IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

SINOVEL WIND GROUP CO., LTD., d/b/a SINOVEL WIND GROUP (USA) CO., LTD., SU LIYING, ZHAO HAICHUN, and DEJAN KARABASEVIC a/k/a DAN KARABASEVIC,

Defendants.

OPINION AND ORDER

13-cr-84-bbc

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In this criminal proceeding, the United States attempted to serve a summons and complaint on defendant Sinovel Wind Group Co., Ltd. (Sinovel China) by delivering and mailing a copy of the summons and complaint to Sinovel China's subsidiary, Sinovel Wind Group (USA) Co., Ltd. (Sinovel USA). Sinovel China appeared specially in this court to challenge the exercise of jurisdiction over it, contending that the government's service attempt was inadequate and, as a result, the government lacks jurisdiction to proceed against it.

Sinovel China' challenge to service was full briefed before United States Magistrate Judge Stephen L. Crocker, who issued a 27-page opinion and order on May 27, 2014, denying Sinovel China's motion to quash the service of the summons and complaint and

concluding that the government's service was sufficient for jurisdictional purposes. The matter is now before this court on Sinovel China's objections to the magistrate judge's order and its request for reconsideration of that order. Because Sinovel China is the only defendant objecting to the magistrate judge's order, I will refer to it as defendant for the remainder of the opinion.

Defendant devotes a large portion of its objections to challenging the factual inferences that the magistrate judge drew from the record. I find these factual challenges unpersuasive; the facts are more than sufficient to show that Sinovel USA was not independent of defendant for all the reasons listed by the magistrate judge, including the references to Sinovel USA as a "branch office" of defendant, the close supervision of Sinovel USA's activities by the parent organization, the parent's close control of all finances and the employees' tendency to refer to themselves as employees of defendant.

Turning to the magistrate judge's legal conclusions, defendant takes issue with the conclusion that Fed. R. Crim. P. 4 allows this court to exercise jurisdiction over defendant based solely on the fact of service of the summons and indictment on a domestic subsidiary that has been found to be the alter ego of its parent organization. Its primary argument is that the majority of courts have found similar efforts to serve a criminal summons upon a corporate subsidiary ineffective as a means of service on the parent organization. This is technically true; twice as many cases have ruled this way as have not, but the "minority" consists of two cases; the "majority," of four, and the four provide questionable support for defendant's position. In three of the four cases, the courts acknowledged the proposition

that service upon a subsidiary could constitute service on the parent when the subsidiary is shown to be a mere conduit for the parent's activities, but found that such a showing had not been made in the cases before them. United States v. Kolon Industries, Inc., 926 F. Supp. 2d 794, 807-08 (E.D. Va. 2013) (noting that, as general proposition, service upon subsidiary does not constitute service on parent, but one of two "widely recognized" exceptions to rule is "where the subsidiary serves as the 'alter ego' of the parent"); United States v. Pangang Group Co., Ltd., 879 F. Supp. 2d 1052 (N.D. Cal. 2012) (refusing to find service on domestic subsidiary was sufficient when showing of parental control of subsidiary had not been made); United States v. Johnson Matthey PLC, 2007 WL 2254676 *1, n.13 (E.D. Va. Aug. 2, 2007) ("'[S]ervice of process on a foreign defendant's wholly-owned subsidiary is not sufficient to effect service on the foreign parent so long as the parent and the subsidiary maintain separate corporate identities.'")

Even the fourth case, United States v. Alfred L. Wolff GmbH, 2011 WL 4471383 (N.D. Ill. Sept. 26, 2011), adds little to defendant's position. In Wolff, the question was not whether the subsidiary corporations were independent of the parent but whether the government had shown that the subsidiary corporations were formed only to perpetrate a fraud on the United States. Wolff was decided against the government after the court found that the government had failed to make the showing that the corporate structure was used for fraudulent purposes.

Against this background, the cases cited by the magistrate judge, United States v. Chitron Electronics, Ltd., 668 F. Supp. 2d 298 (D. Mass. 2009), and United States v. The

Public Warehousing Co., 2011 WL 1126333 (N.D. Ga. Mar. 28, 2011), are not the outliers defendant says they are. Chitron appears to be the first instance in which a court adopted the alter ego doctrine in a case involving service of a criminal summons. The government indicted Chitron, a Chinese company, for illegally shipping military parts from the United States to China. Chitron challenged the service of process on its Massachusetts-based subsidiary; the court found that such service constituted service on the parent because the subsidiary was the alter ego (a "mere conduit") of the parent and the indictment charged fraudulent practices by both the subsidiary and the parent. Chitron, 558 F. Supp. 2d at 305. In the second case, Public Warehousing, 2011 WL 1126333 at *5, a Georgia district court held that Fed. R. Crim. P. 4 allowed service on a foreign corporation through a domestic subsidiary when the subsidiary was shown to be so dependent on its parent as to be the parent's alter ego.

In short, I am not persuaded by defendant's assertion that it was error for the magistrate judge to find that service of a criminal summons upon a domestic subsidiary can constitute sufficient service when the subsidiary is the alter ego of its foreign parent.

The magistrate judge found "no good reason to depart from the general rule that state law . . . governs the analysis" of the effectiveness of serving a subsidiary in place of its foreign parent. Defendant accepts this premise and agrees that Delaware law applies because Delaware is the state of incorporation of defendant's subsidiary. It disagrees, however, with the magistrate judge's conclusion that Delaware law permits a federal court to assert jurisdiction over a domestic subsidiary shown to be the alter ego of its foreign parent.

From my own review of the applicable law, I agree with the magistrate judge that Delaware distinguishes between the showing that must be made to obtain jurisdiction over a parent organization and the showing required to pierce the corporate veil for liability purposes. E.g., Zhai v. Stein, 2012 WL 1409358, *7 (Del. Sup. Jan. 6, 2012). To obtain jurisdiction over defendant, the government has to show only that Sinovel USA is the alter ego of defendant, in other words, that it has no independent reason for existence. It has made this showing. As the magistrate judge concluded,

> Sinovel USA's sole function was and is to do the acts and bidding of Sinovel China, while giving Sinovel China a jurisdictional firewall against liability and culpability. Sinovel USA was Sinovel China's puppet, so that its presence and acts in the U.S. can be imputed to Sinovel China.

Op. & Order, dkt. # 68, at 26. At this stage of the proceedings, no further showing need be made to support this court's exercise of jurisdiction over defendant.

ORDER

IT IS ORDERED that the motion to quash the government's service of summons of the criminal complaint and indictment filed by defendant Sinovel Wind Group Co., Ltd. is DENIED.

Entered this 10th day of September, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge