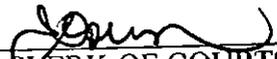


FEB 07 2018


ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

SAMSUNG HEAVY INDUSTRIES CO. LTD., a Korean corporation,)	CIVIL ACTION NO. 2017-081
)	
Plaintiff,)	
)	
vs.)	
)	ORDER GRANTING MOTION TO DISMISS
FOCUS INVESTMENTS LTD., a Marshall Islands corporation, and MEHMET EMIN KARAMEHMET,)	
)	
Defendants)	
_____)		

TO: James McCaffrey, counsel for plaintiff
Dennis Reeder, counsel for defendants

ORDER

Plaintiff Samsung Heavy Industries Co. Ltd. (“Samsung”) filed this suit against defendants Mehmet Emin Karamehmet (“Karamehmet”) and Focus Investments Ltd. (“Focus”), seeking enforcement of a \$44,332,413 judgment entered against Karamehmet in the High Court of England (“English Judgment”). Karamehmet moved to dismiss the Complaint against both defendants for lack of personal jurisdiction over Karamehmet and for *forum non conveniens*. Karamehmet has filed the following documents:

- Motion to Dismiss (“Motion to Dismiss”);
- Defendant Mehmet Emin Karamehmet’s Reply to Plaintiff’s Opposition to the Motion to Dismiss;
- Initial Supplemental Brief of Defendant Karamehmet in Support of Motion to Dismiss (“Dft’s Supp. Br.”); and

- Supplemental Reply Brief of Defendant Karam Mehmet in Support of Motion to Dismiss.

In response, Samsung has filed the following documents:

- Plaintiff's Opposition to Defendant Mehmet Emin Karam Mehmet's Motion to Dismiss ("Opposition");
- Plaintiff's Supplemental Opposition to Defendant Mehmet Emin Karam Mehmet's Motion to Dismiss ("Pl's Supp. Opp."); and
- Plaintiff's Supplemental Reply Opposition to Defendant Mehmet Emin Karam Mehmet's Motion to Dismiss ("Pl's Supp. Reply to Opp.").

The Court, having carefully considered the Motion to Dismiss, related submissions, and counsel's arguments, finds, concludes, and orders that the Motion to Dismiss is **GRANTED** and that this matter is **DISMISSED** for the reasons set forth below.

BACKGROUND

Samsung is a corporation, incorporated in the Republic of Korea. Complaint ¶ 1. Karam Mehmet is an individual, resident of Turkey, and absent from the Marshall Islands. *Id.* ¶ 3. Samsung has not alleged that Karam Mehmet was personally served in the Republic or consented to service. Focus is a non-resident, domestic corporation organized under the laws of the Republic of the Marshall Islands. *Id.* ¶ 2.

The High Court of England issued the \$44,332,413 English Judgment in favor of Samsung and against Karam Mehmet on February 8, 2016, and Samsung seeks to enforce the English Judgment in the Republic. *Id.* ¶¶ 5, 17. In support of its request, Samsung makes several factual allegations: (i) Karam Mehmet indirectly owns 100% of the beneficial interest of Focus represented by its shares; (ii) Focus, in turns, owns 17.26% of voting ordinary shares in Genel Energy plc ("Genel") and 23.31 % of the Ordinary Shares of Genel; and (iii) the only business interest of Focus is holding shares in Genel. *Id.* ¶¶ 8-10. Samsung goes on to make several legal allegations. *Id.* ¶¶ 11-15.

In its prayer for relief, Samsung requests, among other things, that the Court recognize and enforce the English Judgment by ordering the sale of shares in Focus, with the proceeds to be

applied to the English Judgment or, in the alternative, by ordering the transfer of shares in Focus to Samsung, with their fair market value to be applied to reduce the English Judgment. *Id.* ¶ 17. Samsung seeks recognition and enforcement of the English Judgment under the Republic’s Uniform Foreign Money-Judgments Recognition Act, 30 MIRC Chp. 4. Opposition, at 2.

LAW AND ANALYSIS

I. Recognition and Enforcement of Judgment

To obtain recognition and enforcement of the English Judgment under the Republic’s Uniform Foreign Money-Judgment Recognition Act, Samsung must, in addition to meeting the requirements of the Act, demonstrate (i) that the Court has personal jurisdiction over Karamehmet or (ii) that his property can be found in the Republic. As the Restatement provides, “enforcement of a debt arising out of a foreign judgment must be initiated by civil action, and the judgment creditor must establish a basis for the exercise of jurisdiction by the enforcing court over the judgment debtor or his property.” Restatement (Third) of Foreign Relations Law § 481, comment g (1987).

Absent personal jurisdiction over the judgment debtor or the presence of the judgment debtor’s asset in the jurisdiction, courts have refused foreign judgments recognition and enforcement. See *Electrolines, Inc. v. Prudential Assurance Co., Ltd.*, 260 Mich. App. 144, 161, 677 N.W.2d 874, 884 (2003) (“[I]n an action brought to enforce a judgment, the trial court must possess jurisdiction over the judgment debtor or the judgment debtor’s property”); *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1127–28 (9th Cir. 2002) (“[B]y the very terms of its argument, the *sine qua non* of basing jurisdiction on a defendant’s assets in the forum is the identification of some asset. Glencore Grain fails to identify any property owned by Shivnath Rai in the forum against which Glencore Grain could attempt to enforce its award. Indeed, the best Glencore Grain can say is that it believes in good faith that Shivnath Rai has or will have assets located in the forum. This is simply not enough. Given the record before us, we must reject Glencore Grain’s argument for jurisdiction based on property in the forum.”); *Arbor Farms, LLC v. GeoStar Corp.*, 305 Mich. App. 374, 382, 853 N.W.2d 421, 427 (2014) (“When a party seeks enforcement of a foreign judgment in Michigan, there exists a

foundational jurisdictional requirement that must be satisfied with regard to the judgment debtor's person or property."); *UMS Partners, Ltd. v. Jackson*, No. 94J-12-159H-17-076, 1995 WL 413395, at *2 (Del. Super. Ct. June 15, 1995).

Samsung, however, has not obtained personal jurisdiction over Karamehmet or established that his property can be found in the Republic.

A. Personal Jurisdiction

When a defendant, such as Karamehmet, moves to dismiss for lack of personal jurisdiction under MIRC Rule 12(b)(2), the plaintiff bears the burden of demonstrating that the court has jurisdiction over the defendant. *See Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). "This demonstration requires that plaintiff make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss." *Id.* (internal quotations and citations omitted).

In considering a motion to dismiss, courts assume the truth of the allegations contained in the complaint. *See Mann v. Brenner*, 375 Fed. App'x 232, 235 (3d Cir. 2010) ("the District Court must accept the plaintiff's well-pleaded allegations as true . . . "). "To withstand a . . . motion to dismiss, 'a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Eurofins Pharma US Holdings v. BioAlliance Pharma SA*, 623 F.3d 147, 158 (3d Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 129 S.Ct. at 1949.

United States courts have held that to exercise personal jurisdiction over a non-resident defendant consistent with due process, a court must have either "general jurisdiction" or "specific jurisdiction" over the defendant. General jurisdiction may be based on contacts that are not directly related to the claims at issue, and is present where the defendant has "continuous and systematic" contacts with the forum. *Helicopteros Nacionales de Columbia S.A. v. Hall*, 466 U.S. 408, 416 (1984); *Autogenomics, Inc. v. Oxford Gene Tech., Ltd.*, 566 F.3d 1012, 1017 (Fed.

Cir. 2009).¹ In contrast, specific jurisdiction “is proper if it is permitted by a long-arm statute and if the exercise of that jurisdiction does not violate . . . due process.” *Pebble Beach Co.*, 453 F.3d at 1154-1155 (citing *Fireman’s Fund Ins. Co. v. Nat. Bank of Coops.*, 103 F.3d 888, 893 (9th Cir.1996)). “For due process to be satisfied, a defendant, if not present in the forum, must have ‘minimum contacts’ with the forum state such that the assertion of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Pebble Beach Co.*, 453 F.3d 155 (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 315, 66 S.Ct. 154, 90 L.Ed. 95 (1945)).

