Separate Companies? I Think Not – Personal Jurisdiction and the Alter Ego Theory

Riot Games, Inc. v. Suga PTE, LTD et al. (Sept. 14., 2023)

By: Ed Runyan and Alexander Bennett | September 27, 2023

In a motion to dismiss before the Central District of California, District Judge Garnett made clear that personal jurisdiction stands for the foreign affiliate when the foreign affiliate is merely an "alter ego" of their domestic partner. The Central District considered a motion to dismiss for lack of jurisdiction and *Forum Non Conveniens* by defendants Suga PTE, LTD ("Suga Singapore") and Suga Co., LTD ("Suga Vietnam") in a copyright infringement case between gaming powerhouse Riot Games, Inc. and a host of defendants. Although the Court had found personal jurisdiction over defendants Imba Tech and Imba Network LLC., defendants Suga Singapore and Suga Vietnam moved to dismiss, arguing that they are foreign corporations that perform their corporate and business activities exclusively in Singapore and Vietnam and do not have substantial and continuous contacts in the United States. In addition, they argued the lack of convenience of the United States as a forum. The Central District of California found the record sufficient to show that the four defendants were alter egos of each other, justifying the exercise of personal jurisdiction over the foreign defendants while also finding the defendant's arguments failed to make a clear showing that the forum imposes "such oppression and vexation" to be inappropriate.

As the Ninth Circuit in *Ranza v. Nike* explained, the alter ego test extends personal jurisdiction to a foreign party or subsidiary when the foreign entity is not really separate from its domestic affiliate. The test requires a plaintiff to make a *prima facie* showing that (1) there is such a 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. Judge Garnett explained that the first prong requires a showing that the foreign entity controls the other "to such a degree as to render the latter the mere instrumentality of the former" with ownership not being a requirement.

Judge Garnett found that both prongs of the test were satisfied with respect to the Suga Defendants. For the first prong, the Court noted the following circumstances in support of its finding: (1) common ownership and managerial functions, (2) disregard for corporate formalities *i.e.*, "no corporate records, let alone separate ones, corresponding to inter-entity transactions," no documents indicating the ownership split, etc., (3) Suga Singapore's status as the sole member of Imba Network, and (4) what the Court describes as a "record [] replete with examples showing that the Defendants commingle their funds." For the second prong, Judge Garnett also found that treating the entities separately would result in injustice where foreign corporations provided substantial funding and marketing to target customers in the United States while attempting to hide behind local entities.

Corporate counsel should be wary when their clients want to skip the formalities between their businesses, as courts may not treat the businesses as separate entities, which can have serious consequences. Additionally, plaintiffs may want to join foreign related companies hiding behind their domestic alter egos as this may open up additional discovery and damages while also providing a more

efficient process. Not every country has the open discovery policies of the United States, and having to litigate across multiple countries can dramatically increase both costs and complexity.