STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 24CV016862-910
DAEDONG-USA, INC., Plaintiff, v. KI FINANCE, INCORPORATED; PETER DONGKYUN KIM; DAE YOON KIM;YUNG KI PARK and ANNA KIM, Defendants.	**ORDER ON BCR 10.9 SUBMISSIONS**

1. **THIS MATTER** is before the Court on the following BCR 10.9 submissions (collectively, the "BCR 10.9 Submissions"):

   a. Plaintiff Daedong-USA, Inc.'s ("Daedong") 13 December 2024 BCR 10.9 Submission ("13 December Submission");

   b. Defendants Peter Dongkyun Kim, Yung Ki Park, and Anna Kim's (collectively, "C-Suite Defendants") 20 December 2024 BCR 10.9 Submission ("20 December Submission");

   c. Daedong's 23 December 2024 BCR 10.9 Submission ("23 December Submission"); and

   d. Defendant KI Finance, Incorporated's ("KI Finance") 27 December 2024 BCR 10.9 Submission ("27 December Submission").

2. Each of the BCR 10.9 Submissions concerns whether or not certain discovery requests propounded by the parties seek discoverable information. *See* N.C. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]");

see also Shellhorn v. Brad Ragan, Inc., 38 N.C. App. 310, 314 (1978) ("The relevancy test for discovery is not the same as the relevancy test for admissibility into evidence. To be relevant for purposes of discovery, the information need only be 'reasonably calculated' to lead to the discovery of admissible evidence.").

BACKGROUND

3. Daedong is a company that manufactures and distributes tractors and other equipment. (Second Amended Complaint ("SAC") ¶ 1, ECF No. 70.) The C-Suite Defendants, along with Defendant Dae Yoon Kim ("Dae Kim," and together with the C-Suite Defendants, "Individual Defendants")[1] are all former executives or senior employees of Daedong.[2]

4. In a nutshell, Daedong's SAC alleges that the Individual Defendants—while still employed at Daedong—devised a series of self-dealing schemes that were implemented for the purpose of siphoning millions of dollars from the company. (SAC ¶ 2.)

5. One of these schemes involved the Individual Defendants causing Daedong to enter into a "Services Agreement" with KI Finance, an alleged shell company in which the Individual Defendants purportedly held personal financial interests. (SAC ¶ 4.) Pursuant to the Services Agreement, Daedong paid KI Finance over $8.2 million in exchange for the performance of various services. (SAC ¶ 4.)

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[1] Individual Defendants and KI Finance are collectively referred to as "Defendants."

[2] Defendant Peter DK Kim is Daedong's former CEO, Defendant Yung Ki Park is Daedong's former CFO, Defendant Anna Kim is Daedong's former COO, and Defendant Dae Kim is Daedong's former Director of Finance. (SAC ¶¶ 13–16.)

6. Daedong contends that the execution of the Services Agreement constituted a conflict of interest transaction on the part of certain Individual Defendants because they held ownership interests in KI Finance at the time the Services Agreement was executed. (SAC ¶ 146–51.) As a result, Daedong alleges, North Carolina law required the Individual Defendants to disclose the conflict either to the disinterested members of Daedong's Board of Directors or to Daedong's sole shareholder—an entity called Daedong-Korea (which is also Daedong's parent company). (SAC ¶ 4.)

7. Relatedly, Daedong contends that the Individual Defendants used their influence within Daedong to cause certain contractual rights held by the company to be assigned to KI Finance. (SAC ¶ 38.) Specifically, the assigned contracts (the "DataScan Agreements") involved a third party called DataScan, which provides Daedong with an accounting, customer payment, and inventory management software through a portal (the "DataScan Portal"). (SAC ¶ 38.) Daedong alleges that the assignment of the DataScan Agreements allowed KI Finance to seize control of the DataScan Portal and, ultimately, to effectuate a malicious shutdown of Daedong's access to company data stored on that portal, causing significant monetary losses to Daedong. (SAC ¶¶ 38, 99.)

