IN THE COURT OF COMMON PLEAS OF PHILDELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLANIA
TRIAL DIVISION-CIVIL

INTERTRUST GCN, LP, INTERTRUST GCN GP, LLC, general partner, H.F. LENFEST,	:	October Term 2013
Plaintiffs,	:	No. 000654
v.	:	
INTERSTATE GENERAL MEDIA, LLC, And ROBERT J. HALL,	:	COMMERCE PROGRAM
Defendants.	:	Control Number 13102335
v.	:	
GENERAL AMERICAN HOLDINGS, INC.,	:	
Defendant-Intervenors.	:	

ORDER

AND NOW, this 31st day of October 2013, upon consideration of Defendant Robert J. Hall's Preliminary Objections and Defendant Intervenor General American Holdings, Inc.'s joinder in said Preliminary Objections, all responses in opposition and after oral argument, it hereby is **ORDERED** that the Preliminary Objections are **OVERRULED.**

BY THE COURT,

PATRICIA A. McINERNEY, J.

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OPINION

This is a declaratory judgment action filed by the plaintiffs Intertrust GCN, L.P. and Intertrust GCN, GP, LLC (collectively "Intertrust") and H.F. Lenfest ("Lenfest") seeking to declare null and void, the Philadelphia Inquirer's Publisher, Robert J. Hall's alleged *ultra vires* firing of the Editor, William K. Marimow.[1] Plaintiff Intertrust GCN, LP is a Delaware limited partnership. Intertrust GCN GP, LLC is the general partner of Intertrust GCN, LP. Lewis Katz ("Katz") is a representative for plaintiff Intertrust.

Defendant Interstate General Media, LLC ("IGM") is a limited liability company formed in Delaware with six members. The members of IGM include but are not limited to Intertrust, Lenfest and General American Holdings, Inc. IGM was formed in the spring of 2012 for the purpose of acquiring all or substantially all of the capital stock of Philadelphia Media Network, Inc. and maintains an office in Philadelphia, Pa. IGM owns the Philadelphia Inquirer, Daily

[1] The facts set forth herein are taken from Plaintiffs' complaint which at this stage of the litigation must be taken as true.

News and Philly.com. Lenfest is the chairman of IGM. IGM's business affairs and operations are controlled by a Limited Liability Company Agreement.

The Agreement which governs IGM's affairs provides in part as follows:

> Section 5.2 Management Committee
>
> (a) The day-to-day business and operations of the Company (which for purposes of ARTICLES 5 and 6 shall be deemed to include its Subsidiaries) shall be managed by, or under the direction of A Management Committee (the "Management Committee"), which shall be appointed by the Managing Member Designees as provided in Section 5.2 (b). The Management Committee shall have the right, power, and authority to make decisions with respect to all business and operational matters in the ordinary course of business and will oversee and advise the senior management of the Company regarding the performance and execution of the business and strategic plans. The authority of the Management Committee shall be confined to the business and operational aspects of the Company, and the members of the Management Committee shall have no authority with respect to editorial or journalistic policies and decisions of the Company and will not attempt to control or influence such policies and decisions.
>
> (b) The Management Committee shall be comprised of two (2) members...
>
> (c) ...no action shall be taken by the Management Committee unless both members of the Management Committee approve such action. [2]

The Management Committee is composed of Katz, the appointee of Intertrust and George Norcross III ("Norcross"), the appointee of General American Holdings, Inc.

On April 10, 2012, the Management Committee authorized the hiring of William J. Marimow ("Marimow") for the position of Editor. Marimow accepted the position and his employment became effective May 1, 2012. At or about the same time, Robert J. Hall ("Hall") was hired by the Board of Directors for IGM as the full time Publisher for an eight- month term ending December 31, 2012 renewable by mutual agreement between Hall and IGM's Board of Directors. Hall's contract was renewed for an additional eight months ending August 31, 2013

[2] Limited Liability Company Agreement -Exhibit "A" to the Complaint.

with a modification that during the renewal term, he was to be part-time rather than full time Publisher.

