

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

JULIE ERINC : CIVIL ACTION
 :
v. :
 :
ARON KARAVIL et al. : NO. 00-5729

MEMORANDUM

Dalzell, J.

September 27, 2001

For fourteen years, plaintiff Julie Erinc worked out of her home in Oxford, Pennsylvania to market in the United States and Canada clothing that the defendants manufactured. She brings this action for breach of contract, unjust enrichment, and intentional interference with business relations, in which she claims that the defendants, affiliated Turkish and English manufacturers and distributors of cotton clothing, have refused to pay her a commission and percentage of sales she is owed under longstanding agreement.

The defendants have moved to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2). We here consider whether the defendants are subject to the jurisdiction of a Pennsylvania Court and find, with the exception of Flight Eagle Ltd., that they are.

I. Background

A. The Parties

As noted, plaintiff Julie Erinc resides in and works out of her home in Oxford, Pennsylvania. Before 1991, at all times relevant to this lawsuit, she resided in and worked out of her home in Philadelphia.

Defendant Aron Karavil is a citizen of the Republic of Turkey, residing and working in Istanbul. Karavil avers that he never has traveled to Pennsylvania,¹ and owns no real property in the Commonwealth.² Karavil is a shareholder and an officer of several related entities, defendants in this case: Ercan Giyim Sanayil, A.S. ("Ercan"), Enis Tekstil San. Tic. Ltd. Sti. ("Enis"), Burgaz Tekstil San. Tic. Ltd. Sti. ("Enis"), Burgaz Teksti; San. Tic. A.S. ("Burgaz"), Ferdi Teksil San. Tic. A.S. ("Ferdi"), and Riva Teksti Giyim San. Tic. A.S. ("Riva").³

Ercan, Enis, Burgaz, Ferdi, and Riva evidently occupy a single office. They are listed at the same telephone number. They share the same factory.⁴ All five companies are engaged in the manufacture of cotton clothing. They are incorporated under the laws of Turkey, and are not registered to conduct business in Pennsylvania or anywhere else in the United States, and own no real property and have no offices anywhere in the United States.⁵ Ercan, Enis, Burgaz, Ferdi and Riva have a factory and office in Istanbul. Plaintiff Erinc, in an allegation that defendants do not contest, claims that Enis, Burgaz, Ferdi and Riva function as

¹ Affidavit of Aron Karavil, at ¶ 8.

² Id. at ¶ 5.

³ Id. at ¶ 2, 9.

⁴ See business card of Aron Karavil, annexed as Exhibit 1 to Plaintiff Erinc's Response to Defendant Karavil et al's Motion to Dismiss.

⁵ See Affidavit of Niso Eskinaz, annexed as Exhibit A to Defendant Karavil et al's Motion to Dismiss.

alter egos of the primary business, Ercan, and all are under the dominion of Aron Karavil.⁶

Defendant Flight Eagle Ltd. ("Flight Eagle") is organized under the laws of the United Kingdom. Eli Karavil, Aron Karavil's son, directs it,⁷ and Aron Karavil has no ownership interest. Flight Eagle has its offices in London. It neither owns real property, maintains an office, nor is registered to conduct business anywhere in the United States. Flight Eagle does not advertise in Pennsylvania.⁸

B. The Plaintiff's Claims

We briefly rehearse the allegations Erinc makes in her Complaint.

In early 1986, she entered into a contract with Aron Karavil, who acted on his own behalf and for the entities he owned and directed. Karavil's companies manufactured cotton clothing in Turkey. Complaint, at ¶ 14, 19, 20. At the time the parties commenced the contract, those companies had few, if any, customers in the United States. The contract provided that Julie Erinc would act as a marketing representative; she would establish a wholesale market for defendants' apparel in Canada and the United States.

⁶ Affidavit of Julie Erinc, at ¶ 4-5.

⁷ See Supplemental Affidavit of Eli Karavil, at ¶ 2.

⁸ Affidavit of Eli Karavil.

The agreement between the parties lasted until 2000. Over this fourteen year period, solely as the result of Erinc's marketing efforts, a wholesale market for defendants' clothing developed in the United States and Canada. Customers included such wholesale chains as Sears, The Gap, J.C. Penney, Sears, Marshall Fields, K-Mart and Macy's. Id. at ¶ 26.

The agreement negotiated between Erinc and Karavil provided that Erinc would serve as the exclusive agent for Karavil and Karavil's companies in the United States and Canada. Id. at ¶ 20. In exchange for her efforts, pursuant to the agreement Erinc received a three-percent commission on every item of clothing which the defendants sold to any company in the United States or Canada that the plaintiff introduced to the defendants, and a three-percent premium on all sales of clothing in the United States and Canada. See id. at ¶ 21, 22, 32, 46.

Karavil allegedly breached the contract by failing to make the full requisite payments in 1998 and 1999 and failing to pay anything at all in 2000. Erinc has filed this action against Aron Karavil, Ercan, Enis, Burgaz, Ferdi, Riva, and Flight Eagle,⁹ alleging breach of contract and unjust enrichment, and against Karavil only alleging intentional interference with her business relations. Id. at ¶ 34-36.

⁹ The plaintiff had filed this action against an eighth defendant, Infinity Textile, but later dismissed it by stipulation.

C. Jurisdiction-Specific Facts

The parties have submitted affidavits and documentary evidence addressing the issue of personal jurisdiction and what follows is based upon this evidence.

Ercan, Enis, Burgaz, Ferdi, and Riva are Istanbul-based companies that manufacture and export cotton clothing for sale in European and American markets. Aron Karavil owns and directs all of these entities. Erinc maintains that Karavil conducted his apparel business through these various entities, which functioned as a single enterprise. Evidence in the record supports this. The business card of Aron Karavil shows that Ercan, Enis, Burgaz, Ferdi, and Riva occupied a single office and shared a business address, telephone number, fax number, and factory.¹⁰ Karavil admits that he is a shareholder of all five companies.¹¹ He admits to acting as an agent of the defendant apparel companies, Ercan, Enis, Riva, Ferdi and Burgaz, by acknowledging that he entered a marketing agreement with Erinc on their behalf.¹² The apparel companies are organized in Turkey and do not own real property in, are not registered in, and do not have offices in Pennsylvania.¹³

¹⁰ See Affidavit of Julie Erinc, Exhibit A.

¹¹ Affidavit of Aron Karavil, at ¶ 2.

¹² Id. at 9.

¹³ See Affidavit of Niso Eskinaz.

As noted above, defendant Flight Eagle is different. Flight Eagle is incorporated in the United Kingdom, has an office in London, and Eli Karavil directs it. Aron Karavil apparently has no ownership interest or corporate authority over it. But like the defendant apparel companies, Flight Eagle is not registered to conduct business in Pennsylvania and owns no office or real property in Pennsylvania. Erinc makes several allegations which connect defendant Flight Eagle to the breach of contract action and to Pennsylvania. First, she claims that Aron Karavil has on occasion used Flight Eagle to distribute apparel produced by his companies in Turkey to the United States.¹⁴ Second, she claims that Karavil has arranged with Flight Eagle to commission subcontractors to produce apparel in England, and has shipped those to the United States.¹⁵ More fundamentally, Erinc claims that Aron Karavil really controls Flight Eagle and has used Flight Eagle just as it he has used the other defendant entities. Erinc claims that through making distributions of merchandise through Flight Eagle, Aron Karavil has redirected commissions that rightly should go to her.¹⁶

Eli Karavil, director of Flight Eagle, maintains that he and his company do not regularly do business or even communicate with Erinc in Pennsylvania. He acknowledges

¹⁴ See Plaintiff Erinc's Response to Defendant Flight Eagle's Motion to Dismiss and Affidavit of Julie Erinc, at ¶ 6.

¹⁵ See *id.* at ¶ 8.

¹⁶ See *id.*, at ¶ 3-8.

invoicing goods which Ercan, Enis, Burgaz, Ferdi and Riva had sent to Carol Hochman, a United States customer, on behalf of those companies, but did not actually manufacture or deliver goods to her.¹⁷ One document that the plaintiff has provided suggests that Flight Eagle has a similar relationship to the other defendants as she has, in that it is a sales agent of the defendant companies in London.¹⁸

Aron Karavil is a Turkish citizen with a residence and place of business in Istanbul, Turkey. He has never been physically present in Pennsylvania.

In early 1986, Erinc traveled to Istanbul and met with Aron Karavil.¹⁹ The parties agreed that Erinc would serve as market representative for defendant's companies in the United States, and the companies would in turn pay Erinc a commission.²⁰ The necessary inference is that Karavil had to know that Erinc was to market defendants' apparel from her base in Pennsylvania, as that is where Erinc worked and lived.

Erinc was the exclusive agent of the defendant manufacturers. It is undisputed that, for fourteen years, from her base in Pennsylvania, she sold the garments the defendants manufactured in Turkey to wholesale buyers in the United States.

¹⁷ Supplemental Affidavit of Eli Karavil, at ¶ 4-7.

¹⁸ See Affidavit of Julie Erinc, at Exhibit 9.

¹⁹ See Affidavit of Aron Karavil, at ¶ 9; affidavit of Julie Erinc, at ¶ 2.

²⁰ Affidavit of Aron Karavil, at ¶ 9.

It appears undisputed that when Erinc began her dealings with Aron Karavil, the defendants had few, if any, United States customers.²¹ As the fruit of Erinc's efforts, the company Ercan now has reported gross revenue of \$52 million in 1998 with an appreciable share comprised of sales to large United States wholesalers.²²

Defendants, through Aron Karavil, were aware that Erinc was in Pennsylvania. Indeed, it is because she was based in the United States that Erinc was useful to them.

Defendants communicated with Erinc in Pennsylvania by telephone and mail regularly and continuously. Karavil, or other representatives of the apparel companies, communicated with Erinc by telephone almost every day.²³ Defendants sent fabric samples to Erinc at her Pennsylvania address for her to use in the solicitation of customers,²⁴ and wired funds to Erinc's account in a Pennsylvania bank.²⁵

Defendants' contacts with Pennsylvania go beyond retaining and working with a marketing representative in

²¹ Affidavit of Julie Erinc, at ¶ 8.

²² See company profiles of Ercan, annexed as exhibits 2 and 3 to Plaintiff Julie Erinc's affidavit.

²³ Affidavit of Julie Erinc ¶ 21, and Exhibit 12 (telephone records).

²⁴ Id. at ¶ 15, and Exhibit 7 (fax to Erinc from Ercan summarizing shipment of fabric samples).

²⁵ Id. at ¶ 22, and Exhibit 13 (bank statements evidencing wire transfers to Erinc from Enis and Burgaz).

Pennsylvania. Defendants themselves advertised Erinc's Pennsylvania address. Karavil or other agents of defendant apparel companies printed business cards designating Julie Erinc as an Ercan representative or employee. These business cards displayed the company name Ercan, the name Julie C. Erinc, and the addresses of the Turkey factory and Erinc's office in Pennsylvania -- by implication, Ercan's Pennsylvania office. Defendants supplied these cards to the public.²⁶ Similarly, Aron Karavil produced display cards bearing the Philadelphia address of Erinc which the cards labeled as the "Ercan (U.S.A.) office" and sent these cards to Erinc for her to display at United States trade shows.²⁷ Lastly, in a facsimile to a customer, Karavil heralded having a sales representative in the United States, saying, "Julie has been our agent quite a few years now. She is Ercan in the States. I can assure you that she works always for the benefit of both parties and never had a complaint about her from any of our American customers."²⁸ This statement highlights both the long-term nature of Karavil's relationship with Erinc and the strategic significance of her location in the United States.

The defendants maintain that they have never delivered clothing directly to Pennsylvania. See Affidavit of Niso Eskinaz,

²⁶ Id. at ¶ 16, and Exhibit 8.

²⁷ Id. at ¶ 17, and Exhibit 9.

²⁸ Affidavit of Julie Erinc, at ¶ 19, and Exhibit 10 (emphasis added).

at ¶ 12 ("Ercan, Enis, Burgaz, Ferdi and Riva have never shipped their products to Pennsylvania."); Affidavit of Aron Karavil, at ¶ 9 ("No sales on which Julie Erinc was paid any commission were to Pennsylvania."). Erinc proffers contrary evidence, including documents that show that Carole Hochman Design, Inc. is the defendants' largest customer and has a facility in Williamsport, Pennsylvania.²⁹ In her affidavit, Erinc avers that the defendants delivered goods directly to Carole Hochman without an intermediary.³⁰ A document Erinc has attached to her affidavit - a memorandum addressed to Erinc detailing the protocol for shipping goods from a Turkish factory to Carole Hochman Designs, Inc. at 801 Foresman Street, Williamsport, Pennsylvania -- supports this.³¹ The defendants admit that Carole Hochman is their major customer,³² and they do not dispute that Carole Hochman has a shipping facility in Williamsport, Pennsylvania.³³ They allege, however, that they tendered their merchandise to

²⁹ See Affidavit of Julie Erinc, Exhibits 3 & 4.

³⁰ Affidavit of Julie Erinc, at ¶ 10-11.

³¹ Id., Exhibit 4 (a business memorandum to Julie Erinc from one John Hauck, entitled "SHIPPING INSTRUCTIONS AND NOTIFICATION PROCEDURES FOR SHIPMENTS ORIGINATING FROM TURKEY," and stating, inter alia, "WE WOULD LIKE THE FOLLOWING PROCEDURES FOLLOWED WHEN YOU ARE MAKING SHIPMENTS OF FINISHED GOODS TO CAROLE HOCHMAN DESIGNS," "ULTIMATE CONSIGNEE: CAROLE HOCHMAN DESIGNS, INC. / 801 FORESMAN STREET / WILLIAMSPORT, PA. 17701," and "WE WOULD LIKE FOR YOUR FACTORY TO ARRANGE SHIPMENT VIA TURKISH AIRLINES").

³² Supplemental affidavit of Nesim (Niso) Eskinaz, at ¶ 5.

³³ Id.

Carole Hochman F.O.B. Turkey. See Supplemental Affidavit of Nesim (Niso) Eskinaz.

We note that Ercan advertises itself as an exporter. See "Ercan Giyim Company Profile," annexed as Exhibit 2 to the affidavit of Julie Erinc ("Ercan Giyim San. Ve Tic. A.S. is an Istanbul based company that manufactures and exports garments..."). More fundamentally, since Erinc has presented evidence of delivery to Pennsylvania, the burden is on the defendants to come forward with contrary evidence. Instead, in their Reply, they rest on the assertion contained in Nesim (Niso) Eskinaz's supplemental affidavit (an affidavit that corrects inaccuracies in his previous affidavit).³⁴ Given the uncontested reality of deliveries to Pennsylvania to Carole Hochman Designs, a major customer in Pennsylvania, there is no question that the defendants shipped their apparel directly into this Commonwealth. This conclusion is fortified by the evidence that Erinc herself has received clothing from the defendants, addressed to her for sale in her Oxford, Pennsylvania retail store.³⁵

II. Legal Standard

After defendants have moved for dismissal for lack of personal jurisdiction, "the burden falls upon the plaintiff to come forward with sufficient facts to establish that jurisdiction is proper. The plaintiff meets this burden and presents a prima

³⁴ Affidavit of Nesim (Niso) Eskinaz, at ¶ 5.

³⁵ Affidavit of Julie Erinc, at ¶ 14, Exhibit 6.

facie case for the exercise of personal jurisdiction by establishing with reasonable particularity sufficient contacts between the defendant and the forum state." Mellon Bank (East) PSFS v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992) (internal citations and quotation marks omitted). Personal jurisdiction consists of two components, one constitutional and the other statutory. First, the plaintiff must demonstrate that jurisdiction is proper pursuant to the law of the forum state, and second the plaintiff must show that jurisdiction comports with Due Process under the United States Constitution. See, e.g., IMO Indus., Inc. v. Kiekart A.G., 155 F.3d 254, 258-59 (3d Cir. 1998). Since the Pennsylvania long-arm statute provides for the exercise of personal jurisdiction "to the fullest extent allowed under the Constitution of the United States," 42 Pa. C.S. § 5322(b)(2001), we will focus our inquiry on the constitutional basis of personal jurisdiction.

The Constitution authorizes the exercise of jurisdiction where the out-of-state defendant has been given "fair warning" that he may be subject to suit here and jurisdiction otherwise complies with "traditional conception(s) of fair play and substantial justice." See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 464 (1985); Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. Jan. 25, 2001); Gehling v. St. George's School of Med., Ltd., 773 F.2d 539, 540 (3d Cir. 1985). Constitutional perimeters of personal jurisdiction safeguard the individual's fundamental interest in liberty:

The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful contacts, ties, or relations. By requiring that individuals have fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign, the Due Process Clause gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

Burger King, 471 U.S. at 471-72 (internal quotation marks and citations omitted).

The exercise of jurisdiction can satisfy Due Process on one of two distinct theories. General jurisdiction exists when the defendant has "'continuous and systematic' contacts with the forum and exists even if the plaintiff's cause of action arises from the defendant's non-forum related activities." Remick, 238 F.3d at 255 (quoting Vetrotex CertainTeed Corp. v. Consol. Fiber Glass Prod. Co., 75 F.3d 147, 151 n.3 (3d Cir. 1996)). "Specific jurisdiction arises when the plaintiff's claim is related to or arises out of the defendant's contacts with the forum." Mellon Bank, 960 F.2d at 1221 (internal citation and quotation marks omitted). "[S]pecific jurisdiction is present only if the plaintiff's cause of action arises out of a defendant's forum related activities, such that the defendant 'should reasonably anticipate being haled into court' in that forum." Remick, 238 F.2d at 255.

General jurisdiction is established if the defendant's contacts with the forum state are continuous and substantial. Our Court of Appeals has held that advertising in newspapers of general circulation, such as the New York Times and the Wall Street Journal, and visiting Pennsylvania on a promotional tour and in so doing appearing on local television and radio, does not comprise a connection with the forum state of sufficient depth and duration to warrant general jurisdiction. See Gehling, 773 F.2d at 541-43.

Specific jurisdiction is premised upon "minimum contacts" with the forum state in connection with the subject matter of the action. Burger King, 471 U.S. at 472-74. Those contacts must be such that the defendant could reasonably anticipate being haled into a court in the forum state and defending the instant action. See Mellon Bank (East) PSFS v. Diveronica Bros., Inc., 983 F.2d 551, 554 (3d Cir. 1993). Thus, personal jurisdiction is claim specific. Remick, 238 F.3d at 255.³⁶ The benchmark of specific jurisdiction is purposeful

³⁶ The Court of Appeals in Remick concluded that a court should conduct a claim-specific analysis of personal jurisdiction (allowing for the possibility that personal jurisdiction exists as to certain claims but not as to others). In doing so it noted that, "It may not be necessary to do so in every multiple claim case, but because there are different considerations in analyzing jurisdiction over contract claims and over certain tort claims [defamation, intentional interference with contract], we believe such differentiation is required here." Remick, 238 F.3d at 255-56. Since the claims Erinc has asserted are interrelated, really different theories of relief for the same transaction (to wit, Karavil's failure to adhere to the marketing agreement with Erinc), we will not parse the

(continued...)

direction. The defendant must "purposely direct[] his activities at residents of the forum, and the litigation [must] result[] from alleged injuries that arise out of or relate to those activities." Burger King, 471 U.S. at 472 (internal quotation marks and citations omitted). "The defendant [must] purposely avail[] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Diveronica, 983 F.2d at 555. The Supreme Court explained why this is the case:

[W]here the the defendant deliberately has engaged in significant activities within a State, or has created continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by the benefits and protections of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Burger King, 471 U.S. at 475-76 (internal quotation marks and citations omitted).

Furthermore,

[W]here individuals purposely derive benefit from their interstate activities, it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed.

Id. at 473 (internal quotation marks and citations omitted).

³⁶(...continued)
analysis of personal jurisdiction by her legal claims.

"In determining jurisdiction over a breach of contract claim, we must consider the totality of the circumstances, including the location and character of the contract negotiations, the terms of the contract, and the parties' actual course of dealing." Remick, 238 F.3d at 256. "The fact that a non-resident has contracted with a resident of the forum state is not, by itself, sufficient to justify personal jurisdiction over the nonresident. The requisite contacts, however, may be supplied by the terms of the agreement, the place and character of prior negotiations, contemplated future consequences, or the course of dealings between the parties." Mellon, 960 F.2d at 1223.

There is in this realm no mechanical test. Our Supreme Court has endorsed "a highly realistic approach that recognizes that a contract is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." Burger King, 471 U.S. at 479 (internal quotation marks omitted). Accord, Mellon, 960 F.2d at 1224; Mesalic, 897 F.2d at 701.

In Burger King, a case involving a breach-of-contract lawsuit by a national restaurant chain based in Miami against a franchisee based in Michigan, the Supreme Court found minimum contacts to be evidenced by the long-term nature of the franchise agreement, the exacting obligations the defendants assumed by entering into the franchise agreement, the benefits the defendants knowingly derived by affiliating with a nationwide organization, the defendants' understanding that the plaintiff

would administer the contract partly out of Florida, and telephone and mail correspondences between the defendants and plaintiff. 471 U.S. at 479-81. One defendant in Burger King had never entered the forum state, Florida. But the Supreme Court held that physical presence, while some evidence of minimum contacts, is by no means necessary to satisfy due process. See id. at 476 & 480 n.22.

Our Court of Appeals in Mellon, supra, found Pennsylvania to have jurisdiction over a lawsuit that a Pennsylvania bank brought against individual residents of New York and Virginia who defaulted on loan guarantees. While recognizing that entering a contract with a Pennsylvania plaintiff did not per se subject the defendants to Pennsylvania jurisdiction, the Court of Appeals held that the transactions in question had sufficient indicia of purposeful direction to satisfy specific personal jurisdiction. While the defendants negotiated the bank loans and attendant guarantees through an intermediary outside the state of Pennsylvania, and executed the agreements outside of Pennsylvania in their respective states, by selecting a bank based in Pennsylvania, agreeing to a choice-of-law clause in favor of Pennsylvania, and addressing correspondences and payments to the bank in Pennsylvania, the defendants' financing arrangement with Mellon Bank subjected them to suit in this Commonwealth. Mellon, 960 F.2d at 1223.

