

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2004-CP-10-5077

Republic & Eagle Associates, Inc, and)
Sea Miners, Inc.)

Plaintiffs,)

**ORDER GRANTING
MOTION TO DISMISS**

vs.)

John Morris, Greg Stemm, John Lawrence,)
John Balch, Daniel Bagley, Seahawk Deep)
Sea Technologies, Inc. and Odyssey Marine)
Exploration, Inc.)

Defendants.)

FILED
2006 JUN 20 AM 10:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

INTRODUCTION

This matter came before the Court on the motion of Defendants John Morris, Greg Stemm, Daniel Bagley, and Odyssey Marine Exploration, Inc. (the "Odyssey Defendants") to dismiss the complaint of Plaintiffs Republic & Eagle Associates, Inc. (Republic & Eagle) and Sea Miners, Inc. The Odyssey Defendants' motion seeks dismissal on the following grounds: 1) lack of personal jurisdiction pursuant to S.C. R. Civ. P. 12(b)(2); 2) contravention of the South Carolina Door Closing Statute, S.C. Code § 15-5-150 (1976); 3) improper venue pursuant to S.C. R. Civ. P. 12(b)(3); 4) failure to state a claim pursuant S.C. R. Civ. P. 12(b)(6); 5) failure of the Plaintiffs to obtain certificates of authority authorizing them to do business in this state pursuant to S.C. Code § 33-15-102(a)¹; and 6) *forum non conveniens*.

The Court conducted a hearing on the motion to dismiss on April 19, 2006. After considering the arguments of counsel, briefs, affidavits, and submitted documents the Court finds

¹ The Odyssey Defendants withdrew this ground because Republic & Eagle became authorized to do business in South Carolina after filing the Complaint.

that the complaint against the Odyssey Defendants should be dismissed for lack of personal jurisdiction and forum *non conveniens*. The Court also finds that the Plaintiffs' claims against Odyssey Marine Exploration, Inc. ("Odyssey") should be dismissed pursuant to the Door Closing Statute. The Court declines to address the remaining grounds the Odyssey Defendants raise in their motion.

FACTS

Odyssey is a Nevada corporation that finds and salvages shipwrecks. Its principal place of business is Tampa, Florida. In August of 2003, Odyssey found the nineteenth century steamship *Republic* ("S.S. *Republic*") in international waters off the coast of Georgia. Odyssey recovered a valuable treasure from the *S.S. Republic*.

Plaintiff Republic & Eagle Associates, Inc. is a Florida Corporation that has no active business other than the maintenance of this lawsuit. Plaintiff Sea Miners, Inc. is a Maryland Corporation with its principal place of business in Maryland. Neither had been authorized to do business in the state of South Carolina at the time they filed their Complaint.

The Plaintiffs allege they gave valuable information regarding the *S.S. Republic* to Defendant Seahawk Deep Sea Technologies ("Seahawk") in 1995 and that the Odyssey Defendants entered into a conspiracy with Seahawk and its principals, defendants John Lawrence and John Balch,² to obtain this information and use it in their search for the *S.S. Republic*. The Plaintiffs also allege that they entered into a contract with Seahawk to find the *S.S. Republic* and share its treasure, that Seahawk breached this contract, and that the Odyssey Defendants are liable under the contract as alter egos. Finally, the Plaintiffs assert that they entered into fiduciary relationships with all of the

² The Plaintiffs obtained a default judgment against Seahawk and Lawrence and have dismissed their claims against Balch.

Defendants and that the Defendants have breached these fiduciary duties by refusing to share the treasure with Plaintiffs and failing to give Plaintiffs due credit with respect to their role in the discovery of the *S.S. Republic*.

Although Republic & Eagle is suing on a contract with Seahawk executed in 1995, Seahawk began searching for the *S.S. Republic* in 1991. At that time Seahawk was a publicly traded company engaged in the business of searching and salvaging shipwrecks. Its principal place of business was Tampa, Florida. Defendant John Morris was its Chairman, President, and Chief Executive Officer and defendants Greg Stemm and Daniel Bagley were also officers.

On August 1, 1991, Lee Spence (who is now the president of Republic & Eagle) visited Seahawk's offices in Tampa in an effort to sell his research on the *S.S. Republic*. Seahawk executed a ten-year non-disclosure agreement with Spence on the day of the visit. The following day, also at Seahawk's offices in Tampa, Seahawk entered into an Agreement of Joint Venture with Lee Spence regarding locating and salvaging the *S.S. Republic*.

