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# Order (AMANA I SA)

Alice D. Bonner
*Superior Court of Fulton County*

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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| AMANA I SA<br><br>Plaintiff,<br><br>v.<br><br>CAIRNWOOD GROUP, LLC, CAIRNWOOD CAPITAL MANAGEMENT, LLC, LANE P. PENDLETON, LAIRD P. PENDLETON, KIRK P. PENDLETON, and THAYER B. PENDLETON.<br><br>Defendants, | * | Civil Action File No. 2006-CV-114931 |

FILED IN OFFICE
MAR 30 2007
Deputy Clerk Superior Court
Fulton County, Georgia

**ORDER**

The above-styled case is before this Court on Defendants' Motions to Dismiss for Lack of Personal Jurisdiction, for Joinder of Persons Necessary for Just Adjudication, for Protective Order, and for Partial Summary Judgment. The Parties presented arguments on these Motions on March 1, 2007, and the Court finds as follows:

Sheik Mohammed Al-Amoudi ("Al-Amoudi"), a citizen of Saudi Arabia, is the majority shareholder of Plaintiff, Amana I SA ("Amana"), a Luxembourg company. Karim Karaman ("Mr. Karaman"), a citizen of England, is employed by Al-Amoudi and is the manager and minority shareholder of Amana. Mr. Karaman was the liaison between the Defendants, Al-Amoudi and Amana. Amana holds a $10M investment in Cairnwood Global Technology Fund ("CGTF"), a Cayman Islands company. Amana paid CGTF in four investment traunches:[1] $5M in April, 2000; $2.5M in March, 2001; $1M in August, 2001; and $1.5M in January, 2003. The first two traunches, however, were made prior to Amana's incorporation on July 6, 2001, and were wired from one of Al-Amoudi's personal bank accounts. In January, 2006, Al-Amoudi assigned all rights of action related to the first two traunches to Amana. This law suit

1 Investopedia, at http://www.investopedia.com/terms/t/traunch.asp (Mar. 26, 2007) (defining traunches as "[o]ne of

arises out of allegations by the Plaintiff of fraud, misrepresentations, and conspiracy.

From 1999 through 2006, Cairnwood Capital Management, LLC ("CCM"), a Georgia limited liability corporation and Defendant in this action, managed CGTF. Cairnwood Group, LLC ("CG"), a Delaware limited liability corporation and Defendant in this action, sponsored CGTF.[2] CGTF, CCM, and CG are only a few of several business organizations founded and/or managed by Lane Pendleton ("Lane"), Kirk Pendleton ("Kirk"), Laird Pendleton ("Laird", and collectively together with Lane and Kirk, the "Pendleton Defendants") and Thayer Pendleton, who is also a Defendant in this action, as a part of their family's portfolio. Both CG and CCM have their principal place of business in Roswell, Fulton County, Georgia (the "Roswell Office"), which is managed by Tim Lundberg, who is closely involved in the business of CGTF, CCM, and CG. CGTF also conducted business, at least in the United States, out of the Roswell Office. For example, CGTF sent several letters to Plaintiff from the Roswell Office, Tim Lundburg reviewed the executive summary ("Executive Summary") in the Roswell Office which was later distributed to Mr. Karaman, and CGTF listed the Roswell Office as the contact for the fund in the United States on its quarterly updates and annual reports distributed to Plaintiff.

Lane Pendleton, a resident of Singapore who has not returned to the United States since the early 1990's, was heavily involved in the management of CGTF and CG. Lane was a director of CGTF from 1999 through January 2006 when the board was replaced by the majority shareholder, Amana. Lane is also a director, manager, and shareholder of CG.

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many influxes of cash that is part of a single round of investment.").

2 An investment fund sponsor is an influential institution that highly values a particular investment opportunity creating "demand for a security because of their positive outlook on it." Investopedia, at http://www.investopedia.com/terms/s/sponsor.asp (Mar. 28, 2007). An investment fund manager, however, invests the assets of the fund. Id. at http://www.investopedia.com/terms/f/fundmanager.asp (Mar. 28, 2007).

