

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

CDV MANAGEMENT, L.P.	:	CIVIL ACTION
	:	
v.	:	
	:	
INTEGRATED AIRLINE SERVICES, INC.	:	No. 04-4173

Memorandum

Baylson, J.

January 31, 2005

I. Introduction

Plaintiff CDV Management , L.P. (“CDV”) brought this action against Defendant Integrated Airline Services, Inc. (“IAS”) for breach of contract and unjust enrichment for the recovery of expenses under an Investment Advisory Agreement (the “Agreement”). The Complaint was filed in the Court of Common Pleas, Chester County, Pennsylvania, on August 5, 2004. On September 2, 2004, the action was removed to federal court pursuant to 28 U.S.C. § 1441 due to the diversity of citizenship of the parties. Presently before the Court is Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction, filed on September 9, 2004. Plaintiff’s response was filed on September 27, 2004, and Defendant filed a reply brief on October 6, 2004.

II. Background

CDV’s complaint sets forth the following facts. CDV is a limited partnership organized under the laws of the State of Delaware with it principal place of business at 1235 Westlakes Drive, Suite 160, Berwyn, Pennsylvania. CDV provides administrative services for CDV Equity Associates, L.P. and affiliated partnerships, which finance management and leveraged buy-outs and provide expansion capital for companies in a range of industries.

Defendant IAS is a corporation organized under the laws of the State of Colorado with its

principal place of business at 3980 Quebec Street, Suite 111, Denver, Colorado. IAS provides passenger, cargo, and aircraft ground handling services.

In 2002 and early 2003, CDV and IAS discussed an attempt to recapitalize and obtain additional capital for IAS, which never came to fruition. These earlier dealings, which were engaged in pursuant to a letter of intent dated October 8, 2002, are described in greater detail below.

On June 18, 2003, CDV and IAS entered into the Agreement, in which CDV agreed to provide investment advisory services to IAS's management for capital formation. The Agreement also provided that, in addition to success fees, CDV would reimburse reasonable out-of-pocket expenses incurred in furtherance of the capital formation process, as well as "prior expenses related to senior debt financing." The Agreement specified that "CDV will review and submit for approval any prior expenses related to senior debt financing. To date, we estimate those expenses to be approximately \$92,000 plus legal fees of approximately \$20,000." (Plaintiff's Response to Defendant's Motion to Dismiss, Exhibit A). It is the non-payment of these estimated \$112,000 of "prior expenses related to senior debt financing" that form the basis of CDV's breach of contract and unjust enrichment claims.

After CDV performed investment advisory services to IAS's management, including obtaining proposals for loan financing for IAS, IAS rejected CDV's proposals and chose to refinance its loan facility without CDV's participation. IAS paid CDV \$3,034.91 to satisfy one of the invoices submitted by CDV pursuant to the Agreement. On April 16, 2004, CDV forwarded to IAS an invoice seeking reimbursement of further expenses incurred on behalf of IAS, which IAS has refused to pay. CDV seeks damages in the amount of \$112,000 plus

continuing interest, costs and expenses.

III. Parties' Contentions

Defendant's motion argues that IAS does not have constitutionally sufficient contacts with Pennsylvania to support personal jurisdiction, because CDV solicited IAS in Colorado, the Agreement was executed in Colorado, IAS had no other contact with Pennsylvania in connection with the Agreement, and IAS has not otherwise purposefully availed itself of the laws of Pennsylvania. IAS has submitted an affidavit of Harry B. Combs, Jr., Chairman and CEO of IAS, stating that: a representative of CDV contacted IAS in Colorado; after several months of discussions, CDV and IAS signed a letter of intent dated October 8, 2002 (the "LOI"); CDV and IAS were unable to agree to the terms of the agreement required under the LOI, which IAS terminated on or about June 2003; thereafter, CDV contacted IAS and offered to secure debt financing for IAS; after negotiations, CDV and IAS entered into the Agreement on June 18, 2003. (Defendant's Motion to Dismiss, Exhibit A, ¶¶ 5-9).

The affidavit states that no representative of IAS traveled to Pennsylvania to negotiate the Agreement, that the Agreement was signed in Colorado, and that IAS was not required to, and did not, perform services in Pennsylvania pursuant to the agreement. (*Id.*, ¶¶ 10-13). The affidavit also states that all agents, servants, and employees of IAS with information regarding this action reside in and around Denver, that IAS does not directly advertise or market its services, provide services, do business, or maintain offices or assets, in Pennsylvania, and that IAS is not authorized to conduct business in Pennsylvania. (*Id.*, ¶¶ 14-17). In its Memorandum of Law in support of its motion, Defendant also asserts that the Agreement itself has no choice of

law or venue provision, that the services contemplated in the Agreement did not create a nexus with Pennsylvania because they involved locating a third-party senior credit facility to introduce to IAS for use in its Colorado-based operations, and that because IAS rejected CDV's proposals, the Agreement never resulted in any significant activity or obligations in Pennsylvania for IAS.

CDV contends, however, that IAS had sufficient contacts with Pennsylvania to make this Court's exercise of specific personal jurisdiction proper. CDV has submitted an affidavit of Christopher J. Debbas, general partner of CDV, which states the following: Throughout 2002 and early 2003, CDV and IAS worked together on recapitalizing, and obtaining additional capital for, IAS, with the purpose of providing a partial exit strategy for Mr. Combs, who intended to redeem some of his stock for cash. (Plaintiff's Response to Defendant's Motion, Exhibit A, ¶ 4). During this period, CDV scheduled and participated in meetings with entities considering providing financing to IAS and the vast majority of CDV's work for IAS was performed in Pennsylvania. (Id., ¶ 5). CDV also performed work in Pennsylvania in relation to operational support it provided to IAS for tasks unrelated to financing, such as completing a Request for Proposal for United Airlines, and assistance with identifying documentation problems with IAS's self-insured worker's compensation program. (Id., ¶ 6). On three different occasions – June 30, 2002, December 10-11, 2002, and February 10, 2003 – Mr. Combs visited Pennsylvania in connection with CDV's attempt to obtain financing for IAS. (Id., ¶ 7). The proposed recapitalization arranged for by CDV, the work for which was performed in Pennsylvania, would have resulted in approximately \$19.5 million in cash paid to Mr. Combs, if IAS had chosen to consummate it. (Id., ¶ 8).

The Debbas affidavit also states that the Agreement, entered into on June 8, 2003,

provides that CDV will be reimbursed for reasonable out-of-pocket expenses incurred in furtherance of the original recapitalization process and that it is these expenses, incurred by CDV in Pennsylvania and in connection with the visits by IAS personnel to Pennsylvania, that CDV seeks to recover in this action. (Id., ¶ 10-11). Additionally, IAS's communications with CDV included telephone calls, faxes, and letters sent to CDV's offices in Pennsylvania, and IAS sent payments to CDV in Pennsylvania to satisfy invoices originating and sent from Pennsylvania. (Id., ¶ 12).

IAS contends that the contacts with Pennsylvania described by the Debbas affidavit relate only to the LOI, which was terminated before the Agreement was signed on June 18, 2003, and that only the alleged breach of the Agreement is at issue in this suit, not a breach of the LOI, and therefore the contacts prior to June 18, 2003 are irrelevant to the Court's personal jurisdiction determination. (Defendant's Reply in Support of Motion to Dismiss, pp. 1-2).

IV. Legal Standard

When a defendant challenges an action for lack of personal jurisdiction, the plaintiff "need only establish a prima facie case of personal jurisdiction and the plaintiff is entitled to have its allegations taken as true and all factual disputes drawn in its favor." Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004)(citing Pinker v. Roche Holdings Ltd., 292 F.3d 361, 368 (3d Cir. 2002)).

V. Discussion

Federal courts apply the forum state's law to determine whether personal jurisdiction over the defendant is proper. Fed. R. Civ. P. 4(e). Pennsylvania's long arm statute provides for

personal jurisdiction over a nonresident “to the fullest extent allowed under the Constitution of the United States.” 42 Pa. Cons. Stat. Ann. § 5322(b). Thus, parties with constitutionally sufficient minimum contacts with Pennsylvania are subject to suit in the Commonwealth.

Plaintiff concedes that Defendant’s contacts with Pennsylvania are insufficient to support general jurisdiction, so the Court need only consider whether the exercise of specific personal jurisdiction in this case comports with constitutional due process requirements. Specific jurisdiction exists “where the plaintiff’s claim ‘is related to or arises out of the defendant’s contacts with the forum.’” Rotondo Weinreich Enterprises, Inc. v. Rock City Mechanical, Inc., 2005 WL 119571, *2 (January 19, 2005)(quoting Pennzoil Prods. Co. v. Colelli & Associates, 149 F.3d 197, 201 (3d Cir. 1998)); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985)(finding specific jurisdiction proper when defendant has “purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities”)(internal citations and quotations omitted). The Court must therefore determine “whether the defendant had minimum contacts with the forum such that it would have reasonably anticipated being haled into court there,” and if so, “whether the assertion of personal jurisdiction would comport with fair play and substantial justice.” Id. (citations and quotations omitted).

To find the minimum contacts required, the Court considers “the relationship among the forum, the defendant and the litigation, in order to determine whether the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” Mellon Bank (East) PSFS, Nat’l Ass’n v. Farino, 960 F.2d 1217, 1221 (3d Cir. 1992)(quotations and citations omitted). The Third Circuit has outlined the approach district

courts should take in determining whether personal jurisdiction should be exercised in cases involving contracts:

In contract cases, court should inquire whether the defendant's contacts with the forum were instrumental in either the formation of the contract or its breach. Parties who reach out beyond [their] state and create continuing relationships and obligations with citizens of another state are subject to the regulations of their activity in that undertaking. Courts are not reluctant to find personal jurisdiction is such instances. [M]odern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

General Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001)(quotations and citations omitted). In Deutz, the Third Circuit clarified that "it is not significant that one or the other party initiated the relationship," because "[i]n the commercial milieu, the intention to establish a common venture extending over a substantial period of time is a more important consideration." Id. at 151. While simply entering into a contract with a Pennsylvania resident does not in itself constitute the minimum contacts necessary for specific jurisdiction, purposeful and voluntary contacts by the defendant that give rise to the cause of action do justify the exercise of jurisdiction.

It is well-settled that an individual's contract with a non-resident party *alone* cannot automatically establish sufficient minimum contacts in the other party's home state. Rather, the totality of the circumstances, including the parties' prior negotiations, their contemplated future consequences, their actual course of dealing and the terms of the contract must be evaluated in order to determine whether the non-resident is subject to the Commonwealth's forum. It is necessary that the defendant's contacts are purposeful and voluntary and give rise to the cause of action.

Fidelity Leasing Inc. v. Limestone Co. Bd. of Education, 759 A.2d 1207, 1211 (Pa. Super. Ct. 2000)(citations omitted). Here, IAS purposefully and voluntarily engaged in dealings with CDV,

including multiple visits to CDV's Pennsylvania offices by IAS's CEO. While these meetings were related to the LOI which was terminated prior to the signing of the Agreement, the breach of contract and unjust enrichment claims in this case involve the alleged non-payment of expenses incurred as a result of these earlier dealings and provided for in the Agreement. Minimum contacts are thus established between IAS and Pennsylvania regarding these claims because the "non-resident defendant has purposefully directed his activities at a resident of the forum and the injury arises from or is related to those activities." Deutz, 270 F.3d at 150 (quotations and citations omitted).

The two cases relied upon by Defendant, Hall-Woolford Tank Co., Inc. v. R.F. Kilns, Inc., 698 A.2d 80 (Pa. Super. Ct. 1997), and Vetrotex Certainteed Corp. v. Consolidated Fiber Glass Prods. Co., 75 F.3d 147 (3d Cir. 1995), are factually distinguishable. In Hall-Woolford, the Superior Court found that "[a]t no time did [an] . . . agent or representative [of defendant] enter Pennsylvania to perform contract negotiations or services," and that the "several follow-up phone calls" that the defendant made to the forum state did not "lead to the conclusion that [defendant] thereby availed itself of the privileges of our state such that it should also have anticipated being subjected to its burdens by being haled into a Pennsylvania court." Hall-Woolford, 698 A.2d at 84. In Vetrotex, the Third Circuit found that the defendant was merely a "passive buyer" of plaintiff's product – Defendant's personnel never visited Pennsylvania and "[t]he only contacts that [the defendant] had with Pennsylvania consisted of some telephone calls and letters written to [the plaintiff] in Pennsylvania." Vetrotex, 75 F.3d at 151-52. Here, however, IAS's CEO traveled to Pennsylvania on several occasions to engage in dealings with CDV, and the consequences of those dealings – the expenses incurred by CDV prior to entering

into the Agreement – are the subject of the provision of the Agreement that CDV claims has been breached.

Having found the minimum contacts required, the Court considers whether the exercise of specific jurisdiction comports with notions of fair play and substantial justice. “To defeat jurisdiction based on this fairness inquiry, a defendant must ‘present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.’” Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004)(quoting Burger King, 471 U.S. at 476)). To determine whether such a compelling case has been made, courts may consider “the burden on the defendant, the forum State’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining the most efficient resolution of controversies and the shared interest of the several States in furthering fundamental substantive social policies.” Id. (quoting Burger King, 471 U.S. at 477). IAS has not presented a compelling case that defending against these claims in Pennsylvania would be a particular burden upon it and, as noted above, without any evidence presented otherwise, courts are reluctant to assume any such burden as “modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.” Deutz, 270 F.3d at 150. Moreover, Pennsylvania has an interest in the recovery of expenses incurred by its residents, CDV has an interest in obtaining the efficient resolution of the controversy in its home forum, and the several States have a shared interest in the enforcement of contracts made between residents of various states. IAS has presented no contrary evidence or arguments to suggest that this Court’s exercise of personal jurisdiction does not comport with fair play and substantial justice.

Therefore, the fact that the alleged breach of the Agreement at issue in this case involves

provisions related to expenses incurred during IAS's prior dealings with CDV – which involved, among other things, visits to CDV's Pennsylvania offices by IAS's CEO – indicates that IAS could have reasonably anticipated being haled into court in Pennsylvania, and this Court's exercise of personal jurisdiction over IAS complies with the requirements of the Pennsylvania long arm statute and comports with due process requirements.

V. Conclusion

For the foregoing reasons, the Court finds that IAS is subject to specific jurisdiction in this district. Accordingly, defendant's motion is denied.

An appropriate order follows.

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ORDER

AND NOW this 31st day of January, 2005 upon consideration of Defendant's Motion to Dismiss for Lack of Personal Jurisdiction (Docket No. 2) and the responses thereto, it is ORDERED that the motion is DENIED.

BY THE COURT:

/s/ Michael M. Baylson
Michael M. Baylson, U.S.D.J.