Even when there are minimum contacts, before exercising specific jurisdiction a court should consider other factors to

assure the exercise of jurisdiction accords with fair play and substantial justice. See Mesalic, 897 F.2d at 701; see also Burger King, 471 U.S. at 476-77; Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal., 480 U.S. 102, 114 (1987). These factors include: the burden on the defendant, the forum state's interest in adjudicating the dispute, the plaintiff's interest in convenient and effective relief, the interstate judicial system's interest in the efficient resolution of controversies, and the shared interest of the states in the furtherance of fundamental substantive social policies. See Burger King, 471 U.S. at 476-77. The Supreme Court has admonished that "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." Asahi, 480 U.S. at 114. That concern is rather pointed here. At the same time, "where a defendant who purposely has directed his activities at forum residents seek to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Burger King, id. at 477. Thus, once the plaintiff has demonstrated minimum contacts, the burden of persuading the Court that other factors militate against assertion of personal jurisdiction falls to the defendants.

III. Discussion

As surely as personal jurisdiction is bottomed on an individual's fundamental interest in liberty, see supra Part II, we must examine its existence as to each defendant. Since there seems to be no dispute that the corporate defendants Aron Karavil owns are alter egos of one another,³⁷ and in any event behaved in close conjunction with one another in their business dealings with the plaintiff, we will discuss jurisdiction over these defendants together. We will then address personal jurisdiction over Aron Karavil and Flight Eagle.

A. Ercan, Enis, Burgaz, Ferdi, and Riva

Erinc has satisfied her burden of establishing minimum contacts with the forum state as to these defendants. Under the governing case law, those five companies purposely directed their activity toward the Commonwealth of Pennsylvania. Burger King, 471 U.S. at 540-41; Mellon, 960 F.2d at 1222. The defendant apparel companies, through their agent, Aron Karavil, entered into a marketing contract with Erinc, a resident of Pennsylvania, while knowing that she would live in Pennsylvania and implement the contract from that state. They did this for fourteen years. The defendant's choice of Pennsylvania was deliberate, not the product of fortuity or happenstance. In contrast, in Unisys

³⁷ C.f. Gehling v. St. George's School of Medicine, Ltd., 773 F.2d 539, 541 (3d Cir. 1985) (crediting for the purpose of analyzing personal jurisdiction the plaintiff's claim that the defendants are alter egos of one another and proceeding to analyze personal jurisdiction as to the defendants collectively). We do not here make any conclusion about the separate judicial identity of these companies under Turkish law.

Corp. v. Elec. Recovery, Inc., No. 94-1640, 1994 U.S. Dist. LEXIS 7267 (E.D.Pa. June 2, 1994), which defendants cite, the plaintiff relocated during the life of the contract, and we did not charge this change of location to the defendant when the defendant adhered to the contract and extended it.

The defendant apparel manufacturers made a strategic decision to retain a United States sales agent. They made a parallel decision to retain a United Kingdom sales agent.³⁸ Erinc, from her base in Pennsylvania, solicited customers in North America for the defendants. That was the essence of the fourteen-year business relationship. The defendants, through business cards and display cards and appeals to customers, publicized Erinc at her Pennsylvania address. A purchaser for the Gap or Sears could more easily purchase clothing from a sales agent in Pennsylvania than in Istanbul. The defendant apparel companies reaffirmed their contacts with Pennsylvania through almost daily telephone calls and mail and wire transfers over many years. While defendants deny having any office in Pennsylvania or the United States, they nevertheless created business cards listing Philadelphia as the address of Ercan, display cards deeming Philadelphia as the "Ercan (U.S.A.) Office," and letters to clients referring to Julie Erinc as "Ercan in the States."

³⁸ See exhibit 9 to Affidavit of Julie Erinc.

The defendants had little or no market in the United States before entering into a marketing agreement with Erinc. The marketing agreement was executed and conceived to enable the defendants' business in the United States to flourish. We find that the defendants have purposely directed their activities at Pennsylvania, availing themselves of the benefits and protections of its laws, and consequently may be called to answer in Pennsylvania for suits arising from those activities.

Having found that minimum contacts exist, we must address whether the maintenance of suit in Pennsylvania is otherwise fundamentally fair. Mesalic, 897 F.2d at 701. The defendants, haling from Turkey, may well experience more hardship than the average litigant in defending suit here. See Asahi, 480 U.S. at 113. At the same time, as the plaintiff has established minimum contacts, the burden is now on the defendants to "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Burger King, 471 U.S. at 477; see also Asahi, 480 U.S. at 114 ("When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant."). The defendants have not met this burden. They have presented no evidence and made no specific claims as to this question. Aron Karavil is apparently fluent in the English language. The defendant entities have reported over \$52 million in gross revenue in 1998 and, as far as we can tell, are financially capable of defending

this foreign action. Most importantly, should we decline to assume jurisdiction and leave it to the plaintiff to re-file in Turkey, we would not solve the problem of having a foreign national as litigant, but just delay the plaintiff's search for relief.

The plaintiff has sought relief here. The defendants have established minimum contacts with Pennsylvania. It accords with our notions of fair play and substantial justice to hear the suit.

B. Aron Karavil

Since the other defendants, Ercan, Enis, Burgaz, Ferdi, and Riva, by and large acted through Aron Karavil, it follows that he possessed contacts with Pennsylvania to the same extent as the other defendants. The question arises of whether the same conduct by Aron Karavil that subjected the corporate defendants to personal jurisdiction can subject him to personal jurisdiction, where Karavil acted at all times as agent of the defendants.

We believe that personal jurisdiction exists over Karavil. Karavil is not only an employee. The record evidences that Karavil is a principal and a mover behind all the corporate entities. In Mesalic, a breach-of-contract action involving a contract made by the president of a company on the corporation's behalf, the Court of Appeals found jurisdiction to exist over the individual and corporate defendant. See 897 F.2d at 697.

Furthermore, the plaintiff has plead that Karavil entered into the subject transactions on behalf of the defendant apparel companies as well as on his own behalf. See Complaint, at ¶ 14. On these facts, therefore, jurisdiction exists over Karavil.

C. Flight Eagle

Flight Eagle is an independent entity based in England that was not a party to the marketing agreement on which Erinc's complaint is based. Given this, Erinc has a very high hurdle to jump to demonstrate specific jurisdiction. She alleges that Flight Eagle has in the past delivered apparel to United States customers as an intermediary of Karavil's companies and at the behest of Karavil's companies. She alleges, furthermore, that Flight Eagle has commissioned the manufactured of apparel by subcontractors in England at Karavil's companies request and delivered such apparel to the United States. Even if this were true, then Flight Eagle's triangulated relationship with Pennsylvania -- sending things to Pennsylvania or elsewhere in the United States at Aron Karavil's entities' request -- does not constitute purposeful direction toward Pennsylvania for specific jurisdiction to exist. The director of Flight Eagle, Eli Karavil, affirms that his company has had little communication with the plaintiff or anyone else in Pennsylvania.

The plaintiff's bid for general jurisdiction is equally tenuous. Flight Eagle has no offices, employees, or real property in Pennsylvania. It is not registered to conduct business in Pennsylvania and has never advertised in Pennsylvania. The plaintiff can point to no connection that the defendant Flight Eagle has with Pennsylvania that is continuous, substantial, and systematic. Thus, on neither a theory of specific nor general

jurisdiction can this Court exercise jurisdiction over Flight Eagle.

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

JULIE ERINC : CIVIL ACTION
:
v. :
:
ARON KARAVIL et al. : NO. 00-5729

ORDER

AND NOW, this 27th day of September, 2001, upon consideration of defendants Aron Karavil et al.'s motion to dismiss for lack of personal jurisdiction (docket no. 4), plaintiff's opposition thereto, and defendants' reply to plaintiff's opposition, and for the reasons stated in the accompanying memorandum, it is hereby ORDERED that the motion is DENIED.

BY THE COURT:

Stewart Dalzell, J.

