

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

INTEGRAL RESOURCES (PVT))
LIMITED, a Pakistani corporation,)
)
Plaintiff,)
)
v.)
)
ISTIL GROUP, INC., a Delaware)
corporation,)
)
Defendant.)
)

Case No. 03-904 (GMS)

MEMORANDUM

I. INTRODUCTION

The plaintiff, Integral Resources (PVT) Limited (“Integral”), filed the above-captioned action against ISTIL Group, Inc. (“ISTIL”) on September 24, 2003. In its complaint, Integral alleges that ISTIL interfered with its contractual relationship with the Progress Agency (“Progress”), a Ukrainian Republic foreign trade firm and agency of the government of Ukraine, by inducing Progress to terminate its contract with Integral. Integral further alleges that ISTIL interfered with prospective contractual relations arising from Integral’s long-term business relationship with Progress.

Presently before the court is ISTIL’s renewed motion to dismiss Integral’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. For the reasons that follow, the court will grant ISTIL’s motion.

II. BACKGROUND

Integral, a military equipment consultant, is incorporated under the laws of Pakistan, with its principal place of business in Pakistan. ISTIL is a Delaware corporation, with its principal place

of business in West Linn, Oregon.¹ ISTIL is engaged in the business of manufacturing and trading steel products.

Integral alleges that, on November 4, 1995, it entered into a contract with Progress (the “Progress Contract”) to assist Progress in developing, marketing, and implementing the sale of military equipment – initially the T-80 UD tank – for the government of Pakistan. The Progress Contract was allegedly amended several times after its execution, enlarging the scope of Integral’s business relationship with Progress. Specifically, Integral was to be the sole and exclusive commercial consultant on all projects between Progress and the Pakistani government, including, but not limited to, the Al-Kahlid tank project. Additionally, Integral and Progress agreed by amendment that the contract between them would remain in effect as long as the T-80 UD tank remained in service for the Pakistani government.

Integral further alleges that, in 2001, ISTIL embarked on a mission to usurp the economic benefits of the Progress Contract and to disrupt Integral’s business relationship with Progress. According to Integral, ISTIL, with the aid of its Ukrainian lawyers, specifically Volodymyr Petryna (“Petryna”), formed Reventox Consulting Limited (“Reventox”), a company incorporated under the laws of Cyprus. ISTIL then had Petryna approach and falsely advise Progress that it would be permissible to breach the Progress Contract in order to enter into a new agreement with Reventox.

According to the complaint, at the time that ISTIL and Petryna induced Progress to terminate the Progress Contract, they knew that the termination would violate the terms of the

¹ ISTIL disputes this allegation, asserting that it is not registered to do business in Oregon and that its principle place of business is Ukraine. However, the court must accept as true the well-pleaded allegations of the complaint. *See Doug Grant Inc. v. Great Bay Casino Corp.*, 232 F.3d 173, 183-84 (3d Cir. 2000). Thus, the court will consider Oregon as ISTIL’s principle place of business for purposes of this motion.

contract, and that their efforts to interfere with the contract were unlawful. Petryna allegedly advised ISTIL that there was a need for secrecy and that it should devise a plan to avoid suspicions concerning its actions.

As a result of ISTIL's and Petryna's efforts, Progress allegedly terminated the Progress Contract, entered into a new contract with Reventox (the "Reventox Contract"), and severed its long-standing business relationship with Integral.

Integral additionally alleges that the Reventox Contract was a fraud at its inception because it violated a contract between the Pakistani and Ukrainian governments. According to Integral, the terms of the Reventox Contract authorized the payment of millions of dollars of commissions to Reventox for Progress. ISTIL then used these "secret commissions" to pay kickbacks to, among others, the representatives of Progress who allegedly participated in and authorized ISTIL's efforts to steal the Progress Contract.²

On September 24, 2003, Integral filed its complaint, alleging tortious interference with a contract and tortious interference with prospective contractual relations. On November 10, 2003, ISTIL filed a motion to dismiss under the doctrine of *forum non conveniens*, arguing that the case should be heard in Ukraine, not in Delaware. Alternatively, ISTIL moved for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6), contending that Integral had failed to state a claim for which relief could be granted under Ukrainian law.

