IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ONESCREEN INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 4545-VCP
	)	
JORDAN HUDGENS,	)	
ANDRE WADSWORTH and	)	
BRYAN MYERS,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Submitted: December 9, 2009
Decided: March 30, 2010

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PARSONS, Vice Chancellor.

In this case, OneScreen, Inc. ("OneScreen") seeks to rescind two transfers of preferred stock from its former CEO, Jordan Hudgens, to Andre Wadsworth and Bryan Myers on the ground that the purported transfers arose from another transaction that was, in reality, nothing more than a criminally usurious loan under Florida law that is void *ab initio* as against public policy. OneScreen, though not a party to any of the relevant stock purchase agreements, seeks to rescind these transfers purportedly so that it can maintain accurate and complete books and records relating to its stock ownership. This action is currently before me on Defendants Wadsworth and Myers' (the "Moving Defendants") motion to dismiss for lack of personal jurisdiction, insufficient process and service of process, and failure to state a claim.

For purposes of the pending motion, the issue of personal jurisdiction is dispositive. The question before the Court is whether, consistent with the constitutional requirements of due process, it may exercise jurisdiction over the Moving Defendants for purposes of an action that seeks to void stock transfers based solely on the fact that those Defendants own stock in a Delaware corporation. Following the line of reasoning employed in *Shaffer v. Heitner* and subsequent Delaware cases,[1] I hold that Wadsworth

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[1] *Shaffer v. Heitner*, 433 U.S. 186 (1977); *Istituto Bancario Italiano v. Hunter Eng'g Co.*, 449 A.2d 210 (Del. 1982); *Ryan v. Gifford*, 935 A.2d 258 (Del. Ch. 2007); *Hart Hldg. Co. v. Drexel Burnham Lambert, Inc.*, 1992 WL 127567 (Del. Ch. May 28, 1992); *Hart Hldg. Co. v. Drexel Burnham Lambert, Inc.*, 593 A.2d 535 (Del. Ch. 1991); *Hynson v. Drummond Coal Co.*, 601 A.2d 570 (Del. Ch. 1991); *Arden-Mayfair, Inc. v. Louart Corp.*, 385 A.2d 3 (Del. Ch. 1978); *Tuckman v. Aerosonic Corp.*, 394 A.2d 226 (Del. Ch. 1978); *Bolger v. N. Lumber Co.*, 1978 WL 2492 (Del. Ch. Apr. 13, 1978).

and Myers' mere ownership of stock in OneScreen is not enough, on its own, to justify exercising jurisdiction over them. Consequently, I grant their motion to dismiss for lack of personal jurisdiction.

I. FACTUAL BACKGROUND

A. The Parties

Plaintiff, OneScreen, is a Delaware corporation with its principal place of business in Costa Mesa, California. At the time of the stock transfer, OneScreen was known as Vidshadow, Inc. ("Vidshadow") and was a wholly-owned subsidiary of DME-Interactive Holdings, Inc. ("DME").

Defendants, Hudgens, Wadsworth, and Myers, live in Texas, Arizona, and Florida, respectively.[2] There is no allegation that Wadsworth and Myers have any connection to Delaware other than as owners of stock in OneScreen.

B. Facts[3]

On September 28, 2007, Hudgens entered into a stock purchase agreement with Wadsworth and Myers (the "September Agreement"), through which Hudgens sold Wadsworth and Myers 422.5 shares of Series A Preferred Stock of DME (the "DME Shares") for $225,000. The September Agreement granted Hudgens the right to repurchase all or a portion of the DME Shares within a certain time period. Specifically,

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2 Though Hudgens is a named Defendant in this case, he is not a party to the pending motion to dismiss.