Lane met with Mr. Karaman outside of the United States on five different occasions to discuss Amana's investment in CGTF. During the first of these meetings, Lane provided Mr. Karaman with the Executive Summary and a power point presentation (the "PowerPoint") describing the management of and investment opportunity in CGTF. Lane also sent Mr. Karaman several facsimile, email, and letter communications requesting that Amana fulfill its investment commitment, making statements regarding the investments such as the amount of Lane's personal contributions into the investments and the current funding levels, as well as, providing Amana with specific wiring instructions for CGTF's Georgia bank account.

Kirk Pendleton, a Pennsylvania resident, is Lane and Thayer's father and Laird's brother. Kirk owns approximately 25% of CCM and has been a manager/director of CG since 1999. Kirk was involved with the creation and management of CGTF from its inception in 1999 until his removal as a director in 2006. Kirk also spoke with Mr. Karaman, at Lane's suggestion, regarding Amana's investment in CGTF. Additionally, Kirk sent Mr. Karaman a letter regarding CGTF on Roswell Office stationary, which was mailed from the Roswell Office, even though Kirk was never physically present in Georgia.

Laird Pendleton, a Massachusetts resident, is Kirk's brother and Lane and Thayer's uncle. Laird owns approximately 25% of CCM and was a manager/director of CG from 1999 to 2003. Laird was involved with the creation and management of CGTF from its inception in 1999 until his removal as a director in 2006.

## Motions to Dismiss for Lack of Personal Jurisdiction

Defendants Laird Pendleton, Kirk Pendleton and Lane Pendleton have moved to dismiss for lack of personal jurisdiction. A court may exercise personal jurisdiction over a

nonresident defendant if there is sufficient basis under the forum's long arm jurisdiction statute and the nonresident defendant's actions demonstrate minimum contacts sufficient to meet the United States Constitutional due process considerations. Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985). The Georgia Long Arm Jurisdiction statute establishes personal jurisdiction over a nonresident who commits a tortious act or omission, causes an injury, or "transacts any business" in this state. O.C.G.A. § 9-10-91. A defendant who moves a court to dismiss for lack of personal jurisdiction bears the burden to prove the court's lack of jurisdiction. Beasley v. Beasley, 260 Ga. 419, 420 (1990).

In evaluating the Constitutional considerations of personal jurisdiction based upon "transacts any business," the Court applies a three-part test: (1) whether or not the defendant purposefully consummated a transactions or did an act within this state; (2) whether the cause of action arises from such act or transactions; and (3) whether the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. Aero Toy Store, LLC v. Grieves, 279 Ga. App. 515, 517 (2006). The first two prongs of the Aero Toy test establish "minimum contacts" and the third factor evaluates the reasonableness of asserting jurisdiction, such as "the burden on defendant, the forum state's interest in adjudicating the dispute, plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution to controversies, and the shared interest of the states in furthering substantive social policies." Id. at 518. The scope of Georgia's long arm statute with respect to the "transacts any business" prong is coterminous with due process. Innovative Clinical & Consulting Serv., LLC, v. First Nat'l Bank of Ames, Iowa, 279 Ga. 672 (2005) remanded to 280 Ga. App. 337 (2006).

A threshold issue presented by the facts of this case is whether or not liability resulting

from the actions of a business entity officer or director is attributable to the business entity or to the individual. While this Court is respectful of the corporate form and the protections that it offers its officers, investors and directors, the tortious acts of a corporate officer are sufficient to hold the officer personally liable, even in the absence of sufficient evidence to pierce the corporate veil. Beasley v. A Better Gas Co., Inc., 269 Ga. App. 426, 429 (2004); Cherry, v. Ward, 204 Ga. App. 833, 834 (1992) ("[I]t is well established that an officer of a corporation who takes part in the commission of a tort by the corporation is personally liable therefor....").

