

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

ROTONDO WEINREICH :  
ENTERPRISES, INC. :  
 : CIVIL ACTION  
 v. :  
 : NO. 04-5285  
ROCK CITY MECHANICAL, INC. :

**MEMORANDUM**

**Padova, J.**

**January 19, 2005**

Plaintiff Rotondo Weinreich Enterprises, Inc. ("RWE"), a corporation engaged in the business of designing, marketing, constructing, and installing concrete modular facility cells for corrections and detentions facilities, brought this action against Rock City Mechanical, Inc. ("Rock City") for promissory estoppel and breach of contract. The current controversy arises out of Rock City's refusal to provide previously agreed upon construction services to RWE. Before the Court is Rock City's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) and (3) for lack of personal jurisdiction and improper venue. In the alternative, Rock City moves to transfer the action to the United States Court for the Middle District of Tennessee pursuant to 28 U.S.C. §§ 1404(a), 1406(a) or 1631. For the reasons that follow, the Motion to Dismiss is granted.

**I. BACKGROUND**

The Complaint alleges the following facts. RWE, a Pennsylvania corporation, was awarded a sub contract to supply precast concrete modular prison cells for the Elliot County Medium Security Correctional Facility in Sandy Hook, Kentucky (the

"Prison") by Ray Bell Construction Company ("RBCC"). (Compl. ¶¶ 6-7.) In August 2001, RBCC asked RWE to submit a bid for chase work at the prison facility (the "Project"). (Compl. ¶¶ 1, 6, 8.) Before submitting its bid, RWE contacted Rock City, a Tennessee Corporation engaged in the business of outfitting mechanical chases for precast concrete modular prison cells, and requested a bid for the installation of ductwork, sanitary and waste pipes, plumbing piping and controls, and pipe insulation for the chase work. (Id. ¶¶ 3-4, 8-10.) On August 21, 2001, Rock City submitted a written bid proposal to RWE's office in Pennsylvania. (Id.) In this proposal, Rock City offered to install the Project's ductwork, plumbing, piping and insulation individual chases for \$156,060. (Id. ¶ 11.) RWE incorporated Rock City's bid into its own final bid proposal to RBCC, and on November 12, 2001, RWE was verbally notified that it had been awarded the contract by RBCC. (Id. ¶¶ 13, 14.) A final written contract between RWE and RBCC was issued on December 12, 2001. (Id. ¶ 15.)

From December 2001 through July 2002, RWE had numerous conversations with two of Rock City's employees regarding the coordination of work on the Project. (Id. ¶ 17.) However, between the time Rock City submitted its bid and the time RWE was supposed to commence work on the Project, Rock City demanded an additional \$240,000 to perform the chase work. (Id. ¶ 18.) Specifically, on July 1, 2002, Rock City sent RWE a revised bid proposal in the

amount of \$395,456.74. (Id. ¶19.) In response, RWE sent Rock City a subcontract agreement for execution that was based on Rock City's original bid of \$156,060. (Id. ¶ 21.) Rock City refused to execute the subcontract agreement or perform any of the work on the Project. (Id. ¶ 22.) As a result, RWE had to perform the work itself and incurred damages in the amount of \$418,000. (Id. ¶¶ 23, 31.)

## **II. LEGAL STANDARD**

Pursuant to Federal Rule of Civil Procedure 4(e), a federal court may exercise personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state. Pennzoil Prods. Co. v. Colelli & Assocs., 149 F.3d 197, 200 (3d Cir. 1998) (citation omitted); Fed. R. Civ. P. 4(e). Pennsylvania's long arm statute authorizes the exercise of jurisdiction over a nonresident person "to the fullest extent allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b) (West Supp. 2002); Pennzoil, 149 F.3d at 200.

In evaluating whether an exercise of personal jurisdiction is constitutional, a court first determines whether the defendant's contacts with the forum state are sufficient to support general personal jurisdiction. Pennzoil, 149 F.3d at 200. General jurisdiction exists where a nonresident's contacts with the forum are "continuous and substantial," and permits the court to exercise jurisdiction "regardless of whether the subject matter of the cause

of action has any connection to the forum." Id.

In the absence of general jurisdiction, a court looks to whether the requirements of specific personal jurisdiction are met. Specific jurisdiction exists where the plaintiff's claim "is related to or arises out of the defendant's contacts with the forum." Id. at 201 (citations omitted). The analysis of specific jurisdiction involves two inquiries, the first mandatory and the second discretionary: (1) whether the defendant had minimum contacts with the forum such that it would have "reasonably anticipate[d] being haled into court there," id. (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)); and (2) whether "the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" Id. (citations omitted). Although the latter standard is discretionary, the United States Court of Appeals for the Third Circuit has "generally chosen to engage in this second tier of analysis in determining questions of personal jurisdiction." Id.

"A finding of minimum contacts demands the demonstration of some act by which the defendant purposely avail[ed] itself of the privilege of conducting business within the forum State, thus invoking the protection and benefits of its laws." Id. at 203 (citations omitted). In addition, the court takes into account "the relationship among the forum, the defendant and the litigation." Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960

F.2d 1217, 1221 (3d Cir. 1992) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). The Supreme Court has provided guidance in analyzing minimum contacts in a contract matter:

[W]ith respect to interstate contractual obligations, we have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities . . . [W]here the defendant "deliberately" has engaged in significant activity within a State, or has created "continuing obligations" between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's law it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Id. at 1222 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-76 (1985) (internal citations omitted)). The plaintiff bears the burden of coming forward with facts sufficient to establish the existence of minimum contacts. Id. at 1223.

To evaluate the "fair play and substantial justice" prong of the standard for specific personal jurisdiction, a court applies the following "fairness factors": "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social

policies." Pennzoil, 149 F.3d at 205-06 (citations omitted). At this point in the analysis, the defendant carries the burden. See Farina, 960 F.2d at 1226 ("[O]nce the plaintiff has made a prima facie case for jurisdiction based upon minimum contacts, the burden falls upon the defendant to show that the assertion of jurisdiction is *unconstitutional*. This burden is met when the defendant demonstrates to the court that factors are present that make the exercise of jurisdiction unreasonable.") (emphasis in original).

### **III. DISCUSSION**

Rock City contends that this action should be dismissed pursuant to Rule 12(b)(2) for lack of personal jurisdiction because it is a Tennessee corporation that does not regularly do business in Pennsylvania and does not have sufficient contacts with Pennsylvania to be haled into court here. In the alternative, Rock City moves to dismiss for improper venue pursuant to Rule 12(b)(3), or for a transfer of this action to the United States District Court for the Middle District of Tennessee.

#### **A. General Jurisdiction**

Rock City argues that its overall contacts with Pennsylvania are neither continuous nor systematic and do not subject it to general jurisdiction in this Commonwealth. Likewise, RWE does not allege that this Court has general personal jurisdiction over Rock City. Accordingly, the Court finds that Rock City's contacts with this Commonwealth are not sufficiently continuous or systematic to

subject it to general jurisdiction here.

B. Specific Jurisdiction

RWE, however, maintains that this Court has specific personal jurisdiction over Rock City based upon its purposeful contacts with Pennsylvania in connection with its bid on the Project. The Third Circuit Court of Appeals (the "Third Circuit") has discussed the relevant inquiry to be made with regard to personal jurisdiction in a contract case in General Elec. Co. v. Deutz AG, 270 F.3d 144 (3d Cir. 2001). The Third Circuit held that:

In contract cases, courts should inquire whether the defendant's contacts with the forum were instrumental in either the formation of the contract or its breach. Parties who reach out beyond [their] state and create continuing relationships and obligations with citizens of another state are subject to the regulations of their activity in that undertaking. Courts are not reluctant to find personal jurisdiction in such instances. [M]odern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

Deutz, 270 F.3d at 150 (citations omitted).

RWE has submitted two affidavits in support of this contention that Rock City is subject to personal jurisdiction under this standard. Walter Bannon, an employee of RWE, states in his affidavit that he sent Rock City a request for a bid proposal from RWE's office in Pennsylvania on August 16, 2001, and thereafter had "numerous conversations" with Larry Medlen and Sam Mullins, two of

Rock City's employees, from his office in Pennsylvania. (Response Ex. C ¶¶ 7, 8.) Bannon further states that RWE's involvement in the Project has been completed. (Id. ¶ 11.) Caleb Moyer, also an employee of REW, states in his affidavit that Rock City sent its 'Revised Bid Proposal' to him at RWE's Pennsylvania office on July 1, 2000, and that he, too, had conversations with Larry Medlen and Sam Mullins, from his Pennsylvania office, June 1, 2002 through July 15, 2002. (Response Ex. D ¶¶ 8, 9.) Moyer further states that he is aware that from December 2001 through July 2002 various of RWE's employees "had dealings with Rock City either through email, phone or mail in an effort to finalize the contract process," from RWE's office in Pennsylvania. (Id. ¶ 11.)

Rock City, whose overall position is that the parties never entered into a contract, argues that it is not subject to specific jurisdiction because RWE initiated the contractual negotiations. (Mot. Ex. B. at ¶ 10.) However, "it is not significant that one or the other party initiated the relationship." Id. at 151. Rather, the Third Circuit has held that "[i]n the commercial milieu, the intention to establish a common venture extending over a substantial period of time is a more important consideration." Id. Here, the record is devoid of any evidence tending to establish that RWE and Rock City intended to engage in a common venture over a substantial period of time. Rather, the record establishes that the parties' contractual relations were limited to the specific

project at issue in this case, and that little more than one year elapsed from when RWE first approached Rock City to when the time the project was completed. (Compl. ¶¶ 9, 21.) Accordingly, while it is irrelevant that Rock City did not initiate the relationship, it is significant that the parties did not intend to establish a common venture extending over a substantial period of time. See Deutz, 270 F.3d at 151.

Rock City also stresses that it was not physically present in Pennsylvania during contract negotiations, and that it never made visits to the Commonwealth with respect to the Project or its contractual relations with RWE. (Mot. Ex. B at ¶ 10.) While specific jurisdiction often depends on a defendant's physical contacts with the forum state, "[i]n modern commercial business arrangements . . . communication by electronic facilities, rather than physical presence, is the rule. Where these types of long-term relationships have been established, actual territorial presence becomes less determinative." Deutz, 270 F.3d at 150-51 (citation omitted). While Rock City's lack of physical presence within Pennsylvania is, therefore, not determinative, it nonetheless is significant in a case such as this where the record demonstrates that there was no "deliberate assumption of long-term obligations." Id. at 151. Indeed, as mentioned above, the Complaint alleges only that Rock City bid on a one-time Project which was forecast to last, and did in fact last, less than one

year. (Compl. ¶ 9, Ex. A; Resp. Ex. C ¶ 11.)

Assuming arguendo that the parties entered into a contract for Rock City to perform work for RWE on the Project, the Court finds that Rock City did not enter into a contract with a Pennsylvania corporation which would entail an ongoing relationship. In the absence of such a long-term relationship, "merely entering into a contract with a Pennsylvania resident is generally an insufficient basis upon which to assert personal jurisdiction." Cottman Transmission Sys, Inc. v. Miller, No. Civ. A. 00-3283, 2000 WL 1277928, at \*4 (E.D. Pa. Sept. 7, 2000). Moreover, the contract at hand did not anticipate that any part of its performance would take place in Pennsylvania. Rather, Rock City was to provide construction work at a building site in Kentucky, and RWE was to pay Rock City for its work through Rock City's headquarters in Tennessee. Rock City's minimal electronic contacts with RWE in Pennsylvania do not, themselves, demonstrate that Rock City purposefully availed itself of the privilege of conducting business in Pennsylvania. Accordingly, Rock City in the case at bar has not "purposefully availed itself" of the privilege of conducting activities in Pennsylvania sufficient to subject it to the exercise of personal jurisdiction in this Commonwealth. See Burger King, 471 U.S. 476 (sufficient minimum contacts exist "where defendant 'deliberately' has engaged in significant activities within a State or has created 'continuing obligations' between himself and

residents of the forum") (internal quotations omitted). Therefore, the Court finds that Rock City does not have sufficient contacts with Pennsylvania with regard to the subject matter of the Complaint that it could have "reasonably anticipate[d] being haled into court" here. World-Wide Volkswagen, 444 U.S. at 297.

