

CORPORATE CRIME REPORTER

ALIEN TORT CLAIMS ACT CASE AGAINST FORMER PRESIDENT OF SOUTH KOREA DISMISSED

A federal court in the District of Columbia has thrown out a case against a former President of South Korea alleging violations of the Alien Tort Claims Act.

Young Sam Kim, the former President of the Republic of South Korea, was represented by James McGuire, a partner at Sheppard Mullin in New York.

U.S. District Court Judge James Robertson ruled last month the contacts between the defendant and the United States were “plainly insufficient to support the exercise of personal jurisdiction” in his court.

“The problem remains that this defendant’s contacts with the District are not such that he should reasonably anticipate being haled into court here,” Judge Robertson ruled.

Young Sam Kim was being sued by a resident of Virginia – Chung Mu Son – a journalist and publisher of a magazine in South Korea – *Inside the World*.

While Young Sam Kim was running for president in 1992, *Inside the World* published an article alleging that Young Sam Kim had a hidden out of wedlock daughter.

Young Sam Kim filed a criminal libel charge against Chung Mu Son – and he was arrested.

Chung Mu Son alleges that he was interrogated without sleep from 9 p.m. until 5 a.m. the following day, that three interrogators attempted to coerce a confession from him, and that he was hit and kicked repeatedly on his head, chest, and legs.

Chung Mu Son alleges that he was imprisoned for 26 days, that aides of Young Sam Kim approached him, offering him a large sum of money if he would retract the article, that officials from the Korean Central Intelligence Agency pressured advertisers to stop purchasing advertisements from the magazine, and the Korean Tax Office threatened an audit – and that these actions resulted in large

financial losses to the magazine.

At trial in Seoul, Young Sam Kim decided to drop the charges against Chung Mu Son.

In the lawsuit filed in federal court in the District of Columbia, Chung Mu Son alleged that Young Sam Kim violated the Alien Tort Claims Act and the Torture Victims Protection Act.

But Judge Robertson never reached the substantive claim, throwing the case out for lack of personal jurisdiction.

Sheppard Mullin’s McGuire is handling a number of Alien Tort Claims Act cases – including some that grow out of the 911 attacks on the United States.

In 2004, McGuire left White & Case with a handful of other lawyers to set up a New York office for the Los Angeles, California-based Sheppard Mullin.

He has built the New York practice from nothing to more than 40 lawyers now – and hopes to hit 100 lawyers “as quickly as we can responsibly do it.”

McGuire is building a white collar practice in the heart of Manhattan – from scratch.

“It was a challenge that I was well aware of,” McGuire told *Corporate Crime Reporter* in an interview. “It was part of the reason I took this job. I was looking for a new challenge. Agreed it was a challenge. Agreed there were risks. But so far, we have been able to meet the challenges. But every day is a new day. You have to keep banging the rocks every day to break them up.”

McGuire says much of his practice involves international parties.

“My practice is very substantially international on both the civil and criminal sides,” McGuire said. “It’s almost inevitable that in most cases, there is going to be some international aspect to it. And I am representing more and more non-U.S. residents and non-U.S. citizens.”

INTERVIEW WITH JAMES MCGUIRE, PARTNER, SHEPPARD MULLIN, NEW YORK, NEW YORK

You’re in downtown Manhattan.

And the man hands you the keys to an office in 30 Rock.

And he says – open a white-collar criminal defense practice.

Within a three-mile radius of you are hundreds of white collar criminal defense lawyers eyeing your lunch.

In 2004, the Los Angeles firm Sheppard Mullin wanted a white

collar presence in New York City.

James McGuire answered the call.

McGuire and a handful of colleagues jumped ship from White & Case and opened Sheppard Mullin’s New York office.

Now hovering around 40 to 45 lawyers, they’re aiming for 100.

We interviewed McGuire on April 16, 2007.

CCR: You graduated from Harvard Law School in 1982. What have you been doing since?

MCGUIRE: In the summer of 1982, I became a law clerk to U.S.

District Court Judge Stanley A. Weigel in San Francisco.

In late 1983, I joined the Simpson Thacher firm as an associate in the Litigation Department. I was there for three years.

In 1986, I joined the office of the U.S. Attorney in the Southern District of New York. At that time, the U.S. Attorney was Rudolph Giuliani.

I remained an assistant U.S. Attorney in the Criminal Division for about five years.

In the spring of 1992, I joined the New York office of Mayer Brown. I became a partner in 1993 and remained there until April or May 1998.

I then became a partner at White & Case in New York. I was there until late September 2004.

In September 2004, I opened the New York office of Sheppard Mullin, which had not previously had a presence in New York City.

I have been here at Sheppard Mullin since.

CCR: What kind of firm is Sheppard Mullin and what is your practice at the firm?

MCGUIRE: Sheppard Mullin is about eighty years old. It is one of the more established law firms in California. Its main office is in Los Angeles. It has ten offices and about 500 lawyers – about 150 of which are partners. Seven of the offices are in California.

The firm had no offices outside of California until 2003, when it opened an office in Washington, D.C. We have about 40 lawyers in Washington, D.C. now.

