

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

| | | |
|--------------------------|---|----------------|
| RANDALL JACOBSON AND |) | |
| TECHNOLOGY DEVELOPMENT |) | |
| CORPORATION (USA), LTD., |) | |
| A Delaware Corporation, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | C.A. No. 518-N |
| |) | |
| ALFRED RONSDORF, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM OPINION AND ORDER

Submitted: October 28, 2004

Decided: January 6, 2005

R. Bruce McNew, Esquire, TAYLOR & McNEW, Greenville, Delaware,
Attorney for the Plaintiffs.

Alfred Ronsdorf, *pro se.*

LAMB, Vice Chancellor.

I.

The plaintiffs, a Delaware corporation and its president and largest single stockholder, bring this action seeking a preliminary and permanent injunction, declaratory judgment, specific performance, and damages against the defendant, a purported stockholder and former officer of the corporation. The defendant has moved to dismiss based on lack of subject matter jurisdiction, lack of personal jurisdiction, failure to state a claim upon which relief can be granted, and *forum non conveniens*.

The court finds that it has both subject matter and personal jurisdiction, and that the well-pleaded allegations in the complaint state a claim for relief. Furthermore, the court declines, in its discretion, to dismiss on the basis of *forum non conveniens*. The defendant's motion to dismiss will therefore be denied.

II.¹

Plaintiff Randall Jacobson is a 45% stockholder of Technology Development Corporation (USA) Ltd. ("TDC" or the "Company"), a Delaware corporation whose primary place of business is Maryland. Since 1992, Jacobson has been the Company's President, Treasurer, Secretary, and its sole director. TDC is a small, family-operated company that provides computer services to various agencies and departments of the United States government. Because of the

¹ Unless otherwise noted, the facts set forth in this opinion are taken from the well-pleaded allegations of the amended complaint.

nature of its work, all of the Company's officers, directors, and major stockholders must have security clearance. In addition, all employees and independent contractors who work on government projects for the Company must have security clearance.

Defendant Alfred Ronsdorf is the brother of Jacobson. Ronsdorf was formerly known as Paul Jacobson. He later changed his name to Jimmy Carter and, after that, to Alfred Olympus von Ronsdorf. Ronsdorf was, at one time, a stockholder and officer of the Company.

In June of 1992, Ronsdorf lost his security clearance and was forced to resign as an officer of the Company. Pursuant to an agreement dated January 8, 1987 (the "Agreement"), Ronsdorf transferred his shares in the Company to Jacobson, making Jacobson the sole stockholder. In the Agreement, Ronsdorf and Jacobson had promised that, should one of them become unable or unwilling to contribute to the Company's contract fulfillment, that person would transfer all of his shares to the other party without payment for the transfer, and would resign from all corporate posts.

In 1995, Jacobson transferred 50 shares each to two independent contractors who worked for TDC, leaving him with 900 shares, or 90% of the outstanding shares. On January 1, 1996, despite the fact that the defendant's security clearance had not been reinstated, Jacobson gave 450 shares to Ronsdorf. There was no

payment for the transfer. In an effort to find employment for Ronsdorf, the Company began doing non-classified work for the census bureau. In 1997, Ronsdorf gave 50 shares to each of two independent contractors who worked for the Company, leaving him with 350 shares.

Ronsdorf was fired in March 2002, allegedly for improper billing and conversion of Company funds. Upon his termination, Ronsdorf refused to return his shares in the Company to Jacobson, allegedly in violation of the Agreement.