Seahawk proceeded to search for the *S.S. Republic* in the location suggested by Mr. Spence's research, a shallow water area off the coast of South Carolina. The search was done through aircraft and the RV Seahawk, which operated out of the Edisto Inlet in South Carolina. The search was unsuccessful. During the first two years Seahawk searched for the *S.S. Republic*, Morris and Stemm may have spoken to Spence by telephone and sent him correspondence while he was in South Carolina.

While Morris, Stemm, and Bagley were directors and officers of Seahawk, they were investigated and sued by the Securities Exchange Commission for alleged securities violations. Although they ultimately prevailed on these claims, Morris and Stemm left Seahawk at the beginning of 1994 and Daniel Bagley left sometime prior to Morris and Stemm.

After leaving Seahawk, Morris, Stemm, and Bagley had little contact with South Carolina. Morris sailed his personal boat to Charleston and docked it in Charleston for a little over a month. Stemm may have driven through South Carolina while on vacation. Dan Bagley had no contact with South Carolina until after the Plaintiffs filed their Complaint.

In 1995, after Morris, Stemm, and Bagley had left Seahawk, Seahawk executed some contracts with Republic & Eagle regarding searching for the *S.S. Republic* and sharing its treasure. These contracts specify a new deep-water search area and provide that Florida or U.S. law will control. One of the contracts specifies that the venue of any lawsuit filed concerning the contract shall be Tampa, Florida.

The Odyssey Defendants are not parties to the Seahawk contracts. The Plaintiffs have not produced evidence of any written contracts, oral contracts, or legal relationships between Plaintiffs and the Odyssey Defendants. In addition, the Plaintiffs have neither alleged any facts nor produced any evidence to support a conclusion that John Morris, Greg Stemm, and Daniel Bagley were alter egos of Seahawk (at the time they were not even officers or directors of this publicly traded company) or that the Odyssey Defendants are liable for breaches of the Seahawk contracts.

After leaving Seahawk, Morris and Stemm formed Odyssey. Morris, Stemm, and Bagley also sued Seahawk in a Florida court for director indemnification for costs incurred as a result of the SEC litigation. This lawsuit ultimately settled. As part of the settlement agreement, Daniel Bagley received Seahawk's treasure hunt dossier, consisting of several boxes of documents, including Seahawk's research file on the *S.S. Republic*. The settlement agreement and transfer of the documents took place in Florida.

Odyssey began searching for the *S.S. Republic* in 2002. Odyssey conducted its searches for two years from the coast of Florida. During this time a boat conducting search operations for

Odyssey docked in Charleston, South Carolina 3 times for a total of 10 days in order to avoid bad weather and repair a mechanical problem. The boat also purchased fuel on one of these visits. A boat conducting search operations for Odyssey also entered Charleston harbor in 2004 in order to avoid tropical storm Alex. Odyssey was not searching for the *S.S. Republic* at the time.

Odyssey located the *S.S. Republic* on August 4, 2003 in deep water about 90 miles southeast of Savannah, Georgia. Odyssey found the *S.S. Republic* far outside of the shallow water search area Spence proposed and the deep-water search area the Plaintiffs proposed. All artifacts used to arrest the *S.S. Republic* were brought ashore in Florida and taken to Tampa, Florida. After locating the *S.S. Republic*, Odyssey purchased from Daniel Bagley the documents he obtained from Seahawk in connection with the settlement of his lawsuit. Odyssey purchased these documents so that it could flesh out the history of the *S.S. Republic*. This transaction took place entirely within the state of Florida.

On August 7, 2003, Odyssey filed a Verified Complaint in Admiralty, In Rem, in the United States District Court for the Middle District of Florida. The court awarded Odyssey title to the *S.S. Republic* and its apparel, tackle, appurtenances, and cargo pursuant to a judgment entered March 24, 2004.

Odyssey has had very limited contacts with South Carolina. Besides the few times Odyssey's research vessels docked in Charleston, the Plaintiffs have presented evidence that: 1) Odyssey had a line of credit originated in Florida that required payments to be made to a South Carolina address; 2) Odyssey purchased items from a supply company in Georgia that used a shipping company with a South Carolina address; and 3) Odyssey chartered a small boat for one day that operated out of Charleston, South Carolina. Odyssey is also a publicly traded company and

has shareholders located in South Carolina. There is no evidence that any of Plaintiffs' claims arise out of these contacts.

