



**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

SAM GLASSCOCK III  
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE  
34 THE CIRCLE  
GEORGETOWN, DELAWARE 19947

Date Submitted: June 21, 2012

Date Decided: July 12, 2012

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Re: *Picard v. Wood*,  
Civil Action No. 6526-VCG

Dear Counsel:

I have received the parties' briefs in support of and in opposition to Defendant Charles Wood's Motion to Dismiss for lack of personal jurisdiction. Because I find that no basis exists allowing this Court to exercise jurisdiction over Mr. Wood's person, I am dismissing the claims against him in the above-captioned matter, without prejudice.

Mr. Wood is a resident of Massachusetts. At all relevant times, he was a limited partner in Greenwich Sentry, L.P. ("GS"), the former plaintiff in this action, since replaced by Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities, LLC ("BLMIS"). The Plaintiff asserts claims for

unjust enrichment, mistaken payment, and constructive trust.<sup>1</sup> The Plaintiff contends that Mr. Wood has sufficient minimum contacts with Delaware such that this Court has personal jurisdiction over him via Delaware's long-arm statute, and that exercising jurisdiction over him would not offend due process. In the alternative, the Plaintiff argues that it is reasonable to believe Mr. Wood has sufficient Delaware contacts such that limited discovery should be allowed to determine the extent of Mr. Wood's ties to Delaware.

In reviewing a motion to dismiss for lack of personal jurisdiction, this Court engages in a two-part inquiry: (1) whether jurisdiction is proper under one or more provisions of the Delaware long-arm statute, and (2) whether the exercise of jurisdiction would comport with the requirements of constitutional due process.<sup>2</sup> Although a plaintiff is not required to plead in the complaint a basis for personal jurisdiction, when a defendant moves to dismiss under Court of Chancery Rule 12(b)(2), the plaintiff bears the burden of showing a basis for the court's exercise of jurisdiction over the nonresident defendant.<sup>3</sup>

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<sup>1</sup> The Plaintiff's claims against Mr. Wood arise solely from allegations that he was the recipient of funds to which he appeared to be entitled as a limited partner of GS, a so-called "feeder fund" that invested all of its investor capital in BLMIS. The Plaintiff asserts that GS made redemption payments to Mr. Wood and the other Defendants in amounts that were based on a miscalculation of GS's net asset value, which miscalculation was due to fraud perpetrated by Mr. Madoff.

<sup>2</sup> *Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at \*14 (Del. Ch. Aug. 26, 2005).

<sup>3</sup> See *Werner v. Miller Tech. Mgmt., L.P.*, 831 A.2d 318, 326 (Del. Ch. 2003); *Hart Holding Co. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 539 (Del. Ch. 1991).

The Plaintiff's principal argument is that the long-arm statute confers jurisdiction over Mr. Wood because of Mr. Wood's involvement in a Delaware limited partnership. The Plaintiff relies on 10 *Del. C.* § 3104(c)(1), which provides for personal jurisdiction where a nonresident "[t]ransacts any business or performs any character of work or service in the State."<sup>4</sup> The Plaintiff alleges that Mr. Wood purchased interests in GS, a Delaware limited partnership, and signed a limited partnership agreement indicating that he was purchasing an interest in an entity the affairs of which are governed by Delaware law. These allegations, if true, would simply support the conclusion that Mr. Wood was a member of a Delaware limited partnership. It is well-settled under Delaware law that mere membership in a Delaware limited partnership, absent additional considerations, is insufficient to confer personal jurisdiction.<sup>5</sup> The Plaintiff has not alleged or provided affirmative

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<sup>4</sup> 10 *Del. C.* § 3104(c)(1).

<sup>5</sup> See *Albert*, 2005 WL 2130607, at \*14-\*15 (finding § 3104(c)(1) applicable where the limited partner participated in the formation and management of the limited partnership, was primarily responsible for the management of the limited partnership, and received substantial fees for its management of the limited partnership); *Werner*, 831 A.2d at 328-29 (finding § 3104(c)(1) inapplicable where no affirmative evidence existed and the plaintiff failed to adequately plead that the limited partners controlled, managed, directed, or operated the affairs of the limited partnership, and where the plaintiff simply alleged that the limited partners advised the general partner and participated in the formation of the partnership); *RJ Assocs., Inc. v. Health Payors' Org. Ltd. P'ship, HPA, Inc.*, 1999 WL 550350, at \*5 (Del. Ch. July 16, 1999) (holding that allegations that the defendant limited partner "had at least indirect control over the Partnership's general partner" and that the defendant "unilaterally caused the Partnership Agreement to be amended to alter the Cash Flow distributions to the plaintiff's detriment" were sufficient to establish that the defendant transacted business in Delaware for purposes of personal jurisdiction). See also *Red Sail Easter Ltd. Partners, L.P. v. Radio City Music Hall Prods., Inc.*, 1991 WL 129174, at \*2 (Del. Ch. July 10, 1991) (holding that where the asserted basis for

evidence that Mr. Wood managed, controlled, or exerted influence over GS, and so jurisdiction over Mr. Wood on the basis of his membership in a Delaware limited partnership would be improper.

The Plaintiff also asserts that personal jurisdiction may be conferred by Mr. Wood's possible service as a trustee of a Delaware charitable organization, a possibility attested to in an affidavit submitted by the Plaintiff. Even if the Plaintiff's assumptions were true, however, Mr. Wood's status as trustee would be insufficient to confer personal jurisdiction because the Plaintiff's claims in this action do not arise from Mr. Wood's alleged service as trustee of a Delaware entity.<sup>6</sup>

The Plaintiff finally offers a series of vague allegations which, if true, could support personal jurisdiction over Mr. Wood under the long-arm statute: he “*may* regularly conduct business in Delaware,” he “*may* derive substantial revenue from services provided in Delaware,” he “*may* have otherwise engaged in consistent contact with the State,” “it is *possible* that Mr. Wood has engaged in repeated contact with the State of Delaware,” and “it is *possible* . . . that Mr. Wood holds

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jurisdiction over the defendant is the defendant's participation in the formation of a Delaware entity, the wrong alleged must arise from the formation of the entity).

<sup>6</sup> See 10 Del. C. § 3114(a) (providing that trustees of Delaware corporations are deemed to have “consented to the appointment of the registered agent of such corporation . . . as an agent upon whom service of process may be made . . . in any action or proceeding against such . . . trustee . . . for violation of a duty in such capacity” (emphasis added)). See also *Red Sail Easter*, 1991 WL 129174, at \*2 (holding that, by its express terms, the long-arm statute requires the wrong alleged by the plaintiff to arise out of one of the acts enumerated in Section 3104 in order to confer personal jurisdiction).

real property in the State of Delaware.”<sup>7</sup> The Plaintiff argues that because of these possibilities, the Court should grant leave to conduct limited discovery into Mr. Wood’s connections to Delaware.

As the Plaintiff correctly notes, this Court held in *Hart Holding Co. v. Drexel Burnham Lambert Inc.* that a plaintiff “may not ordinarily be precluded from reasonable discovery in aid of” his attempt to prove “that [the] defendant is subject to the jurisdiction of the court.”<sup>8</sup> The holding in *Hart* is not, however, an invitation to sue first and ask questions later. The *Hart* court found that a plaintiff is *not* entitled to “jurisdictional” discovery “where the facts alleged in the complaint make any claim of personal jurisdiction over defendant frivolous,” and where the “plaintiff’s assertion of personal jurisdiction lack[s] th[e] minimal level of plausibility needed to permit discovery to go forward.”<sup>9</sup> The Plaintiff cannot establish a right to jurisdictional discovery simply by alleging that the Defendant “might” have engaged in the activities enumerated in the long-arm statute or that “it is possible” that the Defendant has sufficient minimum contacts in Delaware. Such allegations are mere speculation and could be leveled at virtually any person living in the United States. The Plaintiff has not, by affidavit, allegation, or other

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<sup>7</sup> See Pl.’s Br. Opp’n Def.’s Mot. Dismiss at 8 (emphasis added).

<sup>8</sup> *Hart Holding Co.*, 593 A.2d at 539.

<sup>9</sup> *Id.* at 539-40.

means, established a plausible basis for personal jurisdiction sufficient to justify the discovery he seeks.

Because I find that the Plaintiff has failed to meet his burden to show a basis for personal jurisdiction under the first prong of the personal jurisdiction analysis set out above, I need not consider whether this Court's exercise of personal jurisdiction over Mr. Wood would comport with due process.

For the reasons stated above, Mr. Wood's Motion to Dismiss is GRANTED, and the Plaintiff's claims against him are dismissed WITHOUT PREJUDICE.

IT IS SO ORDERED.

Sincerely,

*/s/ Sam Glasscock III*

Sam Glasscock III