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Case No. 7516-CS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NEW MEDIA HOLDING COMPANY L.L.C.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 7516-CS
	)	
GRANT BROWN and CAPITA FIDUCIARY GROUP LTD.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: November 8, 2012
Date Decided: November 14, 2012

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STRINE, Chancellor.

This case is part of a dispute between two businessmen over the ownership of a Ukrainian television station. In 2007, Vladimir Gusinski and Konstantin Kagalovsky agreed to create a new television network in Ukraine, TVi.[1] In November of that year, Kagalovsky created a Delaware limited liability company, Iota Ventures LLC, to hold the network, and in February 2008 he converted this company into a limited liability partnership, Iota Ventures LLP.[2] In April 2008, Kagalovsky sold a 50% stake in the partnership to Gusinski.[3] Gusinski held this 50% stake through his U.S. investment vehicle, New Media Holding, the plaintiff in this action.[4]

The partnership was managed by Grant Brown, an employee of a fiduciary services company based in the Channel Island of Jersey, Capita Fiduciary Group.[5] Brown and Capita are the defendants New Media has sued in this case. New Media alleges that, in September 2009, Brown and Capita abused their management position and helped dilute New Media's stake in TVi from 50% to 0.3%.[6] Brown and Capita have not challenged the merits of the complaint, but instead seek to dismiss the action under Court of Chancery Rule 12(b)(2) for lack of personal jurisdiction, and under Rule 12(b)(3) for improper venue. In the alternative, they seek to stay the action until a related action in

[1] Compl. ¶ 2. In deciding this motion under Court of Chancery Rule 12(b)(2), I am not limited to the pleadings, and may consider the briefs of the parties and the record as a whole. *Sample v. Morgan*, 935 A.2d 1046, 1055-56 (Del. Ch. 2007).
[2] Defs.' Op. Br. Ex. A at 1 ("Amended and Restated Partnership Agreement of Iota Ventures LLP") [hereinafter Partnership Agreement].
[3] *Id*.
[4] *Id*. at 5 (signature page).
[5] *Id*. ¶ 7(a).
[6] Compl. ¶¶ 33-34.

New York, in which New Media has sued Kagalovsky and entities associated with him, becomes final and unappealable.[7]

I grant the defendants' motion to dismiss for lack of personal jurisdiction. New Media has not sustained its burden of showing that this court has jurisdiction over Brown and Capita under Delaware's long-arm statute, 10 *Del. C.* § 3104.[8] New Media relies upon subsection (c)(1) of the long-arm statute, which is a specific jurisdiction provision requiring a nexus between the actions the defendants take in Delaware and the cause of action the plaintiffs bring.[9] Thus, § 3104(c)(1) grants the courts of this state personal jurisdiction over a non-resident defendant who "transacts any business or performs any character of work or service in the State," where the cause of action "aris[es] from" that business, work, or service.[10] New Media argues that the defendants' work simply in creating Iota Ventures LLP as a Delaware entity, and paying annual partnership taxes and filing annual reports in Delaware, is sufficient to confer jurisdiction over the defendants on this court, but it is wrong. New Media's claims that its stake in the partnership was unfairly diluted are not related to acts that Brown and Capita carried out in Delaware, and no act in Delaware was necessary to, or done in connection with, the alleged dilutive scheme. Unlike a merger, which requires a filing in Delaware for its consummation, the

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[7] This action is *New Media Hldg. Co., LLC, v. Kagalovsky*, Index No. 603742/09 (N.Y. Sup. Ct. Aug. 16, 2012) (Defs.' Op. Br. Ex. C).
[8] *See Steinman v. Levine*, 2002 WL 31761252, at *8 (Del. Ch. Nov. 27, 2002) (noting that, when jurisdiction is contested, the plaintiff "bears the burden of showing a basis for the court's exercise of jurisdiction").
[9] 1 Donald J. Wolfe, Jr., & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 3.04[a][1][i] (updated 2012).
[10] 10 *Del. C.* § 3104(c)(1).

complaint does not allege that any acts of Brown and Capita in Delaware were performed to further the dilutive scheme in any way.[11] Thus, Brown and Capita's acts are not sufficient to confer jurisdiction on this court for these claims.[12]

Nor can New Media assert jurisdiction over Brown and Capita under 6 *Del. C.* § 18-109(a), which provides for service of process on the managers of limited liability companies.[13] Iota Ventures LLC was converted into a limited liability partnership in February 2008, before any of the allegedly fraudulent acts took place, and before New Media even invested in the entity.[14] Therefore, 6 *Del. C.* § 18-109(a) is of no use to New Media, because the jurisdiction provided by that statute ended when Iota Ventures LLC ceased to exist.[15]

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[11] *See, e.g.*, *In re Gen. Motors S'holders Litig.*, 2005 WL 1089021, at *22 (Del. Ch. May 4, 2005) (upholding this court's jurisdiction over a defendant in relation to a merger, because the "filing of the Certificate of Merger was . . . a necessary act in Delaware to achieve the purpose of the Merger Agreement").

[12] *Compare, e.g.*, *Steinman*, 2002 WL 31761252, at *9 (holding that the filing of a certificate of merger in Delaware, and the amendment of a certificate of incorporation, could not give rise to personal jurisdiction for breaches of fiduciary duty, fraud, and misrepresentation, because these acts did not "relate to [the plaintiff's] causes of action"), *with Cairns v. Gelmon*, 1998 WL 276226, at *3 (Del. Ch. May 21, 1998) (upholding jurisdiction over non-resident defendants based on the act of creating a corporation in Delaware, because "the incorporation of [the company] in Delaware is central to [the plaintiffs'] claims of wrongdoing").

[13] 6 *Del. C.* § 18-109(a) ("A manager's . . . serving as such constitutes such person's consent to the appointment of the registered agent of the limited liability company (or, if there is none, the Secretary of State) as such person's agent upon whom service of process may be made as provided in this section.").

[14] *See* Partnership Agreement at 1.

[15] *Cf. Bernstein v. TractManager, Inc.*, 953 A.2d 1003, 1008-11 (Del. Ch. 2007) (denying advancement of attorney's fees to a corporate director under a corporate bylaw, because the director's actions that were at issue related to his role as the manager of a limited liability company that converted into the corporation, and the limited liability company operating agreement did not provide for the advancement of attorney's fees to managers).

It is doubtless troubling to New Media that Delaware law provides no statutory basis for exercising jurisdiction over the manager of a Delaware limited liability partnership for breaches of fiduciary duty in the course of his work for the partnership, absent acts taken in Delaware itself in furtherance of the alleged wrongdoing.[16] But this is the state of our law, and I must apply it as it is. Therefore, I GRANT the defendants' motion to dismiss. The defendants' motion to dismiss the case for improper venue, or in the alternative to stay the case, is thus moot. IT IS SO ORDERED.

[16] *See* 6 *Del. C.* § 15-114(a) (providing for service of process on the partners and liquidating trustees of a partnership, but not on managers).