

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD L. ANDREWS, JR. : CIVIL ACTION
:
v. :
:
COMPUSA, INC., JAMES HALPIN, :
CLINT NEWBY, GEORGIA PETERSON, :
PAUL POYFAIR, SCOTT SEAY and :
TONY WEIS : NO. 99-3420

M E M O R A N D U M

WALDMAN, J.

May 12, 2000

Plaintiff is a former employee of CompUSA. He has sued CompUSA and six individuals presently or formerly in its employ for CompUSA's failure to pay commissions earned by plaintiff as a result of his role in securing a CompUSA contract with UNISYS Corporation to provide training to Social Security Administration ("SSA") employees. Plaintiff asserted claims against CompUSA for violation of the Pennsylvania Wage Payment and Collection Law, 43 Pa. C.S. §260.1 et seq. ("WPCL"), breach of contract and fraud.¹ Plaintiff asserted claims against the individual defendants for violation of the WPCL.²

Plaintiff is a citizen of Pennsylvania and worked for CompUSA here. CompUSA is incorporated in Delaware and maintains its principal place of business in Texas. Mr. Seay is a resident of Georgia. The other individual defendants are citizens of Texas.

¹Plaintiff has dismissed by stipulation the fraud claim.

²Plaintiff dismissed without prejudice by stipulation defendant Clint Newby.

Presently before the court is defendants' motion to dismiss as to all of the individual defendants for lack of personal jurisdiction and to dismiss the WPCL claims against three of them for failure to state a claim.³

Once a jurisdictional defense is raised, the plaintiff bears the burden of proving, through affidavits or other competent evidence, sufficient contacts with the forum state to establish personal jurisdiction over each moving defendant. See Dayhoff Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1302 (3d Cir. 1996), cert. denied, 117 S. Ct. 583 (1996); North Penn Gas Co. v. Corning Natural Gas Corp., 897 F.2d 687, 689 (3d Cir. 1990), cert. denied, 498 U.S. 947 (1990); Provident Nat'l Bank v. California Fed. Savs. Ass'n, 819 F.2d 434 (3d Cir. 1987); Gehling

³Plaintiff suggests that the individual defendants should be deemed to have waived their personal jurisdiction defense by failing to produce certain items requested in discovery. Such an action in this case is unwarranted. Plaintiff requested copies of any telephone records, correspondence and travel records reflecting contact with Pennsylvania. By order of January 10, 2000, the court directed defendants to produce any such documents. There has been no showing that defendants thereafter failed to produce existing responsive documents. Defendants provided plaintiff with all travel related documents still in existence. Plaintiff was given an opportunity and the necessary information to subpoena defendants' telephone records if he wished to do so. Each individual defendant testified under oath regarding any contacts with Pennsylvania.

It does appear that CompUSA has resisted production of certain documents reflecting commissions paid to employees in connection with other non-SSA related contracts with Unysis which could lead to the discovery of admissible evidence suggesting entitlement to commissions on the SSA related contract, although plaintiff has suggested other reasons for the request. While this information should be produced by CompUSA, it clearly has no bearing on the existence of personal jurisdiction over the individual defendants.

v. St. George's School of Medicine, Ltd., 773 F.2d 539, 542 (3d Cir. 1985). Plaintiff must establish those contacts with reasonable particularity. See Mellon Bank (East) PSFS Nat'l Ass'n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992); Provident Nat'l Bank, 819 F.2d at 437.

Consistent with due process, a federal district court may exercise personal jurisdiction over a nonresident of the forum state to the extent authorized by the law of that state. Provident Nat'l Bank v. California Federal Savings Ass'n, 819 F.2d 434, 436 (3d Cir. 1987). Pennsylvania provides that a court may exercise personal jurisdiction to the full extent permitted by the Constitution. Van Buskirk v. Carey Canadian Mines, Ltd., 760 F.2d 481, 490 (3d Cir.1985). There are two bases on which a court may exercise personal jurisdiction--specific jurisdiction and general jurisdiction. See 42 Pa. Cons. Stat. Ann. §§ 5301, 5322; Provident Nat'l Bank, 819 F.2d at 437.

Specific personal jurisdiction may be established by showing that a defendant undertook some action by which he purposefully availed himself of the privilege of conducting activities within the forum, thus invoking the benefits and protections of the laws of the forum. Hanson v. Denckla, 357 U.S. 235, 253 (1958). To invoke specific jurisdiction, a plaintiff's cause of action must arise from or relate to defendant's forum related activities, such that the defendant should reasonably anticipate being haled into court in the forum. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S.

408, 414 n.8 (1984); Mellon Bank (East) PSFS v. Di Veronica Bros., Inc., 983 F.2d 551, 554 (3d Cir. 1993); Dollar Sav. Bank v. First Sec. Bank, 746 F.2d 208, 211 (3d Cir. 1984).

It is uncontroverted that all of the individual defendants' conduct relating to the alleged decision to deny plaintiff commissions occurred in Texas. Thus, the only possible basis for specific jurisdiction is the alleged violation of the WPCL by conduct outside of the forum. Such a violation of the WPCL, however, does not subject the individuals responsible to personal jurisdiction in Pennsylvania. See Sneberger v. BTI Americas, Inc., 1998 WL 826992, *4 (E.D. Pa. Nov. 30, 1998) (that individual defendants may be personally liable as employers under the WPCL does not support jurisdiction absent showing that they also have requisite minimum contacts); Schommer v. Eldridge, 1992 WL 357557, *2 (E.D. Pa. Nov. 30, 1992) (court will not consider for jurisdictional purposes defendant's conduct in corporate capacity constituting violation of WPCL); Boles v. Vanderbilt Shirt Co., 1990 WL 74202, *2 (E.D. Pa. May 31, 1990) (violation of WPCL insufficient to sustain personal jurisdiction absent sufficient forum contacts); Bowers v. NETI Technologies, Inc., 690 F. Supp. 349, 357 (E.D. Pa. 1988) (violation of WPCL insufficient to sustain personal jurisdiction over defendant); Central Penn. Teamsters Pension Fund v. Burten, 634 F. Supp. 128, 132 (E.D. Pa. 1986) (WPCL violation does not support exercise of

personal jurisdiction over non-resident corporate officers with insufficient personal contacts with forum).

General jurisdiction may be exercised even when the claim arises from the defendant's non-forum related activities. See Helicopteros Nacionales, 466 U.S. at 414 n. 9; Gehling v. St. George's School of Medicine, Ltd., 773 F.2d 539, 541 (3d Cir. 1985). To establish general jurisdiction over a defendant, however, the plaintiff "must show significantly more than minimum contacts." Provident Nat'l Bank, 819 F.2d at 434. See also Reliance Steel Prods. Co. v. Watson, Ess, Marshall & Enggas, 675 F.2d 587, 589 (3d Cir. 1982). The nonresident defendant's contacts with the forum must be "continuous and systematic." Fields v. Ramada Inn, Inc., 816 F. Supp. 1033, 1036 (E.D. Pa. 1993); 42 Pa. Cons. Stat. Ann. § 5301(a)(2)(iii). See also Provident Nat'l Bank, 819 F.2d at 437; Gehling, 773 F.2d at 541; Reliance Steel Prods. Co., 675 F.2d at 589. Contacts are continuous and systematic if they are "extensive and pervasive." Fields, 816 F. Supp. at 1036. See also Reliance Steel, 675 F.2d at 589.

Generally, individuals are not subject to personal jurisdiction in a state for acts undertaken in that state in their corporate capacity. See Sneiderger, 1998 WL 826992, *4 (E.D. Pa. Nov. 30, 1998) (no personal jurisdiction over defendants in absence of minimum contacts with Pennsylvania in

their individual capacities); Bowers, 690 F. Supp. at 357 (individuals not subject to personal jurisdiction for acts in forum state in their corporate capacity). The individual defendants do not have the requisite personal contacts with Pennsylvania to sustain an exercise of jurisdiction.⁴

Mr. Halpin's only potentially non-business related contacts with Pennsylvania were several semi-annual visits to Philadelphia to lecture at the Wharton school, for which he received no compensation. There is no evidence of any personal contacts by Mr. Poyfair, Mr. Seay or Ms. Peterson with Pennsylvania. The only personal contact by Mr. Weiss with Pennsylvania consists of flights into and from the Philadelphia airport on trips to New Jersey.

Plaintiff has requested that the court transfer rather than dismiss his case should it conclude that it lacks personal jurisdiction over the moving defendants. Plaintiff specifically requests that the case be transferred to the Northern District of Texas where CompUSA's headquarters is located and where the defendants' alleged actions underlying plaintiff's claims

⁴Over the past four years, Mr. Poyfair traveled to Pennsylvania "maybe twice and they were on business trips that lasted no more than a day or two." One of these two trips was merely to drive to Wilmington, DE. Over the course of six years, Mr. Poyfair made business related telephone calls to Pennsylvania approximately six times. Mr. Halpin and Mr. Seay visited Pennsylvania on CompUSA business with some frequency. Ms. Peterson had two business related trips to Pennsylvania during her tenure at CompUSA. Mr. Weiss traveled to Pennsylvania on business on a few occasions. There is no evidence or suggestion that any of these business contacts were related to plaintiff's claim for commissions.

occurred. Defendants did not object or otherwise respond to this request.

Title 28 U.S.C. § 1406(a) has been read to permit a district court that lacks personal jurisdiction to transfer a case in the interest of justice to a district in which personal jurisdiction can be established. See Porter v. Groat, 840 F.2d 255, 257 (4th Cir. 1988); Manley v Engram, 755 F.2d 1463, 1467 (11th Cir. 1985) (§ 1406(a) may be used when suit is filed in a district in which venue or personal jurisdiction is improper); Sinclair v. Kleindienst, 711 F.2d 291, 294 (D.C. Cir. 1983) (§ 1406(a) transfer appropriate to remove obstacles presented by "lack of personal jurisdiction"); Corke v. Sameiet M.S. Song of Norway, 572 F.2d 77, 80 (2d Cir. 1978); Taylor v. Love, 415 F.2d 1118, 1120 (6th Cir. 1969), cert. denied, 397 U.S. 1023 (1970); Mayo Clinic v. Kaiser, 383 F.2d 653, 656 (8th Cir. 1967); Dubin v. U.S., 380 F.2d 813, 815 (5th Cir. 1967); Shaw v. Boyd, 658 F. Supp. 89, 92 (E.D. Pa. 1987). Also, 28 U.S.C. § 1631 provides that in the interest of justice, a case may be transferred to another court in which the case could have been originally brought if it cannot be maintained in the present court due to a lack of jurisdiction. This section encompasses transfers for lack of personal, as well as subject matter, jurisdiction. See Ross v. Colorado Outward Bound School, Inc., 822 F.2d 1524, 1527 (10th Cir. 1987); Carty v. Beech Aircraft Corp., 679 F.2d 1051, 1065-66 & n. 17 (3d Cir. 1982); Jaffe v. Julien, 754 F. Supp. 49, 53 (E.D. Pa.1991); Nolt & Nolt, Inc. v. Rio Grande, Inc., 738 F.

Supp. 163, 166 (E.D. Pa. 1990).⁵

Although the complaint does not allege on which exact date the commissions became due, CompUSA entered into the UNISYS SSA contract in June 1996. It thus is likely that the three year statute of limitations has run on plaintiff's WPCL claim. See 43 Pa. C.S. §260.9a(g). It is thus in the interest of justice to transfer the case so plaintiff may have his proverbial day in court and this dispute can be resolved on the merits.

The Northern District of Texas clearly has subject matter jurisdiction. Venue would be proper in that district as a substantial part of the events or omissions underlying the claims took place in that district. All of the defendants are subject to personal jurisdiction in Texas. See Alpine View Co. Ltd. v. Atlas Copco AB, 205 F.3d 208, 214 (5th Cir. 2000) (Texas long-arm statute has same scope as the U.S. Constitution); TeleVentures, Inc. v. International Game Tech., 12 S.W.3d 900, 907 (Tex. App. 2000) (only limitation on Texas courts in asserting personal jurisdiction over nonresident defendant are those imposed by due

⁵The court's personal jurisdiction over CompUSA is unquestioned. Where the involvement of a defendant over whom the court has jurisdiction, however, is such that severance and transfer of the claims against defendants not subject to jurisdiction would result in litigation of the same issues in two places, the proper course is to transfer the case in its entirety to an appropriate district. See Cottman Transmission Systems, Inc. v. Martino, 36 F.3d 291, 296 (3d Cir. 1994). The transfer as to such a defendant would be made pursuant to 28 U.S.C. § 1404(a). Witnesses would be needlessly inconvenienced if they had to give essentially the same testimony twice in two different places. The parties would be needlessly inconvenienced by having to litigate simultaneously essentially the same issues in two forums. The interest of justice would clearly be served by avoiding fragmentation of what is essentially a single legal controversy.

process clause of Fourteenth Amendment). CompUSA has continuous and systematic contacts with Texas as its principal place of business is located there. Virtually all of the alleged conduct giving rise to this suit was undertaken by the individual defendants in Texas while they were living and working there.

The court will transfer this case in the interest of justice to the Northern District of Texas.⁶

⁶The individual defendants also argue that plaintiff has failed to state cognizable WPCL claims against them. Agents and officers of an employer may be held liable under the WPCL. See 42 Pa. C.S. § 260.9a; 42 Pa. C.S. § 260.2a. The definition of "agent or officer" for purposes of the WPCL encompasses individuals who exercised a policy-making function in the company or had an active role in the decision making process. Tyler v. O'Neill, 994 F. Supp. 603, 616 (E.D. Pa. 1998). Although Mr. Seay denies he was an officer or policymaker during the relevant time period, plaintiff has alleged that he was. With the possible exception of Ms. Peterson, plaintiff's allegations regarding the corporate status of the individual defendants is clearly sufficient to withstand a motion to dismiss. If there is evidence which conclusively refutes these allegations, it is appropriately presented with a motion for summary judgment to the transferee court.

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O R D E R

AND NOW, this day of May, 2000, upon consideration of defendants' Motion to Dismiss (Doc. #9) and plaintiff's response thereto, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is **DENIED** and that in lieu of dismissal, the above case is **TRANSFERRED** to the U.S. District Court for the Northern District of Texas at Dallas.

BY THE COURT:

JAY C. WALDMAN, J.

