

Ninth Circuit Looks North in First-of-Its-Kind Decision

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Much has been written lately about mandatory forum selection for the adjudication of fiduciary duty claims and other intracorporate disputes. While recent attention has been given to the propriety of enacting forum selection bylaws in U.S. jurisdictions, the Ninth U.S. Circuit Court of Appeals recently considered the effects of a statutory forum selection provision permitting only a Canadian court to grant relief for a breach of fiduciary duty claim arising under Canadian law.

In *Paulsson v. Dorosz*, No. 13-55413 (9th Cir. Apr. 27, 2015), the Ninth Circuit in a first-of-its-kind opinion dismissed a breach of fiduciary duty claim under Federal Rule of Civil Procedure 12(b)(6), holding that shareholders of an Alberta, Canada-incorporated business cannot obtain relief in an American court for a breach of fiduciary duty claim arising under Section 242 of the Alberta Business Corporations Act. Rather, under Alberta law, a remedy for such a claim may be obtained only in the Court of the Queen's Bench of Alberta. Because the laws of most Canadian provinces provide for only a Canadian court to grant relief with respect

to claims challenging acts of fiduciaries of a Canadian corporation, the Ninth Circuit's decision in *Paulsson* is a potent tool for the quick disposal of such claims if they are brought in an American court.

In 2009, Seismic Reservoir 2020, Inc., a California company with its principal place of business in California, sued Björn Paulsson in the United States District Court for the Central District of California. In response, Paulsson, invoking the district court's diversity jurisdiction, asserted claims against two of Seismic's Canadian directors. Paulsson brought those claims in his capacity as a shareholder and director of Seismic's parent company, Seismic Reservoir 2020, Ltd., an entity incorporated in Alberta. Paulsson eventually dismissed all but one of his claims—a claim for breach of fiduciary duty under Section 242 of the Alberta Business Corporations Act.

The district court requested briefing on whether the court had subject



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matter jurisdiction to grant relief under Section 242 of the act, which allows a stockholder to “apply to the Court for an order ... to rectify the matters complained of ...” *Paulsson*, Slip Op. at 5 (quoting Section 242). The act defines the “Court” as “the Court of Queen’s Bench of Alberta” and permits the “Court” to issue various remedies, including “an order compensating an aggrieved person.” (Act at § 1(m), § 242(3).)

In addition to requesting briefing from the parties, the district court commissioned an expert to advise the court on Alberta law. The expert advised the court that, under Alberta law, only an Alberta court has jurisdiction to grant relief with respect to a claim brought under Section 242.

Ninth Circuit Looks to 12(b)(6)

Relying on the expert's advice and Delaware case law dismissing similar breach of fiduciary duty claims under the Canada Business Corporations Act (a statute similar to the Alberta Business Corporations Act) for lack of subject matter jurisdiction, the district court held that it lacked subject matter jurisdiction to grant relief under the Alberta Business Corporations Act and dismissed Paulsson's claim.

The Ninth Circuit affirmed, but on different grounds. The Ninth Circuit held that dismissal was proper due to Paulsson's failure to state a claim, and not for lack of subject matter jurisdiction. The court acknowledged the Delaware case law dismissing similar claims under the Canada Business Corporations Act for lack of jurisdiction, but distinguished that authority. The Ninth Circuit observed that for subject matter jurisdiction to exist in the Delaware Court of Chancery, (1) one or more of the plaintiff's claims must be equitable in nature, (2) the plaintiff must seek relief that is equitable in nature, or (3) a statute must confer subject matter jurisdiction. By contrast, a federal court has subject matter jurisdiction to hear a claim brought pursuant to its diversity jurisdiction. Because Paulsson brought his claim pursuant to the district court's diversity jurisdiction, the Ninth Circuit held that the district court had jurisdiction.

Nonetheless, the Ninth Circuit held that the district court properly dismissed Paulsson's claim because under the clear language

of the statute, the Alberta Business Corporations Act provides a remedy only through the Queen's Bench of Alberta. Because the district court could not grant any relief in respect of the Section 242 claim, the Ninth Circuit held that Paulsson failed "to state a claim upon which relief can be granted" and thus dismissal was appropriate under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

While a handful of other courts have dismissed claims like those in Paulsson for lack of subject matter jurisdiction, the Ninth Circuit opinion appears to be the first of its kind to dismiss on 12(b)(6) grounds a claim in respect of which a foreign court has exclusive power to grant relief.

Broader Consequences of Decision

The decision in *Paulsson* has potentially sweeping consequences. The Canadian Business Corporations Act and the business corporations acts of many Canadian provinces include provisions like Section 242 of the Alberta Business Corporations Act granting a Canadian court exclusive authority to address or award relief in respect of claims implicating a corporation's internal affairs, including derivative claims and claims for oppression and breach of fiduciary duty. See, e.g., Canada Bus. Corp. Act. §§ 2(1), 239-240; British Columbia Bus. Corp. Act §§ 1(1), 227, 232, 291; Manitoba Corp. Act. §§ 1(1), 232-234; New Brunswick Bus. Corp. Act §§ 1(1), 164-166; Newfoundland and Labrador Corp. Act §§ 2(j), 369-371; Northwest Territories Bus. Corp.

Act §§ 1, 241-243; Nova Scotia Cos. Act § 2(1)(d) and Third Schedule; Nunavut Bus. Corp. Act §§ 1, 241-243; Ontario Bus. Corp. Act. §§ 1(1), 246-248; Quebec Bus. Corp. Act §§ 2, 450; Saskatchewan Bus. Corp. Act §§ 2(1)(k), 232-234; Yukon Bus. Corp. Act §§ 241-243.

To the extent a shareholder challenges the internal affairs of a Canadian corporation in an American court, the *Paulsson* decision provides a powerful tool for the dismissal of those claims. The *Paulsson* decision may also provide persuasive authority in support of dismissal of claims brought under the laws of other foreign jurisdictions with provisions similar to Section 242 of the Alberta Business Corporations Act.

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