After the filing of the Complaint, Odyssey purchased advertising that has appeared in South Carolina and has sold about \$8000.00 in coins and memorabilia related to the *S.S. Republic* to around a dozen individuals located in South Carolina, two of whom are principals of the Plaintiffs and one of whom is an employee of Plaintiffs' law firm. These sales represent a small fraction of Odyssey's national sales. Daniel Bagley has also had limited contacts with South Carolina after the Plaintiffs filed their complaint. He speaks to a personal coaching client located in South Carolina once a week by phone. None of Plaintiffs' claims arises out of these contacts with South Carolina.

CONCLUSIONS OF LAW

I. PERSONAL JURISDICTION

Once jurisdiction is challenged, the plaintiffs bear the burden of establishing sufficient facts to support the Court's exercise of personal jurisdiction over non-resident individuals and corporations. Southern Plastics Co. v. Southern Commerce Bank, 310 S.C. 256, 423 S.E.2d 128 (1992). "At the pretrial stage, this burden is met by a prima facie showing of jurisdiction either in the complaint or in affidavits." International Mariculture Resources v. Grant, 520 S.E.2d 160, 161 (S.C. App. 1999). If the complaint does not demonstrate jurisdiction on its face, the Plaintiff must supply other evidence supporting jurisdiction. Id. Springmasters, Inc. v. D&M Mfg., 402 S.E.2d 192, 193 (S.C. App. 1991).

South Carolina Code Ann. § 36-2-803 provides for personal jurisdiction arising out of the defendants' contacts with South Carolina. With respect to the allegations in this lawsuit, the South Carolina Long Arm Statute provides:

- (1) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's

...

(c) commission of a tortious act in whole or in part in this State;

...

(g) entry into a contract to be performed in whole or in part by either party in this State

South Carolina Code Ann. § 36-2-802 provides for personal jurisdiction over a defendant with an enduring relationship with South Carolina. These statutes extend South Carolina Courts' personal jurisdiction over defendants to the outer limits of due process. Cockrell v. Hillerich & Brasby Co., 611 S.E.2d 505, 508-510 (S.C. 2005); Moosally v. W.W. Norton & Co., Inc., 358 S.C. 320, 329, 594 S.E.2d 878, 883 (S.C. App. 2004).

Under the Due Process Clause of the Fourteenth Amendment, a state may not exercise jurisdiction over a non-resident defendant unless the defendant has sufficient "minimum contacts" with the forum state and the exercise of jurisdiction does not offend "traditional notions of fair play and substantial justice." Southern Plastics Co. 310 S.C. at 259, 423 S.E.2d at 130; Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)); Lesnick v. Hollingsworth & Vose Co., 35 F.3d 939 (4th Cir. 1994), cert. denied, 130 L.Ed.2d 1020 (1995). The nature and amount of contacts required for the Court to exercise jurisdiction varies depending on whether the causes of action alleged by the Plaintiffs arise out the Defendants' contacts with the State.

Where the cause of action arises out the Defendants' contacts with the State, the Court is exercising specific jurisdiction and must find that the Defendants have "directed its activities to a resident of this State." Southern Plastics Co., 310 S.C. at 260, 423 S.E.2d at 131; Burger King, 471 U.S. at 472. Mere foreseeability that the defendant's activities may cause injury in another

state is not sufficient to establish specific personal jurisdiction. Burger King, 471 U.S. at 474, citing World-Wide Volkswagen Corp. v. Woodsen, 444 U.S. 286, 295 (1980). The Defendant's connections must be such that "he should reasonably anticipate being haled into court there" and "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws." Burger King, 471 U.S. at 475, citing Hanson v. Denckla, 357 U.S. 235, 253 (1958). Where the alleged causes of action do not arise out the Defendants' contacts, the Court is attempting to exercise general jurisdiction over the Defendants and must find that the Defendants' contacts with the State are both "continuous and systematic." Cockrell, 611 S.E. 2d at 510; Helicopteros, 466 U.S. at 414-416.

