

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

THE QUANDEL GROUP : CIVIL ACTION
 :
 v. :
 :
 CHAMBERLIN CO., Inc. and :
 SOUTHERN COMMERCIAL :
 WATERPROOFING : NO. 98-5762

MEMORANDUM ORDER

This is a breach of contract action. Presently before the court is defendant Southern Commercial Waterproofing's ("Southern") Motion to Dismiss for lack of personal jurisdiction, improper venue and failure to state a claim.

Plaintiff alleges that it entered into a subcontract with defendant Chamberlin whereby it was to provide waterproofing for a project at Virginia Polytechnic and State University in Blacksburg, Virginia for which plaintiff was the general contractor. Plaintiff alleges that at some point Chamberlin began to perform its contractual duties "either through or in conjunction with" Southern, its "parent or subsidiary corporation," and that defendants breached the contract by improperly and untimely performing the waterproofing work.

Once a defendant asserts lack of personal jurisdiction, the burden is upon the plaintiff to make at least a prima facie showing with sworn affidavits or other competent evidence that

such jurisdiction exists. See Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66-67 n.9 (3d Cir. 1984); Leonard A. Fineberg, Inc. v. Central Asia Capital Corp., 936 F. Supp. 250, 253-54 (E.D. Pa. 1996); Modern Mailers, Inc. v. Johnson & Quin, Inc., 844 F. Supp. 1048, 1051 (E.D. Pa. 1994). To make such a showing, a plaintiff must demonstrate "with reasonable particularity" contacts between the defendant and the forum sufficient to support an exercise of personal jurisdiction. Mellon Bank (East) PSFS Nat'l Assoc. v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992).

A federal district court has personal jurisdiction over a defendant to the same extent as a court of the state in which the district is located. See Fed. R. Civ. P. 4(k). The Pennsylvania long-arm statute is co-extensive with the due process clause of the Fourteenth Amendment. See 42 Pa. C.S.A. § 5322(b); Pennzoil Products Co. v. Colelli & Assoc., 149 F.3d 197, 200 (3d Cir. 1998); Nagele v. Holy Redeemer Visiting Nurse Agency, 813 F. Supp. 1143, 1145 (E.D. Pa. 1993). Consistent with due process, personal jurisdiction may be general or specific depending on the nature of a defendant's contacts with the forum state.

To establish general jurisdiction, a party's contacts with the forum must be "continuous and substantial." Pennzoil, 149 F.3d at 200. Southern has neither continuous nor substantial

contacts with Pennsylvania. Southern is incorporated under the law of Delaware and maintains its principal place of business in Birmingham, Alabama. Its averments that it is not licensed to do business in Pennsylvania; has no office, employees or sales agents in Pennsylvania; has never conducted business in Pennsylvania; has not advertised in Pennsylvania; and, has no telephone or bank account in Pennsylvania are uncontroverted.

Specific jurisdiction exists when a plaintiff's claim is related to or arises out of the defendant's contacts with the forum. See Pennzoil, 149 F.3d at 201. The defendant must have "minimum contacts" with the forum such that the defendant could have "reasonably anticipated being haled into court there." Id. If minimum contacts have been established, a court may inquire as to whether "the assertion of personal jurisdiction would comport with fair play and substantial justice." Id. Southern does not have the requisite minimum contacts with Pennsylvania. Southern was not a party to the subcontract at issue and has no contract with plaintiff. There is no showing or even suggestion that Southern had any contacts with Pennsylvania related to plaintiff's breach of contract claim.

Plaintiff has made no showing to substantiate its allegation that Southern is Chamberlin's parent or subsidiary. Southern's affidavit that the companies are distinct, that it is neither a parent nor subsidiary of Chamberlin and that the two

Motion to Dismiss (Doc. #4) and in the absence of any timely response by plaintiff thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in that plaintiff's complaint as to Southern Commercial Waterproofing is **DISMISSED** for lack of personal jurisdiction and improper venue without prejudice to reassert any cognizable claim against Southern in an appropriate forum, and Southern is dismissed and terminated as a party defendant herein.

BY THE COURT:

JAY C. WALDMAN, J.