On October 31, 2003, Ronsdorf began a derivative action (Civil Action No. 20614) against Jacobson, claiming mismanagement of the Company. On December 31, 2003, the court granted Jacobson's motion to stay discovery. On January 9, 2004, Ronsdorf filed his first amended complaint and, in response, on January 26, 2004, Jacobson filed a motion to dismiss. The court partially dismissed the derivative action and granted a stay pending a determination in this case as to the nature and extent of Ronsdorf's ownership of common stock of TDC.²

The complaint in this action alleges that, since his termination, Ronsdorf has repeatedly taken action, purportedly on behalf of TDC, and has claimed to have rights as a stockholder. In 1992, Ronsdorf took approximately \$100,000 in unauthorized payments and sued TDC unsuccessfully in Virginia State Court for

² *Ronsdorf v. Jacobson*, 2004 WL 2158050, at *1 (Del. Ch. Sept. 16, 2004).

compensation he was allegedly due. The Virginia action was premised on a promissory note which Ronsdorf purportedly executed as a director of TDC for his own benefit while sitting at a lunch counter in Virginia. In January 2004, Ronsdorf brought suit against the Company in Georgia, again based upon a promissory note from TDC that Ronsdorf executed for himself. Ronsdorf did not attempt to serve the Company in the Georgia action, instead purporting to accept service and consent to the jurisdiction of the Georgia court on behalf of TDC. Additionally, Ronsdorf served discovery upon the defendants in the Georgia action identical to that stayed by this court. The Georgia court invalidated the service.

Finally, the complaint alleges that Ronsdorf has not had authority to act as a director of TDC since his removal in 1992. It also alleges that, since the date of his termination from the Company, Ronsdorf has not transferred his shares to Jacobson, as required by the Agreement.

The complaint contains three counts. Count I seeks a preliminary and permanent injunction, and a declaratory judgment against Ronsdorf. Specifically, the plaintiffs seek an order enjoining Ronsdorf from taking “any action of any nature whatsoever to pursue any claim against either defendant or any of TDC’s directors, stockholders or independent contractors”³ relating to their relationship with the Company. Count I also seeks a declaration that Ronsdorf is not, and has

³ Compl. ¶ 29.

not been since September of 1992, an officer or director of TDC. Count II seeks specific performance of the Agreement. Specifically, Count II seeks an order requiring Ronsdorf to transfer his shares in TDC to Jacobson or, in the alternative, canceling Ronsdorf's shares in TDC. Count II also seeks a declaration that Ronsdorf is not, and has not been since March of 2002, a stockholder of the Company. Count III seeks damages.

The complaint was filed on June 21, 2004. On October 6, 2004, Ronsdorf filed an amended motion to dismiss the complaint on the following grounds: (1) this court lacks subject matter jurisdiction, (2) this court lacks *in personam* jurisdiction over Ronsdorf, (3) venue is improper, (4) the complaint fails to state a claim upon which relief can be granted, and (5) the complaint is perjured. The court will address each of these grounds in turn.

III.

A. Subject Matter Jurisdiction

Pursuant to 10 *Del. C.* § 341, this court has jurisdiction “to hear and determine all matters and causes in equity.” The traditional bases for invocation of equity jurisdiction fall into two categories: (1) actions involving equitable subjects, claims, or rights (such as fiduciary relations) and (2) actions seeking an equitable remedy (such as injunctive relief).⁴ When the action involves a claim for relief

⁴ *Bird v. Lida, Inc.*, 681 A.2d 399, 402 (Del. Ch. 1996).

predicated on a cause of action arising only in equity, it is without dispute that this court has jurisdiction and the court need not inquire into whether the plaintiff lacks an adequate remedy at law.⁵ However, where all claims for relief are cognizable at law, and equity jurisdiction is based solely on the claimed need for equitable relief, this court is required to find that the complaint adequately states a claim for an equitable remedy, and that there is not otherwise a sufficient remedy at law.⁶

Count I of the complaint seeks a determination that Ronsdorf is neither an officer nor a director of TDC, and seeks a preliminary and permanent injunction. A declaratory judgment is, of course, not a purely equitable remedy, as courts of law have the power to issue declarations.⁷ However, this court has both inherent and statutory authority to determine whether an individual is an officer or director of a Delaware corporation.⁸ Ronsdorf has, allegedly, engaged in a substantial pattern of fraudulently acting on behalf of the Company when he has no authority to do so, and clearly threatens to continue acting in that pattern. Money damages are insufficient to remedy this wrong. Injunctions are equitable remedies and the plaintiffs do not have an adequate remedy at law.