Plaintiff alleges that the Pendleton Defendants took or directed actions to be taken that amounted to fraud, conspiracy to commit fraud, negligent misrepresentations, and wire fraud. Such alleged torts, even though enacted through the Defendants' various corporate entities, are attributable to the individuals. Thus the protections of corporate form do not shield the Pendleton Defendants from personal liability for the alleged intentional torts they committed, even if done so in their official capacity as officers or directors of an organization.

Kirk Pendleton, a Pennsylvania resident, is a manager and 25% owner of CCM, a Georgia limited liability company. Kirk is also a current manager of CG and a former director of CGTF. Kirk was involved in the creation and management of CGTF through his roles in CCM and CG and was identified and his relevant skills and experiences described in the PowerPoint. Specifically, Kirk participated in email communications in July of 2002, regarding the best manner in which to persuade Plaintiff to pay the final capital installment to CGTF. Additionally, Kirk communicated directly with Mr. Karaman regarding Amana's investment in CGTF. The first was a letter, sent in 2002, providing wire instructions to CGTF's Georgia bank account, and the second was a letter, sent in 2005, discussing Amana's investment in CGTF and written on stationary from the Roswell Office.

Lane Pendleton is a manager of CG and was a director of CGTF from 1999-2006. The PowerPoint identified Lane and described and his relevant skills and experiences to the fund. Throughout the course of Amana's investment in CGTF, Lane served as the main point of contact between CGTF, the individual Defendants, and Amana. Specifically, Lane met with Mr. Karaman to discuss CGTF on five occasions, each one occurring outside of the United States. Lane also sent Mr. Karaman several letter, email, and facsimile communications regarding CGTF. In April, 2000, and July, 2001, Lane sent Mr. Karaman, two faxes requesting investment installments and providing wire transfer instructions to CGTF's Georgia bank account. Lane also sent Mr. Karaman a letter dated July 23, 2002, on CGTF stationary from the Roswell Office. Additionally, Lane participated in internal management email discussions regarding the funding of CGTF, which took place in 2000, and regarding the best manner in which to persuade Plaintiff's final investment traunch in CGTF, which took place in 2002.

Laird Pendleton, a Massachusetts resident, is a 25% owner of CCM and a manager of CG. In 1999, Laird sent a string of email communications to the other Pendleton Defendants plus Thayer Pendleton discussing the creation, capitalization, and management of CGTF. Additionally, CGTF identified Laird in the PowerPoint and described his skills and experience relevant to the management of the fund. Laird also participated in the email discussion in 2002 regarding the most effective manner in which to persuade Plaintiff to make its final investment traunch, as well as the best manner in which to cover CGTF's existing investment obligations.

The facts of this case present a jurisdictional nightmare because the individual Defendants reside and are incorporated in diverse locations with communications originating

from and being received in similarly diverse locations creating multiple spokes in the wheel of activity. Thus far, the record establishes that the majority of relevant communications and decisions were effectuated over international email, fax, telephone and letter communications. The only possible nexus, or hub, of these activities, however, is the Roswell Office, which was the principal place of business for CG and CCM and where CGTF operated a substantial portion of its business. For example, CGTF directed all investments from Plaintiff to a CGTF bank account in Georgia. The CGTF updates and annual reports cited by both Plaintiff and Defendants all list the "United States contact" as the Roswell Office. Additionally, both Lane and Kirk sent Mr. Karaman letters regarding CGTF on the Roswell Office stationary.

The combined result of these actions and circumstances is that CGTF, which operated out of the Roswell Office, received in its Georgia bank account $10M wired from Al-Amoudi/Amana. The circumstances surrounding and culminating in that $10M investment form the basis of Plaintiff's Complaint. Accordingly, this Court finds that each Pendleton Defendant sufficiently "transacted business" in Georgia under O.C.G.A. § 9-10-91(1) and established minimum contacts with this forum. First Nat'l Bank of Ames, Iowa v. Innovative Clinical & Consulting Serv., LLC., 280 Ga. App. 337, 338 (2006) (holding that a bank's intangible contacts with Georgia, where it sought to derive economic benefit from such contact, was sufficient to establish both "business" with the forum and minimum contacts for purposes of exercising personal jurisdiction over the bank), remanded from 279 Ga. 672.

