

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

)	
SUHAIL NAJIM ABDULLAH)	
AL SHIMARI, et al.,)	
)	
Plaintiffs,)	Case No. 1:08-CV-00827-GBL-JFA
)	
v.)	
)	
CACI INTERNATIONAL INC, et ano,)	
)	
Defendants.)	
)	

**MEMORANDUM IN SUPPORT OF DEFENDANT CACI INTERNATIONAL
INC’S MOTION TO DISMISS PLAINTIFFS’ SECOND AMENDED COMPLAINT**¹

I. INTRODUCTION

Defendant CACI International Inc (“CACI International”) did not supply any personnel to Abu Ghraib prison, and had no contract with the United States to provide personnel to Abu Ghraib prison. The United States contracted with Defendant CACI Premier Technology, Inc. (“CACI PT”), a subsidiary of CACI International, for the provision of interrogators at Abu Ghraib prison. Even though all of the CACI personnel serving at Abu Ghraib prison were employed by CACI PT, Plaintiffs have persisted in naming CACI International as a Defendant based on a theory of alter ego liability. However, governing law requires that a Plaintiff asserting alter ego liability allege specific facts showing misuse of the corporate form *and* that

¹ CACI International joins in the motion to dismiss filed this date by CACI PT, and submits this separate motion to raise a grounds for dismissal that is unique to CACI International.

the defendant misused the corporate form to perpetuate a fraud. The Second Amended Complaint does not allege facts satisfying either of these requirements. The Second Amended Complaint merely offers the conclusions that CACI International is CACI PT's alter ego, and that CACI PT is not separately capitalized or independently managed. Plaintiffs' allegation that CACI International and CACI PT are alter egos is a legal conclusion entitled to no weight at the motion to dismiss stage. Moreover, Plaintiffs' allegations that CACI PT is not separately capitalized or independently managed are conclusions unsupported by allegations of fact and, in any event, do not suffice show misuse of the corporate form. Finally, even though it is an ironclad requirement for alter ego liability, Plaintiffs do not allege any facts suggesting that CACI International used CACI PT's corporate form to perpetuate a fraud.

Thus, the Second Amended Complaint does not allege facts which, if true, would permit the extraordinary result of holding CACI International liable for the supposed obligations of a separate corporate entity. Indeed, if Plaintiffs were allowed to proceed on an alter ego theory with no facts, corporate parents and stockholders would never be able to obtain dismissal of alter ego claims. To the contrary, however, such claims are disfavored and regularly dismissed at the pleading stage. Therefore, CACI International is entitled to dismissal from this action because Plaintiffs have not, and cannot, state *facts* sufficient to plead alter ego liability.

II. APPLICABLE LEGAL STANDARD

On a Rule 12(b)(6) motion to dismiss, courts must dismiss a complaint unless the plaintiff alleges enough facts to nudge its claims across the line from conceivable to plausible. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570) (internal quotations omitted);

Bradford v. HSBC Mortg. Corp., 799 F. Supp. 2d 625, 629 (E.D. Va. 2011). For a complaint to allege a *plausible* claim, the facts must “permit the court to infer more than the mere possibility of misconduct.” *A Society Without a Name v. Virginia*, 655 F.3d 342, 346 (4th Cir. 2011); *see also Twombly*, 550 U.S. at 555 (plausibility requires that the factual allegations “be enough to raise a right to relief above the speculative level”).

In assessing plausibility, legal conclusions couched as factual allegations are not accepted by the court. *Twombly*, 550 U.S. at 555 (internal citation omitted). Similarly, labels and conclusions, or a “formulaic recitation of the elements of a cause of action will not do.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Complaints relying on “naked assertions” without further factual enrichment are insufficient. *Id.* (citing *Twombly*, 550 U.S. at 557). A plaintiff must plead more than facts merely consistent with a defendant’s liability. *Id.* (citing *Twombly*, 550 U.S. at 557). As the Fourth Circuit succinctly stated, “[a] court decides whether this [*Twombly/Iqbal*] standard is met by separating the legal conclusions from the factual allegations, assuming the truth of only the factual allegations, and then determining whether those allegations allow the court to reasonably infer that ‘the defendant is liable for the misconduct alleged.’” *A Society Without a Name*, 655 F.3d at 346 (quoting *Iqbal*, 556 U.S. at 678).

