UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MA KA LAM,

Plaintiff,

v.

RISE HUGE CORPORATION LTD., et al.,

Defendants.

Case No. 22-cv-06094-TLT

ORDER GRANTING MOTION TO DISMISS AND MOOTING MOTION FOR SUMMARY AFFIRMANCE OF ARBITRATION AWARD

ECF: 28, 34

I. INTRODUCTION

The action to uphold an international arbitration award under the Convention on the Recognition and Enforcement of Foreign Arbitration Awards (New York Convention) must be dismissed for lack of personal jurisdiction over Defendant Rise Huge Corporation.

The question is whether specific jurisdiction is appropriate over a Hong Kong defendant in an action brought in California by a Chinese plaintiff where the only "contact" with California is a *contract* between the Hong Kong defendant and a California-defendant.

We hold that specific jurisdiction over defendant Rise Huge is improper. The Court **GRANTS** the motion to dismiss. ECF 28, rendering the Motion for Summary Affirmance of Arbitration Award, ECF 34, **MOOT**.

II. BACKGROUND

A. Factual Background

Plaintiff Ma Ka Lam hired Mr. Chan and Mr. Chen Shaoan ("Chen Brothers"), the sole owners of Defendant Rise Huge, as her nominee/agent to broker two deals acquiring stock in Defendant Twist Bioscience Corporation, one in 2017 and another in 2018. Compl. ¶ 10, 13, 17–18, 21–23. In 2017, Rise Huge funded a $9.5 million payment, and in 2018, a $35 million payment was sent on behalf of Ever Alpha Fund, L.P., where Ma is a limited partner. Compl. ¶ 31, 33.

In March 2020, Mr. Chan declared Rise Huge, not Ma or Ever Alpha, the owner of the Twist stock. Compl. ¶ 34. Rise Huge commenced arbitration proceedings to this effect in August 2020 against Ever Glory Limited and Ever Alpha Fund L.P., seeking distribution of the Twist shares acquired in 2018. Compl. ¶ 35. In September 2020, Ma intervened, asserting ownership over the stock acquired in both transactions.

In June 2022, the Hong Kong International Arbitration Center ruled in favor of Ma and Ever Alpha L.P. in a "partial award" addressing the 2018 investment. Compl. ¶ 36.

One month later, Ma requested that Twist re-issue the shares purchased in 2017 in her name. Compl. ¶ 42. Twist's counsel, however, represented that they would only re-issue the shares when presented with an Order from a Court of competent jurisdiction. Compl. ¶ 44.

B. Procedural Background

The action commenced on October 17, 2022. ECF 1. The Motion to Dismiss was filed March 13, 2023. ECF 27–28. And the Motion for Summary Affirmance on May 9, 2023. ECF 34.

III. LEGAL STANDARD

A. Motion to Dismiss under Rule 12(b)(2)

"Great care and reserve should be exercised when extending our notions of personal jurisdiction to an international field." *Asahi Metal Ind. Co. v. Sup. Ct. of Cal., Solano Cty.*, 480 U.S. 102, 115 (1987).

An action to confirm an international arbitration award requires the Court have personal jurisdiction over the defendant against whom enforcement or property is sought. *Glencore Grain v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1122 (9th Cir. 2002); *see* Elliot Friedman et al., *Glob. Arb. Rev.: Guide to Challenging and Enforcing Arb. Awards* 570 (2019) ("[T]o have jurisdiction over an application for recognition and enforcement of arbitral awards, a US court must have personal jurisdiction over the award debtor."). "When assessing personal jurisdiction to confirm an award under the New York Convention, a court should consider contacts related to the underlying dispute – not only contacts related to the arbitration itself. *Conti 11. Container Schiffarts-GMBH Co. v. MSC Mediterranean Shipping Co.*, 91 F.4th 789, 792 (5th Cir. 2024) (noting that every other circuit to have ruled on the issue holds the same).

Under Rule 12(b)(2), a court must dismiss an action where it does not have personal jurisdiction over a defendant. Fed. R. Civ. Pro. 12(b)(2). In exercising personal jurisdiction, a

district court must abide by the Fourteenth Amendment's Due Process Clause and the state long-arm statute. *Impossible Foods v. Impossible X*, 80 F.4th 1079, 1086 (9th Cir. 2023). California's long-arm statute limits jurisdictional reach to abiding by the U.S. Constitution. Cal. Code Civ. P. § 410.10. Due Process requires "sufficient minimum contacts" with the forum state such that jurisdiction is "reasonable" and "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316–17 (1945). Personal jurisdiction may be either general or specific. *Impossible Foods*, 80 F.4th at 1086.

"[T]he plaintiff bears the burden of establishing that jurisdiction is proper." *Mavrix Photo v. Brand Techs.*, 647 F.3d 1218, 1223 (9th Cir. 2011). "Uncontroverted allegations in the complaint must be taken as true, and factual disputes are construed in the plaintiff's favor." *Freestream Aircraft Ltd. v. Aero L. Grp.*, 905 F.3d 597, 602 (9th Cir. 2018).