1. General Jurisdiction

As noted above, general jurisdiction requires that a defendant have “continuous and systematic” contacts with the forum. *Helicopteros*, 466 U.S. at 416; *Autogenomics, Inc.*, 566 F.3d at 1017; *Southmark Corp. v. Life Inv’rs, Inc.*, 851 F.2d 763, 772 (5th Cir. 1988). “While seemingly broad, the standard for general jurisdiction is high in practice and not often met.” *Reach & Assocs., P.C. v. Dencer*, 269 F. Supp. 2d 497, 505 (D. Del. 2003).

In this case, Samsung has not alleged facts sufficient to establish that Karamehmet is subject to general jurisdiction in the Republic, and, as Samsung concedes in Pl’s Supp. Reply to Opp., at 3, Karamehmet’s status as an owner of Focus shares does not suffice to establish general jurisdiction. Karamehmet’s contacts in the Republic are not continuous or substantial enough to establish general jurisdiction. Accordingly, the Court need only consider the question of whether Karamehmet’s contacts are sufficient to establish specific jurisdiction. *See Glencore*, 284 F.3d at 1125.

2. Specific Jurisdiction

In order to establish specific jurisdiction, Samsung must establish two things: (i) that the Republic’s long-arm statute confers such jurisdiction; and (ii) that the exercise of such

¹“Article I, § 3(1) of the Constitution governs how the Courts are to interpret and apply the Constitution: ‘[i]n interpreting and applying this Constitution, a Court shall look to the decisions of the courts of other countries having constitutions similar, in the relevant respect, to the Constitution of the Republic of the Marshall Islands, but shall not be bound thereby; and, in following any such decision, a court shall adapt it to the needs of the Republic, taking into account this Constitution as a whole and the circumstances of the Republic from time to time.’” *In the Matter of P.L. No. 1995-118*, 2 MILR 105, 109 (1997).

jurisdiction is consistent with principles of due process, *i.e.*, the defendant must have “minimum contacts” with the forum. Courts have interpreted “minimum contacts” to mean that (a) a defendant “has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum,” (b) “the claim arises out of or results from the defendant’s forum-related activities,” and (c) “the exercise of jurisdiction is reasonable.” *Pebble Beach Co.*, 453 F.3d at 1154-1155. “The plaintiff bears the burden of satisfying the first two prongs of the test. If the plaintiff fails to satisfy either of these prongs, personal jurisdiction is not established in the forum state. If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to “present a compelling case” that the exercise of jurisdiction would not be reasonable. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (C.A.9 (Cal.), 2004) (*citing Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). Samsung has failed to establish that the Republic’s long-arm statute confers personal jurisdiction over Karamehmet and that such jurisdiction is consistent with principles of due process.

a. The Scope of the Republic’s Long-arm Statute

Under the Republic’s “long-arm statute,” Section 251 of the Judiciary Act 1983, 27 MIRC Ch. 2, a non-resident person or entity is subject to civil jurisdiction in the Republic if the non-resident engages in specified conduct. *See* 27 MIRC 251. Only causes of action referenced in Section 251, may be asserted against a person in proceedings based upon Part VII, Division 2, of the Judiciary Act 1983. *See* 27 MIRC 254.

Samsung, however, has not asserted that Karamehmet has engaged in any conduct that would subject him to civil jurisdiction in the Republic under Section 251. Samsung has not alleged that Karamehmet transacted business within the territorial limits of the Republic (27 MIRC 251(1)(a)); operated a vessel or aircraft within the territorial waters or airspace of the Republic (27 MIRC 251(1)(c)); acted within the territorial limits of the Republic as director, manager, trustee or other officer of a corporation organized under the laws of the Republic (27 MIRC 251(1)(i)); or engaged in any other conduct listed in Section 251.

Rather, in support of its claim for jurisdiction over Karamehmet, Samsung asserts that Karamehmet indirectly owns 100% of the beneficial interest of Focus represented by its shares

and that the situs of the shares is the Republic. Even if this were the case (and the Court does not find that it is), holding such an interest in a non-resident domestic corporation is not conduct that subjects one to civil jurisdiction under the Republic's long-arm statute, 27 MIRC 251.

Because Karam Mehmet has not engaged in any Section 251 conduct, the Court concludes that it does not have personal jurisdiction over Karam Mehmet.

b. "Minimum Contacts" Consistent with Due Process

Even if ownership of shares of a non-resident domestic corporation were listed under Section 251(1), as conduct subjecting a person to the civil jurisdiction of the Republic, the exercise of such jurisdiction would not be consistent with the due process principles set forth above in the three-pronged "minimum contacts" test. First, Samsung has not alleged that Karam Mehmet has performed some act or consummated some transaction within the Republic or otherwise purposefully availed himself of the privileges of conducting activities in the Republic. Second, Samsung's claim does not arise out of or results from Karam Mehmet's forum-related activities. As Samsung can meet neither the first or second prong of the "minimum contacts" test, this Court need not consider the third prong, that the exercise of jurisdiction over Karam Mehmet is not reasonable. *See Pebble Beach Co.*, 453 F.3d at 1155.

For the above reasons, the Court concludes that exercising personal jurisdiction over Karam Mehmet is not consistent with due process. This conclusion is consistent with the United States Supreme Court's decision in *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977) (Delaware's assertion of jurisdiction over defendants, based solely on the statutory presence of their property in Delaware (*i.e.*, under a Delaware statute, Delaware is the legal situs of shares in Delaware corporations), violated the due process clause of the United States Constitution.); *see also In Matter of Dissolution of Arctic Ease, LLC*, No. CY 8932-VCMR, 2016 WL 7174668, at *3 (Del. Ch. Dec. 9, 2016) citing *Fisk Ventures, LLC v. Segal*, 2008 WL 1961156, at *7 (Del. Ch. May 7, 2008) ("A party's ownership of interests in a Delaware entity alone does not constitute sufficient minimum contacts for Delaware courts to exercise personal jurisdiction.").

Because the Court does not have personal jurisdiction over Karam Mehmet, to maintain an enforcement action, Samsung must prove Karam Mehmet has property in the Republic, which it has

not.

B. *Property in the Forum*

Samsung maintains that Karamehmet has property in the Republic through his indirect beneficial interest in Focus shares, shares whose legal situs is the Republic. In support of its claim, Samsung argues as follows. The Republic does not have an express statute that establishes the legal situs of shares of domestic corporations. In the absence of an express statute, the Court must look to the common law. *See Linkinbod and Alik v. Kejlat*, 2 MILR 65, 66 (1995) (The legal framework established by the 1979 Marshall Islands Constitution “continued the common law in effect as the governing law, in the absence of customary law, traditional practice or constitutional or statutory provisions to the contrary.”). “[T]he general rule at common law has been that the situs of stock for the purpose of attachment is the domicile of the corporation, *i.e.*, its place of incorporation.” *Opposition*, at 7 (citing cases from the early 20th Century). Therefore, the legal situs of shares in Focus, a non-resident domestic corporation of the Republic, is the Republic.

From this conclusion, Samsung argues that as Karamehmet indirectly owns 100% of the beneficial interest in Focus represented by its shares, Karamehmet owns property in the Republic, and his property is subject to sale or transfer to enforce the English Judgment. However, a closer look at *Linkinbod* negates Samsung’s claim.

As noted above, in *Linkinbod*, the Marshall Islands Supreme Court held that the legal framework established by the 1979 Marshall Islands Constitution “continued *the common law in effect* as the governing law, in the absence of customary law, traditional practice or constitutional or statutory provisions to the contrary.” *Id.*, at 66 (emphasis added). Accordingly, the Court must determine what was “*the common law in effect*,” on May 1, 1979, when the Constitution took effect.

As Samsung concedes, “[t]he situs of shares for attachment purposes is currently addressed by statute in most U.S. states.” *Opposition*, at 7. Similarly, Karamehmet argues that the situs of shares for attachment has been controlled by statute for decades: under the Uniform Stock Transfer Act proposed in 1909 and adopted by all 50 states in the next 30 years; and under §8-317(1) [currently §8-112] of the Uniform Commercial Code promulgated in 1951 and

adopted by 49 of the 50 states, with Delaware enacting its own statute, § 169 of the DGCL. Dft's Supp. Br., at 5-7. In short, by May 1, 1979, when the Republic's constitution came into effect there was no United States "*common law in effect*" regarding the situs of shares in corporations. The relevant United States law *in effect* was statutory law.

In the absence of an express statute and common law that remains *in effect*, this Court can look to other methods to enforce judgments against shares in a domestic corporation. As Samsung points out, Section 105 of the Enforcement of Judgments Act, 30 MIRC Ch. 1, provides: "[e]nforcement of judgment[s] may also be affected, if the High Court deems justice requires and so orders by the appointment of a receiver, or receivers, by taking possession of property and disposing of it in accordance with the orders of the Court, or by a civil action on the judgment, *or in any other manner known to American common law or in the courts in the United States.*" Pl's Supp. Opp., at 6. That is, if the Court deems justice so requires, the Court can look beyond the abandoned common law to how courts in the United States enforce judgments against shares in a domestic corporation.

As noted above, in the United States, 49 of the 50 states rely on Section 8-112 of the Uniform Commercial Code. Section 8-112 (a) provides as follows: "The interest of a debtor in a certificated security [including shares of stock] may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy. . . ."²

"[T]he historical [common law] rule was that the situs of shares was the domicile of the corporation; the location of the certificates did not count for much since they were mere evidence of the shares. [However, a]fter states enacted the Uniform Stock Transfer Act, and later Article 8 of the Uniform Commercial Code, courts tended to view the situs of shares as the place where the share certificates were located. The reasoning was that the purpose of these acts was to make the transfer of title to stock easier and less subject to collateral attack." § 5101. Situs of shares of stock, 11 Fletcher Cyc. Corp. § 5101 (citations omitted).

Consistent with this reasoning, this Court concludes that it is in the interest of justice to

²" Section 8-112 of UCC Article 8 governs a creditor's levy upon or attachment of a debtor's 'securities,' which includes shares of stock." § 5104. Levy or attachment under UCC Article 8, 11 Fletcher Cyc. Corp. § 5104 (citation omitted).

make the transfer of title to stock easier and less subject to collateral attack under the laws of the Republic. Accordingly, under the authority of Section 105 of the Enforcement of Judgments Act, this Court adopts Section 8-112 of the UCC as the Republic's common law governing the enforcement of judgments on shares of domestic corporations.³ This Court does not accept the abandoned historical United States common law regarding that the situs of shares. *See Yandal Investments Pty Ltd v. White Rivers Gold Limited, et al.*, C.A. No. 2010-158, slip op, at 3.

Even if the abandoned historical United States common law were still effect, the needs of modern commerce have so changed that the common law regarding the jurisdiction for enforcing judgment on debtors' interest in shares should be modified as set forth in Section 8-112 of the UCC, and as followed by the vast majority of U.S. states. It makes no sense to this Court to apply abandoned 19th Century common law in the 21st Century. This Court has the authority to advance the common law, and hereby does so. *See* 15A Am. Jur. 2d Common Law § 13 ("Total abrogation, revision, or modification or change of an outmoded common-law rule is within the competence of the judiciary; and indeed it is the duty of the courts to bring the law into accordance with present-day standards of wisdom and justice, and to keep it responsive to the demands of a changing scene." (internal citations omitted)); *see also*, 15A C.J.S. Common Law § 15 ("It is a basic precept of common law that it can, and must, change when change is appropriate. Common law is not static; it is consistent with reason and common sense." (citation omitted)); *see also*, Article I, Section 3, of the Marshall Islands Constitution (In interpreting and applying the Republic's Constitution, the courts are to take into account "circumstances in the Republic from time to time.").

For these reasons, the Court concludes Samsung has not shown that Karamehmet's property, even if it includes shares in Focus, can be found in the Republic.

II. Forum non Conveniens

As the Court finds that it does not have personal jurisdiction over Karamehmet and that his property is not to be found in the Republic, the Court need not address the question of *forum*

³The courts of the Federated States of Micronesia have long used the FSM's version of Section 105 to authorize the remedy of garnishment, which also is in derogation of the common law. *See FSM Social Sec. Admin. v. Lelu Town*, 13 FSM R. 60, 62 (Kos. 2004).

non conveniens.

DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED for the foregoing reasons that the Motion to Dismiss is **GRANTED** and that this matter is **DISMISSED**.

Ordered and Entered: February 7, 2018.

A handwritten signature in black ink, consisting of a large, stylized 'C' and 'B' followed by 'INGRAM' in a cursive script.

Carl B. Ingram
Chief Justice