On October 7, 2013, Hall allegedly unilaterally and without the consent, approval or authorization of the Management Committee fired Marimow prior to the expiration of his employment contract. After the firing, Hall represented that he had received the concurrence "of each and every director and shareholder but one" on his firing decision. Hall's representation was allegedly false since it is alleged that at least two directors (Katz and Lenfest) did not concur in Hall's firing of Marimow. Prior to Hall's termination, Katz, a member of the Management Committee informed Hall that he would not approve the firing of Marimow.

On October 10, 2013, Intertrust and Lenfest instituted the instant action against IGM and Hall seeking to declare null and without effect the firing of Marimow. The action also seeks to declare Hall's employment as IGM's publisher ceased effective September 1, 2013.

In addition to filing the complaint, plaintiffs also filed a Petition for Preliminary Injunction alleging irreparable harm and loss if the illegal termination of the editor Marimow is not declared null and void and the employment of Hall is not declared ended. On October 16, 2013, the court entered an order requiring defendants to file a response by October 21, 2013 and appear for a status conference with the court on October 22, 2013.

In the meantime, on October 18, 2013, Defendant Hall filed preliminary objections seeking to dismiss the complaint under the "internal affairs" doctrine, improper venue-forum non conveniens, failure to make demand on the Board before filing a derivative suit, failure to state a claim against Hall, failure to join an indispensible party[3] and Lenfest's lack of standing to pursue this action.

[3] The preliminary objection asserting indispensible party was withdrawn.

On October 21, 2013, General American Holdings, Inc. filed a Petition to Intervene. On October 23, 2013 the court granted General American Holdings, Inc's Petition to Intervene. Thereafter, General American Holdings, Inc. joined in the preliminary objections filed by Hall as well as Hall's opposition to the Preliminary Injunction. On October 28, 2013, the court heard oral argument on the preliminary objections.[4]

DISCUSSION

I. The Internal Affairs Doctrine is Inapplicable to this Case.

Under the "internal affairs" doctrine, courts will choose not to take jurisdiction of a matter for the purpose of regulating or interfering with the internal management or affairs of a foreign corporation.[5] Where the matter falls within the ambit of the "internal affairs" doctrine, the court is not deprived of jurisdiction but may voluntarily choose not to interfere in the internal affairs of the foreign corporation.[6] The general proposition that a court will not take jurisdiction of a case that involves regulating or interfering with the internal management of a corporation is based on a number of considerations such as the court's inability to enforce its order, a reluctance to interpret the laws of another state, a reluctance to get involved where the differences between the parties are merely a matter of business judgment, and the view that a Pennsylvania resident has no right to call upon the courts of his own state to protect him from the consequences of a voluntary membership of a foreign corporation.[7]

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[4] Plaintiffs filed preliminary objections to preliminary objections which are disposed of in a separate order issued by the court.

[5] Kahn v. American Cone & Pretzel Co., 365 Pa. 161, 74 A.2d 160, 161 (Pa. 1950).

[6] Plum v. Tampax, Inc., 399 Pa. 553, 160 A.2d 549 (Pa. 1960).

[7] Ski Roundtop, Inc. v. Hall, 265 Pa. Super. 266, 401 A.2d 1203, 1206 (Pa. Super. 1979).

The "internal affairs" of a foreign corporation are interfered with where the suit is predicated upon rights derived from some status within the corporate association, and where the suit is brought by or against persons in their capacities as shareholders, officers and directors. [8] In those cases, rights upon which those plaintiffs base their suits are derived exclusively from the fact that plaintiffs are shareholders in defendant corporations and suing directors of defendant corporations in their capacity as directors.

Application of the "internal affairs" doctrine is, however, subject to limitations, particularly where the facts of any one case indicate that the assumption of jurisdiction will not inextricably involve the "internal affairs" of a foreign corporation.[9] An action to enforce an individual or contractual right represents one such exception.

In the case *sub judice*, the crux of the dispute between the parties is the alleged deprivation of Katz and Lenfest's contractual right to cast votes as members of the Management Committee and Board of Directors, respectively. The question of whether Katz and Lenfest were deprived of their voting rights hinges on the interpretation of the Limited Liability Agreement Article 5.2 (a), that is, was the decision to fire the editor a day-to-day business decision or was it a journalistic and editorial decision outside the scope of the Management Committee and Board of Director's authority. The interpretation of the Limited Liability Agreement as with any contracts falls within the Commerce Program schema which was specifically and purposefully established to provide litigants with a specialized and expeditious forum for adjudication of corporate and commercial cases. The fact that Delaware law governs the interpretation of the Limited Liability Agreement does not pose any difficulty since the interpretation does not involve any novel or

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[8] Tanzer v. Warner Co., 9 Pa. D.& C.3d 534 (Phila. C.P. Ct. 1978) (citations omitted).

[9] Colvin v. Somat Corporation, 230 Pa. Super. 118, 326 A.2d 590 (Pa. Super. 1974) *citing* Plum v. Tampax, Inc., 399 Pa. 553, 160A.2d 549 (1960).

complex issues. This court is quite capable of applying Delaware law and providing justice.[10] Although interpretation of this Limited Liability Agreement may have some effect on the internal affairs of IGM, any effect is merely incidental and not sufficient for this court to decline jurisdiction.

II. This action should not be stayed or dismissed on the basis of *forum non conveniens*.[11]

Defendants argue this court should stay or dismiss this action in favor of the pending Delaware Court of Chancery action which involves allegedly the same operative facts and legal issues. Defendants' objection is based on the fact that IGM is a Delaware corporation, the Limited Liability Agreement requires the application of Delaware law and the complaint raises issues related to the internal affairs of a foreign corporation which the courts of Pennsylvania should voluntarily choose not to hear. Having already determined that this matter does not implicate the internal affairs of IGM to the degree requiring relinquishment of jurisdiction, this court will focus on whether venue is indeed appropriate in Philadelphia.

A personal action against a corporation or similar entity may be brought in and only in a county where its registered office or principal place of business is located, a county where it regularly conducts business, the county where the cause of action arose, a county where a transaction or occurrence took place out of which the cause of action arose, or a county where the property or a part of the property which is the subject matter of the action is located. [12] This matter concerns a local newspaper which has served this community for many years. The parties

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[10] EuroCapital Advisors, LLC v. Colburn, 2008 WL 401352 (De.Chan. February 14, 2008).

[11] Although improper venue may be raised by preliminary objection, *forum non conveniens* is to be raised by petition. See Note to Pa. R. Civ. P. 1028 (a) (1). As such, the court will convert the objection to one for improper venue.

[12] See Pa. R. Civ. P. 2179 (a).

are either located here or are located in areas which are readily assessable to our courthouse. IGM does business in Philadelphia. Its publication and dissemination of its papers are in Philadelphia and the surrounding areas. Three of the parties have Pennsylvania addresses and any witnesses associated with the Inquirer work in Philadelphia. Consequently, venue is appropriate in Philadelphia.

Moreover, this action was the first filed action. Delaware subscribes to the general rule that "litigation should be confined to the forum in which it is first commenced and a defendant should not be permitted to defeat the plaintiff's choice of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction of its own choosing."[13] Plaintiffs' choice of forum should not be disregarded so easily. Based on the foregoing, defendants' preliminary objection is overruled.

III. Demand was not required since this is not a derivative action.

Defendants argue the instant action should be dismissed since it is a derivative suit and plaintiffs failed to make the required pre-suit demand on the Board. The Delaware Supreme Court has set forth the test for distinguishing between direct and derivative claims. The analysis must be based solely on the following questions: Who suffered the alleged harm-the corporation or the suing stockholder individually-and who would receive the benefit of the recovery or other remedy? [14]

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[13] Brookstone Partners Acquisition XVI, LLC v. Tanus, 2012 WL 5868902 (De. Chan. November 20, 2012), (quoting McWane Cast Iron Corp. v. Pipe Corp. v. McDowell- Wellman Eng'g Co., 263 A.2d 281, 283(Del. 1970); see Lisa, S.A. v. Mayorga, 993 A.2d 1042, 1047 (Del. 2010). (Where the Delaware action is not the first filed, the policy favoring strong deference to a plaintiff's initial choice of forum requires the court freely to exercise its discretion in favor of staying or dismissing the Delaware action.).

