

FILED

MAY 28 2018

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

**IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS**

SAMSUNG HEAVY EQUIPMENT)
INDUSTRIES CO., LTD,)
A Korean corporation,)
)
Plaintiff-Appellant,)
)
v.)
)
FOCUS INVESTMENTS LTD,)
a Marshall Islands corporation, and)
MEHMET EMIN KARAMEHMET,)
)
Defendants-Appellees.)

Supreme Court Case No.: 2018-02

High Court Civil Action No: 2018-081

**ORDER DENYING MOTION FOR
INJUNCTION PENDING APPEAL**

**TO ALL PARTIES HEREIN THROUGH THEIR RESPECTIVE COUNSEL OF
RECORD:**

CADRA, C.J., single judge procedural order:

Pending before the Court is a “motion for injunction pending appeal” filed by Appellant, Samsung Heavy Equipment Industries Co., LTD. (Samsung). Samsung’s motion seeks an order (a) enjoining and prohibiting Appellee Karamehmet from selling or transferring any shares Karamehmet owns, directly or indirectly, in Focus Investments, Ltd, a Marshall Islands corporation; (b) prohibiting Appellee Focus Investments from transferring on its records any shares owned by Karamehmet or any other shareholder in Focus Investments, Inc.; and, finally, (c) prohibiting Focus Investments, Ltd., from transferring or selling any assets of Focus Investments, Ltd, including shares of Genel Energy plc held by Focus Investments.

Samsung has also filed a motion to allow the filing of a supplemental declaration in

support of its motion for an injunction pending appeal.

Defendant Mehmet Emin Karamehmet has opposed both motions.

For the reasons stated herein, the undersigned DENIES Samsung's motion for an injunction pending appeal and finds it unnecessary to address the motion to supplement that motion.

A condensed procedural and factual history follows.

I. FACTS & PROCEDURAL BACKGROUND

Samsung Heavy Industries Co., LTD, (Samsung), a Korean corporation, obtained a judgment against Karamehmet, a Turkish citizen, for \$44.3 million in an English court (the "English judgment"). That judgment arose out of defaults on shipbuilding contracts on which Karamehmet was a guarantor.

Focus Investments, Inc., (Focus) is an RMI corporation. Samsung alleges that Karamehmet is the "beneficial" owner of 100% of Focus' shares. Focus, in turn, owns substantial shares in Genel, a Jersey corporation. Samsung alleges Focus is a "shell corporation" established for the sole purpose of holding Karamehmet's stake in Genel.

On April 19, 2017, Samsung filed a complaint seeking recognition and enforcement of the "English judgement" under the Republic's Uniform Foreign Money Judgements Recognition Act, 30 MIRC Chpt. 4.

Samsung alleges jurisdiction exists under Art. VI, Section 3(1) of the Constitution; the Business Corporations Act, 52 MIRC Part 1; the Uniform Foreign Money Judgements Recognition Act, 30 MIRC section 404; the Enforcement of Judgments Act, 30 MIRC sec. 102; and the Civil Procedure Act, 29 MIRC Part III.

On May 18, 2017, the High Court issued a preliminary injunction prohibiting any sale or transfer of Karamehmet's shares in Focus or the underlying assets of Focus "until the conclusion of the matter" based on a stipulation by the parties.

Karamehmet moved to dismiss Samsung's complaint for lack of personal jurisdiction and on grounds of *forum non conveniens*.

On February 7, 2018, the High Court entered an order granting Karamehmet's motion to dismiss. The High Court found it did not have personal jurisdiction over Karamehmet and that Samsung had failed to establish that his property can be found in the Republic, thus, concluding that there was neither *in personam* nor *quasi in rem* jurisdiction.

As acknowledged by Samsung, the principal point of controversy below (as here on appeal) was whether Karamehmet is considered to own property in the Marshall Islands by virtue of holding 100% of the shares in the Marshallese company, Focus Investments. In reaching its conclusion that Samsung failed to establish that Karamehmet owned property in the Marshall Islands sufficient to support jurisdiction the High Court rejected the common law rule that the situs of shares is the domicile of the corporation and, instead, adopted Section 8-112 of the UCC as the Republic's common law governing the enforcement of judgements on shares of domestic corporations.

