APPENDIX

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APPENDIX A

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MAY 14 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KAREN C. HAN, Plaintiff-Appellant, v. YANGRAI CHO, Defendant-Appellee.	No. 19-16073 D.C. No. 1:18-cv-00277-HG-KJM MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Helen W. Gillmor, District Judge, Presiding

Submitted May 6, 2020**

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Karen C. Han appeals pro se the district court's judgment dismissing her diversity action alleging fraud and civil conspiracy claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for lack of personal jurisdiction. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Cir. 2011). We affirm.

The district court properly dismissed Han's action for lack of personal jurisdiction because Han failed to allege facts sufficient to establish that defendant Cho had continuous and systematic contacts with Hawaii to establish general personal jurisdiction, or sufficient minimum contacts with Hawaii to provide the court with specific personal jurisdiction over Cho. *See CollegeSource, Inc.*, 653 F.3d at 1074-76 (discussing requirements for general and specific personal jurisdiction).

The district court did not abuse its discretion in denying Han's motion for reconsideration because Han failed to establish any basis for relief. *See Sch. Dist. No. 1J Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Federal Rule of Civil Procedure 59(e)).

The district court did not abuse its discretion in denying Han's request for jurisdictional discovery because Han failed to demonstrate that the requested discovery would have yielded "jurisdictionally relevant facts." *Boschetto v. Hansing*, 529 F.3d 1011, 1020 (9th Cir. 2008) (setting forth standard of review and explaining that the denial of a request for jurisdictional discovery "based on little more than a hunch that it might yield jurisdictionally relevant facts [is] not an abuse of discretion").

The district court did not abuse its discretion by dismissing Han's complaint without leave to amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that a district court may deny leave to amend if amendment would be futile).

AFFIRMED.

APPENDIX B

MINUTE ORDER

CASE NUMBER:	CV NO. 18-00277 HG-KJM
CASE NAME:	Karen C. Han v. Yangrai Cho
ATTY FOR PLAINTIFF:	Pro Se
ATTYS FOR DEFENDANT:	Jeff Ray, Esquire Nadine Y. Ando, Esquire

JUDGE: Helen Gillmor

DATE: April 23, 2019

I. BACKGROUND

On March 21, 2019, the Court issued an ORDER GRANTING DEFENDANT'S MOTION TO DISMISS. (ECF No. 25).

On the same date, the Court entered Judgment in favor of the Defendant. (ECF No. 26).

On April 17, 2019, Plaintiff Karen C. Han, proceeding pro se, filed PLAINTIFF'S MOTION FOR RECONSIDERATION PURSUANT TO FED. R. CIV. P. 59(E). (ECF No. 29).

II. STANDARD OF REVIEW

Plaintiff's Motion moves for reconsideration pursuant to Federal Rule of Civil Procedure 59(e) and District of Hawaii Local Rule 60.1.

The Court construes the Plaintiff's filing liberally given her pro se status. Ballisteri v. Pacific Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

A. Fed. R. Civ. P. 59

A party may ask the court to reconsider and amend a previous order pursuant to Federal Rule of Civil Procedure 59(e). White v. Sabatino, 424 F.Supp.2d 1271, 1274 (D. Haw. 2006).

Fed. R. Civ. P. 59(e) offers "an extraordinary remedy, to be used sparingly in the interests of finality and

conservation of judicial resources." Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003) (internal citation omitted).

A motion for reconsideration must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. Na Mamo O Aha Ino v. Galiher, 60 F.Supp.2d 1058, 1059 (D. Haw. 1999).

The Ninth Circuit Court of Appeals has set forth the following grounds justifying reconsideration pursuant to Rule 59(e):

(1) to correct manifest errors of law or fact upon which the order rests;

(2) to present previously unavailable evidence;

(3) to prevent manifest injustice; or,

(4) to amend the order due to an intervening change in controlling law.

Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011).

A motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment. Fed. R. Civ. P. 59(e).

B. District of Hawaii Local Rule 60.1

The District of Hawaii has implemented the standards for reconsideration pursuant to Fed. R. Civ. P. 59(e) in Local Rule 60.1.

Local Rule 60.1 provides that Motions for Reconsideration based on manifest errors of law or fact must be filed and served not more than fourteen (14) days after the court's written order is filed.

III. Plaintiff's Motion for Reconsideration Is Untimely

Plaintiff's Motion claims that the Court's March 21, 2019 ORDER GRANTING DEFENDANT'S MOTION TO DISMISS (ECF No. 25) contains manifest errors of law and fact. (Pla.'s

Memorandum at p. 6, ECF No. 30).

The timing of Plaintiff's Motion is governed by Local Rule 60.1(c), which requires a Motion to Reconsider based on manifest errors of law or fact to be filed within 14 days of the order being entered.

The Court issued its Order on March 21, 2019.

Plaintiff mailed her Motion to Reconsider on April 15, 2019. (Mailing Documentation, ECF No. 29-1).

Plaintiff's Motion was mailed 25 days after the Court issued its Order, well past the 14 day deadline. Plaintiff's Motion for Reconsideration is untimely pursuant to District of Hawaii Local Rule 60.1.

IV. Reconsideration Is Not Warranted

Even if it was timely filed, Plaintiff's Motion for Reconsideration is without merit and this Court lacks personal jurisdiction over the Defendant Yangrai Cho.

First, Plaintiff's Motion has not presented any change in controlling law.

Second, Plaintiff has not demonstrated that the evidence that she attached to her Motion for Reconsideration is previously unavailable.

A motion for reconsideration pursuant to Fed. R. Civ. P. 59(e) may not present evidence or raise legal arguments that could have been presented at the time of the challenged decision. Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000).

Plaintiff reiterates arguments that she believes that the Court has personal jurisdiction over the Defendant based on property he owns in Hawaii. She appears to now claim that Defendant Cho is a citizen of the State of Hawaii.

Plaintiff bears the burden of demonstrating that the Court has personal jurisdiction over a Defendant and she continues to fail to do so. CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1073 (9th Cir. 2011). The Complaint specifically alleged Defendant was a citizen of South Korea. (Complaint at ¶ 7, ECF No. 1). Plaintiff

served the Complaint on Defendant in South Korea. (ECF No. 9). Plaintiff has not submitted any evidence to demonstrate that the Court has personal jurisdiction over the Defendant.

Plaintiff's Motion for Reconsideration provided alleged "new evidence." The evidence is not authenticated and purports to be an online news article dated March 14, 2019. (Ex. 1, ECF No. 30-1). The article was published a week before the Court issued its Order. The article is not new as it could have been presented at the time of the challenged decision. Kona Enterprises, Inc., 229 F.3d at 890.

Even if considered, the article does not alter the Court's analysis. The article is allegedly translated by Plaintiff's husband. (Id. at pp. 1-2). The evidence purports to state that Defendant retired from Hankook Tire Incorporated, an entity for whom Plaintiff attempts to pierce the corporate veil in her Complaint. The article's translation says nothing about Defendant residing or living in Hawaii.

