IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

THE CHASE MANHATTAN BANK, As Collateral Agent,	:	
Plaintiff,	:	
v.	:	
IRIDIUM AFRICA CORPORATION; IRIDIUM CANADA, INC.; IRIDIUM CHINA (HONG KONG) LTD.; IRIDIUM INDIA TELECOM LTD.; IRIDIUM MIDDLE EAST CORPORATION; IRIDIUM SUDAMERICA CORPORATION; KHRUNICHEV STATE RESEARCH AND PRODUCTION SPACE CENTER; KOREA MOBILE TELECOMMUNICATIONS CORPORATION; LOCKHEED MARTIN CORPORATION MOTOROLA, INC.; NIPPON IRIDIUM (BERMUDA) LTD.; PACIFIC ELECTRIC WIRE & CABLE CO., LTD.; RAYTHEON COMPANY; SPRINT IRIDIUM, INC.; STET-SOCIETÁ FINANZIARIA TELEFONICA PER AZIONI; THAI SATELLITE TELECOMMUNICATIONS CO., LTD.; and VEBACOM HOLDINGS, INC.,	:	Civil Action No: 00-564 JJF
Defendants.	:	

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Attorneys for Defendant Pacific Electric Wire & Cable Co., Ltd.

MEMORANDUM OPINION

October 21, 2003

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion For Summary Judgment filed by Defendant Pacific Electric Wire & Cable Co., Ltd.'s ("PEWC"). (D.I. 830). For the reasons discussed, the Court will deny the motion.

BACKGROUND

This action stems from a $800 million loan Chase Manhattan Bank (now known as JPMorgan Chase Bank) ("Chase") made to Iridium LLC in late 1998 ("1998 Loan"). PEWC was an original Member of Iridium LLC. It is disputed whether or not PEWC was a Member of Iridium LLC at the time of the 1998 Loan. PEWC contends, and Chase disputes, that PEWC transferred all of its Class 1 Interests, including its Reserve Capital Call ("RCC") obligations to Pacific Asia Communications, Ltd. ("PA") prior to the 1998 Loan.

Chase made the 1998 Loan pursuant to a Parent Security Agreement, which purported to give Chase all of Iridium LLC's rights in the Reserve Capital Call ("RCC") obligations that the Members had pledged to Iridium LLC in the Iridium's LLC Agreement ("LLC Agreement"). The Parent Security Agreement also appeared to give Chase the right to call the RCC directly upon Iridium LLC's default of the 1998 Loan. The RCC, as relevant for the purposes of the instant motion, obligated all Members to purchase a predetermined number of Class 1 Interests in Iridium LLC in the event that Iridium LLC defaulted on loans that it secured with

those obligations.

Following Iridium LLC's default on the 1998 Loan and entry into bankruptcy, Chase attempted to foreclose on the RCC obligations. At this point, PEWC objected to the foreclosure, contending that it had transferred all of its Class 1 Interests, including its RCC obligations, to PA in a 1997 Board Meeting according to the procedures outlined in the LLC Agreement.

PEWC contends that there is no genuine dispute as to whether it transferred its interests to PA. It contends that the only remaining issue relating to whether it completed the transfer to PA is whether PA countersigned the LLC Agreement. PEWC points to affidavits and filings of Iridium LLC that it alleges establish PA's countersignature. Chase contends that there are multiple remaining issues of fact relating to PEWC's alleged transfer to PA. First, it contends that PEWC cannot demonstrate that it received the requisite Member approval to transfer its interests to PA. It argues that it was the Iridium Board, not the Members who passed a resolution concerning PEWC's transfer. Further, Chase contends that PEWC's failure to locate PA's signed counterpart to the LLC Agreement demonstrates that the transfer never occurred. Chase also contends that if the Court finds that PEWC transferred its interests to PA, PEWC cannot demonstrate that it obtained the requisite votes of the Members to transfer its RCC obligations to PA. Moreover, Chase alleges that PEWC's execution of the Agreement of Indirect Owner ("AIO") establishes

PEWC's continued RCC obligations and waiver of personal jurisdiction in this Court. Finally, Chase argues that even if the Court were to accept PEWC's contentions that it fully transferred its interest and RCC obligations to PA, the Court should pierce PEWC's corporate veil and hold it responsible for PA's RCC obligations under an alter ego or instrumentality theory.

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). Thus, to properly consider all of the evidence without making credibility determinations or weighing the evidence the "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party

that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Id.

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to:

> do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is "no genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

DISCUSSION

I. Whether PEWC Completed a Transfer of Its Class 1 Interests to PA

Chase alleges that PEWC has waived its objection to personal jurisdiction in this Court through § 11.04 of the LLC Agreement. § 11.04 provides that "each party [to the LLC Agreement] hereby irrevocably waives . . . any objection it may have . . . to the jurisdiction of [this Court.]" PEWC contends that this section is inapplicable to the present motion because it transferred all of its interest in the LLC Agreement to PA in 1997. In order to effectuate a transfer, § 6.04 required 1) PEWC to formally notify Iridium LLC of its intent to transfer its Class 1 Interests to

PA; 2) Iridium LLC to place the matter on the agenda of a Board and Members meeting; 3) PEWC to transfer its Class 1 Interests to PA; 4) receive a 66 2/3% approval vote of all Members on the transfer of Class 1 Interests to PA; 5) receive a 66 2/3% approval vote of all Members on the transfer of the RCC obligations to PA; 6) PEWC to execute the AIO; 7) PA to execute a counterpart to the LLC Agreement; 8) PEWC to return all Class 1 Interests to Iridium LLC; and 9) Iridium LLC to issue new Class 1 Interests to PA. See Article VI of LLC Agreement. The steps at issue in the present motion are steps 4-7.

Chase contends that the Members did not vote to approve PEWC's transfer of Class 1 Interests to PA. It argues that the minutes of the Regular meeting of Board of Directors and Special Meeting of Members ("1997 Meeting"), on October 15, 1997 ("1997 Minutes") establish only that Iridium's Board approved the transfer. In support of this allegation, Chase points to a cover letter of a fax that describes the 1997 Meeting as involving a resolution of the Board of Iridium LLC (D.I. 833 at A 512) without mentioning the Members' vote. Further, it contends that the Declaration of Jack T. Sun ("Sun Declaration"), where Mr. Sun states that the Members gave the requisite approval, should not be given any weight by the Court as it is inconsistent with his prior testimony. The Court is not persuaded by Chase's arguments.

The 1997 Minutes expressly state, "[It is r]esolved, upon

the request of [PEWC] and the affirmative vote of at least 66 2/3% of the Members, including Motorola, that the transfer of all of PEWC's Class 1 Interests to . . . [PA] are hereby approved under Sections 6.04 and 6.07 of the LLC Agreement." (D.I. 844 at B 0082) (emphasis added). Chase's reference to a fax cover letter that seemingly contradicts the 1997 Minutes does not amount to "a mere scintilla of evidence" in support of its argument that the Members did not vote at the 1997 Meeting. Without more evidence than a brief description of the 1997 Meeting on a fax coverpage, the Court has no reason to believe that the 1996 Minutes reflect anything other than the fact that the Members approved the transfer by the requisite 66 2/3% vote.

II. Whether the 1997 Meeting Also Effected A Transfer of PEWC's RCC Obligations

Chase contends that even if the Court concludes that the 1997 Meeting reflected a valid transfer of PEWC's Class 1 Interests to PA, there is a genuine issue of material fact as to whether the transfer reflected a transfer of PEWC's RCC obligations. The Court disagrees.

§ 6.04 of the LLC Agreement requires a 66 2/3% approval vote of the Members for a Member to transfer its RCC obligations. As noted above, the evidence demonstrates that the Members actually approved the transfer by the requisite majority. The Court is not convinced by Chase's reading of the LLC Agreement, where it contends that the Board and Members would have to pass two separate resolutions by the requisite majority to transfer both

the Class 1 Interests and the RCC obligations. If the 1997 Meeting did not effectuate a transfer of the RCC obligations to PA, there would have been no need for PEWC to sign the AIO, which made PEWC a guarantor of PA's RCC obligations. Adopting Chase's interpretation of the actions taken at the 1997 Meeting, as PEWC suggests, would make the AIO superfluous.