A plaintiff cannot avoid the requirements of *Twombly/Iqbal* by offering legal conclusions and claiming a need for discovery. As this Court explained:

This is precisely the sort of fishing expedition the Supreme Court sought to avoid in requiring the plaintiff to plead facts demonstrating their entitlement to relief and the defendant’s liability for misconduct. [A] district court must retain power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed. Plaintiffs cannot be permitted to pursue “extensive discovery” with nothing

more than a series of conclusory allegations and an unfounded hope that the process will yield favorable results.

Ali v. Allergan USA, Inc., No. 1:12-cv-115, 2012 WL 3692396, at *14 (E.D. Va. Aug. 23, 2012) (Lee, J.) (internal citations and quotations omitted) (alteration in original).

When ruling on a Rule 12(b)(6) motion, courts consider the complaint and documents incorporated into the complaint by reference. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) *Girgis v. Salient Solutions, Inc.*, No. 1:11-cv-1287, 2012 WL 2792157, at *7 (E.D. Va. July 9, 2012) (Lee, J.). The Court may also consider “official public records, documents central to a plaintiff’s claim, and documents sufficiently-referred to in the Complaint without converting the motion to dismiss into one for summary judgment.” *Seale & Assoc., Inc. v. Vector Aerospace Corp.*, No. 1:10-cv-1093, 2010 WL 5186410, at *2 (E.D. Va. Dec. 7, 2010) (quoting *Witthohn v. Fed. Ins. Co.*, 164 F. App’x. 395, 396-97 (4th Cir. 2006)). When there is a conflict between the allegations in a complaint and the contents of documents incorporated into or referenced in the complaint, the contents of the documents control. *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F. 2d 1462, 1465 (4th Cir. 1991); *Space Tech. Dev. Corp. v. Boeing Co.*, 209 F. App’x 236, 238 (4th Cir. 2006); *Witherspoon v. Jenkins*, No. 1:11-cv-963, 2011 WL 6934589, at *2 (E.D. Va. Dec. 30, 2011).

III. THE ALLEGATIONS OF THE SECOND AMENDED COMPLAINT

Plaintiffs attempt to blur the distinction between CACI International and CACI PT by making all references in the Second Amended Complaint to “CACI” and lumping both companies under that rubric. However, the Second Amended Complaint references the contract to provide interrogators in Iraq (Second Amended Complaint (“SAC”) ¶¶ 10, 68, 114, 122, 125), and alleges that the CACI Defendants’ liability for Plaintiffs’ injuries arises out of the conduct of employees working on the interrogation contract (SAC ¶¶ 64-65, 69-75). But as the two delivery

orders to which Plaintiffs refer makes clear, the delivery orders to provide interrogators to the United States were issued to *CACI PT*, and not *CACI International*. O'Connor Decl., Exs. 1, 2. Plaintiffs, of course, know this, as Plaintiffs' counsel was provided a copy of the contract in the *Saleh* action. *Id.* ¶ 2. As it was *CACI PT* (and not *CACI International*) that supplied interrogators at Abu Ghraib prison, the only "CACI" personnel in Iraq identified in the Second Amended Complaint are three interrogators employed by *CACI PT*. SAC ¶¶ 64.

The distinction between *CACI PT* and *CACI International* is not unplowed territory. In *Saleh*, the plaintiffs (represented by some of the same counsel representing Plaintiffs here) sought to blur the distinction between *CACI PT* and *CACI International* by making all their allegations against both companies. When the *Saleh* plaintiffs sought leave to file a third amended complaint, Judge Robertson directed the plaintiffs to make separate allegations against each corporate entity. O'Connor decl., Ex. 3 at 7. The *Saleh* plaintiffs responded by making allegations against *CACI PT*, the entity that actually deployed interrogators to Iraq, and making all allegations against *CACI International* "on information and belief." *Id.* Judge Robertson was, to say the least, critical of the *Saleh* plaintiffs' chicanery. *Id.* at 7-8. In any event, there is no genuine dispute that, consistent with the contract, it was *CACI PT* (and not *CACI International*) that supplied interrogators in Iraq.

The only allegations in the Second Amended Complaint that actually involve conduct by *CACI International* is that *CACI International* denied participating in a conspiracy. SAC ¶¶ 97-105. Denying participation in a conspiracy, of course, does not logically support an inference of participating in a conspiracy, as one would expect a non-participant in a conspiracy to deny it when accused. *Loren Data Corp. v. GXS, Inc.*, No. 11-2062, 2012 WL 6685771, at *4 (4th Cir.

