

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

Z-MAN PAINTING, LLC :
: CIVIL ACTION
:
v. :
: NO. 04-CV-4489
:
GENERATION BUILDERS, INC. and :
HOMESTEAD AT MANSFIELD, INC. :

SURRICK, J.

JANUARY 6, 2006

MEMORANDUM & ORDER

Presently before the Court are Defendants Generation Builders, Inc. and Homestead at Mansfield, Inc.'s Motion To Dismiss Plaintiff's Complaint On Jurisdictional Grounds (Doc. No.

4). For the following reasons, Defendants' Motion will be granted.

I. BACKGROUND

Plaintiff Z-Man Painting, LLC is a limited liability company incorporated in Pennsylvania with its primary place of business at 6108 Mark Circle, Bensalem, Pennsylvania. (Compl., Doc. No. 1 ¶ 2; Doc. No. 5 at 1.) Plaintiff incorporated under Pennsylvania law in January 2004. (Doc. No. 5 at 1.) Plaintiff asserts that it is the successor in interest to Z-Man Painting and that prior to incorporating, Z-Man Painting was a business entity operating out of the same principal place of business in Pennsylvania.¹ Ziya Yilmaz was the sole proprietor of Z-Man Painting.

¹ Defendants contend that Z-Man Painting submitted invoices to Defendants bearing the address "1165 Jacksonville Road, Bordentown, New Jersey," which is the home address of Ziya Yilmaz. (Mannion Certification ¶ 11.) However, because this is a Motion to Dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(2), we must resolve any factual disputes in favor of the plaintiff. *Western Equities, Ltd. v. Hanseatic, Ltd.*, 956 F. Supp. 1232, 1238 (D.V.I. 1997).

Defendant Generation Builders, Inc. (“Generation”) is a New Jersey corporation with its principal place of business located in Columbus, New Jersey. (Mannion Certification ¶ 2.) Generation is the builder of homes in the Country Walk housing community in Columbus. (*Id.* ¶ 3.) Defendant Homestead at Mansfield, Inc. (“Homestead”) is also a New Jersey corporation and is the builder of homes in Homestead at Mansfield, a housing community in Columbus, with its construction and sales offices located on-site. (*Id.* ¶ 5.) Neither Generation nor Homestead employs any Pennsylvania residents. Neither defendant conducts any advertising in Pennsylvania and neither owns real estate or has an office in Pennsylvania. Both companies maintain their sole offices in Columbus, New Jersey. (*Id.* ¶¶ 4, 6-7.)

It is undisputed that the relationship between Plaintiff and Defendants began when Ziya Yilmaz approached Defendants’ construction supervisor, identified himself as a sole proprietor painting subcontractor, and inquired whether Defendants had a need for his services. (*Id.* ¶ 9.) Defendants hired Plaintiff to perform painting services at both the Country Walk and Homestead at Mansfield communities. (*Id.* ¶ 10.) Plaintiff was hired to perform work solely at these two New Jersey job sites. (*Id.*) Defendants contracted with Plaintiff by providing him with work orders detailing the location, the type of work, the start and completion dates, and the price. (Doc. No. 1 at Ex. A.) Each work order listed Defendant Generation’s Columbus, New Jersey address and listed Plaintiff’s address as “1165 Jacksonville Road, Bordentown, NJ.” (*Id.*) Plaintiff then submitted invoices to Defendants for the work that it had performed. (*Id.* at Ex. B; Mannion Certification ¶ 11.) All of the invoices listed Defendant Generation’s Columbus, New Jersey address. In addition, all of the invoices listed Plaintiff’s Bordentown, New Jersey address, however, several also included a handwritten line under the typed New Jersey address, stating the

Bensalem, Pennsylvania address. (Doc. No. 1 at Ex. B.) Upon receiving the invoices, Defendants issued a check to “Z-Man Painting Contractor,” and Plaintiff picked up each check at Defendants’ New Jersey job site. (Mannion Certification ¶ 12.)

Plaintiff submitted invoices to Defendants totaling \$66,000. (Doc. No. 1 ¶ 10.) As of March 2004, Plaintiff had received only \$20,000. (*Id.* ¶ 11.) Defendants contend that they withheld payment of the remaining balance because the services performed by Z-Man Painting Contractor were deficient and because they were forced to hire another painter to fix and complete the job. (Mannion Certification ¶ 13.) Plaintiff contends that Defendants breached their contract by failing to pay the remaining balance. (Doc. No. 1 ¶¶ 6-15.) In addition, Plaintiff claims tortious interference with contract based upon Defendants’ hiring of Plaintiff’s subcontractors to work on other homes in the New Jersey communities. (*Id.* ¶¶ 16-21.) Plaintiff asserts that he lost revenue in the amount of \$120,000, which he expected to earn for work on approximately one hundred homes in the Country Walk Development in Columbus, New Jersey. (*Id.* ¶¶ 17-18.) Finally, Plaintiff claims anticipatory breach by Defendants. (*Id.* ¶¶ 22-25.) Plaintiff seeks damages in the amount of \$166,000, interest and costs, and punitive damages. (*Id.* at 5.)

Defendants filed the instant Motion to dismiss for lack of jurisdiction arguing that this Court lacks both subject matter jurisdiction over the claims and personal jurisdiction over Defendants. Because we will grant Defendants’ Motion to Dismiss based on a lack of personal jurisdiction, we need not discuss subject matter jurisdiction.

II. LEGAL STANDARD

In determining whether personal jurisdiction is proper over a defendant, a federal district court sitting in a diversity matter must apply the law of the forum state. *Vetrotex Certaineed Corp. v. Consol. Fiber Glass Prods.*, 75 F.3d 147, 150 (3d Cir. 1995); Fed R. Civ. P. 4(e). Because Pennsylvania's long-arm statute is coextensive with the limits provided by the federal Constitution, we consider federal doctrine to assess Defendants' "susceptibility to personal jurisdiction in Pennsylvania." *Vetrotex*, 75 F.3d at 150; *see also Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001); 42 Pa. Cons. Stat. Ann. § 5322(b) (1981).

When a defendant raises a jurisdictional defense under Federal Rule of Civil Procedure 12(b)(2), the plaintiff must show contacts with the forum state that are sufficient to give the court in personam jurisdiction over the defendant. *BP Chems. Ltd. v. Formosa Chem. & Fibre Corp.*, 229 F.3d 254, 259 (3d Cir. 2000); *Time Share Vacation Club v. Atl. Resorts, Ltd.*, 735 F.2d 61, 63 (3d Cir. 1984). "[M]inimum contacts must have a basis 'in 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.'" *Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal.*, 480 U.S. 102, 109 (1987) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). "The plaintiff may not rest on the bare pleadings, but rather must establish these jurisdictional facts by sworn affidavit, deposition, or other competent evidence." *Thypin Steel Co. v. Murmansk Shipping Co.*, Civ. A. No. 96-1799, 1997 U.S. Dist. LEXIS 4454, at *5 (E.D. Pa. Apr. 3, 1997). Any factual disputes should be resolved in favor of the plaintiff. *Western Equities, Ltd. v. Hanseatic, Ltd.*, 956 F. Supp. 1232, 1238 (D.V.I. 1997).

There are two theories under which personal jurisdiction may be exercised: general jurisdiction and specific jurisdiction. *Remick*, 238 F.3d at 255. Specific jurisdiction, which is the only theory on which Plaintiff here bases its arguments,² is predicated on the notion that the “defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Thus, specific jurisdiction exists over an out-of-state defendant if “the defendant has purposefully directed his 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 (internal citations omitted).

III. LEGAL ANALYSIS

A. Breach of Contract Claim

In its Complaint, Plaintiff alleges three claims: breach of contract, anticipatory breach, and tortious interference with contract. While the analysis of a defendant’s susceptibility to personal jurisdiction differs slightly for breach of contract as opposed to tort claims, in the instant case we need not do a dual analysis. Plaintiff’s tortious interference claim is clearly mislabeled and is, in reality, an additional breach of contract claim. Plaintiff alleges that Defendants tortiously interfered with Plaintiff’s contract with its subcontractors by approaching them directly to work on approximately one hundred homes in the Country Walk community in New Jersey. However, Plaintiff alleges that it suffered monetary damages as a result of this tortious

² Plaintiff’s brief in response to the instant Motion argues that “[t]his Court has specific personal jurisdiction over the defendants.” General jurisdiction is not discussed. (Doc. No. 5 at 4.) As a result, we do not address the theory of general jurisdiction and focus our analysis only on specific jurisdiction.

interference in the amount of \$120,000. This is a figure which actually represents the lost profit that Plaintiff would have realized from painting the one hundred homes that Plaintiff had allegedly contracted with Defendants to paint. Plaintiff does not suggest that it suffered any damages or lost revenue because of Defendants' interference with Plaintiff's contracts with its subcontractors. Plaintiff is claiming that Defendants breached the contract with Plaintiff to perform future work on those one hundred homes. We will therefore assess whether Defendants are subject to personal jurisdiction in Pennsylvania for the breach of contract claim alone.