8. In addition, Daedong asserts that the Individual Defendants took various other actions that harmed the company, including taking out a $200 million loan from a lender, Huntington Bank, that the Individual Defendants allegedly

procured "in order to obfuscate [their] extraction of millions" from Daedong. (SAC ¶ 5.)

9. Based upon these (and other) allegations, Daedong's SAC asserts claims against Defendants for misappropriation of corporate funds, conspiracy, declaratory judgment as to the voidability of the Services Agreement and assignments of the DataScan Agreements under N.C. Gen. Stat. § 55-8-31, constructive fraud, breach of fiduciary duty, unjust enrichment, unfair and deceptive trade practices, and conversion. (SAC ¶¶ 112–200.)

10. As a defense, the Individual Defendants contend that the execution of the Services Agreement did not, in fact, constitute a conflict of interest transaction because none of the Individual Defendants actually possessed an ownership interest in KI Finance that conflicted with their duty owed to Daedong. Moreover, Defendants assert that the Services Agreement was fair in all respects to Daedong—actually saving money for the company and increasing efficiency. With regard to the other acts referenced in the SAC that Daedong characterizes as improper, Defendants argue that they resulted from appropriate business decisions made necessary due to actions taken by Daedong's parent company (at Daedong's expense) to "cannibalize" Daedong. Defendants assert that the parent company's actions in this regard include, among other things, flooding Daedong with inventory in order to promote the interests of another affiliated entity, Daedong Mobility, which is reportedly planning an initial public offering in 2025. (*See* ECF No. 80 ¶ 2.)

11. After receiving initial submissions and responses as to each of the BCR 10.9 Submissions, the Court conducted a conference via Webex on 14 January 2025 at which all parties were represented by counsel.

ANALYSIS

I. 23 December Submission

12. The only issue raised by Daedong in the 23 December Submission is the parties' disagreement over a deadline for Dae Kim and KI Finance to respond to requests by Daedong for the production of certain documents.

13. During the 14 January conference, the parties informed the Court that Dae Kim and KI Finance did, in fact, provide a response to the requests at issue.

14. Although Daedong's counsel has reserved its right to potentially bring a future BCR 10.9 dispute regarding the *substance* of said response, the only issue raised in the 23 December Submission was the deadline for Dae Kim and KI Finance to submit a response. Since that response has now been sent, the 23 December Submission is **MOOT**.

II. 13 December Submission

15. In its 13 December Submission, Daedong seeks access to the "personal financial account statements, credit card statements, and documents and communications reflecting financial transactions" of the C-Suite Defendants, and also seeks the C-Suite Defendants' answers to "interrogatories identifying their financial accounts and interests," and "interrogatories regarding non-de minimis financial

transactions" dated between 1 January 2021 and the present. (13 Dec. 2024 Subm., at 1.)

16. Daedong argues that the documents and information sought would reveal whether the C-Suite Defendants attempted to conceal their personal financial interests in KI Finance—particularly "[i]f another person or entity was acting as an intermediary that would not necessarily be revealed by Dae Kim's and KI[Finance]'s records alone." (13 Dec. 2024 Subm., at 3.)

17. The C-Suite Defendants object to Daedong's requests on grounds of privacy, undue burden, and unnecessary expense, contending that the requests amount to nothing more than a "fishing expedition" because Daedong has failed to articulate a basis for believing that any such intermediaries were actually used. The C-Suite Defendants further note that Daedong has already been granted access to KI Finance's financial records and that they have agreed to produce all documents related to any transactions they had with KI Finance as well as all other documents relating to other conflict of interest transactions alleged in the SAC.

18. During the BCR 10.9 conference, Daedong identified a single entity, UBI-Tab Solutions, that it believes may have been serving as an intermediary. But the C-Suite Defendants assert—and Daedong does not dispute—that the C-Suite Defendants have already fully responded to separate discovery requests specifically relating to UBI-Tab Solutions.