Since due process requires that a defendant must have fair warning that its activities may subject it to personal jurisdiction in a forum, the appropriate time period for evaluating a defendant's contacts with a state is a period of time that is reasonable under the circumstances, up to and including the date the suit was filed. Noonan v. Winston Company, 135 F.3d 85, 93 (1st Cir. 1998); Metropolitan Life Insurance Co. v. Robertson-Ceco Corp., 84 F.3d 560, 569 (2nd Cir. 1996); McMullen v. European Adoption Consultants, Inc., 109 F.Supp2d 417, 420 (W.D. Penn. 2000); United Phosphorous, Ltd. v. Angus Chemical Co., 43 F.Supp2d 904, 908-910 (N.D. Ill. 1999); Haas v. A.M. King Industries, Inc., 28 F.Supp. 2d 644, 649 (D. Utah 1998). Regardless of whether the court is exercising general or specific jurisdiction, the court cannot consider contacts occurring after the filing of the Complaint. Noonan, 135 F.3d at 93 (general jurisdiction); Metropolitan Life Insurance, 84 F.3d at 569 (general jurisdiction); McMullen, 109 F.Supp2d at 420 (specific jurisdiction); United Phosphorous, Ltd., 43 F.Supp2d at 908-910 (specific jurisdiction); Haas, 28 F.Supp. 2d at 649 (general jurisdiction).

A. Specific Jurisdiction

1. Contract to be performed in South Carolina

The Plaintiffs assert that the Odyssey Defendants are subject to jurisdiction in South Carolina under S.C. Code Ann. § 36-2-803(1)(g) because they entered into a contract to be performed in South Carolina. However, the Complaint does not allege a contract with the Odyssey Defendants to be performed in South Carolina. The Complaint alleges that Republic & Eagle entered into a contract with Seahawk. Although the Complaint alleges that the Odyssey Defendants are liable for Seahawk's breaches of the contract, it alleges no facts to support this legal conclusion. The Court does not have to credit such conclusory allegations or legal conclusions but must only treat the well-pled facts as true. Overcash v. South Carolina Electric And Gas Company, 614 S.E.2d 619, 620 (S.C. 2005); Watts v. Metro Security Agency, 550 S.E.2d 869, 871 (S.C. App. 2001) (stating that a plaintiff must plead ultimate facts and that "[u]ltimate facts fall somewhere between the verbosity of 'evidentiary facts' and the sparsity of 'legal conclusions.'"). Further, the affidavits and documents submitted do not support Plaintiffs' allegation that the Odyssey Defendants are liable for a breach of contract by Seahawk. Therefore, Plaintiffs cannot establish jurisdiction over the Odyssey Defendants based upon a contract to be performed in South Carolina.³

³ Even if the Odyssey Defendants were liable for Seahawk's breaches of such contract, the Complaint never alleges that the contract was formed in South Carolina or was to be performed in South Carolina and the Plaintiffs have produced no facts to support such a conclusion. In fact, any Contract would have been formed in Florida and performed there. Therefore, the Plaintiffs have failed to make a prima facie showing of jurisdiction based upon a contract to be performed in South Carolina and cannot make a showing of minimum contacts with South Carolina with respect to such contract. White v. Stephens, 387 S.E.2d 260, 263 (S.C. 1990) (holding that Plaintiff failed to make prima facie showing of personal jurisdiction where complaint alleged existence of contract but did not allege that the contract was formed in South Carolina or was to be performed in South Carolina).

2. Tort causing injuring to Plaintiffs in South Carolina

The Plaintiffs also assert that the Odyssey Defendants are subject to jurisdiction in South Carolina under S.C. Code Ann. § 36-2-803(1)(c) because they committed a tortious act in whole or in part in this state. The Complaint alleges that “defendants” entered into legal relationships with Plaintiffs giving rise to fiduciary duties that were breached and that the Odyssey Defendants participated in a civil conspiracy.

a. Breach of Fiduciary Duty

The complaint does not adequately allege that the Odyssey Defendants breached any fiduciary duty to the Plaintiffs. The Complaint mixes and confuses the separate identities of the different defendants and does not specify which defendants did what. For instance, the Complaint first alleges that the Plaintiffs gave the Odyssey Defendants confidential information as part of a joint venture and then alleges that the Odyssey Defendants entered into a conspiracy to misappropriate it. The Plaintiffs should not be allowed to conflate the separate identities of the Defendants and rely upon inconsistent allegations in order to establish personal jurisdiction over the Odyssey Defendants. Such facts cannot be considered well-pleaded facts that the court must accept as true. Overcash, 614 S.E.2d at 620 (S.C. 2005); Watts, 550 S.E.2d at 871.

A careful reading of the Complaint reveals that Plaintiffs’ breach of fiduciary duty claim is asserted against Seahawk, not the Odyssey Defendants. The only legal relationship specifically alleged in the Complaint is a contract between Republic & Eagle and Seahawk and the Plaintiffs have produced no evidence that the Odyssey Defendants entered into any relationships with the Plaintiffs. The Plaintiffs were given an opportunity to conduct discovery and submit affidavits and documents to clarify these allegations and demonstrate a legal relationship between the Plaintiffs and the Odyssey Defendants, but have not done so. Therefore,

Plaintiffs cause of action for breach of fiduciary does not set forth a prima facie case for personal jurisdiction over the Odyssey Defendants.⁴

b. Civil Conspiracy

The Plaintiffs also assert that their cause of action for civil conspiracy makes a prima facie showing of personal jurisdiction over the Odyssey Defendants. “[A] civil conspiracy consists of three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) which causes him special damage.” Swinton Creek Nursery v. Edisto Farm Credit, ACA, 483 S.E.2d 789, 795, 326 S.C. 426, 438 (S.C. App. 1997). “The gravamen of the tort is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.” Lee v. Chesterfield General Hospital, 344 S.E.2d 379, 382, 289 S.C. 6, 10-11 (S.C. App. 1986). The overt act may be either an unlawful act or a lawful act where the conspirators combine to willfully injure a man in his business. Id. at 383.

⁴ Even if the Plaintiffs could establish they had a fiduciary relationship with the Odyssey Defendants, the Plaintiffs’ breach of fiduciary duty claim does not allege a tortious act or injury in South Carolina. Although it is hard to understand how searching for the *S.S. Republic* could be a tortious act if the joint venture required such a search, the Plaintiffs have not alleged that the search took place in South Carolina waters. With respect to any duty to share the treasure or publicity once the *S.S. Republic* was found, any breach would have occurred in Florida. The Plaintiffs do not allege that the artifacts were to be brought back to South Carolina and divided here and the facts show that all the artifacts were brought back to Florida. Finally, the Plaintiffs do not allege an injury in South Carolina because neither Plaintiff is a South Carolina corporation and both dealt with Seahawk in Florida. Although the shareholders of Republic & Eagle reside in South Carolina, a Plaintiff cannot be considered to have been injured wherever its shareholders reside and finding personal jurisdiction merely based upon such an attenuated injury would violate due process. Young v. Colgate-Palmolive Co., 790 F.2d 567 (7th Cir. 1985) (stating “that shareholders may have been injured by some effect on their interest in the corporation does not mean that the tort was committed wherever they reside” and holding that allowing jurisdiction in any state where a shareholder of the Plaintiff resides would not comport with due process requirements). Due process requires that the Defendant purposely avail itself of the privilege of conducting activities within the state and reasonably anticipate being hailed into court there. Jurisdiction based upon the residence of shareholders, which the defendant cannot control, does not meet these requirements. Id. see also ESAB Group, Inc. v. Centricut, Inc., 126 F.3d 617, 624 (4th Cir. 1997) (holding that merely causing financial impact to a Plaintiff located in South Carolina did not satisfy due process requirements because there was no substantial connection with South Carolina and the defendant did not purposefully avail itself of the privilege of conducting activities in South Carolina).

Plaintiffs' civil conspiracy claim does not establish personal jurisdiction over the Odyssey Defendants. First, this claim does not allege an act in furtherance of a conspiracy occurring in South Carolina. The Complaint alleges that Daniel Bagley obtained research information from Seahawk in a court settlement and the Odyssey Defendants purchased this information from Bagley. The Complaint does not allege that these acts took place in South Carolina and the only evidence is that these acts occurred in Florida.

The Complaint also does not adequately allege an injury resulting from the alleged conspiracy, let alone an injury in South Carolina. Although the Complaint alleges that the Odyssey Defendants used the Plaintiffs' information in the search for the *S.S. Republic*, the Complaint does not allege that Odyssey found the *S.S. Republic* where the Plaintiff's research information said it would be or how the information assisted Odyssey's search. Odyssey spent two years searching for the *S.S. Republic*, which is inconsistent with its having valuable information from the Plaintiffs regarding the ship's location.

Even if the Plaintiffs were injured, the injury did not occur in South Carolina because neither Plaintiff is a South Carolina corporation or was authorized to do business here at the time the alleged acts took place. The mere presence of one of the Plaintiffs' stockholders in South Carolina is not sufficient to assert a tortious injury in South Carolina. Young v. Colgate-Palmolive Co., 790 F.2d 567 (7th Cir. 1985) (stating "that shareholders may have been injured by some effect on their interest in the corporation does not mean that the tort was committed wherever they reside").

Finally, merely causing a financial impact upon a stockholder located in South Carolina does not constitute sufficient minimum contacts with South Carolina to satisfy due process requirements. Where the defendant has not directed any of its activities toward a particular state

but has merely caused a financial impact to a person located there, the defendant has not purposely availed himself of the privilege of conducting activities in South Carolina. ESAB Group, Inc. v. Centricut, Inc., 126 F.3d 617, 624 (4th Cir. 1997) (holding that conspiracy that took place outside of South Carolina but caused financial injury to Plaintiff located in South Carolina did not satisfy due process requirements because there was no substantial connection with South Carolina and the defendant did not purposefully avail itself of the privilege of conducting activities in South Carolina); Young, 790 F.2d at 567 (holding that allowing jurisdiction in any state where a shareholder of the Plaintiff resides would not comport with due process requirements).

B. General Jurisdiction

The Plaintiffs have set forth a number of contacts unrelated to the causes of action alleged in the Complaint that they claim support jurisdiction over the Odyssey Defendants. As none of Plaintiffs' causes of action arises out of these contacts, Plaintiffs must show that these contacts are continuous and systematic in order to establish this Courts' general jurisdiction over the Odyssey Defendants.

1. Odyssey

During the time Odyssey searched for the *S.S. Republic*, a boat conducting search operations for Odyssey docked in Charleston several times to escape bad weather and conduct repairs. The boat also purchased fuel one of the times it docked in Charleston. After Odyssey found the *S.S. Republic*, the same boat docked in Charleston to avoid tropical storm Alex and Odyssey chartered a small boat operating out of Charleston for a day. Plaintiffs do not allege any causes of action against the Odyssey Defendants arising out of these contacts, such as failure to pay docking charges or damages to the docking facility. These few and sporadic contacts with a South Carolina port are not sufficient to subject Odyssey to general jurisdiction in South

Carolina. Warn v. M/Y Maridome, 961 F.Supp. 1357, 1366 (S.D. CA 1997)(holding that a boat visiting California twice, once for fuel and once for repairs, was not sufficient to subject boat owner to general jurisdiction in California); Submersible Systems, Inc. v. Perforadora, S.A. de C.V., 249 F.3d 413, 419 (5th Cir. 2001)(holding that defendants having drilling rig constructed in Mississippi and maintaining office with three employees at shipyard to monitor construction were not sufficient continuous or systematic contacts for the court to exercise general jurisdiction over defendant.) Asarco, Inc. v. Glenara, Inc., 912 F.2d 784, 787 (5th Cir. 1990)(holding that forty-seven calls at Louisiana port by ships managed by defendant over period of four years were not sufficient continuous and systematic contacts to render defendant subject to general jurisdiction in Louisiana).

The Plaintiffs also assert that Odyssey has South Carolina shareholders, that Odyssey had a line of credit (originated in Florida) that was payable to a South Carolina address, and that Odyssey purchased supplies from a company located in Atlanta, Georgia that used a shipping company with a South Carolina Address. None of these facts evidences a purposeful contact with South Carolina, let alone the kind of continuous and systematic contacts necessary to establish general jurisdiction over Odyssey.

