

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

FRANKLIN MINT COMPANY, : CIVIL ACTION
 :
 v. :
 :
 CAMDEX INTERNATIONAL, INC. : NO. 99-4170

MEMORANDUM AND ORDER

HUTTON, J.

March 9, 2000

Presently before the Court is Defendant's Motion to Dismiss, (Docket No. 8), and Plaintiff's Opposition thereto. For the following reasons, Defendant's Motion is **DENIED**.

I. BACKGROUND

This action arises out of a 1998 purchase agreement between Plaintiff and Defendant for the purchase of certain books. Plaintiff Franklin Mint Company is a Delaware Corporation with its principle place of business located in Pennsylvania. Defendant Camdex International is a New York corporation with its principle place of business in New York, and is in the business of purchasing and reselling books.

On April 25, 1997, the parties entered into a written purchase agreement for the purchase of certain books. At some time on or after June, 1997, but before January, 1998, this initial purchase agreement was satisfied. Subsequently, the parties entered into a 1998 purchase agreement wherein Defendant was to purchase

additional books from Plaintiff. It is this 1998 purchase agreement which gives rise to Plaintiff's Complaint.

Plaintiff alleges that the parties engaged in in-person negotiations surrounding the 1998 purchase agreement at Plaintiff's Pennsylvania headquarters on at least two occasions, and that such negotiations resulted in the agreement to sell certain books to Defendant at prices of \$1.25 and \$1.00.

Following said negotiations, Defendant issued purchase order to Plaintiff pursuant to the 1998 discussions. Plaintiff alleges that Defendant failed to pay the resulting invoices pursuant to the 1998 purchase agreement and the agreed price term. It is the application of these agreed price terms to said invoices and the nature of the 1998 in-person visits to Plaintiff's Pennsylvania facility which forms the basis of Defendant's position in this instant motion.

Defendant's motion to dismiss raise three separate and distinct issues. First, Defendant asserts that the Court must dismiss the underlying action because it lacks personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). Second, Defendant asserts that the Court must dismiss for failure to state a claim for which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Third, Defendant asserts that the Court should dismiss or stay the underling action because of a parallel New York state court Declaratory Judgment action, in

which Defendant seeks a declaration of a reasonable price for the books purchased under the 1998 purchase agreement. The Court will consider each of these arguments in turn.

II. DISCUSSION

A. Motion to Dismiss for Lack of Personal Jurisdiction

When a defendant raises a defense of lack of personal jurisdiction, the plaintiff then bears the burden to come forward with sufficient facts to establish that jurisdiction is in fact proper. Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992). The plaintiff must produce "sworn affidavits or other competent evidence," since a Rule 12(b)(2) motion "requires resolution of factual issues outside the pleadings" Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 67 n.9 (3d Cir. 1984). For the purposes of the motion, the court must accept as true the plaintiff's version of the facts, and draw all inferences from the pleadings, affidavits, and exhibits in the plaintiff's favor. DiMark Mktg., Inc. v. Louisiana Health Serv. & Indem. Co., 913 F. Supp. 402, 405 (E.D. Pa. 1996); In Re Arthur Treacher's Franchisee Litigation, 92 F.R.D. 398, 409-10 (E.D. Pa. 1981).

Under Federal Rule of Civil Procedure 4(e), this Court may exercise personal jurisdiction over non-resident defendants to the extent permitted by Pennsylvania's long-arm statute. Pennsylvania exercises jurisdiction over non-residents to the fullest extent

allowed under the Due Process Clause of the Fourteenth Amendment of the Constitution. See 42 Pa. Cons. Stat. Ann. § 5322(b). The constitutional limitations on the exercise of personal jurisdiction differ depending upon whether a court seeks to exercise general or specific jurisdiction over a non-resident defendant. See Mellon, 960 F.2d at 1221. General jurisdiction permits a court to exercise personal jurisdiction over a non-resident for non-forum related activities when the defendant has engaged in "systematic and continuous" activities in the forum state. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-16, 104 S. Ct. 1868, 80 L. Ed.2d 404 (1984). In the absence of general jurisdiction, specific jurisdiction permits a court to exercise personal jurisdiction over a non-resident defendant for forum-related activities where the "relationship between the defendant and the forum falls within the 'minimum contacts' framework" of International Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), and its progeny. Mellon, 960 F.2d at 1221.

1. Specific Jurisdiction

The Plaintiff in this case does not allege that "general jurisdiction" is proper, rather Plaintiff asserts a claim of "specific jurisdiction" over the Defendant. A court's inquiry as to whether it has specific jurisdiction over a defendant starts with the Pennsylvania long-arm statute, which provides in pertinent

part that "[a] tribunal of this Commonwealth may exercise [specific] personal jurisdiction over a person . . . who acts directly or by an agent . . . (1) Transacting any business in this Commonwealth." 42 Pa. Cons. Stat. Ann. § 5322(a). The statute permits the exercise of jurisdiction "based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." § 5322(b).

Under the Due Process Clause, a court can exercise specific jurisdiction over a defendant who has purposefully established "minimum contacts" in the forum state such that it "should reasonably anticipate being haled into court there." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474, 105 S. Ct. 2174, 85 L. Ed.2d 528 (1985) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945) and World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).

"Specific jurisdiction is invoked when the cause of action arises from the defendant's forum related activities . . . 'such that the defendant should reasonably anticipate being haled into court there.'" Verotex Certainteed Corp. v. Consolidated Fiber Glass Prods. Co., 75 F.3d 147, 151 (3d Cir. 1996) (citations omitted). To establish specific jurisdiction, "the plaintiff must show that the defendant has constitutionally sufficient 'minimum contacts' with the forum." IMO Industries, Inc. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998). In applying the minimum contacts

standard, it is clear that a "defendant will not be haled into a jurisdiction solely as a result of 'random,' fortuitous,' or 'attenuated' contacts." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed.2d 528 (1985). Rather, the plaintiff must establish that the defendant "purposefully availed itself" of the privilege of conducting activities within the forum. Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 2 L. Ed.2d 1283 (1958).

Nevertheless, even if "purposeful availment" is established, the Court must consider whether the exercise of personal jurisdiction would comport with the notion of "fair play and substantial justice." See Burger King, 471 U.S. at 476, 105 S. Ct. at 2184. In making this determination, the Court considers (1) the burden on the defendant; (2) the plaintiff's interests in obtaining convenient and effective relief; (3) the forum state's interest in adjudicating the dispute; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversies; and (5) the shared interests of the states in furthering fundamental substantive social policies. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292, 100 S. Ct. 559, 564, 62 L. Ed.2d 490 (1980). It is the defendant's burden to present a compelling set of circumstances which would render jurisdiction unreasonable. See Burger King, 471 U.S. at 477, 105 S. Ct. at 2184.

2. Specific Jurisdiction Analysis

"The mere existence of a contract between the non-resident defendant and the resident plaintiff does not, by itself, establish personal jurisdiction" Superior Precast v. Proto Constr. and Dev. Corp., No. CIV.A.99-1893, 1999 WL 455594, at *3 (E.D. Pa. July 6, 1999) (quoting AMP Inc. v. Methode Electronics Inc., 823 F. Supp. 259, 264 (M.D. Pa. 1993)). Rather, "[p]ersonal jurisdiction is a fact-specific inquiry. The focus is on the relationship among the defendant, the forum state and the litigation." AMP, 823 F. Supp. at 262. The Court in determining the existence of specific jurisdiction, considers the existing contract, as well as "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." See Verotex, 75 F.3d at 151 (quoting Burger King, 471 U.S. at 479, 105 S. Ct. at 2185). The Third Circuit has recognized that "informational communications in furtherance of [a contract between a resident and nonresident] does not establish the purposeful activity necessary for a valid assertion of personal jurisdiction over [the nonresident defendant]." Id. at 152 (citation omitted). Thus, one who is merely a "passive buyer" does not "purposefully avail" itself of the privilege of doing business within the non-resident forum. Id.

In considering the facts surrounding this case, the Court finds that Defendant has engaged in sufficient contacts with the

forum state of Pennsylvania to justify a finding of specific jurisdiction. In reviewing the affidavit of Gene Donohoe in support of Plaintiff's assertion that specific jurisdiction is proper, the Court notes that a review of the affidavit appears to attempt to justify jurisdiction over this matter, not only through the 1998 purchase agreement which is the subject of the underlying Complaint, but also pursuant to a 1997 purchase agreement that was apparently completed prior to the circumstances giving rise to this matter. (See Aff. of Donohoe ¶¶ 1-20; see also Am. Compl. ¶¶ 13-19 (explaining that the subject matter of the complaint concerns an alleged breach of a new 1998 book purchase agreement)). In essence, Plaintiff is attempting to bootstrap the 1997 purchase agreement contacts onto the separate and materially different 1998 purchase agreement.

At most the 1997 purchase agreement is only evidence of prior negotiations to be considered in the context of the instant dispute surrounding the 1998 purchase agreement. See, e.g., Verotex, 75 F.3d at 151 n.4. As such, the Court's conclusion that specific jurisdiction exists is based primarily upon those contacts alleged in Plaintiff's affidavit relevant only to the 1998 purchase agreement.

The affidavit provided by Plaintiff clearly evidences that Defendant's contact with Pennsylvania with respect to the 1998 purchase agreement was in the context of negotiating the terms of

the agreement, along with various communications necessary to complete the purchase. While the existence of mere communications with a forum state alone are insufficient to establish minimum contacts, Plaintiff's affidavit also states that Defendant entered Pennsylvania on at least two occasions for the purpose of negotiating the terms of the 1998 purchase agreement. (See Aff. of Donohoe ¶ 7). Although Defendant submits a contrary affidavit disputing the nature of the Pennsylvania visits, for the purpose of this motion all doubts must be resolved in favor of the Plaintiff. See Kishi Int'l, Inc. v. Allstate Textile Machinery, Inc., No. CIV.A.96-6110, 1997 WL 1836324, at *2 (E.D. Pa. April 11, 1997).

Looking at the totality of the circumstances surrounding the 1998 purchase agreement, the Court finds that Plaintiff has set forth a prima facie case of specific jurisdiction over defendants. The Defendant's communications with the forum state, coupled with the in-person contractual negotiations within Pennsylvania remove Defendant from the status of a "passive buyer." Further, the underlying Complaint in this matter arises out of a dispute concerning the terms of the agreement which were alleged to have been established during these in-person visits to Pennsylvania. (See Aff. of Donohoe ¶ 9). As such, the Court concludes that Defendant has sufficient minimum contacts with Pennsylvania to support a finding of specific jurisdiction under the Pennsylvania Long Arm Statute, and the established constitutional framework.

Although the Court concludes jurisdiction is proper, the inquiry must also consider if the exercise of such jurisdiction comports with the notion of "fair play and substantial justice." In this respect, the Court looks to Defendant to establish a set of compelling circumstances which render jurisdiction unreasonable. With this in mind, the Court finds that Defendant has failed to meet such a burden. The only evidentiary showing that Defendant makes with respect to the unreasonableness of jurisdiction is through the affidavit of Roger A. Raimond, which simply attempts to show that Plaintiff does business in New York, and thus a New York forum would not be inconvenient. (See Aff. of Raimond ¶ 6). Such evidence clearly does not rise to the level of compelling circumstances contemplated by the Supreme Court. See Burger King, 471 U.S. at 477, 105 S. Ct. at 2184.

Further, Defendant attempts to dispute the reasonableness of the Court's jurisdiction on the basis that Defendant is not a Pennsylvania resident and that all negotiation relevant to the 1998 purchase agreement took place outside Pennsylvania. (See Def.'s Mot. to Dismiss Am. Compl. at 17). For the purposes of this instant motion, however, such assertion appears to be incorrect. Plaintiff has provided competent evidence through an affidavit that Defendant did in fact negotiate the terms of the 1998 purchase agreement during in-person visits to Plaintiff's principle place of business within Pennsylvania. (See Aff. of Donohoe ¶ 7); see also Kishi

Int'l, Inc., 1997 WL 1836324, at *2 (stating that all doubts must be resolved in favor of the Plaintiff). Consequently, for the purpose of this motion it is apparent that Defendant's contacts with Pennsylvania were not the result of "random, fortuitous, or attenuated" contacts. As such, the Court finds that Defendant has failed to present a set of compelling circumstances which would render the Court's exercise of jurisdiction unreasonable and offensive to the notion of "fair play and substantial justice."

B. Failure to State a Claim Under Rule 12(b)(6)

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),¹

¹ Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)). The Court will only dismiss the complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

1. Failure to State a Claim Under Rule 12(b)(6) Analysis

Upon review of Plaintiff's Complaint it is clear that Defendant's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) must fail. Plaintiff's Amended Complaint contains one count of breach of contract which clearly alleges the necessary elements of a cause of action. Plaintiff has alleged (1) a valid and binding agreement to which Defendant was a party; (2) the agreement's essential terms were present, in particular the price term; (3) that Plaintiff complied with the agreement's terms; (4) that Defendant breached the duty imposed by the agreement; and (5) that damages resulted from Defendant's breach. (See Am. Compl. at ¶¶ 14-23); See also Gundlach v. Reinstein, 924 F. Supp. 684, 688 (E.D. Pa. 1996) (listing the elements required in a breach of contract case). As such, the Court cannot find any basis to conclude that as a matter of law Plaintiff's Complaint fails to

sufficiently state a claim for breach of contract.

Nevertheless, a review of Defendant's reasons for which Plaintiff's Complaint fails to state a claim essentially disputes the accuracy of invoices and contests the validity of certain factual allegations. (See Def.'s Mot. to Dismiss Am. Compl. at 18-21). Further, Defendant argues in his reply brief to Plaintiff's opposition of Defendant's Motion, which incidently was submitted without leave of the Court, that there was no meeting of the minds with respect to the price term in the 1998 purchase agreement. (See Def.'s Resp. to Pl.'s Opp'n at 7-8). Such, argument only further evidences Defendant's obvious misunderstanding of the procedural nature of a Rule 12(b)(6) motion.

Each and every objection by Defendant to Plaintiff's Complaint rests not with legal sufficiency of the claims when accepting as true the facts as alleged by Plaintiff. Rather, Defendant apparently attempts to cajole the Court into treating its explicit Rule 12(b)(6) motion as a Motion for Summary Judgment. As Courts have long held, a Rule 12(b)(6) motion confines the Court to the Complaint as alleged by the plaintiff. The Court may not look beyond the Complaint to determine if dismissal is proper pursuant to a Rule 12(b)(6) motion. See Anjelino v. New York Times Co., 200 F.3d 73, 87 (3d Cir. 1999) (stating that to the extent that the court considers evidence beyond the complaint in deciding a Rule 12(b)(6) motion, it is converted to a motion for summary judgment).

As is obvious from Plaintiff's Complaint, it clearly does not fail as a matter of law. Consequently, Defendant's Rule 12(b)(6) motion must be denied and any factual determinations are to be reserved for Summary Judgment.

C. The Colorado River Doctrine

Abstention premised upon the existence of a similar action pending between the parties in state court is commonly referred to as Colorado River abstention. See Colonial Penn Group, Inc. v. US Wats, Inc., No. CIV.A.94-2458, 1994 WL 502497, at *2 (E.D. Pa. Sept. 15, 1994). Such abstention is not premised upon principles of constitutional law or state-federal relations. Rather, it rests on considerations of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976).

In deciding whether a case is appropriate for Colorado River abstention, the Court should not attempt to find a substantial reason to exercise the jurisdiction conferred upon it; "rather, the task is to ascertain whether there exist 'exceptional circumstances,' the clearest of justifications, that can suffice under Colorado River to justify the surrender of that jurisdiction." Moses H. Cone Memorial Hosp. V. Mercury Constr. Corp., 460 U.S. 1, 25-26 (1983).

In light of the above stated reasons for which abstention may be premised, the Supreme Court has made it clear that such abstention is a rare occurrence. As such, the Supreme Court has established six factors that a district court is to consider in deciding whether the circumstances of a particular case are

exceptional: (1) whether one court has first obtained jurisdiction over property; (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which the state and federal court obtained jurisdiction; (5) the source of the law that will provide the rules of the decision; and (6) the adequacy of the state court proceeding to protect the rights of the parties. See Moses H. Cone, 460 U.S. at 15-16, 25-26; Colorado River, 424 U.S. at 818. A district court's analysis of the above factors should not be mechanical, rather the district court should carefully balance the factors that apply to the given case, "with the balance heavily weighted in favor of the exercise of jurisdiction." Moses H. Cone, 460 U.S. at 17.

