

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

WOODROW GUYTON, III,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	
A.M. GENERAL,	:	No. 01-CV-3883
Defendant.	:	

MEMORANDUM

GREEN, S.J. **December** , **2001**

Presently before the Court is Defendant A.M. General's¹ Motion to Dismiss for Lack of Personal Jurisdiction pursuant to Fed.R.Civ.P. 12(b)(2) and Improper Venue pursuant to Fed.R.Civ.P. 12(b)(3) or, alternatively, Motion to Transfer pursuant to 28 U.S.C. §1404, Plaintiff's Response and Defendant's Reply. For the reasons set forth below, Defendant's motion to dismiss will be denied and the motion to transfer will be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Woodrow Guyton, a Maryland resident, purchased a Hummer Hardtop from NuCar Connection Automotive Service, a Delaware Corporation. (See Pl.'s Resp. at 6.) Following numerous mechanical problems that allegedly impaired the use, safety and value of the vehicle, Plaintiff sought recovery of approximately \$85,832.00 from the vehicle manufacturer, Defendant A.M. General, a Delaware Corporation with headquarters in Indiana. (See Pl.'s Resp. at 6.)

On June 15, 2001, Plaintiff filed suit in the Court of Common Pleas for Philadelphia County alleging that the inherently defective vehicle constituted a breach of

¹In its Motion to Dismiss, Defendant points out that it is misnamed in the Complaint and caption as "A.M. General" and notes that the caption should read "AM General Corporation." (See Def.'s Mot. at 1.)

warranty. (See Def.'s Mot. at 3.) Defendant removed the case to federal court, asserting federal jurisdiction based on diversity of citizenship.² Diversity jurisdiction is proper in this case because the parties, a Maryland resident and a Delaware Corporation, are citizens of different States and the amount in controversy is greater than \$75,000.00.

Pursuant to Fed.R.Civ.P. 12(b)(2) and 12(b)(3), Defendant moves to have the case dismissed for lack of personal jurisdiction and improper venue, respectively, or, in the alternative, moves to have the case transferred to the District of Delaware pursuant to 28 U.S.C. §1404. (See Def.'s Mot. at 1.) Defendant argues that personal jurisdiction in Pennsylvania is improper because the Defendant does not have the contacts required for the Court to exercise jurisdiction.³ (See Def.'s Mot. at 3.) Alternatively, Defendant argues that this case has strong ties to Delaware⁴, making the District Court of Delaware the proper venue. (See Def.'s Mot. at 4.)

²Diversity of citizenship exists between

(1) citizens of different States, (2) citizens of a State and citizens or subjects of a foreign state, (3) citizens of different States in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state, as defined in section 1603(a) . . . , as plaintiff and citizens of a State or of different states.

28 U.S.C. § 1332(a).

³ Defendant offers the affidavit of Walter Bell stating that A.M. General does not maintain offices, maintain a license to do business, own property, solicit business from or file tax returns in Pennsylvania. Therefore, Defendant argues that it has not availed itself of the privilege of doing business in Pennsylvania. (See Def.'s Mot. at 3.)

⁴ Defendant avers that Plaintiff negotiated the purchase of the vehicle in Delaware, signed the contract in Delaware and all repairs and service took place in Delaware. Defendant also points out that Defendant is a Delaware corporation and that all of the witnesses are located in Delaware. (See Def.'s Mot. at 2, 4.)

II. DISCUSSION

A. PERSONAL JURISDICTION

A federal district court has personal jurisdiction over a non-resident defendant to the extent permissible under the state law of the jurisdiction in which the action is brought, consistent with the demands of the Constitution of the United States. See Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n, 819 F.2d 434, 436 (3d Cir. 1987) (citing Fed.R.Civ.P. 4(e)). Because this Court resides in the Eastern District of Pennsylvania and because no party has raised a conflict of law issue, Pennsylvania law applies to the exercise of jurisdiction over a non-resident defendant. Pennsylvania's long-arm statute provides in pertinent part:

[T]he jurisdiction of the tribunals of this Commonwealth shall extend to all persons who are not within the scope of section 5301 (relating to persons) 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. § 5322(b). Thus, "the reach of the Pennsylvania statute is coextensive with the due process clause [of the Fourteenth Amendment] of the United States Constitution." Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984).

Under the strictures of the Fourteenth Amendment due process requirement, personal jurisdiction is appropriate only when the defendant has "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe v. State of Washington, 326 U.S. 310, 316 (1945) (citations omitted). Fair play and substantial justice demand that "defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled

into court there.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473 (1985) (citation omitted). The Supreme Court cautioned, however, that the “‘minimum contacts’ test of *International Shoe* is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite ‘affiliating circumstances’ are present.” Kulko v. Superior Court of California, 436 U.S. 84, 92 (1978) (citation omitted). Thus, “an essential criterion in all cases is whether the ‘quality and nature’ of the defendant’s activity is such that it is ‘reasonable’ and ‘fair’ to require him to conduct his defense in that State.” Id. (quoting International Shoe, 326 U.S. at 316-17, 319).

Personal jurisdiction over a non-resident defendant is split into two categories, specific and general.⁵ See Dollar Sav. Bank v. First Sec. Bank of Utah, N.A., 746 F.2d 208, 211 (3d Cir. 1984). Specific jurisdiction exists when the transactions giving rise to the cause of action have occurred in the forum State. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414, n.8 (1984). In contrast, general jurisdiction exists when causes of action unrelated to a defendant’s forum activities may be asserted based on the defendant’s presence, either as an individual or as a general business, in the forum State. See Strick Corp. v. A.J.F. Warehouse Distributs., Inc., 532 F. Supp. 951, 955 (E.D. Pa. 1982).

In this case, Plaintiff contends that general personal jurisdiction is proper. (See Pl.’s Resp. at 10.) To establish general personal jurisdiction pursuant to 42 PA. CONS. STAT. § 5301(a)(2)(iii), the Third Circuit has held that a plaintiff must show not only minimum contacts with the forum but that those minimum contacts were “continuous and substantial.” Provident

⁵Pennsylvania law provides for general jurisdiction in 42 PA. CONS. STAT. § 5301 and 42 PA. CONS. STAT. § 5322 for specific jurisdiction.

Nat'l Bank, 819 F.2d at 437. The basis for general jurisdiction is generally found where a non-resident defendant makes a substantial number of visits to the forum State, solicits business regularly from the forum State or advertises directly to the forum State. See Bucks County Playhouse v. Bradshaw, 577 F. Supp. 1203, 1207 (E.D. Pa. 1983). As held by the Supreme Court, where a defendant has deliberately 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. See Travelers Health Ass'n v. Virginia, 339 U.S. 643, 648 (1950).

In the instant case, Plaintiff alleges that Defendant purposefully sold its vehicles through dealerships in Pennsylvania thereby placing itself in contractual privity with both the dealerships and the Pennsylvania consumers and availing itself of Pennsylvania law. (See Pl.'s Resp. at 8-9.) Defendant argues that it has not availed itself of the law by selling vehicles to a dealership and that far more contact has been deemed insufficient for general jurisdiction. (See Def.'s Mot. at 6.) (citing Strick Corp., 532 F. Supp. at 955-60; Allied Leather Corp. v. Altama Delta Corp., 785 F. Supp. 494, 497-98 (M.D. Pa. 1992)). Defendant's argument is contrary to fact and without merit.

The facts of this case are easily distinguishable from Defendant's cited authority as they show far more contact between Defendant and the forum State. While Defendant has filed an affidavit stressing that A.M. General maintains no ties to Pennsylvania by maintaining offices, owning property, soliciting business, or filing tax returns here, it is uncontested that Defendant sold vehicles to one authorized dealership in the forum State and later added a second

dealership. (See Def.'s Reply at 3.) By its nature, the automobile industry requires a manufacturer to maintain contact with its dealerships. As such, continuous and systematic dealings take place between Defendant and its dealerships within the forum State. Therefore, sales by Defendant to its dealerships and subsequently, consumers in the forum State are dealings to be considered for purposes of jurisdiction. Defendant is hard pressed to show that its sales to its dealerships are not continuous and systematic.

Further, by regularly placing its product into the stream of commerce for commercial benefit, Defendant has availed itself of the privilege of conducting business in Pennsylvania and invoked the benefits of Pennsylvania law. Weighing the factors of fair play and substantial justice, this Court concludes that Defendant's continuous and substantial contacts with Pennsylvania are sufficient such that Defendant can reasonably anticipate being haled into court here. Thus, under the Pennsylvania long arm statute, jurisdiction in the Eastern District of Pennsylvania is proper, and the case should not be dismissed.

B. IMPROPER VENUE

The proper venue for a civil action founded on diversity jurisdiction is determined using the guidelines of 28 U.S.C. § 1391. Venue is proper in a judicial district where the defendant resides, in a district where a substantial part of the events giving rise to the claim took place or in a district where the defendant is subject to personal jurisdiction. See 28 U.S.C. § 1391(a). When the defendant is a corporation, that defendant is deemed to reside in any district where it is subject to personal jurisdiction at the time the action is commenced. See 28 U.S.C. § 1391(c). If a district court finds venue to be improper, that court should dismiss the case or, if justice requires, transfer the case to a district where venue is proper. See 28 U.S.C. § 1406(a).

Defendant contends that venue is improper in Pennsylvania because a significant portion of the events that gave rise to this claim did not occur in Pennsylvania. (See Def.'s Mot. at 9.) However, this Court has already determined that the Defendant is subject to personal and subject matter jurisdiction in Pennsylvania. Therefore, venue in the Eastern District of Pennsylvania is proper under § 1391 and the case may not be dismissed. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 878-79 (3d Cir. 1995) This leaves only the question of whether the interests of justice support a transfer to the District of Delaware.

C. TRANSFER

Where venue of a civil action is proper in more than one judicial district, a court may, in the interest of justice and for the convenience of the parties, order the transfer of that case to any other judicial district where the case may have been brought. See 28 U.S.C. § 1404(a). The purpose of this statute is to protect litigants, witnesses and the public against unnecessary inconvenience and expense. See Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26-27. In determining whether a case would more conveniently proceed and the interests of justice be better served by transfer to a different forum, the court must look at all relevant factors. See Jumara, 55 F.3d at 879.

Factors to be considered when transferring venue include the following:

(1) plaintiff's choice of forum as evidenced by original filing; (2) defendant's preferred forum; (3) where the claim arose; (4) convenience of the parties; (5) convenience of the witnesses; and (6) the location of the evidence. See id. The public's interest when transferring venue must also be considered because the public maintains an interest in enforcing the judgment, holding expeditious and inexpensive trials, and deciding local controversies at home. See id. at 879-80.

In the present case, the District of Delaware would have jurisdiction over the parties. All of the events that gave rise to this action took place in Delaware and a majority of the evidence, including witnesses, contracts, service records and other paperwork, is located in Delaware. (See Def.'s Mot. at 2.) The only circumstance supporting retaining this case in Pennsylvania stems from the presence here of Plaintiff's counsel, which however, standing alone, is not a strong factor supporting retaining this case here. Therefore, the interests of justice and the convenience of the parties and witnesses support the transfer of this case to the District Court for the District of Delaware.

An appropriate order follows.

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WOODROW GUYTON, III,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	
A.M. GENERAL,	:	No. 01-CV-3883
Defendant.	:	

ORDER

AND NOW, this _____ day of November, 2001, upon consideration of Defendant A.M. General's Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction and Improper Venue or, alternatively, Motion to Transfer and Plaintiff's Response, **IT IS HEREBY ORDERED** that:

1. Defendant's Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction and Improper Venue is **DENIED**; and
2. Defendant's Motion to Transfer is **GRANTED** such that the case shall be transferred by the Clerk of the Court to the District of Delaware.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.