RWE argues that a contract with a forum state resident and the negotiations which lead to its conclusion are sufficient to establish personal jurisdiction over an out-of-state defendant. See Grand Entertainment Group, LTD. v. Star Media Sales, Inc., 988 F.2d 476, 482-83 (3d Cir. 1993). In that case, however, the Court found it significant that the defendant had deliberately and personally directed at least twelve communications to the forum, had engaged in negotiations for an agreement that would have created rights and obligations among citizens of the forum, and had endeavored to create significant ties with the forum state. Id. at 483. Here, by contrast, the resulting agreement did not create rights and obligations among Pennsylvania residents, and did not contemplate that any ties with the forum state beyond Rock City's compensation under the contract being initiated in the forum state. Certainly this alone does not amount to a "significant tie" with Pennsylvania. See id.

RWE further argues that the absence of physical presence within the forum state is irrelevant, as mail and telephone communications by the defendant into the forum may count toward the

minimum contacts that support jurisdiction. In support of this argument, RWE cites to Mickleburgh Machinery Co., Inc. v. Pacific Economic Development Co., 738 F.Supp. 159 (E.D. Pa. 1990). In that case, the defendant had initiated written and telephonic contract negotiations with plaintiff, a resident of Pennsylvania. Id. at 161. Moreover, defendant had agreed to pay plaintiff in Pennsylvania, and had specifically requested that the parties' contractual relationship be extended beyond the initial agreement. Id. Here, by contrast, the contact was initiated by RWE, Rock City was to perform out of state, and neither party intended their contractual relationship to extend over a significant period of time.

RWE also cites Lebel v. Everglades Marina, Inc., 558 A.2d 1252 (N.J. 1989) in support of its argument that the assertion of personal jurisdiction over Rock City would be proper. In Lebel the out-of-state defendant had contacted the New Jersey plaintiff at least twenty times over a period of two years in order to persuade the plaintiff to enter into a contract with him. See id., 558 A.2d at 1253. The Lebel court specifically recognized that the fact that a defendant "made phone calls, mailed checks, and sent correspondence to plaintiff in Pennsylvania is not sufficient to draw defendant into Pennsylvania for purposes of personal jurisdiction." Id. at 1256. The court, however, drew a distinction between normal contractual negotiations and the case

before it, noting that "when a merchant uses the instrumentalities of commerce to tap into an interstate market for its product, such wire and mail communications are relevant contacts to be considered." Id. at 1256. Here, Rock City did not attempt to tap into the Pennsylvania market for its product. Rather, it was Plaintiff who contacted Rock City, and the product itself was to be supplied in Kentucky. (Compl. ¶¶ 6, 8, 9.) Moreover, unlike the parties in Lebel, the duration of the parties' contacts in this case lasted no more than one year. (Compl. ¶¶ 9, 21.)

RWE further argues that the exercise of personal jurisdiction is proper because default by a non-resident on an agreement with a Pennsylvania resident, causing monetary loss to the Pennsylvania resident, has been found to satisfy the Pennsylvania Long Arm Statute. Rosen v. Solomon, 374 F.Supp. 915 (E.D. Pa. 1974). In Rosen, plaintiff brought a breach of contract action against an out of state defendant for alleged default under a stock option agreement. Id. at 915. In its jurisdictional analysis, the Rosen court found it significant that the contract had been negotiated in Pennsylvania, that the contract included a Pennsylvania choice of law clause, and that the option which was the subject of the agreement was scheduled to be exercised in Pennsylvania and was in fact exercised there. Id., 364 F.Supp. at 920. Here, by contrast, the contract was not negotiated in Pennsylvania, there is no Pennsylvania choice of law provision, and the subject of the

agreement (the chaste and plumbing work) was not to be performed in Pennsylvania.

The Court concludes that where the only contacts an out of state defendant has with the forum state are that it concluded a contract with a forum state plaintiff and sent some related communications to that plaintiff, and where the contract negotiations were initiated by the plaintiff, the contract is to be performed entirely outside the forum state, the contract does not contain a choice-of-law clause designating the application of forum state law, and the contract does not create long-term or substantial ties with the forum state, the defendant does not have sufficient contacts with the forum state to grant forum state courts personal jurisdiction.

As the Court finds that RWE has not established the requisite minimum contacts between Rock City and the Commonwealth, it need not reach the question of whether or not the assertion of personal jurisdiction would comport with the notions of "fair play and substantial justice." Similarly, because the Court finds that it does not have personal jurisdiction over Rock City in this case, it need not reach Rock City's request to dismiss this action for improper venue or to transfer it to the United States District Court for the Middle District of Tennessee.

An appropriate Order follows.

