



in Pennsylvania; controls no bank account or telephone listing in Pennsylvania; owns no Pennsylvania real property of any kind; and pays no Pennsylvania tax. Bizzare contends that although Bibby does not maintain a general business presence in Pennsylvania, the "Master Purchase and Sale Agreement" (collectively, the "Factoring Agreement") Bibby entered into with co-defendant Premium Foods, Inc. ("Premium Foods"), a Pennsylvania corporation, demonstrates contacts sufficient to support personal jurisdiction. Since the Factoring Agreement directs Premium Food's customers, many of whom reside in Pennsylvania, to send to Bibby future payments allegedly owed to Bizzare, and grants Bibby the authority to collect, sue for or otherwise enforce collection of accounts from these customers, Bizzare argues that personal jurisdiction exists. For the following reasons, Bibby's Motion to Dismiss is **DENIED**.

#### I. BACKGROUND

The instant dispute arises from a verbal contractual agreement (the "Verbal Agreement") entered into in or about February 2001 by Plaintiff Bizzare, a New York corporation having its principal place of business in Corona, New York, and Defendants Premium Foods, a Pennsylvania corporation having its principal place of business in Philadelphia, Pennsylvania, and Hezekiah Cooper, Jr., a Premium Foods officer residing and

working in Philadelphia, Pennsylvania.<sup>2</sup> The Verbal Agreement obligated Bizzare to supply Premium Foods with products that Premium Foods would, in turn, sell to its customers on behalf of Bizzare. Bizzare would bill and maintain accounts for Premium Food customers that ordered Bizzare's product. These customers then submitted payment directly to Bizzare within 30 days of delivery by Premium Foods.

In addition to selling Bizzare's products, Premium Foods assisted in the collection of accounts receivable from customers purchasing Bizzare's products and took measures to ensure that Bizzare's invoices were paid in a timely manner. In the event these invoices were not paid, Premium Foods was responsible for paying Bizzare on any uncollectible accounts. To compensate Premium Foods for its services, Bizzare issued to it a weekly draw of \$1200.00, which had increased to \$1490.00 by the time the parties terminated their relationship. Bizzare also reimbursed Premium Foods on a monthly basis for certain office expenses incurred, and awarded it an additional 2% sales commission on the Bizzare goods sold.

The parties performed under this Verbal Agreement until Premium Foods, in or about July 2002, terminated the agreement with Bizzare and notified its customers that it would no longer

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<sup>2</sup> When using the phrase "Premium Foods" herein, we refer to both Premium Foods, Inc. and its officer Hezekiah Cooper, Jr., unless otherwise noted.

be affiliated with Bizzare. (Bizzare's Compl. Exs. A & B.) However, prior to terminating the Verbal Agreement, Premium Foods entered into the Factoring Agreement with Bibby wherein Bibby would manage Premium Food's accounts receivables. Specifically, this Factoring Agreement assigned Bibby the "full power to collect, sue for, compromise, assign, in whole or in part, or in any manner enforce collection" of Premium Foods accounts from many of its customers doing business in Pennsylvania. (Bibby's Mot. to Dismiss Ex. 1.) Bizzare claims that, after entering into the Factoring Agreement, Premium Foods notified all of its customers to direct future payments to Bibby, thereby diverting payments still owed to Bizzare for its products. Despite making verbal demands for these payments, Bibby refused to provide Bizzare with any funds received from Premium Food's customers.

On December 12, 2002, Bizzare filed the instant suit to recover the principal outstanding balance of \$302,040.31<sup>3</sup> exclusive of interest, attorneys' fees and costs still owed to them by Premium Foods and retained by Bibby. In its Complaint, Bizzare avers, inter alia, that Bibby was unjustly enriched by retaining payments rightfully owed to Bizzare, engaged in a civil

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<sup>3</sup> Bizzare contends that Bibby was assigned accounts receivable that rightfully belong to Bizzare totaling \$313,950.46. However, since Bizzare has since received payments of \$11,910.15 directly from Premium Foods' customers, the principal outstanding balance, minus this amount, totals \$302,040.31.

conspiracy with Premium Foods to deprive Bizzare of the benefit of those payments, wrongfully converted funds belonging to Bizzare, and tortiously interfered with Bizzare's rights under the Verbal Agreement, resulting in both existing and prospective economic loss.

## II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12 provides that a party may move to dismiss for lack of jurisdiction over the person. Fed. R. Civ. P. 12(b)(2). In reviewing a Rule 12(b)(2) motion, the court "must accept all of the plaintiff's allegations as true and construe disputed facts in favor of the plaintiff." Pinker v. Roche Holdings, Ltd., 292 F.3d 361, 368 (3d Cir. 2002) (citation omitted); Bucks County Playhouse v. Bradshaw, 577 F. Supp. 1203, 1206 (E.D. Pa. 1983). However, a plaintiff bears the burden of making a prima facie showing of jurisdiction by demonstrating with reasonable particularity that the defendant's contacts within the forum state are sufficient to exercise personal jurisdiction. Mellon Bank PSFS (East), N.A. v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984); Aircraft Guaranty Corp. v. Strato-Lift, Inc., 974 F. Supp. 468, 471 (E.D. Pa. 1997); Romann v. Geissenberger Manufacturing Corp., 865 F. Supp. 255, 259 (E.D. Pa. 1994). To meet this burden, a plaintiff

cannot simply rest on the assertions set forth in the complaint, but must produce affidavits or other forms of competent evidence to establish personal jurisdiction. North Penn Gas Co. v. Corning Natural Gas Corp., 897 F.2d 687, 689 (3d Cir. 1990); Stranahan Gear Co. v. NL Industries, Inc., 800 F.2d 53, 58 (3d Cir. 1986).

### III. DISCUSSION

Bibby contends that, pursuant to Rule 12(b)(2), dismissal for lack of personal jurisdiction is warranted since it does not conduct any business in this forum or otherwise maintain contacts sufficient to satisfy either specific or general jurisdiction requirements. Bizzare counters that the Factoring Agreement between Bibby and Premium Foods supports its position that Bibby's contacts with this forum are both continuous and systematic to warrant general personal jurisdiction. Even if these contacts are not sufficient to support general jurisdiction, Bizzare, nevertheless, contends that haling Bibby into this forum would be reasonable under specific personal jurisdiction requirements.

Federal Rule of Civil Procedure 4(e) authorizes personal jurisdiction over non-resident defendants to the extent permitted under the law of the state where the district court sits. Fed. R. Civ. P. 4(e). The Pennsylvania long-arm statute permits the

courts to exercise personal jurisdiction over non-residents "to the fullest extent allowed under the Constitution of the United States." 42 Pa. Cons. Stat. § 5322(b). Thus, a court's exercise of personal jurisdiction over non-resident defendants must also satisfy the Due Process Clause of the Fourteenth Amendment. North Penn Gas, 897 F.2d at 689-90; Thypin Steel Co. v. Strekalovskiy, No. Civ. A. 96-1799, 1997 U.S. Dist. LEXIS 4454, at \*6 (E.D. Pa. Apr. 3, 1997). "Personal jurisdiction under the Due Process Clause depends upon the 'relationship among the defendant, the forum, and the litigation,'" IMO Indus. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)), and requires that the defendant possess sufficient minimum contacts with the forum so as not to offend "traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

