

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 : Civil Action No:
CORPORATION; LOCKHEED MARTIN CORPORATION; : 00-564 JJF
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., :
 :
Defendants. :

Stephen E. Jenkins, Esquire and Regina A. Iorii, Esquire of ASHBY & GEDDES, Wilmington, Delaware.
Of Counsel: SIMPSON THACHER & BARTLETT, New York, New York,
MORGAN, LEWIS & BACKIUS LLP, New York, New York.
Attorneys for Plaintiff The Chase Manhattan Bank, as Collateral Agent.

Samuel A. Nolen, Esquire and Anne C. Foster, Esquire of RICHARDS, LAYTON & FINGER, Wilmington, Delaware.
Attorneys for Defendant STET-Societa Finanziaria Telfonica per Azioni.

MEMORANDUM OPINION

February 13, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is Plaintiff The Chase Manhattan Bank's ("Chase") Objections Pursuant To 28 U.S.C. § 636(b) To Report and Recommendation Of Magistrate Judge Regarding STET's Renewed Motion To Dismiss. (D.I. 646.) For the reasons discussed, the Court will not adopt the Magistrate Judge's Report and Recommendation regarding STET-Societa Finanziaria Telefonica per Azioni's ("STET") Renewed Motion to Dismiss. (D.I. 645.)

BACKGROUND

To better understand the instant motion, a brief description of the procedural history is helpful. In a September 28, 2001, order ("September 28 Order"), Judge McKelvie denied STET's motion to dismiss for lack of personal jurisdiction. In his order, Judge McKelvie concluded that issues of disputed fact existed on the issue of whether STET had completed a transfer of its interests in Iridium LLC to Iridium Italia, S.p.A. ("Iridium Italia"). Therefore, Judge McKelvie held that under the Federal Rule of Civil Procedure 12(b)(2) standard Chase had established a prima facie case of personal jurisdiction over STET. In prefacing his order, Judge McKelvie stated that if further discovery established that STET had completed its transfer to Iridium Italia the court would not have specific jurisdiction over STET. Accordingly, Judge McKelvie invited STET to renew its motion once discovery was complete. See September 28 Order at 15.

Following discovery, STET renewed its motion before the Magistrate Judge (the "Renewed Motion to Dismiss"). (D.I. 558.) The Magistrate Judge recommended granting the Renewed Motion to Dismiss, agreeing with STET's contention that even if STET retained contractual obligations pursuant to the 1996 version of the Iridium LLC Agreement ("1996 LLC Agreement"), including STET's waiver of its personal jurisdiction defense and RCC obligations (the "contractual obligations"), those obligations did not extend to the 1998 Amendments to the LLC Agreement that purportedly gave Chase the right to directly call the RCC obligations. Further, the Magistrate Judge concluded that STET demonstrated, by a preponderance of the evidence, that it transferred its interest in Iridium LLC to Iridium Italia, and thus, STET's jurisdictional consent did not apply to the instant action.

STANDARD OF REVIEW

When reviewing a dispositive matter decided by a magistrate judge, a district court shall conduct a de novo determination of those portions of the magistrate judge's finding and recommendation to which a party objects. See 28 U.S.C. § 636(b)(1)(B). A motion to dismiss is a dispositive matter for the purposes of Section 636. See id. Under Section 636(b)(1)(B), the district court "may accept, reject, or modify, in whole or in part [the magistrate judge's] findings and recommendations, and may also receive further evidence." Haines

v. Liggett Group Inc., 975 F.2d 81, 91 (3d Cir. 1992) (inner quotation omitted).