Plaintiff does not present any other evidence to warrant reconsideration.

Third, Defendant has not presented any basis upon which to find there was an error in the Court's decision. She has not presented any new facts or law that would support reversal of the Court's prior decision.

Plaintiff argues that the Court improperly considered Plaintiff's service of process on Defendant in South Korea. The Court's consideration was proper. The Court considered the Notice as part of its analysis that Plaintiff failed meet her burden to establish personal jurisdiction.

Plaintiff's lawsuit relates to corporate entities engaging in agreements that took place in Malaysia and Korea more than 20 years ago. Plaintiff's suit and her Motion for Reconsideration fail to recognize the jurisdictional requirements for suit in the District Court for the District of Hawaii. The Complaint also appears to have severe deficiencies with respect to the statute of limitations and issues of standing relating to the corporate entities at issue.

Plaintiff's disagreement with the Court's previous

order is an insufficient basis for reconsideration. White, 424 F.Supp.2d at 1274; Leong v. Hilton Hotels Corp., 689 F.Supp. 1572, 1573 (D. Haw. 1988).

Plaintiff's MOTION FOR RECONSIDERATION (ECF No. 29) is **DENIED**.

No further Motions may be filed without leave of Court.

The Clerk of Court is **ORDERED** to **CLOSE THE CASE**.

Submitted by: Rachel Sharpe, Courtroom Manager

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KAREN C. HAN Plaintiff, vs. YANGRAI CHO, Defendant.	CIVIL NO. 18-00277 HG-KJM

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS (ECF No. 10)

Plaintiff Karen C. Han, an individual, sued Defendant Yangrai Cho, an individual. Plaintiff Han claims that she has been injured by various corporations associated with Defendant Cho.

Defendant Cho filed a Motion to Dismiss Complaint (ECF No. 10) based on lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6), and failure to join a party under Fed. R. Civ. P. 19 pursuant to Fed. R. Civ. P. 12(b)(7).

The Court lacks personal jurisdiction over Defendant Cho.

Defendant's Motion to Dismiss Complaint (ECF No. 10) is **GRANTED.**

PROCEDURAL HISTORY

On July 18, 2018, Plaintiff Karen C. Han filed a Complaint. (ECF No. 1).

On October 29, 2018, Defendant Yangrai Cho filed MOTION TO DISMISS COMPLAINT. (ECF No. 10).

On November 13, 2018, Plaintiff Han filed her Opposition. (ECF No. 17).

On January 2, 2019, Defendant Cho filed his Reply. (ECF No. 20).

BACKGROUND

On July 18, 2018, Plaintiff Han filed a Complaint. (Compl., ECF No. 1). Plaintiff Han is a citizen of the State of Texas. (Compl. at ¶¶ 6, 9, ECF No. 1).

Plaintiff Han brings suit in her individual capacity and as the "real party in interest" for Peninsula Asset Management (Cayman) Ltd. ("Peninsula Asset Management"). (Compl. at ¶¶ 6, 15, ECF No. 1).

Han founded Peninsula Asset Management in December 1995 to engage in the business of providing financial services to investment banks in international finance centers. (Id.) Peninsula Asset Management was a Grand Cayman Islands corporation and is now defunct. (Id.; Memorandum at p. 2, attached as Ex. A to Def.'s Mot. to Dismiss, ECF No. 10-2).

Plaintiff Han asserts claims solely against Defendant Yangrai Cho. Defendant Cho is a citizen of the Republic of Korea. (Compl. at ¶ 7, ECF No. 1; Def.'s Mot. to Dismiss at p. 3, ECF No. 10).

The claims asserted against Defendant Cho are based on his status as shareholder and management figure in a group of corporations that include Hankook Tire Worldwide Co., Ltd. and Hankook Tire Co. Ltd., (these entities are referred to as "Hankook Tire"). (Compl. at ¶¶ 73-94, ECF No. 1). The Hankook Tire entities are corporations organized and existing under the laws of South Korea, with their principal place of business in Seoul, Republic of Korea. (Compl. at ¶ 7, ECF No. 1; Memorandum at p. 2, attached as Ex. A to Def.'s Mot. to Dismiss, ECF No. 10-2).

Plaintiff alleges that Hankook Tire established a separate entity, Ocean Capital Investment Limited ("Ocean Capital Investment") to raise investment funds. (Compl. at ¶ 17, ECF No. 1). Ocean Capital Investment is a Malaysian company. (Ex. A to Compl., ECF No. 1-1).

The Complaint alleges that Hankook Tire hired Peninsula Asset Management in 1998 to act as Ocean Capital Investment's agent to raise funds for refinancing. (Compl. at ¶ 21, ECF No. 1). Hankook Tire and Defendant Cho allegedly used Peninsula Asset Management to perpetrate a money-laundering scheme to transfer $20 million dollars out of the Republic of Korea to an account in New York. (Id.)

Plaintiff Han states three causes of actions solely against Defendant Cho:

(1) declaratory relief based on alter ego and/or piercing the corporate veil;

(2) fraud and fraudulent inducement; and

(3) civil conspiracy to commit fraud.

(Compl. at ¶¶ 1-2, 7, 73-94, ECF No. 1).

The lawsuit is the latest[1] in a series of actions filed by Han, her husband No Joon Park, and their corporation Peninsula Asset Management. They have sued Defendant Cho and the Hankook Tire entities. (Def.'s Mot. to Dismiss at pp. 1-2, ECF No. 10; Compl. at ¶¶ 1-3, 45-62, ECF No. 1).

Defendant Cho filed a Motion to Dismiss the Complaint. (Def.'s Mot. to Dismiss, ECF No. 10).

STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 12(b)(2), a defendant may move to dismiss a complaint for lack of personal jurisdiction.

Where a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating

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[1] Plaintiff Han, Peninsula Asset Management, and Park have unsuccessfully attempted to sue Defendant Cho and Hankook Tire several times in other federal district courts. See Peninsula Asset Management (Cayman), Ltd. v. Hankook Tire Co., Ltd., 2006 WL 2945642 (N.D. Ohio Oct. 13, 2006), rev'd, 509 F.3d 271 (6th Cir. 2007); Han v. Hankook Tire Co., Ltd., 2018 WL 4104198 (N.D. Ohio Aug. 28, 2018); Han v. Fin. Supervisory Serv., 2018 WL 791353 (S.D.N.Y. Feb. 8, 2018).

that the court has jurisdiction. CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1073 (9th Cir. 2011).

When the motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts to withstand a motion to dismiss for lack of personal jurisdiction. Mavrix Photo, Inc. v. Brand Technologies, Inc., 647 F.3d 1218, 1223 (9th Cir. 2011); Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1154 (9th Cir. 2006).