Dec. 26, 2012) (facts supporting plausible claim of conspiracy must tend to exclude the possibility of independent, non-conspiratorial action).

IV. ANALYSIS

This Court is required to apply the choice of law rules of the state in which it sits. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496-97 (1941). Virginia law dictates that the law of the state of incorporation determines whether a corporate veil may be pierced. *Morrow v. Vaughan-Bassett Furniture Co.*, 4 S.E.2d 399, 401 (Va. 1939); *C.F. Trust, Inc. v. First Flight Ltd. P'ship*, 359 F. Supp. 2d 497, 501 n.6 (E.D. Va. 2005), *Int'l Bancorp, LLC v. Societe Des Baines De Mer Et Du Cercle Des Etrangers A Monaco*, 192 F. Supp. 2d 467, 477 n.18 (E.D. Va. 2002). Plaintiffs correctly allege that CACI International is a Delaware corporation (SAC ¶ 8), and CACI PT is also a Delaware corporation.² Consequently, Delaware law governs the requirements for establishing alter ego liability.

“Delaware courts take the corporate form and corporate formalities very seriously,” and a plaintiff has “a substantial burden in this respect. *Case Fin., Inc. v. Alden*, No. 1184, 2009 WL 2581873, at *4 (Del. Ch. Ct. Aug. 21, 2009); *see also Microstrategy Inc. v. Acacia Research Corp.*, No. 5735, 2010 WL 5550455, at *11 (Del. Ch. Ct. Dec. 30, 2010) (Delaware law embodies a strong “public policy [that] does not lightly disregard the separate legal existence of corporations”). Accordingly, “a plaintiff must do more than plead that one corporation is the alter ego of another in conclusory fashion in order for the Court to disregard their separate legal existence.” *Id.*; *BASF Corp. v. POSM II Props. P'ship, L.P.*, 2009 WL 522721, at *8 n.50 (Del.

² Although Plaintiffs should have alleged it in order to allege diversity, the Second Amended Complaint omits reference to CACI PT's state of incorporation. Public records, on which the Court can rely at the motion to dismiss stage (*see* Section II, *supra*), confirm that CACI PT is incorporated in Delaware. *See* <https://sccefile.scc.virginia.gov/F1544552>.

Ch. Ct. Mar. 3, 2009). In order to prevail on an alter ego theory, a plaintiff must plead and prove two separate elements.

First, a plaintiff must plead and prove facts showing the “misuse of the corporate structure.” *Microstrategy*, 2010 WL 5550455, at *11 (citing *Medi-Tec of Egypt Corp. v. Bausch & Lomb Surgical Fr.*, No. 19760, 2004 WL 415251, at *7 (Del. Ch. Ct. Mar. 4, 2004)). In assessing whether the corporate structure has been misused, Delaware courts consider:

(1) whether the company . . . was adequately capitalized for the undertaking; (2) whether the company was solvent; (3) whether corporate formalities were observed; (4) whether the controlling shareholder siphoned company funds; and (5) whether, in general, the company simply functioned as a façade for the controlling shareholder.

Case Fin., Inc., 2009 WL 2581873, at *4.

Second, even if the above factors show a misuse of the corporate structure, that showing is insufficient to support a disregard of the corporate form under Delaware law. Rather, in addition to a showing on the factors described above, “[t]here also must be an element of fraud to justify piercing the corporate veil.” *Id.* (emphasis added). As the federal district court in Delaware explained:

Any breach of contract and any tort – such as patent infringement – is, in some sense, an injustice. Obviously, this type of “injustice” is not what is contemplated by the common law rule that piercing the corporate veil is appropriate only upon a showing of fraud or something like fraud.

Mobil Oil Corp. v. Linear Films, Inc., 718 F. Supp. 260, 268 (D. Del. 1989); *see also Medi-Tec*, 2004 WL 415251, at *4 n.30 (quoting and adopting reasoning in *Mobil Oil Corp.*).

