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Re: *Reid v. Siniscalchi*
C.A. No. 2874-VCN
Date Submitted: February 29, 2012

Dear Counsel:

Plaintiff Dennis A. Reid ("Reid") moves for entry of an order (1) compelling Defendants Alenia Spazio ("Alenia"), Alcatel Alenia Space Italia S.p.A. (formerly known as Alenia Spazio) (also, "Alenia"), and Finmeccanica S.p.A. (together with Alenia, collectively, the "Entity Defendants") to produce certain witnesses for depositions; and (2) for the issuance of compulsory process sufficient to enable the depositions of witnesses not under the Entity Defendants' control. The Entity Defendants oppose this motion.

The facts of this case have been set forth in two previous opinions of this Court[1] and will not be revisited here in any detail. Most relevant to the motion before the Court are Reid's allegations that the Entity Defendants conspired with Vincenzo Siniscalchi ("Siniscalchi") and Giorgio Capra ("Capra") to divest U.S. Russian Telecommunications, LLC ("USRT") of its share of the proceeds of a business venture undertaken with the Entity Defendants.[2] The issue now before the Court is whether to allow jurisdictional discovery to continue or to conclude that enough is enough and move forward with the Entity Defendants' motion to dismiss. Reid seeks to depose eight named witnesses and one or two as of yet unnamed witnesses (all of the witnesses, collectively, the "proposed deponents") to supplement his jurisdictional discovery. Most of these depositions (the "proposed depositions") would likely take place in Italy, but some might be taken in France, Russia, and the United States. Apparently, none of the proposed deponents resides in Delaware.

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[1] *See Reid v. Siniscalchi*, 2011 WL 378795 (Del. Ch. Jan. 31, 2011); *Reid v. Siniscalchi*, 2008 WL 821535 (Del. Ch. Mar. 27, 2008), *rev'd sub nom. Reid v. Spazio*, 970 A.2d 176 (Del. 2009).
[2] The object of this business venture was to exploit, for commercial gain, satellite orbital slots controlled by Russia (the "Satellite Project").

The Entity Defendants filed their motion to dismiss some time ago. In a 2008 Memorandum Opinion, the Court dismissed this action, concluding that it was "untimely when measured by the applicable statute of limitations" and likewise "time-barred as a matter of laches."[3] This judgment was reversed and the case was remanded to this Court for resolution of the final issue remaining from the Entity Defendants' motion to dismiss: the question of whether this Court has personal jurisdiction over the Entity Defendants.[4] In an April 21, 2009, letter to counsel for Reid and counsel for the Entity Defendants, the Court stated that it would reserve decision on the issue of personal jurisdiction, pending completion of jurisdictional discovery.[5] In the April 21 Letter, the Court stated that, although Reid already had the opportunity to take jurisdictional discovery for a related action filed by Reid in Texas (the "Texas litigation"),[6] the Court could not "be

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[3] *Reid*, 2008 WL 821535, at *12.
[4] *Reid*, 970 A.2d at 184-85.
[5] Letter from the Court to Ian C. Bifferato, Esq. & Allen M. Terrell, Jr., Esq., dated April 21, 2009 ("April 21 Letter").
[6] *Alenia Spazio, S.p.A. v. Reid*, 130 S.W.3d 201 (Tex. App. 2003), *cert. denied*, 549 U.S. 821 (2006). In the Texas litigation, the Fourteenth Court of Appeals of Texas reversed the trial court and concluded that Texas did not have personal jurisdiction over the Entity Defendants. *Id.* The Texas appellate court also denied Reid's motion for a rehearing *en banc*, and the Supreme Court of Texas denied Reid's petition for review and motion for rehearing. *Reid*, 970 A.2d at 179. The

confident that discovery focused on the jurisdiction of the Texas courts would also generate those facts pertinent to this Court's jurisdiction." The scope of this jurisdictional discovery was the subject of Reid's motion to strike objections and compel more complete discovery responses, which the Court granted in part and denied in part in January 2011.[7]

The witnesses Reid seeks to depose fall into four categories. First, there are four proposed deponents who worked for Alenia during the time it collaborated with USRT. They are: Claudio Mastracci ("Mastracci"), Guiseppe Morsillo ("Morsillo"), Paolo Piantella ("Piantella"), and Giorgio Zappa ("Zappa"). According to the Entity Defendants, none of these proposed deponents currently works for Alenia. Second, Reid seeks to depose the two other defendants in this action, Siniscalchi and Capra. The third group of proposed deponents consists of non-parties Michael Topalov ("Topalov"), Chief Executive Officer ("CEO") of InSpace, and Biagio Sorice ("Sorice"), a "confidential" member of USRT Holdings LLC ("Holdings"). Fourth, the final category of proposed deponents is

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case was remanded to the trial court, which entered an order of dismissal on April 11, 2006. *Id.* (citing *Reid v. USRT Hldgs. LLC*, 2006 WL 4009596 (Tex. D. Ct. Apr. 11, 2006)).
[7] *See Reid*, 2011 WL 378795, at *14.

the unnamed witnesses (the "Unnamed Witnesses"). Reid seeks to depose one or two persons with knowledge of the document production for the Texas litigation and the instant action to question them about apparent gaps in the production of documents that were produced for both this case and the Texas litigation.

