206 (7th Cir. 1993); *Coastal Steel Corp. v. Tilghman Wheelabrator, Ltd.*, 709 F.2d 190 (3d Cir. 1983); *Hadley*, 2003 WL 21960406; *Jordan v. SEI Corp.*, 1996 WL 296540 (E.D. Pa. June 4, 1996).

[18] *See Capital Group*, 2004 WL 2521295, at *6 ("In general, a non-signatory is estopped from refusing to comply with a forum selection clause when she received a 'direct benefit' from a contract containing a forum selection clause." (citing *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000); *Tencara Shipyard*, 170 F.3d at 353)).

1. Direct Benefit

In *Capital Group*, the direct benefit was that a closely held company allowed one of its employees to transfer his individually titled stock to a joint trust for himself and his wife on the condition that the trust execute a Stock Restriction Agreement. This transfer benefited the wife because it gave her a direct, beneficial interest in the stock, and the court held that she was therefore bound by the forum selection clause in the Stock Restriction Agreement when the company brought suit against her in her individual capacity.[20] In *American Bureau of Shipping v. Tencara Shipyard S.P.A*,[21] the direct benefit was that a certification of seaworthiness allowed a ship purchaser to obtain lower insurance rates and permission to sail the ship under the French flag. The court therefore held that the purchaser was bound to the forum selection clause in the agreement to certify the ship executed between the ship's builder and the certification organization when the purchaser tried to sue the certification organization for improperly certifying the ship.[22]

Here, Gulfstream claims that W&A received a direct benefit under the Asset Purchase Agreement because Gulfstream would not have entered the Lease Agreement if it was not buying the Repair Business in accordance with the Asset Purchase Agreement.

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[19] *See Hugel*, 999 F.2d at 209 ("In order to bind a non-party to a forum selection clause, the party must be 'closely related' to the dispute such that it becomes 'foreseeable' that it will be bound." (quoting *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514 n.5 (9th Cir.1988); *Coastal Steel*, 709 F.2d at 203)); *Jordan*, 1996 WL 296540, at *6 ("Forum selection clauses bind nonsignatories that are closely related to the contractual relationship or that should have foreseen governance by the clause.").

[20] 2004 WL 2521295, at *7.

[21] 170 F.3d 349 (2d Cir. 1999).

[22] *Id.* at 353.

The Lease Agreement is a direct benefit to W&A because it provides a lucrative tenant for W&A. Under the Lease Agreement, Gulfstream must pay W&A an annual base rent that increases over each of the five years of the lease term, starting at $277,500 and ending at $324,480, for a total of over $1.5 million paid over the life of the lease (Gulfstream paid $19.3 million for the Repair Business).[23] In addition to this base rent, Gulfstream must pay W&A a pro rata share of W&A's "Operating Expenses" based on the percentage of rentable area occupied by Gulfstream, which was 62.12% at the time of the Lease Agreement.[24] Thus, under the Lease Agreement, W&A is able to shift a major portion of its costs of operating the Lincoln facility to Gulfstream, which is a direct benefit to W&A and is a benefit that Gulfstream only agreed to provide because the Asset Purchase Agreement required Gulfstream to lease the Lincoln Facility from W&A.

2. Foreseeability

A close relationship based on foreseeability also exists here. Several cases suggest that when a control person agrees to a forum, it is foreseeable that the entities controlled by that person which are involved in the deal will also be bound to that forum.[25] The

[23] Lease Agreement Ex. C.

[24] Lease Agreement § 4.2. As defined in the Lease Agreement, W&A's Operating Expenses include taxes, amortized capital repairs or replacements, insurance, permits and inspections, regulatory costs, utilities in common areas, and management fees for common areas.

[25] I find the statements of the foreseeability rule to be somewhat circular — a party is bound when she should know she will be bound. But, the cases applying it seem to focus on whether the same people were involved in all of the agreements, even if they were acting on behalf of different entities. *See, e.g.*, *Hugel*, 999 F.2d at 210 (upholding district court's finding that "the corporations owned and controlled by Hugel are so closely related to the dispute that they are equally bound by the forum selection clause and must sue in the same court in which Hugel agreed to sue"); *Jordan*, 1996 WL 296540, at *6 (holding that a company formed by a signatory to a marketing agreement for the purpose of fulfilling the signatory's obligations under the

rationale for binding such entities rests on the public policy that forum selection clauses "promote stable and dependable trade relations," and it would be inconsistent with that policy to allow the entities through which one of the parties chooses to act to escape the forum selection clause.[26]

Here, Weygandt negotiated the entire Repair Business transaction, including the sale of the Business and the lease of the Lincoln Facility. Weygandt agreed, on behalf of both himself and Weco-California, to a forum for resolving disputes arising from the sale of the Repair Business. Both Weygandt and Gulfstream expected that if there was a dispute regarding the Asset Purchase Agreement, it would be resolved in Delaware — indeed, Weygandt and Weco-California initiated this very suit in this court. Likewise, it should have been apparent to Weygandt, and therefore his controlled company, W&A, that W&A might become involved in a dispute under the Asset Purchase Agreement.

W&A obtained the Lease Agreement only because Weygandt negotiated for it as part of the sale of Repair Business memorialized in the Asset Purchase Agreement. It was foreseeable that if Gulfstream sought rescission of the Asset Purchase Agreement because it was fraudulently induced, as it is doing here, Gulfstream would also seek

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marketing agreement was bound to the forum selection clause in the marketing agreement even though the company was a non-signatory).

[26] *Coastal Steel*, 709 F.2d at 203; *see also Clinton v. Janger*, 583 F. Supp. 284, 290 (N.D. Ill. 1984) ("[T]he cases hold that a range of transaction participants, parties and non-parties, should benefit from and be subject to forum selection clauses. This is especially true where the non-party is a third party beneficiary of the disputed contract and it is foreseeable that dispute resolution would occur in a foreign jurisdiction." (citations omitted)); *Manetti-Farrow*, 858 F.2d at 514 n.5 ("However, 'a range of transaction participants, parties and non-parties, should benefit from and be subject to forum selection clauses.' We agree with the district court that the alleged conduct of the non-parties is so closely related to the contractual relationship that the forum selection clause applies to all defendants." (quoting *Janger*, 583 F. Supp. at 290)).

rescission of the Lease Agreement because the key inducement for both Agreements — Weygandt's representations about health of the Repair Business — was the same. Put bluntly, if Gulfstream was excused from buying the Repair Business because of fraud or the falsity of the contractual representations and warranties, it would have had no business reason or legal obligation to enter the Lease Agreement, a Lease Agreement which was only needed if Gulfstream was to operate the Repair Business. And, it was foreseeable that such a dispute involving both the Asset Purchase and Lease Agreements would have to be brought, at least in part, in Delaware because of the Consent Provision in the Asset Purchase Agreement.

Because W&A's controller negotiated this arrangement, wherein a dispute foreseeably involving W&A and the Lease Agreement had to be brought in Delaware, W&A is bound to appear in Delaware. Otherwise, W&A would have the power to cause duplicative and inefficient litigation in multiple forums and undermine the benefit of predictability that W&A's controller, Weygandt, provided to Gulfstream by agreeing to the Consent Provision in the Asset Purchase Agreement.

Thus, W&A is equitably estopped from asserting that this court lacks jurisdiction over it.

III. Conclusion

For the foregoing reasons, I find that this court has personal jurisdiction over third-party defendant Weygandt & Associates and therefore deny the motion to dismiss for lack of personal jurisdiction. IT IS SO ORDERED.