[14] Tooley v. Donaldson, Lufkin & Jenrette, Inc., 845 A.2d 1031, 1035 (Del. 2004)

Here, plaintiff Intertrust suffered the harm when Katz, its designee, to the Management Committee and Board of Directors was deprived of his right to vote on the firing of Marimow. Lenfest also suffered harm when Hall represented that he had received the concurrence "of each and every director and shareholder but one" on his firing decision. Lenfest did not concur. Delaware courts have recognized that a limited liability company member's right to vote and a director's right to decide issues are direct claims.[15] The alleged deprivation of the right to vote is a unique harm to plaintiffs. The injuries to Katz and Lenfest resulted directly from the defendants' actions, and a favorable decision would remedy their injuries by potentially invalidating the votes taken at any meetings and the resulting transactions. Plaintiffs therefore have standing to pursue their direct claims and defendants' preliminary objection is overruled.

IV. Hall's demurrer to the complaint is overruled.

Defendants argue the complaint against Hall fails to state a claim for relief. Defendant Hall argues that since he is not a member of IGM or a party to the IGM agreement he cannot be sued for any alleged breach of the agreement including the alleged violation of section 5.2 (a) which is the gravamen of this lawsuit. [16] While it is true that Hall is not a party to the IGM agreement nor a member of IGM, the absence of same does not justify dismissing Hall as defendant at this juncture. Taking all the facts and all inferences therefrom in a light most favorable to plaintiffs, as this court must at this stage in the litigation, sufficient allegations exist to impose liability upon Hall.

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[15] See, Kalisman v. Friedman, 2013 WL 1668205 (Del. Ch. Apr. 17, 2013), Bakerman v. Sidney Frank Importing Co., Inc., 2006 WL 3927242 (Del. Ch. Oct. 10, 2006)

[16] Defendant Hall's memorandum of law in support of preliminary objections pg. 18.

Plaintiffs have not filed a breach of contract action against Hall. Instead, plaintiffs seek declaratory relief. Plaintiffs ask the court to declare that the purported firing of Marimow by Hall on October 7, 2013 is null and void and without effect. Plaintiffs allege the following:

> 14. Notwithstanding the clear and unambiguous language of 5.2 of the Agreement, on October 7, 2013, Hall unilaterally and without the consent, approval, or authorization of the Management Committee required for such decisions, summarily fired Marimow prior to the expiration of Marimow's employment contract (expiring April 30, 21014). In fact, shortly before October 7, 2013, Lewis Katz, one of the two members of the Management, specifically told hall that he (Lewis Katz) would *not* approve the firing of Marimow. Shockingly, neither prior to nor at the time of Hall's firing of Marimow did Hall advise Lewis Katz of the firing.
>
> 15. After the firing of Marimow, Hall represented that he had received the concurrence "of each and every director and shareholder but one" on his firing decision. Hall's representation was and is false. At least two directors (Katz and Lenfest), one of whom is also a member of the Management Committee (Katz), have in fact not concurred in hall's firing of Marimow.

Based on the foregoing, defendants' preliminary objection is overruled.

V. Lenfest has standing to pursue this action at this time.

Defendant argues Lenfest lacks standing to pursue this action because he is not a member of the Management Committee and has not suffered any direct injury to his personal interest. Although Lenfest is not a member of the Management Committee, the complaint alleges that he did suffer a direct injury by being deprived of his voting rights as a Board Director. The complaint alleges that after the firing of Marimow, Hall represented that he had received the concurrence "of each and every director and shareholder but one" on his firing decision. The complaint further alleges that Hall's representation was and is false because Katz and Lenfest did not concur in Hall's firing of Marimow. [17] Based on the foregoing allegation, the court finds that Lenfest has standing to pursue this action at this time.

[17] Complaint paragraph 15.

CONCLUSION

For the foregoing reasons, defendants' preliminary objections are overruled.

BY THE COURT,

PATRICIA A. McINERNEY, J.