

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

JACK L. WOLGIN, : CIVIL NO. 00-3997
Plaintiff :
 :
v. :
 :
FINE DECORATORS, INC. :
and :
THEODORE FINE :
and :
JAMES COHEN, :
Defendants :

Memorandum

August 7, 2001

Giles, C. J.

I. Introduction

Jack Wolgin brings this state law diversity action for fraud, fraud in the inducement, unjust enrichment, negligence and civil conspiracy against James Cohen ("Cohen"), Ted Fine ("Fine"), and Fine Decorators, Inc. ("Fine Decorators"). He alleges that the defendants made fraudulent misrepresentations to induce him to purchase a Porto Vita condominium in Florida and to pay \$276,613.20 to Fine and Fine Decorators for design work in the premises. Plaintiff seeks compensatory damages with interest, punitive damages, and attorney's fees.

Defendants now move to dismiss the complaint for lack of personal jurisdiction, pursuant to Fed. R. Civ. 12 (b)(2). For the reasons stated below, the motions are granted and the complaint is dismissed without prejudice. The court denies Fine Decorators' motion for attorney's fees.

II. Factual Background

A. James Cohen and the Sale of the Porto Vita Condominium

Responding to an advertisement in the November 1998 issue of Architectural Digest Magazine, Plaintiff, Wolgin initiated contact with Defendant, Cohen of Porto Vita Ltd., by telephone and set up an appointment to purchase a condominium at the Porto Vita Development ("Porto Vita") in Aventura, Florida. (Pl.'s Resp. to Def. Cohen's Mot. To Dismiss, p. 8-9).

Initial meetings took place between Wolgin and Cohen in Florida at the offices of Porto Vita. (Dep. Cohen,¹ pp. 18-20). On October 19, 1998, Wolgin negotiated and signed a contract to purchase a Porto Vita condominium. (Pl.'s Resp. to Def. Cohen's Mot. To Dismiss, Ex. C). The signing took place in Porto Vita's office in Aventura, Florida. (Dep. Cohen, p.66).

Cohen resides in Bay Harbor Islands, Florida. (Dep. Cohen, p. 62). He is licensed as a real estate broker only in Florida and conducts business for Porto Vita Ltd. in Dade County, Florida. (Dep. Cohen, pp. 5-10, 63).

At the time of negotiation and signing, the condominium was unfinished and not ready for habitation. The condominium required substantial construction, design, and decoration, including electrical work, plumbing, painting, carpeting,

¹Attached as Exhibit A to Pl.'s Resp. to Def. Cohen's Mot. To Dismiss.

flooring, masonry and construction of built-in furniture.

(Compl., p.5).

Wolgin alleges that Cohen represented and promised that he would personally act as the coordinator and supervisor of the renovation project and assist in obtaining a designer who would serve as overseer of the project and who was able to complete the necessary work in a timely and workmanlike manner. (Id.). Wolgin further alleges that Cohen represented that his compensation for such oversight would be paid by defendants, Fine and Fine Decorators, who were obtained by Cohen to perform the necessary work. (Compl., pp.5-6). Cohen maintains that his only involvement with the condominium project was the sale of the condominium to Wolgin. (Def. Cohen's Suppl. Br. In Supp. Of Mot. To Dismiss, p.3).

Alleged contacts by Cohen to the forum include full-page advertisements for the Porto Vita Development that were run in the national magazine Architectural Digest and advertisements for the Porto Vita Development run in Florida Design Magazine. Both magazines are available in Pennsylvania. (Pl.'s Br. In Resp. to Def. Cohen's Mot to Dismiss, Exs. L, N).

Telephone records for the period 1995 through 1999 reflect 168 calls from Cohen's home in Florida to Pennsylvania totaling 1,183 minutes. (These figures were derived from an affidavit attached as Exhibit E to Pl.'s Br. In Resp. to Def. Cohen's Mot.

to Dismiss. The affidavit attributed the calls to Fine Decorators probably in error.) Cohen asserted that the identified phone calls were to friends and family members. On three occasions, calls were placed to a Pennsylvania business engaged in manufacturing upholstery for aircrafts. (Dep. Cohen, pp. 45-51). Calls were also placed to the Pennsylvania residence of Kenneth Ross, who in addition to being a friend of the Cohen family, purchased a condominium at Porto Vita through Cohen. (Dep. Cohen, pp. 50-52).

Cohen also sold a Porto Vita condominium to L & M Associates of Pittsburgh, Pennsylvania on March 3, 1999 valued at \$595,000 (Pl.'s Br. In Resp. to Def. Cohen's Mot. to Dismiss, Ex. D).

Cohen made three flights in a personal aircraft to Pennsylvania in 1999 and generally visited family members in Pennsylvania about once a year. (Dep. Cohen, pp. 42, 52-54). He has previously owned real estate in Pennsylvania from 1982-1984. (Dep. Cohen, p. 78).

B. Ted Fine, Fine Decorators, and the Interior Design of Porto Vita

Sometime after meeting with Cohen in Florida, Wolgin entered into negotiations with Fine and Fine Decorators of Florida, regarding performance of the interior design of the unfinished condominium. (Compl., p. 6). Fine Decorators is a Florida

corporation engaged in the business of interior design and decorating. (Def. Fine's Mot. To Dismiss, p.2).

Wolgin and Fine Decorators entered into a retainer agreement in Florida on October 21, 1998. The agreement provided that Wolgin would pay \$10,000 in exchange for Fine Decorators starting work on the decorating job. (Def. Fine's Mot. To Dismiss, Ex. 2). Fine Decorators wrote to Wolgin on October 29, 1998 to confirm the mailing of a floor plan to Wolgin and to Cohen. (Pl.'s Br. In Opp. To Def. Mot. To Dismiss, Ex. 16).

Subsequently, the parties entered into the "Design Agreement" on December 3, 1998. The Design Agreement set out the terms of a comprehensive design plan and a schedule for \$255,000 worth of work to be performed by Fine Decorators. (Def. Fine's Mot. To Dismiss, Ex. 3). Later, the parties executed addenda to perform work beyond the original terms. (Pl.'s Br. In Opp. To Def. Mot. To Dismiss, Exs. 14, 15).

There were multiple correspondence and calls between the parties. On December 10, 1998, Wolgin sent a fax to Fine Decorators in Florida that stated that he had wired a \$50,000 deposit for work on the apartment and that he wanted the contract to be modified to include work the parties had previously discussed, such as the installation of wallpaper, electrical outlets, and a ceiling fan. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 17). On December 11, 1998, Fine Decorators

sent Wolgin a fax in Philadelphia telling him that they had agreed to his contract modifications. The fax also stated that the required deposit was \$81,666.67 and that Wolgin owed Fine Decorators an additional \$31,666.67 (Pl.'s Br. In Opp. To Def. Fine's Mot. To Dismiss, Ex. 8).

On January 13, 1999, Wolgin sent Fine and Fine Decorators a letter in Florida by mail and fax that discussed construction delays and offered three proposals. The first was to void the contract, the second was to have Wolgin provide sub-contractors to finish the remodeling, and the third was to have Fine Decorators continue with the remodeling work on a revised schedule. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 18). Fine Decorators' response by fax on January 14, 1999 detailed a revised schedule similar to the one Wolgin suggested. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 9).

Additional contacts between the parties include a fax on January 18, 1999 from Wolgin to Fine Decorators approving the purchase of items on one of the contracts, (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 19), and a fax on January 19, 1999 from Fine Decorators to Wolgin in Philadelphia noting additional contract changes. (Pl.'s Br. In Opp. To Def. Fine's Mot. To Dismiss, Ex. 10).

Fine Decorators sent a letter to Wolgin on February 3, 1999, addressing concerns about an anticipated move-in date of February

10, 1999. Fine Decorators warned Wolgin about health risks associated with moving into a unit while it is under construction. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 11). On February 24, 1999, Fine Decorators sent Wolgin a statement requesting payment of \$84,946.53. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 23).

On March 3, 1999, Fine Decorators sent Wolgin copies of the contracts already signed. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 12). That same day, Wolgin sent by overnight courier a payment and a letter disputing some of the charges that were on his last statement. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 21). On March 4, 1999, Fine Decorators faxed Wolgin a letter confirming receipt of the payment. The letter also stated that the disputed charges were correct since they were directly pursuant to the original contract between the parties. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 13).

On April 3, 1999, Fine Decorators sent Wolgin a statement requesting the balance due of \$9,415.72. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 27). On April 12, 1999, copies of all the contracts were faxed to Wolgin by Fine Decorators, and on April 22, 1999, a fax was sent to Wolgin confirming fax of contracts and requesting signatures on revised contracts. (Pl.'s Br. In Opp. To Def. Fine's Mot. To Dismiss, Ex. 14).

On May 3, 1999, a fax was sent to Wolgin by Fine and Fine Decorators noting a meeting of February 25, 1999 and requesting payment of \$9,415.72. (Pl.'s Br. In Opp. To Def. Fine's Mot. To Dismiss, Ex. 28). Fine Decorators sent billing statements to Wolgin on May 21, 1999, June 17, 1999, and August 31, 1999. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 4, pp. 25-26; Exs. 25, 26). On October 5, 1999, Fine Decorators sent Wolgin a copy of a contract and requested his signature. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 15).

Fine Decorators spends \$10,000 annually to advertise in Architectural Digest and spends \$15,000 annually to advertise in Florida Design four to six times per year. (Dep. Fine², pp. 22, 91). Phone records for the period 1999 through 2000 reflect 527 calls totaling 1,221.7 minutes to Pennsylvania. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 7). Fine testified that phones are open for personal use by employees (Dep. Fine³, p.86).

C. Court Proceedings

Wolgin became unsatisfied with the work of Fine Decorators. He alleges that the condominium was not ready for occupancy until one year after the promised time and that much of the design work

²Attached as Exhibit 1 to Pl.'s Resp. to Def. Fine's Mot. To Dismiss.

³Attached as Exhibit 6 to Def. Fine's Mot. To Dismiss.

completed was "negligent, incompetent, incomplete, and unsatisfactory." (Complaint, p. 7). Wolgin sued Cohen, Fine, and Fine Decorators in Pennsylvania state court on July, 11, 2000. Defendants removed to this court based on diversity of citizenship.

Currently before this court is a motion by all Defendants to dismiss for lack of personal jurisdiction, a motion by Fine Decorators to dismiss because its contracts with Wolgin required arbitration of any disputes, a motion by Fine Decorators for attorneys' fees and costs, and a cross-motion by Wolgin for attorneys' fees and costs. Taking all available facts in the light most favorable to Wolgin, this court grants defendants' motion to dismiss for lack of personal jurisdiction. This court does not grant Fine Decorators' motion for attorneys' fees and costs. The motion to dismiss based on the arbitration clause is dismissed as moot.

III. Discussion

When a defendant responds to a pleading asserting the lack of personal jurisdiction, the plaintiff has the burden of advancing sufficient jurisdictional facts to establish with reasonable particularity that there were sufficient contacts between defendant and the forum to make jurisdiction proper. See Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217,

1223 (3d Cir. 1992). For purposes of this motion, the court must accept as true the plaintiffs' version of the facts, and draw all inferences from the pleadings, affidavits, and exhibits in plaintiffs' favor. See DiMark Mktg., Inc. v. Louisiana Health Serv. & Indem. Co., 913 F.Supp. 402, 405 (E.D. Pa. 1996).

Personal jurisdiction may be exercised under two distinct theories, either a defendant's claim-specific or its general contacts with the forum. Under Fed. R. Civ. P. 4(e), a district court may assert personal jurisdiction "over non-resident [defendants] to the extent permissible under the law of the state where the district court sits." Mesalic v. Fiberfloat Corp., 897 F.2d 696, 698 (3d Cir. 1990).

A. Specific Jurisdiction

Two portions of Pennsylvania's long-arm statute are pertinent to specific jurisdiction. First, Section 5322(a)(4) contains a provision which extends personal jurisdiction to anyone who "caus[es] harm or tortious injury in the Commonwealth by an act or omission outside the Commonwealth." 42 Pa. Cons. Stat. Ann. § 5322(a)(4). Second, section 5322(b) of the statute states that jurisdiction extends

to all persons who are not within the scope of section 5301 [relating to general jurisdiction] 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.

A district court's exercise of specific jurisdiction pursuant to Pennsylvania's long-arm statute is therefore valid as long as it is constitutional.

Specific jurisdiction is constitutional only if the plaintiff's cause of action arises from a defendant's forum-related activities such that the defendant has "minimum contacts" in the forum state and that the exercise of jurisdiction comports with "traditional notions of fair play and substantial justice." Milliken v. Meyer, 311 U.S. 457, 463 (1940). The Supreme Court has stated that "minimum contacts must have a basis in 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 480 U.S. 102, 109 (1987)(quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)). These contacts are established where the defendant "should reasonably anticipate being haled into court" in that forum, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980), and where those contacts directly give rise to the cause of action. See Sunbelt Corp. v. Noble, Denton & Assoc., 5 F.3d 28, 33 (3d Cir. 1993).

1. There Is No Specific Jurisdiction Based On Cohen's Minimum Contacts With Pennsylvania

Wolgin alleges three different forms of contacts Cohen had with the forum in connection with the cause of action. First, Wolgin argues that specific jurisdiction over Cohen is established through Porto Vita's advertisement in the November 1998 issue of Architectural Digest. Wolgin alleges he viewed the magazine while in Pennsylvania and that the advertisement caused him to contact James Cohen. The third circuit has specifically held that simply advertising in a forum is not an example of purposely availing oneself of the privilege of conducting business in the forum and cannot give rise to the minimum contacts necessary for specific jurisdiction. Scheidt v. Young, 389 F.2d 58, 60 (3d Cir. 1968).

Second, Wolgin alleges he and Cohen had numerous telephone conversations while Wolgin was in Philadelphia, including many that were initiated by Cohen. (Pl.'s Br. In Resp. To Def. Cohen's Mot. To Dismiss, Ex. O). As Wolgin does not provide any explanation or allegation regarding the content of these conversations, this court cannot find that the telephone conversations directly gave rise to the cause of action as is required in assessing minimum contacts for the purposes of specific jurisdiction. See Sunbelt Corp., 5 F.3d at 33; Gehling v. St. George's School of Medicine, 773 F.2d 539, 541 (3d Cir.

1985) (stating that the court must initially determine whether plaintiff's claim arises from defendant's forum related activities or non-forum-related activities). Therefore, the telephone conversations are irrelevant to the specific jurisdiction analysis.

Third, Wolgin argues that specific jurisdiction can be asserted because a harm was committed outside the forum that caused him harm in Pennsylvania. The Pennsylvania long-arm statute specifically provides that jurisdiction may be exercised, in some cases, over out-of-state residents who commit torts having an effect in Pennsylvania, 42 Pa. C.S.A. § 5322(a)(4), but, as the third circuit has discussed, the plaintiff still must demonstrate that the exercise of jurisdiction would comport with due process. In IMO Indus., Inc. v. Kiekert AG, 155 F.3d 254 (3d Cir. 1998), the third circuit elaborated on the Supreme Court's analysis of this issue as discussed in Calder v. Jones, 465 U.S. 783 (1984). The third circuit stated, "Generally speaking, under Calder, an intentional tort directed at the plaintiff and having sufficient impact upon it in the forum may suffice to enhance otherwise insufficient contacts with the forum such that the 'minimum contacts' prong of the Due Process test is satisfied." IMO, 155 F.3d at 260 n.3. The plaintiff must show the following factors to permit personal jurisdiction in such circumstances: "(1) the defendant committed an intentional tort; (2) the

plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort; and (3) the defendant expressly aimed [the] tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity." Id. at 265-66.

For example, in Calder, specific jurisdiction was properly exercised in California over a Florida defendant who allegedly wrote a defamatory article about a California resident and published it in a nationally circulated magazine. In that case, California could be said to be the focal point of the tortious activity. The Supreme Court found:

The allegedly libelous story concerned the California activities of a California resident. It impugned the professionalism of an entertainer whose television career was centered in California. The article was drawn from California sources, and the brunt of the harm, in terms both of respondent's emotional distress and the injury to her professional reputation, was suffered in California. In sum, California is the focal point both of the story and of the harm suffered. Jurisdiction over petitioners is therefore proper in California based on the "effects" of their Florida conduct in California.

Calder, 465 U.S. at 788-89. In contrast, Florida is the only focal point of the alleged actions of Cohen. Cohen sold Wolgin a Florida condominium while they were both at Cohen's office in Florida. The sales contract stated that any dispute arising out of that contract would be litigated in Miami-Dade County Florida and would be governed by Florida law. (Pl.'s Br. In Resp. To Def.

Cohen's Mot. To Dismiss, Ex. D). The brunt of the alleged harm, the improper furnishings and the uninhabitable condition of the condominium during particular times, all occurred in Florida. Therefore, personal jurisdiction cannot be asserted based on the allegation that Cohen committed an act outside the forum that affected Wolgin in the forum.

2. There Is No Specific Jurisdiction Over Fine and Fine Decorators Based On Minimum Contacts With Pennsylvania

The court finds that Wolgin has not established that Fine and Fine Decorators had the minimum contacts with Pennsylvania necessary for this court to assert specific jurisdiction.

This court can only assert personal jurisdiction over Fine and Fine Decorators if they should have reasonably anticipated being haled into court based on their minimum contacts in Pennsylvania. World-Wide Volkswagen Corp., 444 U.S. at 297. All the interactions between the parties show that Fine and Fine Decorators could not have reasonably anticipated being haled into court anywhere but Florida. Wolgin signed a retainer agreement with Fine Decorators in Dade County, Florida on October 21, 1998. (Def. Fine's Mot to Dismiss, Ex. 2). The agreement provided that a formal "Design Agreement" would later be executed. (Id.) Most importantly, the agreement provided that any claim arising out of the retainer agreement would be settled "by arbitration in Dade

County, Florida, in accordance with Florida statutes." (Id.). The parties later entered onto the formal Design Agreement which set forth a payment schedule for the \$255,000 in work that was to be completed. (Def. Fine's Mot to Dismiss, Ex. 3). Again, the agreement stated that any dispute arising from the agreement would be settled "by arbitration in Dade County, Florida, in accordance with Florida statutes." (Id.). As Fine and Fine Decorators entered into an agreement specifically stating the disputes would be heard in Florida and were to be governed by Florida law, they could not reasonably expect to be haled into court in Pennsylvania.

Fine Decorators sent subsequent contracts for specific furnishings and requests for payments to Wolgin while he was in Pennsylvania, but each of the contracts that Wolgin has proffered states specifically that all claims arising from the contract must be settled in Florida, in accordance with Florida law. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Exs. 14, 15). Even though Fine Decorators faxed these contracts and requests for payments into Pennsylvania, it cannot be said to have purposely directed its activities toward the forum sufficiently to have reasonably anticipated being haled into court in Pennsylvania. See IMO, 155 F.3d at 260 ("The weight of authority among the courts of appeals is that minimal communication between the defendant and the plaintiff in the forum state, without more,

will not subject the defendant to the jurisdiction of that state's court system.").

Wolgin initiated the use of Fine Decorators in Florida and made at least one trip to Florida on February 25, 2000 to oversee the progress of the project and to discuss the disputed furnishings contracts. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 22, 28). On another occasion, Wolgin wrote to Fine Decorators and offered to discuss disputed payments for furnishings while he was in Florida. (Pl.'s Br. In Resp. To Def. Fine's Mot. To Dismiss, Ex. 22). Fine and Fine Decorators never made any trips to Pennsylvania in connection with the redecorating project. See Carterat Savings Bank v. Shusan, 954 F.2d 141, 149-50 (3d Cir. 1992) (asserting personal jurisdiction when defendant's communications with plaintiff while plaintiff was in the forum state were coupled with a visit to the forum state for allegedly fraudulent purposes). Fine and Fine Decorators were accustomed to interacting with Wolgin in Florida and could not have reasonably expected to be haled into court in Pennsylvania.

These contacts are also insufficient, applying the Calder "effects test," since, as noted above, the focal point of the alleged activities was in Florida. Wolgin first met with Fine and Fine Decorators in Florida and signed a retainer agreement there. All the decorating occurred or failed to occur at the Florida

condominium.

3. There Is No Specific Jurisdiction Based On The Minimum Contacts Of The Alleged Conspiracy Between All Three Defendants

Wolgin alleges that all three defendants were in a conspiracy to have sub-standard and delayed work done on his condominium. He claims that the contacts of each member of the conspiracy should be attributed to every other member of the conspiracy.

Taking all of the alleged contacts together, no defendant could reasonably expect to be haled into court in Pennsylvania. All interactions between the defendants and Wolgin were pursuant to contracts that provided that any disputes would be settled in Florida according to Florida law. None of the defendants ever came to Pennsylvania and Wolgin made his initial contact with each defendant in Florida. The focal point of all the alleged activities was a condominium in Florida.

B. General Jurisdiction

If specific jurisdiction does not exist, a court may still exercise general jurisdiction over non-resident defendants. See Farino, 960 F.2d at 1221. If a party is subject to the general jurisdiction of a state, that party can be called to answer any claim against it, regardless of whether the subject matter of the

cause of action has any connection to the forum. Id. Pennsylvania's general jurisdiction statute, 42 Pa.C.S.A. § 5301, extends jurisdiction over entities who carry on "continuous and systematic" business in Pennsylvania. Similarly, the United States Constitution only allows assertion of general jurisdiction when general business contacts with the forum are continuous and systematic. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415-16 (1984)

1. There Is No General Jurisdiction Over Cohen Since Contacts Are Not Continuous and Substantial

Wolgin argues that Cohen is subject to general jurisdiction based on Cohen's "continuous and substantial" contacts with Pennsylvania. (Pl.'s Br. In Opp. To Def. Cohen's Mot. To Dismiss, p.3). He states that general jurisdiction is established by virtue of Cohen's prior ownership of property in Pennsylvania and his frequent visits to family members. (Id.). Further, Porto Vita, Inc. targeted Pennsylvania residents through its advertisements in Architectural Digest and Florida Design as well as through its website at www.portovita.com. (Pl.'s Br. In Resp. to Def. Cohen's Mot. To Dismiss p. 7). While in Florida, Cohen also sold two Porto Vita condominiums to Pennsylvania residents other than Wolgin. (Pl.'s Br. In Resp. to Def. Cohen's Mot. To Dismiss, p. 4). Cohen was aware Wolgin's status as a Pennsylvania

resident. (Id.). Cohen also made many phone calls to Pennsylvania. (Id.).

The court finds that Wolgin has not established that Cohen is subject to general jurisdiction in Pennsylvania. Cohen's contacts with the forum do not rise to the level of "continuous and substantial." In Helicopteros Nacionales de Colombia, 466 U.S. 408, the Supreme Court held that a Texas district court did not have general jurisdiction over the defendant even though the defendant negotiated a contract in Texas, purchased 80% of its helicopters in Texas, purchased \$4 million worth of parts and accessories in Texas, and sent personnel to train in Texas. Id. at 411. In this case, Cohen did not negotiate any contracts in Pennsylvania, did not travel to Pennsylvania for business, and did not conduct any business related activity in Pennsylvania.

In Gehling v. St. George's Sch. of Med., Ltd., 773 F.2d 539, 542 (3d Cir. 1985), the third circuit held that general jurisdiction was improper over a defendant school that advertised in two national newspapers that had substantial circulation in Pennsylvania, received approximately six percent of its students from Pennsylvania, staged a media campaign that included appearances on Philadelphia radio and television shows, and entered into a long-term arrangement with a school in Pennsylvania. See id. at 542-43.

That case and others hold that an advertising or other

business campaign, aimed at selling a particular item, does not give rise to general jurisdiction even if some Pennsylvania residents respond to that campaign. See id.; Modern Mailers v. Johnson & Quin, Inc., 844 F. Supp. 1048, 1054 (E.D. Pa. 1994) (rejecting general jurisdiction based on a general advertising campaign). Applying these principles to the case at hand, this court is not persuaded that Cohen's advertising in Architectural Digest and Florida Design or his connection, if any, to the Porto Vita website, establish sufficient "continuous and systematic" contacts.

In Provident Nat'l Bank v. California Fed. S&L Ass'n., 819 F.2d 434 (3d Cir. 1987), the third circuit held that a California bank was subject to general personal jurisdiction in Pennsylvania even though the total monetary amount of business in Pennsylvania was very small. See id. at 437-38. Through a "zero-balance account," the California bank conducted business with a Pennsylvania bank every business day. This daily contact was a continuous and central part of the bank's business. Id. at 438. The court found that the defendant's maintenance and daily use of a bank account in Pennsylvania was enough to establish general jurisdiction. Id.

Cohen's three real estate sales with Pennsylvania residents did not require that he maintain a continuing relationship with the purchasers. Because Cohen had no continuous contact with

Pennsylvania central to the functioning of his business, he is not subject to the general jurisdiction of this court.

2. No General Jurisdiction As To Fine and Fine Decorators Since Contacts Are Not Continuous and Substantial

Wolgin argues that general jurisdiction exists over Fine and Fine Decorators by virtue of their advertisements in Architectural Digest and Florida Design, their maintenance of a website, and their telephone calls to Pennsylvania.

National advertising is not a basis for general jurisdiction. See Gehling, 773 F.2d 539, 542. Fine's advertising was of a similar nature to the advertising of Cohen. Applying the principles of Gehling and Modern Mailers, the court finds, for the reasons above stated, that magazine advertisements and maintenance of a website do not establish sufficient "continuous and systematic" contacts for the assertion of general jurisdiction.

IV. Conclusion

Upon consideration of defendants' Motions to Dismiss for Lack of Personal Jurisdiction and Improper Venue, the court finds that Cohen, Fine, and Fine Decorators lacked the necessary contacts with Pennsylvania for jurisdictional purposes. Accordingly, the motions are granted, and this civil action is

dismissed without prejudice.

Defendant Fine Decorators asks that it be awarded attorneys' fees and costs. Since this dismissal is without prejudice, the motion for attorney's fees and costs is denied. Further, Fine Decorators' motion to dismiss based on a contract arbitration clause is denied as moot.

An appropriate Order follows.

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

JACK L. WOLGIN, : CIVIL NO. 00-3997
Plaintiff :
 :
v. :
 :
FINE DECORATORS, INC. :
and :
THEODORE FINE :
and :
JAMES COHEN, :
Defendants :

ORDER

AND NOW, this ___ day of August, 2001, upon consideration of James Cohen's Motion to Dismiss (Docket #36) and Fine and Fine Decorators' Motion to Dismiss (Docket #34), and plaintiff's response thereto, it is hereby ORDERED that the Motions are GRANTED and the complaint is DISMISSED without prejudice.

It is further ORDERED that the Motion by Fine Decorators for Attorneys' Fees (Docket #35) is DENIED and Fine Decorator's Motion to Dismiss Based Upon Arbitration Clause (Docket #33) and Plaintiff's Cross-Motion for Attorneys' Fees (Docket #41) are DENIED as moot.

BY THE COURT:

JAMES T. GILES C.J.

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