

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

SELAS FLUID PROCESSING
CORPORATION

v.

JEFFREY SPILMAN, et al.

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CIVIL ACTION
NO. 04-00591

O'Neill, J.

April 3, 2006

MEMORANDUM

Plaintiff Selas Fluid Processing Corporation brought this action against defendants Jeffrey Spilman, Gilbert Spilman, Murray Spilman, MAC Group, Incorporated and Metropolitan Alloys Corporation, Gilbert Spilman Revocable Trust U/A/D March 21, 1984 and John Does A through Z. In 2004, defendants filed a motion to dismiss for lack of personal jurisdiction or transfer of venue and plaintiff responded. I denied that motion without prejudice. Now before me is plaintiff's second memorandum in support of personal jurisdiction or to transfer venue to the United States District Court for the Northern District of Indiana; defendants' second motion to dismiss plaintiff's complaint, stay proceedings, or transfer venue to the United States District Court for the Eastern District of Michigan; and plaintiff's reply.

BACKGROUND

Plaintiff Selas Fluid Processing Corporation ("SFPC") custom designs, engineers, fabricates, and installs various types of combustion related process plant equipment for chemical,

petrochemical, refining and other industries. Ultra-Cast, Inc. (“Ultra-Cast”) is a Michigan corporation, headquartered in Detroit, Michigan, that manufactures heat and corrosion resistant cast tubing, radiant tube assemblies, fittings and various petrochemical and heat treating-relating castings. Until recently, Ultra-Cast also maintained a manufacturing facility in Indiana. Defendants Murray Spilman, Jeffrey Spilman, and Gilbert Spilman are the sole stockholders and officers of Ultra-Cast.

The individual defendants in this matter have been residents of Michigan at all relevant times. They are officers and shareholders of both Ultra-Cast, which is not a party to this action, and the corporate defendants, MAC Group, Incorporated and Metropolitan Alloys Corporation. In their depositions, defendants Gilbert Spilman and Murray Spilman asserted that they have nominal involvement in the day-to-day operations of Ultra-Cast. The corporate defendants are Michigan corporations with their principal places of business in Detroit, Michigan. Both MAC Group and Metropolitan Alloys have loaned money to Ultra-Cast at various times over the past several years in the aggregate amount of approximately \$2 million. Many of these loans remain unpaid and are included in the Ultra-Cast bankruptcy proceedings.

Ultra-Cast filed for bankruptcy under Chapter 7 in December 2004. The bankruptcy petition represents that there will be no funds available for unsecured creditors and that estimated assets are less than \$50,000. Jeffrey Spilman filed for Chapter 7 protection in October 2005. SFPC has not attempted to assert any of its claims in either the Ultra-Cast or the Jeffery Spilman bankruptcy proceedings. Although SFPC named Jeffery Spilman as a defendant in this case it now requests that the action proceed without him and against the remaining defendants.

In 2002, SFPC and Ultra-Cast entered into multiple contracts under which SFPC

procured materials and manufactured reformer tube and outlet manifold assemblies, outlet header pipe material, and other materials from Ultra-Cast as required in connection with the on-site erection of facilities in Texas and Louisiana. SFPC alleges that Ultra-Cast (1) demanded advance payment then used that payment to fund more profitable contracts for other customers; (2) delivered unusable materials concealed within tube bundles to avoid detection in a preliminary inspection; (3) extorted additional payments in excess of the contract prices; (4) misrepresented its ability to issue letters of credit; (5) misrepresented the progress of the project; and (6) failed to secure futures contracts for the necessary metals and raw materials, then failed to perform because the price of those materials rose.

SFPC seems to assert multiple arguments for personal jurisdiction. It argues that Jeffrey Spilman's continuous contacts with Pennsylvania subject him to general jurisdiction here. SFPC also argues that Jeffrey Spilman is subject to specific jurisdiction here because he visited SFPC's office in Pennsylvania at least three times, made multiple misrepresentations regarding the contracts at those times, and communicated closely with SFPC's Pennsylvania office throughout the durations of the contracts. SFPC argues that this court should exercise jurisdiction over Murray Spilman and Gilbert Spilman under the doctrine of co-conspirator jurisdiction. SFPC also asserts that MAC Group¹ has multiple customers and a regional sales manager in

¹Plaintiff seems to use the names MAC Group and Metropolitan Alloys Corporation interchangeably. Both are listed as defendants in the original and amended complaint, but SFPC does not assert separate bases for jurisdiction over them. Because both companies are Michigan corporations with principal places of business in Michigan and the individual defendants are the sole shareholders, I will analyze them as if they were the same entity.

Pennsylvania.² Defendants do not seem to contest that this court has personal jurisdiction over defendant Jeffrey Spilman. Defendants do contest this court's jurisdiction over the remaining defendants.

DISCUSSION

1. Personal Jurisdiction

The defendant bears the burden of raising the defense of lack of personal jurisdiction, but the burden is on the plaintiff to show that jurisdiction is proper. See D & S Screen Fund II v. Ferarri, 174 F. Supp.2d 343, 345 (E.D. Pa. 2001). Under Rule 4(e)(1) of the Federal Rules of Civil procedure, a District Court has personal jurisdiction over non-resident defendants to the extent authorized under the law of the state in which the district court sits. Fed. R. Civ. P. 4(e)(1). Pennsylvania's long-arm statute provides personal jurisdiction over a person for causes of action arising from that person "transacting any business in this Commonwealth," or "[c]ausing harm or tortious injury by an act or omission in [and outside] of this Commonwealth." 42 Pa. Cons. Stat. Ann. § 5322(a)(1), (3) & (4). The long-arm statute further provides that a court's jurisdiction extends to the "fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b).

Under the Due Process Clause of the Fourteenth Amendment of the United States Constitution a plaintiff must first demonstrate that the defendants have sufficient minimum

²SFPC does not seem to assert any basis for this court's exercise of jurisdiction over Gilbert Spilman Revocable Trust U/A/D/ March 21, 1984 or John Does A through Z.

contacts with the forum state.³ See Guardi v. Desai, 151 F. Supp. 2d 555, 559 (E.D. Pa. 2001).

If minimum contacts are established, “the defendant’s contacts with the forum State must be such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Omnikem v. Shepherd Tissue, Inc., No. 98-5269, 2000 U.S. Dist. LEXIS 5268, at *10 (E.D. Pa. Apr. 26, 2000), quoting World Wide Volkswagen Corp. v. Woodson, 44 U.S. 286, 292 (1980). Minimum contacts are established by “affirmative acts directed at residents of the forum; there must be some act by which the defendant purposefully avails him or herself of the privilege of conducting activities within the forum state thus invoking the benefits and protections of its laws.” Guardi, 151 F. Supp. 2d at 559, citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985).

Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a “substantial connection” with the forum State. . . . Thus where the defendant “deliberately” has engaged in significant activities 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 laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Burger King Corp, 471 U.S. at 475-76 (citations omitted).

A. Specific Jurisdiction

A defendant may be subject to specific jurisdiction “when the cause of action arises from

³Personal jurisdiction may be general or specific, however, plaintiff “must show significantly more than mere minimum contacts” to establish general jurisdiction. Omnikem, 2000 U.S. Dist. LEXIS 5268, at *7, quoting Provident Nat’l Bank v. California Fed. Savs. Ass’n, 819 F.2d 434 (3d Cir. 1987). Because the record shows no basis for general personal jurisdiction over defendants, I will consider only whether a finding of specific personal jurisdiction is appropriate here.

the defendant's forum related activities. 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." Vetrotex v. Certaineed Corp. v. Consol. Fiber Glass Prods. Co., 75 F.3d 147, 151 n.3 (3d Cir. 1996). In other words, "specific jurisdiction is established when a non-resident defendant has purposefully directed his activities at a resident of the forum and the injury arises from or is related to those activities." Gen. Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001).

The individual defendants, with the exception of Jeffrey Spilman, argue that an exercise of personal jurisdiction over them is improper because they had no contacts with Pennsylvania.⁴ Defendant's physical presence in the forum state is not required for personal jurisdiction to exist. See, e.g., Grand Entertainment Group, LTD v. Star Media Sales, Inc., 988 F.2d 476, 483 (3d Cir. 1993) ("Due process does not require a defendant's physical presence in the forum before personal jurisdiction is exercised."). SFPC, however, has not alleged any additional contacts by Gilbert or Murray Spilman in their individual capacity. SFPC does assert that Murray Spilman spoke on the phone with a sales officer in Pennsylvania, but (1) the deposition testimony indicates that the sales officer called him; (2) there is no indication that those calls were made in Murray Spilman's individual capacity; and (3) the conduct at issue in this dispute did not arise from those phone calls.

SFPC also alleges that MAC Group is subject to personal jurisdiction in this court

⁴ SFPC may have met its burden of proving personal jurisdiction over defendant Jeffrey Spilman. Jeffrey Spilman, however, is currently in bankruptcy proceedings in the United States District Court for the Eastern District of Michigan, and any claims against him must be brought there.

because it had multiple customers in Pennsylvania and a sales representative who served the Pennsylvania area. These actions, however, are not so systematic and continuous to subject MAC Group to general jurisdiction here. “[I]nformational communications in furtherance of a contract between a resident and a nonresident do[] not establish the purposeful activity necessary for a valid assertion of personal jurisdiction over the nonresident defendant.” Vetrotex Certainteed Corp. v. Consol. Fiber Glass Prods. Co., 75 F.3d 147, 152 (3d Cir. 1995) (citations and alterations omitted) (holding that where only contacts were letters and phone calls to resident seller, nonresident was merely a “passive buyer” and no personal jurisdiction existed). Further, MAC Group’s activities in Pennsylvania did not create the basis for this lawsuit. I find that these actions do not provide the requisite minimum contacts with Pennsylvania to support an assertion of personal jurisdiction over them.

I find that defendants’ interactions with the forum state were not sufficiently substantial that they could have reasonably anticipated being required to defend against a claim by plaintiff in Pennsylvania.⁵

B. Co-conspirator Jurisdiction

SFPC urges me to find that this court has personal jurisdiction over Jeffrey Spilman and then apply the doctrine of co-conspirator jurisdiction to exercise jurisdiction over Murray Spilman and Gilbert Spilman.

Co-conspirator jurisdiction is not a separate basis of jurisdiction apart from general or specific jurisdiction. Rather, it is based upon the same contacts with

⁵Because I find plaintiff has not met its burden of establishing the minimum contacts required for personal jurisdiction to exist, I need not consider whether the assertion of personal jurisdiction over defendants would comport with the notions of “fair play and substantial justice.”

the forum analysis just discussed. The difference is that a court looks not only at the defendant's forum contacts, but at those of the defendant's "resident" co-conspirators. The court imputes the contacts of the "resident" co-conspirator over whom it has jurisdiction to the "foreign" co-conspirator to see if there are sufficient contacts to exercise jurisdiction over the latter.

Massachusetts School of Law at Andover, Inc. v. American Bar Ass'n, 846 F. Supp. 374, 379

(1994). I cannot exercise personal jurisdiction over Gilbert and Murray Spilman on this basis.

First, SFPC has not alleged the existence of a conspiracy. In both the cases cited by SFPC in its response, the plaintiff had alleged a conspiracy. See, e.g., id. at 376 ("[d]efendants, plaintiff

asserts, have conspired to fix the salaries of law school faculties and administrators"); see also

Santana Products, Inc. v. Bobrick Washroom Equip., 14 F. Supp.2d. 710 (M.D. Pa. 1998)

("alleging that the defendants had conspired to interfere with Santana's business"). In the first

amended complaint, SFPC does not even mention an agreement, an essential element of a

conspiracy. Therefore I cannot exercise jurisdiction over Murray and Gilbert Spilman in this

case.

II. Motion to Transfer Venue

In the alternative, SFPC urges me to transfer venue to the Northern District of Indiana under 28 U.S. § 1404(a). Defendants ask that I transfer venue to the Eastern District of

Michigan. Notwithstanding my lack of personal jurisdiction over the defendants, I believe it to

be in the interests of justice to transfer this case to the Eastern District of Michigan. See 28

U.S.C. § 1631 ("Whenever a civil action is filed in a court . . . and that court finds that there is a

want of jurisdiction, the court shall, if is in the interests of justice, transfer such action or appeal

to any other such court in which the action or appeal could have been brought at the time it was

filed." Personal jurisdiction and venue are proper in the Eastern District of Michigan because all

three individual defendants reside in Michigan and the corporate defendants are Michigan corporations with principal places of business in Michigan. See Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004); 28 U.S.C. § 1391(a) and (c)). Transfer is in the interests of justice because jurisdiction is clearly proper in the Eastern District of Michigan and the Court's interests in judicial economy will be served by obviating the need for plaintiff to refile his claim in Michigan.⁶ See Lawman Armor Corp. v. Simon, 319 F. Supp.2d 499, 507 (E.D. Pa. 2004).

SFPC argues that I should not transfer this case to the Eastern District of Michigan because plaintiff's choice of forum generally is a "paramount consideration in any determination of a transfer request." See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995) (Section 1404(a) transfer). Instead, SFPC asks that I transfer this case to the Northern District of Indiana, the location of a former Ultra-Cast plant where some of the contract work was performed. SFPC argues that the individual defendants are subject to jurisdiction in Indiana primarily because they are shareholders of businesses which own real estate in Indiana.⁷ These allegations, however, are not strong enough for that court to exercise personal jurisdiction over the defendants. Jurisdiction is not proper in this court, nor has SFPC met its burden to show that the District Court for the Northern District of Indiana would have personal jurisdiction over all

⁶Defendants ask that I transfer this case to the Bankruptcy Court for the Eastern District of Michigan because it is related to the Ultra-Cast bankruptcy currently pending in that court.

⁷SFPC does not explain how MAC Group would be subject to personal jurisdiction in Indiana.

the defendants. Therefore, this action will be transferred to the Eastern District of Michigan.⁸

An appropriate order follows.

⁸In their motion to dismiss, defendants also raise the issues of whether this case can continue despite the automatic stay in effect because of the Ultra-Cast and Jeffrey Spilman bankruptcies and abstention. I will not address these issues because of this court's lack of personal jurisdiction over the defendants.

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ORDER

AND NOW, this 3rd day of April 2006, after considering plaintiff's memorandum in support of personal jurisdiction or to transfer venue to the United States District Court for the Northern District of Indiana; defendants' motion to dismiss plaintiff's complaint, stay proceedings, or transfer venue to the United States District Court for the Eastern District of Michigan; and plaintiff's reply, and for the reasons set forth in the accompanying memorandum, it is ORDERED that defendants' motion to transfer is GRANTED. This action is TRANSFERRED to the United States District Court for the Eastern District of Michigan.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.