Defendant's position that the Court should abstain from hearing this matter is premised upon a Declaratory Judgment action pending before the New York Supreme Court. (See Def.'s Mot. to Dismiss at 23-29). In such action Defendant is seeking to have the New York court determine a reasonable price for the books purchase pursuant to the 1998 purchase agreement. (See N.Y. Decl. Action at 1). As an initial matter, such Declaratory Judgment action is not germane to Plaintiff's case pending before this Court. Plaintiff's Complaint clearly alleges that the established prices for the purchased books were \$1.25 and \$1.00, therefore a reasonable price

determination is unnecessary.² Further, although Defendant alleges that the price to be paid for "excess inventory" was unresolved and to be determined by the parties at a later date, such assertion is contrary to the breach of contract claim asserted in Plaintiff's Complaint. (See Def.'s Mot. to Dismiss Am. Compl. at 23-29; see also Am. Compl. at ¶¶ 14-23). Furthermore, Plaintiff carries the burden of persuasion in proving its case. Thus, although Defendant's position may be relevant to defending the breach of contract claim, it can hardly be classified as such an "exceptional circumstance" which would justify abstention.

Additionally, in applying the abstention factors enunciated by the Supreme Court, there is no basis for federal abstention. First, there is no property which to obtain jurisdiction over, therefore such factor is not applicable to the Court's analysis. Second, there is no basis for the Court to conclude that the selected federal forum is inconvenient. As this is a simple breach of contract claim, it is unlikely that property located in New York will play an essential role in resolving Plaintiff's Complaint. Further, simply because Defendant's witnesses, attorneys, and files

² Defendant also claims that because its purchase orders did not state a price term, the courts must set a reasonable price pursuant to Article 2 of the Uniform Commercial Code. Section 2-201 of the Uniform Commercial Code states that "[a] writing is not insufficient because it omits or incorrectly states a term agreed upon, but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing." U.C.C. § 2-201 (statute of frauds). As Plaintiff's allege in their Complaint that the price term of the 1998 purchase agreement was established by the parties, and that Defendant's in turn sent confirmatory purchase orders, the Court finds that the pending Declaratory Judgment action is not relevant to the resolution of Plaintiff's Complaint.

are located in New York, hardly justifies a finding that the Pennsylvania forum is inconvenient. Just because one forum might be more convenient, does not render the alternative forum inconvenient. This is especially true given that the Court has already determined that the exercise of personal jurisdiction over this matter did not offend the notion of "fair play or substantial justice," or otherwise present an unreasonable exercise of jurisdiction.

Third, as previously discussed, the relevancy of the Declaratory Judgment action to Plaintiff's complaint is at most a minor concern given that Plaintiff alleges the existence of agreed price terms. As such the Court finds that the likelihood of piecemeal litigation is slight. Fourth, although the New York state court has jurisdiction over Defendant's Declaratory Judgment action, it has no jurisdictional claim over Plaintiff's breach of contract Complaint. Even if the New York court was to resolve the Declaratory Judgment action, Plaintiff's breach of contract claim would remain unresolved. As such, the Court does not find that the state court proceeding adequately addresses Plaintiff's rights or supports a finding that the state court first obtained jurisdiction over this matter. Fifth, although the choice of applicable law is relevant to an abstention determination, given the clear weight of the facts against abstention, the court finds that the resolution of any choice of law concerns need not be resolved at this time.

As such, when applying the abstention factors to the circumstances of this case, in light of the preference to exercise jurisdiction, the Court finds that Defendant has failed to show the existence of "exceptional circumstances" which would justify abstention over the resolution of this matter in favor of the state court proceedings.

An appropriate Order follows.

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

FRANKLIN MINT COMPANY, : CIVIL ACTION
 :
 v. :
 :
 CAMDEX INTERNATIONAL, INC. : NO. 99-4170

O R D E R

AND NOW, this 9th day of March, 2000, upon consideration of the Defendant's Motion to Dismiss the Amended Complaint (Docket No. 8), and Plaintiff's Opposition thereto, IT IS HEREBY ORDERED that the Defendant's Motion is **DENIED**.

IT IS HEREBY FURTHER ORDERED that Defendant's Motion to Dismiss (Docket No. 3) is **DENIED AS MOOT**.¹

BY THE COURT:

HERBERT J. HUTTON, J.

¹ As the Court has resolved Defendant's later motion to dismiss Plaintiff's amended complaint, the resolution of the previous motion to dismiss the original complaint is rendered moot.