IV. DISCUSSION

A. Personal Jurisdiction

The parties dispute whether Rise Huge has sufficient minimum contacts with California. Ma argues that sufficient minimum contacts are established vis-à-vis the 2017 Stock Purchase Agreement ("2017 Agreement") between Rise Huge and Twist, relying on the specific jurisdiction analysis in *Burger King v. Rudzewicz*, 471 U.S. 462 (1985).

A contract must create a "substantial connection" with the forum state so defendant would be on reasonable notice that they could be haled into the forum state in a breach of contract action. *See Burger King*, 471 U.S. at 479. In *Burger King*, the Court found a substantial connection vis-à-vis an agreement between a Florida plaintiff and a Michigan defendant, considering (1) prior business negotiations, (2) the parties' actual course of dealing, and (3) future consequences contemplated by the terms of the contract. *Id.*

1. Prior Negotiations and Actual Course of Dealing

Rise Huge had relatively little involvement during negotiations with Twist. Discussions were solely held between Ma and Twist for the first two months. And when Rise Huge did join, they seemingly took a back-seat. It was Ma who communicated with Twist about how Rise Huge would broker the deal as her nominee/agent. Compl. ¶ 24.

Rise Huge's involvement did, however, increase nearing perfection of the deal. For example, Twist sent them a stack of documents which Rise Huge eventually signed. Rise Huge then sent nearly a $9.5 million payment to Twist, who issued the stock and mailed Rise Huge the

certificate.

In any event, Rise Huge's involvement in negotiations was relatively low. These facts are in stark contrast to those in *Burger King*, where defendant "deliberately reached out" beyond its' borders to execute the agreement. *Burger King*, 471 U.S. at 479. The level of Rise Huge's involvement in the negotiation process fall well short of contributing to a finding that the contract created a "substantial connection" with California, based on the pleadings.

Ma's argues that their own contacts with California, *i.e.*, through Twist, should be imputed on Rise Huge. But "[o]ur inquiry is limited to examining contacts that "proximately result from actions by the defendant *himself*." *Id.* at 475. And Ma did not attempt to argue that she was in an alter ego relationship with Rise Huge.

2. Relationship Contemplated by the Investment Agreements

Additionally, the pleadings do not show that the investment agreements created an ongoing relationship to establish sufficient minimum contacts with the defendant.

A contract is but an intermediary step "to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Burger King*, 471 U.S. at 479.

Ma argues that Rise Huge "expected some form of ongoing relationship with Twist" through the contract such that they would reasonably expect being hailed into California to account for conduct arising out of the contract. Pl.'s Opp. to Mot. to Dismiss, ECF 33, at 15. But the pleadings do not allege how the investment agreements created a sufficient ongoing relationship with Twist such that exercising jurisdiction would not offend traditional notions of fair play and substantial justice. And any relationship created is certainly distinguishable from the business relationship in *Burger King*. The investment agreements are for a one-time stock purchase rather than a 20-year franchisor-franchisee agreement. The business relationship contemplated by the contract in *Burger King* required consistent and ongoing contacts with the forum state, where the Plaintiff Burger King was headquartered. For example, issues with franchisor-defendant's building design, construction fees, rent, and default payments were handled through company headquarters in the forum-state. *Burger King*, 471 U.S. at 480–81.

On the contrary, the purpose of the investment agreements were for a one-time stock purchase. Rise Huge's contractual obligations (*i.e.*, sending the payment), could have been done, and in fact were done, from outside of the forum state, in China. The Court recognizes that a contract is insufficient for establishing minimum contacts in a forum state, unless a defendant

takes action that creates a "substantial connection" with the forum state rather than "random, fortuitous, or attenuated" contacts. *Picot v. Weston*, 780 F.3d 1206, 1212–13 (9th Cir. 2015) (finding an oral agreement and two trips to the forum state insufficient for specific jurisdiction where the contract did not create ongoing obligations in the state).

In sum, the Court finds that the 2017 Agreement between Twist and Rise Huge is insufficient to amount to a "substantial connection" with California.

3. Due Process

Due Process requires "sufficient minimum contacts" with the forum state such that jurisdiction is "reasonable" and "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316–17 (1945). Specific jurisdiction is proper when (1) the defendant purposefully directed its' activities toward the forum or purposefully availed itself of the laws and privileges of the forum state, (2) the claim arises out of or relates to the defendant's activities in the forum state, and (3) exercising jurisdiction comports with fair play and substantial justice inasmuch as jurisdiction is reasonable. *Impossible Foods*, 80 F.4th 1079, 1086 (9th Cir. 2023).