Uncontroverted allegations in the complaint must be taken as true. Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). Conflicts between parties over statements in affidavits must be resolved in plaintiff's favor in evaluating a 12(b)(2) motion to dismiss. Id.

Where there is no applicable federal statute governing personal jurisdiction, the district court applies the law of the state in which the district court sits. Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998). Hawaii's long-arm jurisdictional statute is coextensive with federal due process requirements and the analyses under state law and federal due process are the same. Hawaii Forest & Trail Ltd. v. Davey, 556 F.Supp.2d 1162, 1168 (D. Haw. 2008).

ANALYSIS

I. PERSONAL JURISDICTION

A district court may exercise personal jurisdiction over a defendant who has sufficient minimum contacts with the forum

state when "maintenance of the suit does not offend traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

A district court may exercise either general or specific jurisdiction over a defendant. Helicopteros Nacionales de Colombia S.A. v. Hall, 466 U.S. 408, 414-16 (1984); Doe v. American Nat'l Red Cross, 112 F.3d 1048, 1050-51 (9th Cir. 1997). If the defendant's activities are insufficient to subject him to general jurisdiction, then the court looks to the nature and quality of the defendant's contacts in relation to the cause of action to determine whether specific jurisdiction exists. Lake v. Lake, 817 F.2d 1416, 1420-21 (9th Cir. 1987) (citation omitted).

A. General Jurisdiction

The United States Supreme Court has held that "[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile." Daimler AG v. Bauman, 134 S. Ct. 746, 760 (2014) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011)).

Courts have in rare instances exercised general jurisdiction over an individual who is not domiciled in a jurisdiction. The individual's contacts with a forum must be so substantial that "the defendant can be deemed to be 'present' in that forum for all purposes" so that exercising general jurisdiction over the defendant does not offend traditional notions of fair play and substantial justice. Hendricks v. New Video Channel America,

LLC, No. 2:14-cv-02989-RSWL-SSx, 2015 WL 3616983, at *4 (C.D. Cal. June 8, 2015) (quoting Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1205 (9th Cir. 2006)). A defendant's frequent visits to a forum, or even his owning property in a forum, do not, alone, justify the exercise of general jurisdiction over him. Id. (citing Span Constr. & Eng'g, Inc. v. Stephens, No. CIV-F-06-0286 AWI DLB, 2006 WL 1883391, at *5 (E.D. Cal. July 7, 2006)).

Plaintiff argues that there is general jurisdiction over Defendant Cho on the basis of his "physical presence" and property ownership in Hawaii.

Plaintiff Han alleges as follows in her Complaint:

> This Court has personal jurisdiction over Defendant because Defendant has engaged in continuous and systematic general business or other contacts that approximate physical presence in Hawaii. On information and belief, having decided to live a retired life in Hawaii, Defendant purchased in his own name as well as names of his family members and has continuously maintained his residence in various places in Hawaii since 1990--including but not limited to a house located at 5611 Kalanianaole Highway, Honolulu, a condominium located at 64 Ironwood Lane, Lahaina, and a condominium located at 1108 Auahi Street 37-A, Honolulu--which, on information and belief, is valued in total at over $15 million. Thus, Defendant made himself at home in this forum; and Defendant's physical presence in this forum has been substantial enough for an assertion by this Court of general jurisdiction over Defendant.

(Compl. at ¶ 11, ECF No. 1).

The mere presence of property in a forum state does not establish sufficient relationship between the owner of the property and the forum state to support the exercise of general

jurisdiction over an unrelated cause of action. Rush v. Savchuk, 444 U.S. 320, 328 (1980). General jurisdiction is lacking unless there are sufficient contacts to satisfy due process. Id. Neither Cho's business activities nor the corporate entities that Plaintiff Han wishes to reach are alleged to have had any connection to Hawaii.

Defendant's ownership of real estate unrelated to the allegations in the Complaint is insufficient to confer general jurisdiction. Plaintiff does not allege that Defendant has any significant contacts with Hawaii separate from Defendant's property ownership. The Court cannot exercise general jurisdiction over Defendant based only on his property ownership in Hawaii.

Plaintiff served Defendant in the Republic of Korea. Plaintiff did not serve Cho in Hawaii where Plaintiff alleges that Defendant has made himself "at home." (Notice of Commencement of Service in a Foreign Country, ECF No. 9).

The Court cannot exercise general jurisdiction over Defendant based on property ownership that is unrelated to the allegations in the complaint.

B. Specific Jurisdiction

If a defendant is not subject to general jurisdiction, the forum state may still assert specific jurisdiction based on the quality and nature of the defendant's contacts with the forum state. Lake, 817 F.2d at 1420 (citation omitted). The jurisdictional analysis under state law and federal due process

are the same because Hawaii's long-arm jurisdictional statute is coextensive with federal due process requirements. Hawaii Forest & Trail Ltd. v. Davey, 556 F.Supp.2d 1162, 1168 (D. Haw. 2008).

The Ninth Circuit Court of Appeals employs a three-part test which requires the plaintiff to show that:

(1) the nonresident defendant has purposefully directed his activities or consummated some transaction within or with the forum state;

(2) the claim arises out of or relates to the defendant's forum-related activity; and

(3) the exercise of jurisdiction comports with fair play and substantial justice.

Schwarzenegger, 374 F.3d at 802.

If the plaintiff fails to satisfy either of the first two prongs of the test, jurisdiction in the forum would deprive the defendant of due process of law. Id. If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant. Id.

(1) Purposeful Availment

The purposeful availment requirement protects a defendant from being hauled into a jurisdiction merely because of "random," "fortuitous," or "attenuated" contacts with the jurisdiction. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985).

Plaintiff Han does not allege that Defendant Cho, Hankook Tire, or Ocean Capital Investment conducted business in Hawaii. The subject matter of the lawsuit relates to actions and agreements Plaintiff claims took place in South Korea, Malaysia, and other parts of the United States more than twenty years ago.

(Compl. ¶¶ 14-31, ECF No. 1). There has been no intentional action alleged to be expressly aimed at Hawaii. Plaintiff Han has not demonstrated that Defendant Cho purposely directed any activities towards the forum.

(2) Arising out of forum-related activities

The second prong requires that the claim arise out of or be related to the defendant's forum-related activities. See Panavision, 141 F.3d at 1322.

Plaintiff does not allege that the claims in the Complaint arose out of any business transaction, tortious act or contract action that occurred in Hawaii. See Haw. Rev. Stat. § 634-35(1)-(4). Plaintiff also does not allege that the claims arose out of or are related to Defendant Cho's ownership, use, or possession of real estate in Hawaii.

Plaintiff's fraud based claims arising from the actions of Hankook Tire and Ocean Capital Investment are unrelated to Defendant's Cho ownership of property in Hawaii.

