

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

RANDALL CRAIG COBB : CIVIL ACTION  
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: :  
v. : :  
: :  
SHARON RUBEN COBB, : :  
HEAVYWEIGHT TITLES, INC., : :  
AND WILLIAM D. GLENN, C.P.A. : NO. 97-8

M E M O R A N D U M

WALDMAN, J.

September 22, 1997

Presently before the Court is the Motion of Defendants Sharon Cobb and Heavyweight Titles, Inc. to Dismiss or Transfer for lack of personal jurisdiction and improper venue, pursuant to Fed. R. Civ. P. 12(b)(2) and (3).

Plaintiff is currently a Pennsylvania citizen. He moved to Pennsylvania from Tennessee sometime in 1994. He was a professional boxer and actor who appeared in several successful feature films.

Plaintiff and defendant Sharon Cobb were married in 1986. They are currently parties to a divorce action pending in a Tennessee court. Mrs. Cobb is a citizen of Tennessee. Defendant Heavyweight Titles, Inc. ("HTI") was a Tennessee corporation with its principal place of business in Nashville. Mrs. Cobb was president, sole owner and operator of HTI from 1989

when it was incorporated until it was dissolved in September 1992.

Defendant William Glenn is a Tennessee citizen and accountant. He served as the Cobbs' accountant and financial advisor. Mr. Glenn has not appeared in this action.

Subject matter jurisdiction in this action is predicated on diversity of citizenship.

Plaintiff alleges that in 1989 he entered into an oral contract with Mrs. Cobb and HTI which provided that they would act as plaintiff's business managers and agents for his acting performances and boxing matches. In return for her services, Mrs. Cobb was to receive a management fee of 15% of any sums earned by Mr. Cobb. This arrangement was later formalized in a written contract executed by the Cobbs in Tennessee on April 2, 1992. The written management agreement was for a term of two years with an option to renew for a like term upon written notice.<sup>1</sup>

Mr. Cobb alleges that Mrs. Cobb, individually and through HTI, continuously withheld money that was received on his behalf, including payments from boxing promoters and residual

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<sup>1</sup>There is no evidence or suggestion that the contract was ever renewed by the Cobbs and, as noted, HTI was dissolved in 1992. Both contracts were consummated in Tennessee and, as plaintiff acknowledges, the "contract law" of that state "admittedly controls the issues" in this action.

commissions from the Screen Actors Guild ("SAG") for the showing of films in which he appeared.

Plaintiff asserts claims for breach of the alleged oral and written contracts against Mrs. Cobb and HTI, and seeks an equitable accounting by all defendants of any monies received on plaintiff's behalf.<sup>2</sup>

In deciding a motion to dismiss for lack of personal jurisdiction, the allegations of the complaint are taken as true. After a defendant has raised a jurisdictional defense, however, the plaintiff bears the burden of proving, by affidavits or other competent evidence, sufficient contacts with the forum state to establish personal jurisdiction. See Dayhoff Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1302 (3d Cir. 1996); North Penn Gas Co. v. Corning Natural Gas Corp., 897 F.2d 687,689 (3d Cir.), cert. denied, 498 U.S. 847 (1990); Provident Nat'l Bank v. California Federal Savings Ass'n, 819 F.2d 434, 437 (3d Cir. 1987); Gehling v. St. George's School of Medicine, Ltd., 773 F.2d 539, 542 (3d Cir. 1985). Plaintiff must establish those contacts with reasonable particularity. See Provident Nat'l Bank, 819 F.2d at 437.

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<sup>2</sup>It is not clear that HTI is subject to liability on claims asserted more than two years after dissolution, see Tenn. Code Ann. § 48-24-106 (known claims against dissolved corporation) and § 48-24-107 (unknown claims), however, HTI is subject to suit in its corporate name. See Tenn. Code Ann. § 48-24-105(b)(5).

A federal district court may exercise personal jurisdiction over a nonresident of the forum state to the extent authorized by the law of that state. Id. at 436. Pennsylvania law provides two bases for a court to exercise in personam jurisdiction -- general jurisdiction or specific jurisdiction. See 42 Pa. Cons. Stat. Ann. §§ 5301, 5322. There is no contention or showing that any defendant has carried on a continuous and systematic part of his or her business within Pennsylvania or has otherwise maintained the type of continuing or substantial contacts here which could subject any to general personal jurisdiction.

Under Pennsylvania's long arm statute, a district court may assert personal jurisdiction over a defendant "to the fullest extent allowed under the Constitution of the United States and may be based on the minimum contact with [the] Commonwealth allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b). Thus, the parameters of jurisdiction under Pennsylvania's long-arm statute are co-extensive with those permitted by the Due Process Clause of the Fourteenth Amendment which requires sufficient minimum contacts with the forum. Simkins Corp. v. Gourmet Resources Intern., 601 F. Supp. 1336, 1340-42 (E.D. Pa. 1985).

To satisfy due process, it must appear that a defendant undertook an affirmative act by which he purposefully availed

himself of the privilege of conducting activities in the forum. Burger King v. Rudzewicz, 471 U.S. 462, 476 (1985); Hanson v. Denckla, 357 U.S. 235, 253 (1958). The nature of the conduct and connection of the defendant with the forum must be such that the defendant should reasonably anticipate being haled into court there. See World-Wide Volkswagen Corp. v. Woodsen, 444 U.S. 286, 297 (1980).

Where personal jurisdiction depends on minimum contacts between a defendant and the forum, it must appear that plaintiff's claim arises from or relates to those contacts. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n.8 (1984); Gundle Lining Const. Co. v. Adams County Asphalt, 85 F.2d 201, 205 (5th Cir. 1996); Sawtelle v. Farrell, 70 F.3d 1381, 1388-89 (1st Cir. 1995); Mellon Bank (East) PSFS v. Di Veronica Bros., Inc., 983 F.2d 551, 554 (3d Cir. 1993); Dollar Sav. Bank v. First Sec. Bank, 746 F.2d 208, 211 (3d Cir. 1984). There is an important difference for jurisdictional purposes between contacts incidental to a transaction that results in litigation and contacts that give rise to a plaintiff's claim or create a substantial connection between the defendant and the forum. Grand Entertainment Group v. Star Media Sales, 988 F.2d 476, 482-83 (3d Cir. 1993).

Plaintiff contends that Mrs. Cobb and HTI are subject to specific personal jurisdiction here because they arranged for him to perform in films "which were shown in theaters throughout

the country including the Commonwealth of Pennsylvania" and booked two boxing matches for him "which were televised by [a] cable network throughout the country including the Commonwealth of Pennsylvania."

Plaintiff relies on Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1983). That reliance is misplaced. The Court in Keeton held that a New Hampshire court could exercise personal jurisdiction over a nonresident defendant publisher in a libel action based on the defamatory contents of a magazine it circulated in that state and which injured plaintiff's reputation in that state, noting that the tort of libel occurs in the place or places in which the offending material is circulated. Id. at 776-77.

Even assuming that Mrs. Cobb determined when and where boxing matches would be staged or films featuring plaintiff would be rebroadcast, plaintiff was not injured by the display of these matches or films to Pennsylvania viewers.<sup>3</sup> The alleged breaches of contract occurred in Tennessee when and where Mrs. Cobb failed to execute checks in the amounts due, and not in the state where

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<sup>3</sup>No competent evidence has been presented which demonstrates that defendants actually distributed any entertainment product in Pennsylvania. According to Mr. Cobb's own averments, defendants breached oral and written contracts to serve as managers or agents for his acting performances and boxing matches. There is no showing that the contracts on which this action is predicated obligated Mrs. Cobb and HTI to distribute films or display boxing matches in Pennsylvania or elsewhere.

plaintiff happened to reside when particular payments or residuals were forwarded to defendants by promoters or SAG. See Cottman Transmission Systems, Inc. v. Martino, 36 F.3d 291, 295 (3d Cir. 1994) (breach of contractual obligation to pay license fees on product sales occurs and claim arises in state where obligor fails to remit payments and not in state of non-receipt by obligee); Nolt & Nolt, Inc. v. Rio Grande, Inc., 738 F. Supp. 163, 166 (E.D. Pa. 1990) (non-receipt by forum plaintiff of contractual payments due from defendant will not support exercise of personal jurisdiction).<sup>4</sup> See also Buckley v. Bourdon, 682 F. Supp. 95, 98 (D.N.H. 1988) (that defendant managed actor who appeared in television programs aired nationally and thus seen in the forum does not confer personal jurisdiction in plaintiff's action for diversion of commissions).

Thus, the fact that plaintiff may have resided in Pennsylvania when his share of a residual or other payment was withheld will not sustain an exercise of personal jurisdiction by the courts here. That a forum plaintiff is injured as a result of acts by the defendant outside the forum is not sufficient to sustain a claim of specific personal jurisdiction. See, e.g., Naeqler v. Nissan Motor Co., Ltd., 835 F. Supp. 1152, 1155-56 (W.D. Mo. 1993). What is required is a showing that a defendant

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<sup>4</sup>It clearly appears that when the oral and written contracts were consummated the parties contemplated that payments would be made to plaintiff in Tennessee where he then resided with Mrs. Cobb.

intentionally targeted some wrongful act at the plaintiff in the forum. See Narco Avionics, Inc. v. Sportsman's Market, Inc., 792 F. Supp 398, 408 (E.D. Pa. 1992). Plaintiff has made no such showing. There is an important distinction between acts which result in injury in the forum and acts targeted at the forum for the very purpose of having an effect there. Id. See also Buckley, 682 F. Supp. at 99 (that plaintiff lost residual commissions from broadcast performances of clients due her since moving to the forum does not confer personal jurisdiction).

Plaintiff argues alternatively that Mrs. Cobb established "minimum contacts" with Pennsylvania in February 1996 when in response to plaintiff's petition in a Pennsylvania state court to reduce the amount of support payments he was ordered to make by a Tennessee court in 1994, she filed a "counter-petition" objecting to any reduction and asking unsuccessfully for increased support.<sup>5</sup>

As plaintiff chose to relocate to and file suit in Pennsylvania, it is only in the courts of this state that Mrs. Cobb could defend against that suit or realistically could obtain an enforceable order to secure enhanced support.<sup>6</sup> That

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<sup>5</sup>Mrs. Cobb filed a pro se submission but did not appear or argue in person in the Pennsylvania support case.

<sup>6</sup>Plaintiff suggests it is significant that Mrs. Cobb acknowledged that "Pennsylvania had jurisdiction" to award her relief in the support case. The courts of Pennsylvania in 1996 clearly could exercise general personal jurisdiction over Mr. Cobb who was then domiciled here. It does not remotely follow

plaintiff's choice to relocate to and bring suit in Pennsylvania effectively compelled the resolution of his and any interrelated claim here no more confers personal jurisdiction in this action than would his decision to move to New Jersey have subjected defendant to suit in the courts of that state for the alleged breaches of contract committed in Tennessee. Plaintiff's claims against Mrs. Cobb and HTI in this action do not arise from her participation in domestic relations litigation in Pennsylvania.<sup>7</sup>

Under plaintiff's theory, a defendant in a breach of a commission contract case could be haled into court in any of the 50 states whenever a film for which residual payments are withheld is shown nationally or in any state in which he happened to reside when a residual was due. This is not something a party to a contract negotiated, executed and to be performed in Tennessee would reasonably anticipate.

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that a Pennsylvania court has specific personal jurisdiction over Mrs. Cobb in this action.

<sup>7</sup>Plaintiff acknowledges that a Tennessee court has awarded Mrs. Cobb "the right to attach Mr. Cobb's SAG earnings for her own use." In so far as plaintiff seeks relief in this action predicated on a claim of entitlement to those monies, an award in his favor would render that Tennessee state court order ineffectual and thus this court would lack subject matter jurisdiction to grant such relief under the Rooker-Feldman doctrine. See FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996). While the court has an unflagging obligation to ensure itself that it has subject matter jurisdiction before adjudicating the merits of a claim, the court limits itself to considerations of personal jurisdiction and venue in disposing of the instant motion.

This is not a close case. Plaintiff has not demonstrated any meaningful contacts of movants to the forum giving rise to this action.<sup>8</sup>

It follows that venue for this action also does not lie in this district. No defendant "resides" in this district and a "substantial part of the events or omissions giving rise to the claims(s)" did not occur here. See 28 U.S.C. § 1391(a); Cottman, 36 F.3d at 295, Cornell & Co., Inc. v. The Home Ins. Cos., 1995 WL 46618, \*5 (E.D. Pa. Feb. 6, 1995).

Nevertheless, dismissal of plaintiff's action is not mandated. If it is in the "interest of justice," a federal court in which venue is improper may transfer a case to another district in which the case could have been brought. See 28 U.S.C. § 1406(a).<sup>9</sup>

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<sup>8</sup>Absolutely no basis appears for an exercise of personal jurisdiction over Mr. Glenn, the only defendant likely to be able to provide a quality accounting. Lack of personal jurisdiction is not waived by a party who declines to appear or respond to a complaint. Without such jurisdiction the court could not even enter a default judgment against him, let alone enforce an order directing him to produce the requested accounting. See Williams v. Life Savings and Loan, 802 F.2d 1200, 1203 (10th Cir. 1986); Zelson v. Thomforde, 412 F.2d 56, 58 n.8 (3d Cir. 1969); Orange Theatre Corp. v. Rayherstz Amusement Corp., 139 F.2d 871, 873 (3d Cir. 1944); Jones v. Davey, 702 F. Supp. 752, 754 (E.D. Mo. 1988), aff'd, 889 F.2d 1092 (8th Cir. 1989).

<sup>9</sup>Plaintiff discusses the Gilbert factors and appears to misconstrue defendants' alternative request for transfer as one for a change of venue under § 1404(a). That statute, which addresses the convenience of parties and witnesses, by its very nature contemplates that the court has personal jurisdiction and venue or retaining and litigating the case would not be an

A court need not have personal jurisdiction to transfer a case because of improper venue. Goldlawr, Inc. v. Heiman, 369 U.S. 463, 465-66 (1962). Moreover, Goldlawr has been read to permit the transfer of a case for lack of personal jurisdiction. See Porter v. Groat, 840 F.2d 255, 257 (4th Cir. 1988); Corke v. Sameiet M.S. Song of Norway, 572 F.2d 77, 80 (2d Cir. 1978); Taylor v. Love, 415 F.2d 1118, 1120 (6th Cir. 1969), cert. denied, 397 U.S. 1023 (1970); Mayo Clinic v Kaiser, 383 F.2d 653, 656 (8th Cir. 1967); Dubin v. U.S., 380 F.2d 813, 815 (5th Cir. 1967); Shaw v. Boyd, 658 F. Supp. 89, 92 (E.D. Pa. 1987).

Further, 28 U.S.C. § 1631 directs that a court which lacks jurisdiction "shall" transfer an action if that is in the interest of justice. Section 1631 has been construed to encompass transfers for lack of personal, as well as subject matter, jurisdiction. See Ross v. Colorado Outward Bound School, Inc., 822 F.2d 1524, 1527 (10th Cir. 1987); Carty v. Beech Aircraft Corp. 679 F.2d 1051, 1065-66 & n.17 (3d Cir. 1982); Juffe v. Julien, 754 F. Supp. 49, 53 (E.D. Pa. 1991); Nolt & Nolt, 738 F. Supp. at 166. See also Hill v. U.S. Air Force, 795 F.2d 1067, 1070-71 (D.C. Cir. 1986).

A dismissal of this action without prejudice would effectively time bar a portion of plaintiff's claims. See Tenn.

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option. Defendants, who premise this motion solely on Rule 12(b)(2) and (3), clearly seek a dismissal or transfer because of improper venue and lack of personal jurisdiction.

Code Ann. § 28-3-109(a)(3).<sup>10</sup> The Middle District of Tennessee is clearly a district in which this action could have been brought. Indeed, it appears to be the only district in which venue and personal jurisdiction over all defendants can be ensured. If plaintiff for some reason determines that no action is preferable to one in Tennessee, he may of course voluntarily dismiss his case pursuant to Rule 41(a)(1). In any event, however, it is in the interest of justice to permit him to preserve his claim for any payments wrongfully withheld in the first nine months of 1991 from the bar of the statute of limitations. Thus, the court will transfer rather than dismiss this action.

Accordingly, defendants' motion to dismiss will be denied and their alternative motion to transfer for lack of venue and personal jurisdiction will be granted. An appropriate order will be entered.

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<sup>10</sup>It would appear that any claim for breach of the initial contract prior to January 7, 1991 is already time barred. A dismissal of the instant action could also preclude claims for damages based on breaches of contract between January and October 1991.

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O R D E R

AND NOW, this                    day of September, 1997, upon consideration of the alternative Motions of defendants Heavyweight Titles, Inc. and Sharon Cobb pursuant to Fed. R. Civ. P. 2(b)(2) & (3) to Dismiss or Transfer, and plaintiff's response thereto, consistent with the accompanying memorandum, **IT IS HEREBY ORDERED** that the Motion to Dismiss (Doc. #2, Part 1) is **DENIED**, the Motion to Transfer (Doc. #2, Part 2) is **GRANTED** and accordingly, pursuant to 28 U.S.C. §§ 1631 & 1406(a), the above case is **TRANSFERRED** to the U.S. District Court for the Middle District of Tennessee at Nashville.

BY THE COURT:

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JAY C. WALDMAN, J.