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CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: February 4, 2005
Decided: February 9, 2005

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Re: *American Scheduling, Inc. v. Radiant Systems, Inc.*
Civil Action No. 725-N

Dear Counsel:

Before the Court is defendant Radiant Systems, Inc.'s ("Radiant") Motion to Quash Jurisdictional Discovery (the "Motion"). Radiant is a Georgia corporation, and has never been a Delaware corporation.¹ Plaintiff American Scheduling, Inc. ("ASI") opposes the Motion, arguing that it has a good faith basis upon which to assert jurisdiction over Radiant here in Delaware. Because there is no non-frivolous basis upon which ASI may

¹ Aff. of Mark Haidet.

establish jurisdiction over Radiant in this Court, the Motion is GRANTED.

Oral argument is unnecessary to the disposition reached here.

In general, a plaintiff need not plead facts in the complaint that establish jurisdiction over a defendant.² In the event, however, that the defendant moves to dismiss the complaint for lack of personal jurisdiction, plaintiff must set forth a plausible basis for jurisdiction.³ If the facts alleged in the complaint are insufficient to meet this burden, the trial court *may* permit the plaintiff jurisdictional discovery so long as plaintiff's claim of jurisdiction is not frivolous.⁴ A motion to dismiss on the ground of lack of personal jurisdiction has been filed.

The complaint in this action is completely devoid of any allegations that might serve to establish personal jurisdiction over the defendant. There is no "short and plain statement ... showing that the pleader is entitled to relief" in this Court.⁵ In its opposition to the Motion, plaintiff still fails to articulate any reasonable basis upon which to assert jurisdiction over the defendant. The closest ASI comes to asserting a viable ground for

² *Hart Holding Co. Inc. v. Drexel Burnham Lambert, Inc.*, 593 A.2d 535, 538 (Del. Ch. 1991).

³ *See Benerofe v. Cha*, 1996 WL 5353405, at *3 (Del. Ch.).

⁴ *Id.*; *Hart Holding*, 593 A.2d at 541.

⁵ CT. CH. R. 8(a).

jurisdiction is arguing that “Radiant or a similarly named affiliate was incorporated in Delaware....”⁶

First, Radiant has never been incorporated in Delaware. This fact is clearly established by the affidavit of Mark Haidet submitted in support of the motion to dismiss. Radiant is a publicly-held corporation. As such, its filings with the Securities and Exchange Commission (“SEC”) are freely available on the Internet. Those filings are clear that Radiant is and has been a Georgia corporation.⁷ If that were not sufficient, the contract that is the basis for the dispute between the parties, which was also filed with the SEC, states that the contract was “made and entered into by and among RADIANT SYSTEMS, INC., a Georgia corporation....”⁸ Therefore, there is no non-frivolous basis upon which ASI can contend that Radiant itself is or was a Delaware corporation.

Second, Delaware law is clear that jurisdiction over one entity cannot be obtained by having jurisdiction over another affiliate entity unless the affiliate is the agent of the entity being sued, or there is some reason for the separate existence of the two entities to be ignored (such as would permit

⁶ Resp. of Pl. American Scheduling, Inc. in Opp’n To Mot. of Def. Radiant Systems, Inc. to Quash Jurisdictional Disc. at 1.

⁷ See Reply of Def. Radiant Systems, Inc. in Supp. of Its Mot. To Quash Jurisdictional Disc. at 7 n.5. See also www.sec.gov.

⁸ See Ex. 2.1 to Radiant’s Form 8-K dated Dec. 16, 2003 (Ex. A to Reply of Def. Radiant Systems, Inc. in Supp. of Its Mot. To Quash Jurisdictional Disc.).

piercing the corporate veil).⁹ Plaintiff has asserted no basis here, either in the complaint or in other filings with the Court, for the Court to be able to ignore the separate legal existence of this so-called affiliate, especially in light of the fact that the only “affiliation” between the two is that their names are identical. That is not enough to establish a non-frivolous basis for this Court to exercise personal jurisdiction over Radiant.

For the foregoing reasons, the Motion is GRANTED, and the discovery requests and interrogatories of December 29, 2004 are QUASHED. Plaintiff shall not propound nor seek additional discovery as to jurisdiction, and plaintiff shall file a response to Radiant’s motion to dismiss within 14 days of this Order.

IT IS SO ORDERED.

Very truly yours,

/s/ William B. Chandler III

William B. Chandler III

WBCIII:amf

⁹ See, e.g., *Red Sail Easter Ltd. Partners, L.P. v. Radio City Music Hall Prods., Inc.*, 1991 WL 129174, at *1-2 (Del. Ch.); *IM2 Merch. & Mfg., Inc. v. Tirex Corp.*, 2000 WL 1664168, at *4 (Del. Ch.); *Medi-Tec of Egypt Corp. v. Bausch & Lomb Surgical*, 2004 WL 415251, at *4 n.28 (Del. Ch.); *Republic Env'tl. Sys., Inc. v. Resi Acquisition (Delaware) Corp.*, 1999 WL 464521, at *2 (Del. Super.).