

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 20-cv-00052-CMA-SKC

WESTERN ACCEPTANCE, LLC,

Plaintiff,

v.

GENERAL AGRICULTURE, INC., *f/k/a* General Agriculture, LLC,
STIG WESTLING,
CALLAGHAN BECKER,
PHIL TAGAMI, and
CALIFORNIA CAPITAL & INVESTMENT GROUP, INC.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS CALIFORNIA
CAPITAL & INVESTMENT GROUP, INC.'S AND STIG WESTLING'S
MOTIONS TO DISMISS**

This matter is before the Court on two motions: (1) Defendant California Capital & Investment Group Inc.'s FRCP 12(b) Motion to Dismiss Plaintiff's Second Amended Complaint for Lack of Personal Jurisdiction and Failure to State a Claim ("CCIG's Motion," Doc. # 130); and (2) Defendant Stig Westling's Motion to Dismiss Plaintiff's Second Amended Complaint ("Westling's Motion," Doc. # 172). For the following reasons, the Court grants in part and denies in part CCIG's Motion, and the Court grants Defendant Westling's Motion.

I. BACKGROUND

A. ALLEGATIONS IN THE SECOND AMENDED COMPLAINT

This is a business dispute. Plaintiff Western Acceptance, LLC (“Western Acceptance” or “Plaintiff”) is a Colorado limited liability company headquartered in Colorado Springs, Colorado. (Doc. # 112.) Western Acceptance sued three California corporations: Defendants General Agriculture, Inc. (“GenAg”), Sonoma Stainless, Inc. (“Sonoma”), and California Capital & Investment Group, Inc. (“CCIG”). Western Acceptance also sued three California citizens affiliated with those entities: Defendants Stig Westling, Callaghan Becker, and Phil Tagami (the “Individual Defendants”). The claims against Sonoma were previously dismissed by the Court. (Doc. # 154.)

According to the Second Amended Complaint, Plaintiff entered into a contract with former Defendant SXIP, LLC¹ (“SXIP”) for approximately \$2 million to design and manufacture business equipment referred to as a “Distillate Unit.” (Doc. # 112 at ¶ 10.) “At some point in time during the manufacturing of the Distillate Unit,” Plaintiff alleges that SXIP was acquired by GenAg. (*Id.* at ¶ 13.)

As a result, Plaintiff avers that it “entered into an oral contract” with GenAg and “began dealing directly” with GenAg as to “the design and manufacture of the Distillate Unit.” (*Id.* at ¶¶ 13, 17, 31.) In exchange, GenAg “took monies directly from” Western Acceptance. (*Id.* at ¶¶ 13, 17, 31.) According to Western Acceptance, the oral

¹ Although SXIP was initially named as a Defendant in this case, all claims against it have been dismissed. (Doc. # 83.)

agreement was “in addition to the contract with SXIP which GenAg now own[ed],” by virtue of its acquisition of SXIP. (*Id.* at ¶ 31.)

Western Acceptance avers that, around the same time, GenAg’s alleged “agents” began “personally visiting” Plaintiff’s facility in Colorado Springs, on GenAg’s behalf, to “create[] a ruse that they wanted to partner with Plaintiff, [and] help Plaintiff grow its business,” when in reality, they “were conspiring to learn of Plaintiff’s business” for purposes of “eventually tak[ing]” Plaintiff’s property and money. (*Id.* at ¶¶ 11–16, 51.) These alleged agents include: (1) GenAg’s Chief Executive Officer, Defendant Becker; (2) GenAg’s retained consultant, Defendant Tagami, who was allegedly acting on behalf of himself as well as the agent for CCIG; and (3) Defendant Westling. (*Id.*) The Second Amended Complaint does not specify the capacity in which Mr. Westling worked for GenAg or in what capacity Mr. Westling served as an alleged agent for GenAg.

