

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

PETER R. HALL,)	
)	
Plaintiff,)	
)	C.A. No. 08C-07-123 MJB
)	
v.)	
)	
MARITEK CORPORATION,)	
MICHAEL J. GEOFFREY)	
FULTON and DAVID H.)	
YOUNG,)	
)	
Defendants.)	

Submitted: January 9, 2009
Decided: April 29, 2009

For the reasons set forth herein, this action is hereby stayed.

OPINION AND ORDER

Francis J. Murphy, Esquire, Murphy & Landon, Wilmington, DE, Attorney for Plaintiff.

Raymond J. DiCamillo, Esquire, Richards, Layton & Finger, Wilmington, DE, Attorney for Defendants.

BRADY, J.

INTRODUCTION

In this action, Peter Hall (“Plaintiff”) seeks to hold Young (“Young”), Fulton (“Fulton”) and Maritek Corporation (“Maritek”)(collectively, “Defendants”) liable for their alleged tortious interference with a contract between Plaintiff and a Bahamian corporation, Maritek Bahamas, Ltd., regarding the sale of land in The Bahamas. Defendants filed a Motion to Dismiss the Amended Complaint asserting several bases for dismissal. Recently, in a related action in the Bahamas, the Bahamian Supreme Court held that no contract existed between Plaintiff and MBL. A final ruling from the Bahamian Court that no contract existed between Plaintiff and MBL would effectively eviscerate the two claims for tortious interference with contract presently before the Court, given that the threshold requirement in order to state a claim for tortious interference with contract is, of course, demonstrating the existence of a valid contract.

No final judgment has been rendered and Plaintiff represents to the Court that he intends to appeal any adverse ruling by the Court of Appeal of The Bahamas to The Privy Council in London, England. Given the lack of finality with respect to the Bahamian Action, the Court is not in a position to evaluate the collateral effect, if any, of a final judgment from the Bahamian Courts. Therefore, the most prudent course of action is to stay this case until such time as a final judgment is rendered in the Bahamian Action.

FACTS

This action arises out of an alleged contract for the sale of land in The Bahamas. Plaintiff alleges that on October 11, 2002, he entered into a contract (the “Hall Contract”) with Maritek Bahamas, Ltd. (“MBL”) for the purchase of 24,682 acres or approximately 39 square miles of land (the “Bahamas Property”) on Long Island, The Bahamas. Pursuant to the Hall Contract, Plaintiff alleges that he deposited \$1.15 million toward the purchase of the Bahamas Property. Non-party MBL is a Bahamian corporation and wholly-owned subsidiary of Maritek Corporation, a Delaware corporation. Defendant Fulton is a resident of Canada and an officer and director of both Maritek and MBL. Defendant Young is also a resident of Canada and is a director of both Maritek and MBL.

The Amended Complaint alleges that during the period from June 2005 to the present, Fulton and Young engaged in intentionally tortious and unlawful conduct in their capacities as directors of Maritek, and in Fulton’s case, also as an officer of Maritek, in an attempt to procure the Bahamas Property from Maritek’s wholly-owned subsidiary, MBL, for their personal benefit. Plaintiff alleges that Defendants knowingly and intentionally misrepresented to Maritek’s other directors that Plaintiff (a) did not have a valid contract with MBL to purchase the Bahamas Property, (b) was unable to finance the Hall Contract, (c) would not be

able to carry-out the purchase of the Bahamas Property, and (d) had failed to obtain government approval for the project.

The Amended Complaint alleges that Fulton and Young, in their capacities as directors of Maritek, and in Fulton's case, also as an officer of Maritek, had Maritek cause MBL to initiate a lawsuit in 2005 in the Supreme Court of The Commonwealth of the Bahamas (the "Bahamian Action") against Plaintiff seeking a declaration that the Hall Contract is unenforceable and void, or in the alternative, that Plaintiff had breached the Hall contract by failing to satisfy the condition precedent of obtaining government approval. Trial in the Bahamian Action commenced in late 2007, and at the time Plaintiff's Complaint was filed in Delaware, the parties still awaited a ruling from the Bahamian Supreme Court.

While trial in the Bahamian Action was ongoing, certain Maritek stockholders commenced litigation in the Delaware Court of Chancery against Young and Fulton, Maritek and two other Maritek directors (the "Chancery Action").¹ The Plaintiffs in the Chancery Action have alleged, among other things, that the Defendants in that action breached their fiduciary duties by orchestrating a transaction whereby the Bahamas land that is the subject of the Hall Contract was to be divided up for their own personal benefit. On June 10, 2008, Plaintiff attempted to intervene in the Chancery Action but the Court of Chancery denied

¹ *Wang v. Fulton*, C.A. No. 3409-VCL.

Plaintiff's Motion, holding that "the parties here, including the people who hold the [Hall C] contract, recognize that...whatever rights they have under that contract, are subject to the determination by the Bahamian court about Mr. Hall's contract. [Granting the motion to intervene] would just unnecessarily confuse and interject issues into this litigation that just don't need to be here."²

On September 17, 2008, Young and Fulton³ filed a Motion to Dismiss the Complaint on the grounds that (i) the Court could not exercise personal jurisdiction over the Defendants, (ii) the complaint failed to state a claim upon which relief could be granted, and (iii) the Complaint failed to name a necessary party.