3 Unless otherwise noted, these facts are drawn from the Complaint and related documents.

the Agreement provided that Hudgens could, within 30 days, repurchase all of the DME Shares from Wadsworth and Myers for $325,000. If the repayment occurred after 30 days but before 60 days, however, Hudgens could repurchase only 322.5 DME Shares for $325,000. If the repayment did not occur within 60 days, Hudgens forfeited the right to repurchase any DME Shares.[4]

On November 9, 2007, having failed to repurchase the DME Shares within the original 30-day time period, Hudgens entered into separate, but identical, stock purchase agreements with Wadsworth and Myers (the "November Agreements").[5] Through the November Agreements, Hudgens transferred 12.5 shares of his Series A Preferred Stock

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4 In pertinent part, the repurchase provision of the September Agreement provides that:

> [I]f the Seller has paid to Purchaser . . . cash or certified funds in the amount of . . . ($325,000) on or before October 29, 2007 at 12 Noon EST, all of the shares conveyed in this Agreement shall be conveyed and delivered back to Seller by Purchaser. If payment of . . . ($325,000) is made on or after October 29, 2007 at 12:01 p.m. EST, but on or before November 29, 2007 at 12 Noon EST, then, in exchange for the delivery of . . . ($325,000) . . . 322.5 Shares of Series A Preferred Stock shall be delivered and reconveyed to Seller by Purchaser. On November 29, 2007 at 12:01 p.m., if payment . . . has not been made . . . the 422.5 shares of Series A Preferred Stock shall be unconditionally the sole and exclusive property of Purchaser.

5 According to these Agreements, Wadsworth and Myers received 6.25 Vidshadow Shares each in exchange for a total purchase price of $325,000. It is not clear from the record, however, whether any money changed hands as part of this transaction or whether, as OneScreen argues, Wadsworth and Myers received the shares as repayment for the "loan" memorialized in the September Agreement.

in Vidshadow (the "Vidshadow Shares") to Wadsworth and Myers. Immediately before entering the November Agreements, Hudgens also transferred 94.1346 shares of Series A Preferred Stock in Vidshadow to Wadsworth and Myers at their insistence (the "Additional Vidshadow Shares"). This transfer gave Wadsworth and Myers a combined ten percent holding in Vidshadow.

None of OneScreen, Vidshadow, or DME was a party to or third-party beneficiary of the September or November Agreements.

C. Procedural History

OneScreen filed its Complaint on April 28, 2009 seeking to rescind the transfer of the Vidshadow Shares and Additional Vidshadow Shares from Hudgens to Wadsworth and Myers. On June 19, Defendants Wadsworth and Myers moved to dismiss this action for lack of personal jurisdiction, insufficient process and service of process, and failure to state a claim upon which relief could be granted.[6] After briefing, I heard argument on the motion to dismiss on December 9, 2009.

D. Parties' Contentions

OneScreen seeks to cancel the stock transfers effectuated through the November Agreements, arguing that they resulted from a disguised, criminally usurious "loan"

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[6] Hudgens also was named as a Defendant and served with process by OneScreen. He failed to respond to the Complaint, however, and the Court declared him in default on July 24, 2009.

under Florida law.[7] According to OneScreen, "the purported sale of the 422.5 DME Shares was nothing more than a disguised loan transaction meant to bypass Florida's usury laws" and "the purported sale of the Vidshadow Shares and transfer of Additional Vidshadow Shares was nothing more than satisfaction of the original (and illegal) loan made to Hudgens by Wadsworth and Myers."[8] Moving Defendants respond by arguing that the September Agreement was a typical stock purchase agreement that also granted Hudgens the opportunity, but did not obligate him, to repurchase the DME Shares. They further contend that, because the September Agreement was not a disguised loan transaction, OneScreen has no basis on which to challenge the validity of the November Agreements.

In response to the motion to dismiss for lack of personal jurisdiction, OneScreen avers that this Court has authority to hear a claim against the Moving Defendants because it has *in rem* jurisdiction over the Vidshadow Shares and Additional Vidshadow Shares. OneScreen suggests that, because it does not ask this Court to exercise jurisdiction over

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7 OneScreen also asserts that, because they are part of a criminally illegal loan, the September and November Agreements are void *ab initio* and must be rescinded.