Here, the Second Amended Complaint does not satisfy either of these pleading requirements. As for indicia of misuse of the corporate structure, the closest allegations from the Second Amended Complaint are that CACI PT is not *separately* capitalized (not that CACI PT

was undercapitalized), and that CACI PT does not have management that is independent from that of CACI PT's parent corporation. SAC ¶ 87. Neither of these allegations, even if true, qualifies as one of the indicia of misuse of the corporate structure. *See Case Fin., Inc.*, 2009 WL 2581873, at *4 (listing relevant factors bearing on misuse of corporate form). Even more important, Plaintiffs' Second Amended Complaint makes no allegations whatsoever that CACI International used the corporate form to perpetuate a "fraud or something like fraud." *Mobil Oil Corp.*, 718 F. Supp. at 268. An alter ego claim is dead on arrival if the plaintiffs cannot plead a plausible claim that the corporate form was used to perpetrate fraud, even if the laundry list of factors considered for the first part of the alter ego test suggests misuse of the corporate form. *Id.*; *see also Case Fin., Inc.*, 2009 WL 2581873, at *4 ("There also must be an element of fraud to justify piercing the corporate veil."). Because Plaintiffs make no allegation of fraud,³ and also offer only unsupported legal conclusions on issues of capitalization and management that (even if supported by facts) would not satisfy the requirement for misuse of corporate form, Plaintiffs cannot proceed in this action on an alter ego theory.

In *SEC v. Woolf*, 835 F. Supp. 2d 111 (E.D. Va. 2011) (Lee, J.), this Court applied Virginia and Utah law, which appear to be identical in all respects to Delaware law, and rejected an alter ego claim that was based on "labels and conclusory allegations that cannot survive a Rule 12(b)(6) motion without further factual enhancement." *Id.* at 124 (citing *Iqbal*, 556 U.S. at 678). *Woolf* is no outlier, as this Court regularly rejects alter ego claims at the motion to dismiss

³ Because Delaware law requires a showing of fraud to pierce the corporate veil, it is likely that the facts supporting such an allegation must be alleged with particularity pursuant to Federal Rule of Civil Procedure 9(b). *EED Holdings v. Palmer Johnson Acquisition Corp.*, 228 F.R.D. 508, 512 (S.D.N.Y. 2005); *Coyer v. Hemmer*, 901 F. Supp. 872, 883 (D.N.J. 1995); *Shadix-Marasco v. Austin Regional Clinic, P.A.*, No. 09-CA-891, 2010 WL 2232804, at *5-6 (W.D. Tex. June 1, 2010). Here, Plaintiffs have made no allegation whatsoever that CACI International used the corporate form to perpetrate a fraud, much less an allegation that is pleaded with particularity.

stage when the plaintiff's complaint merely offers labels and legal conclusions that hew to the factors required for alter ego liability but provides insufficient supporting facts. *See, e.g., Lower Neuse Preservation Group, LLC v. Boats, Etc., Inc.*, No. 4:11-cv-77, 2011 WL 4565434, at *3 (E.D. Va. Sept. 28, 2011) (dismissing alter ego claim where plaintiff merely alleged that the corporation "fail[ed] to observe other corporate formalities" and "abus[ed] the corporate form" while "describ[ing] no 'corporate formalities' which Boats, Etc. failed to observe"); *see also Informatics Applications Group, Inc. v. Shkolnikov*, 836 F. Supp. 2d 400, 426-27 (E.D. Va. 2011); *Spacenet, Inc. v. Am. Agricultural Comm'n Sys., Inc.*, No. 1:05-cv-1231, 2005 WL 3416644, at *2 (E.D. Va. Dec. 8, 2005) (holding that allegation that corporation was undercapitalized was insufficient to state a claim for alter ego liability).

All of the conduct alleged in the Second Amended Complaint that occurred in Iraq is alleged conduct of CACI PT and its employees, as it was CACI PT that had the contract to provide interrogators in Iraq. O'Connor Decl., Exs. 1, 2. As for Plaintiffs' alter ego theory, Plaintiffs merely state the legal conclusion that CACI International is CACI PT's alter ego, that CACI PT is not independently capitalized, and that CACI PT is not independently managed. SAC ¶¶ 86-87. Those conclusory allegations, bereft of facts, are insufficient to withstand a motion to dismiss. To allow Plaintiffs' claims to proceed against CACI International would be a complete rejection of the entire concept of corporate separateness, as Plaintiffs have not alleged the extraordinary circumstances required to pierce the corporate veil, such as a particularized allegation of fraud or facts concerning the misuse of the corporate form. For these reasons, the Court should dismiss Plaintiffs' claims against CACI International.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' claims against CACI International.

Respectfully submitted,

/s/ J. William Koegel, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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