A court may exercise personal jurisdiction over a non-resident provided it has directed its activities towards the residents of the forum state or otherwise has "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Hanson v. Denckla, 357 U.S. 235, 253 (1958). Personal jurisdiction can be established by either a defendant's general or claim-specific contacts with the forum state. Remick

v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001); BP Chemicals Ltd. v. Formosa Chemical & Fibre Corp., 229 F.3d 254, 259 (3d Cir. 2000). "General jurisdiction" is not dependent upon whether the plaintiff's cause of action arises from the defendant's forum related activities, but is based upon the defendant's continuous and systematic contacts with the forum state. Pinker, 292 F.3d at 368 n.1; Remick, 238 F.3d at 255. In contrast, "specific jurisdiction" exists when a defendant's contacts with the forum are related to the underlying cause of action such that the defendant "should reasonably anticipate being haled into court." Remick, 238 F.3d at 255 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)); IMO Industries, 155 F.3d at 260. Bibby argues that under either general or specific jurisdiction requirements, its contacts with Pennsylvania are insufficient to warrant this Court's exercise of personal jurisdiction. We discuss each basis for personal jurisdiction in turn.

#### **A. General Jurisdiction**

Bizzare first argues that, under the Pennsylvania long-arm statute and the Due Process Clause, Bibby's business dealings in this forum with Premium Foods and its customers are sufficient to subject it to the jurisdiction of this Court. To support its jurisdictional assertion, Bizzare contends that the Factoring

Agreement that Bibby entered into with Premium Foods, a Pennsylvania corporation, illustrates that its contacts with Pennsylvania residents are both systematic and continuous.

The Pennsylvania long-arm statute specifies that general personal jurisdiction is established over corporations if they "carry on . . . a continuous and systematic part of its general business within Pennsylvania." 42 Pa. Cons. Stat. § 5301. Since general jurisdiction is not dependant upon forum-related activity, however, a plaintiff must meet a higher threshold to satisfy due process requirements by demonstrating that these contacts with the forum are sufficiently "extensive and persuasive." Reliance Steel Products Co. v. Watson, Ess, Marshall & Enggas, 675 F.2d 587, 589 (3d Cir. 1982) (citation omitted); Fields v. Ramada Inn, Inc., 816 F. Supp. 1033, 1036 (E.D. Pa. 1993). Since there is no established legal test to determine whether a corporation's activities are sufficiently continuous and systematic to warrant the exercise of general jurisdiction, a court instead engages in a factual analysis that focuses on "the overall nature of the activity, rather than its quantitative character." Romann, 865 F. Supp. at 261.

Bizzare claims that, pursuant to the Factoring Agreement, Bibby's contacts with this forum are systematic and continuous to satisfy the significant showing required. By investing Bibby with the "full power to collect, sue for, compromise, assign, in

whole or in part, or in any other manner enforce collection" of amounts owed to Premium Foods by its customers, Bizzare argues that this arrangement involved significant contacts with Pennsylvania. Moreover, Bibby could negotiate or settle amounts in dispute with these customers or, in the event settlement cannot be reached, commence proceedings against Premium Foods customers in Pennsylvania. Thus, Bizzare argues that, by entering into this contract, Bibby created sufficient and continuing contacts with this forum to support general jurisdiction. Although Bizzare demonstrates that Bibby entered into this Factoring Agreement, we are not presented with sufficient evidence to characterize its contacts with this forum as "continuous and substantial" for the purpose of finding general jurisdiction. While the Factoring Agreement provides that Bibby may collect funds, engage in negotiations, or sue Premium Foods customers who reside in Pennsylvania, we are not presented with evidence demonstrating that Bibby has, in fact, performed any of these acts under this Agreement continuously or as apart of the general conduct of its business, as is required for a showing of general jurisdiction. See Provident National Bank v. California Federal Savings & Loan Assoc., 819 F.2d 434, 437 (3d Cir. 1987) (citation omitted). Absent the contract it entered into with Premium Foods, Bibby does not have any Pennsylvania employees, maintain an office in this forum, or

otherwise conduct any business within Pennsylvania. (Bibby's Mot. to Dismiss, Atkins Aff. ¶¶ 4-5.) Thus, we cannot confidently conclude that Bibby's contacts suffice to exercise general jurisdiction.