8 Compl. ¶ 4. OneScreen bases its claim on this characterization of the facts. Essentially, OneScreen claims that, after financial difficulties in late 2007, Hudgens sought a $225,000 term "loan" from Wadsworth and Myers and transferred the DME Shares as collateral for that loan. Under this interpretation of the September Agreement, Hudgens was required to repay the loan principal plus $100,000 interest within 60 days or risk forfeiting part or all of the DME Shares. OneScreen further contends that Hudgens transferred the Vidshadow and Additional Vidshadow Shares to Wadsworth and Myers to repay the "loan" and regain the DME Shares.

the Moving Defendants, but only over the property purportedly belonging to them, this suit is proper under 8 *Del. C.* § 169 and 10 *Del. C.* § 365.[9]

In response, the Moving Defendants contend that the Court may not exercise jurisdiction here because, in light of the United States Supreme Court's ruling in *Shaffer v. Heitner* and subsequent decisions interpreting *Shaffer*, ownership of stock in a Delaware corporation, on its own, is an insufficient basis on which to hale nonresident defendants into a Delaware court. Thus, Defendants argue that this case must be dismissed because OneScreen has shown no connection between Delaware and the Moving Defendants other than stock ownership.[10]

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[9] OneScreen contends that it has standing to bring this suit because it is a Delaware corporation charged with the absolute obligation and responsibility under Delaware law of maintaining accurate books, records, and ledgers of the owners of its stock.

Even if OneScreen does have standing to seek to invalidate a stock transfer simply to maintain an accurate ledger of the owners of its stock, a highly doubtful proposition, to grant OneScreen the relief it seeks, this Court would need to conclude that the November Agreements are invalid and unenforceable. In a suit to invalidate a transaction, the parties to that transaction generally are considered indispensable parties because a judgment rendered in their absence may be unduly prejudicial and inadequate. *See* Ct. Ch. R. 19; *Elster v. Am. Airlines*, 106 A.2d 202, 203-04 (Del. 1954); *E.I. du Pont de Nemours & Co., Inc. v. Shell Oil Co.*, 1983 WL 8942, at *3-7 (Del. Ch. Dec. 13, 1983). Thus, as a matter of procedure, even if I accepted OneScreen's argument that a "true" *in rem* proceeding does not require any showing of minimum contacts, which I do not, this case would likely still be dismissed for inability of the Court to exercise jurisdiction over Wadsworth and Myers.

[10] The Moving Defendants also seek to dismiss OneScreen's claim (1) because OneScreen was not a party to the September or November Agreements, and, thus, has no standing to bring this action, and (2) because the agreements at issue merely provided for the sale and possible repurchase of stock and were not part of

II. ANALYSIS

Because a finding of personal jurisdiction is a condition precedent to examining the remaining grounds for dismissal,[11] I first determine whether this Court has jurisdiction over the Moving Defendants. The central question raised by this portion of Defendants' motion is whether a state court may, consistent with notions of fair play and substantial justice, take jurisdiction over a defendant in an action that seeks to void a stock transfer based solely on the fact that the defendant owns stock in a Delaware corporation.

For the reasons that follow, I find that *Shaffer* and its progeny preclude the Court from exercising jurisdiction over the Moving Defendants because their stock ownership is not such that they reasonably would have foreseen being haled into this Court in this action. Thus, I grant the pending motion to dismiss for lack of personal jurisdiction.

A. Motion to Dismiss for Lack of Personal Jurisdiction

On a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2), the plaintiff bears the burden of showing the basis for the court's exercise of jurisdiction. When considering whether the plaintiff has met that burden, I may rely upon "pleadings,

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a criminally usurious loan. Because I dismiss OneScreen's claims against the Moving Defendants for lack of personal jurisdiction, I need not address these alternative arguments advanced in support of their motion to dismiss.

