

The Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington)
corporation,)

Plaintiff,)

v.)

KNITTING FEVER, INC., a New York)
Corporation, DESIGNER YARNS, LTD., a)
corporation of England, FILATURA)

PETTINATA V.V.G. DI STEFANO VACCARI)
& C. (S.A.S.) an entity organized or existing)
under the laws of Italy, SION ELALOUF, an)
individual, DIANE ELALOUF, an individual,)
JAY OPPERMAN, an individual, DEBBIE)
BLISS, an individual, DAVID WATT, an)
individual and DOES 1-50,)

Defendants.)

Case No. C10-00861 RSM

**SUPPLEMENTAL BRIEF IN
RESPONSE TO COURT’S ORDER**

**Noted on Motion Calendar:
November 19, 2010**

I. INTRODUCTION

Pursuant to the Court’s Order of November 17, 2010, Defendants respectfully submit this
Supplemental Brief.

II. ARGUMENT

A. The Alter-Ego Doctrine Does Not Apply to Defendant Sion Elalouf

As the party seeking to invoke jurisdiction in the Western District of Washington, Plaintiff, Cascade Yarns, Inc. (“Cascade”), bears the burden of establishing that jurisdiction is proper. *See AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). In the absence of sufficient contacts between Defendant Sion Elalouf and this forum, Cascade must establish that an alter-ego relationship exists between Mr. Elalouf and Defendant Knitting Fever, Inc. (“KFI”). Aside from Cascade’s conclusory statements, Cascade offers no evidence to support this allegation. Instead, Cascade’s argument is grounded in the false premise that a corporate officer who is involved in the daily business of his corporation is necessarily operating the corporate entity as a mere sham. While an exception exists where the corporation is the alter ego of an individual, this only applies where justice requires that the corporate entity be disregarded. *Flynt Distributing Co. v. Harvey*, 734 F.2d 1389, 1393 (9th Cir. 1984). Courts caution that for jurisdictional purposes, the corporate veil should be pierced only in “exceptional circumstances.” *Langlois v. Déjà Vu, Inc.*, 984 F. Supp. 1327, 1336 (W.D. Wash. 1997).

To carry its burden, Cascade must make a *prima facie* showing that: “(1) that there is such unity of interest and ownership that the separate personalities . . . no longer exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice.” *AT&T*, 94 F.3d at 588. Courts consider a number of factors in assessing whether to pierce the corporate veil, including: “the amount of respect given to the separate identity of the corporation by its shareholders, the fraudulent intent of the incorporators, and the degree of injustice visited on the litigants by recognition of the corporate entity.” *Orloff v. Allman*, 819 F.2d 904, 909 (9th Cir. 1987). A corporation does not lose its separate identity merely because it is wholly owned by a

1 single individual, so long as corporate formalities are maintained. *Grayson v. Nordic Constr.*
2 *Co.*, 599 P.2d 1271, 1273 (Wash. 1979); *see also Harris Rutsky & Co. Ins. Servs. v. Bell &*
3 *Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003). The Ninth Circuit has found that corporate
4 formalities are maintained where the parent reviews and approves major decisions, files
5 consolidated tax returns, and participates in pricing decisions because these activities “reflect no
6 more than a normal parent-subsidary relationship.” *AT&T*, 94 F.3d at 591.

7 In its complaint, Cascade summarily alleges that KFI is an alter ego of Mr. Elalouf
8 because Mr. Elalouf sets the corporation’s trade policies and practices. *See Amended Compl.* at
9 ¶ 8. Cascade fails to explain, however, how this activity falls outside the ordinary scope of a
10 chief executive’s responsibilities. Similar to the activities described by the Ninth Circuit in
11 *AT&T*, setting and approving major decisions like trade policy is a normal activity for a chief
12 executive to perform for his corporation. Cascade also alleges that Mr. Elalouf is “the sole or
13 controlling shareholder and chief executive of KFI.” Yet, as the Washington Supreme Court
14 recognized in *Grayson*, such an allegation, without more, is not enough to pierce the corporate
15 veil. *Grayson*, 599 P.2d at 1273; *see also Becker Family Builders Co. v. FDIC*, 2010 U.S. Dist.
16 LEXIS 95962, at *10 (W.D. Wash. Sept. 10, 2010) (“A corporation’s separate legal entity is not
17 lost merely because all of its stock is held by a single corporation, members of a single family, or
18 by one person.”).

19 In its thirty-three page complaint, Cascade fails to allege *any* facts to support a finding
20 that Mr. Elalouf fraudulently intended to use KFI as an alter ego or that justice could not be
21 served without asserting jurisdiction over Mr. Elalouf. *See Langlois*, 984 F. Supp. at 1341
22 (declining to pierce the corporate veil where plaintiff “provided no evidence regarding the
23 corporate structure or capitalization” of the defendant). Thus, Cascade Yarns has not met its

1 burden of presenting competent evidence that jurisdiction over Mr. Elalouf exists under an alter
2 ego theory. Accordingly, Mr. Elalouf urges this court to grant his motion to dismiss for lack of
3 personal jurisdiction.