Since personal jurisdiction has been challenged and Reid has the burden of showing a basis for the Court's exercise of personal jurisdiction, he is entitled to "reasonable discovery in aid of mounting such proof."[8] Under Court of Chancery Rule 26(a), depositions are, of course, a permitted discovery method. Here, jurisdictional discovery must relate to the factual allegations in the Complaint and to the question of personal jurisdiction.[9] "[T]his Court may exercise its sound discretion in delineating the appropriate scope of discovery,"[10] and, as this Court has stated in the past, Reid "may not utilize the benefit of jurisdictional discovery so he can fish for a possible basis for this [C]ourt's jurisdiction."[11]

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[8] *Hart Hldg. Co. Inc. v. Drexel Burnham Lambert Inc.,* 593 A.2d 535, 539 (Del. Ch. 1991) (citations omitted).
[9] *Reid*, 2011 WL 378795, at *4.
[10] *In re Tyson Foods, Inc.,* 2007 WL 2685011, at *3 (Del. Ch. Sept.11, 2007).
[11] *Reid*, 2011 WL 378795, at *4 (internal quotation and citation omitted).

Under Court of Chancery Rule 26(b)(1), the Court shall limit discovery if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive. The Entity Defendants contend that the proposed depositions meet all three of these criteria. Furthermore, the Entity Defendants argue that Reid's motion should be denied because the proposed depositions are not likely to lead to evidence relevant to personal jurisdiction. Finally, the Entity Defendants contend that Reid has failed to comply with the Court's rules regarding compulsory service.

The Entity Defendants' argument that the proposed depositions are unreasonably cumulative or duplicative is based primarily upon their contention that Reid is not entitled to further discovery because the discovery he has obtained, thus far, has not yielded evidence supporting his conspiracy theory of jurisdiction.[12] According to the Entity Defendants, the jurisdictional discovery taken to date—which includes the production of thousands of pages of documents

[12] *See* Defs. Alenia Spazio, Alcatel Alenia Space Italia, S.p.A. & Finmeccanica, S.p.A.'s Opp'n to Pl.'s Mot. to Compel Depositions 10-14.

and depositions taken during the Texas litigation—actually weighs against a conclusion that the Entity Defendants were involved in the conspiracy alleged by Reid. This argument fails.[13]

First, it is unclear how the fact that Reid, according to the Entity Defendants, has not already obtained proof of his conspiracy theory necessarily renders the proposed depositions cumulative or duplicative. Second, even if this argument is viewed as a broader argument against allowing the proposed depositions, one not necessarily tied to the criteria of Rule 26(b)(1)(i), it still fails. Reid has set forth a conspiracy theory that he claims can support a conclusion that this Court has personal jurisdiction over the Entity Defendants under the conspiracy theory of jurisdiction. As explained below, the proposed depositions are relevant to Reid's conspiracy theory and do not meet any of the Rule 26(b)(1) criteria which authorize the Court to limit discovery. As such, the Court cannot endorse the Entity Defendants' attempt to inject a factual assessment of Reid's conspiracy

[13] Furthermore, to the extent that the Entity Defendants argue that Reid is not entitled to additional jurisdictional discovery because his conspiracy theory is inadequate, this argument is not persuasive. This Court previously concluded that Reid is entitled to jurisdictional discovery with regard to his conspiracy theory of personal jurisdiction. *See Reid*, 2011 WL 378795, at *5.

theory into its decision regarding whether discovery should continue—discovery aimed at providing proof of Reid's conspiracy theory. There may well be a point at which a plaintiff has conducted so much discovery without finding support for a theory of jurisdiction that further jurisdictional discovery is nothing more than Quixotic quest that the Court should not allow. But, by the time that point is reached, presumably, further discovery would be foreclosed by the fact that it is not relevant or that it meets one of the Rule 26(b)(1) grounds for limiting discovery. In sum, the Court rejects the Entity Defendants' argument that Reid should be denied the opportunity to conduct the proposed depositions because the discovery to date, according to the Entity Defendants, does not support Reid's conspiracy theory.