[11] *Branson v. Exide Elec. Corp.*, 625 A.2d 267, 269 (Del. 1993) ("[A] court's finding of personal jurisdiction is not only a condition precedent to a proper exercise of its own judicial authority, but it is determinative of the course of other litigation between the same parties.").

proxy statements, affidavits, and briefs of the parties"[12] and "must draw reasonable inferences in favor of the plaintiff."[13] Typically, a plaintiff may meet its burden by making a prima facie showing that exercise of personal jurisdiction is appropriate.[14]

Delaware courts apply a two-step analysis to determine if personal jurisdiction exists over a nonresident defendant: First, the court considers whether service of process over a nonresident defendant is authorized by statute; and second, the court determines whether exercise of jurisdiction over such a defendant comports with the Due Process Clause of the Fourteenth Amendment.[15]

1. Statutory basis

OneScreen asserts that this Court has *in rem* jurisdiction to determine the validity of Hudgens' purported transfer of stock to Wadsworth and Myers based on 8 *Del. C.* §

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[12] *Sample v. Morgan,* 935 A.2d 1046, 1055-56 (Del. Ch. 2007) (quoting *Crescent/Mach I P'rs, L.P. v. Turner,* 846 A.2d 963, 974 (Del. Ch. 2000)).

[13] *Id.* at 1056 (citing *Outokumpu Eng'g Enter., Inc. v. Kvaerner EnviroPower, Inc.,* 685 A.2d 724, 727 (Del. Super. 1996)).

[14] *Hart Hldg. Co. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 539 (Del. Ch. 1991) ("The trial court is vested with a certain discretion in shaping the procedure by which a motion under Rule 12(b)(2) is resolved. Since the central question is one of fact, the court may hold a preliminary hearing and determine the necessary facts, or it may decide the matter on affidavits. It has discretion to delay decision until further discovery is completed. If the motion is decided on affidavits, the court should require only that plaintiff make out a *prima facie* case. If, however, the motion is decided upon testimony, whether at trial or at a pre-trial evidentiary hearing, plaintiff must establish personal jurisdiction by a preponderance of the evidence.") (citations omitted).

[15] *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.,* 871 A.2d 428, 438 (Del. 2005); *Hercules, Inc. v. Leu Trust & Banking (Bah.) Ltd.*, 611 A.2d 476, 480-81 (Del. 1992).

169 and 10 *Del. C.* § 365.[16] Essentially, OneScreen argues that (1) Delaware is the legal situs for all stock in a Delaware corporation and (2) nonresidents may be brought to this Court by constructive service of process under 10 *Del. C.* § 365 where "the suit is one wherein the relief sought relates to the status, title or ownership of property actually located within its jurisdiction."[17] Thus, OneScreen contends that this Court may exercise jurisdiction over the owners of stock in any suit relating to the "status, title or ownership" of stock in a Delaware corporation. Specifically, OneScreen claims these statutes allow the Court to exercise *in rem* jurisdiction over the Vidshadow Shares and Additional Vidshadow Shares and, thus, subject Defendants to suit in Delaware.[18]

Plaintiff's invocation of 8 *Del. C.* § 169 and 10 *Del C.* § 365 to provide a statutory basis for the assertion of *in rem* jurisdiction by the Court of Chancery in the circumstances of this case is a dubious proposition, at best. I need not reach the merits of that issue, however, because, as addressed below, this Court cannot subject Wadsworth

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[16] Section 169 provides:

> For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in this State, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this State, whether organized under this chapter or otherwise, shall be regarded as in this State.

[17] *Arden-Mayfair, Inc. v. Louart Corp.*, 385 A.2d 3, 4 (Del. Ch. 1978).

