

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

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|--|---|---------------------|
| GENERAL ELECTRIC CAPITAL CORPORATION, | : | CIVIL ACTION |
| | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| ALLECO, INC., et al., | : | |
| | : | |
| Defendants. | : | NO. 00-5226 |

Reed, S.J.

March 13, 2001

M E M O R A N D U M

Three of the defendants in this diversity action have claimed that this Court lacks personal jurisdiction over them and now move this Court to dismiss them as defendants (Document Nos. 9 and 12). For the reasons described herein, I conclude that this Court may properly exercise personal jurisdiction over defendants Morton M. Lapidés, Sr., Harry A Wadsworth, and VR Holdings, Inc.¹

Background

General Electric Capital Corporation (“GECC”) brings this action to recover moneys that alleged belong to GECC, as an assignee of Service American Corporation (“SAC”). GECC alleges that defendants wrongly converted funds by knowingly accepting numerous interest payments to which they had no right or claim. The complaint includes claims for conversion, breach of fiduciary duty, breach of contract, unjust enrichment, fraudulent misrepresentation and

¹ While there are only two entries in the docket, there are three identically worded, separate motions now pending before me: the motion of Harry A. Wadsworth, the motion of Morton M. Lapidés, Sr., and the motion of VR Holdings. It does not appear that the VR Holdings motion was docketed, and perhaps it was inadvertently attached to one of the other motions. I will, however, consider the VR Holding’s motion as a discrete motion, separate from that of Wadsworth or Lapidés.

concealment.

The interest payments at issue came from funds intended to serve as collateral for worker's compensation surety bonds issued by the Insurance Company of North America ("CIGNA") to defendant Alleco, Inc., in 1986. In 1987, SAC split off from Alleco, and the surety bond funds were allocated between Alleco and SAC. In 1992, Alleco filed for Chapter 11 bankruptcy, and SAC asserted substantial claims against Alleco's bankruptcy estate, which were released pursuant to a settlement agreement. Plaintiff contends that the settlement agreement between Alleco and SAC makes it clear that SAC was entitled to most of the interest on the funds. It is alleged that despite that agreement, and unbeknownst to SAC, Alleco continued to accept monthly interest payments from the funds, which were located in an account with PNC Bank, N.A., in Philadelphia, Pennsylvania, account number 35-25-008-1023089. GECC, as the assignee of SAC, claims that Alleco and the other defendants took these interest payments knowing that they were not entitled to them.

Defendants Lapides, Wadsworth, and VR Holdings each have filed identically worded *pro se* motions and affidavits, claiming in laundry-list fashion and without explanation that this Court lacks personal jurisdiction and subject matter jurisdiction, that venue is improper here, that the complaint fails to state a claim upon which relief can be granted, and that the complaint fails to join a necessary party.

Analysis

Lacking any meaningful guidance from defendants as to the basis for their motions, I have carefully reviewed the complaint, the motions, and the response of plaintiffs, and have concluded that the only ground asserted by defendants that warrants discussion is the personal

jurisdiction ground. It is clear that this Court has subject matter jurisdiction, as there is diversity among the parties and the amount in controversy exceeds \$75,000. See 29 U.S.C. § 1332. The complaint is lengthy and detailed, and I could locate no failure therein to set forth grounds upon which relief may be granted. Defendants do not identify any necessary party that plaintiffs have failed to join, and I am at a loss as to who that could be. A defendant bears the burden of establishing that venue is improper, see Simon v. Ward, 80 F. Supp. 2d 464, 468 (E.D. Pa. 2000), and defendants here have not done so.

I turn, then, to an analysis of defendants' assertion that this Court may not exercise personal jurisdiction over them. Pennsylvania's long-arm statute authorizes the exercise of personal jurisdiction to the fullest limits permissible under the Constitution of the United States. See 42 Pa. C.S. § 5233 (b). Under the Constitution, a court may exercise either specific jurisdiction, when the cause of action arises out of the defendant's contacts with the forum, or general jurisdiction, when a plaintiff's claim does not arise out of a defendant's contacts with the forum, but defendant's contacts with the forum are "continuous and systematic." See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416, 104 S. Ct. 1868 (1984).

Wadsworth, Lapides, and VR Holdings assert that they have insufficient minimum contacts with Pennsylvania to warrant the exercise of personal jurisdiction over them by this Court. In their motions, each defendant purports to attach an affidavit "demonstrating that I have no contacts or connection with the State of Pennsylvania." Only Wadsworth actually attached an affidavit. However, a defendant need only raise the jurisdictional issue to shift to plaintiff the burden of proof of establishing with reasonable particularity sufficient contacts to support jurisdiction. See Provident Nat'l Bank v. California Federal Sav. & Loan Ass'n, 819 F.2d 434,

437 (3d Cir. 1987) (citation omitted).

In cases involving intentional torts – as this case does – the Supreme Court of the United States has established a unique approach to specific jurisdiction. In Calder v. Jones, 465 U.S. 783, 104 S. Ct. 1482 (1984), the Supreme Court held that even when defendants otherwise lacked the sufficient minimum contacts, defendants could “reasonably anticipate being haled into court” in a forum at which they “expressly aimed” their “intentional, and allegedly tortious, actions.” See id. at 789-90 (citations omitted). The Court of Appeals for the Third Circuit has developed a three-part test to guide its application of Calder under which plaintiff must show that:

- (1) The defendant committed an intentional tort;
- (2) The plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort;
- (3) The defendant expressly aimed his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity.

Remick v. Manfredy, 238 F.3d 248, 2001 U.S. App. LEXIS 1049, at *21 (3d Cir. 2001) (quoting Imo Indus., Inc. v. Kiekert AG, 155 F.3d 254, 265 (3d Cir. 1998) (footnote omitted)).

I conclude that plaintiff has met the first element of the Imo Industries test, having sufficiently alleged the intentional torts of conversion and fraudulent misrepresentation/ concealment. (Complaint, at Counts II and V.)² As to the second element, plaintiff has produced evidence that the bank account from which the interest was allegedly skimmed by defendants was located at PNC Bank in Philadelphia, Pennsylvania. (PNC Bank Account Statements,

² Of course, plaintiff need not prove at this stage that defendants in fact committed intentional torts; such a requirement would put the fact-finding cart before the jurisdictional horse. Because the jurisdictional inquiry is a preliminary one focusing not on the merits but upon the Court’s authority to hear this case, plaintiff need only state a valid claim that defendants committed an intentional tort. I have concluded that plaintiff in this case has done so.

Account No. 35-35-008-1023089, Exh. G. to Plaintiff's Response to Wadsworth's Motion to Dismiss.) The record demonstrates that the allegedly tortious conduct of defendants deprived plaintiff of money in Pennsylvania; Pennsylvania was the "focal point" of the harm suffered by plaintiff because plaintiff felt the brunt of the harm here. Thus, the second element of the Imo Industries analysis is met here.

The record also shows that the third element is met here. Again, there is no question that the bank account at issue in this case was located in Pennsylvania. (PNC Bank Account Statements, Account No. 35-35-008-1023089, Exh. G. to Plaintiff's Response to Wadsworth's Motion to Dismiss.) By repeatedly accepting, over a lengthy period of time, interest payments from that Pennsylvania bank, defendants expressly aimed their allegedly tortious activity at Pennsylvania such that Pennsylvania was the focal point of the allegedly tortious activity. I conclude that whether or not defendants acted wrongfully, they have aimed enough conduct at Pennsylvania, and benefitted sufficiently from continuous activities taking place in this state, to subject themselves to the jurisdiction of this Court. Therefore, plaintiff has satisfied the third element of the Imo Industries test.

Accordingly, I conclude that plaintiff has made a sufficient showing to meet the requirements of the Calder / Imo Industries test for specific jurisdiction as to the moving defendants, and that this Court may therefore exercise personal jurisdiction over the defendants.³

³ This conclusion is further supported by the holding of the Court of Appeals for the Third Circuit in Mellon Bank, PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217 (3d Cir. 1992), which involved a suit for breach of guaranty and suretyship agreements. The court of appeals held that personal jurisdiction could be exercised because the out-of-state defendants "were all well aware, or should have been, that they were dealing with a Pennsylvania bank." Id. at 1223. The court held that the documentation received by defendants reflected that the bank was a Pennsylvania bank, and defendants sent personal financial information and all loan payments and correspondence to the Pennsylvania bank. In this case, too, defendants knew or should have known that they were dealing with a Pennsylvania bank, as they regularly received payments from a Pennsylvania bank. This case arguably involves even

I further conclude that the exercise of such jurisdiction is consistent with “traditional notions of fair play and substantial justice.” International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154 (1945); see also Calder, 465 U.S. at 790 (concluding that jurisdiction was proper because defendant’s intentional conduct was intended to cause injury to plaintiff in forum state).

Defendants have not asserted the “corporate shield” doctrine as a defense to the exercise of personal jurisdiction here, but it warrants a brief discussion nonetheless. The corporate shield doctrine provides that “individuals performing acts in a state in their corporate capacity are not subject to the personal jurisdiction of the courts for that state for those acts.” McMullen v. European Adoption Consultants, Inc., No. 99-302, 2001 U.S. Dist. LEXIS 731, at *11 (W.D. Pa. Jan. 29, 2001) (quoting Elbeco, Inc., v. Estrella de Plato Corp., 989 F. Supp. 669, 767 (E.D. Pa. 1997)).⁴ It appears that this doctrine was soundly rejected by the Supreme Court of the United States in Calder when it observed that defendants’ “status as employees does not somehow insulate them from jurisdiction.” Calder, 465 U.S. at 790; see also Forbes v. Eagleson, No. 95-7021, 1997 U.S. Dist. LEXIS 18052, at *20 (E.D. Pa. Nov. 7, 1997) (“If the [corporate shield] doctrine were ever viable in Pennsylvania, however, it almost certainly is no longer in light of Calder v. Jones.”) (footnote omitted); United States v. Sun West Servs., Inc., No. 97-644, 2000 U.S. Dist. LEXIS 17193, at *23 (D.N.M. April 11, 2000) (“More importantly, the Supreme Court opinion in Calder v. Jones seems to reject outright the constitutional underpinnings of the corporate shield rule.”) (internal citation omitted). Therefore, I conclude that the corporate shield

greater contact with Pennsylvania than Farino, because here the property allegedly belonging to plaintiff was intentionally removed from the state, where as in Farino, defendants merely breached a contract that required money to flow into Pennsylvania. Therefore, I conclude that Farino supports the exercise of personal jurisdiction over defendants in this case.

⁴ This defense, of course, is not available to VR Holdings, because it is a corporation and not an individual.

doctrine has no effect on this Court's jurisdiction over defendants.⁵

The motions to dismiss for lack of personal jurisdiction will be denied.

An appropriate Order follows.

⁵ Even if the corporate shield doctrine were still viable, it does not apply "where the individual defendant exercises a great deal of control over the corporation and is alleged to have been extensively involved in wrongdoing through the corporation." See Forbes, 1997 U.S. Dist. LEXIS 18052, at * 22 (citations omitted). Wadsworth and Lapidés are both alleged to have been extensively involved in the wrongdoing at issue here, and it is apparent from the record that they both exercised a great deal of control over the corporations at issue here. Uncontroverted documents attached to plaintiff's response reflect that Lapidés owns 100 percent of the capital stock of VR Holdings, and that Lapidés was, and may still be, the chairman of Alleco. (Copy of United States v. Allegheny Bottling Co., 854 F. Supp. 430 (E.D. Va. 1994), Dun & Bradstreet Business Records for VR Holdings, Exh. A to Plaintiff's Response to Wadsworth's Motion to Dismiss.) Wadsworth is apparently vice president of Alleco. (Affidavit of Ira A. Rosenau, ¶ 5, dated December 21, 2000, Exh. H to Plaintiff's Response to Wadsworth's Motion to Dismiss.) Thus, the corporate shield doctrine would not defeat the exercise of personal jurisdiction here.

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| ALLECO, INC., et al., | : | |
| | : | |
| Defendants. | : | NO. 00-5226 |

ORDER

AND NOW, this 13th day of March, 2001, upon consideration of the motions of defendants Morton M. Lapidés, Sr., Harry A Wadsworth, and VR Holdings, Inc. to dismiss pursuant to rule 12 (b) of the Federal Rules of Civil Procedure (Documents No. 9 and 12), and having concluded that this Court has subject matter jurisdiction over this action, that venue is not improper in this Court, that the complaint states claims upon which relief may be granted, that the defendants have failed to show that plaintiff has not joined a necessary party, and that this Court may exercise personal jurisdiction over defendants, **IT IS HEREBY ORDERED** that the motions of defendants are **DENIED**.

IT IS FURTHER ORDERED that the request of Harry A. Wadsworth for a hearing on his motion to dismiss (Document No. 10) is **DENIED**.

IT IS FURTHER ORDERED that defendants Wadsworth, Lapidés, and VR Holdings shall answer the complaint no later than April 9, 2001.

LOWELL A. REED, JR., S.J.