

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

MERCY HEALTH SYSTEM : CIVIL ACTION
 :
 v. :
 :
 CSI FINANCIAL, INC. : NO. 01-5681

MEMORANDUM ORDER

This is a breach of contract case. Plaintiff is a Pennsylvania corporation with its principal place of business in Conshohocken. Defendant is a Montana corporation with its principal place of business in Helena. Mercy and CSI are parties to a Patient Financing Agreement under which CSI finances certain of Mercy's accounts receivable. CSI arranged a purchase of the accounts receivable by the First National Bank of Montana. The Bank is expressly named in the Agreement as a third-party beneficiary in a provision that specifically recognized its prerogative directly to enforce its rights against Mercy after making a reasonable effort to do so through CSI.

CSI has filed alternative Motions to Dismiss or to Transfer this action to the District of Montana.

CSI first contends that this action should be dismissed because Mercy failed to join the Bank which is an indispensable party. The Bank may well be an indispensable party under the pertinent factors identified in Fed. R. Civ. P. 19(b). This is not, however, a usual case. The Bank and CSI sued Mercy in a parallel action in the District of Montana which was recently

transferred to this court pursuant to 28 U.S.C. § 1404(a). The Bank's interest is thus protected and all necessary parties are thus present in related actions now before the court.

It may be appropriate to dismiss this action in favor of the transferred Montana case in which Mercy can, and presumably will, assert its claims as counterclaims. At a minimum, this case should be stayed or the two cases consolidated. In any event, given the situation that has developed, dismissal for failure to join the Bank would not be appropriate.

CSI's motion to transfer this action to the District of Montana was, as a practical matter, mooted with the transfer of the Montana action to this court pursuant to 28 U.S.C. § 1404(a).

CSI finally contends that the court lacks jurisdiction over it. The burden is upon the plaintiff to make a prima facie showing with sworn affidavits or other competent evidence that such jurisdiction exists. See Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66 n.9 (3d Cir. 1984); Leonard A. Fineberg, Inc. v. Central Asia Capital Corp., 936 F. Supp. 250, 253-54 (E.D. Pa. 1996). "[C]ourts reviewing a motion to dismiss a case for lack of in personam jurisdiction must accept all of the plaintiff's allegations as true and construe disputed facts in favor of the plaintiff." Carteret Sav. Bank, FA v. Shushan, 954 F.2d 141, 142 n.1 (3d Cir.), cert. denied, 506

U.S. 817 (1992). It appears from the pleadings and plaintiff's affidavit that the pertinent forum contacts are as follow.

In August of 1999, CSI sent unsolicited marketing material to Mercy in Pennsylvania. In the fall of 1999, Pete Parsons, CSI's Director of Marketing, visited Mercy's office in Pennsylvania to explain and promote CSI's program. On October 18, 1999, Mercy executed the Patient Financing Agreement in Pennsylvania which was forwarded to CSI and under which the parties are still conducting business. CSI performs various services involving interaction with Mercy's patients including collection of accounts, responding to patient inquiries and resolution of billing disputes. All of Mercy's patients reside in Pennsylvania or New Jersey. CSI is obligated under the Agreement to provide assistance in the training of Mercy's employees, all of whom are in Pennsylvania.

CSI's forum contacts were instrumental in the formation of the contract at issue. CSI actively solicited in Pennsylvania a Pennsylvania corporation with which it established an ongoing relationship and continuing obligations resulting in the direction of numerous communications to Mercy and its patients in the forum. This constitutes sufficient minimum contacts to support an exercise of personal jurisdiction in an action arising from or related to those contacts. See General Electric Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001); Mellon Bank (East)

PSFS Nat'l. Assoc. v. Farino, 960 F.2d 1217, 1225-26 (3d Cir. 1992).

CSI's argument that "if specific jurisdiction exists it should not be exercised" because of the "substantial hardship" it will face if it must litigate here was presumably rejected, and effectively foreclosed, with the transfer of the Montana case to this court.

ACCORDINGLY, this day of June, 2002, upon consideration of defendant's Motion to Dismiss (Doc. #5, part 1) and alternative Motion to Transfer (Doc. #5, part 2), and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motions are **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.