After the success of that office, the firm decide to open an office in New York City and did so with me and a handful of associates and colleagues from White & Case in September 2004. We have now grown the office to about 40 to 45 lawyers. And within the last two months, the firm has opened an office in Shanghai.

We are a full service firm. The firm has four or five strengths nationally recognized – litigation, entertainment on the studio side, finance and bankruptcy, employment, and general corporate.

My practice is almost entirely litigation. It varies between 70 percent commercial and 30 percent white collar and 70 percent white collar and 30 percent commercial.

CCR: What about the criminal/civil split?

MCGUIRE: My white collar practice breaks down into half criminal and half regulatory – most of that being SEC. But I also have some issues with other government agencies.

CCR: Is the practice of the New York office primarily white collar?

MCGUIRE: The strategic plan for our office is to build it to a critical mass of say 100 or so lawyers, as quickly as we can responsibly do it in those five areas I mentioned. The biggest portion of the office right now is in litigation. That necessarily means, given what I do here, complex commercial litigation, white collar criminal, and regulatory matters. And also a good deal of internal regulatory work.

CCR: Did you grow up in California?

MCGUIRE: No. I grew up in Brooklyn. I was lucky enough to get an offer early on from Judge Weigel in San Francisco. I had never set foot in California before that. He offered me a job and I took it for

the experience of living out there. I didn't really think I would stay in California. It was always my plan to come back to New York.

CCR: What kind of public white-collar cases have you handled in the past?

MCGUIRE: I represented a gentleman named Danny Young. He was charged by the DA in Manhattan in connection with certain alleged wrongdoing in connection with third world debt. It was a case of first impression back when it was brought in the 1990s.

I represented the heir to Martha Graham's intellectual property in a fairly celebrated dispute with the Martha Graham Foundation.

I have been representing a gentleman named Gordon Hall. He was alleged to have been involved with a brokerage house on Wall Street that was allegedly connected to organized crime. The allegation was that he was involved with certain pump and dump activities. It was a RICO case brought by the U.S. Attorney in the Southern District.

I represented a gentleman named Paul Quirk in the 1990s. He was indicted by the Massachusetts Attorney General on tax charges. Mr. Quirk was a well known political and public figure in Massachusetts. And we were able to get him fully acquitted on those charges.

Most recently, we represented a company called Final Analysis Communication Services. We were hired to come in and try the case after it had been litigated for three years.

The defendants in the case were General Dynamics and one of its subsidiaries. They were represented by Jenner & Block.

After a two month jury trial, the jury awarded my client \$161 million. Unfortunately, the judge has ruled on a JNOV (judgment notwithstanding the verdict) motion to cut the award to about \$20 million. And the matter is now on appeal. That matter has received much press attention recently.

CCR: What kind of case was that?

MCGUIRE: That was a complicated contract case. That was a nice win. The result was disappointing, but we're hoping for a better result in the Fourth Circuit.

CCR: Are you primarily plaintiff's side or defense side?

MCGUIRE: I do both. I've always wanted to do that.

CCR: You also have a victory in an Alien Tort Claims Act case which you handled. You represented a former President of the Republic of South Korea – Young Sam Kim. How did that case come in the door for you?

MCGUIRE: We had a colleague here – a gentleman who is a consultant to the firm. His name is Sy Kim. He knew a gentleman by the name of Bruce Lee. Not the Bruce Lee.

He lives here in the U.S. He had some high level position in the organization of the national Democratic Party. Bruce Lee's wife is the wife of Young Sam Kim – the former president of South Korea.

A lawsuit was filed against Young Sam Kim. Bruce called Sy. Sy asked me to get involved. And I was happy to do it. We flew to South Korea, met the president and were retained.

The lawsuit was filed in December 2005 by Chung Mu Son. He's

a gentleman of South Korean descent. He lives in Virginia and has lived there since 1980. He was a journalist. In the late 1980s he published a magazine based in Seoul, South Korea. He owned the magazine.

As I understand the timing, while Young Sam Kim was running for the presidency, but before he was elected – this would have been in 1992 – the plaintiff ran an article reporting that Young Sam Kim had a daughter that he was hiding who was born out of wedlock.

The plaintiff alleged that Young Sam Kim was concerned about this allegation. And that somehow, the defendant raised a criminal complaint, which he could do in Korea, alleging that the charges in the magazine were libelous.

And then it was alleged that President Kim then somehow caused the plaintiff to be arrested in South Korea. That he was interrogated for a long time – seven or eight hours overnight.

The complaint alleged that three interrogators tried to coerce a confession from him. And there were allegations that he was beaten – hit and kicked all over his body – that he was hit on his head, chest and legs.

A trial was held in Seoul in the criminal court on the libel complaint filed by President Kim. He decided at trial that he didn't wish to press charges. The plaintiff who had been held for three or four weeks – 26 days sticks in my mind – was released. The plaintiff also alleged that representatives of President Kim approached him and offered him money to withdraw the article, which he refused to do. He also alleged that the Korean Central Intelligence Agency pressured advertisers to stop buying ads in his magazine. He also alleged that the Korean tax authorities threatened him with an audit. All of this activity he alleged damaged his magazine.

