STATE OF NORTH CAROLINA

COUNTY OF LINCOLN

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 1391

DENVER GLOBAL PRODUCTS, INC.,

Plaintiff,

v.

JEANNE HENDRIX,

Defendant,

and

ROGER LEON and KEITH PIERCY,

Defendants and Counterclaim/Third-Party Plaintiffs,

v.

CHONGQING RATO POWER CO., LTD.; CHONGQING RATO POWER MANUFACTURING CO., LTD.; CHONGQING RATO TECHNOLOGY CO., LTD.; ZHU LIEDONG; LARRY QIAN WANG; JIN XIANG; MICHAEL PARKINS; GODWIN LENG; and RATO NORTH AMERICA, INC.,

Third-Party Defendants.

ORDER ON DEFENDANTS AND COUNTERCLAIM/THIRD-PARTY PLAINTIFFS' MOTION FOR JURISDICTIONAL DISCOVERY

1. Defendants and Counterclaim/Third-Party Plaintiffs Roger Leon and Keith Piercy have filed a Motion for Jurisdictional Discovery ("Motion"). Leon and Piercy seek evidence to support the exercise of personal jurisdiction over Third-Party Defendants Liedong Zhu, Larry Wang, Jin Xiang, and Chongqing Rato Technology

Co., Ltd. ("Rato Technology"). The Court heard oral argument on the Motion on January 20, 2017.

2. Plaintiff Denver Global Products, Inc. ("Denver Global") filed its Complaint on December 30, 2015, naming as Defendants Leon, Piercy, and Jeanne Hendrix—all former executives, officers, and directors of Denver Global. The Complaint alleges that Defendants embezzled Denver Global's funds and made unauthorized payments to key employees before convincing those employees to resign. According to the Complaint, Denver Global is a North Carolina corporation and a wholly owned subsidiary of Chongqing Rato Power Manufacturing Co., Ltd. ("Rato Manufacturing"), a Chinese company. (Compl. ¶¶ 17, 19.)

3. On February 29, 2016, Leon and Piercy filed their Answer. They also filed claims against multiple third parties for fraud, breach of fiduciary duties, conversion, unfair and deceptive trade practices, and civil conspiracy, among other claims. The Third-Party Defendants include Rato Manufacturing and two related entities: Rato Technology and Chongqing Rato Power Co., Ltd. ("Rato Power"). Rato Power and Rato Technology are both Chinese limited-liability companies having their principal places of business in Chongqing, China. (Third-Party Compl. ¶ 6.) The relevant individual Third-Party Defendants are Zhu, Wang, and Xiang, who are directors, officers, or shareholders of Rato Power, Rato Manufacturing, and Rato Technology. (Third-Party Compl. ¶¶ 7–10.)

4. Zhu, Wang, Xiang, and Rato Technology moved to dismiss the claims against them for lack of personal jurisdiction under Rule 12(b)(2) of the North

Carolina Rules of Civil Procedure. Leon and Piercy opposed and subsequently moved for jurisdictional discovery.

5. The decision to grant jurisdictional discovery and the scope of any discovery are matters within the Court's discretion. *See Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 402–03 (4th Cir. 2003); *see also K2 Asia Ventures v. Trota*, 209 N.C. App. 716, 722, 708 S.E.2d 106, 110 (2011) (noting "that most federal courts leave the scope of jurisdictional discovery to the discretion of the trial judge"). The party seeking discovery "must offer more than speculation or conclusory assertions about contacts with a forum state." *Pan-Am. Prods. & Holdings, LLC v. R.T.G. Furniture Corp.*, 825 F. Supp. 2d 664, 689 (M.D.N.C. 2011). A court may deny even limited discovery where the "claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by defendants." *Rich v. KIS Cal., Inc.*, 121 F.R.D. 254, 259 (M.D.N.C. 1988).