However, since Bizzare contends that Bibby tortiously interfered with its contract with Premium Foods by entering into the Factoring Agreement that permits Bibby to collect and retain money from Pennsylvania customers, Bizzare's claim against Bibby appears to relate to, or arise out of business transactions occurring within this forum. Thus, our analysis next focuses on whether specific jurisdiction has been established.

## **B. Specific Jurisdiction**

Pursuant to Pennsylvania's long-arm statute, a court can exercise specific jurisdiction over a non-resident defendant if a plaintiff's cause of action is related to, or arises out of the defendant's contacts with the forum. Pennsylvania law specifies that a court located in this state may exercise personal jurisdiction as to a cause of action, or other matter arising from a person:

(1) Transacting any business in this Commonwealth. Without excluding other acts which may constitute transacting business in this Commonwealth, any of the following shall constitute transacting business for the purpose of this paragraph:

(i) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary

benefit or otherwise accomplishing an object.  
(ii) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.

...

(2) Contracting to supply services or things in this Commonwealth.

(3) Causing harm or tortious injury by an act or omission in this Commonwealth.

(4) Causing harm or tortious injury in this Commonwealth by an act or omission outside this Commonwealth.

42 Pa. Cons. Stat. § 5322. Since Bizzare avers that Bibby, upon entering into the Factoring Agreement, tortiously interfered with Bizzare's contract with Premium Foods, specific jurisdiction is arguably warranted pursuant to Sections 5322(2)-(4). However, since the Pennsylvania long-arm statute also requires that jurisdiction must satisfy due process, to establish specific jurisdiction over non-resident defendants, a plaintiff must demonstrate that the defendant maintains minimum contacts with the forum state and that subjecting the defendant to this Courts jurisdiction based on these limited contacts comports with "traditional notions of fair play and substantial justice." International Shoe, 326 U.S. at 316 (quotation omitted); see also Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n.8 (1984). In assessing the sufficiency of a defendant's contacts with the forum, the court examines whether the defendant engaged in some purposeful act directed at the forum by which it

availed itself to the benefits and protections of a forum's laws and "should reasonably anticipate being haled into court there." World-Wide Volkswagen, 444 U.S. at 297; Hanson, 357 U.S. at 253; IMO Industries, 155 F.3d at 259. Provided these minimum contacts are established, the court next looks to whether the exercise of personal jurisdiction over a non-resident defendant is both fair and just. Pinker, 292 F.3d at 370; Mellon Bank, 960 F.2d at 1222. In making this assessment, the court may examine "fairness factors" such as: "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most effective resolution of controversies, and the shared interests of the several States in furthering fundamental substantive social policies." Pinker, 292 F.3d at 370 (quoting Burger King, 471 U.S. at 477); Mellon Bank, 960 F.2d at 1222.

Bibby argues that since its only contact with this forum is a Factoring Agreement it entered into with Premium Foods, a Pennsylvania corporation, Bizzare has failed to satisfy its burden of demonstrating sufficient contacts warranting specific jurisdiction. While we agree that Bibby's contract with a Pennsylvania corporation does not, alone, "automatically establish sufficient minimum contacts in the other party's home forum," we find that specific personal jurisdiction exists.

Burger King, 471 U.S. at 478; Mellon Bank (East) PSFS, N.A. v. DiVeronica Bros., 983 F.2d 551, 557 (3d Cir. 1993). We consider not only the existence of a contract, but also "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." Burger King, 471 U.S. at 479; see Mellon Bank, 960 F.2d at 1223 (evaluating contemplated future consequences of dealings between the parties); Aircraft Guaranty Corp., 974 F. Supp. at 473 (same). The Factoring Agreement expressly grants Bibby the right to sue, collect debts and engage in settlements with Premium Foods customers, many of whom are located in Pennsylvania, and directs Pennsylvania customers to send future payments for all Premium Foods goods to Bibby. By entering into an agreement with a Pennsylvania corporation that contemplates continuing activities geared towards residents of this forum, we find that Bibby purposefully availed itself to the laws and protections of Pennsylvania. Thus, we agree that Bibby engages in sufficient "minimum contacts" with this forum to warrant specific personal jurisdiction.<sup>4</sup>