[18] OneScreen suggests that, because this is a true *in rem* action as opposed to a *quasi in rem* or *in personam* action, "the court may resolve a dispute relating to that property" without satisfying the due process requirements raised in *International Shoe*. Pl.'s Ans. Br. ("PAB") 9.

and Myers to its jurisdiction here without violating the governing constitutional standard for due process.

2. Due Process concerns

OneScreen argues that, because this is a "true" *in rem* proceeding, no contacts between the Moving Defendants and Delaware need be shown other than ownership of stock in a Delaware corporation.[19] But, this argument obfuscates the pronouncements in *Shaffer* and its progeny. As I discuss in more detail below, to meet the requirements of due process, a plaintiff must show that a defendant has the necessary minimum contacts with Delaware for all *in rem* proceedings before this Court. In certain circumstances, however, the minimum contacts standard conceivably could be satisfied by ownership of stock in a Delaware corporation, such as in an action relating *directly* to the *rights or attributes inherent in that stock*.[20]

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[19] *Id.* at 1 ("This action, therefore, is a 'true *in rem* action'—an action involving ownership of stock of a Delaware corporation.").

[20] *See* Donald J. Wolfe, Jr. & Michael A. Pittinger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 3.04[c][2], at 3-32 (2009) ("Even assuming, contrary to the views expressed by the Delaware Supreme Court in *Istituto Bancario*, that there exists an *in rem* or *quasi in rem* exception to the general holding in *Shaffer* in cases in which capital stock in a Delaware corporation is the subject matter of the litigation . . . the exception is a narrow one. It is only where the litigation involves the rights or attributes inherent in the stock of a Delaware corporation that ownership of such stock in and of itself *might* be sufficient to render the exercise of jurisdiction over a nonresident owner of such stock constitutionally permissible.").

The "polestar" of the modern law of personal jurisdiction is "the broad concept of fairness."[21] In *International Shoe v. Washington*, the United States Supreme Court declared that the exercise of personal jurisdiction over a nonresident defendant is permissible only when the defendant has sufficient minimum contacts with the forum state such that allowing suit to proceed in that state does not offend "traditional notions of fair play and substantial justice."[22]

More than three decades later, in *Shaffer v. Heitner*, the Supreme Court extended the due process requirements articulated in *International Shoe* to apply to "all assertions of state court jurisdiction," including *in rem* and *quasi in rem* jurisdiction.[23] Specifically, *Shaffer* recognized that, in order to ensure justice, courts seeking to exercise jurisdiction over a defendant needed to examine "the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States," before exercising personal jurisdiction over that defendant.[24] In doing so, the Supreme Court struck down Delaware's practice of using 8 *Del. C.* § 169 as the basis of *quasi in rem*

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[21] *Hynson v. Drummond Coal Co.*, 601 A.2d 570, 579 (Del. Ch. 1991).

[22] *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945); *see also Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) ("[T]he foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.").

[23] *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977).

[24] *Id*. at 204. The Court in *Shaffer* did note, however, that "the presence of property in a State may bear on the existence of jurisdiction by providing contacts among the forum State, the defendant, and the litigation." *Id*. at 207.

jurisdiction to compel the appearance of nonresident directors in breach of fiduciary duty actions.[25]

After the Supreme Court's ruling in *Shaffer*, however, an important issue remained: whether, and to what extent, the situs of stock in a Delaware corporation could be considered a sufficient minimum contact, by itself, to satisfy due process concerns and permit a Delaware court to exercise jurisdiction over a party to a suit involving the rights, privileges, and characteristics arising from ownership of that stock.[26] The Court of Chancery addressed that question in three cases decided shortly after *Shaffer*: *Arden-*

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[25] *Id*. at 216-17 ("It strains reason . . . to suggest that anyone buying securities in a corporation formed in Delaware 'impliedly consents' to subject himself to Delaware's . . . jurisdiction on any cause of action.") (quoting Folk & Moyer, *Sequestration in Delaware: A Constitutional Analysis*, 73 COLUM. L. REV. 749, 751-54 (1973)).

[26] In *Shaffer*, the Supreme Court declared that "all assertions of state court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Id*. at 212. In that context, however, the Court also observed that:

> [T]he presence of property in a State may bear on the existence of jurisdiction by providing contacts among the forum State, the defendant, and the litigation. For example, when claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction. In such cases, the defendant's claim to property located in the State would normally indicate that he expected to benefit from the State's protection of his interest.

Id. at 207 (citations omitted).

Mayfair, Inc. v. Louart Corp.,[27] *Tuckman v. Aerosonic Corp.*,[28] and *Bolger v. Northern Lumber Co*.[29] Each of these cases interprets *Shaffer* to mean that ownership of stock that has its statutory situs in Delaware does not, by itself, satisfy the minimum contacts requirement.[30]

Though it declined to rule definitively on the issue, the Delaware Supreme Court in *Istituto Bancario* cast further doubt on the ability of Delaware courts to take jurisdiction over nonresident defendants based on 10 *Del. C.* § 365 and 8 *Del. C.* § 169 when the sole basis for doing so arises from a defendant's stock ownership.[31] After a comprehensive examination of *Shaffer* and subsequent cases, the Court concluded that:

> While the existence of property in the state is one contact to the jurisdiction, and in some cases it may suggest other contacts, in and of itself, mere ownership in the forum of

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27 385 A.2d 3 (Del. Ch. 1978).

28 394 A.2d 226 (Del. Ch. 1978).

29 1978 WL 2492 (Del. Ch. Apr. 13, 1978).

30 *See Arden-Mayfair*, 385 A.2d at 6-7 ("[I]t appears that under the 'traditional notions of fair play and substantial justice' . . . the nonresident . . . defendants have a constitutionally protected right to be free from appearing in the courts of the state of Arden-Mayfair's domicile in a suit . . . brought to establish the present nature and extent of their voting rights . . . in Arden-Mayfair's stock."); *Tuckman*, 394 A.2d at 229 ("[T]here must be greater minimum contacts with Delaware than mere ownership of stock in a Delaware corporation to support the jurisdiction of this Court over a nonresident defendant where service of process over him is obtained by substituted service."); *Bolger*, 1978 WL at *2 ("[T]he thrust of [*Shaffer*] is to make all actions against nonresidents of Delaware whether *in personam* or *in rem* comport with the minimum requirements laid down in *International Shoe*.").

31 *Istituto Bancario Italiano v. Hunter Eng'g Co.*, 449 A.2d 210 (Del. 1982).

> property related to the litigation is not necessarily sufficient under the *International Shoe* standard. . . . [W]e are inclined to the view . . . that the statutory situs of the stock in Delaware coupled with our *in rem* jurisdictional statute, § 365, would not constitutionally confer on Delaware jurisdiction over [the record owners of stock] in a suit to cancel the stock . . . .[32]

While these cases seemed to sound the death knell for exercising jurisdiction based solely on ownership of stock in a Delaware corporation, the Court of Chancery revisited the issue more than a decade later in two opinions from the *Hart Holding* litigation. In those opinions, Chancellor Allen suggested that, where the subject matter of an action involves the legal existence of stock or its character or attributes, ownership of stock likely would be "sufficient to satisfy the dictates of common fairness to permit binding adjudication in this court of such claim."[33] During that period, Chancellor Allen employed similar reasoning when he held, in *Hynson v. Drummond Coal Co.*, that buying

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[32] *Id*. at 222 (bringing suit to cancel newly issued shares in a Delaware corporation allegedly issued for the purpose of defrauding an Italian bank by diluting its security interest).

[33] *Hart Hldg. Co. v. Drexel Burnham Lambert, Inc.*, 1992 WL 127567, at *7 (Del. Ch. May 28, 1992) ("[W]here the subject matter of the litigation involves the legal existence of stock in a Delaware corporation, or its character or attributes (e.g., its validity or its right to vote or for liquidation preference, etc.), I am convinced that ownership of the stock, without more, will ordinarily be sufficient to satisfy the dictates of common fairness to permit binding adjudication in this court of such claim, without regard to where the holder may reside."); *see also Hart Hldg. Co. v. Drexel Burnham Lambert, Inc.*, 593 A.2d 535, 543 (Del. Ch. 1991) ("Where the action is one to determine the validity or ownership of stock, or the existence of rights to exercise power with respect to the stock (e.g., voting), the ownership of stock in a Delaware corporation alone would arguably qualify as a 'contact' with the jurisdiction that would count in assessing amenability to suit here.").

stock in a Delaware corporation was itself sufficient to satisfy the demands of fairness and require nonresident plaintiffs to be bound by the results of litigation in a class action purporting to establish the rights of stockholders.[34]

More recently, the Court noted the possibility of exercising *in rem* jurisdiction solely on the basis of stock ownership in dicta in *Ryan v. Gifford*. In that case, Chancellor Chandler indicated, in a rather lengthy footnote, that "in limited circumstances, *in rem* jurisdiction may exist where the *res* itself is, as *Shaffer* suggested, the source of the controversy."[35] OneScreen relies heavily on these cases and argues that

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[34] 601 A.2d 570, 579 (Del. Ch. 1991). After suggesting that "it would be radically inconsistent with [the Court of Chancery's] history to suppose that binding an absent shareholder to an actual adjudication in the corporate domicile of the corporate rights of holders of stock is in any sense unfair to that absent shareholder," Chancellor Allen wrote:

> In my opinion, buying stock of a Delaware corporation . . . is itself a sufficient act to establish a nexus with the jurisdiction that creates and regulates the internal governance of that corporation to render it consistent with traditional notions of fairness to bind the holder of that stock as a plaintiff to adjudications *concerning the corporate rights that attach to that stock* . . . . I say this recognizing that, in many instances, people will in fact buy stock without any understanding of which state has created that corporation and governs its internal affairs. But it is not unreasonable . . . to conclude that the law has long put the buyer of corporate stock on notice that corporate rights attaching to stock ownership may be adjudicated in a single proceeding in another jurisdiction, including at a minimum the corporation's state of incorporation.

Id. at 576, 579.

[35] *Ryan v. Gifford*, 935 A.2d 258, 273 n.48 (Del. Ch. 2007).

the Court may exercise jurisdiction over the Moving Defendants in this action because "no demonstration of minimum contacts is needed 'where the *res* itself is . . . the source of the controversy."[36]

The Moving Defendants, however, read too much into the statements made in these cases. For instance, in *Hart Holding*, Chancellor Allen did recognize that ownership of stock in a Delaware corporation, without more, may be enough to satisfy due process for actions relating to the legal existence of stock or its character or

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[36] PAB 15 (quoting *Ryan*, 935 A.2d at 273 n.48). Specifically, OneScreen suggests that because it seeks jurisdiction over only the Vidshadow and Additional Vidshadow Shares, and not over the Moving Defendants themselves, no showing of minimum contacts is necessary. The Supreme Court in *Shaffer* addressed this issue directly, however, when it stated that:

> The case for applying to jurisdiction in rem the same test of "fair play and substantial justice" as governs assertions of jurisdiction in personam is simple and straightforward. It is premised on recognition that "(t)he phrase, 'judicial jurisdiction over a thing', is a customary elliptical way of referring to jurisdiction over the interests of persons in a thing." This recognition leads to the conclusion that in order to justify an exercise of jurisdiction in rem, the basis for jurisdiction must be sufficient to justify exercising "jurisdiction over the interests of persons in a thing." The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process clause *is the minimum-contacts standard elucidated in International Shoe*.

Shaffer v. Heitner, 433 U.S. 186, 207 (1977) (emphasis added) (citations omitted). Thus, this Court may only exercise jurisdiction over Wadsworth and Myers in this case if ownership of Vidshadow stock is itself a sufficient minimum contact to satisfy the demands of due process.

attributes.[37] Yet, the Chancellor held that, because the plaintiffs sought to cancel stock as an equitable remedy for fraud and not by "reason of some alleged defect in the corporate process by which the warrants were authorized or the stock issued," the ownership of stock was not enough, by itself, "to satisfy the constitutional test of minimum contacts."[38] Thus, consistent with *Hynson* and *Ryan*, the decision in *Hart Holding* suggests that ownership of stock in a Delaware corporation may be a sufficient contact with Delaware to subject the owner of stock to jurisdiction in this Court, but only in actions relating directly to the legal existence of stock or its character or attributes.[39]

The Court may not simply disregard the minimum contacts inquiry even in an action that relates directly to the legal existence of stock or its character or attributes. Rather, in a limited number of situations, ownership of stock in a Delaware corporation may, by itself, be a sufficient minimum contact to satisfy the demands of due process. In such a case, the connection between the forum (Delaware), the defendant (an owner of stock in a Delaware corporation), and the litigation (judicial determination of attributes of stock based on, *e.g.*, the governing documents of a Delaware corporation) quite possibly

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37 *Hart Hldg. Co.,* 1992 WL 127567, at *7.

38 *Id.*

39 A stock's "attributes or characteristics" may include such issues as voting rights, liquidation preferences, or the authenticity of certificates. *See Hart Hldg. Co. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 539 (Del. Ch. 1991); *Hynson v. Drummond Coal Co.*, 601 A.2d 570, 579 (Del. Ch. 1991).

would justify an exercise of *in rem* jurisdiction "over the interests of persons in" that stock.[40]

Even accepting that premise, however, this action must be dismissed because it does not relate directly to the legal existence, rights, characteristics, or attributes of stock in a Delaware corporation. OneScreen here seeks to void a *transfer* of stock on the grounds that the transfer violated a criminal statute in Florida.[41] The Complaint does not allege a defect in the corporate process by which the Vidshadow and Additional Vidshadow Shares were issued or ask the Court to examine those shares in terms of the internal governance of a Delaware corporation—a situation that may justify exercising jurisdiction over a defendant based solely on their ownership of stock in a Delaware corporation. Instead, this action challenges transactions that only incidentally involve stock in a Delaware corporation.

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[40] *See supra* note 24.

[41] OneScreen's position is even more tenuous because OneScreen asks this Court to invalidate the transfer of the Vidshadow and Additional Vidshadow Shares, through the November Agreements, based on the fact that the transfer of the DME Shares, through the September Agreement, was part of a criminally usurious loan under Florida law.

The November Agreements, however, are governed by California Law. OneScreen has not delved into the complexities and ramifications of asking this Court to invalidate the November Agreements based solely on the fact that the September Agreement, which is governed by Florida law, may be characterized as a criminally usurious loan. Even if the September Agreement is void *ab initio* for violation of Florida law, it does not necessarily follow that the November Agreements, which are governed by different laws and are not facially related to the September Agreement, would also be invalid.

Thus, like the corporate plaintiffs in *Hart Holding*, which sought cancellation of shares held by the defendants as an equitable remedy for fraud, OneScreen here seeks to invalidate a stock transfer as an equitable response to the Moving Defendants' alleged violation of a Florida criminal statute. Because this action does not implicate the corporate process or the validity or attributes of OneScreen's stock, OneScreen has not alleged sufficient minimum contacts to support this Court exercising jurisdiction over Wadsworth and Myers and this case must be dismissed.

III. CONCLUSION

For the foregoing reasons, I grant the Moving Defendants' motion to dismiss for lack of personal jurisdiction because there is no basis to hale Wadsworth and Myers into this Court to determine this matter based solely on their ownership of shares in a Delaware corporation.

IT IS SO ORDERED.