Finally, the Plaintiffs assert that Odyssey has advertised and sold products to persons located in South Carolina. These advertisements and sales took place after the filing of the Complaint and therefore cannot be considered for purposes of personal jurisdiction. Noonan, 135 F.3d at 93; Metropolitan Life Insurance, 84 F.3d at 569; McMullen, 109 F.Supp2d at 420; United Phosphorous, Ltd., 43 F.Supp2d at 908-910; Haas, 28 F.Supp. 2d at 649. Further, the Plaintiffs' causes of action do not arise out of these contacts and these limited sales and advertising do not constitute sufficient continuous and systematic contacts with South Carolina

to support general jurisdiction over Odyssey. See ESAB Group, Inc. v. Centricut, Inc., 126 F.3d 617, 624 (4th Cir. 1997) (holding that defendant's mail order sales to 26 customers in South Carolina and advertising in national publication were not even close to the required contacts for the Court to exercise general jurisdiction over the defendant).

2. John Morris, Greg Stemm, and Daniel Bagley

John Morris' contacts with South Carolina consist of communicating with Lee Spence by phone and mail while he was an officer of Seahawk from 1991 to 1993 and visiting Charleston on his sailboat while on vacation. The Plaintiffs do not allege they had a contract or relationship with Seahawk at the time these contacts took place. Stemm's only contacts with South Carolina are limited to traveling through South Carolina on vacation. Morris's communications and Morris and Stemm's visiting South Carolina while on vacation do not constitute continuous or systematic contacts that would justify this court exercising general jurisdiction over them. See Foster v. Arletty 3 S.A.R.L., 278 F.3d 409, 52 Fed.R.Serv.3d 470 (C.A.4 (S.C.) 2002) (holding that a French company's contacting a French citizen residing in South Carolina by telephone and fax for the purpose of obtaining assistance in securing licenses was insufficient, standing alone, to establish jurisdiction); Sheppard v. Jacksonville Marine Supply, 87 F.Supp. 260, 268 (D.S.C. 1995)(holding that defendants' infrequent travels to South Carolina and part ownership of warehouse in South Carolina were not sufficient for court to exercise general jurisdiction over defendant).

Daniel Bagley's only contacts with South Carolina consist of calls to a client in South Carolina in connection with his personal coaching business. These contacts took place after the filing of the complaint and cannot be considered for purposes of personal jurisdiction. Regardless, these phone calls are not sufficient to subject him to general jurisdiction in South

Carolina. Railcar, LTD v. Southern Illinois Railcar Co., 42 F. Supp. 2d 1369, 1378-1379 (N.D. GA 1999) (holding that defendant having one customer in Georgia and corresponding with customer by phone and mail was insufficient to subject defendant to general jurisdiction in Georgia).

C. Fair Play and Substantial Justice

The consideration of whether jurisdiction comports with fair play and substantial justice can either establish reasonableness of asserting jurisdiction upon a lesser showing of minimum contacts than would otherwise be required or render jurisdiction unreasonable even though minimum contacts have been established. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985). In determining whether exercise of jurisdiction comports with notions of fair play and substantial justice the courts may evaluate:

1. the burden on the defendant;
2. the forum state's interest in adjudicating the dispute;
3. the plaintiff's interest in obtaining convenient and effective relief;
4. the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and
5. the shared interest of the several states in furthering fundamental substantive social policies.

Burger King, 471 U.S. at 477, citing World-Wide Volkswagen Corp., 444 U.S. at 292; Builder Mart of America, Inc. v. First Union Corporation, 563 S.E.2d 352, 357 (S.C. App. 2002).

Further, a South Carolina court will refuse to exercise jurisdiction where doing so "would contravene the limited jurisdiction exercised by each state's courts and impinge upon the sovereignty of our sister state." Builder Mart, 563 S.E.2d at 357.

There are no considerations of fairness or substantial justice that would make an assertion of person jurisdiction over the Odyssey Defendants reasonable in this case. Coming to South Carolina is burdensome for the Defendants because they all live and work in Florida. Although Lee Spence and Ed Sloan, the officers of Republic & Eagle, are located in South Carolina, Republic & Eagle is a Florida corporation that does no active business in South Carolina and Sea Miners is a Maryland Corporation with its principal place of business in Maryland. Republic & Eagle reached out to the state of Florida to negotiate a contract with Seahawk and agreed in a non-disclosure agreement with Seahawk that venue in any case under that agreement would be a court in Tampa, Florida. South Carolina has no interest in adjudicating this dispute because the property in dispute and the activities that lead to this dispute took place in Florida. Further, South Carolina's adjudicating this dispute would impinge upon Florida's sovereignty and its right to adjudicate a dispute between two Florida corporations arising out of actions that took place in Florida. Therefore, consideration of fairness and substantial justice do not make this court's assertion of personal jurisdiction over the Odyssey Defendants reasonable but would militate against this Court exercising personal jurisdiction over the Defendants.

