IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Outpost Capital Management, LLC and Bill Laggner, Plaintiffs, v. Robert Prioleau, as Manager of HMB Ventures, LLC; HMB Ventures, LLC; and Halsey Minor Defendants.	Civil Action No. 2:16-cv-3684-RMG **ORDER and OPINION**

This matter is before the Court on two motions to dismiss, one filed by Defendants HMB Ventures, LLC and Halsey Minor and a second filed by Defendant Robert Prioleau. (Dkt. Nos. 15, 16.) Plaintiffs have filed a combined response in opposition to both motions to dismiss, and defendants have filed replies. (Dkt. Nos. 19, 22, 23.) For the reasons set forth below, the Court finds that jurisdictional discovery is warranted. The parties shall complete jurisdictional discovery by September 19, 2017 and file supplemental briefs with the Court on or before October 3, 2017.

I. Relevant Facts

a. Bitreserve, Ltd. and Related Entities

This matter involves a contract dispute over a Stock Purchase, Transfer, and Voting Agreement for shares of a privately-held company called "Bitreserve, Ltd." The parties' briefings have not been helpful to the Court, so the Court has relied substantially on publicly

available records from the Secretaries of State in California, South Carolina, and Washington, which reveal the following about Bitreserve, Ltd. and its related entities.

- **"Bitreserve, Inc."** is an entity that was incorporated in the state of Washington on January 13, 2014. It has been licensed to do business in California since May 2014. The entity changed its name to **"Uphold, Inc."** in February 2017, several months after this lawsuit was filed.
- **"Bitreserve HQ, Inc."** is an entity that was incorporated in South Carolina on March 31, 2014. It has been licensed to do business in California since December 2014. The entity changed its name to **"Uphold HQ, Inc."** in March 2016. Minor has conceded that Bitreserve, Ltd. "operates" through this "HQ" entity that is incorporated in South Carolina. (Dkt. No. 23 at 2.)
- **"Bitreserve, Ltd.,"** whose stock is the subject of this litigation is, according to Defendant Halsey Minor, a Cayman Islands corporation with its principal place of business in California. (*Id.* at 3.) Minor asserts that Bitreserve, Ltd. has "always maintained its headquarters in California." (*Id.* at 6.) Minor, who resides in California, is the founder and former CEO of Bitreserve, Ltd. (Dkt. No. 12.) Plaintiffs allege that Bitreserve, Ltd. was "previously headquartered in South Carolina and is registered to do business in this state." (*Id.* at 1.) The Court has not found any record of Bitreserve, Ltd. being incorporated or registered to do business in South Carolina. Although Bitreserve HQ and Bitreserve, Inc. are both licensed to do business in California, this Court has not been able to identify any publicly available record showing that an entity named "Bitreserve, Ltd." is licensed to do business in California. For this reason, the Court

cannot readily accept Defendants' assertion that Bitreserve, Ltd.'s principal place of business is California.

Because the parties' briefings reveal that Plaintiffs have not had access to the information needed to properly brief arguments about jurisdiction and venue, and because the Court is not confident that Defendants' representations about the various Bitreserve entities are accurate, jurisdictional discovery is warranted.[1] The parties will have until September 19, 2017 to complete jurisdictional discovery and until October 3, 2017 to file supplemental briefs on these issues. To guide the parties during this period of jurisdictional discovery, the Court sets forth below its preliminary understanding of the facts and relevant legal standards.

b. Minor creates HMB Ventures, LLC and appoints Prioleau as Manager

Plaintiffs allege that, in 2015, Minor transferred his 30,000,000 shares of Bitreserve, Ltd. to HMB Ventures, LLC ("HMB"), a limited liability company incorporated in Delaware.[2] (Dkt. No. 12 at 3-4.) Minor is the sole member of HMB. (Dkt. Nos. 12 at 4; 15-2 at 1.) The details of this transaction are set forth in HMB's Limited Liability Company Agreement ("LLC Agreement"). (Dkt. No. 15-2 at 13-20.) The purported purpose of the LLC Agreement, signed on September 24, 2015, was to allow Minor to "relinquish[] any right to vote [his] Bitreserve Shares and any right to exercise control or influence over the voting of his Bitreserve Shares." (*Id.* at 13.) The LLC Agreement names Robert Prioleau as Manager and vests him with the "sole, complete and unrestricted right to vote the Bitreserve Shares and all rights to exercise control and influence over the voting of the Bitreserve Shares." (*Id.* at 15.)

c. The Parties Execute a Stock Purchase, Transfer, and Voting Agreement

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[1] Plaintiffs have requested a period of jurisdictional discovery. (Dkt. No. 19 at 20, n.6.)
[2] Minor has represented that HMB's principal place of business is in Beverly Hills, California. (Dkt. No. 15-2 at 1.)

Plaintiff Laggner is an individual who resides in Texas. (Dkt. No. 12 at 3.) Plaintiff Outpost Capital Management, LLC is a limited liability company incorporated in Delaware with its principal place of business in Connecticut. (*Id.*) Outpost has only two members, and both are residents of Connecticut. (*Id.*)

Plaintiffs allege that they entered a Stock Purchase, Transfer, and Voting Agreement ("Stock Agreement") with Defendants on June 26, 2016 in which each Plaintiff agreed to purchase 4,843,890 shares of stock in Bitreserve, Ltd. (*Id.* at 1.) Under the terms of the Stock Agreement, the seller agreed to transfer and assign the shares to Plaintiffs after Bitreserve, Ltd.'s "Board approves such company's next financing." (Dkt. No. 19-9 at 2.)

The Stock Agreement includes a voting provision under which the "seller agrees to vote his and any of his affiliate[s'] remaining shares . . . according to the vote recommended by the majority of the Board of Directors of Bitreserve, Ltd. until such time as Bitreserve has completed a financing." (Dkt. No. 15-2 at 6.) At the time the parties entered the Stock Agreement, only Prioleau, as Manager of HMB, had the ability to vote Bitreserve, Ltd. shares. (*Id.* at 15.) Prioleau is not listed as a party to the Stock Agreement, but he signed the Agreement and wrote under his signature "I have reviewed this Agreement and agree to fulfill its terms as to the Shares and [Minor] in my capacity as trustee and acknowledge full receipt of the consideration paid for said shares." (*Id.* at 8.)

d. The Condition Precedent of the Stock Agreement is Allegedly Met and Defendants Allegedly Breach the Stock Agreement

After they entered the Stock Agreement, Plaintiffs traveled to California to meet with investors and pitch their financing proposal. (Dkt. No. 15-1 at 3.) Minor asserts that the Bitreserve, Ltd. Board rejected Plaintiffs' financing proposal for Bitreserve, Ltd. (*Id.*) Plaintiffs

allege that "on or about July 21, 2016, the Company's Board of Directors approved the Company's next round of financing, thereby satisfying the final condition precedent of the Agreement." (Dkt. No. 12 at 6.) There is a thus a dispute of fact about whether this condition precedent was met, triggering Minor's obligations under the Stock Agreement. Plaintiffs allege that Defendants breached the Stock Agreement when they refused to transfer the shares. (*Id.* at 2.)

e. Plaintiffs Sue Prioleau for Breach of Contract

On November 18, 2016, Plaintiffs filed this lawsuit against Prioleau alone, seeking specific performance of the Stock Agreement. (*Id.* at 6.) Prioleau filed his answer on December 15, 2016 (Dkt. No. 6), acknowledging that he had signed the Stock Agreement but denying that he had or has "the authority to effectuate the transfer of shares." (*Id.* at 1.)

f. Minor Terminates Prioleau as Manager of HMB

On December 16, 2016, the day after Prioleau filed his answer (Dkt. No. 6), Minor terminated Prioleau as Manager of HMB by signing a document entitled "Termination as Manager." (Dkt. No. 15-2 at 10-11.) That document, which Minor purportedly executed on behalf of HMB, amended HMB's LLC Agreement to remove any reference to a "Manager" and vested all voting rights with Minor. (*Id.* at 10.)

g. Plaintiffs Amend Complaint to Add Minor and HMB as Defendants

Plaintiffs then filed an amended complaint, adding Minor and HMB as parties and adding two new causes of action for breach of contract accompanied by a fraudulent act (against Minor) and civil conspiracy (against all defendants). (Dkt. No. 12 at 8.) Plaintiffs allege that Minor's "attempt to terminate Prioleau as Manager of HMB during the pendency of this action constitutes a fraudulent act meant to frustrate Plaintiffs' ability to enforce the clear terms of the agreement."

(*Id.* at 7.) Plaintiffs seek specific performance of the Stock Agreement, monetary damages (if specific performance is unavailable), punitive damages, and special damages as a result Defendants' alleged civil conspiracy. (*Id.* at 9-10.)

II. Legal Standard - Personal Jurisdiction

On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden to establish that a ground for jurisdiction exists. *Combs v. Bakker,* 886 F.2d 673, 676 (4th Cir. 1989). To assert jurisdiction over a non-resident defendant, Plaintiffs must satisfy two conditions: (1) that the exercise of jurisdiction is authorized by South Carolina's long-arm statute, and (2) that the exercise of personal jurisdiction complies with the constitutional due process requirements. *See Christian Sci. Bd. of Dirs. of First Church of Christ, Scientist v. Nolan,* 259 F.3d 209, 215 (4th Cir. 2001).

South Carolina's long-arm statute provides, in relevant part, that "A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action from the person's: (1) transacting any business in this State . . .; (3) commission of a tortious act in whole or in part in this State . . .; or (7) entry into a contract to be performed in whole or in part by either party in this State . . . ." S.C. Code Ann. § 36-2-803(A). South Carolina has interpreted its long-arm statute to extend to the constitutional limits of due process. *See Foster v. Arletty 3 Sarl,* 278 F.3d 409, 414 (4th Cir. 2002); *S. Plastics Co. v. S. Commerce Bank,* 423 S.E.2d 128, 130-31 (S.C. 1992). Thus, the jurisdictional requirements collapse into a single inquiry: whether the due process requirements are met. *ESAB Group, Inc. v. Centricut, LLC,* 34 F. Supp. 2d 323, 328 (D.S.C. 1999); *Sonoco Products Co. v. Inteplast Corp.,* 867 F. Supp. 352, 354 (D.S.C. 1994). Due process requires that a defendant have sufficient "minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and

substantial justice'"" *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer,* 311 U.S. 457, 463 (1940)).

To determine whether specific jurisdiction exists, the Court considers "(l) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the state; (2) whether the plaintiffs' claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally 'reasonable.'" *See Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 397 (4th Cir. 2003) (citing *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.,* 293 F.3d 707, 711–12 (4th Cir. 2002)).

In conducting its "individualized and pragmatic inquiry" of the facts surrounding the defendant's establishment of minimum contacts with the forum state, courts look to multiple factors, including:

(i) whether the defendant initiated the contractual relationship;

(ii) whether the contract would be performed, in part, in South Carolina;

(iii) whether the agreement created any ongoing obligations or relationship among the contracting parties;

(iv) whether the defendant maintains offices or agents in South Carolina;

(v) whether the defendant deliberately engaged in significant or long-term business activities in South Carolina;

(vi) whether the defendant made in-person contact with a resident of South Carolina regarding the business relationship; and

(vii) the nature, quality and extent of the parties' communications about the agreement or business.

Red Bone Alley Foods, LLC v. Nat'l Food & Beverage, Inc., No. 4:13-CV-3590, 2014 WL 1093052, at *4 (D.S.C. Mar. 14, 2014) (finding defendant subject to specific jurisdiction on account of defendant's long-term business activities in South Carolina, contractual performance in South Carolina, in-person contact with plaintiff in South Carolina, and emails with plaintiff in South Carolina); *McNeil v. Sherman,* No. 2:09-CV-00979, 2009 WL 3255240, at *4 (D.S.C. Oct. 7, 2009) (finding jurisdiction over defendant who knowingly established an ongoing business relationship with a South Carolina resident).

III. Discussion

a. Personal Jurisdiction

i. Prioleau

The parties do not dispute that this Court has personal jurisdiction over Prioleau because he is a resident of South Carolina. When this lawsuit was initially filed, Prioleau may have been a proper party, although there is a dispute of fact about whether he was actually in a position to transfer the shares. However, it is undisputed that Prioleau is no longer the manager of HMB so is no longer in the position to effectuate any relief ordered by this Court with regard to specific performance of the Stock Agreement. (Dkt. No. 15-2 at 10-11.) Because the Court has refrained from ruling on Plaintiffs' civil conspiracy claim in this order (the only remaining claim against Prioleau), it has not yet determined whether Prioleau is still a proper party to this lawsuit.

ii. Minor and HMB

Minor contends that there is no basis for this Court to assert jurisdiction over him or HMB because (1) Minor is domiciled in California, and HMB is incorporated in Delaware with its principal place of business California; (2) neither Minor nor HMB does business in South

Carolina; and (3) neither Minor nor HMB is subject to jurisdiction under South Carolina's long arm statute. (Dkt. No. 15-1 at 6.)

First, although HMB is apparently incorporated in Delaware, there is no record of that entity being licensed to do business in California. As a result, as with Bitreserve, Ltd., the Court cannot readily accept that HMB's principal place of business is California. The parties should address this issue in their supplemental briefs following jurisdictional discovery.

Second, under South Carolina's long arm statute, "A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's . . . entry into a contract to be performed in whole or in part by either party in this State . . . ." S.C. Code Ann. § 36-2-803(A). Minor and HMB argue that the Stock Agreement "would not have been performed in South Carolina, as only Minor could transfer the Shares and that would have been performed, if the conditions had been met, in California." (Dk. No. 15-1 at 6, n.3.) The Stock Agreement that is the subject of this dispute was a Stock Purchase, Transfer, and *Voting* Agreement. Minor has admitted that Prioleau, who the parties do not dispute was empowered to vote all Bitreserve, Ltd. shares under HMB's LLC Agreement, "ratified the Stock Agreement at issue in this action in case he was ever called on to vote Mr. Minor's Shares in connection with a completed financing of Bitreserve." (Dkt. No. 23 at 2.) Prioleau is domiciled in South Carolina, so it appears that at least one aspect of the Stock Agreement would have to be performed in South Carolina.[3] *See, e.g.*, *Troy H. Cribb & Sons, Inc. v. Cliffstar Corp.*, 273 S.C. 623, 625 (1979) ("It is inconceivable that appellant would authorize respondent to submit bids on its behalf, knowing that respondent's corporate domicile and principal place of business was

[3] The parties should address this issue in their supplemental briefs following jurisdictional discovery.

South Carolina, without anticipating that performance would at least in part be made in South Carolina. Further, it remains a mystery to the Court where Bitreserve, Ltd. and HBM actually conduct business, and it is conceivable that they in fact "do business" or did business through Bitreserve, Ltd.'s "operating" arm, Uphold HQ, Inc., which is apparently still incorporated in South Carolina.

If it is the case that South Carolina's long-arm statute covers Minor's activities, the Court must then determine whether subjecting Minor to jurisdiction in South Carolina satisfies due process requirements. Whether the defendant maintains offices or agents in the forum state is one of several factors that courts consider when making this due process inquiry. *See Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009); *Red Bone Alley Foods,* 2014 WL 1093052, at *4). HMB's LLC Agreement, which is governed by Delaware law (Dkt. No. 19-7 at 7), may have created an agency relationship between Minor and Prioleau which Minor relied on when he entered the Stock Agreement that Prioleau signed as "trustee." Under Delaware law, "'an agency relationship is created when one party consents to have another act on its behalf, with the principal controlling and directing the acts of the agent.'" *In re NHI, INC.*, 320 B.R. 563, 570 (Bankr. D. Del., 2005) (quoting *Fisher v. Townsends, Inc.*, 695 A.2d 53, 57-58 (Del. 1997)). The Bankruptcy Appellate Panel of the Sixth Circuit had the opportunity to consider an overlapping agency/trustee relationship that is relevant here:

> A person may be both agent of and trustee for another. If he undertakes to act on behalf of the other and subject to his control, he is an agent; but if he is vested with the title to property which he holds for his principal, he is also a trustee. In such a case, however, it is the agency relation that predominates, and the principles of agency, rather than the principles of trust, are applicable. This is the case, for example, where the title to bonds or shares of stock or other securities is vested in a person who undertakes to hold subject to the directions of the person who caused the property to be vested in him. He is an agent since he is acting

> subject to the control of another, even though he is also trustee since he is vested with the title to the property.

In re Adams, 302 B.R. 535, 544 (B.A.P. 6th Cir. 2003) (quoting Austin Wakeman Scott and William Franklin Fratcher, The Law of Trusts § 8 (4th ed. 1987)); *see also* 2A C.J.S. Agency § 24. Although Prioleau and Minor appear to have had an agency relationship that gives this Court jurisdiction over Minor, jurisdictional discovery is needed to clarify their relationship. The parties' briefs also suggest that Prioleau is an agent of HMB and that Minor may have an alter-ego relationship with HMB because he totally dominates and controls that entity. The parties should address this issue in their supplemental briefs as well.

IV. Venue

Because many of the facts relevant to this Court's determination about venue overlap with the facts relevant to personal jurisdiction, the Court will not rule on venue before jurisdictional discovery is complete.

V. Conclusion

For the reasons set forth above, the Court finds that jurisdictional discovery is necessary. The parties shall complete jurisdictional discovery by September 19, 2017 and file supplemental briefs with the Court on or before October 3, 2017. The Court's current scheduling order (Dkt. No. 7) is stayed pending completion of jurisdictional discovery and supplemental briefing.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Judge

July 18, 2017
Charleston, South Carolina