This Court finds that exercise of personal jurisdiction over the Pendleton Defendants in Georgia does not offend traditional notions of fair play and substantial justice. See Delong Equipment Co. v. Washington Mills Abrasive Co., 840 F.2d 843, 854 (11th Cir. 1988). The Court recognizes that there will be some geographical inconvenience for the Pendleton

Defendants, but due to the geographic diversity of the Defendants, there is no better suited alternative. Although the connections to this forum may be construed as tenuous, Georgia presents the only nexus of actions and injury and thus the most convenient and efficient forum for all Parties in this matter. Georgia has been CGTF's United States hub of activity and has housed CGTF's funds within its financial institutions. Georgia, thus, has an interest in consolidating these claims, to the extent permitted by the law, and resolving them in this forum. Moreover, the Court finds it ironic that the Pendleton Defendants' arguments in support of its Motions to Dismiss are contrary to their later arguments made on the issue of joinder urging this Court to recognize the confluence of events here in Georgia.

Upon review of the record and consideration of the arguments presented, this Court hereby **DENIES** Defendants Laird Pendleton, Kirk Pendleton and Lane Pendleton's Motions to Dismiss for Lack of Personal Jurisdiction.

## Motions to Join Indispensable Parties

The Defendants petition the Court to join Al-Amoudi as a plaintiff and CGTF as a defendant in order to alleviate the threat of double recovery and inconsistent results. Joinder is permissible if (1) relief cannot be afforded among those who are already parties, (2) a party claims an interest in the action and his absence impairs or impedes the ability to protect that interest, or (3) a party claims an interest in the action where his absence creates a substantial risk of double, multiple or inconsistent obligations. O.C.G.A. § 9-11-19. The Court may join a party as a plaintiff, a defendant, or as an involuntary plaintiff. Id. See also, Altama Delta Corp. v. Howell, 225 Ga. App. 78, 81 (1997) (holding in part that the trial court did not abuse its discretion in denying the motion to dismiss and adding parties as involuntary plaintiffs);

Christine M. Gimeno, Georgia Procedure § 12:19 (2006).

### *Motion to Join Al-Amoudi*

In support of their Motions to Join Al-Amoudi, Defendants presented evidence that the first two investment traunches totaling $7.5M (made in April, 2000, and March, 2001) were wired from one of Al-Amoudi's personal bank accounts and were made before Amana was incorporated on July 6, 2001. Additionally, Defendants argue that many of the alleged misrepresentations giving rise to Plaintiff's claims were made to Mr. Karaman acting as Al-Amoudi's agent, prior to Amana's incorporation. Thus, Defendants argued, Al-Amoudi, and not Amana, is the proper party to bring the action as it relates to the first $7.5M invested in CGTF, therefore requiring Al-Amoudi to be joined as a plaintiff.

In opposition to the Motions to Join, Plaintiff referenced an assignment between Al-Amoudi and Amana, proposed a stipulation order, and demonstrated that Defendants treated Amana as the shareholder of record at all times. On January 5, 2006, Al-Amoudi assigned to Amana all rights of action he held against CGTF, any Cairnwood entity, or any Pendleton family member (the "Assignment"). The Assignment contains an English choice of law provision and was entered into in London, several months before Plaintiff initiated this suit in Georgia. Plaintiff also proposed a stipulation order to prevent double recovery on behalf of Amana from any of the Defendants. The proposed stipulation, however, did not contain a signature line for Al-Amoudi, the party from whom the Defendants would want to restrict recovery. Additionally, Plaintiff presented evidence that the Defendants treated Amana, at all times, as the investor in CGTF and that all parties acknowledged that Al-Amoudi would invest

in CGTF through a holding company, not personally. Finally, Plaintiffs challenge the joinder of Al-Amoudi on the grounds that this Court could not exercise personal jurisdiction over the Saudi Arabia resident.

While all parties may have agreed to and acted as if Al-Amoudi would invest in CGTF solely through a holding company, which was later incorporated to be known as Amana, the facts conclusively demonstrate that it was Al-Amoudi, who made the initial investments of $7.5M. Additionally, some of the alleged misrepresentations were received by Mr. Karaman in his capacity as an agent of Al-Amoudi, not Amana, because there is no agency relationship with an unformed principal. As such, Al-Amoudi has an interest in this action that could subject the Defendants to a substantial risk of "double, multiple, or otherwise inconsistent obligations" contemplated under O.C.G.A. § 9-11-19. Whether or not Al-Amoudi still holds such an interest and is a proper plaintiff, albeit an involuntary one, in this action is determined by the effect of the Assignment.

Georgia law prohibits the assignment of certain causes of action. "A right of action for personal torts or for injuries arising from fraud to the assignor may not be assigned." O.C.G.A. § 44-12-24. Section 44-12-24 provides a clear cut answer regarding the assignability of causes of action arising from torts or fraud, but the application of the statute to the English Assignment is an issue of first impression. Plaintiff, however, points to the doctrine of *lex loci contractus*. Plaintiff argues that because the Assignment was entered into in England, then English law governs, and recognizes the assignment of a cause of action if the assignee has a commercial interest in the action. Defendants, on the other hand, argue first that such an interpretation violates the public policy behind O.C.G.A. § 44-12-24 such that

this Court should apply Georgia law. See O.C.G.A. § 1-3-9. Section 1-3-9 requires a Court to recognize foreign laws unless the enforcement is "contrary to the policy or prejudicial to the interests of this state." Id. Second, Defendants argue that the doctrine of *lex fori* applies so that the law of the forum state (*i.e.*, Georgia) governs the validity of the assignment of a cause of action.

There is no Georgia case law on point, and so this Court is required to contemplate the appropriateness of the joinder of Al-Amoudi in the context of this case with the facts and the law presented. Plaintiff initiated this suit in Georgia, a forum that does not recognize the assignment of causes of action arising from tort or fraud. O.C.G.A. § 44-12-24. Plaintiff also urged this court to find Georgia to be a nexus of activity for purposes of exercising personal jurisdiction over the Defendants, the same forum that Plaintiff now states could not properly exercise personal jurisdiction over Al-Amoudi. Al-Amoudi, by wiring investment money to the Georgia bank account of CGTF, which operated out of the Roswell Office, transacted business in Georgia consistent with the same analysis applied to the Pendleton Defendants.

There is a point where strategic litigation tactics must give way to public policy and a common sense approach to the law. Section 1-3-9 allows a contravention of choice of law principles if the enforcement of a foreign law is contradictory to the policy of the forum or "prejudicial to the interests of the state." O.C.G.A. § 1-3-9. The public policy of this forum is to disallow the assignment of causes of action arising in tort or fraud. Additionally, as described above, this Court has an interest in overseeing the just, efficient, and consistent resolution of this case. This Court has ruled to exercise personal jurisdiction over all Defendants in order to bring the parties together in this forum which served as a nexus of activity and which is the most convenient forum for all parties. In light of the stance that the

Georgia General Assembly has taken to prohibit the assignment of fraud causes of action and the interests that this forum has in resolution of related claims brought before it, the Court finds that O.C.G.A. § 1-3-9 controls the outcome of this dispute.

Further, the Court finds that *lex fori* is an appropriate choice of law mechanism to determine the enforceability of the Assignment based upon the English law presented to the Court and the determination that the applicable choice of law principle is a procedural question. See, Dicey & Morris, The Conflict of Laws 983 (2006) ("The validity of the assignment of a bare cause of action is governed by the lex fori.").