On January 5, 2004, the court issued an order denying ISTIL's motion to dismiss, without prejudice, on the ground of *forum non conveniens*. The court declined to issue a ruling on ISTIL's

² ISTIL's alleged criminal conduct is not at issue in the present case. Thus, the court will not address Integral's allegations of fraud with respect to the Reventox Contract.

Rule 12(b)(6) motion because the factual record on the choice-of-law issue was not yet fully developed. The court subsequently ordered the parties to conduct limited discovery and requested further briefing on the choice-of-law issue. On April 2, 2004, ISTIL filed a renewed Rule 12(b)(6) motion to dismiss.

III. STANDARD OF REVIEW

ISTIL moves to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Dismissal is appropriate pursuant to this Rule if the complaint fails “to state a claim upon which relief can be granted.” FED. R. CIV. P. 12(b)(6). In this inquiry, the court must accept as true and view in the light most favorable to the non-movant the well-pleaded allegations of the complaint. *Doug Grant, Inc. v. Great Bay Casino Corp.*, 232 F.3d 173, 183-84 (3d Cir. 2000). The court ‘need not accept as true “unsupported conclusions and unwarranted inferences.”’ *Id.* (quoting *City of Pittsburgh v. West Penn Power Co.*, 147 F.3d 256, 263 n.13 (3d Cir. 1998)) (quoting *Schuylkill Energy Res., Inc. v. Pennsylvania Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997)). However, it is the duty of the court ““to view the complaint as a whole and to base rulings not upon the presence of mere words but, rather, upon the presence of a factual situation which is or is not justiciable.”” *Id.* at 184 (quoting *City of Pittsburgh*, 147 F.3d at 263).

IV. DISCUSSION

A. Choice of Law

Before the court addresses the sufficiency of Integral’s complaint, it must determine whether Delaware or Ukranian law applies to Integral’s allegations.³ Delaware courts apply the “most

³ The court will apply Delaware choice of law rules to determine what law governs Integral’s claims. *See, e.g., Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941); *Brown v. SAP America, Inc.*, No. C.A. 98-507-SLR, 1999 WL 803888, at *4 (D. Del. Sept. 13, 1999).

significant relationship test” of the Second Restatement of Conflicts. *See Travelers Indemnity Co. v. Lake*, 594 A.2d 38, 47 (Del. 1991) (adopting the most significant relationship test from the Second Restatement of Conflicts). Section 145 of the Restatement directs the court to apply the law of the state that “has the most significant relationship to the occurrence and the parties under the principles stated in § 6.” RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145. After applying the factors set forth in Sections 145 and 6 and evaluating the contacts according to their relative importance with respect to the alleged tortious acts, the court concludes that Ukraine, not Delaware, has the most significant relationship to the acts. Thus, Ukrainian law applies to the claims asserted by Integral.⁴

1. Section 145 Factors

Section 145 sets forth the relevant contacts that the court should consider when applying the principles of § 6 to determine the law applicable to an issue. These factors include: (1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (4) the place where the relationship, if any, between the parties is centered. *Id.* The court should evaluate the contacts according to their relative importance with respect to the particular issue. *Id.*; *see also Travelers Indemnity*, 594 A.2d at 48 (“[T]he Restatement test does not authorize a court to simply add up the interests on both sides of the equation and automatically apply the law of the jurisdiction meeting the highest number of contacts listed in sections 145 and 6. Section 145 has a qualitative aspect.”).

⁴ Indeed, the only reference to Delaware in the complaint is in paragraph two, which alleges that ISTIL is a corporation organized and existing under the laws of Delaware.