19. Therefore, the Court finds that Daedong has not made a sufficient showing of the need to obtain the type of broad personal financial information that it

requests in the 13 December Submission. *See Urquhart v. Trenkelbach*, 2016 N.C. Super. LEXIS (N.C. Super. Ct. Dec. 30 2016). As a result, the Court will not require that the C-Suite Defendants respond to the discovery requests at issue.[3]

III. 20 December Submission

20. The C-Suite Defendants allege that Daedong has refused to produce evidence in its possession that relates to (1) intercompany transactions between Daedong-Korea and its affiliated entities; and (2) Daedong-Korea's approval processes for decisions made by its affiliates.

A. Evidence of Intercompany Transactions

21. C-Suite Defendants argue that evidence of intercompany transactions between Daedong-Korea and its affiliated entities is relevant to their defense in this litigation that the allegations against them in Daedong's SAC can be attributed—either directly or indirectly—to a strategy employed by Daedong-Korea to "cannibalize [Daedong] and other affiliates for [its own] benefit . . . and in anticipation of a Korean affiliate's IPO." (20 Dec. 2024 Subm., at 2.) In this regard, the C-Suite Defendants assert that "Daedong-Korea forced [Daedong] to absorb substantial excess inventory and liabilities, to [Daedong's] detriment and to the benefit of its Korean parent and affiliates." (20 Dec. 2024 Subm., at 2.) As a result, the C-Suite Defendants contend, they "were forced to make a number of business decisions they

[3] However, in the event that Daedong obtains evidence providing a good faith basis for believing that specific persons or entities did, in fact, act as intermediaries for these purposes, it shall have the right to revisit this issue in a new discovery request and, if necessary, in a new BCR 10.9 submission.

otherwise would not have had to make to keep [Daedong] afloat." (20 Dec. 2024 Subm., at 2.)

22. Daedong, conversely, argues that none of the requested evidence is relevant to the claims asserted in the SAC. Daedong contends that in this lawsuit they seek only damages directly flowing from Defendants' specific misconduct and are not attempting to recover general lost profits of the company or for an overall reduction in its value. For this reason, Daedong maintains that the actions of Daedong-Korea with regard to Daedong and its affiliated entities lack any relevance to Daedong's claims.

23. The Court is unable to agree with Daedong that Defendants are not entitled to conduct any discovery on this subject. It is true (as Daedong argues) that the central issue in this case appears to be whether or not certain Individual Defendants improperly failed to disclose a conflict of interest regarding the execution of the Services Agreement with KI Finance—an issue that, in a vacuum, would not seem to implicate transactions between Daedong's parent company and its affiliates. However, even as to that issue, North Carolina law provides that a conflict of interest transaction is not voidable if it is fair to the company. *See* N.C. Gen. Stat. § 55-8-31(a)(3). Moreover, the SAC also contains allegations of different forms of misconduct by the Individual Defendants separate and apart from the execution of the Services Agreement. For example, the allegations regarding the Huntington Bank loan directly call into question whether and why such a loan was actually necessary. In defending this lawsuit, the Individual Defendants have asserted the theory that such

events were made necessary due to actions taken by Daedong-Korea that were designed to weaken Daedong financially for the benefit of one or more affiliated entities. As such, they are entitled to conduct discovery on this theory.

24. However, the Court finds that the discovery requests at issue in this submission—as currently drafted—are impermissibly broad. These requests also encompass a period of time that appears to be excessive.

25. Accordingly, counsel for all parties are **DIRECTED** to meet and confer prior to **28 January 2025** and to exercise their best good faith efforts to agree on a narrowly-tailored (both in scope and temporally) set of specific topics on this subject as to which C-Suite Defendants shall be entitled to obtain discovery from Plaintiff.

26. In the event that the parties are unable to reach agreement, each side shall submit their respective proposals to the Court on or before **5:00 p.m. on 30 January 2025**.