(3) Reasonableness

The last prong states that the exercise of jurisdiction must comport with fair play and substantial justice. It would be unreasonable to find specific jurisdiction when Defendant Cho has not met the first two prongs of the test. See Panavision, 141 F.3d at 1322.

Defendant Cho is not subject to either general or specific jurisdiction in Hawaii.

C. Plaintiff Han's Request for Jurisdictional Discovery

Plaintiff Han argues that rather than dismiss the action for lack of personal jurisdiction, Plaintiff should be permitted to conduct jurisdictional discovery that may reveal Defendant Cho's ongoing contacts and relationships in Hawaii. (Pl.'s Opp'n at pp. 3-7, ECF No. 17).

Discovery is warranted where "pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." Laub v. U.S. Dep't of the Interior, 342 F.3d 1080, 1093 (9th Cir. 2003). The Court may deny jurisdictional discovery where a plaintiff's claim of personal jurisdiction appears to be both "attenuated and based on bare allegations in the face of specific denials made by the defendants." Pebble Beach Co., 453 F.3d at 1160 (quoting Terracom v. Valley Nat'l Bank, 49 F.3d 555, 562 (9th Cir. 1995)).

It is uncontroverted that Defendant Cho is a citizen of South Korea. Plaintiff Han does not allege the corporate entities she wishes to hold accountable have any contacts with Hawaii. Plaintiff Han has not provided any basis to justify jurisdictional discovery.

Plaintiff's request for jurisdictional discovery is **DENIED**.

CONCLUSION

Defendant's Motion to Dismiss Complaint (ECF No. 10) is **GRANTED**. The Court does not have personal jurisdiction over

Defendant Cho.

The Court need not review the additional bases for dismissal raised by Defendant Cho because the Court lacks jurisdiction.

IT IS SO ORDERED.

DATED: March 21, 2019, Honolulu, Hawaii.

Helen Gillmor
United States District Judge

APPENDIX D

FILED

AUG 31 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KAREN C. HAN,

Plaintiff-Appellant,

v.

YANGRAI CHO,

Defendant-Appellee.

No. 19-16073

D.C. No. 1:18-cv-00277-HG-KJM
District of Hawaii,
Honolulu

ORDER

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. Civ. P. 35.

Han's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 10) are denied.

No further filings will be entertained in this closed case.

ORIGINAL

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Plaintiff proceeding pro se

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUL 18 2018

at 2 o'clock and 25 min. P M.
SUE BEITIA, CLERK

cc: KJM/TT
Pacer mailed to TT 7/19/18 sps

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Karen C. Han Plaintiff, v. Yangrai Cho Defendant.	**Civil Action No.** **COMPLAINT** **CV18 00277** **(JURY TRIAL DEMANDED)**

Plaintiff Karen C. Han ("Plaintiff" or "Han"), as and for her Complaint against Defendant Yangrai Cho ("Defendant" or "Mr. Cho"), states and alleges as follows:

NATURE OF THE ACTION

1. This is a diversity action to seek a judgment against Defendant, principally asserting claims for piercing-corporate-veil and civil conspiracy to commit fraud. In this action, as for her piercing-corporate-veil claim, pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure ("Fed.R.Civ.P.") 57 Plaintiff seeks a declaration of vicarious liability of Defendant to Plaintiff—

based on a declaration that Ocean Capital Investment (L) Limited ("Ocean") was an alter ego of Defendant; and a declaration that Ocean's corporate veil is pierced to hold Defendant liable to Plaintiff for any and all debts or obligations of Ocean related to Plaintiff's claim against it.

2. As for her civil conspiracy to commit fraud claim, Plaintiff asserts that Defendant is jointly and severally liable with Hankook Tire Co., Ltd. ("Hankook")—of which Defendant was the controlling shareholder at all times relevant to this case—for damages resulting from an illegal financial scheme in an offshore tax haven area planned and implemented by Defendant and Hankook (collectively, "Hankook Party")—in which Plaintiff unknowingly participated at Hankook Party's instructions pursuant to the terms and conditions of the relevant contract into which Plaintiff was fraudulently induced by Hankook Party to enter. Plaintiff brings this action because Hankook Party refused to indemnify such damages incurred by Plaintiff as agreed by the parties in the contract described above.

3. The present case marks Plaintiff's third litigation effort in this prolonged legal battle between Hankook Party and Plaintiff. Previously, in 2008, Plaintiff's second action against Hankook Party in the United States District Court for the Northern District of Ohio (the "Ohio Court") (the "First Ohio Action") was dismissed without prejudice for lack of subject matter jurisdiction. Thereafter, a re-institution of Plaintiff's claims against Hankook Party has been

delayed by a dispute between Plaintiff and the Financial Supervisory Service ("FSS"), a South Korean corporation without capital, over discovery of evidence exclusively within FSS's possession that is critical to both parties' positions in this case—whether the financial transactions at issue in this case were in violation of laws or regulations of South Korea such that the contractual indemnity obligation was triggered to indemnify Plaintiff by Hankook Party. Since 2005, FSS has refused to cooperate with discovery in the United States, claiming entitlement to foreign sovereign immunity. This immunity issue involving FSS was the subject of Plaintiff's litigation efforts for some ten (10) years; currently Plaintiff's action against FSS is pending in the United States District Court for the District of Columbia, bearing docket number 1:18-cv-00141-EGS.

4. On or about September 29, 2017, Plaintiff's action against Hankook, bearing docket number 5:17-cv-02046-SL (the "Ohio Second Action"), primarily asserting breach of contract claim was timely re-instituted in the Ohio Court within Ohio's fifteen (15) year limitations period applicable to breach of contract in writing. The limitations period applicable to Plaintiff's fraud claim against Hankook Party has run while Plaintiff has been disputing the immunity issue with FSS. However, while Plaintiff has been pursuing her rights diligently, FSS, acting in concert with Hankook Party, has not only fraudulently concealed the discovery of Plaintiff's cause of action against

Hankook Party, but has also unlawfully or improperly hampered proof of Plaintiff's case by refusing to provide evidence without any valid grounds. As such, Plaintiff is entitled to invoke equitable tolling to save her fraud claim against Hankook Party in this action as well as the Second Ohio Action.

5. Plaintiff files with this Court this lawsuit against Defendant separately from the Second Ohio Action because at the time of the filing of the Second Ohio Action, Hankook Party rejected Plaintiff's proposal to litigate her cause of action against Hankook Party in the Ohio Court (or any other forum)—which, on information and belief, does not have personal jurisdiction over Defendant.

PARTIES AND RELEVANT NON-PARTIES

6. Plaintiff Han is a citizen of the State of Texas. Han is pursuing this cause of action against Defendant individually and as the real party in interest for Peninsula Asset Management (Cayman) Ltd. ("Peninsula"), which is now defunct.

