

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

JAMES R. ZAZZALI, as Trustee for the)
DBSI Private Actions Trust,)
)
Plaintiff,)
)
v.)
)
ALEXANDER PARTNERS, LLC, et. al.)
)
Defendants.)
)

C.A. No. 12-00828 GMS

**OPENING BRIEF IN SUPPORT OF REPRESENTATIVE DEFENDANTS¹
MOTION TO DISMISS AMENDED COMPLAINT FOR IMPROPER VENUE**

Dated: March 14, 2014

[REDACTED]

Brett G. Evans
EVANS & KOB, PC
180 E. Main Street, Suite 104
Tustin, CA 92780
Telephone: (657) 357-2114
Facsimile: (888) 956-7890
brett@eklawpc.com

¹ Due to the large number of defendants joining in the motion to dismiss and Appendix, it is not feasible to list all of defendants on the cover page as required by Local Rule 7.1.3(a)(1). The defendants joining in the motion to dismiss are [REDACTED] (the “Representative Defendants”).



TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

NATURE AND STAGE OF PROCEEDING 2

SUMMARY OF ARGUMENT 4

STATEMENT OF RELEVANT FACTS 4

 A. The Trustee’s Sole Basis for Venue in Delaware is the Incorporation of the DBSI
 Companies within Delaware and the formation of SPEs in Delaware to invest in DBSI TIC
 offerings. 4

 B. Representative Defendants Did Not Sell Any DBSI Securities Formed in the State of
 Delaware 4

ARGUMENT 12

CONCLUSION..... 13



TABLE OF AUTHORITIES

Cases

Cottman Transmission Sys. v. Martino, 36 F.3d 291, 294 (3d Cir. Pa. 1994)..... 13

Statutes

28 U.S.C. § 1391(b)(2) 3, 12

Section 1391(b)..... 13

Rules

Rule 12(b)(2)..... 3

Rule 12(b)(3)..... 2, 4



INTRODUCTION

The Amended Complaint (“Complaint”) (D.I. 436) filed by Plaintiff James R. Zazzali, as Trustee for the DBSI Private Action Trust (“Trustee”) against Defendants ██████████

██████████ (the “Representative Defendants”) in an attempt to bring, in a single complaint, claims based on almost one thousand individualized securities transactions involving hundreds of different purchasers and dozens of different private securities offerings against current or former registered representatives, broker-dealers, parent companies and owners or shareholders of parent companies of certain broker-dealers.

Analogous to the Representative Defendant’s motion to dismiss for failure to state a claim upon which relief can be granted, the Trustee’s attempt to plead venue related to hundreds of defendants whom are separately situated – sales of entities formed in Idaho as well as Delaware, registered representatives, broker-dealers, control persons, owners, holding companies of broker-dealers, minority and majority owners of broker-dealers or the broker-dealers’ holding companies with different levels of interaction with investors, states of sale, distinct common law applicable to the majority of Trustee’s claims, dates of sale, access to records or lack thereof, involvement in the sales process, parties to different agreements, particular security sold, damages, jurisdiction and affirmative defenses – in cursory statements related to the activities of Diversified Business Services & Investments, Inc. (“DBSI”) dooms the Complaint to fail. While the Trustee has intimate knowledge of the entities of each of the PAT Beneficiaries that assigned claims forming a basis for the instant Complaint, the allegations against the Representative



Defendants did not involve any sales of entities formed in Delaware or TICs in which SPEs were subsequently formed in Delaware.

In the instant motion, Representative Defendants move this Court to dismiss the Complaint for improper venue as none of the sales to the PAT Beneficiaries involving the Representative Defendants were formed in Delaware and therefore, the Trustee is left without any basis for venue within the judicial district of Delaware. The Representative Defendants respectfully moves this Court for an order dismissing the Complaint (D.I. 436) in its entirety pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure for improper venue as the Complaint provides no basis for venue in Delaware.

NATURE AND STAGE OF PROCEEDING

On November 10, 2008, Diversified Business Services & Investments, Inc. and ninety-three of its related entities (collectively “DBSI”) filed petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Complaint, ¶ 9. DBSI had, until that time, been a national real estate investment firm. Prior to its bankruptcy filing, DBSI sold interests in its real estate investments to accredited investors in unregistered securities offerings. Some of those sales were made through numerous broker-dealers pursuant to agreements between DBSI and the broker-dealers.

On October 26, 2010, the Bankruptcy Court issued a Confirmation Order (defined *infra*) confirming DBSI’s Second Amended Joint Chapter 11 Plan of Liquidation (“Plan”). *Id.*, ¶ 12. In pertinent part, the Plan provided for the creation of a private action trust (“PAT”), and the vesting of authority in the Trustee to prosecute claims and causes of action assigned to the PAT. *Id.*, ¶ 13. The Plan contemplated that certain holders of DBSI securities would transfer their



claims and causes of action against broker-dealers to the PAT, in exchange for the Trustee's prosecution of the same and the grant of a beneficial interest in the trust. *Id.* at 14.

On June 27, 2012, based upon the alleged assignments of claims to the PAT, the Honorable James R. Zazzali, as Trustee of the PAT, initiated this suit by filing a single complaint against hundreds of other current or former registered representatives, fifteen broker-dealers, over twenty-four parent companies, minority owners or shareholders of parent companies of certain broker-dealers and over fifty individual owners or officers of certain broker-dealers and John Does 1-500. The Trustee claims that, in connection with the sale of DBSI securities to their customers, who are not identified in the Complaint, the Broker Defendants allegedly committed securities fraud. This is a motion to dismiss that Complaint.

On September 25, 2013, after briefing by the Trustee and Representative Defendants, as well as other defendants, issued its decision on several motions to dismiss for lack of personal jurisdiction under Rule 12(b)(2) of the Federal Rules of Civil Procedure and improper venue under Rule 12(b)(3) of the Federal Rules of Civil Procedure. (D.I. 421) The Court denied the motions to dismiss and in its ruling on the Rule 12(b)(3) motions to dismiss for improper venue determined that venue was proper under 28 U.S.C. § 1391(b)(2) as a substantial part of the events giving rise to the alleged claim occurred in Delaware due to the Trustee's claim that the sales of interests in Delaware entities "form[ed] the required nexus" to the Delaware forum with the defendants failing to meet the burden of demonstrating that venue was improper by making only vague assertions of improper venue. However, the Court recognized "that, while many of the challenged DBSI transactions were made through SPEs formed in Delaware, not all of the sales took this form. (D.I. ¶¶ 27-29.) As such, to the extent that the remaining Moving Defendants believe the DBSI sales with which they were allegedly associated did not involve a



Delaware SPE, the court will grant them leave to re-file a proper motion to dismiss under Rule 12(b)(3).” *Id.*, footnote 4.

SUMMARY OF ARGUMENT

1. The Complaint should be dismissed for improper venue as there was not a substantial part of the events or omissions giving rise to the claim that occurred in Delaware.²

STATEMENT OF RELEVANT FACTS

The facts most pertinent to the Motion to Dismiss include:

A. The Trustee’s Sole Basis for Venue in Delaware is the Incorporation of the DBSI Companies³ within Delaware and the formation of SPEs⁴ in Delaware to invest in DBSI TIC offerings.

The sole remaining allegation, as determined by the Court in its ruling applicable to the determination of venue, is the Trustee’s allegations that “[a]t least two-hundred-ninety-one (291) DBSI-created entities whose securities were sold to members of the PAT were formed in the State of Delaware[.]” Complaint ¶ 23, and that “DBSI required approximately 90% of their TIC Investors to make their investments in TIC offerings through newly- formed special purpose entities.” Complaint ¶ 25.

B. Representative Defendants Did Not Sell Any DBSI Securities Formed in the State of Delaware

Representative Defendants, pursuant to the allegations contained in the Complaint and Exhibit A thereto (D.I. 436-1), sold securities to the assignees of the PAT (PAT Beneficiary) in

² In the interest of judicial economy, Representative Defendants will not attempt to argue any other basis for improper venue based on this Court’s prior ruling on September 23, 2013. (D.I. 421).

³ See Complaint ¶¶ 22-31. “DBSI Companies” shall mean the Consolidated Debtor and Non-Debtor Entities identified in the Plan, including exhibits thereto. *Id.* ¶ 8(f).

⁴ “SPE” shall mean special purpose entity. *Id.* ¶ 8(t).



		Corporation		
██████████	██████████	DBSI 2008 Notes Corporation	Idaho	A
██████████	██████████	DBSI 2008 Notes Corporation	Idaho	A
██████████	██████████	DBSI 2008 Notes Corporation	Idaho	A
██████████	██████████	DBSI 2008 Notes Corporation	Idaho	A
██████████	██████████	DBSI 2008 Notes Corporation	Idaho	A
██████████	██████████	DBSI 2008 Notes Corporation	Idaho	A
██████████	██████████	DBSI 2008 Notes Corporation	Idaho	A
██████████	██████████	DBSI Chattahoochee LLC	Idaho	B ⁶
██████████	██████████	DBSI 2005 Secured Notes	Idaho	C, C-1
██████████	██████████	DBSI 2005 Secured Notes	Idaho	C, C-2
██████████	██████████	DBSI 2005 Secured Notes	Idaho	C, C-3
██████████	██████████	DBSI 2005 Secured Notes	Idaho	C, C-4
██████████	██████████	DBSI 2005 Secured Notes	Idaho	C, C-5
██████████	██████████ rquardt	DBSI 2005 Secured Notes	Idaho	C, C-6
██████████	██████████ III	DBSI 2005 Secured Notes	Idaho	C, C-7
██████████	██████████	DBSI 2005 Secured Notes	Idaho	C, C-8
██████████	██████████	DBSI 2006 Land Opportunity Fund	Idaho	D

⁶ See Exhibit A to the Declaration of Brett G. Evans in Support of ██████████
 ██████████
 ██████████

██████████ Motion to Dismiss Amended Complaint for Improper Venue. Deane Farms-Chattahoochee, LLC is the SPE formed for the PAT Beneficiary’s TIC investment associated with DBSI Chattahoochee, LLC.



		Opportunity Fund		
██████	██████	DBSI 2006 Land Opportunity Fund	Idaho	D
██████	██████	DBSI 2006 Land Opportunity Fund	Idaho	D
██████	██████	DBSI 2006 Land Opportunity Fund	Idaho	D
██████	██████	DBSI 2006 Land Opportunity Fund	Idaho	D
██████	██████	DBSI 2006 Land Opportunity Fund	Idaho	D
██████	██████	DBSI 2006 Land Opportunity Fund	Idaho	D
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E
██████	██████	DBSI 2006 Secured Notes Corporation	Idaho	E



[REDACTED]	[REDACTED]	DBSI 2006 Secured Notes Corporation	Idaho	E
[REDACTED]	[REDACTED]	DBSI 2006 Secured Notes Corporation	Idaho	E
[REDACTED]	[REDACTED]	DBSI 2006 Secured Notes Corporation	Idaho	E
[REDACTED]	[REDACTED]	DBSI 2006 Secured Notes Corporation	Idaho	E
[REDACTED]	[REDACTED]	DBSI 2006 Secured Notes Corporation	Idaho	E
[REDACTED]	[REDACTED]	DBSI 2006 Secured Notes Corporation	Idaho	E
[REDACTED]	[REDACTED]	DBSI 2006 Secured Notes Corporation	Idaho	E
[REDACTED]	[REDACTED]	DBSI 2007 Land Improvement & Development Fund LLC	Idaho	F, F-1, F-2
[REDACTED]	[REDACTED]	DBSI 2007 Land Improvement & Development Fund LLC	Idaho	F, F-1, F-2
[REDACTED]	[REDACTED]	DBSI 2007 Land Improvement & Development Fund LLC	Idaho	F, F-1, F-2
[REDACTED]	[REDACTED]	DBSI 2007 Land Improvement & Development Fund LLC	Idaho	F, F-1, F-2
[REDACTED]	[REDACTED]	DBSI Buckley & 120th	Idaho	G
[REDACTED]	[REDACTED]	DBSI Carrollton East	Idaho	H
[REDACTED]	[REDACTED]	DBSI Chambers & Hess LLC	Idaho	I
[REDACTED]	[REDACTED]	DBSI Chambers & Hess LLC	Idaho	I



