

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

JOHN GAMMINO,

Plaintiff,

v.

VERIZON COMMUNICATIONS, INC., VERIZON
PENNSYLVANIA INC., VERIZON NEW JERSEY, INC.,
VERIZON NEW YORK, INC., VERIZON DELAWARE, INC.
VERIZON CALIFORNIA, INC., VERIZON FLORIDA, INC.,
VERIZON MARYLAND, INC., VERIZON, VIRGINIA, INC.,
VERIZON WASHINGTON DC, INC., VERIZON WEST
VIRGINIA, INC., VERIZON NEW ENGLAND, INC.,
VERIZON NEW ENGLAND, INC., VERIZON NORTH, INC.,
VERIZON NORTHWEST, INC., VERIZON SOUTH, INC.,
GTE SOUTHWEST INC., CONTEL OF THE SOUTH, INC.
PUERTO RICO TELEPHONE CO., INC., GTE MIDWEST,
INC.,

Defendants.

NO. 03-CV-5579

GREEN, S.J.

December 27 , 2005

MEMORANDUM

Presently pending is the following Defendants' Motion to Dismiss for lack of personal jurisdiction:

Verizon New Jersey, Inc.,
Verizon New York, Inc.,
Verizon Delaware, Inc.
Verizon California, Inc.,
Verizon Florida, Inc.,
Verizon Maryland, Inc.,
Verizon, Virginia, Inc.,
Verizon Washington DC, Inc.,
Verizon West Virginia, Inc.,
Verizon New England, Inc.,
Verizon New England, Inc.,
Verizon Northwest, Inc.,
Verizon South, Inc.,
Gte Southwest Inc.,
Contel of the South, Inc.
Puerto Rico Telephone Co., Inc., and
Gte Midwest, Inc.

Defendants Verizon Communications, Inc. (“VCI”), Verizon Pennsylvania, Inc., and Verizon North, Inc. did not file any motion to dismiss and instead have filed Answers to the Complaint. Plaintiff filed a Response in Opposition to the motion. Also pending is Plaintiff’s Motion to Compel Discovery from the moving Defendants. For the reasons set forth below, Defendants’ motion to dismiss will be granted and Plaintiff’s motion to compel will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff John Gammino, filed a Complaint against Defendant VCI and many of VCI’s subsidiaries. The Complaint alleges that the Defendants have infringed upon - and continue to infringe upon - two patents registered and owned by Plaintiff. The patents allegedly cover techniques for blocking international telephone calls.

The moving Defendants are all subsidiaries of VCI. Defendants moved to dismiss the Complaint asserting that this court cannot properly exercise personal jurisdiction over them. Defendants specifically assert that neither general or specific jurisdiction may lawfully be exercised by this court because Defendants have no contacts with Pennsylvania nor have Defendants availed themselves of the privilege of conducting business in the Commonwealth. Defendants assert that as subsidiaries of VCI, they are wholly separate and unique business entities. Therefore, they argue that they are not the alter-ego of VCI and that VCI’s contacts with Pennsylvania cannot be imputed to them. Defendants also argue that telephone calls made into Pennsylvania is an improper basis upon which this court can rely in exercising jurisdiction over them. The Defendant subsidiaries finally assert that the they do not conduct business in Pennsylvania through the Verizon website.

A. Motion to Dismiss

Defendants assert that they should be dismissed pursuant to Fed.R.Civ.P 12(b)(2) and argue that the court cannot properly exercise either general or specific personal jurisdiction over them. They state that they do not have the requisite minimum contacts with Pennsylvania in order to support an exercise of

general personal jurisdiction. They further contend that despite Plaintiff's assertions to the contrary, the moving Defendants are not alter egos of VCI - and should not be subject to personal jurisdiction in Pennsylvania based upon an alter ego theory of jurisdiction. The moving Defendants also argue that VCI's website, www.verizon.com, does not confer personal jurisdiction over them in Pennsylvania.

In response, Plaintiff argues that Defendants are subject to the personal jurisdiction of this Court based upon an alter-ego theory of jurisdiction. Plaintiff argues VCI and the Defendant subsidiaries have a single identity and that under the doctrine of alter ego, if a parent and subsidiaries operate with a single identity, there will be jurisdiction over non-resident corporations upon a finding that either the dominant or subservient corporation does business in Pennsylvania. Plaintiff asserts that Defendant VCI and the moving Defendants are a single functioning entity because VCI owns 100% of the stock of the moving Defendant subsidiaries, the Defendants subsidiaries each have the same President and CEO, Chief Financial Officer, and Controller as VCI, and also because VCI and the subsidiaries use a common marketing image, logo, and integrated sales system. Plaintiff concludes that because VCI is the parent and alter-ego of the Defendant subsidiaries, they are all subject to personal jurisdiction in this forum. Plaintiff additionally argues that the moving Defendants purposefully direct their activities towards Pennsylvania through the Verizon website. In further support of their assertion, Plaintiff argues that the www.verizon.com website states that it provides descriptions of services for Delaware, Maryland, New Jersey, Virginia and other states without making reference to the Defendant subsidiaries. Plaintiff concludes that the website contacts are a sufficient basis for the court's exercise of personal jurisdiction over the moving Defendant subsidiaries.

II. DISCUSSION

This court has subject matter jurisdiction over Plaintiff's claims due to the presence of a federal question and diversity of citizenship. See 28 U.S.C. §§ 1331, 1332. A federal district court can exercise personal jurisdiction over a nonresident of the state in which the court sits to the extent constitutionally

authorized by the law of the state. See Hildebrand v. Steck Manuf. Co., Inc., 279 nF.3d 1351, 1354 (fed. Cir. 2002). “Under Pennsylvania's long-arm statute, jurisdiction may be exercised to the fullest extent allowed under the Constitution of the United States.” 42 Pa. Con. Stat. Ann. § 5322(b). “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.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 n.1 (1985).

Plaintiffs have the burden of establishing sufficient facts to show that jurisdiction is proper. Inamed Corp. v. Kuzmak, 249 F.3d 1356 , 1360 (2001). In order for this court to exercise general personal jurisdiction over a defendant, a plaintiff must demonstrate that the defendant has “continuous and substantial contact with the forum state.” Burger King., 471 U.S. at 462. To exercise specific personal jurisdiction over a defendant, three elements must exist: the defendant must have “minimum contacts” with the forum state; the cause of action “must arise from the defendant’s forum related activities;” and the exercise of jurisdiction must be reasonable or fair. Akro Corp. V. Luker, 45 F.3d 1541, 1545 (Fed. Cir. 1995). Plaintiff does not rely upon specific personal jurisdiction because the causes of action do not arise from forum related activities of the moving Defendants, but instead rely upon the assertion that the Defendant subsidiaries, through VCI, have established substantial contacts with Pennsylvania.

A. Alter-Ego Jurisdiction.

Plaintiff argues that VCI and its subsidiaries operate as a single functioning entity and that as a result this court may properly exercise jurisdiction over the moving Defendant subsidiaries. This court must apply Pennsylvania law - the law of the forum state - to determine whether VCI is the alter ego of the moving Defendant subsidiaries. See Genetic Implant Syst, Inc. v. Core-Vent Corp., et al., 123 F3d 1445 (Fed. Cir. 1997). In Pennsylvania, “If the record demonstrates that the subsidiary is the “alter ego” of the parent to the extent that domination and control by the parent corporation renders the subsidiary a mere instrumentality of the parent; under such extreme circumstances the parent corporation may be held to be

doing business within the state under the facade of the subsidiary.” Botwinick v. Credit Exch., Inc. 213 A.2d 349, 353 (Pa. 1965). “Neither the similarity of names between the parent and subsidiary corporation, nor the total ownership of the stock of the subsidiary by the parent, nor the fact that a single individual is the active chief executive of both corporations will per se justify a court in piercing the corporate veil if each corporation maintains a bona fide separate and distinct corporate existence.” Id., 213 A.2d 353-54 (citations omitted).

Plaintiffs heavily rely on another decision issued by this court in Directory Dividends Inc. v. SBC Communication, Inc. Et al, 2003 U.S. Dist LEXIS 12214, *6 (E.D Pa 2003) wherein the court concluded, based on the evidence presented to it, that SBC was the alter ego of its subsidiaries named in that case. Plaintiff now argues that many of the factual findings in Direct Dividends apply here and asserts that under the holding in Direct Dividends, the court must find jurisdiction over VCI and the remaining Defendants. The ten factors this court has considered when determining whether a subsidiary is an alter ego of a parent are: 1) ownership of all or most of the stock of the subsidiary; 2) common officers and directors; 3) a common marketing image; 4) common use of a trademark or logo; 5) common use of employees; 6) an integrated sales system; 7) interchanges of managerial and supervisory personnel; 8) subsidiary performing business functions which the principal corporation would normally conduct through its own agents or departments; 9) subsidiary acting as a marketing arm of the principal corporation, or as an exclusive distributor, and 10) receipt by the officers of the related corporation of instruction from the principal corporation. Arch v. American Tobacco Co., Inc. 984 F.Supp. 830 (E.D. Pa., 1997); (citing, Lucas v. Gulf & Western Indus., Inc., 666 F.2d 800, 805-806) (3d. Cir. 1981).

Here the court cannot conclude that VCI is the alter-ego of the Defendant subsidiaries. Viewing the evidence before the court in the light most favorable to Plaintiff, it is clear that: (1) the moving Defendant subsidiaries are owned - wholly or in part by VCI; (2) VCI and its subsidiaries share common officers; and, (3) VCI and its subsidiaries share a common marketing image and/or logo. Plaintiff has failed to demonstrate, however, that VCI exercises such dominion and control over the Defendant subsidiaries such they should be considered a single functioning entity. Although Plaintiff argues that VCI and the Defendant subsidiaries

have an integrated sales system, have an “interrelationship of business functions,” and that the subsidiaries receive instruction from VCI, Plaintiff has offered only minimal evidence in support of these assertions. Plaintiff baldly asserts that because VCI and the Defendant subsidiaries share “core” officers VCI “. . . can set policy , give directives, and otherwise exercise overall control over the Subsidiareis, both vertically and horizontally.”(Pl. Br. Opp’n. at 21). Plaintiff’s only evidence of corporate instruction from parent to subsidiary is a statement in VCI’s annual report that VCI has “. . . a rigorous code of conduct which applies to all employees worldwide.” Id. At 22-23.

Plaintiff’s assertions and minimal evidence in support thereof are insufficient to prove that VCI and the Defendants subsidiaries are a single functioning entity, such that VCI should be considered the alter ego of the subsidiaries. The facts herein are distinguishable from the court’s extensive findings in Directory Dividends regarding the significant common use of employees and interchange of managerial and supervisory personnel, centralized legal department and operations, and mandatory corporate directives SBC issued to the Directory Dividends subsidiaries. Plaintiff has not presented the court with any such evidence of vertical or horizontal integration, or of corporate control by VCI over the Defendant subsidiaries. Moreover, Defendants aptly note that the subsidiaries are legally required by the FCC to maintain corporate separateness as a result of the divestiture of AT&T and the federal legislation resulting therefrom. See, 47 U.S.C. §§ 271, 272; U.S. v. AT&T, Co., 552 F.Supp. 131 (D.D.C. 1982). The resulting legislation proscribes the subsidiaries’ region of lawful operation. Essentially, the subsidiaries are prohibited from operation outside of defined region. As a result of the aforementioned, the court cannot conclude that VCI is the alter ego of the instant subsidiaries based on Directory Dividends. Pennsylvania law states that only in extreme circumstances and upon a sufficient showing that the parent exercised such dominion and control of the subsidiary to render it a mere instrumentality of the parent will the corporate veil be pierced to subject the parent or subsidiary to the jurisdiction of the state. See Botwinick at 213 A.2d 354. Consequently, having found that VCI is not the alter ego of the moving subsidiaries, the court also concludes that it does not have personal jurisdiction over the moving Defendant subsidiaries.

No evidence that VCI dominates and controls subsidiaries such that contacts imputable to VCI.

B. Verizon Website Contacts

Plaintiff additionally argues that the Verizon website confers personal jurisdiction over the Defendant subsidiaries. In support Plaintiff provides evidence that a Pennsylvania resident ordered telephone services via the Verizon website for telephone services to be provided outside of Pennsylvania. However, as Defendants note none of the orders made were for services provided by the Defendant subsidiaries for services in Pennsylvania. Under the law, each of the Defendants must have purposefully availed itself of conducting activity in the forum state by directly targeting its website activities to the state. Toys “R” Us, Inc. et al v. Step Two, S.A., et al., 318 F.3d 446, 454 (3d Cir. 2003). There is insufficient evidence to support a finding that the subsidiary Defendants have purposefully conducted activity in Pennsylvania through the Verizon website that meets the threshold requirements. Indeed, it appears that none of them offer services in Pennsylvania to Pennsylvania residents. Accordingly, the Defendant subsidiaries’ motion to dismiss will be granted.

III. CONCLUSION

The court concludes that there is no basis for this court to exercise alter-ego jurisdiction over the Defendant subsidiaries because Plaintiff has not offered evidence that VCI and its subsidiaries are a single functioning entity. Further, the court concludes that it cannot properly exercise general jurisdiction over the subsidiary Defendants based upon the subsidiaries alleged contacts with Pennsylvania via the verizon website. Because the court cannot exercise personal jurisdiction over the Defendant subsidiaries their motion to dismiss will be granted. Plaintiff’s motion to compel discovery from the Defendant subsidiaries will be denied because although discovery has never closed in this matter, Plaintiff has not provided the court with evidence to support its assertion that exercising personal jurisdiction over the subsidiary Defendants is proper.

An appropriate order follows.