7. Defendant Cho, a citizen of South Korea, was, at all times material hereto, the Chairman of the Board and controlling shareholder of Hankook, and is currently the Chairman of the Board and controlling shareholder of Hankook Tire Worldwide Co., Ltd., a holding company of Hankook. Non-party Hankook is a global corporate conglomerate organized and existing under the laws of South Korea, with its principal offices located in

Seoul, South Korea. Mr. Cho and Hankook were named as co-defendants in the First Ohio Action. No relief is sought herein against Hankook because upon information and belief, this Court has no personal jurisdiction over Hankook, and parallel relief against Hankook is sought by Plaintiff in the Second Ohio Action. Thus, Hankook is included in this Complaint primarily to present factual allegations.

8. Non-party FSS is a civil special corporation without capital established under the laws of South Korea, with its principal offices located in Seoul, South Korea, which maintains branch offices in New York, NY and Washington, D.C.

9. Non-party No Joon Park ("Park") is the spouse of Han, residing in the State of Texas with Han. Park was an additional plaintiff principally related to a fraud-related claim in the First Ohio Action. Park seeks no relief against Defendant in this action because his claim for damages is largely duplicative of Plaintiff's. He is included in this Complaint primarily to present factual allegations.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this matter and the parties pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy exceeds $75,000.00 exclusive of costs.

11. This Court has personal jurisdiction over Defendant because Defendant has engaged in continuous and systematic general business or other contacts that approximate physical presence in Hawaii. On information and belief, having decided to live a retired life in Hawaii, Defendant purchased in his own name as well as names of his family members and has continuously maintained his residence in various places in Hawaii since 1990—including but not limited to a house located at 5611 Kalanianaole Highway, Honolulu, a condominium located at 64 Ironwood Lane, Lahaina, and a condominium located at 1108 Auahi Street 37-A, Honolulu—which, on information and belief, is valued in total at over $15 million. Thus, Defendant made himself at home in this forum; and Defendant's physical presence in this forum has been substantial enough for an assertion by this Court of general jurisdiction over Defendant.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this judicial district.

FACTUAL ALLEGATIONS

13. Plaintiff incorporates by reference the allegations set forth above as if fully set forth herein.

Hankook Party's Illegal Financial Activities in Offshore Tax Haven Area

14. The events and transactions that gave rise to Plaintiff's claims in this action concern Hankook Party's illegal financial activities in an offshore tax

APPENDIX F

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

KAREN C. HAN, Plaintiff, vs. YANGRAI CHO, Defendant.	CIVIL NO. 18-00277 KJM MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

As briefly explained in Defendant's Motion to Dismiss Complaint, the instant lawsuit brought by Plaintiff KAREN C. HAN ("Plaintiff" or "Han") is the latest of many prior actions that Han, her husband, No Joon Park ("Park") and their company, Peninsula Asset Management (Cayman) Ltd. ("Peninsula") have brought and lost against Defendant Yangrai Cho ("Cho") and Hankook Tire Worldwide Co., Ltd. ("Hankook") related to agreements between Peninsula and an entity called Ocean Capital Investment Limited ("Ocean"). Following dismissal of prior actions filed in Texas and Ohio, Plaintiff Han brought the instant Complaint asserting claims against Defendant Cho for declaratory relief based on alter

ego/piercing the corporate veil, fraud and fraudulent inducement and civil conspiracy to commit fraud.

The Motion seeks dismissal of the action based on lack of personal jurisdiction (Federal Rules of Civil Procedure Rule 12(b)(2)), lack of subject matter jurisdiction (Federal Rules of Civil Procedure Rule 12(b)(1)); failure to state a claim upon which relief can be granted (Federal Rules of Civil Procedure Rule 12(b)(6)); and failure to join indispensable parties under Federal Rules of Civil Procedure Rule 19 (Federal Rules of Civil Procedure Rule 12(b)(7)).

II. APPLICABLE LAW AND STANDARDS OF REVIEW

A court should dismiss a suit for failure to state a claim upon which relief can be granted if the complaint does not provide fair notice of the claim and does not state factual allegations showing that the right to relief is plausible. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 & n.3 (2007). While the Court must construe the Complaint in a light most favorable to Plaintiff, a claim must be supported by factual allegations such that it is "plausible on its face." A claim is facially plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Twombly*, 550 U.S. at 570, and *Iqbal*, 129 S.Ct. at 1949.

Courts may "consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir.2003); See *also Cooper v. Pickett*, 137 F.3d 616, 622–23 (9th Cir.1997) (When ruling on a motion to dismiss, a court may also consider documents central to the allegations in a complaint even if the documents are not attached to the complaint, so long as the authenticity of the documents is undisputed.); *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.1992) (Courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.").

III. THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT SUCH THAT RULE 12(b)(2) APPLIES

Defendant moves for dismissal under F.R.C.P. 12(b)(2) for a lack of personal jurisdiction as Defendant is a Korean citizen who is not a citizen or resident of the Hawaii. (Complaint, Doc. #1, PageID #4, ¶6). Hawaii's long-arm statute provides that any person whether or not a citizen or resident of the state submits to jurisdiction of Hawaii if the cause of action arises from the transaction of any business in the state, commission of a tortious act within the state, ownership, use, or possession of real estate, or contract to insure a person,

property, or risk located in the state at the time of contracting. See HRS ¶634-35(a). Hawai'i Revised Statutes §634-35(c) requires that the cause of action relate to the defendant's contacts in Hawaii. *Commercial Insurance Company of Newark, New Jersey v. Pacific-Peru Construction Corporation*, 558 F.2d 948, 955 (9th Cir. 1977); *Hawaii Credit Card Corp. v. Continental Credit Card Corp.*, 290 F.Supp. 848, 851 (D.Hawaii 1968).

Here, while Defendant owns vacation property in Hawaii, this lawsuit does not relate in any way to the ownership of that property. The subject matter of the lawsuit relates to actions and agreements that took place in Malaysia and/or Korea more than 20 years ago. (Complaint, Doc. #1, PageID #6-15, ¶14-31). As property ownership alone is insufficient to confer personal jurisdiction over a defendant, the Court lacks personal jurisdiction over Defendant Cho in this action. *Resorts World At Sentosa Pte Ltd. v. Chan*, CV 15-00499 DKW-KJM, 2016 WL 1587219, at *3 (D. Haw. Apr. 18, 2016).

IV. DISMISSAL IS WARRANTED UNDER FRCP RULES (12)(b)(1) AND 12(b) (7)

It is well-established that "[t]he party asserting subject matter jurisdiction has the burden of proving its existence." *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir.2009). Here, the Complaint asserts that this Court has jurisdiction over the matter and parties pursuant to 28 U.S.C. § 1332(a) based on complete diversity of citizenship. Diversity jurisdiction, however, does not encompass

foreign plaintiffs suing foreign defendants." *Faysound Ltd. v. United Coconut Chemicals, Inc.,* 878 F.2d 290, 294 (9th Cir. 1989) *quoting Cheng v. Boeing Co.,* 708 F.2d 1406, 1412 (9th Cir.) cert. denied, 464 U.S. 1017, 104 S.Ct. 549, 78 L.Ed.2d 723 (1983).