[REDACTED]	[REDACTED]	DBSI Copenhaver Road	Idaho	J
[REDACTED]	[REDACTED]	DBSI Highway 60 LLC	Idaho	K
[REDACTED]	[REDACTED]	DBSI Kettering Road LLC	Idaho	L, L-1
[REDACTED]	[REDACTED]	DBSI Highway 60 LLC	Idaho	K
[REDACTED]	[REDACTED]	DBSI Kings Highway North	Idaho	M
[REDACTED]	[REDACTED]	DBSI Kings Highway North	Idaho	M
[REDACTED]	[REDACTED]	DBSI Kings Highway North	Idaho	M
[REDACTED]	[REDACTED]	DBSI Kings Highway South	Idaho	N
[REDACTED]	[REDACTED]	DBSI Kings Highway South	Idaho	N
[REDACTED]	[REDACTED]	DBSI Kings Highway South	Idaho	N
[REDACTED]	[REDACTED]	DBSI Loop 1604	Idaho	O
[REDACTED]	[REDACTED]	DBSI New Hampstead II LLC	Idaho	P
[REDACTED]	[REDACTED]	DBSI North Austin II LLC	Idaho	Q, Q-1
[REDACTED]	[REDACTED]	DBSI North Austin II LLC	Idaho	Q, Q-1
[REDACTED]	[REDACTED]	DBSI North Austin II LLC	Idaho	R, R-1
[REDACTED]	[REDACTED]	DBSI North Austin II LLC	Idaho	R, R-1
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate	Idaho	S



	[REDACTED]	Funding Corporation (DBSI REF 9)		
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Real Estate Funding Corporation (DBSI REF 9)	Idaho	S
[REDACTED]	[REDACTED]	DBSI Short Term Development Fund	Idaho	T, T-1
[REDACTED]	[REDACTED]	DBSI Short Term Development Fund	Idaho	T, T-1
[REDACTED]	[REDACTED]	DBSI Short Term Development Fund	Idaho	T, T-1
[REDACTED]	[REDACTED]	DBSI Short Term Development Fund	Idaho	T, T-1
[REDACTED]	[REDACTED]	DBSI Short Term Development Fund	Idaho	T, T-1
[REDACTED]	[REDACTED]	DBSI Short Term	Idaho	T, T-1



		Development Fund		
		DBSI Short Term Development Fund	Idaho	T, T-1
		DBSI Short Term Development Fund	Idaho	T, T-1
		DBSI 2001A Funding Corporation	Idaho	U
		DBSI 2001A Funding Corporation	Idaho	U
		DBSI 2001B Funding Corporation	Idaho	V
		DBSI 2001B Funding Corporation	Idaho	V
		DBSI 2001C Funding Corporation	Idaho	W
		DBSI 2001C Funding Corporation	Idaho	W
		DBSI 2001C Funding Corporation	Idaho	W

ARGUMENT

In the absence of the sole basis for venue in Delaware, this Court should dismiss the Complaint as to Representative Defendants for improper venue. In its ruling, the Court found that venue was proper in Delaware under 28 U.S.C. § 1391(b)(2), which provides that a plaintiff to bring a civil action in a “judicial district in which a substantial part of the events or omissions giving rise to the claim occurred[.]” Pursuant to the Trustee’s claims, the “Delaware SPEs were formed explicitly for the purpose of carrying out the security sales in relation to which defendants are alleged to have made misrepresentations.” (D.I. 421) (citing Complaint, D.I. 1 ¶¶ 27-28). This Court determined that there was no requirement that the “substantial part” be conducted by defendants. However, the Court recognized that, “while many of the challenged DBSI transactions were made through SPEs formed in Delaware, not all of the sales took this



form.” (D.I. 421). The Court invited the Representative Defendants to re-file motions to dismiss for improper venue to demonstrate that the DBSI sales did not involve a DBSI SPE.

As demonstrated by the Declarations submitted with this motion to dismiss and brief and the associated exhibits, none of the entities associated with the Representative Defendants’ sales involved an entity formed in Delaware or a TIC SPE formed in Delaware. Section 1391(b) “favors the defendant in a venue dispute by requiring that the events or omissions supporting a claim be ‘substantial.’ Events or omissions that might only have some tangential connection with the dispute in litigation are not enough. Substantiality is intended to preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship to the dispute.” *Cottman Transmission Sys. v. Martino*, 36 F.3d 291, 294 (3d Cir. Pa. 1994). Therefore, the Complaint is left without a basis for venue in Delaware and the Complaint should be dismissed.

CONCLUSION

For the foregoing reasons, Representative Defendants respectfully request that the Court grant its motion and dismiss the Trustee’s Complaint for improper venue and grant any such other and further relief as this Court deems just and proper.

[REDACTED]

Dated: March 14, 2014

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]



EVANS & KOB, PC

Brett G. Evans
180 E. Main Street, Suite 104
Tustin, CA 92780
Telephone: (657) 210-2114
Facsimile: (888) 956-7890
brett@eklawpc.com

Attorneys for [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

