

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

NEIL WALLACE, )  
Plaintiff, )  
 )  
v. ) C.A. No. K11C-03-018(JTV)  
 )  
GECKOSYSTEMS INTERNATIONAL )  
CORP. and R. MARTIN SPENCER, )  
Defendants. )

**MOTION TO DISMISS DUE TO LACK OF  
SUBJECT MATTER JURISDICTION OR IN THE ALTERNATIVE  
FORUM NON CONVENIENS**

TO: Neil Wallace  
105 Luffness New  
Williamsburg, VA 23188

PLEASE TAKE NOTICE that the within motion to dismiss will be present to the Court on Friday, July 8, 2011 at 11:00 a.m.

*/s/ Donald L. Gouge, Jr. #2234*  
DONALD L. GOUGE, JR. (#2234)  
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Attorney for defendant GeckoSystems

DATED: May 13, 2011

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY**

NEIL WALLACE,	)	
Plaintiff,	)	
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v.	)	C.A. No. K11C-03-018(JTV)
	)	
GECKOSYSTEMS INTERNATIONAL	)	
CORP. and R. MARTIN SPENCER,	)	
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FORUM NON CONVENIENS**

Defendant R. Martin Spencer (“Spencer”), by and through counsel, moves to dismiss this action pursuant to Superior Court Civil Rule 12(b)(1) & (6) on the following grounds:

1. Wallace, a resident of the state of Virginia and former employee of defendant Geckosystems International, Corp. (“Gecko”), has filed yet another suit against the defendants.
2. Defendant Gecko’s principal place of business is in the state of Georgia. In addition, Spencer is a resident of the state of Georgia.
3. Gecko is incorporated in Delaware. Wallace has not perfected service on Gecko.
4. This action claims defamation, an intentional tort.
5. There is nothing in the complaint to indicate that Delaware has any interest in this matter, or that any of the alleged defamation occurred in Delaware. Any witnesses, documents and information would come from outside of Delaware. It is likely tht the laws of Georgia would be applicable, not Delaware. See *Chabbott Petrosky Commercial Realtors v. Briggs*, 2002 De.Super.Lexis 279, Witham, J. (October 8, 2002). Wallace chose this jurisdiction to make it difficult for the defendants to appear and defend here, as he has already done in several prior matters.

6. Generally, defamation is injury to reputation, business or occupation. It must expose the plaintiff to public contempt or ridicule or lower him in the estimation of the community in which he lives. *Danias v. Fakis*, 261 A.2d 529, 531 (Del.Super. 1969). Wallace does not live here and all witnesses and evidence would come from out of state.

7. If the standards set forth in *Danias* are not enough, such that this court does not have subject matter jurisdiction, then the court, in the alternative, should grant a motion for *forum non conveniens*.

8. Just because a corporation is incorporated in Delaware does not necessarily give this court jurisdiction. In *American Home Products v. Adriatic Insurance*, 1991 Del.Super.Lexis 428, Del Pesco, J. (Nov 5, 1991) (Exhibit 1), a Delaware corporation was not permitted to maintain its first filed action based on the ground of *forum non conveniens*. A brief review of the factors demonstrates that the inconvenience and hardship would be yet another ground for this court to not have subject matter jurisdiction. First, Delaware law would not apply. Second, any proof of the defamation is in Georgia, and any witnesses to demonstrate that Wallace is subject to contempt or ridicule is in Virginia. Third, any witnesses, other than Wallace are in Georgia or Virginia. Fourth, a view of the premises is not a factor in a wage claim. Fifth, Wallace has filed multiple suits against these defendants, on his own behalf and, upon information and belief, others. Sixth, all other practical considerations make Georgia the logical state to hear this dispute. *Id.* at 11-23.

9. In his discovery responses, Wallace was unable to identify any witnesses or damages that he has allegedly sustained or any connection to Delaware (Exhibit 2).

WHEREFORE, for all of the reasons set forth above, the case should be dismissed with prejudice.

/s/ Donald L. Gouge, Jr. #2234  
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DATED: May 16, 2011