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<sup>4</sup> Bibby contends that this Court's decision in Aquarium Pharmaceuticals, Inc. v. Richard Boyd Enterprises, Inc., No. Civ. A. 91-5246, 1991 U.S. Dist. LEXIS 18152 (E.D. Pa. Dec. 24, 1991), in which we found specific jurisdiction did not exist, is instructive in the instant case. Although this Court determined that the plaintiff in that case failed to meet its burden, our decision was based on the plaintiff's complete failure to present any factual evidence except for a mere recital of "attenuated and unsubstantiated contacts" between the defendant and the forum

Moreover, we find that haling Bibby into a court in this forum comports with "traditional notions of fair play and substantial justice," as required by the second prong of the specific jurisdiction inquiry. International Shoe, 326 U.S. at 320. In determining whether specific assertions of jurisdiction are reasonable, we consider the "burden on the defendant, the forum State's interest in adjudicating the dispute, [and] the plaintiff's interest in obtaining convenient and effective relief." Burger King, 471 U.S. at 477. Although Bibby is located in Florida, we find that, by entering into a contract with a Pennsylvania corporation that creates continuing relationships and obligations with Pennsylvania customers, it had "fair warning" that litigation resulting from its contractual

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state. Id. at \*9-11. Since, in the instant case, Bizzare presents evidence demonstrating Bibby's contacts with this forum, and does not merely recount allegations set forth in its Complaint, we do not find that Aquarium Pharmaceuticals applies to Bibby's claim.

Bibby also relies on Calgift v. Bank One of Eastern Ohio, N.A., 666 F. Supp. 709 (M.D. Pa. 1986), in which the Court refused to exercise general personal jurisdiction over a non-resident defendant bank located in Ohio that attempted to collect accounts receivable on behalf on a bankrupt Ohio corporation. The Court in Calgift determined that the plaintiff did not meet its burden when it produced only a single letter written by the defendant bank to a customer residing in the Middle District of Pennsylvania. Although factually similar to the instant case, Bizzare presents more than a single letter to illustrate Bibby's contacts with this forum. Rather, Bizzare produces the contract between Bibby and Premium Foods that authorizes Bibby to collect funds, negotiate, and sue Premium Foods customers, many of whom are located in Pennsylvania. Thus, we find that Bizzare provides sufficient evidence of Bibby's contacts with this forum.

obligations could occur in this forum. Id. at 472. The United States Supreme Court has opined that, when non-resident corporations:

reach out beyond one state and create continuing relationships and obligations with citizens of another state . . . [and] 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 473-74. Since Bibby, by entering into the Factoring Agreement, incurred continuing obligations with residents of the forum, we do not find it unreasonable to require Bibby to submit to the burdens of litigation in this forum. Accordingly, we find that specific personal jurisdiction exists, and **DENY** Bibby's Motion to Dismiss.

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

BIZZARE FOODS, INC. d/b/a	:	CIVIL ACTION
TROOPER FOODS, INC.,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PREMIUM FOODS, INC., HEZEKIAH	:	
COOPER, JR., and BIBBY	:	
FINANCIAL SERVICES, INC.,	:	
Defendants.	:	No. 02-CV-9061

O R D E R

**AND NOW**, this                    day of May 2003, in consideration of the styled Motion to Dismiss, or, in Lieu Thereof to Quash the Return of Service of Summons for Lack of Personal Jurisdiction filed by Defendant Bibby Financial Services, Inc. ("Bibby") (Doc. No. 13), the Response of Plaintiff Bizzare Foods, Inc. d/b/a Trooper Foods, Inc. (Doc. No. 19) and Bibby's reply thereto (Doc. No. 22) it is **ORDERED** that Bibby's Motion is **DENIED**.

BY THE COURT:

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JAMES MCGIRR KELLY, J.