

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

LASALLE BUSINESS CREDIT, LLC,	:	CIVIL ACTION
	:	
	:	No. 05-5849
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
HARVEY OXENBERG	:	
	:	
	:	
Defendant.	:	

JOYNER, J

July 18, 2006

MEMORANDUM AND ORDER

This case arises from a breach of contract between LaSalle Business Credit, LLC ("Plaintiff" or "LaSalle") and loan guarantor, Harvey Oxenberg ("Defendant"). The Plaintiff claims: (1) Defendant consented to jurisdiction for all claims; (2) extended personal guaranties to LaSalle based on business transactions in Pennsylvania, and(3) that by visiting Pennsylvania in regards to those transactions, the Defendant has established enough minimum connections to support the Court's exercise of personal jurisdiction and venue.

Presently before the Court is Defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12 (b)(2) and Fed R. Civ. P. 12 (b)(3), because this Court lacks personal jurisdiction and the venue is improper. The Defendant asserts that he did not have "continuous and systematic" contacts within the state of Pennsylvania to satisfy the requirements of personal

jurisdiction. The Defendant also states that he did not personally participate in actions within the forum that would cause him to be subject to this Court's jurisdiction. For the reasons that follow, we will deny Defendant's Motion to Dismiss for lack of personal jurisdiction and improper venue.

BACKGROUND

Accepting Plaintiff's allegations as true, the facts are as follows. Defendant is an officer, director and owner of SeaSpecialties, Inc. ("SeaSpecialties") and FSF Trading, Corp. ("FSF"). SeaSpecialties owns Homarus/Marshall Smoked Fish, Inc. ("Homarus"). In 1998, he served as a loan guarantor for SeaSpecialties and FSF. (Compl. ¶ 2.)

On or about February 24, 1998, LaSalle made a loan in the amount of \$7,750,000 to SeaSpecialties Inc., a Florida corporation. (Compl. ¶ 2). A portion of the SeaSpecialties loan was used to support operations in Bucks County, Pennsylvania. (Pl.'s Mem. In Opp'n to Def.'s Am. Mot. To Dismiss Pl.'s Am. Compl. at 2.)

On or about August 6, 1998, LaSalle granted a term loan for \$625,000 to FSF, also a Florida corporation where Defendant serves as President. The FSF term loan proceeds were also used to maintain the property in Bucks County, Pennsylvania to be leased to Homarus for its use in the area. (Pl.'s Mem. In Opp'n to Def.'s Am. Mot. To Dismiss Pl.'s Am. Compl. at 3.)

The Defendant executed three guaranties for these loans. On or about August 5, 1998, Defendant entered into a Continuing Unconditional Guaranty. On or about August 20, 2001, Defendant entered into a Fourth Additional Limited Guaranty. On or about May 9, 2002, Defendant entered into an Amended and Restated Limited Guaranty; both the Amended and Restated Guaranty were issued to guarantee the financial obligations of SeaSpecialties. (Compl. ¶¶ 3-4.) Modifications were made to the agreement as needed. Modification No. 13 contains jurisdiction and venue provisions. The provisions state that both parties would consent to the jurisdiction of the Commonwealth of Pennsylvania and of the United States District Court for the Eastern District of Pennsylvania. (Compl. ¶¶ 3-4.)

In May of 2002, Defendant visited Philadelphia to meet with LaSalle First Vice President David S. Oppenheimer ("Oppenheimer"). During this visit, the Defendant also spent time with employees at his Bucks County, Pennsylvania operation. The Defendant visited the Philadelphia area again in October of 2003 to meet with Oppenheimer and visit his employees. (Pl.'s Mem. In Opp'n to Def.'s Am. Mot. to Dismiss Pl.'s Am. Compl. at 4-5.)

In June of 2005, Plaintiff began to liquidate FSF and SeaSpecialties, and defaulted on his loans. At this point, all amounts under the loan agreement became due. After receiving no

response from SeaSpecialties or FSF, LaSalle demanded that the Defendant pay all amounts owed based on the guaranties he signed. (Compl. ¶¶ 4-5.)