The complaint alleges that ISTIL, with the aid of its Ukrainian lawyers, more specifically Petryna, orchestrated a scheme to usurp from Integral the economic benefits of the Progress Contract and its business relationship with Progress. The Progress Contract that is the subject of ISTIL's alleged unlawful conduct was negotiated and performed in Ukraine and Pakistan. The places of injury are, therefore, Ukraine and Pakistan.⁵

The place where the conduct causing the injury occurred is Ukraine. Integral alleges that ISTIL and Petryna induced Progress to breach the Progress Contract. ISTIL's wrongful conduct includes placing Petryna at Progress' disposal in Ukraine. As previously discussed, Petryna then allegedly advised Progress that it would be permissible to terminate the Progress Contract and enter into the Reventox Contract. In addition, Integral accuses Petryna of preparing the termination letter that Progress sent to Integral. Furthermore, Petryna allegedly advised ISTIL that it should proceed with secrecy and avoid starting a scandal. Lastly, Integral alleges that Progress ended its business relationship with Integral as a result of ISTIL's and Petryna's interference. Progress is an agency of the Ukraine government. Petryna and his associates were advising Progress and ISTIL from the Yuris Law Offices, located in Ukraine. ISTIL committed the alleged unlawful acts in Ukraine. Thus, the conduct causing the injury occurred in Ukraine.

The third factor the court must consider is the place of incorporation and place of business of the parties. In the present case, this factor does not point to any one location. Integral's place of incorporation and principal place of business is Pakistan. ISTIL's place of incorporation is Delaware. According to the complaint, ISTIL's principal place of business is Oregon. Comment e to § 145 is instructive on the importance that the court should afford this factor when evaluating

⁵ Neither party has argued that the court should apply Pakistani law.

it in light of the other § 145 factors: the “relative importance [of place of incorporation and place of business of the parties] varies with the nature of the interest affected.” RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 145 cmt. e. In the case of some torts, “the importance of these contacts depends largely upon the extent to which they are grouped with other contacts. The fact, for example, that one of the parties is domiciled or does business in a given state will usually carry little weight of itself.” *Id* Given the foregoing, the court concludes that this factor does not favor Delaware. At most, it is neutral.

The last element of § 145, the place where the relationship between the parties is centered, is inapplicable because Integral and ISTIL did not have an existing relationship.

When deciding a choice of law issue such as that before the court, “Delaware courts place considerable emphasis on ‘the place where the injury occurred’ and ‘the place where the conduct causing the injury occurred.’” *Rudisill v. Sheraton Copenhagen Corp.*, 817 F. Supp. 443, 448 n. 7 (D. Del. 1993) (citations omitted). Ukraine is one of the places where the injury occurred and the place where the conduct causing the injury occurred. In addition, the place of incorporation and place of business are neutral, and the place where the relationship between the parties is centered is inapplicable. Given its analysis of the § 145 factors, the court concludes that Ukraine has the most significant relationship to the conduct about which Integral complains. Thus, the court will apply Ukrainian law. The inquiry does not end with § 145, however, as the court must also evaluate ISTIL’s acts with regard to the § 6 factors.

2. Section 6 Factors

Section 6 of the Restatement provides the following choice of law considerations: (a) the needs of the interstate and international systems (e.g., choice of law rules should seek to further

harmonious relations and facilitate intercourse between states); (b) the relevant policies of the forum; (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue; (d) the protection of justified expectations; (e) the basic policies underlying the particular field of law; (f) certainty, predictability and uniformity of the result; and (g) ease in determination and application of the law to be applied. RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 6. Given the principles set forth in § 6, the court finds that Ukrainian law applies to Integral's claims.

The needs of the interstate and international systems favor application of Ukrainian law. The Progress Contract was formed in order to facilitate the sale of military equipment by Progress to the Pakistani government. Ukraine has an interest in overseeing the negotiation and performance of its military contracts. Delaware has no such interest in the subject matter of the present case.

The relevant policies of the forum also favor Ukraine. Comment e to § 6 states that a court should not apply a forum state's law "where the state of the forum has no interest in the case apart from the fact that it is the place of the trial of the action." RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 6 cmt. e. Integral has not alleged that any of ISTIL's wrongful conduct occurred in or affected Delaware. Thus, Delaware's only interest in the case is that it is the place of trial. As previously discussed, Ukraine has an interest in overseeing its military contracts. In addition, Ukraine has a criminal interest in the case – in June 2003, the Attorney General of Ukraine instituted a criminal investigation relating to the termination of the Progress Contract and related criminal acts by Progress and its director.