The Second Amended Complaint identifies Mr. Tagami “upon information and belief” as a consultant for GenAg or “employed by GenAg in some form or fashion.” (*Id.* at ¶ 11.) The Second Amended Complaint also identifies Mr. Tagami as an employee of CCIG. (*Id.* at ¶ 12.) Plaintiff alleges that GenAg retained CCIG and Mr. Tagami to serve as “consultants to assist in the hemp-extraction business.” (*Id.*) Western Acceptance states that Mr. Tagami was an “agent for CCIG at all times,” and he benefited CCIG, GenAg, and himself through his tortious acts. (*Id.*)

Western Acceptance avers that Mr. Tagami visited its Colorado Springs facility on multiple occasions as a consultant on behalf of GenAg. (*Id.* at ¶ 16.) During one such visit, Mr. Tagami “attempt[ed] to take” its “equipment,” by disingenuously advising

Western Acceptance to “move its entire operation to another facility that [Mr. Tagami] designated.” (*Id.* at ¶ 16.) Plaintiff further alleges that, after “GenAg learned while visiting Plaintiff’s facility that Heaters were necessary for the processing of distillate,” unspecified “persons from GenAg showed up at” Plaintiff’s facility and “took” the Heaters. (*Id.* at ¶ 18.) Plaintiff complains that “Defendants” have thus far refused to divulge the location of the Heaters. (*Id.* at ¶ 23.)

According to the Second Amended Complaint, one of GenAg’s agents informed Western Acceptance “that after completion of the Distillate Unit, GenAg wanted to take possession of it.” (*Id.* at ¶ 21.) Western Acceptance claims that it “vehemently refused” to allow GenAg to do so. (*Id.*) At the time, Western Acceptance reportedly made clear to GenAg that it “wanted the Distillate Unit sent to Colorado Springs following completion.” (*Id.*) Plaintiff alleges that the Distillate Unit was taken by Defendants, and Defendants refused to provide the location of the Distillate Unit. (*Id.* at ¶ 22, 23.)

B. RELEVANT JURISDICTIONAL FACTS

The following jurisdictional facts regarding CCIG are taken from the Complaint, as well as the declarations and exhibits attached to the parties’ briefing.

CCIG is a California corporation with a single office located in Oakland, California. (Doc. # 130-1 ¶ 3.) Mr. Tagami is CCIG’s Chief Executive Officer and President of the Board of Directors. (*Id.*)

On April 2, 2019, CCIG entered into a written Consulting Agreement with GenAg. (*Id.* at ¶ 5; Doc. # 130-2.) The Consulting Agreement identifies CCIG as the “Consultant” and Mr. Tagami as the “Consultant Contact.” (Doc. # 130-2 at 2.) The Consulting

Agreement states that CCIG will assist GenAg with “[g]eneral business consulting to help advance [Client’s] existing business operations.” (*Id.*)

In connection with the consulting agreement, Mr. Tagami—in his capacity as an employee of CCIG—traveled with a CCIG subcontracted architect to Colorado to perform a two-day inspection of Plaintiff’s facility in Colorado in May 2019. (Doc. # 130-1 at ¶¶ 7–8.) During the two-day inspection, Mr. Tagami spoke with one of Plaintiff’s representatives, T. Alan Boyd, and informed him that the Colorado Springs facility did not comply with “government codes and he recommended that all of Western Acceptance’s equipment be moved out of the Colorado Springs facility to a location in Oakland, California or elsewhere that [Mr. Tagami] controlled that would be code compliant.” (Doc. # 134-3 at ¶ 17.)

Mr. Boyd informed Mr. Tagami “that under no circumstances was there going to be any removal of existing equipment from the Colorado Springs location and that if any business was to be done in the future, it must be done in Colorado Springs, at Western Acceptance’s facility.” (*Id.* at ¶ 18.) Mr. Tagami, in response, told Mr. Boyd that “GenAg and Western Acceptance would work together to develop the hemp extraction business in the Colorado Springs facility.” (*Id.* at ¶ 19.)

On or about June 19, 2019, “CCIG’s subcontracted architect—with input from CCIG—produced a written compliance report, which utilized the findings from the May 2019 site inspection.” (Doc. # 130-1 at ¶ 11.) The written report concluded that Plaintiff’s Colorado Springs facility “was not in compliance with local building and zoning use

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