

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

VALLEY FORGE FLAG COMPANY,)
)
 Plaintiff) Civil Action
) No. 02-CV-06647
 vs.)
)
ROBCO ENVIRONMENTAL CORPORATION,)
trading as PBR INDUSTRIES,)
)
 Defendant)

* * *

APPEARANCES:

MICHAEL D. KRISTOFKO, ESQUIRE,
On behalf of Plaintiff,
Valley Forge Flag Company,

NAHUM A. KIANOVSKY, ESQUIRE
On behalf of Defendant,
ROBCO Environmental Corporation,
trading as PBR Industries,

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on defendant's oral motion made August 14, 2003¹ to dismiss plaintiff's Complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil

¹ On October 1, 2002, defendant filed the Notice of Motion wherein it announced its intention to move the court to dismiss the Complaint at a date and time determined by the court because the court lacks personal jurisdiction over defendant. Defendant did not actually file a written motion, although it did file a memorandum of law in support of such a motion, a proposed Order, and the sworn "declaration" of three individuals in support of such a motion.

Procedure. On October 16, 2002, plaintiff filed the Response to Defendant's Motion to Dismiss Complaint. Defendant filed a Reply Memorandum of Law in Further Support of Motion to Dismiss for Lack of Personal Jurisdiction on October 25, 2002. For the reasons expressed below we deny defendant's motion.

The within civil action was initiated by a one-count Complaint alleging breach of contract. It is before the court on diversity jurisdiction. 28 U.S.C. §1332. Plaintiff Valley Forge Flag Company ("Valley Forge") is a Pennsylvania corporation with its principle place of business at 1700 Conrad Weiser Parkway, Womelsdorf, Pennsylvania. Defendant ROBCO Environmental Corporation is also known as PBR Industries ("PBR"). PBR is a New York corporation with its principle place of business at 143 Cortland Street, Lindenhurst, New York 11757.

Oral argument was conducted before the undersigned on August 14, 2003. During oral argument, plaintiff conceded that the court lacks general jurisdiction over defendant, but argued that specific jurisdiction exists. Because we find that defendant's contacts with Pennsylvania are sufficient for the defendant to foresee being haled into court in Pennsylvania and because we find that "traditional notions of fair play and substantial justice," International Shoe Co. v. State of Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 101-102 (1945)(citations omitted), are not offended

by compelling defendant to defend the within civil action in Pennsylvania, we find that specific jurisdiction over defendant exists. Accordingly, we deny defendant's motion.

Facts

Based upon the Complaint, record papers, the Declaration of Michael Robbins in Support of Motion to Dismiss for Lack of Personal Jurisdiction, the Declaration of Gregory Harris, the Declaration of Jason Robbins in Support of Motion to Dismiss for Lack of Personal Jurisdiction, the pertinent facts are as follows.

In 1999 the parties contracted for PBR to sell Valley Forge an automatic washing-reclaiming machine. The parties met at a trade show in Kansas City, Missouri. At the show, a representative for plaintiff requested information regarding defendant's products.

While many of the characterizations of the subsequent negotiations leading to the contract are in dispute the parties agree that there were a number of phone calls between Gregory Harris, President of Valley Forge, and Michael Robbins, President of PBR, and Jason Robbins, the PBR sales manager. The parties also agree that Jason Robbins visited Harris one time for two hours in Pennsylvania.

After Jason Robbins visited Harris, PBR sent Valley Forge a revised quote. Valley Forge signed this quote (and

offers this document as the purported contract). It appears that the contract which forms the basis of the relationship of the parties was formed in Pennsylvania when Valley Forge accepted PBR's offer.

Danilo Bombardi was a principal in a company located in Italy which had some relationship with PBR, and which was involved in a manufacturing aspect of this transaction. After the contract was formed, Mr. Bombardi left his Italian company. This caused a disruption in the contract. In order to appease Harris, PBR paid an invoice made payable to Harris' travel agent in order to send Harris from Pennsylvania to Italy so that Harris could inspect Bombardi's new company and manufacturing capability. Upon inspection, Harris agreed to go forward with the contract.

The ordered machine was manufactured in Italy, then shipped to one of plaintiff's facilities in South Carolina. It appears that the contract requires defendant to provide service and support for the washing-reclaiming machine.

Discussion

In this diversity action, we must apply the substantive law of Pennsylvania to determine whether personal jurisdiction is established. Fed.R.Civ.P. 4(e)(1). Pennsylvania's long-arm statute provides for the maximum reach allowed by the United States Constitution. 42 Pa.C.S.A. §5322. As a result, we are

required by Pennsylvania law to examine the boundaries that the due process clause of the Fourteenth Amendment places upon the imposition of personal jurisdiction.

Upon challenge², it is plaintiff's burden to establish personal jurisdiction. General Electric Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001). The plaintiff may meet its burden with a "prima facie case ... establishing with reasonable particularity sufficient contacts between the defendant and the forum state." Mellon Bank PSFS, National Association v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992).

In order to prove personal jurisdiction the plaintiff need not show in personam jurisdiction founded upon the presence of a person within a state, see Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565 (1877), but rather jurisdiction founded upon defendant's contacts with the forum state that ensures that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe, 326 U.S. at 316, 66 S.Ct. at 158, 90 L.Ed. at 101-102 (1945) (citations omitted).

In the modern analysis, we are to determine if the defendant has sufficient minimal contacts with the state so as to permit the state to have jurisdiction over the defendant and to

² Defendant's burden to raise a personal jurisdiction argument in a Rule 12(b)(2) motion is codified in Rule 12(h) of the Federal Rules of Civil Procedure.

decide whether the defendant has purposefully availed himself of the state's jurisdiction. See General Electric, 270 F.3d 144. This two-prong due process test is designed to ensure that persons are shielded "from judgments of a forum with which they have established no substantial ties or relationship." General Electric, 270 F.3d at 150 (3d Cir. 2001).

To that end we must first examine the "the relationship among the forum, the defendant and the litigation," Shaffer v. Heitner, 433 U.S. 186, 204, 97 S.Ct. 2569, 2580, 53 L.Ed.2d 683, 698 (1977), to determine if the defendant's contacts, if any, with the state have any relation to the issues in dispute. Vetrotex Certainteed Corp. v. Consolidated Fiber Glass Products Co., 75 F.3d 147, 150 (3d Cir. 1996).

Forseeability is the touchstone of the entire analysis. It is essential to the imposition of personal jurisdiction that "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528, 542 (1985)(quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 64 L.Ed.2d 490, 501 (1980)). If these factors are satisfied, then "traditional notions of fair play and substantial justice" will not be offended by the imposition of

personal jurisdiction. International Shoe, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95.

We conclude that while defendant's contacts with Pennsylvania are minimal, the contacts are sufficient to permit the assertion of jurisdiction. When considering if personal jurisdiction exists, the court may examine: (1) who initiated the contact;³ (2) the contractual negotiations; (3) performance; (4) resolution of disputes; (5) contemplated future dealings; (6) the parties actual presence at any dealings (as opposed to electronic communications); (7) and the parties' actual interaction. Burger King, 471 U.S. at 479, 105 S.Ct. at 2185, 85 L.Ed.2d at 545 (1985); General Electric, 270 F.3d at 150.

The contact between the parties was initiated by plaintiff when it requested product information from defendant at the Kansas City trade show. After the trade show, the contact between the parties shifted to the parties' headquarters in New York and Pennsylvania. Defendant sent plaintiff information, and Michael Robbins followed up with telephone calls to Valley Forge. This contact precipitated a series of negotiations.

³ Who initiated the relationship has been held to be insignificant in the analysis. See General Electric, 270 F.3d at 151. That holding was made in the context of comparing the initiation of a relationship and the creation of a long-standing relationship. In that case, the latter factor was found more salient.

In May 1999 Jason Robbins visited Harris at plaintiff's headquarters in Pennsylvania. The meeting lasted approximately two hours. It appears that this meeting had a profound impact on the formulation of the contract at issue.

Plaintiff characterizes the event as culminating in an agreement in principle. Defendant counters that the meeting resulted in defendant sending plaintiff a revised quote. We note that the revised quote was signed by Harris and plaintiff claims that the signed quote is the contract. In our view this meeting and the immediate formation of a contract thereafter constitutes a significant contact.

These contacts, in and of themselves, are not sufficient. Mere contracting within the forum state is insufficient to warrant the imposition of personal jurisdiction upon a defendant. Vetrotex, 75 F.3d at 151. Thus, we examine that contacts between the parties after the contract.

A problem with performance arose after the contract was formed. Bombardi left the company from which PBR was going to obtain the machine. In response to some instability that Bombardi's departure caused the contract, defendant agreed to send Harris from Pennsylvania to Italy to inspect Bombardi's new manufacturing facility. Defendant reimbursed Harris for the trip. These facts suggest that the parties were developing a deepening relationship and demonstrate that resolution of

problems with the contract required Valley Forge personnel located in Pennsylvania to respond.

Further evidence of the expected long-term relationship is found in the service clause of the document which plaintiff purports to be the contract. The service clause states that PBR will provide "24 hour factory telephone support and modem diagnostics." Plaintiff claims that this included requests for support from anywhere plaintiff is located, including Pennsylvania.

Defendant argues that the locus of the parties relationship existed in South Carolina where the machine was installed and delivered. We agree that there are significant contacts in South Carolina. We also recognize that defendant may be sued in New York. The existence of personal jurisdiction in one state, however, does not preclude the existence of personal jurisdiction in another state. See e.g. International Shoe Co., supra.

Upon balancing the factors and examining defendant's contacts with Pennsylvania regarding the contract, we find that the contact between the parties, the personal negotiation of the contract in Pennsylvania, the resolution of the problem of Bombardi's changing manufacturing facilities, and the promise of continuous service and support for the machine meet the minimal requirements necessary to hale defendant into court in

Pennsylvania. Given defendant's contacts with Pennsylvania concerning the contract, we conclude that defendant could reasonably foresee being compelled to defend this action in Pennsylvania.

Building upon the minimal contacts analysis, we must then determine if the defendant purposefully availed himself of the forum's jurisdiction. Vetrotex, 75 F.3d at 150. There must be "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." Vetrotex, 75 F.3d at 150 (quoting Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283, 1298 (1958)).

For the following reason we find that plaintiff has established its prima facie burden that defendant purposefully availed itself of Pennsylvania law. As noted, defendant entered Pennsylvania through mail, electronic mail, and telephone and personal contact to negotiate a contract that was formed in Pennsylvania. When the parties did contract, they chose not to insert a choice of law provision into the purported contract.

The document that plaintiff claims he signed to form the contract was drafted by defendant. If defendant had been concerned about the application of Pennsylvania law to the contract, PBR could easily have drafted a provision requiring

adjudication under some other law. At this point, we construe the absence of a choice of law provision against defendant as the drafter of the contract. See e.g. Nationwide Mutual Fire Insurance Co. v. Pipher, 140 F.3d 222, 227 (3d Cir. 1998). Under these circumstances, we find that defendant could not only reasonably foresee that Pennsylvania law would be applied to the contract, but also could foresee having to seek enforcement of the contract or protection under the contract pursuant to Pennsylvania law. As a result, we find that defendant purposefully availed itself of Pennsylvania law for the purposes of specific jurisdiction.

Conclusion

For all the foregoing reasons, we find that defendant's contacts are sufficient to hale defendant into court in Pennsylvania and that compelling defendant to defend this action in Pennsylvania does not offend "traditional notions of fair play and substantial justice." International Shoe, 326 U.S. at 316, 66 S.Ct. at 158, 90 L.Ed. at 101-102. Consequently, we deny defendant's motion to dismiss plaintiff's Complaint.

2003; upon consideration of the Complaint filed August 7, 2002; upon consideration of the Declaration of Michael Robbins in Support of Motion to Dismiss for Lack of Personal Jurisdiction, which declaration was filed October 1, 2002; upon consideration of the Declaration of Gregory Harris filed October 16, 2002; upon consideration of the Declaration of Jason Robbins in Support of Motion to Dismiss for Lack of Personal Jurisdiction, which declaration was filed October 25, 2002; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that defendant's motion to dismiss plaintiff's Complaint is denied.

BY THE COURT:

James Knoll Gardner

United States District Judge

