

FAIRTRADE INTERNATIONAL, INC. and
RODRIGO ECHEVERRIGARAY,

Defendants.

NOVEMBER 17, 2020

**MEMORANDUM OF LAW IN SUPPORT OF MOTION BY
FAIRTRADE INTERNATIONAL, INC. FOR JUDGMENT ON THE
PLEADINGS PURSUANT TO FED. R. CIV. P. 12(c) AND 12(h)(3)**

Defendant FairTrade International Inc. (“FairTrade” or “Defendant”), by and through undersigned counsel, hereby moves for judgment on the pleadings as to the Complaint filed in this action by Plaintiffs Awano Food Group PTE Ltd. (“Awano”) and Baali International Inc. (“Baali” and together with Awano, “Plaintiffs”) (Dkt. 1). Defendant respectfully submits that diversity between the parties as required by 28 U.S.C. § 1332 is lacking. As this is the only basis for jurisdiction alleged in the Complaint, this Court does not have subject matter jurisdiction over the action. Accordingly, judgment should be entered dismissing the Complaint.

I. This Action

Plaintiffs commenced this action by filing their Complaint on September 15, 2020.¹ FairTrade was served with process on October 6, 2020. Plaintiffs requested, and this Court

¹ Plaintiffs had commenced a similar action in the Superior Court of the State of Connecticut at Bridgeport (Case No. FBT-CV19-5042399 S), a year earlier. Plaintiffs voluntarily withdrew that proceeding by the filing of a Withdrawal of Action on September 29, 2020, three weeks after that court had, on September 8, 2020, scheduled argument for October 19, 2020 on a motion to dismiss for lack of personal jurisdiction.

Complaint alleges that this Court has subject matter jurisdiction over the three claims solely pursuant to 28 U.S.C. § 1332, diversity jurisdiction. The Complaint identifies each party to the action as follows: (1) Plaintiff “Awano is a Singapore Private Limited Company with a principal place of business in Singapore;” (2) Plaintiff “Baali is a Taiwan corporation with a principal place of business in Taiwan;” (3) Defendant “FairTrade is a Delaware corporation with a principal place of business in Connecticut;” and (4) Defendant “Rodrigo Echeverrigaray (“Rodrigo”), upon information and belief, is a citizen of Uruguay.” (Dkt. 1, p.3). In the corporate disclosure statements submitted to this Court pursuant to Fed. R. Civ P. 7.1, Plaintiff Awano represents that it “is a Singapore private limited company with its principal place of business in Singapore,” (Dkt. 10), and Plaintiff Baali represents that it “is a Taiwan corporation with its principal place of business in Taiwan.” (Dkt. 11).

FairTrade answered the Complaint, admitting the allegations concerning citizenship and principal place of business, and asserting the affirmative defense that subject matter jurisdiction over this action is lacking. (Dkt. 17, p. 13).

On November 10, 2020, Plaintiffs moved to strike two of Defendant’s affirmative defenses, which are based in Delaware corporate law. (Dkt. 18). FairTrade will respond to that motion in a separate brief.

is common ground that in our federal system of limited jurisdiction any party or the court *sua sponte*, at any stage of the proceedings, may raise the question of whether the court has subject matter jurisdiction; and, if it does not, dismissal is mandatory.”) (quoting *Manway Constr. Co. v. Housing Auth. of Hartford*, 711 F.2d 501, 503 (2d Cir. 1983)).

A federal court may not determine the merits of a case over which it does not have jurisdiction: subject matter jurisdiction is “an unwaivable *sine qua non* for the exercise of federal judicial power.” *Herrick Co., Inc. v. SCS Communications, Inc.*, 251 F.3d 315, 321 (2d Cir. 2001); *See also Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.À.R.L.*, 790 F.3d 411, 416-17 (2d Cir. 2015) (“A district court properly dismisses an action ... for lack of subject matter jurisdiction if the court lacks the statutory or constitutional power to adjudicate it...”) (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)).

A motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) is analyzed under the same standard as that applied to a motion to dismiss pursuant to FRCP 12(b). *Patel v. Contemporary Classics of Beverly Hills*, 259 F.3d 123, 126 (2d Cir. 2001); *see also, Komondy v. Gioco*, 59 F. Supp. 3d 469, 473 (D. Conn. 2014).

Plaintiffs’ claims for breach of contract, violation of fraudulent conveyance, and breach of fiduciary duty arise solely under Connecticut state law. Because Plaintiffs have not pleaded federal-question jurisdiction and the Complaint asserts no allegations to

\$75,000.00, exclusive of interests and costs, and there is diversity of citizenship between the parties. 28 U.S.C. § 1332(a). “A corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business [...]” 28 U.S.C. § 1332(c)(1). A corporation can only have one principal place of business. *Hertz Corp. v. Friend*, 559 U.S. 77, 93-94 (2010). The determination of a corporation’s principal place of business as outlined in *Hertz*, also applies to foreign corporations. *JS Barkats PLLC v. Blue Sphere Corp.*, 2017 WL 2930935, at *4 (S.D.N.Y. July 10, 2017) (applying the test dictated by *Hertz* to an Israeli corporation and noting that “an alien corporation's *worldwide* principal place of business, and not its principal place of business within the United States, is controlling.”)

As the party asserting federal jurisdiction, Plaintiffs bear the burden to show that diversity jurisdiction exists. *Hertz Corp. v. Friend*, 559 U.S. 77, 96 (2010); *see also Herrick Co. v. SCS Commc'ns, Inc.*, 251 F.3d 315, 322 (2d Cir. 2001) and *Borderud v. Riverside Motorcars, LLC*, 2020 WL 2494760, at *2 (D. Conn. May 13, 2020).

Alien citizenship “destroys diversity if there is an alien on the other side of the case and there are not citizens of states on both sides.” 15 Moore’s Federal Practice § 102.55 (3d ed. 2003) (*citing* 28 U.S.C. § 1332(a)(2)–(4)). As is the case here, “diversity is lacking ... where the only parties are foreign entities, or where on one side there are citizens and aliens and on the opposite side there are only aliens.” *Bayerische Landesbank, New York*

corporation with its principal place of business in Taiwan. As Plaintiffs allege, Defendant Rodrigo Echeverrigaray is a citizen of Uruguay and FairTrade is a Delaware corporation with its principal place of business in Connecticut. There are not citizens of states on both sides, therefore diversity is lacking. Accordingly, Plaintiffs' claims must be dismissed.

IV. Conclusion

On the basis of the foregoing, Defendant respectfully requests that the Court enter judgment dismissing Plaintiffs' Complaint for lack of subject matter jurisdiction

Date: November 17, 2020

THE DEFENDANT,
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