⁵ *Harman v. Masoneilan Int'l, Inc.*, 442 A.2d 487, 497 (Del. 1982); *IBM Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 n.6 (Del. Ch. 1991).

⁶ *Comdisco*, 602 A.2d at 80.

⁷ *See, e.g., Suplee v. Eckert*, 120 A.2d 718, 720 (Del. Ch. 1956).

⁸ *See 8 Del. C. § 225* ([T]he Court of Chancery may hear and determine the validity of any election, appointment, removal or resignation of any director, member of the governing body, or officer of any corporation, and the right of any person to hold or continue to hold such office, and . . . may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper . . .”).

Count II seeks specific performance of the Agreement and a determination that Ronsdorf is not a stockholder of TDC. Specific performance is an equitable remedy and the plaintiffs do not have an adequate remedy at law. Shares in a closely-held corporation are unique, such that money damages would be insufficient to remedy Ronsdorf's breach of the Agreement.

Count III seeks damages. While damages are clearly a legal remedy, this court has subject matter jurisdiction over equitable claims even if, in addition to equitable remedies, monetary damages are sought in relief.⁹

For the above reasons, the court must refuse to dismiss the complaint for lack of subject matter jurisdiction.

B. Personal Jurisdiction

When personal jurisdiction is challenged by a motion to dismiss pursuant to Court of Chancery Rule 12(b)(2), the plaintiff bears the burden of showing a basis for the court's exercise of jurisdiction over the nonresident defendant.¹⁰ The plaintiffs here allege that Ronsdorf was personally served in Delaware while pursuing his derivative action against Jacobson and TDC. They have also adduced an affidavit of personal service, attesting to the fact that Ronsdorf was personally served in Delaware on June 30, 2004. Ronsdorf has not refuted or contradicted

⁹ See 10 Del. C. § 3411; see also *Actrade Fin. Tech. Ltd. v. Aharoni*, 2003 WL 22389891, at *5 (Del. Ch. Oct. 17, 2003).

¹⁰ *Werner v. Miller Tech. Mgmt., L.P.*, 831 A.2d 318, 326 (Del. Ch. 2003).

this evidence. Actual personal service of process on a nonresident while in this State grants this court *in personam* jurisdiction over him.¹¹ Therefore, the court must deny Ronsdorf's motion to dismiss for lack of personal jurisdiction.

C. Failure To State A Claim

The standard for dismissal pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted is well established. The motion will be granted if it appears with reasonable certainty that the plaintiff could not prevail on any set of facts that can be inferred from the pleading.¹² In considering a motion to dismiss under Rule 12(b)(6), the court is required to assume the truthfulness of all well-pleaded allegations of fact in the complaint.¹³ All well-pleaded factual allegations and inferences that can reasonably be drawn therefrom are accepted as true.¹⁴ However, neither inferences nor conclusions of fact unsupported by allegations of specific facts are accepted as true.¹⁵ That is, a trial court need not

¹¹ *Burnham v. Superior Court of California*, 495 U.S. 604, 611 (U.S. 1990) (“[E]ach State ha[s] the power to hale before its courts any individual who [can] be found within its borders, and that once having acquired jurisdiction over such a person by properly serving him with process, the State [can] retain jurisdiction to enter judgment against him, no matter how fleeting his visit.”). The only exception to this general rule is proof that the defendant was induced by fraud or trickery to enter a foreign jurisdiction and served with process. *Chesapeake Steel, Inc. v. Yowell*, 1978 WL 8412, *2 (Del. Ch. Sept. 15, 1978). This exception does not apply here. Ronsdorf personally availed himself of the benefits of appearing in Delaware when he brought his derivative suit against TDC in this court. There can be no reasonable contention that he was induced by fraud to enter this State.

¹² *Kohls v. Kenetech Corp.*, 791 A.2d 763, 767 (Del. Ch. 2000).

¹³ *Grobow v. Perot*, 539 A.2d 180, 188 n.6 (Del. 1988).

¹⁴ *Id.*

¹⁵ *Id.*

blindly accept as true all allegations, nor must it draw all inferences from them in the plaintiff's favor unless they are reasonable inferences.¹⁶

The well-pleaded facts of the complaint state a claim for relief. The complaint alleges that Ronsdorf has continually claimed to be both an officer and a stockholder of TDC when he is neither, and has purported to act on behalf of the Company. The complaint also alleges that Ronsdorf has failed to transfer his shares in the Company to Jacobson, as he was required to do by the Agreement. Should the plaintiffs be able to prove these allegations, they would clearly be entitled to relief. Therefore, dismissal under Rule 12(b)(6) is inappropriate.

D. *Forum Non Conveniens*

Under the doctrine of *forum non conveniens*, dismissal is only appropriate when the moving party demonstrates, with particularity, that being required to litigate in Delaware would subject it to “overwhelming hardship.”¹⁷ A defendant must show that the case is one of the rare cases where the drastic relief of dismissal is warranted based on the burden of litigating in this forum that is so severe as to result in manifest hardship.¹⁸

In Delaware, the factors a court considers in deciding whether or not to exercise its discretion to dismiss a complaint based on *forum non conveniens*

¹⁶ *In re Lukens Inc. S'holders Litig.*, 757 A.2d 720, 727 (Del. Ch. 1999).

¹⁷ *Candlewood Timber Group, LLC v. Pan Am. Energy, LLC*, 859 A.2d 989, 994 (Del. 2004).

¹⁸ *Id.*

include the following: (1) whether Delaware law is applicable, (2) the relative ease of access to proof, (3) the availability of compulsory process for witnesses, (4) the possibility of the view of premises, (5) the pendency or non-pendency of a similar action or actions in another jurisdiction, and (6) all other practical considerations which would make the trial easy, expeditious and inexpensive.¹⁹

Ronsdorf has utterly failed to show overwhelming hardship. First, Delaware law does apply to this case. Ronsdorf purports to be an officer and director of the Company and claims to be a 35% shareholder. The issues of governance and control of a Delaware corporation are central to Delaware law.²⁰ Second, there is no question of access to proof or the viewing of premises. The parties have not raised any issue involving the viewing of premises and the evidence as to proof of ownership of the shares will be documentary or testimonial in nature. Third, because the Company transacts most of its business in Maryland, the procuring of witnesses should not be overly burdensome. Fourth, there is no other proceeding involving these issues in another jurisdiction. The action pending in Georgia is based on a purported promissory note and not the ownership of shares in TDC. Finally, there are no other considerations that overwhelmingly tip the balance

¹⁹ *Id.* at 995.

²⁰ *See, e.g., Chandler v. Ciccoricco*, 2003 WL 21040185, at *12 (Del. Ch. May 5, 2003) (“Delaware has a strong interest in resolving disputes involving the ownership of shares in, and the governance of, corporations formed under its laws.”); *In re USACafes, L.P. Litig.*, 600 A.2d 43, 51 (Del. Ch. 1991) (“[Delaware] . . . has a strong interest in the effective administration of the law governing corporations and limited partnerships organized under its laws.”).

against this court hearing the case. While Ronsdorf's residence abroad may be an inconvenience for him, he has brought suit himself in this court. He cannot now claim that defending a suit in this State is an overwhelming burden.

For the above reasons, the court must decline to exercise its discretion to dismiss the complaint based on *forum non conveniens*.²¹

IV.

For the foregoing reasons, the defendant's motion to dismiss is denied. IT IS SO ORDERED.

²¹ Ronsdorf has also moved to dismiss on the ground that Jacobson perjured himself. This contention is not cognizable on a motion to dismiss.