Under Federal Rules of Civil Procedure Rule 19, a necessary and indispensable party whose presence would destroy subject-matter jurisdiction requires dismissal of the case. *Republic of Philippines v. Pimentel,* 553 U.S. 851, 862-63, 871-72 (2008). In this case, Peninsula is an indispensable party to Plaintiff's claims. The issue of whether or not Peninsula is an indispensable party has been determined twice by the United States District Court Eastern Division of Ohio. *See* Exhibit "A" attached hereto and incorporated by reference. Peninsula's inclusion as a Plaintiff would place foreigners on both sides of the case thus destroying diversity jurisdiction (Peninsula is a Grand Cayman Islands corporation and Defendant Cho is a citizen of Korea).

Han alleges she has standing and capacity to sue not just in her own name but as "the real party in interest for Peninsula, which is now defunct." (Compl., ¶6, PageID #4). Under FRCP Rule 17(b)(3), parties like Han who purport to sue in a representative capacity have their capacity determined by the law of the forum state. The general rule is that a corporation and its shareholders are to be treated as distinct legal entities. *Chung v. Animal Clinic, Inc.,* 63 Haw. 642, 645, 636 P.2d

721, 723 (1981). "[S]tockholders and guarantors of a corporation do not have the right to pursue an action on their own behalf when the cause of action accrues to the corporation." *Joy A. McElroy, M.D., Inc. v. Maryl Group, Inc.,* 107 Hawai'i 423, 431, 114 P.3d 929, 937 (Ct. App. 2005), as amended (June 14, 2005).

Han's claims are inextricably intertwined with conduct involving Peninsula as a corporate entity, as all actions complained of were actions taken by Peninsula (presumably through Han and Park) related to the contract between Peninsula and Ocean. Moreover, under FRCP Rule 23.1 and HRCP Rule 23.1, the shareholder must file a verified complaint alleging facts with particularity, including all efforts to convince corporate directors, shareholders, or members to file the action at issue. Plaintiff has failed to do so.

Here, to the extent Han sues as a shareholder on Peninsula's behalf, she (1) lacks standing and capacity to sue and (2) has not satisfied Rule 23.1. Indeed, she readily admits in her complaint and brief that Peninsula isn't a party to this action but is "defunct." Han's attempt to sue on Peninsula's behalf cannot prevent dismissal because the Ohio Court previously ruled that Peninsula was an indispensable party. Peninsula's presence there destroyed diversity and deprived the court of jurisdiction just as it does in this case. Han has filed this action without naming Peninsula so as to evade the diversity rule. But she cannot finesse this joinder/diversity quandary by alleging, contrary to the authorities cited above,

that she can act as Peninsula's representative by bringing this action in her own name.

Nor does Han's allegation that Peninsula is "defunct" require a different result. If Peninsula is truly "defunct," Han made it so by "decid[ing] to discontinue Peninsula's business." (Compl., ¶29, PageID #14). Further, Han previously represented to the Ohio Court that although Peninsula had ceased doing business, it "has not been liquidated yet and still exists legally"-that it "exists for this lawsuit while it is dormant business-wise." (Case No. 5:04-cv-01153-DDD; Doc. #216, PageID #8681-8682). Thus, the fact that Peninsula may be "defunct" from a business standpoint doesn't mean it ceased to exist for joinder purposes.

V. DISMISSAL IS WARRANTED UNDER FRCP RULE 12(b)(6) (FAILURE TO STATE A CLAIM)

The claims against Defendant Cho are based on allegations that Ocean is an alter ego of Defendant Cho and Hankook where there have been no judgments obtained or actions pursued to determine Ocean's liability. (*See* Compl. At ¶¶s 74-80). "Piercing the corporate veil is not itself an independent … cause of action, 'but rather is a means of imposing liability on an underlying cause of action.'" *Peacock v. Thomas,* 516 U.S. 349, 354 (1996). Thus, an underlying claim or judgment against an underlying corporate entity is a prerequisite to piercing the veil and pursuing a shareholder. *See In re Expert South Tulsa, LLC*, 506 B.R. 298, 301 (Bankr. D. Kan. 2011) (Alter-ego doctrine "merely imposes liability against a

second corporation or individual upon an underlying cause of action ... brought against the first corporation."); *Hardy v. Brock*, 826 So.2d 71, 75-76 (Miss. 2002) ("[F]or there to be alter ego liability placed on one shareholder of a corporation, there must be a claim in existence against the corporation...."); *Five Points Hotel Partnership v. Pinsonneault*, 2014 WL 1713623, *4 (D. Ariz.) (action to pierce corporate veil "is merely a procedure to enforce an underlying judgment."); *Powertrain, Inc. v. Ma,* 88 F.Supp.3d 679, 703 (N.D. Miss. 2015).

Here, Han has not obtained a judgment against Ocean, and she *cannot* obtain one now because Ocean isn't a party to this case and the Ohio case has been dismissed with prejudice. See Exhibit "B" attached hereto and incorporated by reference. Further, Han alleges that Ocean's only share was issued to a Malaysian company, not to Hankook. (Doc. #1 at PageID #:33, ¶75). Piercing the corporate veil is not an available remedy because Han hasn't alleged that Defendant or Hankook was an Ocean shareholder. Even if the factual allegations are assumed to be true, they do not show a right to relief that is more than speculative as there is no judgment against Ocean or Hankook, and in fact, Plaintiff's lawsuit against Hankook has been dismissed in the Ohio Court. *Twombly*, 550 U.S. at 555; See *Iqbal*, 556 U.S. at 678-79.

Moreover, Plaintiff's claims are subject to a six-year statute of limitations because they sound in fraud. "Personal actions of any nature whatsoever not

specifically covered by the laws of the State" have a limitations period of six years. HRS § 657–1(4). Claims sounding in fraud, whether based on state or federal law, are governed by this six-year statute of limitations. *Mroz v. Hoaloha Na Eha, Inc.*, 360 F.Supp.2d 1122, 1135 (D.Haw.2005) (citing *Eastman v. McGowan*, 86 Hawai'i 21, 946 P.2d 1317, 1323 (1997)); See *also Au v. Au*, 63 Haw. 210, 217, 626 P.2d 173, 179 (1981) (holding that "[s]ince fraudulent representations are not governed by a specific limitations period, the general limitations period set forth in HRS § 657–1(4) applies"); *Trost v. Embernate*, 2011 WL 6101543, *3 (D.Haw. Dec. 7, 2011) ("Accordingly, because Plaintiff's Complaint asserts a breach of fiduciary duty claim based on fraud, the applicable statute of limitations is HRS § 657–1(4)."). "Claims for fraud, whether based on state or federal law, arise when the fraud is or should have been discovered." *Mroz*, 360 F.Supp.2d 1122, 1135 (citing *First Interstate Bank v. Hartley*, 681 F.Supp. 1457, 1460 (D.Haw.1988)); See *also Assoc. of Apartment Owners of Newtown Meadows ex rel. its Bd. of Dirs. v. Venture 15, Inc.*, 115 Hawai'i 232, 270, 167 P.3d 225, 277 (2007) (Holding that under HRS § 657–7, "a claim accrues when the plaintiff discovers, or through the use of reasonable diligence should have discovered[,]" the cause of action.).

In this case, Plaintiff was aware of the facts and causes of action since at least 2002 when the first lawsuit was filed in Texas or at the latest in 2004 when

the first Ohio lawsuit was filed. Therefore, all of Plaintiff's claims are barred by the applicable statute of limitations.

Plaintiff Han invokes "equitable tolling" in an attempt to rescue her time-barred fraud claims. Her Complaint states in conclusory fashion that Financial Supervisory Service ("FSS"), a South Korean entity, acted in concert with Hankook to fraudulently conceal discovery of Han's claims against Hankook. She also alleges that FSS "hampered proof of Plaintiff's case by refusing to provide evidence without any valid grounds." (Compl., ¶4 at PageID#:4). But this court need not accept as true mere legal conclusions. And "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Significantly, Han makes no specific allegation of how Defendant Cho acted in concert with the FSS or of any actions taken by Defendant Cho. Equitable tolling should be used "sparingly" and only "where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89, 96 (1990). "'[L]ong-settled equitable-tolling principles' instruct that " '[g]enerally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and

(2) that some extraordinary circumstances stood in his way.' " *Credit Suisse*, 132 S.Ct. at 1419 (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S.Ct. 1807, 161 L.Ed.2d 669 (2005) (emphasis omitted)); See *also Ramirez v. Yates*, 571 F.3d 993, 997 (9th Cir.2009).

As to the first element, "[t]he standard for reasonable diligence does not require an overzealous or extreme pursuit of any and every avenue of relief. It requires the effort that a reasonable person might be expected to deliver under his or her particular circumstances." *Doe v. Busby*, 661 F.3d 1001, 1015 (9th Cir.2011). Central to the analysis is whether the plaintiff was "without any fault" in pursuing his claim. *Fed. Election Comm'n v. Williams*, 104 F.3d 237, 240 (9th Cir.1996). *Kwai Fun Wong v. Beebe*, 732 F.3d 1030, 1052 (9th Cir. 2013), *aff'd and remanded sub nom. United States v. Kwai Fun Wong*, 135 S. Ct. 1625, 191 L. Ed. 2d 533 (2015). "With regard to the second showing, 'a garden variety claim of excusable neglect, such as a simple miscalculation that leads a lawyer to miss a filing deadline, does not warrant equitable tolling.' Holland, 130 S.Ct. at 2564 (internal quotation marks and citations omitted). Instead, a litigant must show that 'extraordinary circumstances were the cause of his untimeliness and ... ma[de] it impossible to file [the document] on time.' Ramirez, 571 F.3d at 997 (internal quotation marks and citations omitted) (second alteration in original). Accordingly, '[e]quitable tolling is typically granted when litigants are unable to file timely

[documents] as a result of external circumstances beyond their direct control.' Harris v. Carter, 515 F.3d 1051, 1055 (9th Cir.2008). *Kwai Fun Wong*, 732 F.3d at 1052.

Han claims her delay in re-filing her case against Hankook was due to a dispute between her and FSS. She cites to a 2018 federal court case—Case No. 1:18-cv-00141-EGS—filed in the District of Columbia to show that she diligently pursued documents to prove claims in this suit. (Compl., ¶3, PageID#:3). Thus, Han's evidence of "diligence" is a lawsuit filed *ten years* after the United States District Court in Ohio dismissed Han's first federal case against Hankook. Plaintiff fails to mention a case cited in the second Ohio lawsuit, a 2017 federal case—Case No. 17-cv-04383-GBD-BCM—filed in the Southern District of New York, where Han brought claims against the FSS, which has been dismissed. The docket of the New York case shows it was dismissed in February 2018, and no appeal was filed. (Exhibits C, D, and E). Moreover, the New York court held an oral argument in that case. (Exhibit F). During that argument, Han's counsel stated that Han delayed her filing due to an "unfavorable political climate" in South Korea. See (Exhibit F at 8-9). When asked if any statute allowed tolling when a political climate is unfavorable, Han's counsel said Han intended to argue that in the Ohio court. *Id.* at 8-9.

In sum, Han's Complaint offers no basis for the conclusory statement that she is entitled to equitable tolling, especially in light of her comments in the New York action. Moreover, she does not even attempt to explain why any FSS action should be attributable to Defendant Cho. Defendant Cho made no representations about statutes of limitation and did nothing to trick Han into delaying her filing. Han claims she needed more evidence, but she sued Hankook in Texas in 2002, and she sued Hankook in the Ohio Court in 2004 under the same set of facts and actions. She should have pursued evidence through discovery years ago and the instant action is time-barred.

V. CONCLUSION

Because the allegations of the Complaint demonstrate that Plaintiff Han cannot possibly prevail, Defendant Cho respectfully requests dismissal of the Complaint as a matter of law based on lack of personal jurisdiction, lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted and failure to join indispensable parties under Federal Rules of Civil Procedure Rule 19.

DATED: Honolulu, Hawaii, October 29, 2018.

/s/ Nadine Y. Ando
NADINE Y. ANDO

Attorney for Defendant
YANGRAI CHO

APPENDIX G

ORIGINAL

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Plaintiff proceeding pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

KAREN C. HAN Plaintiff, v. YANGRAI CHO, Defendant.	Civil No. 18-cv-00277-HG-KJM MEMORANDUM IN SUPPORT OF MOTION; EXHIBIT "A" - DECLARATION OF NO JOON PARK

Korea," which was Mr. Cho's place of business.[1] (*See* Summons, ECF No. 3 at PageID # 71) Thereafter, Plaintiff served such summons and the Complaint on Mr. Cho at his place of business in South Korea through the Hague Service Convention. (*See* Notice of Commencement of Service in a Foreign Country, ECF No. 9)

C. Mr. Cho's Failure To Submit His Declaration To Rebut His Actual Residency In Hawaii

On October 29, 2018, Mr. Cho filed his motion to dismiss the Complaint based on various grounds, including for lack of personal jurisdiction ("Motion To Dismiss").[2] (ECF No. 10) However, Mr. Cho failed to submit any sworn evidence in the form of affidavit or declaration alongside the Motion to Dismiss in order to rebut his alleged actual residency in Hawaii or contacts with Hawaii that proximate his physical presence in Hawaii, based on which Plaintiff claims the Court can exercise general personal jurisdiction over him.

