

222 Delaware Avenue • Suite 900
P.O. Box 25130 • Wilmington, DE • 19899
Zip Code For Deliveries 19801
www.bayardlaw.com

PT China LLC v. PT Korea LLC, et al.,
C.A. No. 4456 (Del. Ch. February 26, 2010) (Noble, V.C.)
Digest by Vanessa R. Tiradentes

In a letter opinion resolving jurisdictional issues, Vice Chancellor Noble recently found that the Court of Chancery had personal jurisdiction pursuant to 6 Del. C. § 18-109 over the member of a Delaware limited liability company for breach of fiduciary duty and breach of contract claims.

Plaintiff PT China LLC (“PT China”), a Delaware limited liability company, sued PT Korea LLC (“PT Korea”), a Delaware limited liability company, and Myung Hun Kim (“Kim”), sole member and manager of PT Korea, on its own half and derivatively on behalf of nominal Defendant Pine Tree Holdings I LLC (“PT Holdings”). PT Holdings, PT Korea, and Kim (collectively, the “Third-Party Plaintiffs”) asserted counterclaims against PT China and third party claims against Harrison Wang (“Wang”), PT China’s sole member and manager. The relationship of the parties is the subject of the First Amended Limited Liability Operating Agreement and the Master Joint Venture Agreement (collectively, the “Agreements”).

The Third-Party Plaintiffs asserted claims for breach of fiduciary duty, breach of contract, and breach of the implied covenant of good faith and fair dealing against Wang and PT China, alleging that “Wang and PT China usurped corporate opportunities to PT Holdings’ detriments, disclosed confidential information and utilized proprietary information for their own benefit, misappropriated PT Holdings’ resources, and did so willfully and in bad faith.” Wang filed a Motion to Dismiss for lack of personal jurisdiction. The Third Party Plaintiffs served jurisdictional discovery and Wang, in turn, filed a Motion for Protective Order. The Third-Party Plaintiffs invited the Court to avoid the protective order issues by deciding if the Court had personal jurisdiction over Wang under 6 Del. C. § 18-109.

Section 18-109, the “implied consent” statute, allows service of process on managers of limited liability companies formed under the laws of this state. In order to be consistent with due process, service under the statute requires that the action relate to a violation by the manager of a fiduciary duty owed to the limited liability company. Wang did not refute that he is a manager as defined in § 18-109, but argued that the allegations are not sufficiently supported by the facts and are otherwise duplicative of the breach of contract claims. The Court disagrees with Wang’s assessment.

After carefully analyzing the breach of fiduciary claims, the Court first found that “the Third-Party Plaintiffs have pleaded sufficient facts to support their allegations that Wang breached his fiduciary duties to PT Holdings and PT Korea.” Additionally, it noted that since the fiduciary duty claims arise independently from those imposed by the Agreements and no argument has been made that the Agreements limit those duties, these claims are not duplicative of the breach of contract claims.

The Court also held that it has personal jurisdiction over Wang for the breach of contract claims under § 18-109 because “the breach of contract claims are intertwined with Wang’s management of both PT Holdings and PT Equity, the potential usefulness of his involvement in this suit, and Delaware’s interest in adjudicating disputes involving management of its limited liability companies.”