DISCUSSION

I. **Whether STET's Consent to Jurisdiction In the 1996 LLC Agreement Applies to The Instant Action:**

A. Whether The Law Of The Case Prevents The Court From Considering STET's Consent To Jurisdiction In The 1996 LLC Agreement

Chase objects to the Magistrate Judge's Report and Recommendation dismissing Chase's "retention of obligation" argument. Chase contends that the Magistrate Judge improperly resolved conflicting interpretations of the LLC Agreement. In response, STET contends that notwithstanding the Magistrate Judge's well reasoned Report and Recommendation, the "law of the case" from Judge McKelvie's September 28 Order precludes the Court from considering whether STET's alleged retention of its contractual obligations under the 1996 LLC Agreement waived its objection to personal jurisdiction in this action. (D.I. 659 at 12.)

"Under the law-of-the-case doctrine, 'once an issue has been decided, parties may not relitigate that issue in the same case.'" Ogbudimkpa v. Ashcroft, 342 F.3d 207, 210 (3rd Cir. 2003) (quoting Waldorf v. Shuta, 142 F.3d 601, 616 n. 4 (3d Cir. 1998)). This doctrine protects "against agitation of settled issues." Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816 (1994) (inner quotation omitted). However, the law of the case doctrine does not extend to issues not addressed by the

court. 18 James Wm. Moore et al., Moore's Federal Practice § 134.20[3] (3d ed. rev. 2003). Instead, the preclusive doctrine only applies to issues the court actually decides on the merits. Id. Applying these standards to the September 28 Order, the Court concludes that the law of the case doctrine does not preclude the Court from addressing Chase's objections to the Magistrate Judge's Report and Recommendation.

In his September 28 Order, Judge McKelvie did not address the contention of whether STET's alleged retention of its contractual obligations under the 1996 LLC Agreement would provide the necessary consent to jurisdiction in this action. Instead, it appears that Judge McKelvie reached his conclusion based on the assumption that STET's transfer of its interests to Iridium Italia would transfer all of its contractual obligations under the 1996 LLC Agreement. In these circumstances, the Court may consider whether STET retained its contractual obligations under the 1996 LLC Agreement.

B. Whether STET's Transfer To Iridium Italia Relieved It Of Its Waiver Of Its Personal Jurisdiction Defense

After reviewing the 1996 LLC Agreement, the Court concludes that a transfer of STET's interests to Iridium Italia did not relieve STET of its contractual obligations in the 1996 LLC Agreement. Therefore, the Court concludes that it has personal jurisdiction over STET in this action.

In a 1996 meeting, the Iridium Board approved STET's transfer to Iridium Italia. The minutes of this meeting reflect

that the Iridium Board adopted a resolution permitting STET's transfer pursuant to Section 6.02(b) of the LLC Agreement. STET contends that this transfer should end the Court's inquiry into whether its consent to jurisdiction in Delaware applies to the instant action. However, Section 6.04 of the LLC Agreement provides that "[n]o transfer shall relieve [STET] of its contractual obligations under this Agreement . . . unless the relief of such obligations is approved by the holders of at least 66 2/3% of the then outstanding [Members, including Motorola]." § 6.04 of 1996 LLC Agreement. One of STET's contractual obligations under the 1996 LLC Agreement was its consent to jurisdiction in Section 11.04, and STET has provided the Court with no evidence that it satisfied Section 6.04's requirements for relief of its contractual obligations.

Further evidence of STET's remaining contractual obligations following its transfer to Iridium Italia is provided by the minutes to Iridium LLC's 1998 Board Meeting. In this meeting, the Iridium Board approved Pacific Electric Wire & Cable's ("PEWC") transfer of its interests to Pacific Asia Communications ("Pacific Asia"). The minutes of this meeting reflect, unlike the resolution concerning STET's transfer, that the Iridium Board approved PEWC's transfer pursuant to Sections 6.04 and 6.07 of the LLC Agreement. As noted above, Section 6.04 provides the requisite steps for a Member to transfer all of its contractual obligations; Section 6.02 does not. Further, the Iridium Board

conditioned PEWC's transfer on PEWC's execution of the Agreement of Indirect Owner ("AIO"), an agreement that provided for PEWC's consent to jurisdiction in Delaware and retention of its RCC obligations. If the transfer to Iridium Italia relieved STET of its contractual obligations, the facts suggest that the Iridium Board would have required STET to execute an AIO, as they did with PEWC, thereby providing a similar consent to jurisdiction in Delaware and the retention of STET's RCC obligations. Based upon the differing Sections by which the Iridium Board transferred PEWC's and STET's interests and the Iridium Board's condition that PEWC (but not STET) execute the AIO, the Court concludes that STET retained its contractual obligations under the 1996 LLC Agreement.

C. Whether STET's Waiver Of Its Personal Jurisdiction Defense Applies To The Instant Action

STET contends that even if the Court concludes that STET's transfer to Iridium Italia did not relieve STET of its contractual obligations, its waiver of its personal jurisdiction defense in the 1996 LLC Agreement is irrelevant. In support of its contention, STET relies upon the Magistrate Judge's rationale that because STET's waiver of its personal jurisdiction defense arose from the 1996 LLC Agreement and not pursuant to the 1998 Amendments to the LLC Agreement that purportedly gave Chase the right to directly call the Members' RCC obligations, STET's waiver does not apply to the instant action. Because the Court disagrees with the Magistrate Judge's analysis, the Court will

not adopt the Magistrate Judge's Report and Recommendation and will deny STET's Renewed Motion to Dismiss.

The Magistrate Judge reasoned that if she were to accept Chase's contention that STET retained its jurisdictional waiver following its transfer to Iridium Italia, that would lead to the absurd conclusion that "Iridium could make [STET] liable for any obligation of its members, based solely on its onetime membership in Iridium." (D.I. 645 at 8.) This is an overstatement of the effect of STET's retention of its contractual obligations under the 1996 LLC Agreement. STET could have shed itself of its contractual obligations by acquiring the requisite votes under Section 6.04. However, STET has presented no evidence that it satisfied the requirements of Section 6.04. Moreover, the Court concludes that it is irrelevant that Chase has no rights under the 1996 LLC Agreement.¹ The 1998 Amendments to the LLC Agreement purported to pledge to Chase the existing RCC obligations. This included the consent to jurisdiction from any action "with respect" to those obligations. See § 11.04 of 1996 LLC Agreement. Accordingly, because the Court concludes that STET retained its contractual obligations following its transfer to Iridium Italia, the 1998 Amendments that purportedly pledged the RCC obligations to Chase also included STET's consent to be sued in this action.

¹ At this point, the Court is not commenting on the validity of the 1998 Amendments to the LLC Agreement.

CONCLUSION

In summary, the Court concludes that Chase has established that STET retained its RCC obligations and jurisdictional waiver following its transfer to Iridium Italia. The different Sections by which the Iridium Board approved STET and PEWC's transfers and the absence of the Iridium Board's requirement that STET execute an AIO demonstrate that STET retained its contractual obligations. Further, the Court concludes that STET's contractual obligations are applicable to the instant action. At the time of the 1998 Amendments to the LLC Agreement, all existing RCC obligations were purportedly pledged to Chase. This included STET's consent to be sued in Delaware. Accordingly, the Court will deny STET's Renewed Motion to Dismiss pursuant to Rule 12(b)(2).²

An appropriate Order will be entered.

² As a result of these conclusions, the Court will not address Chase's objections to the Magistrate Judge's denial of its ratification, acquiescence, and estoppel theories. For the same reasons, the Court will not address Chase's discovery arguments.

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HOLDINGS, INC., :
 :
Defendants. :

ORDER

At Wilmington, this 13th day of February, 2004, for the
reasons discussed in the Memorandum Opinion issued this date;

NOW THEREFORE, IT IS HEREBY ORDERED that:

- 1) The Court **WILL NOT ADOPT** the Magistrate Judge's April
5, 2002, Report and Recommendation (D.I. 645);
- 2) STET-Societa Finanziaria Telfonica per Azioni's Renewed
Motion To Dismiss (D.I. 558) is **DENIED**.

JOSEPH J. FARNAN, JR.

UNITED STATES DISTRICT JUDGE