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[1] In an apparent attempt to save time and money, Plaintiff chose to serve Mr. Cho at his well-known place of business in South Korea, rather than at his home in Hawaii, because Plaintiff did not know for sure where to serve Mr. Cho in Hawaii as he has multiple, at least three, residential addresses in Hawaii.

[2] Mr. Cho retained Ms. Ando of McCorriston Miller Mukai MacKinnon LLP as his counsel. Recently, it was drawn to Plaintiff's attention that the Honorable Judge Kenneth J. Mansfield had worked for the same law firm for more than 15 years before he was selected as a Magistrate Judge for this Court. Currently, Plaintiff lacks the requisite information or knowledge to develop any theory or claim for any impropriety regarding this matter such as ex parte communication. However, Plaintiff preserves this point for review on appeal, if any, or in any other proceedings, particularly given that in this Motion, Plaintiff claims that the Order is manifestly unjust.

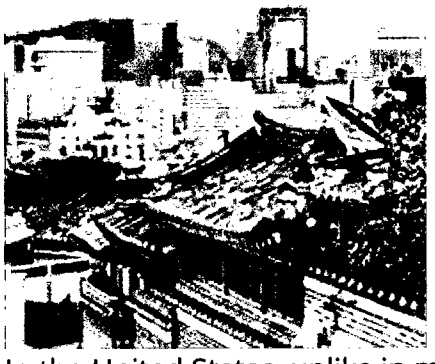
APPENDIX H

Kelley Drye

Korea's Financial Supervisory Service Retains Sovereign Immunity, For Now

Kelley Drye Client Advisory

MARCH 20, 2018



In the United States, unlike in many civil law jurisdictions, the federal courts are vested with broad civil subpoena power. That power, however, is limited by the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1602-1611, which exempts most foreign states and their "instrumentalities" from the jurisdiction of the U.S. Courts.

In January 2009, the Korean Ministry of Finance and Economy (MOFAE) decided to release the Financial Supervisory Service of the Republic of Korea (FSS), the nation's principal financial regulator, from its prior designation as "public institution" in order "to secure [its] autonomy and independence ... from the government." In a recent decision, the U.S. District Court declined to rule whether that decision by the MOFAE caused the FSS to lose its FSIA exemption.

Three years prior, the U.S. Court of Appeals for the Second Circuit had ruled that the FSS did have sovereign immunity, finding that it "has oversight duties similar to this country's Securities and Exchange Commission." *Peninsula Asset Mgmt. (Cayman) v. Hankook Tire Co.*, 476 F.3d 140, 142 (2d Cir. 2006). The Court of Appeals came to that conclusion by applying the five-factor test set forth in *Filler v. Hanvit Bank*, 378 F.3d 213, 217 (2d Cir. 2004), a case in which the Court granted FSIA status to the Korean Deposit Insurance Corporation.

In 2017, however, plaintiff Karen C. Han sought to revisit *Peninsula Asset Mgmt.* in light of the MOFAE's 2009 decision. She filed a declaratory judgment action in the U.S. District Court for the Southern District of New York (Manhattan), a district in which the FSS maintains an office. *Han v. Financial Supervisory Service*, 17-CV-4383.

043a

The 2017 case is the latest chapter in a fifteen-year legal battle between plaintiff Han and non-party Hankook Tire Co., Ltd. (Hankook), a South Korean corporation with facilities in Ohio. In 1988, a corporation known as Peninsula Asset Management (Cayman) Ltd. (Peninsula), of which Han was the sole shareholder, had contracted with Hankook to place certain zero coupon notes issued by a Malaysian investment company. Hankook's acquisition of the notes allegedly caused Peninsula to inadvertently violate South Korean money laundering laws.

Han and Peninsula responded by bringing suit against Hankook in Texas and Ohio, asserting contractual indemnity and other causes of action. In March, 2005, the plaintiffs in the Ohio action served the FSS with a subpoena in New York seeking testimony and documents about the FSS's investigation of the matter. When the FSS declined to comply with the subpoena, the District Court denied the plaintiffs' motion to hold the FSS in contempt. On appeal, the Second Circuit affirmed that denial, holding that: "FSS is entitled to foreign sovereign immunity" since it is "an agency or instrumentality of a foreign state." *Peninsula*, 476 F.3d at 143-44.

Deprived the evidence they claimed to need from the FSS, Han and the other plaintiffs lost their case against Hankook. Last year, however, Han returned to Court, seeking a declaration that FSS was no longer a sovereign subject to immunity, but rather was now required to comply with her subpoena. The FSS responded by moving to dismiss Han's action, claiming it remained exempt from federal court jurisdiction under FSIA.

In support of its motion, the FSS submitted, *inter alia*, the affidavit of Seong Taek Shin, who served as Korea's Chief Justice of the Supreme Court from 1994-2000. Mr. Shin explained that the FSS remains a "quasi-government supervisory authority" under Korean law, and thus is still subject to FSIA immunity under American law.

The District Court referred the FSS's motion to the Magistrate, who recommended that the case be dismissed on the ground that the case did not present an "actual case or controversy" as required by Article III of the U.S. Constitution and the Declaratory Judgment Act, 28 U.S.C. § 2201(a). According to the Magistrate: "Plaintiff Han has also put the cart before the horse. At the time she filed this action, she had no case pending against Hankook, in any jurisdiction, and therefore no means of obtaining or serving a subpoena upon FSS."

On February 8, 2018, the District Court issued a Decision and Order adopting the Magistrate's Report, finding that "plaintiff must clear a number of hurdles [in the Ohio action against Hankook] before the foreign sovereign immunity question posed by her putative declaratory judgment action can cross the line from an abstract question to an actual controversy." In so ruling, the District Court left unresolved the underlying question of whether the FSS still qualifies for exemption under FSIA.

Meanwhile, Hankook has recently moved to dismiss Han's latest complaint on a number of substantive grounds. That motion is pending. *Han v. Hankook Tire Co., Ltd.*, 5:17-CV-02046. If it is granted, then the FSIA question will remain unanswered for the foreseeable future.

For now, the FSS remains a state instrumentality, immune from discovery in the U.S. courts. That, however, does not limit *voluntary* intergovernmental requests. For example, in 2015, the

U.S. Commodity Futures Trading Commission executed a Memorandum of Understanding with the FSS and the Korean Financial Services Commission to cooperate and exchange "information in the supervision and oversight of clearing organizations that operate on a cross-border basis in both the United States and the Republic of Korea." And, just a few weeks ago, the New York State Department of Financial Services asked the FSS and Korea's Financial Intelligence Unit to provide it with crypt-currency data from six major Korean banks.

As a result, it is conceivable that FSS materials and information exchanged in this manner may yet find their way into U.S. litigation.