It is a far stretch that Rise Huge purposefully availed to California vis-à-vis the investment agreements. *See Conti 11.*, 91 F.4th at 792 (contacts related to underlying dispute considered in personal jurisdiction analysis); *Devas Multimedia Priv. v. Antrix Corp.*, 2023 WL 4884882, at *2 (9th Cir. 2023) (personal jurisdiction through contract insufficient where negotiated outside of the United States, executed in India, and did not require defendant to conduct activities in or have any ongoing obligations in the United States). And even though the investment agreements are sufficiently "related" to the underlying dispute, there must be sufficient minimum contacts. *See Ford Motor*, 140 S. Ct. at 1026 (a causal connection is not necessary to establish that a contact "relates to" an underlying action).

We find that exercising personal jurisdiction would offend traditional notions of fair play and substantial justice. *See Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316–17 (1945).

B. 4(k)(2) Jurisdiction ("Nationwide Minimum Contacts") and *Quasi In Rem* Jurisdiction

Expanding the analysis to include "nationwide contacts" under Rule 4(k)(2) does not change the result. Fed. R. Civ. P. 4(k)(2). For any claim arising under federal law, serving a summons establishes personal jurisdiction if (1) the defendant is not subject to jurisdiction in any

state's court of general jurisdiction, and (2) jurisdiction is consistent with the United States Constitution and laws. *Id.*; *see Lang Van v. VNG Corp.*, 40 F.4th 1034, 1040 (9th Cir. 2022) (presenting the Ninth Circuit test for jurisdiction under Rule 4(k)(2)).

Here, there is no dispute that upholding a foreign arbitration award is a matter of federal law, nor do parties argue that Rise Huge is subject to personal jurisdiction in another state's court of general jurisdiction. However, the pleadings do not allege any further contacts between Rise Huge and the United States to warrant jurisdiction under this theory.

Nor is *quasi in rem* jurisdiction in the United States appropriate. *Quasi in rem* jurisdiction can be asserted over intangible property. *Off. Depot v. Zuccarini*, 596 F.3d 696, 700 (9th Cir. 2010). Under this theory, Ma argues that Rise Huge owns property, *i.e.*, Twist shares, in Delaware. Putting aside the contradictory effect this argument has on allegations, it relies on an incomplete iteration of *Shaffer v. Heitner*, 433 U.S. 186 (1977), where the Supreme Court ruled that *quasi in rem* jurisdiction could be exercised where there is property in a forum even if the forum lacks personal jurisdiction. Even if the pleadings alleged that Rise Huge, not Ma, was the true owner of the Twist shares, *Shaffer* held that *quasi in rem* jurisdiction is appropriate where a court of competent jurisdiction had already held a defendant to be a debtor to a plaintiff. *Id*. at 210. But that is the holding that Ma ultimately seeks from this Court.

Exercising *quasi in rem* jurisdiction here is inappropriate where the defendant has not been declared a debtor to the plaintiff by a court of competent jurisdiction.

C. The Arbitration Clause in the 2017 Agreement

Ma's last-ditch effort to assert jurisdiction does not sway our analysis.

A forum selection clause may give rise to a waiver of personal jurisdiction objections under general contract principles where the defendant agrees to be bound. *Holland Am. Line v. Wartsila N. Am.*, 485 F.3d 450, 458 (9th Cir. 2007).

Ma argues that Rise Huge waived any arguments against personal jurisdiction by consenting to an arbitration clause in the 2017 Agreement. The clause bound them to arbitrate before J.A.M.S/Endispute, Inc., in San Francisco, California for disputes "arising out" of the agreement. Rise Huge, however, did not enter an agreement with a forum selection clause relating to litigation with a non-party, they agreed to *arbitration* with Twist for any dispute arising out of the agreement.

If Ma was indeed a third-party beneficiary to the agreement and could enforce the terms of the contract, which would require a ruling on the arbitration award, then this litigation would be against the arbitration provision. Ma attempts to invoke the arbitration clause, but she cannot do so if and until she is designated a third-party beneficiary. Under California law, a third party is a beneficiary to a contract only where the contract is expressly made for the third party's benefit. *Ngo v. BMW*, 23 F.4th 942, 945 (9th Cir. 2022). Ma is not mentioned in the contract. Stock Purchase Agreement, ECF 28-4, Ex. A.

Rise Huge consented to arbitration proceedings *with Twist* pursuant to the 2017 Agreement. And the arbitration clause states that arbitration may commence after a written demand filed *by any party hereto*. Because Ma is a nonsignatory to the contract, *i.e.*, not a party "hereto" the contract, the provision cannot be invoked to show that Rise Huge waived any right to argue against personal jurisdiction in the United States in litigation against Ma. *See id.* (rejecting a third party's attempt to compel arbitration where the clause expressly limited who could compel arbitration and the third party was not listed).

CONCLUSION

The Motion to Dismiss is **GRANTED** for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). As a result, the Motion for Summary Affirmance is **MOOT**.

IT IS SO ORDERED.

This Order resolves ECF 28, 34.

Dated: April 5, 2024

TRINA L. THOMPSON
United States District Judge