The magazine was not a plaintiff, but the plaintiff did have a personal interest in the magazine.

I say all of this not because we had any belief in the veracity of any of these allegations. But the complaint had been filed and it was obvious to us that we should move to dismiss it.

On those kinds of motions, the allegations of the complaint are usually accepted as true.

CCR: The lawsuit alleged violations of the Alien Tort Claims Act and the Torture Victims Protection Act.

MCGUIRE: Yes. The plaintiff alleged that he was arbitrarily imprisoned, he was tortured, and this caused him extreme emotional suffering and distress and caused financial losses.

CCR: The Alien Tort Claims Act says that if a wrong is committed overseas, you can sue in U.S. courts to collect damages.

MCGUIRE: I'm involved in a lot of these cases arising out of 9/11. I represent certain Middle Eastern defendants.

These are civil cases brought by the next of kin or representative of people who perished or by people who were injured on 9/11. The claim is that these defendants somehow financially conspired to assist Al Qaeda and helped them to pull off 9/11. The Alien Tort Claims Act is being used in those cases also.

CCR: Was 911 case filed in federal court in Manhattan?

MCGUIRE: The cases have been consolidated by the multi-district litigation panel in New York.

CCR: Where was the case against Young Sam Kim filed?

MCGUIRE: In federal court in the District of Columbia. And it was assigned to Judge James Robertson.

CCR: Was there an oral argument?

MCGUIRE: No, the judge did not require oral arguments. We filed our motion. And he ruled.

CCR: What was your argument?

MCGUIRE: Our lead argument was that the court did not have personal jurisdiction over the non-resident defendant, President Kim, because he lacked contacts or links to the United States.

We also moved to dismiss on substantive grounds under Rule 12b-6 for failure to state a claim under these statutes.

CCR: I thought the point of the Alien Tort Claims Act was to bring these kinds of cases into federal court in the United States?

MCGUIRE: The argument we made here was that statutes like the Alien Tort Claims Act do not vitiate the Constitution. There is this notion of minimum contacts – which the due process clause requires – to hale someone into court. We argued that there weren't sufficient contacts between President Kim and the United States to allow him to be haled into court under any statute.

In this particular case, the governing statute was the District of Columbia long-arm statute. That sets out three or four indicia on who can be subject to jurisdiction in the District. You have to regularly do or solicit business, or engage in some other persistent course of conduct, or devise substantial revenue from activities taking place in the District.

Absent these, you don't have sufficient contacts to be brought into court. And the case needs to be brought somewhere else.

In this case the judge said the long-arm statute in DC applies. The judge looked at the record, looked at the allegations of the complaint. And he found that there were insufficient contacts between the defendant and the United States.

CCR: What was the other sides argument as to the contacts with the United States?

MCGUIRE: They alleged that he visited Washington, D.C. in September 1985 to meet with political supporters. And he maintained those contacts for many years. They alleged that he is a chairman or honorary chairman of The Committee for the Democratization of North Korea, which maintains an office in DC.

CCR: There have been many Alien Tort Claims Act cases filed by torture victims against political leaders in Central and South America, for example, and they have been allowed to proceed in various federal courts in the U.S. How does your case differ?

MCGUIRE: I'm not familiar with those cases. But what I can surmise is that in those cases the courts found that the defendants, whether they be individuals or entities, had sufficient links to the United States.

The plaintiff in this case was unable to allege sufficient links.

The judge in this case did not expressly dismiss this case with

prejudice. If this plaintiff has anything further to allege about the contacts with the United States, arguably he could file a new complaint and maybe take another run at it. Or they could appeal the judge's order. There is no indication that either of those things have happened yet.

CCR: When did the decision come down?

MCGUIRE: March 28, 2007.

CCR: As far as I can tell, it got no press play here in the United States?

MCGUIRE: I don't think it did.

CCR: It's a very narrow decision. It's not as if it's going to undermine the Alien Tort Claims Act.

MCGUIRE: Not at all. The issue was – what contacts does a defendant have to have with a particular jurisdiction. My guess is we would have had a more difficult position if the defendant had been a company with business in the United States.

CCR: It seems as if many of the white collar practitioners are now more engaged in international practice. There is more talk about the foreign bribery, Alien Tort Claims Act. Is the white collar practice

overall morphing into some kind of an international practice?

MCGUIRE: No question. My practice is very substantially international on both the civil and criminal sides. It's almost inevitable that in most cases, there is some international aspect to it. And I am representing more and more non-U.S. residents and non-U.S. citizens.

CCR: You have opened a white-collar defense practice in New York from scratch. That had to be a daunting task, given the competition within just a couple mile radius of where you sit.

MCGUIRE: It's true. It was a challenge that I was well aware of. It was part of the reason I took this job. I was looking for a new challenge. Agreed it was a challenge. Agreed there were risks. But so far, we have been able to meet the challenges. But every day is a new day. You have to keep banging the rocks every day to break them up.

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