



Entertainment, Inc. should be dismissed, but assert that GNOC is a proper party defendant. Memorandum of Law in Support of Plaintiffs' Response to Defendants' Motion to Dismiss at 2. For the reasons that follow, we find that the Merlinos have failed to come forward with sufficient evidence to establish that the court can exercise personal jurisdiction over GNOC. Accordingly, the joint motion will be granted in its entirety.

“[I]n reviewing a motion to dismiss under Rule 12(b)(2), we ‘must accept all of the plaintiff’s allegations as true and construe disputed facts in favor of the plaintiff.’” Pinker v. Roche Holdings, Ltd., 292 F.3d 361 (3d Cir. 2002) (quoting Carteret Sav. Bank, F.A. v. Shushan, 954 F.2d 141, 142 n.1 (3d Cir. 1992)). Once a defendant has properly raised a jurisdictional defense, the plaintiffs bear the burden of proving, either by sworn affidavits or other competent evidence, sufficient contacts with the forum state to establish personal jurisdiction. North Penn Gas v. Corning Natural Gas, 897 F.2d 687, 689 (3d Cir. 1990) (per curiam); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (1984).

Under the Federal Rules of Civil Procedure, district courts are authorized to exercise personal jurisdiction over non-residents to the extent permissible under the law of the state in which the district court is located. Fed. R. Civ. P. 4(e); North Penn Gas, 897 F.2d at 689. In exercising personal jurisdiction, the court must first ascertain whether jurisdiction exists under the forum state’s long-arm jurisdiction

statute and then determine whether the exercise of jurisdiction comports with the due process clause of the Fourteenth Amendment to the Constitution. Van Buskirk v. Carey Canadian Mines, Ltd., 760 F.2d 481, 489-90 (3d Cir. 1985). This inquiry has been collapsed in Pennsylvania, as the Pennsylvania long-arm statute provides that:

the jurisdiction of the Tribunals of this Commonwealth shall extend to all persons who are not within the scope of section 5301 (relating to persons) to the fullest extent permitted by the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the constitution of the United States.

41 Pa. Cons. Stat. Ann. §5322(b); Van Buskirk at 490. The reach of the Pennsylvania statute is thus “coextensive” with the due process clause. North Penn Gas, 897 F.2d at 690.

Personal jurisdiction may be either specific or general. Specific jurisdiction applies where the plaintiff’s cause of action arises from the defendant’s forum related activities. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985); North Penn Gas, 897 F.2d at 690. “To establish specific jurisdiction a plaintiff must show that the defendant has minimum contacts with the state ‘such that [the defendant] should reasonably anticipate being haled into court there.’” North Penn Gas, 897 F.2d at 690 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). In an appropriate case, even a single act by a non-resident defendant within the forum state may support jurisdiction. Burger King Corp., 471

U.S. at 475, n. 18. However, the contacts must not be “random, fortuitous or attenuated.” *Id.* (citations omitted). The minimum contacts necessary for the exercise of specific jurisdiction must result from the defendant’s purposeful actions within or directed toward the forum state. “Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant himself that create a ‘substantial connection’ with the forum state.” Burger King Corp., 471 U.S. at 475 (quoting McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957) (emphasis in original)). Where the defendant has “manifestly . . . availed himself of the privilege of conducting business [in the forum state] . . . it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.” *Id.* at 476, see also Mellon Bank (East) PSFS, Nat. Assn. v. Farino, 960 F.2d 1217, 1221 (3d Cir. 1992) (in order to exercise specific jurisdiction, there must be “some act by which the defendants purposely availed [themselves] of the privilege of conducting business in the forum state, thus invoking the benefits and protections of the laws”) (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)).

General jurisdiction is implicated where the claim arises from the defendant’s non-forum related activities. Helicopteros Nacionales de Columbia S.A. v. Hall, 466 U.S. 408, 414 n. 9 (1984); Gehling v. St. George's School of Medicine, 773 F.2d 539, 541 (3d Cir. 1985). In such a case the plaintiff “must show significantly more than mere minimum contacts.” Provident National Bank v.

California Federal Savings & Loan Association, 819 F.2d 434, 437 (3d Cir. 1987).

To assert general jurisdiction, the plaintiff must establish that the defendant's contacts with the forum state were "continuous and substantial." Id.; Gehling, 773 F.2d at 541.

The Merlino's complaint alleges that Mrs. Merlino suffered a slip and fall in a bathroom at the Atlantic City Hilton. Complaint, Count I. Mr. Merlino alleges a cause of action for loss of consortium. Complaint, Count II. The Merlino's are residents of Springfield, Pennsylvania. Complaint ¶ 1. GNOC is alleged to reside at its premises in Atlantic City, but is also alleged to "transact and solicit business from various cities, counties and states including the Commonwealth of Pennsylvania." Complaint ¶ 2.

In its motion, GNOC asserts that it does not regularly conduct business in the Commonwealth, maintains no office here, owns no property that is related to the Merlino's cause of action, is not licensed to do business, and has not managed, lease or transferred any property in Pennsylvania that is related to the cause of action. Joint Motion to Dismiss at ¶ 11. It also asserts it has not purposely availed itself of the benefits of the laws of Pennsylvania. Id. at ¶ 12. It argues that, as all of the events giving rise to the plaintiffs' injuries occurred in New Jersey, they have alleged no facts that will satisfy the minimum contacts requirement.

The Merlino's respond with an affidavit of counsel asserting that GNOC

has availed itself of the Pennsylvania courts on at least nineteen occasions as a party-plaintiff in the Court of Common Pleas of Philadelphia County. Affidavit of Gregory M. Palumbo at p. 1. They argue that when a defendant has used the forum state's court system "there can be no dispute that it is availing itself of the benefits and protections of the forum state's laws and that minimum contacts should be determined in the forum state." Memorandum of Law in Support of Plaintiffs' Response to Defendants' Motion to Dismiss at 4. We cannot agree.

Accepting as true the assertion that GNOC has filed lawsuits in the Pennsylvania courts to vindicate its legal rights, there is no allegation that the claims the Merlinos raise here has any relationship to any of these other lawsuits. Without such a relationship, the fact that GNOC has brought suits as a plaintiff is immaterial to the question of whether it can be haled into a Pennsylvania court as a defendant through the exercise of specific jurisdiction. See, e.g., Mellon Bank (East), 960 F.2d at 1221 (specific jurisdiction arises when the plaintiff's claim is related to or arises out of the defendant's contacts with the forum).

Plaintiffs' argument seems to improperly conflate purposeful availment – a specific jurisdiction concept – with general jurisdiction to argue that once a defendant makes use of the Commonwealth's court system it has opened itself to being sued in the Commonwealth on any claim. Filing even nineteen lawsuits, without more, cannot constitute continuous and systematic activity so as to establish

general jurisdiction. The unrelated lawsuits are also too random, fortuitous and attenuated to support any finding of specific jurisdiction.

Accordingly, we find that the Merlino's have failed to meet their burden of demonstrating sufficient contacts with the forum state to establish personal jurisdiction. GNOC's motion is therefore granted. An appropriate order follows.

