

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

RLI INSURANCE CO.	:	CIVIL ACTION
	:	
v.	:	
	:	
BENNETT COMPOSITES, INC., et al.	:	NO. 04-272

MEMORANDUM

Baylson, J.

March 28, 2005

I. Introduction

Plaintiff RLI Insurance Company (“RLI”) filed this action against Defendants Bennett Composites, Inc. (“BCI”), Charles H. Stephens, Gary L. Bennett, Kay Bennett, and Floy Stephens (“Defendants”) on January 22, 2004. This Court has jurisdiction pursuant to 28 U.S.C. §1332 due to the diversity of citizenship of the parties.

Presently before the Court are Motions to Dismiss for Lack of Personal Jurisdiction, filed by Defendants Floy Stephens (“Floy”) and Kay Bennett (“Kay”) on April 5, 2004. On April 22, 2004, all proceedings in the action were stayed until further order of the court. Following a telephone conference on February 18, 2005, this case was removed from suspense status on February 23, 2005. Plaintiff filed a response to the motions on March 4, 2005, and Floy filed a reply brief on March 14, 2005.

II. Legal Standard

When a defendant challenges an action for lack of personal jurisdiction, the plaintiff “need only establish a prima facie case of personal jurisdiction and the plaintiff is entitled to have its allegations taken as true and all factual disputes drawn in its favor.” Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004)(citing Pinker v. Roche Holdings Ltd., 292 F.3d 361, 368

(3d Cir. 2002)).

III. Factual Allegations

RLI's complaint sets forth the following factual allegations relevant to the motions before the Court. RLI is a corporation engaged in the business of suretyship, organized and existing under the laws of the State of Illinois with its principal place of business in Cleveland, Ohio. BCI is a corporation organized and existing under the laws of the State of Alabama with its principal place of business in Clanton, Alabama. BCI manufactures glass reinforced concrete panels for use in construction of commercial buildings. During all relevant periods, Charles Stephens and Gary Bennett were shareholders and officers of BCI. The individual defendants are all Alabama residents.

According to the RLI's complaint, personal jurisdiction exists over the defendants because they executed an Indemnity Agreement dated October 1, 1998 (the "Indemnity Agreement"), indemnifying RLI from all loss and expenses in connection with bonds executed on behalf of BCI.

On March 23, 2001, the Norwood Company ("Norwood") and BCI entered into a subcontract for the fabrication, delivery and erection of glass reinforced concrete panels for a construction project known as the 2301 Renaissance Boulevard, King of Prussia, Upper Merion Township, Pennsylvania project (the "2301 project"). On March 30, 2001, BCI and Charles Stephens executed an Application Agreement and formed a "silent joint venture" to obtain bonding for the 2301 project.

As mentioned above, on October 1, 1998, RLI and Defendants had entered into the Indemnity Agreement whereby Defendants agreed to exonerate, indemnify and hold harmless

RLI against any and all liability for losses and/or expenses resulting from the execution of the bonds, the failure to comply with the Indemnity Agreement, or the enforcement of the Indemnity Agreement. In reliance upon the Application Agreement and the Indemnity Agreement, RLI executed a Performance and Payment Bond undertaking instruments of guarantee (the “Bonds”) on behalf of BCI with respect to the Subcontract between BCI and Norwood in relation to the 2301 project, with BCI as principal and Norwood and Liberty Properties Trust (“Liberty”) as dual-obligees.

In October 2001, Norwood declared BCI in default on the Subcontract. In December 2001, Norwood filed an action against RLI in this Court, Norwood Co. v. RLI Insur. Co., 01-CV-6153 (the “Pennsylvania Bond Claim Action”), which was dismissed in December 2004 following a settlement agreement. Meanwhile, BCI had brought a state court action against Norwood and others in Alabama, Bennett Composites, Inc. v. Norwood Co., et al., Circuit Court of Chilton County, Alabama, CV 2001 426 (the “Alabama Action”), which was referred to arbitration in 2002, and arbitration hearings were held between August and December 2003. On or about January 6, 2004, the Arbitration Panel entered an award in favor of Norwood and against BCI. In relation to Norwood’s claims on the 2301 project, Norwood was awarded \$1,124, 085.08.

RLI has been defending against the claims brought by Norwood in the Pennsylvania Bond Claim Action, and has incurred costs in the amount of \$208,090.30 and will continue to incur additional costs. RLI has been reimbursed only \$60,000.00. Despite notice and demands by RLI that Defendants fulfill their obligations under the Application and Indemnity Agreements, Defendants have refused to adhere to the terms of these agreements and to indemnify RLI for

losses sustained on the Bonds and as a result of Norwood's claims against BCI.

The Complaint requests that the Court enter judgment that Defendants are jointly and severally liable to RLI for any and all amounts paid in satisfaction of its bond obligations and all related losses, costs and expenses, attorneys' fees and consultants' fees incurred by RLI.

IV. Motions Not Barred by Collateral Estoppel

RLI argues that Kay and Floy are collaterally estopped from pursuing these motions by this Court's recent decision in related litigation against the Stephens and the Bennetts, in which the Court held that its exercise of personal jurisdiction over Floy and Kay was proper. Great American Ins. Co. v. Stephens, 2005 WL 452349 *3-*5 (E.D. Pa. Feb. 25, 2005). The Court determined in that case that "their signatures on the Indemnity Agreement are sufficient to demonstrate that Floy and Kay 'purposefully directed [their] activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities.'" Id. at *5 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985)).

The collateral estoppel argument fails because the motions in this case do not constitute relitigation of an issue previously decided in a different cause of action between the same parties. "Under collateral estoppel, once a court decides an issue of fact or law necessary to its judgment, that decision precludes relitigation of the same issue on a different cause of action between the same parties." Kremer v. Chemical Constr. Corp., 456 U.S. 461, 467 n. 6 (1982); Walker v. Horn, 385 F.3d 321, 336 (3d Cir. 2004). Here, the parties are not the same as in Great American, and the issue, while similar, is not the same. In Great American, the Court held that under the facts of that case the Court properly exercised specific jurisdiction over Floy and Kay based on their execution of an Indemnity Agreement between the plaintiff, Great American Insurance

Company, and the defendants. Great American, 2005 WL 452349 at *5. The issue presented by these motions, however, is whether the Court may properly exercise specific jurisdiction over Floy and Kay under the similar, but not identical, facts of this case.

V. The Court May Properly Exercise Jurisdiction over Floy and Kay on the Facts of the Case

Floy and Kay argue in their motions that they are residents of Alabama without any contacts with Pennsylvania. They concede that they were signatories of an Indemnity Agreement executed on October 1, 1998, between Plaintiff and Defendants, but argue that the Indemnity Agreement is insufficient to establish that they purposefully directed their activities at Pennsylvania because the Indemnity Agreement (1) contains no consent to the jurisdiction or venue of this Court, (2) does not refer to or incorporate any such clauses in any other agreements, and (3) does not refer to the project in Pennsylvania or to any other project location.

These arguments parallel those made in Great American, but Floy's Reply Brief distinguishes the facts here by focusing on the chronology of events. In Great American, the Indemnity Agreement was signed by Floy and Kay on February 26, 2001, to guaranty the performance of obligations under a Performance Bond for a construction project in Pennsylvania which was executed that same day. Great American, 2005 WL 452349. Here, Defendants signed the Indemnity Agreement on October 1, 1998, over two years before Norwood and BCI entered into the Subcontract for the 2301 project and BCI and Charles Stephens executed the Application Agreement to obtain bonding for the 2301 project.

In Great American, the Court summarized the relevant law regarding personal jurisdiction, which will not be repeated here. Great American, 2005 WL 452349 at *3-*5. In

Great American, the Court noted that Floy and Kay “voluntarily signed the Indemnity Agreement while fully aware that it related to a performance bond for construction of a project in Pennsylvania.” Id. at *5. Here, it is less clear that when Floy and Kay signed the Indemnity Agreement they were aware that BCI would seek bonds for a project in Pennsylvania. In fact, RLI’s Brief in Response to the motions states that at the time the Indemnity Agreement was signed, BCI was seeking a bid for a project in South Carolina. (Plaintiff’s Brief in Response to Motions to Dismiss for Lack of Personal Jurisdiction, p. 14).

Still, Defendants allowed the Indemnity Agreement to remain in place for the 2301 project, and the Court’s ruling in Great American did not rely solely on the finding that Floy and Kay were aware that the Indemnity Agreement related to a performance bond for construction in Pennsylvania. The Court also relied on the fact that, as here, “their economic interest in the transaction was apparent in that their signatures of the Indemnity Agreement were demanded and received.” Id. at *5. Similarly, in Great American as well as here, “the question of breach or performance relates to Pennsylvania-focused events.” Id. So, despite the differing chronology of events in this case, the Court finds that the execution of the Indemnity Agreement by Floy and Kay is sufficient to demonstrate that they “purposefully directed [their] activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities.” Burger King, 471 U.S. at 472.

Having found the requisite minimum contacts, the Court must consider whether the exercise of specific jurisdiction over Floy and Kay comports with notions of fair play and substantial justice. “To defeat jurisdiction based on this fairness inquiry, a defendant must ‘present a compelling case that the presence of some other considerations would render

jurisdiction unreasonable.’’ Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004)(quoting Burger King, 471 U.S. at 476)). To determine whether such a compelling case has been made, courts may consider “the burden on the defendant, the forum State’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining the most efficient resolution of controversies and the shared interest of the several States in furthering fundamental substantive social policies.” Id. (quoting Burger King, 471 U.S. at 477).

Neither Floy nor Kay has presented a compelling case that defending against these claims in Pennsylvania would be a particular burden upon either of them. As noted above, without any evidence presented to the contrary, courts are reluctant to assume any such burden as “modern 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. Moreover, Pennsylvania has an interest in the litigation. The 2301 Project is located in Pennsylvania, the arbitration proceedings and the several federal actions relating to these events have taken place in Pennsylvania, and the Commonwealth has an interest in the protection of the indemnity rights of sureties issuing bonds for the benefit of Pennsylvania companies.

Therefore, this Court’s exercise of specific personal jurisdiction over Defendants Floy Stephens and Kay Bennett in relation to RLI’s claims is proper, as the requirements of the Pennsylvania long arm statute have been met and such jurisdiction comports with constitutional requirements. Defendants’ Motions to Dismiss for Lack of Personal Jurisdiction pursuant to Rule 12(b)(2) are therefore denied.

V. Conclusion

For the foregoing reasons, the Court denies Defendants’ Motions to Dismiss for lack of

personal jurisdiction.

An appropriate Order follows.

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ORDER

AND NOW this 28th day of March, 2005 upon consideration of the Motion to Dismiss of Defendant Floy Stephens (Docket No. 9), the Motion to Dismiss of Defendant Kay Bennett (Docket No. 10), and the responses thereto, it is ORDERED that the motions are DENIED.

BY THE COURT:

s/Michael M. Baylson
Michael M. Baylson, U.S.D.J.

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