After the High Court's February 7, 2018, order of dismissal Samsung filed a motion seeking confirmation that the May 18, 2017, preliminary injunction remained in effect or, alternatively, entry of a new injunction to maintain the status quo pending appeal. The High Court denied this motion by order dated February 20, 2018.

Samsung timely filed its Notice of Appeal on February 22, 2018. The parties stipulated to

expedited briefing and jointly requested that this matter be set for oral argument at the June 20, 2018, Supreme Court session. The undersigned granted that stipulated request by way of a single judge procedural order.

Samsung filed the instant Motion for Injunction pending appeal on April 23, 2015. This motion was followed by Karamehmet's Reply on May 4, 2018. Samsung then filed a motion to allow a supplemental declaration in support of its motion which was opposed by Karamehmet on May 9, 2018.

II. STANDARD OF REVIEW

At the outset, it should be noted that Samsung is not seeking review or appeal of the High Court's February 20, 2018, order denying an injunction pending appeal. Supreme Court Rule 8 does allow a request for an injunction to be made directly to the Supreme Court but also anticipates that the motion be first presented to the court appealed from.

The standard of review of an order denying a preliminary injunction is essentially *de novo*. Nevertheless a trial court's ruling on a motion for a preliminary injunction is presumed to be correct and the party challenging the ruling bears the burden of showing it was erroneous. *See, e.g., Visionair, Inc. v. James*, 606 S.E.2d 359, 362 (N.C. App. 2004); *see also Certified Restoration Dry Cleaning Network, LLC., v. Tenke Corp.*, 511 F.3d 535, 541 (C.A. 6 Mich. 2007) ("under this standard (abuse of discretion) 'we review the district court's legal conclusions *de novo* and its factual findings for clear error. *Citation omitted*. The district court's determination of whether the movant is likely to succeed on the merits is a question of law and is accordingly reviewed *de novo*. *Citation omitted*. However, the district court's ultimate determination as to whether the four preliminary injunction factors weigh in favor of granting or

denying preliminary injunctive relief is reviewed for abuse of discretion. This standard of review review is ‘highly deferential’ to the district court’s decision ... The district court’s determination will be disturbed only if the district court relied upon clearly erroneous findings of fact, improperly applied the governing law, or used an erroneous legal standard.”)

In deciding this motion, the undersigned looks beyond the materials filed with the Supreme Court (i.e. Samsung’s motion and Karamehmet’s opposition) and has considered the record below in order to gain a broader understanding of the facts relevant to the request for injunction. Specifically, the undersigned has considered Samsung’s “original complaint,” accepting the well pleaded factual allegations as true, as well as the High Court’s February 7, 2018, and February 20, 2018, orders.

III. DISCUSSION

A. Issuance of an Injunction Requires a Showing that Personal Jurisdiction

“Probably Exists.”

The first prerequisite to obtaining a binding injunction is that the court must have valid *in personam* jurisdiction over the defendant. *See, generally, Wright, Miller & Kane, Federal Practice & Procedure.*, Vol. 11A, sec. 2956, pp. 385-86 text (2013). It is fundamental that a court must have personal jurisdiction over a defendant before it can enter a valid judgment imposing a personal obligation on the defendant. *Kulko v. Superior Court*, 436 U.S. 84 (1978). “[A] prima facie showing of jurisdiction will not suffice ... where a plaintiff seeks preliminary injunctive relief. A court must have in personam jurisdiction over a party before it can validly enter even an interlocutory injunction against him.” *Visual Sciences, Inc. v. Integrated Communications*, 660 F.2d 56, 59 (2d Cir. 1981); *see also Weitzman v. Stein*, 897 F.2d 653, 659 (2d Cir.

1990)(“...the district court may not enter an injunctive order against Beverly without determining that Weitzman has established at least a reasonable probability of success on the question of the court’s *in personam* jurisdiction over Beverly.”)

The preliminary inquiry in deciding whether or not to grant the requested injunction is thus whether Samsung has made a showing of probable jurisdiction over Karamehmet.

B. Appellant Has Not Established Personal Jurisdiction over Appellees With “Reasonable Probability.”

Absent consent, there are two elements which must be satisfied to give the court personal jurisdiction: (1) the law which governs the court must give it authority to assert jurisdiction over the parties in the case and (2) the jurisdiction, even where allowed by the law governing the court, must not violate the due process clause of the Constitution. The determination of whether or not a court has personal jurisdiction over a non-resident defendant involves a two-step analysis. *Genetic Implant Sys, Inc. v. Core-Vent Corp.*, 123 F.3d 1465, 1457-58 (Fed. Cir. 1997); *Northrup King co. v. Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383, 1387 (8th Cir. 1995). First, the court must decide whether the facts satisfy the forum state’s long-arm statute. *Northrup King, supra*, at 1387. If the statute has been satisfied, then the court must address whether the facts show that the nonresident has “minimum contacts” with the forum state such that the court’s exercise of jurisdiction would be fair and in accordance with due process. *Core-Vent, supra*.

Appellees have not consented to jurisdiction so the inquiry becomes whether there is some law granting the court authority to assert jurisdiction over Appellees and, if so, whether due process is offended by assertion of jurisdiction.

1. Samsung has not made a showing that it is “reasonably probable” that personal jurisdiction exists under RMI’s “long arm statute.”

The Republic’s “long arm” statute, 27 MIRC Chpt. 2, sec. 251, enumerates those circumstances under which a “person, corporation or legal entity” can be subject to civil jurisdiction. 27 MIRC, Chpt. 2, Sec. 254, limits civil jurisdiction to those circumstances or “causes of action” referred to in Sec. 251 (“Only causes of action referred to in Section 251 of this Chapter may be asserted against a person in proceedings in which jurisdiction against him is based on this Division.”)

Samsung’s “motion for injunction pending appeal” and the declaration submitted in support of that motion do not contain factual allegations which would support the assertion of personal jurisdiction against Appellees on any of the grounds set forth by Sec. 251. As found by the High Court below, there are no factual allegations that Karamehmet transacted business in the Republic, committed a tortious act in the Republic, owns land within the Republic or performed any of the other numerous acts upon which jurisdiction could be based under the “long arm” statute. Even assuming that the situs of Focus’ shares is within the Marshall Islands, the “long arm” statute does not provide grounds for assertion of personal jurisdiction over Karamehmet on the basis of ownership of that property alone.

The undersigned concludes, as did the High Court below, that there has been no showing that Karamehmet has engaged in any conduct which would support the assertion of personal jurisdiction under Section 251.

2. The Republic’s “Uniform Foreign Money Judgments Recognition Act” does not provide an independent basis for assertion of personal

jurisdiction over Appellee Karamehmet.

Samsung alleges the court has jurisdiction under the Uniform Foreign Money Judgments Recognition Act (UFMJRA), 30 MIRC Sec. 404, and the Enforcement of Judgments Act, 30 MIRC Sec. 102. While those Acts may confer jurisdiction upon the courts to recognize and enforce judgments, neither Act purports to provide an independent basis for asserting personal jurisdiction over a judgment debtor. Personal jurisdiction over the judgment debtor is not even required for the UFMJRA to be applicable. As noted in the High Court's February 7, 2018, Order Granting Motion to Dismiss, it is the presence of the judgment debtor's property or personal jurisdiction over the judgment debtor which allows for foreign judgment recognition. *See Electrolines, Inc. v. Prudential Assurance Co. Ltd.*, 677 N.W.2d 874, 884 (Mich. 2003); *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harmarain Co.*, 284 F.3d 1114, 1127-28 (9th Cir. 2002); *see also, Lenchyshyn v. Pelko Elec., Inc.*, 281 A.D.2d 42, 49 (N.Y. 2001) ("Considerations of logic, fairness, and practicality dictate that a judgment creditor be permitted to obtain recognition and enforcement of a foreign money judgment without any showing that the judgment debtor is subject to personal jurisdiction" in the enforcing forum.); *Pure Fishing, Inc. v. Silver Star Co.*, 202 F.Supp.2d 905, 910 (N.D. Iowa 2002) ("in the context of the recognition and enforcement of other state judgments, the minimum contacts requirement of the due process clause does not prevent a state from enforcing another state's valid judgment against a judgment debtor's property located in that state, regardless of the lack of other minimum contacts by the judgment debtor."); *Stichting Maharishi Global Financing Reseacrh v. Joh. Enschede Stamps, B.V.*, 2016 WL 6674986.

