

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

COTTMAN TRANSMISSION SYS., INC. : CIVIL ACTION
: :
v. : :
: :
THOMAS J. MILLER, et al. : NO. 00-CV-3283

MEMORANDUM

Padova, J.

September , 2000

Plaintiff Cottman Transmission Systems, Inc. (“Cottman”) filed a Complaint against Defendants Thomas J. Miller, Judith E. Miller¹, and Royal Transmission, Inc. on June 28, 2000. Plaintiff asserts that Defendants breached a series of agreements in connection with Plaintiff’s purchase of the Royal Transmission franchise. The Complaint alleges eight counts for breach of contract, tortious interference with contractual relations, trademark infringement, and unfair competition and seeks injunctive relief and monetary damages. Before the Court is Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction filed on July 21, 2000. For the reasons that follow, the Court denies Defendants’ Motion.

I. Background

The Complaint alleges the following facts. Cottman is a Pennsylvania corporation that franchises transmission repair centers. Defendant Royal Transmission (“Royal”) is a Nevada corporation that owns and operates a transmission repair franchise in Nevada. Royal’s franchise

¹On August 17, 2000, Plaintiff voluntarily dismissed Judith Miller from the action.

consisted of several shops in the Las Vegas area that were owned and operated by Royal franchisees under agreements with Royal and Miller. Defendant Thomas Miller (“Miller”) is Royal’s President.

In June 1996, Cottman entered into several agreements with Defendants in connection with Cottman’s purchase of the Royal franchise. First, Cottman contracted with Miller and Royal to convert the existing Royal franchises to Cottman franchises (“Finder’s Fee Agreement”). Second, Miller contracted to become the exclusive developer of Cottman franchises in the Southern Nevada area for an initial period of eighteen months (“Franchise Development Agreement”). Plaintiff alleges that Defendants breached both the Franchise Development Agreement and the Finder’s Fee Agreement.

II. Standard of Review

Since lack of personal jurisdiction is a waivable defense, a defendant must raise the issue on a timely motion to dismiss pursuant to Federal Rule of Civil Procedure 12. See Fed. R. Civ. P. 12(h)(1); Singer v. Commissioner of Internal Revenue Service, No. Civ. A. 99-2783, 2000 WL 14874, at *2 (E.D. Pa. Jan. 10, 2000). When a defendant raises the defense of lack of personal jurisdiction, the plaintiff bears the burden of producing sufficient facts to establish that jurisdiction is proper. Mellon Bank (East) PSFS, Nat’l Assoc. v. Farino, 960 F.2d 1217, 1223 (3rd Cir. 1992). To establish the propriety of jurisdiction, the plaintiff must present a prima facie case for the exercise of personal jurisdiction by establishing with reasonable particularity sufficient contacts between the defendant and the forum state. Id. at 1223 (citing Provident Nat’l Bank v. California Fed. Sav. & Loan Assoc., 819 F.2d 434, 437 (3rd Cir. 1987)). Resolution of a motion challenging personal jurisdiction requires a determination of factual issues outside the pleadings. Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66 (3d Cir. 1984). The plaintiff, therefore, must go

beyond the bare allegations of the pleadings and make affirmative proof through sworn affidavits or other competent evidence. Id. at 66-67 n.9; Singer, 2000 WL 14874, at *2.

III. Discussion

A federal district court may assert personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state. Fed. R. Civ. P. 4(e). The Pennsylvania Long-Arm Statute provides in relevant part that

the jurisdiction of the tribunals of this Commonwealth shall extend . . . to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.

42 Pa. Cons. Stat. Ann. § 5322(b) (West 2000). The Fourteenth Amendment of the United States Constitution limits the reach of long-arm statutes such that a court may not assert personal jurisdiction over a nonresident defendant who does not have certain minimum contacts with the forum such that the maintenance of suit against him does not offend traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Provident Nat'l Bank, 819 F.2d at 436-37. Pennsylvania's long arm statute includes both general and specific jurisdiction over nonresident defendants. 42 Pa. Cons. Stat. Ann. §§ 5301, 5322 (West 2000).

To assert general jurisdiction over a nonresident, a plaintiff must establish that the defendant's contacts with the forum state are so "continuous and substantial" that the defendant should reasonably expect to be haled into court therein on any cause of action. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-16 (1984); Provident Nat'l Bank, 819 F.2d at 437. General jurisdiction over a defendant arises when the defendant has purposefully availed itself of the benefits and protections of the laws of the forum state. See Burger King Corp. v.

Rudzewicz, 471 U.S. 462, 475 (1985). The sole issue raised in Defendants’ Motion is whether the Court has specific personal jurisdiction over Defendants. Plaintiff does not argue for, and the facts do not support, the assertion of general personal jurisdiction in Pennsylvania over Defendants.

Specific personal jurisdiction may arise when the defendant engages in particular or infrequent contacts with the forum state that are related to the plaintiff’s claim. Pennzoil Products Co. v. Colelli & Assoc., Inc., 149 F.3d 197, 200 (3d Cir. 1998). A finding of specific personal jurisdiction requires a two-step analysis. First, the court must find that the relationship between the defendant, the cause of action, and the forum satisfies the minimum contacts framework outlined in International Shoe and its progeny. Farino, 960 F.2d at 1222. Second, the court must conclude that the exercise of jurisdiction would comport with traditional notions of ‘fair play and substantial justice.’ Id.

A. Minimum Contacts

Minimum contacts is a “fair warning” requirement of due process that is satisfied if the defendant has purposely directed his activities at forum residents and availed itself of the privilege of doing business there. Burger King, 471 U.S. at 472; Hanson v. Denckla, 357 U.S. 235, 253 (1958). The defendant’s conduct and connections with the forum must have been such that the defendant could have reasonably anticipated his amenability to suit in the forum. Shaffer v. Heitner, 433 U.S. 186, 204 (1977). “Random,” “fortuitous,” or “attenuated” contacts are insufficient to satisfy the minimum contacts requirement, as are contacts resulting from “the unilateral activity of another party or a third person.” Burger King, 471 U.S. at 475. Only those contacts “proximately result[ing] from actions by the defendant himself that create a “substantial connection” with the forum” satisfy due process. Id.

Defendants can have minimum contacts where they deliberately engage in significant activity within the forum or create continuing obligations between themselves and forum residents. Id. at 475-76. In contract cases, the court should use a “highly realistic” approach to its analysis by taking into account “prior negotiations and contemplated future consequences, along with the terms of the contract and the parties’ actual course of dealing.” Id. at 479; Farino, 960 F.2d at 1224. Courts may also consider contacts that occur after the contract has been executed and after a contractual dispute has arisen. Id.

Defendants’ argument against the propriety of the exercise of personal jurisdiction focuses on the location of the contract negotiations and execution. Miller’s affidavit states that Plaintiff solicited and approached Defendants in Nevada to propose purchasing the Royal franchise. (Miller Aff. ¶¶ 10, 11, 12, 13). Miller further asserts that all contract negotiations were conducted in Las Vegas, Nevada, and the contracts themselves were signed in Nevada. (Id. ¶ 14). Plaintiff’s sales representatives traveled to Nevada to sign and negotiate the contracts. Id. Neither Defendants nor their employees ever traveled into Pennsylvania during the course of the negotiations. Accordingly, all closing payments changed hands in Nevada. (Id. at ¶16). Plaintiff, on the other hand, points to the provisions of the various contracts in dispute to demonstrate the existence of personal jurisdiction. Based on a realistic approach to the contractual language and terms, the Court concludes that both Defendants engaged in sufficient minimum contacts with Pennsylvania to justify the assertion of personal jurisdiction over them.

The Franchise Development Agreement provides:

With respect to any legal proceedings arising out of this Agreement, DEVELOPER [Thomas Miller] and COTTMAN consent to the jurisdiction and venue of any court of general jurisdiction of

Montgomery County, Pennsylvania or the United States District Court of the Eastern District of Pennsylvania, and any legal proceedings arising out of this Agreement shall be brought only in such courts . . .

(Pl. Ex. 4 at 10 (emphasis in original)). The Franchise Development Agreement, thus, provides for consent to jurisdiction in this District in any legal proceeding arising out of the agreement. Personal jurisdiction may be created by consent of the defendant to the extent authorized by the consent. See Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 704 (1982); 42 Pa. Cons. Stat. Ann. §5301(a)(1)(iii) (West 2000). Courts should enforce a contractual consent to personal jurisdiction unless it would be unreasonable or unjust to do so. See Burger King, 471 U.S. at 472 n.14.

Miller concedes the enforceability of the consent provision, but argues that the scope of the consent provision is not broad enough to encompass the entire proceeding since only Count VII directly implicates the Franchise Development Agreement. The Court disagrees. Although the other counts in the Complaint relate to other various agreements between the parties, all of the contracts are interrelated and were part of the same transaction and course of dealing. Notably, the Finder's Fee Agreement, which forms the basis for three of the counts of the Complaint, requires that Cottman enter into the Franchise Development Agreement with Miller. (Pl. Ex. 3 at 4). Thus, a finding of personal jurisdiction over Miller for the entire proceeding based on the Franchise Development Agreement would not exceed the consent given in that agreement. Furthermore, since Defendant Miller proffers no argument that enforcing the contractual consent would be unreasonable or unjust, the Court will enforce the consent stated in the Franchise Development Agreement.

Even if the Court has incorrectly interpreted the scope of the consent provision, the Court

would nonetheless conclude that Miller has engaged in sufficient minimum contacts to justify the assertion of personal jurisdiction over him. The Franchise Development Agreement clearly contemplates an ongoing relationship with Cottman by requiring Miller to develop prospective franchisees for an initial period of eighteen months with an automatic yearly renewal. (Pl. Ex. 4 at ¶ 2). Miller had to obtain Cottman's approval for any solicitation or advertising materials used during the course of the agreement, and was required to attend Cottman's training sessions. (Id. at ¶¶ 8(b), 12(b)). Although merely entering into a contract with a Pennsylvania resident is generally an insufficient basis upon which to assert personal jurisdiction, Mellon Bank (East) v. DiVeronica, 983 F.2d 551, 557 (3rd Cir. 1993), personal jurisdiction may be established where the defendant deliberately engaged in a course of conduct designed to cultivate an ongoing relationship with the plaintiff. See Murray v. National Football League, No. Civ. A. 94-5971, 1996 WL 363911, at *8 (E.D. Pa. June 28, 1996); Mickleburgh Mach. Co., Inc. v. Pacific Econ. Dev. Co., 738 F. Supp. 159, 162 (E.D. Pa. 1990).

With respect to Defendant Royal, Plaintiff does not, and indeed cannot, rely on the language of the Finder's Fee Agreement to justify the assertion of personal jurisdiction.² Rather, Plaintiff argues that the facts of this case mirror those presented in Burger King v. Rudzewicz, 471 U.S. 462 (1985), in which the United States Supreme Court upheld the exercise of personal jurisdiction over

²Unlike the Franchise Development Agreement, the Finder's Fee Agreement does not contain a consent to personal jurisdiction in a specific forum. The Finder's Fee Agreement explicitly disclaims consent to any specific jurisdiction:

Neither party has agreed to an exclusive forum for the resolution of disputes under this Agreement nor consented to the jurisdiction of any particular forum by operation of this provision requiring application of Pennsylvania law.

Pl. Ex. 3 at 22.

a franchisee in federal court in the franchisor's home state. See id. at 487. The Burger King defendant was a Michigan resident who entered into a franchise contract with the plaintiff to operate a Burger King restaurant in Michigan. Id. at 464. The plaintiff, a Florida corporation, brought suit in federal court in Florida alleging breach of contract and trademark infringement. Id. The Supreme Court held that the defendant was subject to specific personal jurisdiction in Florida because he had entered into a franchise agreement with a Florida resident that "envisioned continuing and wide-reaching contacts." Id. at 480. The franchise contract subjected the defendant to oversight by the plaintiff, contained a choice of law provision stating that Florida law governed, and produced a continuing flow of money and correspondence between the parties. Id. at 480-81.

Although the facts of the instant case do not exactly match those presented in Burger King, the Court determines that Royal's contacts with Pennsylvania constitute minimum contacts under the Burger King considerations. While the record indicates that Cottman initially solicited Royal to purchase the Royal franchise, and payments under the contracts flow primarily into Royal in Nevada, the Finder's Fee Agreement and subsequent contracts clearly envision continuing and long-term contacts between Royal and Cottman. (Pl. Ex. 2 at ¶¶ 5, 6; Pl. Ex. 3 at ¶¶ 5.1, 6.1, 7.1, 7.4). For example, the Finder's Fee Agreement includes a management agreement covering non-converting Royal franchises and provides for oversight by Cottman over Royal in performing its duties under the contract. (See e.g. Pl. Ex. 3 at ¶¶ 1.4, 7.1, 13.1).

Other contract provisions further support a finding of minimum contacts. The Finder's Fee Agreement provides that Pennsylvania law shall govern the entire transaction. (Pl. Ex. 3 at ¶ 31.1). Choice of law provisions in a contract can support a finding of minimum contacts by indicating whether the defendant could have reasonably foreseen litigation in the forum state. See Burger King,

471 U.S. at 481-82; Murray, 1996 WL 363911, at *8. Royal also clearly knew that it was contracting with a Pennsylvania resident. (Pl. Ex. 3 at ¶¶ 10.2, 25.1). A defendant's knowledge that he is affiliating with a forum resident may contribute to a finding of minimum contacts. Burger King, 471 U.S. at 480-81. Similarly, the foreseeability of injury to a forum resident supports the existence of minimum contacts. Id. at 480.

Although Royal's contacts with Pennsylvania are not as extensive as those in Burger King, the Court cannot deem them to be "random," "fortuitous," or "attenuated." The Court, therefore, concludes that Royal has engaged in sufficient minimum contacts under the Fourteenth Amendment to justify the assertion of specific personal jurisdiction in Pennsylvania.

B. Fair Play and Substantial Justice

Having concluded that Defendants have the necessary minimum contacts with Pennsylvania, the Court must next consider whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' Burger King, 471 U.S. at 476. The relationship between the defendant and the forum must be such that it is reasonable to require him to defend the suit there. International Shoe, 326 U.S. at 317. This determination depends on an evaluation of the following factors: the burden on the defendant; the plaintiff's interests in obtaining convenient and effective relief; the forum state's interest in adjudicating the dispute; the interstate judicial system's interest in obtaining the most efficient resolution of the controversies; and the shared interests of the States in furthering fundamental substantive social policies. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980). Where a defendant who has purposefully directed his activities at a forum resident seeks to defeat jurisdiction, he must present a compelling case that the presence of some other consideration would render jurisdiction unreasonable. Burger King, 471 U.S. at 477.

Because Defendants proffer no arguments pursuant to the Volkswagen factors indicating that the assertion of personal jurisdiction is unreasonable, the Court concludes that the assertion of personal jurisdiction over them comports with fair play and substantial justice. While litigating a case in a foreign forum may be inconvenient, there is no indication that Defendants' burden in this case is unduly or arduous. Plaintiff retains a strong interest in obtaining convenient and effective relief. Furthermore, Pennsylvania has an interest in providing redress for any contractual breach or other injury inflicted on a forum resident. The interstate judicial system's interest in obtaining the most efficient resolution of the controversy and the shared interests of the States in furthering fundamental substantive social policies likewise support the assertion of personal jurisdiction in this case.

An appropriate Order follows.