Additionally, this Court is not persuaded by the proposed stipulation agreement since there is no signature line for Al-Amoudi and thus would not be binding upon him. While Plaintiff makes a compelling argument that the combined effect of the Assignment and the stipulation agreement minimize the risks of double recovery and inconsistent results, the Court finds it more prudent to bring before it all interested parties with any potential or future claims in order to justly and finally resolve this matter.

Accordingly, this Court hereby **GRANTS** Defendants' Motions to Join Al-Amoudi as an Indispensable Party.

### *Motions to Join CGTF*

In support of their Motions to Join CGTF, Defendants argued that CGTF is a necessary party because it was the original "seller" in the transaction. Additionally, Defendants argue that Plaintiff has the opportunity to recover investment money both in this suit and in the suit pending in the Cayman Islands brought for the mismanagement of CGTF. Defendants also argued that joinder is proper because CGTF will inevitably be brought into this action on

indemnification claims raised by Defendants. Pursuant to the Amended Complaint,[3] however, Plaintiff claims no wrongdoing by CGTF nor any harm suffered at its hands. Instead, Plaintiff complains only of the statements made to it by Defendants to secure Plaintiff's investments in CGTF and the alleged conspiracy to defraud Plaintiff. Additionally, Plaintiff volunteered to enter into a stipulation agreement to ensure that no threat of double recovery exists.

CGTF is not implicated in Plaintiff's complaint and claims no interest in the present action. Additionally, the Court finds that this case and the one pending in the Cayman Islands are unrelated. The parties, however, are invited to enter into a stipulation agreement barring any double recovery they believe could occur. Finally, Defendants are free to bring in CGTF through indemnification claims if they so desire.

Accordingly, this Court hereby **DENIES** Defendants Motions to Join CGTF as an Indispensable Party.

## Motion for Partial Summary Judgment

Defendants petition this Court for Partial Summary Judgment with respect to counts one through three of Plaintiff's Amended Complaint on the grounds that such claims are time-barred by the applicable statute of limitations. The applicable statute of limitations for tort actions is four years. O.C.G.A. § 9-3-31. For actions such as fraud or negligent misrepresentation, the statute of limitation is tolled until the action is ***or*** should have been discovered through the exercise of reasonable due diligence. Sandy Springs Toyota v. Classic Cadillac Atlanta Corp., 269 Ga. App. 470, 471-472 (2004); see also, Miller v. Lomax,

3. Plaintiff's Original Complaint contained two "derivative claims", which were removed from the Amended Complaint.

266 Ga. App. 95 (2004); GE Life & Annuity Asur. Co. v. Barbour, 191 F. Supp. 2d 1375 (M.D. Ga. 2001); Slade v. Chrysler Corp., 36 F. Supp. 2d 1370, (M.D. Ga. 1998), aff'd 170 F.3d 189. Inquiries into reasonable care or diligence are typically questions of fact for the jury; however, where there is no dispute of fact, such an inquiry is one of law appropriate for the court to consider. Sandy Springs Toyota, 269 Ga. App. at 472; Hartley v. Gago, 202 Ga. App. 770, 771 (1992). The plaintiff bears the burden of proving the facts necessary to establish tolling of the applicable statue of limitations. Nash v. Ohio Nat'l Life Ins. Co., 266 Ga. App. 416, 418 (2002).

Plaintiff's Amended Complaint states seven alleged misrepresentations concerning CGTF which form the basis of its complaint. Defendants provided Plaintiff with various summaries, reports and updates regarding CGTF including a first quarter update distributed in 2001 (the "First Quarter Update"). Defendants allege that the First Quarter Update contained both a Comparative Accounts Balance Sheet (a balance sheet of CGTF disclosing notes receivables and the overall fund value) and a Schedule of Accounts (listing the total investment of each investor an the total investment amount). Defendants assert that the Comparative Accounts Balance Sheet and the Schedule of Accounts contained sufficient information to put Plaintiff on notice in 2001 that the alleged misrepresentations were in fact false. As such, Defendants argue that, as a matter of law, Plaintiff had sufficient notice of the alleged fraud in 2001 thus time barring Plaintiff's complaint which was filed in April, 2006.