Even if Karamehmet owns property in the Marshall Islands by virtue of Focus shares

being located in the Republic and even assuming that the English judgment is enforceable against those shares (which need not be decided on this motion for injunction) there is still no basis upon which to assert personal jurisdiction over Karamehmet (or Focus) so as to subject him to the personal obligations imposed by an injunction.

3. **There has been no showing of “minimum contacts” between Karamehmet and the Republic sufficient to satisfy due process.**

“For due process to be satisfied, a defendant, if not present in the forum must have ‘minimum contacts’ with the forum state such that assertion of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 citing *International Shoe Co. v. Washington*, 326 U.S. 310, 315 (1945).

There are two broad types of personal jurisdiction: specific jurisdiction and general jurisdiction. *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414-16 (1984). Specific jurisdiction refers to jurisdiction over causes of action arising from or related to a defendant’s actions within the forum state. *Id. at* 414. Specific jurisdiction may not be exercised where none of the actions complained of occurred within or had any connection with the forum state. *Sondergard v. Miles, Inc.*, 985 F.2d 1389, 1392 (8th Cir. 1993). In contrast, general jurisdiction refers to the power of a state to adjudicate any cause of action involving a particular defendant regardless of where the cause of action arose. For general jurisdiction to exist, the non-resident defendant must be engaged in “continuous and systematic contacts” within the forum. *Helicopteros, supra*, at 416.

Samsung has not alleged that Karamehmet has engaged in any activity within the Republic. There is thus an insufficient basis to assert general jurisdiction over Karamehmet on

the facts as alleged by Samsung.

To establish specific jurisdiction, Samsung must show that the Republic's "long arm" statute confers jurisdiction to the court and that the exercise of jurisdiction by the court is consistent with due process; i.e. that defendants must have "minimum contacts" with the Republic. "Minimum contacts" has been interpreted to mean that (a) a defendant "has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself 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., supra* at 1155.

Samsung has failed to allege sufficient facts to allow a finding that there is a reasonable probability that specific jurisdiction exists over Karamehmet.

The mere ownership of property in a state is not a sufficient contact to subject the property owner to a lawsuit in that state, unless that property itself is the subject of the lawsuit. In *Shaffer, et al, v. Heitner*, 433 U.S. 186 (1977), a Delaware court found that it had *quasi in rem* jurisdiction based on a Delaware statute that declared stock owned in a Delaware corporation to be legally located 'in' Delaware. By sequestering stock, nonresident defendants were compelled to answer and defend a suit. The Supreme Court determined that the minimum contacts rule of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) applied to actions brought *in rem* as well as *in personam*. The mere ownership of stock in a Delaware corporation was held insufficient to confer jurisdiction to the court.

Thus, even assuming that the situs of Focus' shares/stock are within the Republic, Karamehmet's mere ownership of shares in Focus is insufficient to establish "minimum

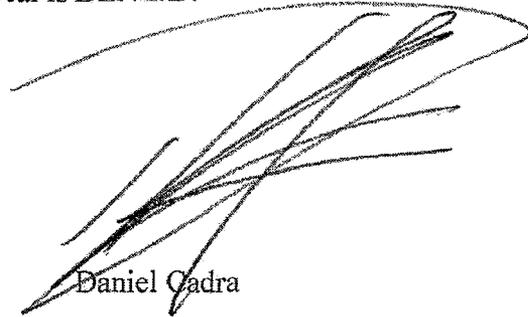
contacts” sufficient to support personal jurisdiction.

IV. CONCLUSION

Because Samsung has failed to make a showing that it is “reasonably probable” that the court has personal jurisdiction over Appellee Karamehmet, it is not necessary to address the requirements for an injunction. It is also not necessary to address Appellant’s motion to allow the supplemental declaration in support of the motion for an injunction pending appeal.

Samsung’s motion for an injunction pending appeal is DENIED.

Dated this 27 day of May, 2018. *ASJ*

A handwritten signature in black ink, appearing to read "Daniel Cadra", is written over a large, light-colored scribble or mark.

Daniel Cadra

Chief Justice, Supreme Court

**ENTERED AS A SINGLE JUDGE PROCEDURAL ORDER PURSUANT TO RULE
27(C) AND SUBJECT TO FULL COURT REVIEW UPON APPLICATION**