PROCEDURAL HISTORY

LaSalle filed its Complaint against Defendant on November 7, 2005. On December 27, 2005, the Defendant filed a motion to dismiss the Complaint on grounds that this Court lacked subject matter and personal jurisdiction. The Defendant also asserted that this Court was not the proper venue. LaSalle filed an Amended Complaint on December 29, 2005 and then argued that the subject matter jurisdiction issue was moot. Finally, on February 3, 2006, the Defendant filed an Amended Motion to Dismiss Plaintiff's Amended Complaint for lack of personal jurisdiction and improper venue. (Pl.'s Mem. In Opp'n to Def.'s Am. Mot. to Dismiss Pl.'s Am. Compl. at 5-6.)

DISCUSSION

I. Legal Standard

A defendant has the burden of showing a lack of personal jurisdiction. See Fed.R. Civ. P. 12 (h)(1). 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." Pinker v. Roche Holdings Ltd., 292 F.3d 361, 368 (3d Cir. 2002). The Plaintiff must prove with "reasonable particularity that sufficient

contacts to support jurisdiction exist between the defendant and the forum state." Mass. Sch. of Law at Andover, Inc. v. Am. Bar Assoc., 846 F. Supp. 374 (E.D. Pa. 1994).

II. Personal Jurisdiction

In order to determine if personal jurisdiction exists over a non-resident defendant, this Court must determine (1) whether jurisdiction exists under Pennsylvania's long-arm statute, and (2) whether exercising jurisdiction would violate the due process clause of the Fourteenth Amendment to the United States Constitution. Van Buskirk v. Carey Canadian Mines, Ltd., 760 F. 2d 481, 489-90 (3d Cir. 1985).

Pennsylvania's long-arm statute provides definitions of general and specific jurisdiction. General jurisdiction is used to assert personal jurisdiction when the claim does not arise out of or is unrelated to the defendant's contacts with the forum. Dollar Sav. Bank v. First Sec. Bank of Utah, 746 F. 2d 208, 211 (3d Cir. 1984). This Court may assert general jurisdiction over a person when defendant (1) is served within Pennsylvania, (2) consents to jurisdiction, or (3) is a domiciliary of Pennsylvania. 42 Pa. Cons. Stat. Ann. § 5322.

This court may exercise specific jurisdiction when "the claim is related to or arises out of the defendant's contacts with the forum." Id. The defendant must have "certain minimum

contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). The plaintiff must show that: (1) there is a 'substantial connection' between the defendant and the forum state, Burger King Corp v. Rudzewicz, 471 U.S. 462, 475 (1985); and (2) the exercise of jurisdiction would not make litigation 'so gravely difficult and inconvenient' that the party is severely disadvantaged. The M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 18 (1972).

Pennsylvania's long-arm statute provides for specific jurisdiction when the cause of action arises from defendant's business transactions within the Commonwealth. 42 Pa C.S.A. §5322 (a)(1). Specifically, the statute states in relevant part that:

A tribunal of this Commonwealth may exercise personal jurisdiction over a person... who acts directly or by an agent, as to a cause of action or other matter arising from such person:

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:...

(iv) The engaging in any business or profession within this Commonwealth, whether or not such business requires license or approval by any government unit of this Commonwealth.

(v) The ownership, use or possession of

any real property situate within this Commonwealth.

42 Pa C.S.A. §5322 (a)(1)(iv),(v).

The long-arm statute also states that:

[i]n addition to the provisions of subsection (a), the jurisdiction of the tribunals of this Commonwealth shall extend...to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.

42 Pa C.S.A. §5322(b).

A. General Jurisdiction With Respect to Defendant's Consent to Jurisdiction.

An individual defendant may consent to personal jurisdiction and venue in forum selection clauses. See, e.g., Provident Mutual Life Ins. Co. v. Bickerstaff, 818 F. Supp. 116, 118 (E.D. PA. 1993). A forum selection clause must clearly be shown to be a vital part of the agreement. M/S Bremen states that "it would be unrealistic to think that the parties did not conduct their negotiations including fixing the monetary terms, with the consequences of the forum clause figuring prominently in their calculations." M/S Bremen 407 U.S. at 15. The Defendant understood when he guaranteed the loans and accepted the modifications that the Commonwealth of Pennsylvania and the United States District Court for the Eastern District of Pennsylvania would have jurisdiction of all matters in the loan agreement.

The Supreme Court held in M/S Bremen that forum selection clauses are "prima facie valid" and should be enforced unless shown to be "unreasonable under the circumstances". M/S Bremen, 407 U.S. at 15. Courts have stated that a forum selection clause not secured through coercion can be seen as unreasonable and invalid if it is seen as seriously inconvenient. A defendant must show that the forum is so gravely difficult that they will be deprived of their day in court or the clause was procured through fraud or overreaching. M/S Bremen, 407 U.S. at 16.

In the present case, the Defendant has failed to present this evidence. The Defendant consented to jurisdiction in two sections of the loan modification agreement, Section 20(b) and Section 14. Section 20(b) discusses venue for the Amended and Restated Limited Guaranty and the Fourth Additional Limited Guaranty states that:

"Obligors, by their signatures set forth below, irrevocably consent" to this Court's jurisdiction for all actions or proceedings "in any way, manner or respect, arising out of or from or related to the Loan Agreement, the Loan Documents, the other Agreements or the Collateral." (Modification 13 § 20 (b).)

"Obligor" is defined to include "the individual Guarantor," Harvey Oxenberg.(Modification 13, p. 3.) Harvey Oxenberg visits the Philadelphia area consistently to monitor his SeaSpecialties, FSF, and Homarus operations. Furthermore, the Defendant consented to this Court's jurisdiction in Modification No. 13 Section 14. Section 14 requires the Defendant to consent to all claims

brought by LaSalle and does not pertain to any particular loan document. Section 14 states "each Obligor irrevocably consents to the non-exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania and of the United States District Court for the Eastern District of Pennsylvania." (Modification 13 § 14.) Here, Plaintiff provides no evidence that enforcement of this clause is unreasonable or unjust or that it was obtained through "fraud or overreaching." M/S Bremen, 407 U.S. at 15.

Rather, the record here indicates that the Defendant, a Miami resident, owned SeaSpecialties which owned Homarus. Homarus operated out of Bucks County, Pennsylvania. When the Defendant guaranteed the loan and signed modifications to the loan, he fully understood he would be dealing with LaSalle's Philadelphia, Pennsylvania office. As a personal guarantor of the loans, the Defendant was not served in Pennsylvania, nor is he domiciled in Pennsylvania. We thus find that, as an individual, the Defendant consented to the general jurisdiction of this Court in Sections 14 and 20 of loan modification document No. 13.

B. Specific Jurisdiction over an Individual due to Minimum Contacts with the Forum and Traditional Notions of Fair Play and Substantial Justice.

We also find that as an individual, the Defendant satisfies the requirements of specific jurisdiction. In National Can

Corporation v. K. Beverage Company, 674 F. 2d 1134 (6th Cir. 1982), the Court held that guarantor defendants satisfied the requirements for specific jurisdiction where they signed a personal guaranty for a business they had an economic interest in that had the requisite "minimum contacts" with the forum. This court held in MM Properties v. Coolawalla, Inc. Enterprises, No. Civ.A.95-7598, 1996 WL 355331 (E.D. Pa. June 26,1996), that defendant guarantors had sufficient "minimum contacts" with the forum. In that case, the defendants had on numerous occasions faxed written communications to King of Prussia, Pennsylvania and engaged in telephone conference calls with the King of Prussia office. This Court determined that these negotiations established a "substantial connection" between the defendants and the forum." *Id.* at 4 (citing Burger King Corp. v. Rudzewicz, 471 U.S. at 479 (1985)). Here, when the Defendant personally met with Mr. Oppenheimer to discuss his role as guarantor of the loans, he purposely availed himself of jurisdiction within the Commonwealth of Pennsylvania. The Defendant engaged in acts within the forum and consistently conducted business with Mr. Oppenheimer. The Plaintiff's personal "negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing . . . must be evaluated in determining whether the defendant purposely established minimum contacts." Burger King Corp.v. Rudzewicz, 471 U.S. 462, 479

(1985). During the meetings with Mr. Oppenheimer, the Defendant discussed the operations and financial obligations of SeaSpecialties, Homarus, and FSF. Based on the Defendant's ongoing visits to Philadelphia to discuss the loan agreement, he purposefully availed himself of the privilege of conducting activities within the forum state. He invoked the benefits and protections of the laws of Pennsylvania. Hanson v. Denckla, 357 U.S. 235,253 (1958).

The Defendant established enough "minimum contacts" with the forum to establish jurisdiction of this Court. Many courts have stated that one visit by a defendant to the forum may provide the necessary "minimum contacts" if the contract that is the basis of the cause of action was negotiated during the visit. Stop-a-Flat Corp. v. Electra Start of Michigan, Inc., 507 F. Supp. 647, 650-651 (E.D. Pa. 1981). When the Defendant met with Mr. Oppenheimer in June of 2005, they specifically discussed the Defendant's liquidation of FSF and SeaSpecialties, and the financial ramifications as they related to LaSalle. The June 2005 meeting in conjunction with meetings that occurred in May of 2002 and October of 2003 provide for the specific jurisdiction of this court.

Since minimum contacts have been established, this Court must now determine if exercising specific jurisdiction over the Defendant complies with "traditional notions of fair play and substantial justice." International Shoe, 326 U.S. at 316. The

Defendant has failed to prove that jurisdiction is unreasonable. Courts have stated that "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." General Electric v. Duetz AG, 270 F. 3d 144(2001). Here it appears that the Defendant, as President of Homarus, regularly travels to the Philadelphia area to meet with employees at his Bucks County operation. The Defendant is also currently litigating a related mortgage foreclosure action in Bucks County, and he is President of FSF which conducts business in Pennsylvania. Through business negotiations with LaSalle and ongoing visits to Bucks County in association with FSF, SeaSpecialties and Homarus, the Defendant has shown an ability to come to the forum state. Based on the minimum contacts, the exercise of jurisdiction comports with fair play and substantial justice. This Court may exercise specific jurisdiction over the defendant.

III. Venue is Proper in the Eastern District of Pennsylvania

Under 28 U.S.C. § 1391 (a):

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in(1) a judicial district where any defendant resides, if all defendants reside in the same state,(2) a judicial district in which a substantial part of property that is the subject of the action is situated, or(3) a judicial

district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought. 28 U.S.C. § 1391 (a).

In this case, the Bucks County operation is the subject of this action, because the loans at issue were used to support it. The real property that was used to secure the mortgage between FSF and LaSalle is located in Bucks County, Pennsylvania. The FSF term loan was used to maintain the property in Bucks County, Pennsylvania and related foreclosure actions are pending in the Court of Common Pleas for Bucks County. Because this Court previously has determined that the Defendant has sufficient minimum contacts to be subject to personal jurisdiction, venue is proper under 28 U.S.C. § 1391 (a). Accordingly, Defendant's Motion to Dismiss for Improper Venue is denied.

CONCLUSION

For the above mentioned reasons, we will deny Defendant's Motion to Dismiss the complaint for lack of personal jurisdiction and improper venue. An appropriate order follows.

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v.	:	
	:	
HARVEY OXENBERG	:	
	:	
Defendant.	:	

JOYNER, J

July , 2006

ORDER

AND NOW, this 18th day of July, 2006, upon consideration of Defendant's Motion to Dismiss for lack of personal jurisdiction and improper venue, and Plaintiff's response thereto, it is hereby ORDERED and DECREED that Defendant's motion is DENIED. Defendant is directed to file his answer to the Plaintiff's Amended Complaint within twenty (20)days of the entry date of this order.

BY THE COURT:

s/J. Curtis Joyner
J.CURTIS JOYNER, J.