Plaintiff disputes that the First Quarter Update contained a Schedule of Accounts. Additionally, Plaintiff states that the references to "notes receivables" and "value" in the Comparative Accounts Balance sheet did not adequately reveal that CGTF made loans to other companies or that the investment level in CGTF was substantially below the initially

represented closing amount of $25M. Instead, Plaintiff identified a conversation that occurred between Lane Pendleton and Mr. Karamin in January, 2003, as the first time that Plaintiff learned any of the alleged misrepresentations were false and the earliest point at which the statute of limitations could begin to run. Additionally in order to demonstrate that Plaintiff was reasonably diligent in attempting to uncover the alleged fraud, Plaintiff presented evidence of Mr. Karaman's repeated requests directed at Lane, Kirk, and other CGTF employees to disclose CGTF's financial information.

"[W]here there are facts involving fraud and excuses for delay in discovering the same, the question is one of mixed law and fact and is one for determination by the jury under proper instructions from the court." Sandy Springs Toyota, 269 Ga. App. at 472. The conflicting evidence of the Parties regarding Plaintiff's receipt of the Schedule of Accounts combined with the inquiry regarding Plaintiff's reasonable diligence in discovering the alleged fraud pose questions of fact only appropriate for a jury to answer. Accordingly, this Court hereby **DENIES** the Defendants' Motion for Partial Summary Judgment.

## Motions for Protective Order

Defendants supported their Motions for Protective Order with evidence that both Plaintiff and CGTF retained the law firms of McKenna Long & Aldridge, LLP and LeBoeuf, Lamb, Green & MacRae, LLP to represent them in this and other related actions. Defendants argued that the Plaintiff and CGTF have shared and will continue to share documents in a manner that amounts to pre-litigation discovery on behalf of CGTF and unwarranted disclosure of CGTF documents to Plaintiff. Such arguments, however, do not warrant this Court to enter a protective order that removes one or both counsel from representation of

Plaintiff in this matter. It is inevitable that documents may be shared among CGTF and Plaintiff; however, this Court is confident that the appropriate jurisdictions where other matters are pending, some related and some not to this matter, will fairly enforce the appropriate rules of discovery and admissibility so as to remove any unfair advantage gained by one party as a result of documents disclosed in this action. Accordingly, this Court hereby **DENIES** Defendants' Motions for Protective Order.

The Parties are, however, instructed to make every reasonable effort to enter into a standard and appropriate confidentiality agreement concerning the distribution of confidential information disclosed in this matter. If the Parties cannot agree to the contents of such a confidentiality agreement, then the Parties are each instructed to submit proposals to this Court for its review and determination of the appropriate terms of a protective order concerning the confidentiality of materials produced during discovery.

## Conclusion

This Court can properly exercise personal jurisdiction over the individual Pendleton Defendants Laird Pendleton, Kirk Pendleton and Lane Pendleton so that Defendants' Motions to Dismiss for Lack of Personal Jurisdiction are **DENIED**. Under O.C.G.A. § 9-11-19, Al-Amoudi is a proper party in this case. Thus, the Motions to Join AL-Amoudi as a plaintiff are hereby **GRANTED**. The Motions to Join CGTF, however, are **DENIED**. Facts surrounding the tolling of the statute of limitations present questions for the jury to determine and require that the Motion for Partial Summary Judgment be **DENIED**. Finally, Defendants' request for a Protective Order prohibiting the sharing of documents among counsel retained by Plaintiff who also advises CGTF is **DENIED**; however, the Parties are ordered to enter into an

appropriate confidentiality agreement regarding the distribution of confidential information disclosed in this matter in accordance with the terms of this order.

SO ORDERED this 30th day of March, 2007.

Alice D. Bonner

ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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