The Entity Defendants note that Guiseppe Viriglio ("Viriglio"), the CEO and a Board member of Alenia at the time relevant to this action, was deposed by Reid in the Texas litigation. Mastracci and Morsillo helped Viriglio prepare for that deposition, so there might be a suggestion that their testimony would, therefore, be cumulative or duplicative. Leaving aside any additional arguments for concluding otherwise, the Court previously concluded that discovery taken for the Texas

litigation may not have "generate[d] those facts pertinent to this Court's jurisdiction;" [14] thus, Mastracci's and Morsillo's testimony would not be duplicative of Viriglio's Texas deposition. The Entity Defendants also note that Siniscalchi was deposed in conjunction with a case[15] brought in Texas that was separate from, but related to, the Texas litigation. Not only did Reid not take part in this deposition, but any argument that it renders Siniscalchi's testimony related to Reid's theory of personal jurisdiction in Delaware cumulative or duplicative fails for the reason explained above with regard to Viriglio's Texas deposition.

The Entity Defendants argue that Reid's motion should be denied because he has had ample opportunity to obtain the information sought in the proposed depositions. The Entity Defendants also contend that they have provided Reid with thousands of pages of documents, responded to multiple interrogatories, and provided a list of former or current employees who, the Entity Defendants believed, were knowledgeable regarding the events described in the Complaint. According to the Entity Defendants, much of this information was provided to Reid between

[14] April 21 Letter. For this same reason, any argument that the testimony of any other proposed deponent would be duplicative of Viriglio's testimony also fails.
[15] *Space Marketing, Inc. v. USRT Hldgs., LLC*, No. H-01-4117 (S.D. Tex. Jul. 8, 2004).

late September 2009 and the middle of June 2010. Furthermore, the Entity Defendants argue that Reid was aware of several of the proposed deponents' involvement in the activities at issue before the beginning of jurisdictional discovery; therefore, according to the Entity Defendants, Reid's request to depose these individuals came far too late.

Reid points out that jurisdictional discovery has been an iterative process, and, on April 29, 2011, the Entity Defendants produced approximately 3,400 additional pages of documents and supplemented their interrogatory responses. Following this supplemental production, Reid informed the Entity Defendants of his intention to identify and depose witnesses.[16] On September 30, 2011, Reid provided the Entity Defendants with a list of witnesses that Reid wished to depose.[17] On October 6, 2011, the Entity Defendants responded that they would "not voluntarily produce any witnesses for deposition or stipulate to issuance of

[16] *See* Letter from Ian C. Bifferato, Esq. to the Court, dated August 31, 2011.
[17] Aff. of Derek Y. Brandt in Supp. of Pl.'s Mot. to Compel Depositions, Ex. J (Letter from Thomas I. Sheridan, III, Esq. to Rick Halper, Esq., dated September 30, 2011).

compulsory process."[18] The motion currently before the Court was filed on October 20, 2011.[19] Therefore, according to Reid, very little time elapsed between when he received complete production of the requested documents and complete responses to his interrogatories and when he began the process of seeking to depose witnesses, and, as a result, the Entity Defendants' argument should be rejected.

The Court agrees with Reid. Considering that the proposed depositions would likely occur in numerous foreign countries, deposing the proposed deponents could become a complicated and costly endeavor. Taking the proposed depositions would also likely require this Court to issue letters rogatory. Taking these factors into account, the Court concludes that Reid acted reasonably by waiting until he received the complete production of documents and responses to interrogatories he was entitled to before seeking to depose witnesses. To do otherwise would have given rise to the risk that the Court's and the parties' resources would have been wasted. Depositions might have been taken that later-

[18] *Id.*, Ex. K (Letter from Rick Halper, Esq. to Thomas I. Sheridan, III, Esq., dated October 6, 2011).
[19] Pl.'s Mot. to Compel Depositions.

received documents or interrogatory responses proved unnecessary; the reverse might also have occurred. Finally, the Court concludes that, after receiving the last set of documents and interrogatory responses, Reid acted in a reasonably expeditious manner in seeking the proposed depositions.

The Entity Defendants argue that the proposed depositions would be unduly burdensome or expensive because a vast majority of the proposed depositions would be taken abroad, would be subject to foreign law, and would likely require the use of translators. This expense would be even more unreasonable, according to the Entity Defendants, because Reid currently has no factual support for his conspiracy theory, and, therefore, the proposed depositions are nothing more than a fishing expedition. The Court has already rejected the Entity Defendants' argument that the proposed depositions should be denied because Reid has, allegedly, failed to make some factual showing in support of his conspiracy theory. Furthermore, while it is true that the proposed depositions would likely be burdensome and expensive given that they would probably take place in several foreign countries, be subject to various foreign laws, and be conducted in multiple languages, Reid cannot be faulted for the fact that those with possible knowledge

of the alleged conspiracy live outside of the United States. The business venture that this litigation relates to was international in nature; this fact was not unknown to the Entity Defendants when they embarked upon their collaboration with USRT. Therefore, the Court concludes that the requested discovery would not be *unduly* burdensome or expensive.

The Entity Defendants contend that the requested depositions are not likely to lead to evidence relevant to personal jurisdiction. In short, this argument does not succeed. Below, the Court briefly summarizes the alleged facts that establish that each proposed deponent is likely to provide testimony relevant to or reasonably calculated to lead to evidence relevant to the issue of personal jurisdiction.

Mastracci and Morsillo are both former employees of Alenia who were deeply involved with the Satellite Project. Both attended meetings with USRT, including meetings where Alenia questioned why it needed to work with USRT. The people most likely to know about the alleged conspiracy are those who worked closely on the Satellite Project.

Piantella signed the May 12, 1998, Memorandum of Agreement (the "MOA") between Alenia and USRT that resulted from Alenia's suggestions that it might pursue the Satellite Project without USRT. Also, when Dr. Aksamentov wrote to Finmeccanica to complain about USRT having been cut-out of the Satellite Project, Piantella responded, stating that the MOA was terminated and there were no more rights and obligations between the parties. Thus, Piantella was involved in the Satellite Project and in the actions that deprived Reid of his economic interest in it.

Zappa's involvement in the Satellite Project appears more limited than that of the other three former employee witnesses. Zappa was Alenia's President and Chairman during the relevant time period. He was, allegedly, a party to dozens of communications regarding the Satellite Project, including the letter that complained of Alenia's usurpation of USRT's rights, which eventually led to Piantella's aforementioned letter to Siniscalchi. Among other things, Reid seeks to depose Zappa regarding what, if any, investigation he made in response to this accusation.

Siniscalchi and Capra are defendants in this action and are alleged to have played critical roles in the alleged conspiracy that forms the basis of Reid's conspiracy theory of jurisdiction.

Topalov was the CEO of InSpace, a Russian company that controlled the orbital slots USRT planned to utilize. As the Court previously recognized, Topalov was among the individuals "directly involved in the Satellite Project" who might have "involvement in, or knowledge of, the alleged conspiracy and actions or effect involving Delaware."[20]

Sorice was a "confidential" member of Holdings and its only other member in addition to Capra. According to Reid, Sorice's involvement with Holdings was kept a secret until Capra disclosed it in connection with Holdings's 2002 bankruptcy filing. Under Reid's conspiracy theory of personal jurisdiction, the creation of Holdings as a Delaware limited liability company was the conspiracy's nexus to Delaware, and Holdings played a central role in the defendants' scheme to deprive Reid of his economic interest in the Satellite Project. As one of only two members of Holdings, it is likely that Sorice has knowledge of its activities.

[20] *Reid*, 2011 WL 378795, at *6.

The alleged facts recited above are enough to establish that, if the alleged conspiracy existed, it is likely that the testimony of these proposed deponents would be relevant to or reasonably calculated to lead to evidence relevant to the issue of personal jurisdiction.

Reid also wishes to depose one or two individuals with knowledge of the Texas litigation production and the current jurisdictional discovery production regarding alleged unexplained gaps in the current production. The Unnamed Witnesses, if properly selected, should be able to explain—assuming their memories have survived the passage of time—the evidentiary gaps.

The Entity Defendants' final argument is that Reid has failed to comply with the Court's rules regarding compulsory service. The Entity Defendants correctly state that Reid has not yet obtained letters of request related to the proposed deponents. Under Court of Chancery Rule 28(b), depositions may be taken in a foreign country, among other ways, pursuant to a letter of request or pursuant to an applicable treaty or convention. The parties agree that many of the proposed deponents reside in countries that are signatories to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, according to which

depositions must be taken pursuant to letters rogatory. The Entity Defendants' argument may, perhaps, quibble with the wording used by Reid to describe the alternative form of relief he requested in his motion: "issuance of compulsory process sufficient to enable the depositions of witnesses not under the Entity Defendants' control."[21] The Court understands this as a request that it issue letters of request (perhaps styled as letters rogatory) to enable him to pursue depositions abroad of those proposed deponents not under the Entity Defendants' control. Understood as such, Reid is seeking the precise thing that the Entity Defendants argue he lacks, and, thus, this argument is unavailing.

For the foregoing reasons, the Court largely grants Reid's motion. The Entity Defendants shall be compelled to produce for deposition any of the proposed deponents they control. Because the Entity Defendants claim that none of the named proposed deponents is still employed by them, they shall search for and produce any agreement governing the post-employment relationship between them and any proposed deponent who is a former employee. These agreements will allow Reid to determine whether the Entity Defendants still have control over

[21] Pl.'s Mot. to Compel Depositions 1.

their former employees, such that they would be able to produce them for deposition. Finally, the Court will issue letters of request for the proposed deponents; the form of these letters shall be provided by Reid, subject to the Court's approval.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K