Alternatively, Fulton and Young moved to dismiss or stay the action in favor of the earlier-filed Bahamian Action. Plaintiff filed a response to the Motion to Dismiss on October 17, and the Court heard oral argument on October 23. At oral argument, the Court granted Plaintiff's request to submit supplemental briefing on the issue of personal jurisdiction. Supplemental submissions were submitted and received by the Court.

On December 15, 2008, the Supreme Court of the Commonwealth of The Bahamas issued its ruling in the Bahamian Action. The Court found that the Hall

² *Wang v. Fulton*, C.A. No. 3409, at 58-59 (Del. Ch. June 20, 2008) (Lamb, V.C.)(TRANSCRIPT).

³ Maritek was not named as a Defendant until the Amended Complaint was filed on January 23, 2009.

Contract was not a valid or enforceable contract.⁴ Moreover, even if the Hall Contract were valid, the Court held that Plaintiff had repudiated and materially breached its terms by failing to pay the deposit required thereunder.⁵

On January 23, 2009, Plaintiff filed an Amended Complaint adding Maritek as a party and a claim for tortious interference with contract against Maritek as well.⁶ On February 25, 2009, Defendants filed a Motion to Dismiss the Amended Complaint on five separate grounds: (i) there is no personal jurisdiction over the Defendants, (ii) the Amended Complaint fails to state a claim for tortious interference because the Bahamian Court held that the Hall Contract was not a valid or enforceable contract, (iii) the Amended Complaint fails to state claim because it does not allege that the individual Defendants exceeded the scope of their authority, (iv) the Amended Complaint fails to name MBL as a party, and (v) this action should be dismissed or stayed in favor of Plaintiff's appeal of the Bahamian Court's ruling.

⁴ *Maritek Bahamas Limited v. Hall*, (Bah. Supr. Ct. Dec. 15, 2008) at ¶¶ 255-61 (“After consideration of the evidence and the authorities commended to me, I find that the [Hall Contract] did not of itself, constitute a binding contract, between [Mr. Hall and MBL]”) *Id.* at ¶¶ 261.

⁵ *Id.* at ¶¶ 262-66.

⁶ Under Superior Court Civil Rule 15(a), a party may amend its complaint, without having to file a motion, at any time before a responsive pleading is served. Defendants had not served a responsive pleading prior to the filing of the Amended Complaint, therefore, Plaintiff was not required to seek leave of the Court.

ANALYSIS

Having reviewed the pleadings, supplemental submissions and authority cited by the parties in this case, the Court is satisfied that a stay of this matter, pending the completion of the appellate process in the Bahamian Courts, is the most prudent course of action. This Court's power to grant a stay is a discretionary one which has "always existed by virtue of the Court's right to control the disposition of causes on its docket."⁷ "This discretion may be properly asserted on the ground that another action is pending in a different jurisdiction, even though not between the same parties and even though the issues are not identical in all respects, where that other action will probably settle or greatly simplify the issues presented."⁸ "[I]n the determination of facts and circumstances sufficient to warrant such stay, each case must be considered on its own merits."⁹

The Plaintiff filed claims for tortious interference with contract in this Court, against Fulton and Young, and Maritek. The threshold requirement for Plaintiff to state a claim for tortious interference with contract is, of course, demonstrating the existence of a valid contract.¹⁰ As stated previously, a final ruling from the Bahamian Courts that no contract existed between Plaintiff and MBL would

⁷ *Wilmington Trust Company v. Lucks*, 1999 WL 743255, at *7 (Del. Super. June 18, 1999).

⁸ *Id.* See also, *Kahn v. McCarthy*, 2008 WL 4482704 (Del. Ch. Sept. 24, 2008); *In re TGM Enterprises*, 2008 WL 4261035 (Del. Ch. Sept. 12, 2008); *General Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681, 683 (Del. 1964).

⁹ *Id.*

¹⁰ *Kirkwood Kin Corp. v. Dunkin' Donuts, Inc.*, 1997 WL 529587, at *14 (Del. Super. Jan. 29, 1997).

effectively eviscerate the claims presently before the Court. However, no final judgment has been rendered and Plaintiff represents to the Court that he intends to appeal any adverse ruling by the Court of Appeal of the Bahamas to The Privy Council in London, England. Given the lack of finality with respect to the Bahamian Action, the Court is not in a position to evaluate the collateral effect of a final judgment from the Bahamian Courts. That being said, the most prudent course of action for this Court to take is to stay this case until such time as a final judgment is rendered in the Bahamian Action. When that occurs, this Court will be in a position to determine the collateral effect, if any, of that ruling.

CONCLUSION

After review of the pleadings, supplemental submissions and authority cited by the parties in this case, the Court concludes that a stay of this matter pending the completion of the appellate process in the Bahamian Courts is the most prudent course of action. Until such time as a final judgment is rendered in the Bahamian Action, this Court is not in a position to render a final judgment in this matter. The matter will, therefore, be **STAYED**.

IT IS SO ORDERED.

_____/s/_____

M. Jane Brady
Superior Court Judge