

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

REGIONS BANK, an Alabama
banking corporation, d/b/a/
REGIONS FUNDING,

Plaintiff,

v.

GROVES FUNDING CORPORATION,
et al.,

Defendants.

CIVIL ACTION FILE

NO. 1:07-CV-1333-BBM

ORDER

This matter is before the court on its own initiative. On December 17, 2007, the court held a hearing in which it requested Plaintiff Regions Bank (“Plaintiff”) to show cause why the following defendants should not be dismissed from this action for lack of personal jurisdiction: Monique L. McDowell; Jennifer Tullis;¹ Kevin Moore; Carey Cole; Harvey Rollings; Stormy Wilder; Steven C. Gittinger; Terrance C. Monnie; Erin Giles; Jackie Tucker; Timothy Lynch; Susan Lynch; Rick L. Goldie; Pyramid America, LLC; and Pyramid II Janitorial Supplies and Equipment, Inc. The following Order is based on findings of the court from the hearing.

¹ The court notes that the Clerk has entered default against Jennifer Tullis and Monique L. McDowell. “[A] district court has the duty to assure that it has the power to enter a valid default judgment.” Sys. Pipe & Supply, Inc. v. M/V VIKTOR KURNATOVSKIY, 242 F.3d 322, 324 (5th Cir. 2001) (noting that a court may inquire into its jurisdiction sua sponte).

I. Factual and Procedural Background

The court very briefly sets out the relevant facts. Plaintiff has filed a 30 count Complaint alleging a complicated conspiracy against 26 named defendants. Plaintiff's allegations center around four entities, Groves Funding Corporation, Groves Funding Group, Inc., Home Loan Funding Corporation, and Real Estate Benefit Plan (collectively, "Groves Funding"). Toby Groves ("Mr. Groves") is the principal of the Groves Funding entities. According to Plaintiff, Groves Funding repeatedly requested that Plaintiff advance money to fund nonexistent or fraudulent loans and supplied false loan documents to Plaintiff to support its requests. Plaintiff and Mr. Groves also entered into a Guaranty Agreement, under which Mr. Groves promised to guarantee the obligations of the Groves Funding entities. Mr. Groves has failed to repay the amounts that Groves Funding allegedly owes Plaintiff.

Best Title Solutions, Inc. ("Best Title"), Classic Title Agency, Inc., and Classic Title Agency, LLC (collectively, "Classic Title") are real estate settlement firms that also received funds from Plaintiff under the alleged scheme. Classic Title and Best Title entered into Bailment Agreements with Plaintiff. They received funds paid by Plaintiff on the basis of Groves Funding's requests, and were to release the funds to Groves Funding only for the purpose of funding specific loans. Instead, Plaintiff alleges that Best Title and Classic Title delivered the funds to the operating account

of Groves Funding. The money was used for ordinary expenses of Groves Funding and for Mr. Groves's other business interests.

Mr. Groves, along with Best Title and several other named (and unnamed) defendants, allegedly conspired to convert the funds issued by Plaintiff for their own use. Plaintiff's funds were allegedly used to allow Mr. Groves to purchase Pyramid II Janitorial Supplies and Equipment, Inc. ("Pyramid II"). Pyramid II was then allegedly assigned to Pyramid America, LLC ("Pyramid America"), which is yet another named defendant. Mr. Groves also allegedly entered into a number of transactions to purchase real estate with the funds advanced by Plaintiff.

Plaintiff has sued the above mentioned entities, Mr. Groves, and the following individuals: Janice Sauer; Monique L. McDowell; Jennifer Tullis; Kevin Moore; Carey Cole; Harvey Rollings; Stormy Wilder; Steven C. Gittinger; Terrance C. Monnie; Erin Giles; Jackie Tucker; Timothy Lynch; Susan Lynch; and Rick L. Goldie (collectively, "Defendants").² Ms. Sauer, Ms. McDowell, Ms. Tullis, Mr. Moore, and Mr. Cole are or were employees of Groves Funding. All are citizens of Ohio, except for Mr. Cole, who is a citizen of Kentucky. Mr. Rollings and Ms. Wilder are affiliated with Best Title. Both are citizens of Florida. Mr. Gittinger, Mr. Monnie,

² Plaintiff initially sued two other individuals, James Cergol and Samuel Burnett. Those individuals were voluntarily dismissed by Plaintiff because this court lacked personal jurisdiction over them.

Ms. Giles, and Ms. Tucker are affiliated with Classic Title. All are citizens of Ohio. Mr. Lynch and Ms. Lynch were owners of Pyramid II, and are citizens of Florida. Mr. Goldie is a citizen of Ohio.