The third factor, the relevant policies and relative interests of the other interested states, favors Ukraine. While the forum should give consideration to its own relevant policies and the

relevant policies of all other interested states, the forum should also appraise the relative interests of the states involved in the determination of the particular issue. *Id.* cmt. f. The state whose interests are most deeply affected should have its local law applied. *Id.* Integral alleges that ISTIL interfered with its contract and its business relationship with Progress. Integral asserts further that this interference occurred in Ukraine and that Progress is an agency of the Ukrainian government. Furthermore, Integral has sought relief in Ukraine by filing a complaint with the Attorney General of Ukraine and demanding an investigation into ISTIL's and Progress' conduct. *See* Def.'s Br. at 22-23; Berman Dec. Exh. L, at 2; *id.* Exh. M, at 1. In contrast, the policies of the other interested states, particularly Delaware, are not affected. Thus, Ukraine's interests are most deeply affected, and it should have its local law applied.

The protection of justified expectations as well weighs in favor of applying Ukrainian law. “[I]t . . . [is] unfair and improper to hold a person liable under the local law of one state when he had justifiably molded his conduct to conform to the requirements of another state.” RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 6 cmt. g. Assuming, as the court must, that ISTIL's conduct occurred in Ukraine, it is reasonable for the court to conclude that ISTIL had justifiably molded its conduct to conform to the requirements of Ukrainian, not Delaware, law.

The next factor the court must consider is the basic policies underlying the particular field of law. This factor is most important when differences between the policies of the interested states are not minor. The policies of Delaware and Ukraine, however, are significantly different (*i.e.* Delaware recognizes claims for tortious interference with contract and tortious interference with prospective contractual relationships, while Ukraine does not). Thus, this factor is inapplicable.

Predictability and uniformity of result favor the court's application of Ukrainian law. These

factors are intended to prevent forum shopping. Integral's decision to pursue this case in Delaware, despite the fact that ISTIL's only alleged connection to the state is that Delaware is its place of incorporation, suggests that Integral is forum shopping. Moreover, as previously discussed, Integral has filed several complaints with the Attorney General in Ukraine and demanded an investigation into ISTIL's conduct in Ukraine – further evidence that Integral is forum shopping.

The final § 6 factor serves as a guideline for courts and addresses the application of choice of law rules. It states that the rules should be simple and easy to apply. The Delaware rules are simple and easy to apply because the court only needs to determine which interested state has the most significant relationship to the issue. In the present case, pursuant to the principles enunciated in § 6, the court concludes that Ukraine has the most significant relationship to ISTIL's conduct. The court, therefore, will apply Ukrainian law to Integral's tort claims.

B. Integral's Tort Claims

Integral's complaint alleges violations of two common law precepts: (1) tortious interference with contract; and (2) tortious interference with prospective contractual relations. As discussed above, the court will apply Ukrainian law to Integral's claims. The law of Ukraine, however, does not recognize Integral's claims. Accordingly, the court must dismiss Integral's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) because it does not state a cause of action under Ukrainian law. *See MM Global Serv., Inc. v. Dow Chem. Co.*, 283 F. Supp. 2d 689, 704 (D. Conn. 2003) (dismissing common law claims alleging tortious interference with business expectancies,

Tortious interference with contractual relationships, and unfair competition because they were not actionable under Indian law); *Atlantic Richfield Co. v. ARCO-Globus Int'l Co.*, No. 95 Civ. 6361, 1996 WL 742863, at *5 (S.D.N.Y. Dec. 31, 1996).

Dated: December 2, 2004

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

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ORDER

For the reasons stated in the court's Memorandum of this same date, IT IS HEREBY ORDERED that:

1. The defendant's Renewed Motion to Dismiss (D.I. 47) is GRANTED.

Dated: December 2, 2004

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE