

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

MEETING SOLUTIONS MARKETING & : CIVIL ACTION  
INCENTIVES INS. :  
Plaintiff

v.

SELECT ARTISTS ASSOCIATION, LLC :  
Defendant NO. 02-6776

MEMORANDUM AND ORDER

McLaughlin, J

November 19, 2002

The defendant, Select Artists Association, LLC, has moved to dismiss this action for lack of personal jurisdiction, improper venue, failure to state a claim upon which relief can be granted, and lack of subject matter jurisdiction. The Court finds that there is no personal jurisdiction over the defendant in this District, and will grant the defendant's motion.

An inquiry into a motion to dismiss for lack of personal jurisdiction requires resolution of factual issues outside the pleadings. Time Share Vacation Club v. Atlantic Resorts, 735 F.2d 61, 66 (3d Cir. 1984). Once a personal jurisdiction issue is raised, the plaintiff must show that jurisdiction is proper through sworn affidavits or other competent evidence; at no point may a plaintiff rely on bare

pleadings or allegations alone in order to withstand a defendant's Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. Id.

The plaintiff in this case has not provided any affidavits or other competent evidence and has relied on mere allegations alone'. The Court, therefore, is not required to consider the facts as alleged in the plaintiff's memorandum of law. The Court, however, will consider the facts alleged in the memorandum because dismissal would be warranted even if the plaintiff's allegations were supported by competent evidence.

The plaintiff is a meeting planning corporation incorporated in and with its principal place of business in Pennsylvania. The defendant is an Arizona corporation with its principal place of business in Arizona. The defendant arranges performers for special events. The plaintiff alleges that in 2000 it referred the plaintiff's client, Doughty Hanson & Co ("DoughtyHanson"), a British company, to the defendant, to provide talent for Doughty Hanson's annual meeting. The defendant helped Doughty Hanson arrange entertainment for the 2000 meeting and then paid plaintiff a referral fee. Plaintiff's

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<sup>1</sup>The defendant has provided an affidavit from its manager, Charles T. Johnston, which confirms the facts as presented in the defendant's Motion to Dismiss.

Brief in Opposition to Motion to Dismiss ("Pl. Opp."), at ¶1, 4, 7.

In 2001, the plaintiff also referred Doughty Hanson to the defendant to get entertainment for Doughty Hanson's 2001 meeting. The plaintiff and the defendant had an oral agreement under which the defendant would pay the plaintiff a referral fee arrangement similar to the 2000 arrangement. Pl. Opp., at ¶8-9.

At some point in the planning of the 2001 Doughty Hanson meeting', the defendant shut the plaintiff out of the meeting's coordination. This resulted in the plaintiff losing Doughty Hanson as a client. The defendant then refused to give the plaintiff the referral fee. Pl. Opp., at 11.

The plaintiff has brought three counts in its complaint. In the first count, the plaintiff alleges that the defendant has not paid the referral fee due under the parties' oral contract. In the second count, the plaintiff alleges that the defendant shut the plaintiff out of the coordination of Doughty Hanson's 2001 annual meeting, and as result, Doughty Hanson now goes directly to the defendant for services. The plaintiff has thus lost all future commissions from the defendant

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<sup>2</sup>The Doughty Hanson meeting was not held at its scheduled time because of the events of September 11, 2001, but was rescheduled and held in March 2002. Pl. Opp., at ¶10.

for referring Doughty Hanson. In the third count, the plaintiff alleges that, because the defendant shut the plaintiff out of the planning process and the plaintiff lost Doughty Hanson as a client, the defendant has interfered with the plaintiff's business relationship with Doughty Hanson.

Once a defendant raises a jurisdictional defense, the plaintiff then bears the burden of showing the defendant had sufficient contacts with the forum state to support personal jurisdiction. Compagnie des Bauxites de Guinee v, L'Union Atlantique S.A. d' Assurances, 723 F.2d 357, 362 (3d Cir. 1983).

Personal jurisdiction exists over an out-of-state defendant if the requirements of both the forum state's long arm jurisdiction and of due process are met. Pennzoil Products v. Colelli & Associates, Inc. 149 F.3d 197, 200 (3d Cir. 1998). Pennsylvania's long arm statute extends personal jurisdiction to the fullest extent allowed under the Constitution of the United States. Thus, in Pennsylvania the usual two-step inquiry into personal jurisdiction is collapsed into a single inquiry of whether due process would allow personal jurisdiction to be exercised over the defendant. IMO Industries, Inc. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998).

Pursuant to due process requirements, jurisdiction can only be maintained over a non-resident defendant if it has

minimum contacts with the state, such that the suit does not offend traditional notions of fair play and substantial justice. Int'l Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L.Ed 95 (1945). Minimum contacts are purposeful acts, undertaken by the defendant, directed toward a state, which make it reasonable for the defendant to anticipate being sued in that state. World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559, 62 L.Ed.2d 490 (1980). The defendant also must, by at least some act, purposely avail itself of the benefits and protections of the laws of the forum state<sup>3</sup>. Burger King v. Rudzewicz, 471 U.S. 462, 105 S. Ct. 2174, 85 L.Ed.2d (1985).

The plaintiff has alleged that the defendant's conduct in this case is sufficient to create specific jurisdiction over the defendant. Specific jurisdiction exists where the nonresident defendant has at least some contact with the forum state and the cause of action in question arises out of or relates to that contact. Helicopteres Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, n. 8, 104 S. Ct. 1868, 80 L.Ed.2d 404 (1984).

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<sup>3</sup>When determining if jurisdiction may properly be based on a party's contractual relations with a forum resident, the court should consider the "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." Burger King, 471 U.S. at 479.

To support its claim that personal jurisdiction is proper, the plaintiff relies on the allegation that the defendant and the plaintiff engaged in business dealings via e-mail and telephone calls which were sent to and from the plaintiff's place of business in Pennsylvania.

The Third Circuit has held that phone calls and letters are not necessarily sufficient to establish minimum contacts. IMO Industries, Inc., 155 F.3d at 260. Minimal communication between the defendant and the plaintiff in the forum state, without more, will not subject the defendant to the jurisdiction of the plaintiff's state's court system. Id.

The use of e-mail and the telephone in this case is insufficient to show that the defendant directed its conduct towards Pennsylvania in such a way as to avail itself of the laws of Pennsylvania or make it foreseeable that it would be brought into court here. See Coleman Financial Services v. Charter Equipment Leasing Corp, 708 F. Supp. 664 (E.D. Pa. 1989) (even where the defendant made the first contact and engaged in subsequent communications with the plaintiff, there was no personal jurisdiction where all other events took place outside Pennsylvania).

This case is different from cases in which the

defendant's communications into the forum state are combined with other circumstances warranting personal jurisdiction. See, e.g., North Penn Gas Company v. Corning Natural Gas Corporation, 897 F.2d 687 (3d Cir. 1990) (personal jurisdiction where communications and payments made into Pennsylvania, plaintiff set aside storage space for defendants in Pennsylvania, defendant had 30 year business relationship with resident plaintiff, and defendant made monthly payments to Pennsylvania for ten months). The plaintiff has not presented additional evidence or alleged additional facts which would indicate that there was anything, other than these communications, to support a finding that there is personal jurisdiction over the defendant<sup>4</sup>.

In this case, the plaintiff is not alleging only that the defendant breached the parties' contract, but also that the defendant interfered with the plaintiff's business relations. Because this is an intentional tort, the Calder v. Jones, 465 U.S. 783 (1984), analysis applies<sup>5</sup>.

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<sup>4</sup>All of the meetings between the parties took place in Arizona. Under the terms of the agreement, as characterized by the plaintiff, the defendant was to assist one of the plaintiff's clients in finding suitable entertainment for a conference that was to be held in Arizona. Other than the e-mails and phone calls, all other aspects of this transaction occurred outside of Pennsylvania.

<sup>5</sup>The Third Circuit has applied this analysis in the context of intentional business torts. IMO Industries, Inc., 155 F.3d at

Under the Third Circuit's analysis of Calder, the plaintiff must show that: 1) that the defendant committed an intentional tort, 2) that 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, and 3) the defendant must have expressly aimed his tortious conduct at the forum, such that the forum can be said to be the focal point of the tortious activity. IMO Industries, Inc., 155 F.3d at 256.

Assuming that the first and second prongs of the Calder analysis are met, it is unlikely that the third prong is met because the plaintiff has not shown that the defendant aimed its contact at Pennsylvania.

In IMO Industries, Inc., the Third Circuit held that asserting that the defendant knew that the plaintiff's principal place of business was located in the forum was insufficient to meet this prong. Id. at 265. Instead, the plaintiff must show that the defendant manifested behavior "intentionally targeted at and focused on the forum." Id. In the typical case, this will require some type of entry into the forum state. Id.

In this case, the plaintiff has not shown or alleged any facts wherein the defendant, in relation to the alleged

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intentional torts, "entered" into the forum state or otherwise directed its conduct at Pennsylvania. There is no allegation that any of the conduct related to the alleged torts was aimed or directed at Pennsylvania. As such, even viewing the plaintiff's allegations in light of the Calder doctrine, there is no basis for personal jurisdiction over the defendant.

An appropriate order follows.

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ORDER

AND NOW, this 19<sup>th</sup> day of November, 2002, upon  
consideration of defendant, Select Artist Associates, LLC, Motion  
to Dismiss (Docket #2), the plaintiff's opposition thereto, and  
the defendant's reply, it is hereby ORDERED and DECREED that the  
defendant's Motion to Dismiss is GRANTED.

BY THE COURT:



MARY A. MCLAUGHLIN, J

*filed from chambers 11/20/02*

*Mark Cherry, leg.*

*Patrick Soderud, leg.*