III. Whether PA Countersigned the LLC Agreement

PEWC contends that various testimony and documents establish that PA countersigned the LLC Agreement, thus completing the transfer from PEWC. PEWC contends that while it is possible that PA did not countersign the LLC Agreement it is more likely that it was simply misplaced through the exchange of large numbers of documents. It also contends that events following the 1997 Meeting, SEC filings, the filing of federal and state tax returns, the 1998 LLC Agreement itself, subsequent minutes to board meetings, and Iridium's bankruptcy filing, identify PA and not PEWC as a Member of Iridium LLC. Therefore, PEWC contends that PA must have countersigned the LLC Agreement. Chase contends that the absence of direct evidence of PA's executed LLC Agreement leaves a genuine issue of material fact that precludes summary judgment. Chase contends that all of PEWC's testimonial evidence is not based on the witnesses' personal knowledge and thus are not proper for consideration by the Court.

Rule 56(e) provides that "[s]upporting and opposing affidavits shall be made on personal knowlege . . . ." Fed. R.

Civ. P. 56(e). Therefore, if a witness states that they have no personal knowledge of the events, the Federal Rules prohibit the Court from considering the evidence. See New Zealand Kiwifruit Mktg. Bd. v. Wilmington, 806 F.Supp. 501, 506 (D. Del. 1992). Therefore, PEWC cannot rely on the testimony of Iridium's senior officers as proof that PA countersigned the LLC Agreement as each of these witnesses admits that they do not have any direct personal knowledge of PA's countersignature of the LLC Agreement. Instead, they state that the normal procedures should have resulted in the PA's execution of the LLC Agreement. (D.I. 833; A 475-75: 29-31 (Deposition of Mr. Tuttle); A 449: 24-25 (Deposition of Mr. Lavin); A 470: 14-15 (Deposition of Mr. Kinzie)).

PEWC is left then with circumstantial evidence of events that occurred after the 1997 Meeting. A party's sole reliance on circumstantial evidence, however, does not automatically lead to a denial of their summary judgment motion. See Hunt v. Cromartie, 526 U.S. 541, 553 (1999). In some instances, circumstantial evidence is the only evidence available and it may be so lopsided that the moving party is entitled to summary judgment. Id. The events PEWC points to as establishing PA's countersigning of the LLC Agreement are the absence of PEWC's name on Iridium's SEC and federal and state tax filings, the 1998 LLC Agreement, subsequent board meetings, and Iridium's bankruptcy filing. Although these events certainly demonstrate

that Iridium LLC and the other Members believed that PA was now a Member of Iridium, they do not establish that PA actually countersigned the LLC Agreement. Instead, these events suggest the conclusion, as noted by PEWC's affiants, that PA countersigned the LLC Agreement. However, in the context of a summary judgment motion the Court must construe all inferences in the light most favorable to Chase. Goodman, 534 F.2d at 573. Thus, whether PA actually completed this last procedure is a question of material fact that cannot be dealt with at the summary judgment stage. Accordingly, the Court will deny PEWC's Motion For Summary Judgment (D.I. 830).[1]

An Order issued on September 30, 2003, for the reasons discussed in this Memorandum Opinion.

[1]Further, the Court is not persuaded by PEWC's argument that the Court may not consider the AIO as a basis for jurisdiction because Chase failed to name that agreement in its Complaint, instead relying on the Iridium LLC Agreement. The Federal Rules of Civil Procedure provide a liberal pleading standard. C.H. ex rel. Z.H. v. Oliva, 226 F.3d 198, 206-207 (3d Cir. 2000). Federal Rule of Civil Procedure 8(a)(2) merely requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "All pleadings shall be construed as to do substantial justice," Fed. R. Civ. P. 8(f); this would not be done by excluding the AIO from the Court's deliberations. However, because the Court will deny PEWC's motion on other grounds, Chase need not rely at this point on the AIO as an additional basis for jurisdiction.