6. Zhu, Wang, and Xiang do not oppose jurisdictional discovery. Instead, they contest the scope of Leon and Piercy's jurisdictional-discovery requests. At the hearing, the parties agreed to attempt to resolve this dispute and to submit a proposed jurisdictional-discovery schedule to the Court. Accordingly, the Court grants the motion for jurisdictional discovery as to Zhu, Wang, and Xiang. Discovery must be limited to the issue of personal jurisdiction and should "not be used as a fishing expedition for general discovery." *Brady v. Xe Servs. LLC*, No. 5:09-CV-449-BO, 2010 U.S. Dist. LEXIS 67165, at *6 (E.D.N.C. July 7, 2010); *see also Alkemal*

Sing. PTE Ltd. v. DEW Global Fin., LLC, No. 15 CVS 1406, slip op. ¶ 14 (N.C. Super. Ct. Aug. 5, 2016) (granting jurisdictional discovery but denying "substantially and unreasonably overbroad" discovery requests).

7. The parties have not reached a similar agreement as to Rato Technology, which opposes jurisdictional discovery of any kind. Leon and Piercy's sole argument is that Rato Technology is an alter ego of Rato Power and Rato Manufacturing, both of which are subject to personal jurisdiction in North Carolina. (Third-Party Compl. ¶ 107.) Leon and Piercy do not allege that Rato Technology itself has any relevant contact with North Carolina, and during the hearing, counsel confirmed that Leon and Piercy are not pressing a successor-liability theory for personal jurisdiction.

8. Leon and Piercy bear a heavy burden. The general rule is that a corporation's contacts are not imputed to its affiliate for the purpose of personal jurisdiction. *See Wyatt v. Walt Disney World Co.*, 151 N.C. App. 158, 168, 565 S.E.2d 705, 711 (2002) (refusing to treat affiliated companies as a single entity "absent proof that the businesses [were] part of the same whole"). North Carolina courts will disregard the corporate form only in "an extreme case where necessary to serve the ends of justice." *State ex rel. Cooper v. W. Sky Fin., LLC*, No. 13 CVS 16487, 2015 NCBC LEXIS 87, at *15 (N.C. Super. Ct. Aug. 27, 2015) (quoting *Dorton v. Dorton*, 77 N.C. App. 667, 672, 336 S.E.2d 415, 419 (1985)). To demonstrate that one corporation is "a mere instrumentality or alter ego" of another, the moving party must show "the domination and control of the corporate entity," "the use of that domination and control to perpetrate a fraud or wrong," and "the proximate causation of the

wrong complained of by the domination and control." *Atl. Tobacco Co. v. Honeycutt*, 101 N.C. App. 160, 164, 398 S.E.2d 641, 643 (1990) (first quoting *Henderson v. Sec. Mortg. & Fin. Co.*, 273 N.C. 253, 260, 160 S.E.2d 39, 44 (1968); then citing *B-W Acceptance Corp. v. Spencer*, 268 N.C. 1, 9, 149 S.E.2d 570, 576 (1966)).

9. To support their alter-ego theory, Leon and Piercy rely on two affidavits from Leon. In the first affidavit (attached to the opposition to the motion to dismiss), Leon states that Rato Technology "is a successor to Rato Power and/or Rato Manufacturing, established to shield the Rato Entities from claims by" Leon and Piercy. (Leon Aff. ¶ 22.) Leon reiterates those allegations in the second affidavit and also states that he attended a meeting of Rato Manufacturing's Board of Directors, during which the company "adopted the proposal" to "transfer . . . all of the assets of Rato Manufacturing to" Rato Technology. (Second Leon Aff. ¶¶ 5–6.) Leon further states that Rato Power, Rato Manufacturing, and Rato Technology share "common ownership structure, executive office structure, product line, facility, location, contact information, customers, employees, legal representation, assets, and website." (Second Leon Aff. ¶ 9.)

10. Rato Technology contends that these are bare allegations and conclusory assertions, insufficient to permit even limited discovery. In its view, Leon's second affidavit "is nothing more than a rote recitation of the factors that bear on an alter-ego claim," without supporting evidence. (Third-Party Defs.' Mem. Resp. Defs.' Mot. Jurisdictional Disc. 11.) Rato Technology further contends that Leon and Piercy offer no "evidence or allegations about Rato Technology's capitalization, compliance with

corporate formalities, the functioning of its officers and directors, or existence of its corporate records." (Resp. Mem. 11.)

11. These objections have some weight, but in deciding whether to grant jurisdictional discovery, the Court must view the facts in a light favorable to Leon and Piercy. *See Pan-Am. Prods. & Holdings*, 825 F. Supp. 2d at 688–89; *see also Cent. States, Se. & Sw. Areas Pension Fund v. Phencorp Reinsurance Co.*, 440 F.3d 870, 877–78 (7th Cir. 2006). Leon's affidavits declare that he has firsthand knowledge of relevant events and additional experience as a former executive of Rato Power and Rato Manufacturing. The affidavits therefore provide *some* evidence that, if taken as true, relates to the alter-ego factors. Courts often permit limited jurisdictional discovery in similar circumstances. *See Pan-Am. Prods. & Holdings*, 825 F. Supp. 2d at 689; *Rich*, 121 F.R.D. at 259; *Alkemal Sing. PTE*, slip op. ¶ 13; *see also CitiMortgage, Inc. v. First Preference Mortg. Corp.*, No. 4:06-CV-1296 (CEJ), 2007 U.S. Dist. LEXIS 649, at *3, *5 (E.D. Mo. Jan. 3, 2007).

12. Further, this is not a case in which the "allegations concerning veil piercing" were "directly contradicted by sworn affidavit testimony." *Weisman v. Blue Mountain Organics Distrib., LLC*, No. 13 CVS 3490, 2014 NCBC LEXIS 41, at *18 (N.C. Super. Ct. Sept. 5, 2014) (denying jurisdictional discovery). The Affidavit of Liedong Zhu states that Rato Technology "is a wholly-owned subsidiary of Rato Manufacturing" and that it has no relevant contacts with North Carolina. (Zhu Aff. ¶¶ 27–29.) Neither the Zhu Affidavit nor any other evidence includes "specific

denials" of Leon and Piercy's veil-piercing allegations. *E.g.*, *Carefirst of Md.*, 334 F.3d at 402–03; *Rich*, 121 F.R.D. at 259.

13. Accordingly, after considering all of the evidence, the Court exercises its discretion to grant the motion for limited written discovery as to Rato Technology. The Court reiterates that discovery requests must be limited to the issue of personal jurisdiction and may not be used to engage in general discovery. *See Brady*, 2010 U.S. Dist. LEXIS 67165, at *6.

14. In its discretion, the Court denies Leon and Piercy's request to take Rule 30(b)(6) depositions of Rato Technology or Rato Manufacturing. The parties acknowledge that depositions would be expensive and burdensome. Especially in view of the limited evidentiary showing thus far, Leon and Piercy may "explore these areas of limited jurisdictional discovery through the less burdensome and more targeted nature of written discovery." *INDAG GmbH & Co. Betreibs KG v. IMA S.p.A.*, 150 F. Supp. 3d 946, 973 (N.D. Ill. 2015); *see also Alkemal Sing. PTE*, slip op. ¶ 15(d) (denying request to take deposition for purposes of jurisdictional discovery).

15. The Court notes that, in granting jurisdictional discovery, this Order does not pass judgment on the appropriateness of, or objections to, the discovery requests attached to Leon and Piercy's Motion. Discovery shall proceed in accordance with the North Carolina Rules of Civil Procedure and the rules of this Court.

16. The Court therefore GRANTS IN PART and DENIES IN PART Leon and Piercy's Motion for jurisdictional discovery. The Court will issue a scheduling order separately.

SO ORDERED, this the 9th day of February, 2017.

/s/ Adam M. Conrad

Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases