

to Dismiss was served upon Plaintiffs' counsel of record on June 24, 1999, and Plaintiffs have neither filed a timely response nor requested an enlargement of time in which to file a response, within the fourteen-day period prescribed by the Local Rules of Civil Procedure of this Court, the Motion to Dismiss could be granted as uncontested.

However, because Defendant argues that this Court cannot exercise personal jurisdiction over the Defendant, I will address the personal jurisdiction issue, notwithstanding the Plaintiffs' failure to timely respond.

FACTUAL AND PROCEDURAL HISTORY

Plaintiffs, Eleanor and Thomas Hill, residents of Doylestown, Pennsylvania, allege in their complaint that they were visiting Naples, Florida, when Eleanor Hill tripped and fell as she was carrying laundry into the Creech Road Laundry. Mrs. Hill struck her head and suffered various personal injuries as a result of the fall.

On May 4, 1999, Eleanor and Thomas Hill filed a Complaint in this Court alleging claims of negligence. The Plaintiffs subsequently amended the Complaint, adding claims of breach of warranty and strict products liability.

Defendant, Creech Road Laundry, Inc., a Florida corporation, now moves to dismiss the Plaintiffs' claims on various grounds, including lack of personal jurisdiction, pursuant to Fed.R.Civ.P. 12(b)(2). For the reasons that follow, Defendant's motion will be granted pursuant to 12(b)(2) only.

DISCUSSION

According to Rule 4(e) of the Federal Rules of Civil Procedure, a Federal Court may assert personal jurisdiction over a nonresident to the extent allowed by the law of

the State in which the Court sits. Thus, Pennsylvania law provides the statutory basis for determining whether this Court may exercise personal jurisdiction over the Defendant in this case.

Pennsylvania courts may exercise two types of personal jurisdiction over out-of-state defendants, (1) specific jurisdiction, under 42 Pa.C.S.A. § 5322, based upon the specific acts of the defendant which gave rise to the cause of action, and (2) general personal jurisdiction, under 42 Pa.C.S.A. § 5301, based upon a defendant's general activity within the state. Derman v. Wilair Services, Inc., 404 Pa.Super. 136, 590 A.2d 317 (1991), *alloc. denied* 529 Pa. 621, 600 A.2d 537 (1991). Even if specific personal jurisdiction does not exist, Pennsylvania courts may still exercise general personal jurisdiction if the defendant has carried on a continuous and systematic part of its general business within the Commonwealth. Id. at 147, 590 A.2d at 323.

Regardless of whether general or specific personal jurisdiction is asserted, the propriety of such an exercise must be tested against both the Pennsylvania Long Arm Statute, 42 Pa.C.S.A. § 5322, and the due process clause of the fourteenth amendment. Id. If jurisdiction may be conferred by the State's Long Arm Statute, the Court must then determine whether the defendant has established minimal contacts with the forum state.

Pennsylvania's Long Arm Statute lists several methods by which a person outside the Commonwealth may be subjected to the in personam jurisdiction of a Commonwealth court. See 42 Pa.C.S.A. § 5322. Given the facts of this case, only one of these methods may apply. Section 5322(a)(4), authorizes Pennsylvania Courts to exercise personal jurisdiction over a person outside the Commonwealth "who acts

directly or by an agent, to cause harm or tortious injury in the Commonwealth by an act or omission outside the Commonwealth.” 42 Pa.C.S.A. § 5322(a)(4). Thus, the inquiry of whether in personam jurisdiction exists with respect to the Florida Defendant in this case focuses on whether Creech Road Laundry’s conduct can be characterized as "causing harm within the Commonwealth."

In determining the scope of activities appropriately deemed to have “caused harm in the Commonwealth,” the Pennsylvania Superior Court has held that the suffering of residual harm by a plaintiff in the forum state is not the type of harm contemplated by Pennsylvania’s Long Arm Statute.² See Defay v. McMeekin, 352 Pa. Super. 409, 412, 508 A.2d 324, 325 (1986). Therefore, even if the Plaintiffs argued that the residual pain that occurred during recuperation upon their return to Pennsylvania is harm sufficient to confer personal jurisdiction, Pennsylvania law does not support their position. See Id. (citing Hilferty v. Neesan, 506 F. Supp. 218,220(E. D. Pa. 1980).

Moreover, Defendant’s contact with the forum does not satisfy the constitutional requirements of minimal contacts necessary to justify the exercise of in personam jurisdiction. In order to pass constitutional muster, “a defendant's contacts with the forum state must be such that the defendant could reasonably anticipate being called to defend itself in the forum.” See, Kubik v. Letteri, 532 Pa. 10, 19-20, 614 A.2d 1110, 1115 (1992) (expressly adopting the minimal contacts test articulated by the United

² In adjudicating a case under state law, I must apply state law as interpreted by the state's highest court in an effort to predict how that court would decide the precise legal issues before me. McKenna v. Pacific Rail Serv., 32 F.3d 820, 825 (3d Cir.1994). In the absence of guidance from the state's highest court, I must consider decisions of the state's intermediate appellate courts for assistance in predicting how the state's highest court would rule. Id. at 825.

States Supreme Court in Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174 (1985)). That is, the defendant must have purposefully directed its activities to the forum and conducted itself in a manner indicating that it has “availed itself of the forum's privileges and benefits such that it should also be subject to the forum state's laws and regulations.” Id.

In the instant case, there is no evidence to show that Defendant, Creech Road Laundry, Inc., carried out any business or had any contacts within the state of Pennsylvania. (Def’s. Mem. In Support of M. to Dismiss at 10). Absent minimal contacts with the forum state, Defendant cannot be said to have purposely availed itself of the privileges and benefits of the forum such that it would reasonably anticipate ever being haled into court in Pennsylvania.

CONCLUSION

After careful review, I find that Creech Road Laundry, Inc.’s forum-related actions are insufficient to support the exercise of personal jurisdiction by this Court. Consequently, the Defendant’s Motion to Dismiss, pursuant to Fed. R .Civ. P. 12(b)(2), will be granted without prejudice to Plaintiffs filing a Complaint in the appropriate jurisdiction. An appropriate Order follows.

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

ELEANOR and THOMAS HILL, W/H

Plaintiffs,

v.

CREECH ROAD COIN LAUNDRY, INC.

Defendant.

CIVIL ACTION NO. 99-2286

ORDER

AND NOW, this _____ day of August 1999, upon consideration of the Defendant's unopposed Motion to Dismiss the Plaintiffs' Amended Complaint, **IT IS HEREBY ORDERED**, that the Motion will be **GRANTED WITHOUT PREJUDICE** to Plaintiffs filing a Complaint in the appropriate jurisdiction.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.