II. Analysis

Plaintiff's primary support in asserting jurisdiction over many of these Defendants is that they were all part of a conspiracy to defraud Plaintiff. Plaintiff has cited the case of National Egg Co. v. Bank Leumi le-Israel B.M., 504 F. Supp. 305 (N.D. Ga. 1980) (Moye, C.J.), for the proposition that a Georgia court can exercise personal jurisdiction over any member of a conspiracy. The court notes that there are two National Egg cases, the one cited above and one decided in 1981. See Nat'l Egg Co. v. Bank Leumi le-Israel, B.M., 514 F. Supp. 1125 (N.D. Ga. 1981) (Moye, J.). Plaintiff provided the court with the citation to the 1980 case, and refers to that case in its brief. In the 1980 National Egg, the conspiracy involved a company called Quality Egg Products and two (non-Georgia) branches of a bank that allegedly misrepresented the financial condition of Quality Egg Products to the plaintiff. Nat'l Egg, 504 F. Supp. at 307. The court, in asserting jurisdiction over the banks, noted that the parties had not briefed the issue of the "conspiratorial theory of jurisdiction" but observed that "under some sets of circumstances, nonresident co-conspirator (A) who has had no direct contacts of his own with the forum may

be held subject to the jurisdiction of the forum's courts, provided that another co-conspirator (B) is subject to the forum court's jurisdiction." Id. at 313.

Unfortunately for Plaintiff's position, there is the matter of the second National Egg case. In 1981, on a renewed motion to dismiss for lack of personal jurisdiction, the National Egg court noted that Georgia had rejected as insufficient to establish personal jurisdiction "the mere allegation that a non-resident is a co-conspirator and through the conspiracy is chargeable with the acts of another conspirator." Nat'l Egg, 514 F. Supp. at 1127; see Coopers & Lybrand v. Cocklereece, 157 Ga. App. 240, 246, 276 S.E.2d 845, 849 (1981) ("[E]ven if the evidence and pleadings are sufficient so to show, the bare existence of a conspiracy is not enough to support long arm jurisdiction without a further showing of a 'contact' with the forum jurisdiction."). National Egg does not stand for the proposition that a member of a conspiracy is subject to the jurisdiction of a Georgia court on the mere allegation that he participated in the conspiracy. Asserting only an individual's participation in a conspiracy that causes injury in Georgia, as Plaintiff has done here, is not enough to establish this court's jurisdiction.

The National Egg plaintiff successfully alleged jurisdiction over the defendant, despite the court's rejection of the conspiracy theory of jurisdiction, by alleging contact with Georgia *beyond* the bare existence of the conspiracy. This leads

the court to another point on which National Egg is no longer good law. The National Egg defendant had allegedly committed a tort against the plaintiff outside the state of Georgia that caused injury in Georgia. Those facts invoke subsection (3) of Georgia's long-arm statute, which allows jurisdiction over a defendant who "commits a tortious injury in this state caused by an act or omission outside this state," if the tortfeasor has engaged in other contacts with Georgia. O.C.G.A. § 9-10-91(3). The National Egg court examined the extent of the defendant's contacts with Georgia and found them sufficient to satisfy constitutional due process. The court in National Egg observed that "the Georgia Supreme Court has held that the Georgia Long Arm Statute extends personal jurisdiction to the maximum extent allowed by due process." Nat'l Egg, 514 F. Supp. at 1128. However, the law in Georgia has changed somewhat in the past 25 years, and the long-arm statute is no longer co-extensive with due process. The current state of Georgia law is as follows:

under subsection (3) a Georgia court may exercise personal jurisdiction over a nonresident who commits a tortious injury in Georgia caused by an act or omission outside Georgia only if the tortfeasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state, *notwithstanding that these limiting conditions may preclude a Georgia court from exercising personal jurisdiction over the nonresident to the fullest extent permitted by constitutional due process.*

Innovative Clinical & Consulting Servs., LLC v. First Nat'l Bank of Ames, 279 Ga. 672, 674, 620 S.E.2d 352, 354 (2005) (citations and quotations omitted) (emphasis added); see also Anderson v. Deas, 279 Ga. App. 892, 894, 632 S.E.2d 682, 684 (2006) (“As recognized in Innovative Clinical, consistent with due process, paragraph (3) of the long arm statute might provide for a Georgia court’s exercise of personal jurisdiction over a nonresident who has committed a tortious injury in the state caused by an act outside the state without also requiring the nonresident to have engaged in a persistent course of conduct here. But by its plain language, paragraph (3) does not do that.”) (footnote omitted). Thus, Plaintiff’s citation of National Egg does not lend support to its conspiracy theory of jurisdiction, or correctly state the current approach to long-arm jurisdiction in Georgia.

Plaintiff must allege more than participation in a conspiracy that causes injury in Georgia. Furthermore, the additional contacts that Plaintiff asserts must satisfy a more demanding standard than constitutional due process. With those requirements in mind, it is clear to the court that Plaintiff has not alleged personal jurisdiction over the following Defendants.³

³ The court notes that Plaintiff cannot rely on subsection (2) of Georgia’s long-arm statute because that subsection applies only where the tortious action or omission was committed in Georgia. Innovative Clinical, 279 Ga. at 674, 620 S.E.2d at 354. Plaintiff has not alleged that any of the following Defendants committed tortious acts or omissions in Georgia.

A. Rick Goldie

Mr. Goldie is a citizen of Ohio. According to Plaintiff, Mr. Goldie is the trustee of Goldenrod Trust, which sold property to Mr. Groves and received money from Best Title and Mr. Groves. That money is alleged to have been wired to Mr. Groves and Best Title by Plaintiff in response to Groves Funding's fraudulent loan applications, and then passed on to Mr. Goldie. Subsection (3) is not satisfied. Plaintiff has not alleged anything that would likely satisfy due process, much less the Georgia long-arm statute. Mr. Goldie did not do or solicit business in Georgia, or engage in any persistent course of conduct here, or derive any revenue from goods or services rendered in Georgia. Mr. Goldie is the named trustee of an Ohio trust that received money that at one time belonged to Plaintiff in Georgia. He did not reach out to Georgia, or purposely avail himself of Georgia, or, so far as the court can tell, have any connection to Georgia at all. Therefore, Plaintiff's claims against Mr. Goldie are dismissed without prejudice for lack of personal jurisdiction.

B. Susan Lynch

Ms. Lynch is a citizen of Florida. Plaintiff has described Susan Lynch as the ex-wife of Timothy Lynch, owner of Pyramid II, which is a business purchased by Mr. Groves with money allegedly belonging to Plaintiff. Ms. Lynch, according to Plaintiff, *may* currently be a partial owner of the business. Even assuming that Ms.

Lynch maintains her ownership of the business, the court still finds that it does not have personal jurisdiction over her. Ms. Lynch did not do or solicit business in Georgia, or engage in any persistent course of conduct here, or derive any revenue from goods or services rendered in Georgia. At most, Ms. Lynch was a partial owner of a Florida company that was purchased by an Ohio citizen (Mr. Groves) with money that originated in Georgia. That connection does not satisfy the requirements of constitutional due process, much less the Georgia long-arm statute. Therefore, Plaintiff's claims against Ms. Lynch are dismissed without prejudice for lack of personal jurisdiction.

C. Timothy Lynch

Mr. Lynch is a citizen of Florida. He owns Pyramid II, a Florida business acquired by Mr. Groves, allegedly using Plaintiff's money. According to Plaintiff, Mr. Lynch received Plaintiff's money, by way of Mr. Groves, to cover the purchase price of his company, and then later lent Mr. Groves money that Mr. Groves subsequently returned to Plaintiff by way of Best Title. Subsection (3) is not satisfied, because he did not do or solicit business in Georgia, or engage in any persistent course of conduct here, or derive any revenue from goods or services rendered in Georgia. The court cannot find any contact that Mr. Lynch might have

had with Georgia. Therefore, Plaintiff's claims against Mr. Lynch are dismissed without prejudice for lack of personal jurisdiction.

D. Pyramid II and Pyramid America

Pyramid II and Pyramid America are Florida entities. Plaintiff has not alleged any reason that this court has jurisdiction over either company, aside from its description of Mr. Lynch's and Ms. Lynch's involvement in this alleged conspiracy. Therefore, for the same reasons as pertain to this court's lack of jurisdiction over Mr. Lynch, Plaintiff's claims against Pyramid II and Pyramid America are dismissed without prejudice for lack of personal jurisdiction.⁴

E. Jackie Tucker

Plaintiff has conceded that this court does not have jurisdiction over Ms. Tucker. Therefore, as noted during the hearing, Plaintiff's claims against Ms. Tucker are dismissed without prejudice for lack of personal jurisdiction.

III. Summary

For the foregoing reasons, Plaintiff's claims against Rick L. Goldie, Susan Lynch, Timothy Lynch, Pyramid America, LLC, Pyramid II Janitorial Supplies and

⁴ The court notes that, unlike its claims against Groves Funding, Best Title, and Classic Title, Plaintiff has not alleged that it entered into any contract with Pyramid II or Pyramid America. Therefore, subsection (1) of the Georgia long-arm statute, relating to transacting business, does not give this court jurisdiction over the Pyramid entities because that subsection applies only to actions in contract. Allen v. Black, 214 Ga. App. 450, 451, 447 S.E.2d 718, 719 (1994).

Equipment, Inc., and Jackie Tucker are DISMISSED WITHOUT PREJUDICE. The court is reserving its jurisdictional analysis of the remaining Defendants discussed at the December 17, 2007 hearing, including Janice Sauer. Plaintiff is going to restate its Complaint, and the court expects Plaintiff, together with its counsel, to do a careful jurisdictional analysis as to each Defendant prior to reasserting claims against them.

Furthermore, the court finds it appropriate for Plaintiff Regions Bank to bear the dismissed Defendants' costs in this matter. Rick L. Goldie, Susan Lynch, Timothy Lynch, Pyramid America, LLC, Pyramid II Janitorial Supplies and Equipment, Inc., and Jackie Tucker may submit their costs, if any, to the court for its consideration.

IT IS SO ORDERED, this 18th day of December, 2007.

s/Beverly B. Martin
BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE