

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

KEITH ERVIN, et al.	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	
	:	
FIRST AMERICAN MARKETING CORPORATION, et al.	:	
Defendants.	:	NO. 05-00184

Stengel, J.

March 30, 2006

MEMORANDUM and ORDER

I. BACKGROUND

On January 15, 2005, Keith Ervin, Kimberly Ervin, James Garcia, Pauline Serfass, and Ronald Bresel (“the former employees”) resigned without notice from their positions at First American Marketing Corp. Shortly thereafter the former employees started their own company (United Integrity Group, Inc.) and then filed this suit against, First American Marketing Corp. (“FAMC”), First American Capital Corp. (“FACC”), Margaret Hall, and the estate of Henry Hall (“the Halls”). The former employees demanded unpaid commissions, declaratory relief from contracts entered into by Garcia, Serfass, and Bresel with FAMC, and compensation/dissolution of FAMC and FACC for ultra vires acts committed by Margaret Hall (the current president of First American who took over following her husband’s sudden death in December of 2004).

In early February of 2005, FAMC commenced suit against the former employees, Douglas Schwarzwaelder, and United Integrity Group claiming breach of contract, misappropriation of trade secrets, breach of duty of loyalty, unfair competition,

conversion, breach of good faith and fair dealings, and tortious interference with contractual relations and prospective advantage. On February 10, 2005, this Court granted FAMC a preliminary injunction against the former employees.

Currently before this court is the defendant's motion to dismiss Margaret Hall and the estate of Henry Hall for Lack of Personal Jurisdiction.

II. DISCUSSION

This court has subject matter jurisdiction over the parties pursuant to 28 U.S.C. § 1332. The Halls now move to dismiss based upon a lack of personal jurisdiction.

A. Personal Jurisdiction Standard

The district court will determine personal jurisdiction based upon the laws of the state in which the court sits. Pennzoil Products Company v. Colelli & Associates, Inc., 149 F.3d 197, 200 (3d Cir. 1998). Pennsylvania's long arm statute establishes jurisdiction over non-resident defendants to the extent allowable under the U.S. Constitution. 42 Pa. Cons. Stat. Ann. § 5322(b) (2005).

For this motion, the Court must accept the plaintiffs' allegations as true and draw all reasonable inferences from the pleadings, affidavits, and exhibits in their favor. DiMark Mktg., Inc. v. Louisiana Health Serv. & Indem. Co., 913 F. Supp. 402, 405 (E.D. Pa. 1996). However, when challenged, the burden of establishing personal jurisdiction rests upon the plaintiff. Grand Entertainment Group v. Star Media Sales, 988 F.2d. 476, 482 (3d. Cir. 1993).

The Supreme Court has established a two prong test defining the due process limits for exercising personal jurisdiction. Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985). First, the defendant must have made constitutionally sufficient minimum contacts with the forum state. Id. at 474. Those minimum contacts may establish either general and specific jurisdiction. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984). Then once constitutionally sufficient contacts are established, the court must consider whether the exercise of personal jurisdiction comports with “traditional notions of fair play and substantial justice.” Burger King, 471 at 476 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945)).

If the defendant “reach[ed] out beyond one state and creat[ed] continuing relationships and obligations with citizens of another state,” the court may find that the defendant had a substantial connection with that other state. Bank (East) PSFS, National Association v. Farino, 960 F.2d 1217, 1222 (3d Cir. 1992) (quoting Burger King, 471 U.S. at 473-74).

For this case, in order to establish personal jurisdiction as to the Halls, the plaintiffs need to show that the Halls purposefully availed themselves of the privileges of conducting activities within Pennsylvania, thereby invoking the benefits and protections of its laws. Burger King, 471 U.S. at 474-75. Further, the plaintiffs must show that the Halls have minimum contacts with Pennsylvania such that they could “reasonably

anticipate being haled into court” here. Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

B. Have the Plaintiffs Met That Standard?

Ms. Hall has never lived or worked in the Commonwealth of Pennsylvania. She does not own either real or personal property in Pennsylvania and she does not pay taxes in Pennsylvania. Her only contacts to the Commonwealth of Pennsylvania are through her business, and her last trip to Pennsylvania was in January of 2003. However, when a corporate officer engages in “tortious conduct in his or her corporate capacity in the forum state, personal liability may attach.” D&S Screen Fund II v. Ferrari, 174 F. Supp. 2d 343, 347 (E.D. Pa. 2001) (citing United Products Corporation v. Admiral Tool & Manufacturing Co., 122 F. Supp. 2d 560 (E.D. Pa. 2000); Huth v. Hillsboro Insurance Management, Inc., 72 F. Supp. 2d 506, 511 (E.D.Pa. 1999); Elbeco, Inc. v. Estrella de Plato, Corp., 989 F. Supp. 669, 675 (E.D.Pa. 1997)). Moreover, corporate officers are precluded from invoking the corporate shield¹ when they are involved in tortious behavior. D&S Screen at 347. Courts then view the corporate behavior on a case by case basis in which the following factors are analyzed to determine if personal liability to the

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In general, individuals performing acts in a state in their corporate capacity are not subject to the personal jurisdiction of the courts of that state for those acts. See Worldcom Techs., Inc. v. Intelnet Int'l, Inc., 2002 U.S. Dist. LEXIS 15892, No. 00-2284, 2002 WL 1971256, at *4 (E.D. Pa. Aug. 22, 2002); D & S Screen Fund II v. Ferrari, 174 F. Supp. 2d 343, 347 (E.D. Pa. 2001). This principle is commonly referred to as the “fiduciary shield” or “corporate shield” doctrine. See D & S Screen, 174 F. Supp. 2d at 347.

Streamlight, Inc. v. ADT Tools, Inc., 2003 U.S. Dist. LEXIS 19843, * 10-11 (E.D. Pa. 2003) (Hutton, J.).

officer should attach: (1) the officer's role in the corporate structure; (2) the quality of the officer's contacts; and (3) the nature and extent of the officer's participation in the alleged tortious conduct. D&S Screen 174 F. Supp. 2d at 347 (citing McMullen v. European Adoption Consultants, Inc., 129 F. Supp. 2d 805, 811 (W.D.Pa. 2001); United Products, 122 F. Supp. 2d at 562; Elbeco, 989 F. Supp. at 676).

In this case, the plaintiffs allege various forms of business torts committed by the Halls including misappropriation of corporate assets and corporate waste. According to the complaint, Mrs. Hall was not a shareholder prior to Mr. Hall's death. After his death, Mrs. Hall was elected as President of the defendant Companies by the Board, which itself was not properly voted in, without notice to the shareholders. After, or possibly prior to, Mrs. Hall's illegal ascension to President, and again without notice to the Shareholders, Mrs. Hall acquired 80,000 shares of class A stock and 5,000,000 shares of class A-1 stock. Prior to this action, the class A-1 stock did not exist, and no consideration was ever paid for these newly obtained shares. The plaintiffs allege that by issuing herself these new shares, without proper authority or consideration, Mrs. Hall committed the tortious conduct of conversion, theft and fraud. Such tortious acts made by Mrs. Hall negatively affected the shareholders, a majority of whom reside and work in Pennsylvania. Furthermore, FAMC and FACC were founded through the personal recruitment of prospective shareholders by Mr. Hall in Pennsylvania. Almost all of the clientele, shareholders, sales force and some offices for the defendant companies reside in

Pennsylvania. Plaintiffs allege that Mrs. Halls's actions were a direct breach of her fiduciary duties owed to Pennsylvania citizens.

For purposes of this motion to dismiss, I find the plaintiffs have met their burden of establishing personal jurisdiction over the Halls. Mr. Hall created constitutionally sufficient minimum contacts with the Commonwealth of Pennsylvania by personally soliciting shareholders for the defendant companies within the Commonwealth, and through his direct and continued contact with those shareholders. Those contacts were the direct result of his activities as the President of the defendant companies. When Ms. Hall assumed the role as the President of the defendant companies upon Mr. Hall's death, she equally assumed the President's contacts for purposes of personal jurisdiction because, as President, she could be held liable for ultra vires acts to the majority of shareholders who continued to reside in Pennsylvania. Consistent with the "traditional notions of fair play and substantial justice" as described in Burger King, it is only fair that the president of a company who actively recruited a majority of its shareholders within the Commonwealth is subject to personal jurisdiction for ultra vires acts taken against those shareholders.

III. CONCLUSION

For the reasons discussed above, I will deny the defendants' motion to dismiss. An appropriate order follows.

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ORDER

AND NOW, this 30th day of March, 2006, upon consideration of the defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Docket # 8), it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.