B. Evidence Regarding Parent Company Approval Process

27. The C-Suite Defendants also seek documents pertaining to Daedong-Korea's processes for approving decisions made by its subsidiaries and affiliates. They argue that this information is relevant to the extent that Daedong is alleging that the C-Suite Defendants were required under general company policy to seek and obtain approval from Daedong-Korea prior to taking certain actions relevant to this case, including the execution of the Services Agreement.

28. During the 14 January conference, however, counsel for Daedong represented to the Court that they are not making such an argument. Instead, they

are simply contending that any conflict of interest transaction was required to be disclosed to, and approved by, either disinterested members of Daedong's Board of Directors or its sole shareholder (which was Daedong-Korea). In other words, to the extent that Daedong is contending that Daedong-Korea's approval of the Services Agreement transaction may have been necessary, the need for such approval would have been based entirely on Daedong-Korea's status as Daedong's sole shareholder and not based on its status as Daedong's parent company or pursuant to a company policy.

29. Based upon this representation, the Court agrees with Daedong that the C-Suite Defendants are not entitled to conduct discovery on Daedong-Korea's approval processes.

IV. 27 December Submission

30. KI Finance requests that the Court order Daedong to identify or produce documents relating to (1) the identities of the members of Daedong-Korea's Board of Directors ("Board Information") between 1 January 2022 and 31 March 2024; (2) actions taken by Daedong-Korea with respect to Daedong's operations ("Operations Documents"); and (3) the work visa and visa application for Daedong's Deputy CEO and Executive Vice-President, Chiwhan Yoon ("Yoon Documents").

A. Board Information

31. KI Finance seeks the identities of the members of Daedong-Korea's Board of Directors between 1 January 2022 and 31 March 2024.

32. Daedong contends that the membership of Daedong-Korea's Board of Directors lacks any relevance to this case and that—for this reason—Defendants should not be permitted to take the depositions of those Board members.

33. However, the issue of whether Defendants should be permitted to depose the former members of Daedong's Board of Directors is not currently before the Court as it is not a subject of the pending BCR 10.9 Submissions. All that is currently being sought are the identities of the members of the Board of Directors during the specified time period. Given the minimal degree of work necessary to respond to this request and the Court's inability to say based on the current limited record that this information lacks any potential relevance to the case, the Court **ORDERS** that Daedong provide this information (to the extent it is known to Daedong).

B. Operations Documents

34. KI Finance next requests that the Court order Daedong to produce documents that reflect Daedong-Korea's influence over Daedong's operations. Specifically, it contends that Daedong-Korea's "actions with regard to [Daedong]'s operations are relevant not only to the type of involvement of [Daedong-Korea] in the day-to-day activity of [Daedong], but also with regard to [Daedong-Korea's] misuse of [Daedong] for its own ulterior purposes . . . Documents establishing that Daedong-Korea improperly manipulated [Daedong] are relevant to the motivation for Defendants to seek and obtain an increased line of credit from Huntington Bank." (27 Dec. Subm., at 3.)

35. As explained above, the Court agrees that Defendants are entitled to conduct discovery in support of their theory. However, the discovery requests that form the basis for the 27 December Submission—as currently drafted—are overly broad. Accordingly, counsel for all parties are **DIRECTED** to meet and confer prior to **28 January 2025** and to exercise their best good faith efforts to agree on a narrowly-tailored (both in scope and temporally) set of specific topics on this subject as to which KI Finance shall be entitled to obtain discovery from Plaintiff.

C. Yoon Documents

36. Finally, with regard to the requested Yoon Documents, it appears that Daedong has either already produced or agreed to produce responsive documents concerning Yoon's appointment to his current positions with Daedong except for his work visa and visa application. KI Finance has failed to convince the Court that these withheld documents are either relevant or reasonably calculated to lead to the discovery of admissible evidence.

37. Therefore, Daedong shall not be required to produce Yoon's work visa or visa application.

SO ORDERED, this the 21st day of January, 2025.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
for Complex Business Cases