

Can't Have It Both Ways: Court Grants Grupo México's 12(B)(2) Motion to Dismiss for Lack of Personal Jurisdiction

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In *Lacey v. Mota-Velasco, et al.* (C.A. No. 2019-0312-SG), the Delaware Court of Chancery (the "Court") dismissed Grupo México S.A.B. de C.V. ("Grupo México") from a derivative lawsuit filed by a stockholder of Southern Copper Corporation ("Southern Copper") on the grounds that the Court lacked personal jurisdiction over Mexico-based Grupo México.

Carla Lacey ("Plaintiff") alleged in the derivative suit that Southern Copper's directors and Group Mexico "worked in concert" to "systemically violate" provisions of Southern Copper's charter that required "independent review of all material related-party transactions between those entities." Plaintiff alleged that several material related-party transactions were not approved in accordance with the independent review procedure set forth in the Southern Copper charter. Plaintiff asserted jurisdiction over Grupo México claiming that it conspired with the directors of Southern Copper, its subsidiary, to systematically violate those charter provisions to Grupo México's benefit.

In Grupo México's motion to dismiss for lack of personal jurisdiction pursuant to Chancery Court Rule 12(b)(2), the issue before the Court was whether Plaintiff had sufficiently alleged that the Court had personal jurisdiction over Grupo México based solely upon a conspiracy theory of jurisdiction. The complaint had not alleged that Grupo México, a Mexican citizen, had conducted business or possessed any other connection with Delaware.

Beginning its analysis by noting that the sole basis for Plaintiff's assertion for jurisdiction over Grupo México was participation in "a conspiracy to transfer wealth from Southern Copper to [Grupo México]," the Court restated the relevant factual showing that Plaintiff was required to sufficiently allege: (1) there was a conspiracy to defraud; (2) Grupo México was a member of that conspiracy; (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in Delaware, the forum state; (4) Grupo México knew or had reason to know of the act in Delaware or that acts outside Delaware would have an effect in Delaware; and (5) the act in, or effect on, Delaware was a direct and foreseeable result of the conduct in furtherance of the conspiracy.

The Court stated that "[a]n alleged conspiracy between Grupo México and a Delaware entity is not a basis for personal jurisdiction absent a substantial act in Delaware in facilitation of the conspiracy by a fellow conspirator, of which Grupo México was (or should have been) aware."

While Southern Copper's amended charter required related-party transactions to be approved by an independent committee, Plaintiff alleged that no such committee approval was obtained with respect to numerous related party contracts that Grupo México had caused Southern Copper to enter into and which were grossly unfair to Southern Copper. Plaintiff further alleged that Grupo México was a participant in the 2005 Southern Copper charter restatement as Grupo México had appointed its allies to the Southern Copper board. The Court, however, rejected Plaintiff's contention that Grupo Mexico's participation in the Southern Copper charter amendment was the requisite substantial act "did not — could not — advance the alleged conspiracy to wrongfully transfer wealth from Southern Copper to its controllers." As the charter amendment's purpose was to protect Southern Copper's stockholders from exactly that risk, the Court found the amendment to have hindered, rather than furthered, Grupo México's ability to loot Southern Copper.

As Plaintiff's sole argument for exercising jurisdiction was that, by facilitating the charter amendments, Grupo México participated in an act in Delaware in furtherance of the alleged conspiracy, the Court held that Plaintiff could not successfully contend that the charter amendments were enacted to prevent Grupo México from looting its subsidiary Southern Copper while simultaneously contending that the enacting enabled the looting to occur. Finding that Plaintiff failed to adequately allege that Grupo México was subject to personal jurisdiction under the conspiracy theory, the Court dismissed Plaintiff's claims as to Grupo México.

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