

damages and injunctive relief under § § 4 and 16 of the Clayton Act, 15 U.S.C. § § 15, 26. Plaintiffs allege that, one such defendant, SCC, a corporation organized under the laws of and headquartered in Japan, engaged in this conspiracy with regard to the sale of folic acid and biotin. On January 13, 2002, SCC, one of the few defendants not to have pled guilty to price-fixing or any other antitrust violation relating to vitamins or vitamin products, filed a motion to dismiss the complaint for lack of personal jurisdiction, failure to plead allegations of fraudulent concealment with particularity, and failure to state a claim upon which relief can be granted. In an Order dated May 25, 2000 ("May 25th Order"), this Court denied SCC's motions to dismiss for failure to state a claim upon which relief can be granted and for failure to plead allegations of fraudulent concealment with particularity, but expressly reserved decision on SCC's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction.¹ On February 15, 2002, SCC filed a Memorandum in Further Support of Motion to Dismiss for lack of personal jurisdiction and on February 22, 2002, SCC filed a Supplemental Brief to the Memorandum of Law in Support of its Motion to Dismiss claiming that the complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) as the District of Columbia is an improper venue.

¹ In its May 9, 2000 Opinion and Order ("May 9th Opinion"), this Court denied numerous defendants' Motions to Dismiss against various plaintiffs in this MDL proceeding for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6), and failure to plead allegations of fraudulent concealment with particularity pursuant to Fed. R. Civ. P. 9(b). In its May 25, 2000 Order, the Court amended the May 9th Opinion to include Sumitomo Chemical Co., Ltd. and Sumitomo Chemical America, Inc. in the list of defendants whose motions to dismiss were denied by the May 9th Order. The Court, in footnote 1 of the May 25th Order, noted that Sumitomo Chemical Co., Ltd.'s motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction had not been addressed by the May 9th Opinion, and therefore expressly preserved Sumitomo Chemical Co., Ltd.'s motion to dismiss for lack of personal jurisdiction for future consideration.

Discussion

Plaintiffs in this action offer two statutory bases to support personal jurisdiction in the District of Columbia: (1) Section 12 of the Clayton Act, 15 U.S.C. § 22, and (2) the D.C. Long Arm Statute, §13-423.

1. Section 12 of the Clayton Act - Contacts Requirement

The issue of whether, pursuant to Section 12 of the Clayton Act,² the relevant forum on which to analyze defendants' conduct for the purposes of personal jurisdiction is the District of Columbia or the United States as a whole has already been addressed by this Court. On July 29, 1999, the Court addressed the contacts requirement in the context of resolving the scope and nature of jurisdictional discovery from foreign defendants, see Memorandum Opinion, July 29, 1999 ("July 29 Opinion"). The July 29 Opinion relied on Go Video, Inc. v. Akai Elec. Co., Ltd., 885 F.2d 1406 (9th Cir. 1989) in interpreting the nationwide service provision of §12 of the Clayton Act, and concluded that was appropriate to use a national contacts test for personal jurisdiction under the Clayton Act. However, on January 11, 2000, the United States Court of Appeals for the D.C. Circuit issued an opinion in GTE New Media Services, Inc. v. Bell South Corp., 199 F.3d 1343 (D.C. Cir. 2000), holding that the relevant forum for personal jurisdiction under the Clayton Act is not a nationwide inquiry, but rather is a local contacts inquiry. The court in GTE specifically held that the language of Section 12 of the Clayton Act allowing for

² Section 12 of the Clayton Act, 15 U.S.C. § 22 states:

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

worldwide service of process may only be used in cases in which the entire initial venue provision has been satisfied. Thus, worldwide service of process is authorized only after the court finds that the defendants are inhabitants of, may be found in, or transact business in the forum in which the complaint is filed. In light of the D.C. Circuit's opinion in GTE, on March 27, 2000, the Court reconsidered its position and adopted a local contacts test for personal jurisdiction under the Clayton Act. See In Re: Vitamins Antitrust Litig., 94 F. Supp. 2d 26, 30 (D.D.C. 2000) ("March 27th Opinion") ("Although this Court is greatly concerned with the effect of a local contacts test on the consolidation and management of multidistrict litigation, it is bound by this Circuit's statutory analysis of the Clayton Act and its clear rejection of the Go-Video approach in GTE").

Section 12 of the Clayton Act is not sufficient to confer personal jurisdiction unless plaintiffs show that the defendant has the requisite local contacts with the District of Columbia. See In Re: Vitamins Antitrust Litig., 94 F. Supp. 2d at 30. As discussed below, plaintiffs have failed to allege sufficient local contacts. Further, the Court finds the arguments by plaintiffs in attempting to distinguish GTE indistinguishable from those addressed in the March 27th Opinion and therefore sees no cause to deviate from its prior opinion. Notably, this Court held that "[i]f the D.C. Circuit did not intend to bind plaintiffs suing alien corporations, the Court could simply have distinguished Go Video as inapposite since Go Video involved foreign corporations and GTE involved only domestic defendants." Id. at 57. Plaintiffs' arguments concerning Section 12 are premised on the Court's, now rejected, national contacts test rather

than the local contacts test as required by GTE.³ Plaintiffs have offered no new arguments, therefore, the Court will discuss plaintiffs' claim of jurisdiction under the D.C. Long Arm Statute.

2. D.C. Long Arm Statute

A personal jurisdiction analysis requires that a court engage in a two-part inquiry to determine whether jurisdiction over a non-resident is proper. A court must determine: (1) whether jurisdiction is proper under the applicable long-arm statute, and (2) whether jurisdiction comports with due process requirements. See GTE, 199 F.3d at 1347 (citing United States v. Ferrara, 54 F.3d 825, 828 (D.C. Cir. 1995)).

Plaintiffs bear the burden of establishing personal jurisdiction under the D.C. long arm statute §13-423. See Bank of Cape Verde v. Bronson, 869 F. Supp. 21, 23 (D.D.C. 1994) (citing Lott v. Burning Tree Club, Inc., 516 F. Supp. 913, 918 (D.D.C. 1980)) ("The Court must look to the District of Columbia long-arm statute, D.C. Code § 13-423, to determine if plaintiff has met the threshold requirement of a prima facie showing of personal jurisdiction over defendants."). In order to establish personal jurisdiction, plaintiff must first show that the defendant had the requisite minimum contacts with the District of Columbia to "reasonably anticipate being hauled into court there." World-Wide Volkswagen Corp., 444 U.S. 286, 297 (1980). Additionally, under D.C. Code §13-423(b), plaintiffs are required to show that the claim arises out of the acts committed within the District of Columbia. See Novak-Canzeri v. Saud, 864 F. Supp. 203, 206

³ SCC aptly points out that plaintiffs have all but conceded that SCC is not subject to personal jurisdiction in D.C. under the local contacts test as plaintiffs stated "there is no basis for SCC to challenge this Court's exercise of jurisdiction" unless the Court "declines to follow its earlier ruling in favor of an analysis that focuses solely on the international defendant's contacts with the District of Columbia." (Pl. Opp. Mem at 29.)

(D.D.C. 1994) (citing Dooley v. United Technologies Corp., 786 F. Supp. 65 at 71 (D.D.C. 1992); LaBrier v. A.H. Robins Co., Inc., 551 F. Supp. 53 (D.D.C. 1982)) ("Section 423(b) bars any claims unrelated to the particular transaction carried out in the District of Columbia upon which personal jurisdiction allegedly is based: The claim itself must have arisen from the business transacted in the District or there is no jurisdiction.").

Plaintiffs have alleged no facts demonstrating SCC's local contacts with the District of Columbia. SCC, however, by way of affidavit, offers that it lacks sufficient local contacts to be subject to personal jurisdiction in the District of Columbia. Specifically, SCC claims that it never: (1) maintained an office in the District of Columbia, or had employees here; (2) sold vitamin products in the District of Columbia; (3) had owned or rented property in the District of Columbia; (4) been registered to do business in the District of Columbia; (5) paid taxes in the District of Columbia; (6) maintained a bank account in the District of Columbia; (7) manufactured any products in the District of Columbia; (7) taken out a loan in the District of Columbia; (8) targeted advertising at residents of the District of Columbia; or (9) commenced a lawsuit in the District of Columbia. See Def.'s Mem. in Further Supp. of Mot. to Dismiss Second Consolidated Am. Class Action Compl. at 4 (Feb. 15, 2002) (citing Tadahisa Ooka Aff. ¶¶ 5-12 (Feb. 12, 2002)). On these facts, the Court has no trouble finding that the plaintiffs have failed to demonstrate that SCC had sufficient contacts with the District of Columbia.

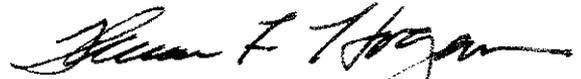
In summary, based on plaintiffs' failure to meet their burden and based on the submission by defendant, it is clear, that SCC, a corporation organized under the laws of, and headquartered in Japan, lacks the requisite local contacts to support personal jurisdiction in the District of Columbia. Plaintiffs jurisdictional claim based upon the D.C. long arm statute must fail and

consequently a due process analysis is unnecessary.

III. Conclusion

For the foregoing reasons, defendant's pending motion to dismiss for lack of personal jurisdiction is granted. An order will accompany this opinion.

April 24th, 2002



Thomas F. Hogan
Chief Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
In re Vitamins Antitrust Litigation)
_____)

Misc. No. 99-1197
MDL No. 1285

FILED

APR 25 2002

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

THIS DOCUMENT RELATES TO:

_____)
Livengood Feeds, Inc. et al.,)
)
Plaintiffs,)
)
v.)
)
Hoffman-LaRoche Inc., et al.)
)
Defendants.)
_____)

ORDER

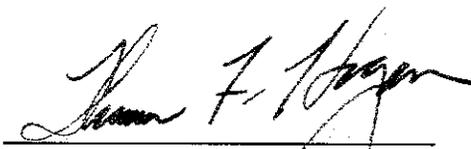
Re: Sumitomo Chemical Co., Ltd's Motion to Dismiss

It is hereby

ORDERED that defendant Sumitomo Chemical Co., Ltd.'s Motion to Dismiss Plaintiffs' Second Consolidated Amended Class Action Complaint pursuant to Fed. R. Civ. P. 12(b)(2), for lack of personal jurisdiction is **GRANTED**.

It is so **ORDERED**.

April 24th, 2002



Thomas F. Hogan
Chief Judge