

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

REFRESCO BEVERAGES US INC., *
Plaintiff, *

vs. * CASE NO. 4:20-CV-181 (CDL)

CALIFORMULATIONS, LLC, *et al.*, *
Defendants. *

O R D E R

Plaintiff Refresco Beverages US Inc. alleges that The Green Organic Dutchman Holdings Ltd. ("TGOD") encouraged several individual Defendants to breach their fiduciary duties to Refresco's predecessor-in-interest, Cott Beverages, and tortiously interfered with several Defendants' contracts with Cott Beverages. TGOD filed a motion to dismiss Refresco's complaint, arguing that this Court does not have personal jurisdiction over TGOD and that Refresco fails to state a claim for relief. For the following reasons, that motion (ECF No. 116) is denied.

DISCUSSION

To determine whether the Court can exercise personal jurisdiction over TGOD, the Court must decide (1) whether the Court can exercise personal jurisdiction under the forum state's (Georgia) long arm statute, and (2) whether exercising personal jurisdiction over TGOD would violate the Due Process Clause of the

Fourteenth Amendment. *Mut. Serv. Ins. Co. v. Frit Indus., Inc.*, 358 F.3d 1312, 1319 (11th Cir. 2004).

I. Personal Jurisdiction under Georgia's Long Arm Statute

Georgia's long arm statute provides for personal jurisdiction over a nonresident if the nonresident, "in person or through an agent . . . (1) Transacts any business within this state; [or] (3) Commits a tortious injury in [Georgia] caused by an act or omission outside of [Georgia] if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in [Georgia]." O.C.G.A. § 9-10-91. A nonresident defendant "transacts any business" in Georgia when it "has purposefully done some act or consummated some transaction in" Georgia, although the defendant "need not physically enter the state." *Diamond Crystal Brands, Inc. v. Food Movers Int'l, Inc.*, 593 F.3d 1249, 1264 (11th Cir. 2010) (quoting *Robertson v. CRI, Inc.*, 601 S.E.2d 163, 166 (Ga. Ct. App. 2004)). A court should "examine all of a nonresident's tangible and intangible conduct and ask whether it can fairly be said that the nonresident has transacted any business within Georgia." *Id.*

The following factual allegations, supplemented by evidence discovered during jurisdictional discovery, are relevant to

whether TGOD transacted business in Georgia for purposes of the Georgia long arm statute.¹

TGOD is a Canadian corporation with its principal place of business in Ontario. Compl. ¶ 8, ECF No. 1. TGOD produces organic cannabis products. In 2018, Symrise Inc. and two executives of Cott Beverages (Edmund O’Keeffe and Tyrone Polhamus) decided to share their proposal to form a new Georgia-based beverage incubator, “NewCo/Califormulations,” with TGOD because they believed there was a “lucrative market for cannabis-infused beverages.” *Id.* ¶ 263. O’Keeffe approached TGOD’s Senior Vice President of Sales, Michael Gibbons, and told him that Refresco was going to buy Cott Beverages. At the time, that information was not publicly known. *Id.* ¶ 266. Csaba Reider, TGOD’s president, informed O’Keeffe and Polhamus that TGOD was interested in the proposal and that Matt Schmidt would “take the lead” for TGOD regarding TGOD’s potential participation. *Id.* ¶ 286.

TGOD representatives sent multiple emails and made multiple phone calls to individuals in Georgia in connection with their interest in the NewCo proposal. These contacts include, among other correspondence, (1) a January 2019 email to O’Keeffe in which Schmidt indicated TGOD was interested in investing subject to due

¹ Refresco’s complaint describes an alleged conspiracy among various Defendants to steal its trade secrets and employees. Those facts are recounted in greater detail in a previous Order. See Order (Sep. 22, 2021), ECF No. 94.

diligence and further review, and (2) February 2019 emails to O'Keefe in which Schmidt asked whether O'Keefe's "key guys" were "good to go" and informed O'Keefe that the NewCo "deal needs to be contingent on the top R&D guy joining." Compl. ¶¶ 336, 339. TGOD President Csaba Reider also discussed including a lab for TGOD scientist, Prem Virmani, in NewCo's proposed Columbus, Georgia location. *Id.* ¶ 280. No such lab was ever constructed for Virmani, though, and Virmani never worked for NewCo in any capacity. TGOD did, however, acknowledge that its investment would mean that important Cott personnel, including several named Defendants, would join Califormulations. See Pl.'s Resp. to Def.'s Mot. to Dismiss Ex. 14, Summary of Proposed Terms and Conditions for Investment in Califormulations, LLC 0009, ECF No. 122-13 ("Toby Polhamus, Khanh Ly and Jason Pontes will be appointed as the officers of the Company[.]").

The Green Organic Beverage Corp., which is TGOD's subsidiary, is a 15% owner of Califormulations. Compl. ¶ 21. TGOD set up this subsidiary "for the purpose of holding TGOD's ownership stake in Califormulations."² *Id.* Further, TGOD's Chief Financial Officer, Sean Bovingdon, is a member of Califormulations' Board of Managers. *Id.* In this role, Bovingdon participates in "oversight

² TGOD initially argued that the subsidiary's actions could not be attributed to it. After completing jurisdictional discovery, however, TGOD abandoned this argument. Am. Renewal of Def.'s Mot. to Dismiss, ECF No. 116.

of the management of Califormulations by its executive officers," but has "no role in directing the day-to-day operations of Califormulations and [has] no authority to enter into contracts or otherwise bind Califormulations." Bovington Aff. ¶ 10, ECF No. 54-2. Califormulations' website advertises TGOD's involvement with the company, stating that Califormulations "combines the expertise of the Columbus Group, Symrise, . . . [and] the offering of [TGOD]." Compl. ¶ 21. TGOD likewise issued a press release advertising its role as an "investor and strategic partner" in Califormulations, which was to operate out of Columbus, Georgia. Pl.'s Resp. to Def.'s Mot. to Dismiss Ex. 5, Press Release, TGOD, The Green Organic Dutchman Enters US Market Through Cornerstone Investment in Califormulations LLC, ECF No. 122-4 at 4 ("TGOD Press Release").

TGOD argues that it did not "transact business" in Georgia because its contacts with Georgia were limited to emails and phone calls to people in Georgia and a minority investment in Califormulations, a Delaware LLC with its principal place of business in Georgia. In support of this argument, TGOD cites *LABMD, Inc. v. Tiversa, Inc.*, an unpublished opinion by a panel of the Eleventh Circuit in which the panel found that the defendants' actions—calling the plaintiff who was in Georgia, sending the plaintiff nine e-mails offering intelligence and security services, and accessing the plaintiff's document on a peer-to-peer

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