4
5 **B. 18 U.S.C. §1965(b) Does Not Apply to Defendant David Watt**

6 As an initial matter, RICO's provision for nationwide service of process, 18 U.S.C.
7 §1965(b), does not apply to a defendant, like Mr. David Watt, who was served outside the United
8 States. Under RICO's nationwide service provision, "[w]here a defendant is properly served *in*
9 *the United States* under RICO's nationwide service provision, that defendant's national contacts,
10 rather than its minimum contacts with the forum state, determine whether the district court has
11 personal jurisdiction over the defendant." *Doe v. Unocal Corp.*, 27 F. Supp.2d 1174, 1182 (C.D.
12 Cal. 1998) (emphasis added). In the present case, Mr. Watt was not served in the United States,
13 but rather in his home sovereign, England. *See* [Dkt. 41.] This is not simply a distinction
14 without a difference.

15 "[S]ervice must be effected pursuant to RICO's service provisions before a plaintiff may
16 rely on a defendant's national contacts to establish personal jurisdiction over the defendant."
17 *Doe*, 27 F. Supp.2d at 1183. "This distinction is important because RICO does not provide for
18 worldwide service, and, thus if [Mr. Watt] was served pursuant to a method other than RICO, a
19 nationwide contacts analysis would not automatically apply." *Darrick Enters. v. Mitsubishi*
20 *Motors Corp.*, 2007 U.S. Dist. LEXIS 72986, at *82 (D.N.J. Sept. 28, 2007). In other words, 18
21 U.S.C. §1965(b) by its terms, applies only to those defendants who have been served *within* the
22 United States and not to foreign defendants, such as Mr. Watt, who are served *outside* the
23 territorial bounds of the Federal Judiciary. *See, e.g., Nat'l Asbestos Workers Med. Fund v. Philip*

1 *Morris, Inc.*, 86 F. Supp. 2d 137, 139 (E.D.N.Y. 2000) (“[B]ecause [defendant] was not served
2 with process in accordance with RICO’s nationwide service provision. Rule 4(k)(1)(D) does not
3 afford a basis for [personal] jurisdiction.”).

4 The court in *National Asbestos Workers* reasoned that section 1965(b)’s language
5 limiting nationwide service of process to parties “residing in any other district . . . appears to
6 limit the section’s coverage to United States residents.” *Id.* at 140. Insofar as RICO contains no
7 provision for worldwide service, a plaintiff who attempts to obtain personal jurisdiction over a
8 foreign national served outside the United States “must rely on the long-arm statute of the state
9 in which he files his suit.” *Stauffacher v. Bennett*, 969 F.2d 455, 460 (7th Cir. 1992) (collecting
10 cases with similar holdings). In other words, “because RICO’s ‘national contacts’ test is
11 predicated on the rule that a court may obtain personal jurisdiction over a defendant by effecting
12 service under a federal statute authorizing nationwide or worldwide service, RICO does not
13 apply where, as here, the defendant is served outside of the United States. *Doe*, 27 F. Supp.2d at
14 1184. “Consequently, to establish that the Court has personal jurisdiction over [Mr. Watt],
15 plaintiff[] must rely on the traditional minimum contacts analysis associated with service of
16 process under [the forum’s] long-arm statute.” *Id.*

17 As detailed in the pending Motion to Dismiss, Cascade has not offered **any** evidence of
18 sufficient contacts between Mr. Watt and the United States generally, or the State of Washington
19 specifically, that would bring him within either the purview of Washington’s long-arm statute or
20 Rule 4(k)(2). *See* Motion to Dismiss at 4-10. [Dkt. 34.] The Complaint does not contain any
21 allegations regarding alleged contacts between Mr. Watt and the United States. In fact, the
22 Complaint alleges that Mr. Watt is a subject of the United Kingdom and that his regular business
23 address is also in the United Kingdom. *See* Compl. ¶ 12. The only evidence alleged in the

1 Complaint of other contacts with the United States is that Mr. Watt received a letter originating
2 from an Italian company of which a United States citizen located in New York was also a
3 recipient. *See id.* ¶ 52-53.

4 There is no allegation that Mr. Watt, either in connection with the alleged scheme or
5 otherwise, has any other contacts in his individual capacity with the United States. Cascade
6 tacitly admits as much in its response to Mr. Watt’s Motion to Dismiss for Lack of Personal
7 Jurisdiction. [Dkt. 55.] There, the only response Cascade can conjure is that “Mr. Watt is
8 actively involved in the management of Designer Yarns.” Cascade, however, does not, because
9 it cannot, allege that Designer Yarns is merely the alter ego of Mr. Watt. Ultimately then,
10 Cascade’s theory of personal jurisdiction over Mr. Watt is that any individual whose employer
11 has purportedly sufficient minimum contacts with the United States is subject to personal
12 jurisdiction in his or her individual capacity. No case has ever interpreted the Fifth
13 Amendment’s Due Process protections to be so illusory.

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III. CONCLUSION

For the foregoing reasons and those contained in its previous submissions, Messrs. Elalouf and Watt respectfully request that the Motion to Dismiss be granted.

DATED this 29th day of November, 2010.

Respectfully submitted,

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1 **CERTIFICATE OF ELECTRONIC SERVICE**

2
3 I hereby certify that on the date set forth below, I electronically filed the foregoing
4 Supplemental Brief with the Clerk of the Court using the CM/ECF system which will send
5 notification of such filing to the following:

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