II. FORUM NON CONVENIENS.

Where a court has jurisdiction, it still has the discretion to dismiss an action when doing so would further the ends of justice and promote the convenience of the parties. Braten Apparel Corp. v. Bankers Trust Co., 259 S.E.2d 110, 112 (S.C. 1979). In deciding whether to apply the doctrine of *forum non conveniens*, the court may consider: the relative ease of access to sources of proof; availability of compulsory process for attendance of the unwilling; the costs of obtaining attendance of willing witnesses; practical problems that make the trial of a case easy, expeditious, and inexpensive; the local communities interest in the action; and whether a court will have to apply another state's law. Id. at 113.

Even if the Plaintiffs could make out a *prima facie* case of personal jurisdiction, this case should be dismissed under the doctrine of forum *non conveniens* because a South Carolina court has no relationship to the causes of action alleged by Plaintiffs. The only relation between this case and South Carolina is that two of the shareholders of one of the Plaintiffs, Republic & Eagle, reside in South Carolina. However, Republic & Eagle has no business other than the maintenance of this lawsuit. On the other hand, Florida has a strong interest in adjudicating this dispute because Florida law will apply, the great majority of witnesses reside in Florida, and Tampa, Florida has an interest in an action affecting a publicly traded company that is located there. Therefore, this case should also be dismissed for forum *non conveniens*.

III. THE DOOR CLOSING STATUTE

South Carolina's Door Closing Statute, S.C. Code Ann. §15-5-150 prohibits a suit against a "foreign corporation created by or under the laws of any other state ..." by a non-resident of South Carolina unless "the cause of action shall have arisen or the subject of the action shall be situated within this State." The Door Closing Statute "does not involve subject matter jurisdiction but rather determines the capacity of a party to sue." Farmer v. Monsanto Corp., 579 S.E.2d 325, 327 (S.C. 2003). Under the door closing statute, a corporation is a resident of South Carolina only if it is incorporated under South Carolina law. See Blue Ridge Power Co. v. Southern Ry. Co., 115 S.E. 306, 308 (S.C. 1922) (holding that Blue Ridge Power Co. was not a resident of South Carolina because it "is a corporation chartered and organized under the laws of North Carolina ..."); Central R.R. & Banking Co. v. Georgia Construction & Investment Company, 11 S.E. 192, 203 (S.C. 1890) (holding that Central Railroad, duly chartered and created under the laws of Georgia could not maintain an action under the door closing statute where the cause of action did not arise in South Carolina.) A corporation does not become a resident of South Carolina merely by registering with

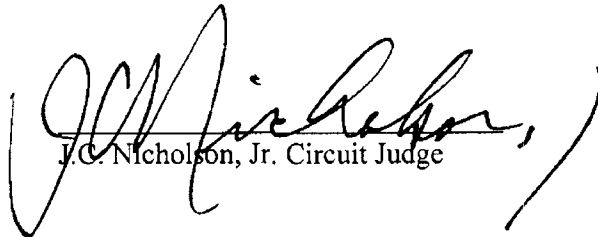
the Secretary of State and becoming authorized to do business in South Carolina. Blue Ridge Power Co., 115 S.E. at 308.

The Plaintiffs do not argue in their brief that they are residents of the State of South Carolina, but argue that their causes of action for breach of contract and breach of fiduciary duty arose in South Carolina. Although Plaintiffs have not adequately alleged either cause of action against Odyssey, both of these causes of action could only have arisen in Florida. Any contracts or relationships were entered into in the state of Florida, ships operating out of Florida ports searched for the *S.S. Republic* in international waters, and any artifacts to which Plaintiffs claim they are entitled are located in Florida. Therefore, the Plaintiffs claims against Odyssey should also be dismissed pursuant to the Door Closing Statute.

WHEREFORE, for the foregoing reasons, the Odyssey Defendants' Motion to Dismiss is granted and the Plaintiffs' Complaint is dismissed.

AND IT IS SO ORDERED

JUNE
~~May~~ 9, 2006


J.C. Nicholson, Jr. Circuit Judge