

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 7
)	
WORLDSPACE, INC., et al.,)	Case No. 08-12412 (PJW)
)	
Debtors.)	Jointly Administered
)	
_____)	
)	
MATHEWKUTTY SEBASTIAN,)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. 14-50365 (PJW)
)	
DONALD J. FRICKEL, ROBERT A.)	
SCHMITZ, QUEST TURNAROUND)	
ADVISORS LLC, and SHEARMAN)	
& STERLING LLP,)	
)	
Defendants,)	
)	
and)	
)	
CHARLES M. FORMAN, as chapter 7)	
Trustee of WorldSpace, Inc.,)	
et al.,)	
)	
Nominal Defendant.)	

MEMORANDUM OPINION

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Dated: December 5, 2014

WALSH, J 

This opinion is with regard to the motion for reconsideration filed by Plaintiff Mathewkutty Sebastian. (Doc. # 31) The motion for reconsideration stems from the original motion to dismiss filed by Defendants Donald J. Frinckel, Robert A. Schmitz, Quest Turnaround Advisors LLC, Shearman and Sterling LLP, and Charles M. Forman as Chapter 7 Trustee of WorldSpace, Inc., et al. (Doc. # 24). The motion sought to dismiss the verified derivative complaint filed by Mathewkutty Sebastian (the "Plaintiff"). The Court granted the motion based on Plaintiff's lack of standing since Plaintiff was an employee of WorldSpace Middle East FZCO ("FZCo") and thus was not an employee of the debtor WorldSpace, Inc. ("WorldSpace").

For the reasons detailed below, the Court finds that Plaintiff lacks standing and the motion for reconsideration is denied.

"A motion for reconsideration...is an extraordinary means of relief in which the movant must do more than simply reargue the facts of the case or [the] legal underpinnings." In re Fruehauf Trailer Corp., No. 96-01563 PJW, 2012 WL 604145, at *1 (Bankr. D. Del. Feb. 17, 2012) (Walsh, J.) (citations omitted). A party seeking reconsideration must establish at least one of the following grounds: (1) an intervening change in the controlling law; (2) newly available evidence; or (3) the need to

correct a clear error of law or fact to prevent manifest injustice. Id. None of these grounds are asserted in the motion for reconsideration.

Plaintiff's position has evolved over time as shown by the following:

"5. Sebastian is a resident of India and was an employee of WorldSpace, Inc. ("WorldSpace") between January 2004 and March 29, 2010. After his employment with WorldSpace ended, Sebastian filed Claim No. 353 with this Court, asserting an administrative expense claim in the amount of \$170,705.90."

(Verified Derivative Complaint, Doc. # 1, p. 2.)

* * *

"MR. MACAULEY: Good morning, your Honor. Thomas Macauley on behalf of Matthewkutty Sebastian.

He is a Indian citizen. He was an employee of WorldSpace, Inc. who was stationed in Dubai. He has an administrative claim for about 170,000 dollars, based on unpaid wages, vacation, and benefits pursuant to his employment contract with WorldSpace, Inc.:

(Hearing Tr. 06/12/12, Ex. 2, p. 8)

* * *

"5. ...He was employed under an employment contract with WorldSpace, Inc. ("WorldSpace") between January 2004 and March 29, 2010. After his employment with WorldSpace ended, Sebastian filed Claim No. 353 with this Court, asserting an administrative expense claim in the amount of \$170,705.90."

(Amended Verified Derivative Complaint, Doc. # 19, p. 2.)

* * *

"Sebastian, an Indian citizen, was employed under an employment contract with

WorldSpace from before the Petition Date
until March 29, 2010"

(Doc. # 20, p. 5.)

Now, in the motion for reconsideration, Plaintiff asserts the following:

"3. Nowhere does the Amended Complaint allege, however, that Sebastian was an employee of WorldSpace. Instead, the relevant allegation reads: "[Sebastian] was employed under an employment contract with [WorldSpace] between January 2004 and March 29, 2010" Amended Complaint ¶ 5.

4. Sebastian's standing to assert this derivative action, therefore, is not premised on any allegation that he was an employee of WorldSpace.

5. Instead, Sebastian's standing is based on his claim against WorldSpace that arises from his employment contract, dated July 1, 2008, and is signed by WorldSpace's Chief Operating Officer. In other words, Sebastian has a contract claim against WorldSpace. As the signatory to the contract, WorldSpace -- not FZCO -- is obligated on the terms of that contract. Furthermore, WorldSpace signed the contract for itself, not on behalf of FZCo."

(Doc. # 31, pp.2-3.)

Thus, Plaintiff now argues that he never claimed to be an employee of WorldSpace. Instead, Plaintiff now argues that he has some unspecified contract claim against WorldSpace and thus standing to assert derivative claims, because an officer of WorldSpace counter-signed his employment contract.

It is my understanding that at all relevant times FZCo was an 80% equity subsidiary of WorldSpace, Inc. The July 1 employment letter was carefully crafted to make it clear that

WorldSpace was not committed to Sebastian for anything. It was an agreement between Sebastian and FZCo (the "Company"),

The dispute here raises an issue of contract interpretation. I conclude that Sebastian's interpretation has no merit. Consequently, the motion for reconsideration is denied.

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)	
Nominal Defendant.)	

ORDER

For the reasons set forth in the Court's memorandum opinion of this date, Plaintiff's motion for reconsideration (Doc. # 31) is **denied**.



Peter J. Walsh
United States Bankruptcy Judge

Dated: December 5, 2014