

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

THE BLUE RIBBON PROSTATE INITIATIVE	:	CIVIL ACTION
	:	
v.	:	
	:	
JACK WEISBERG, et al.	:	NO. 05-4812

MEMORANDUM

Bartle, J.

November 7, 2005

Plaintiff, The Blue Ribbon Prostate Initiative ("Blue Ribbon"), alleges that defendant Jack Weisberg ("Weisberg") breached a contract to donate \$500,000 to it. Plaintiff also claims that Weisberg conspired with defendant Julie Lewit-Nirenberg ("Nirenberg") to breach the contract. Before the court is the motion of Jack Weisberg to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

The following facts are undisputed. Blue Ribbon is a division of the Foundation for Breast and Prostate Health, a non-profit organization (the "Foundation"). Both have their principal places of business in Pennsylvania. Blue Ribbon was established to raise money to increase prostate cancer awareness, detection, and treatment.

The Foundation's president and founder, Rochelle Schwartz ("Schwartz"), hired Nirenberg, a citizen of New York, in November, 2003, as Chief Executive Officer of Blue Ribbon. They

decided that Blue Ribbon would open an office in New York City and partner with the Ralph Lauren Cancer Center in New York City to provide prostate cancer education and treatment.

In September, 2004, Nirenberg solicited Weisberg, a citizen of New York, about donating money to Blue Ribbon. They met in New York City at the law office of Nirenberg's husband to discuss Blue Ribbon's efforts in New York City. In September or October, 2004, Weisberg orally agreed to donate \$500,000 to Blue Ribbon for the establishment of the Jack Weisberg Blue Ribbon Prostate Initiative in New York City (the "Initiative"). Weisberg and Nirenberg continued to meet at various locations in New York City to discuss the objectives of Blue Ribbon and how his money would be used. They also communicated by telephone and electronic mail. It was agreed that the Foundation would handle all public relations work for the Initiative and would be a conduit through which Weisberg's donation would be provided to the Initiative. On January 4, 2005, Nirenberg sent Weisberg a final commitment letter addressed from the Foundation and signed by both Schwartz and Nirenberg. Weisberg executed the letter in New York City and returned it to Nirenberg.

Weisberg did not make the first payment of \$250,000, which was due by January 30, 2005. In or around February, 2005, Schwartz informed Nirenberg that the Foundation could no longer maintain Blue Ribbon's office in New York City. Nirenberg's employment was also terminated for financial reasons. The efforts of Blue Ribbon to establish the Initiative with the Ralph

Lauren Cancer Center, however, would continue. Around March, 2005, Nirenberg forwarded Weisberg a proposal for a partnership between the American Prostate Initiative and the Ralph Lauren Cancer Center.

In this diversity action, we apply Pennsylvania law to determine whether personal jurisdiction over Weisberg is proper. Carteret Sav. Bank, F.A. v. Shushan, 954 F.2d 141, 144-45 (3d Cir. 1992). Pennsylvania's long-arm statute authorizes Pennsylvania courts to exercise personal jurisdiction to the "fullest extent allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b). Due process requires that the defendant have "minimum contacts" in the forum state, and that the exercise of jurisdiction comport with "traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). "[I]t is essential ... that there be some act by which the defendant personally avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." Hanson v. Denckla, 357 U.S. 235, 253 (1958) (citation omitted).

A court may exercise either general or specific jurisdiction over a defendant. Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001). General jurisdiction applies when the cause of action does not arise out of and is not related to the defendant's contacts with the forum. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415 n.9 (1984). "[T]he

plaintiff must show significantly more than mere minimum contacts to establish general jurisdiction. The nonresident's contacts to the forum must be continuous and substantial." Provident Nat'l Bank v. Cal. Fed. Sav. & Loan Ass'n, 819 F.2d 434, 437 (3d Cir. 1987) (citations omitted). Specific jurisdiction is proper when the "cause of action arises out of [the] defendant's forum-related activities, such that the defendant 'should reasonably anticipate being haled into court' in that forum." Remick, 238 F.3d at 255; see also World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). Blue Ribbon only asserts that specific jurisdiction exists over Weisberg. Where the defendant has raised a jurisdictional defense, the plaintiff bears the burden of establishing, through sworn affidavits or other competent evidence, that either general or specific jurisdiction can be exercised. Mellon Bank (East) PSFS, N.A. v. DiVeronica Bros. Inc., 983 F.2d 551, 554 (3d Cir. 1993); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66 n.9 (3d Cir. 1984).

"[T]here are different considerations in analyzing jurisdiction over contract claims and over certain tort claims." Remick, 238 F.3d at 255-56. With respect to plaintiff's breach of contract claim against Weisberg, "we must consider the totality of the circumstances, including the location and character of the contract negotiations, the terms of the contract, and the parties' actual course of dealing." Id. at 256.

Blue Ribbon argues that jurisdiction over Weisberg with respect to its breach of contract claim is proper because Weisberg entered into a contract with the Foundation and Blue Ribbon, a Pennsylvania non-profit organization and its division, and knew that his donation was to be used by a Pennsylvania non-profit organization and its division. Merely entering into a contract with a citizen of the forum state does not establish jurisdiction, "particularly where, as here, the out-of-state defendant executed the contract only at the behest of the resident." DiVeronica Bros., 983 F.2d at 557. Moreover, the foreseeability of the impact of his rescission upon the Foundation is not determinative. World-Wide Volkswagen, 444 U.S. at 295. Rather, the touchstone is whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." Id. at 297; see also Remick, 238 F.3d at 255.

We examine the jurisdictional factors we must consider as outlined by our Court of Appeals in Remick. All discussions took place in New York. All meetings and telephone conversations between Weisberg and Nirenberg occurred in New York, and he signed the commitment to donate the \$500,000 in New York City. Also, "this is not a case where [Weisberg] solicited the contract or initiated the business relationship" Remick, 238 F.3d at 256. Rather, it was Nirenberg who solicited Weisberg. Moreover, the terms of the commitment letter called for the donation to be used by the Foundation and Blue Ribbon to fund the Initiative in

New York City. Weisberg had absolutely no connection with Pennsylvania other than the fact that he knew that the Foundation was a Pennsylvania non-profit organization. We conclude that Weisberg has not had the requisite minimum contacts with Pennsylvania to confer personal jurisdiction over him for Blue Ribbon's breach of contract claim.

We must next determine whether we may exercise personal jurisdiction over Weisberg for Blue Ribbon's conspiracy claim. Under Calder v. Jones, 465 U.S. 783 (1984), "an intentional tort directed at the plaintiff and having sufficient impact upon [him] 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 Indus., Inc. v. Kiekert AG, 155 F.3d 254, 260 (3d Cir. 1998) (quotation marks omitted). Our Court of Appeals applied Calder in IMO Industries, holding that:

- [T]he Calder 'effects test' requires the plaintiff to show the following:
- (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 his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity.

IMO Indus., 155 F.3d at 265-66 (footnote omitted) (emphasis added).

Blue Ribbon alleges that Weisberg conspired with Nirenberg to "create a competing prostate cancer initiative" and "commit his funds to that competing initiative." Reading plaintiff's complaint as alleging conspiracy to interfere with contractual relations, it has satisfied the first prong of the test in Calder. See Boyanowski v. Capital Area Intermediate Unit, 215 F.3d 396, 407 (3d Cir. 2000); Evans v. Philadelphia Newspapers, Inc., 601 A.2d 330, 333 n.1 (Pa. Super. Ct. 1991).

IMO instructs us next to decide whether the plaintiff can satisfy the third prong of Calder before we consider the second prong. We must determine whether Weisberg "expressly aimed" his tortious conduct at Pennsylvania by making some type of "targeted ... entry" into the forum state. IMO Indus., 155 F.3d at 265, 266.

Blue Ribbon draws our attention to the fact that Weisberg had several discussions with Nirenberg in New York before deciding to rescind his gift and to the fact that Weisberg knew that his actions would harm the Foundation. Blue Ribbon also alleges that "Weisberg and Nirenberg entered into discussions with the specific intent to deprive the Foundation of the funds due it pursuant to the terms of the Commitment Letter," and that Weisberg and Nirenberg worked together to create a competing prostate cancer initiative, that is, the American Prostate Initiative.

The discussions that Weisberg had with Nirenberg shortly before rescinding his donation occurred in New York City,

not Pennsylvania. Any knowledge he had that his rescission would injure the Foundation and Blue Ribbon is not dispositive. Foreseeability of harm to the plaintiff is not the relevant question under Calder. Rather, the focus must be on whether the defendant "expressly aimed his tortious conduct at the forum." IMO Indus., 155 F.3d at 266 (applying Calder, 465 U.S. 783).

While there is evidence that Nirenberg forwarded Weisberg a proposal calling for the partnership of the American Prostate Initiative with the Ralph Lauren Cancer Center, there is no evidence that Weisberg worked with Nirenberg on this proposal. In any event, the pursuit of a competing initiative in New York City would not be evidence that Weisberg aimed any tortious conduct at Pennsylvania. See id. at 265-66. Weisberg's only connection with Pennsylvania was the fact that he knew that the Foundation was a Pennsylvania organization and that it was going to be involved in the Initiative in New York City. This knowledge alone is insufficient to meet the targeting requirement. Id. at 265. In sum, Pennsylvania was clearly not the focal point of any tortious activity, and Blue Ribbon cannot meet the minimum contacts requirement of the Due Process Clause in connection with its conspiracy claim. See id. at 268.

Accordingly, this court will grant the motion of defendant Jack Weisberg to dismiss for lack of personal jurisdiction.

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ORDER

AND NOW, this 7th day of November, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of the defendant Jack Weisberg to dismiss for lack of personal jurisdiction is GRANTED.

BY THE COURT:

/s/ Harvey Bartle III
J.