B. Personal Jurisdiction Analysis

Plaintiff bases its assertion that personal jurisdiction over Defendants is proper on the fact that Plaintiff is a company incorporated in Pennsylvania and on Defendants' receipt of several invoices from Plaintiff that bore a Pennsylvania address.³ (Doc. No. 5 at 4.) Plaintiff contends that Defendant "deliberately engaged in the contract with Plaintiff while Plaintiff operated in Pennsylvania." (*Id.*) As a result, Plaintiff argues, "[w]hen Defendants refused to make payments on the outstanding invoices, they had reasonable anticipation of being brought to court in Pennsylvania." (*Id.*)

In *Vetrotex*, the Court of Appeals for the Third Circuit dealt with a similar set of facts. A Pennsylvania company that sold fiberglass products attempted to bring suit in Pennsylvania

³ As previously noted, the invoices, which Plaintiff attached to its Complaint as Exhibit B, do not obviously suggest that Plaintiff's address is in Pennsylvania. Some of the invoices include only a typed heading with Plaintiff's New Jersey address. Others contain this New Jersey address and a handwritten Pennsylvania address beneath it.

In addition, Plaintiff began working for Defendants before Z-Man Painting incorporated in Pennsylvania. Plaintiff asserts that prior to incorporating, Z-Man Painting's primary address was in Pennsylvania. (Doc. No. 5 at 1.) Defendants assert that they knew only of Ziya Yilmaz's home address in New Jersey when they initially hired Plaintiff. (Mannion Certification ¶¶ 14-15.)

against a California corporation that had purchased its products. *Vetrotex*, 75 F.3d at 148. The Third Circuit noted preliminarily that the mere existence of a contract “does not automatically establish sufficient minimum contacts in the other party’s home forum.” *Id.* at 151 (internal citations omitted). In addition to the contract itself, the court must consider ““prior negotiations and contemplated future consequences, along with the terms of the contract and the parties’ actual course of dealing.”” *Id.* (quoting *Burger King*, 471 U.S. at 479). In *Vetrotex*, the facts underlying the contractual dispute suggested that the plaintiff solicited the defendant to obtain the contract, that all of the negotiations took place in California and not in Pennsylvania, and that all of the products were shipped from Texas to California and never passed through Pennsylvania. *Id.* at 151-52. Based on these facts, the court held that the defendant did not ““purposefully avail” itself of the privilege of doing business in Pennsylvania” and as a result, the court could not exercise personal jurisdiction over it. *Id.* at 152.

Similarly, in the instant case, the only connection to Pennsylvania is the fact that Plaintiff is incorporated there and included a handwritten Pennsylvania address on some of its invoices. Plaintiff Z-Man Painting solicited business from Defendants and all negotiations took place in New Jersey. The work performed under the contract took place solely in New Jersey and Plaintiff was paid at Defendants’ job sites in New Jersey. *See id.* (“[T]his is not a case where the defendant solicited the contract or initiated the business relationship leading up to the contract. Nor is this a case where the defendant sent any payments to the plaintiff in the forum state.”) Under the circumstances, construing all facts in favor of the nonmoving Plaintiff, it is clear that Defendants did not “purposely avail [themselves] of the privilege of doing business in Pennsylvania for purposes of establishing the minimum contacts required for specific

jurisdiction.” *Id.* at 153. Accordingly, we will grant Defendants’ Motion to Dismiss based upon a lack of personal jurisdiction.

An appropriate Order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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CIVIL ACTION

NO. 04-CV-4489

ORDER

AND NOW, this 6th day of January, 2006, it is ORDERED that Defendants' Motion To Dismiss Plaintiff's Complaint On Jurisdictional Grounds (Doc. No. 4) is GRANTED and Plaintiff's Complaint is DISMISSED without prejudice.

IT IS SO ORDERED.

BY THE COURT:

R. Barclay Surrick, Judge