

BROAD TOP METAL PROCESSING INC., ALBERT HESS AND GAYLE HESS, Plaintiffs, VS. JOHN W. HESS, WANDA HESS, BROCK'S SCRAP METAL, THE RYAN CORPORATION, DANIEL CARRACCILO, and CARRACCILO AND SONS, Defendants Fulton County Branch, CIVIL ACTION - LAW NO. 18 of 1997 - C

Broad Top Metal Processing v. John Hess, et al.

non-resident defendant - not sufficient contact with Pennsylvania to exercise specific or general personal jurisdiction

1. Where causes of action are for breach of contract and intentional infliction of emotional distress, issue is not lack of *subject matter* jurisdiction, but of *personal* jurisdiction.
2. Defendant, which is a corporation with office in Massachusetts, is a non-resident defendant.
3. Pennsylvania courts may exercise specific and general personal jurisdiction over non-resident defendant.
4. Under the long-arm statute, specific jurisdiction must be based on specific acts of defendant in Pennsylvania; because defendant's prior business activities in Pennsylvania were not the basis for the underlying action, there is no specific personal jurisdiction.
5. Under constitutional due process requirements, personal jurisdiction exists only if defendant had minimum contacts with Pennsylvania.
6. Having performed two projects and maintained temporary offices in Pennsylvania in 1993 is not sufficient to say defendant had minimum contacts as to purposely avail itself to Pennsylvania's benefits and protections such that it could reasonably anticipate being called to defend itself in Pennsylvania courts.
7. General personal jurisdiction may exist where the defendant carries on a continuous and systematic part of its business within Pennsylvania.
8. There is no general personal jurisdiction where the only contacts the defendant has with Pennsylvania were two projects performed in the state in 1993, and where the current contract, made with a Pennsylvania party, was to be performed solely in California.
9. Fulton County is an inconvenient forum where the occurrences giving rise to the causes of action took place in California and it is expected that relevant witnesses can be found there.

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OPINION AND ORDER

Walker, P.J., September 8, 1997:

Factual and Procedural Background

The matter before the court consists of four preliminary objections by Defendant Ryan Corporation against the amended complaint filed by Plaintiffs Broad Top Metal Processing, Inc. ("Broad Top"), and Albert and Gayle Hess, who are the sole shareholders of Broad Top. The underlying action was commenced by plaintiffs when they filed a praecipe for writ of summons on January 24, 1997. A complaint was filed on March 12, 1997. Defendants named include John and Wanda Hess, Brock's Scrap Metal, The Ryan Corporation ("Ryan"), Daniel Carracciolo, and Carracciolo and Sons. Defendant Ryan filed preliminary objections to the complaint on April 7, 1997. As a result, plaintiffs filed an amended complaint on April 29, 1997. Counts IX and X of the amended complaint assert two causes of action against Ryan. Count IX alleges that Ryan breached its contract with Broad Top to sell scrap metal in California. Count X asserts a cause of action for intentional infliction of emotional distress based on an incident that occurred between Plaintiff Albert Hess and John Lane, an employee of Ryan, which occurred in California. Albert Hess alleges that he incurred severe emotional distress when he was told by John Lane to pull up a wire from the ground, after having been assured by John Lane that the wire was not "live." It turned out that the wire was in fact "live" and that Albert Hess barely avoided being shocked by it.

On May 9, 1997, Defendant Ryan filed preliminary objections to the amended complaint, which are now before this court. On May 15, 1997, Defendants John W. Hess and Wanda Hess also filed preliminary objections to the amended complaint. The other defendants have filed answers to the amended complaint. Defendant Ryan has submitted a brief in support of its preliminary objections. Plaintiffs have filed an answer to Ryan's motion to dismiss for lack of personal jurisdiction, which was contained in Ryan's preliminary objections. Plaintiffs have also submitted a brief in opposition of Ryan's preliminary objections, which includes discussion of the personal jurisdiction issue. The court will first dispose of the jurisdiction question, as this will make discussion of the other preliminary objections unnecessary.

Discussion

A. LACK OF SUBJECT MATTER JURISDICTION

Defendant Ryan moves for dismissal for lack of jurisdiction over the subject matter based on the fact that all events underlying Counts IX and X of the amended complaint asserted against Defendant Ryan took place in California. As stated above, Count IX asserts a cause of action for breach of contract by Ryan, and Count X states a claim for intentional infliction of emotional distress by an employee of Ryan against Plaintiff John Hess. As plaintiffs accurately point out in their brief in opposition to the preliminary objections, this is not a matter of subject jurisdiction. Subject matter jurisdiction involves the competency of the court to determine controversies of the general class to which the case belongs. *Commonwealth v. Court of Common Pleas of Philadelphia County*, 506 Pa. 410, 417, 485 A.2d 755, 758 (1984). The Courts of Common Pleas are courts of general jurisdiction and clearly have the competency to hear a cause of action for breach of contract and intentional infliction of emotional distress. The issue in the underlying case is not an issue of jurisdiction over the subject matter, but of jurisdiction over the person of Defendant Ryan.

B. LACK OF PERSONAL JURISDICTION

Defendant Ryan in its preliminary objections also moved for dismissal for lack of personal jurisdiction. When preliminary objections, if sustained, would result in the dismissal of an action, such objections should be sustained only in cases which are clear and free from doubt. *Derman v. Wilair Services*, 404 Pa. Super. 136, 140, 590 A.2d 317 (1991). Additionally, when deciding a motion to dismiss for lack of personal jurisdiction, the court must consider the evidence in the light most favorable to the non-moving party. *Id.*

Ryan is a corporation whose business is located at 60 Reservoir Park Drive, Rockland, Massachusetts (Amended Complaint ¶ 7), and is thus a non-resident defendant. Pennsylvania courts may exercise two types of personal jurisdiction over non-resident defendants: specific jurisdiction under 42 Pa.C.S.A. § 5322 (long-arm statute), and general jurisdiction pursuant to 42 Pa.C.S.A. §5301. *McCall v. Formu-3 International, Inc.*, 437 Pa. Super. 575, 578, 650 A.2d 903 (1994).

Specific jurisdiction must be based on specific acts of defendant occurring in Pennsylvania, which gave rise to the underlying cause of action. *Id.* In October, 1994, Plaintiff Broad Top and Ryan entered into a contract to sell scrap metal in California. (Amended Complaint ¶ 54). The breach of contract action is based on this contract. The cause of action for intentional infliction of emotional distress is based on an incident which occurred in California between December 11 and December 14, 1994. (Amended Complaint ¶¶ 60-64). The specific acts which may give rise to personal jurisdiction are specifically set forth in § 5322. Among such acts are the transaction of any business in Pennsylvania, consisting of a series of transactions or merely a single act (§ 5322(a)(1)); contracting to supply services or things in Pennsylvania (§ 5322(a)(2)); or causing tortious injury in Pennsylvania. (§ 5322(a)(3)). While plaintiffs assert that Defendant Ryan has, on two occasions, engaged in business activities in Pennsylvania in 1993, these business activities are not the basis for the causes of action asserted in the underlying action. Plaintiffs have not alleged any other facts which give rise to the assertion of specific personal jurisdiction on the basis of any of the grounds set forth in § 5322.

The exercise of personal jurisdiction must furthermore comply with constitutional due process requirements. *Kubik v. Letteri*, 532 Pa.10, 614 A.2d 1110 (1992). This requires the defendant to have minimum contacts with the forum state, making it fair and reasonable for a defendant to be hauled into court in that state. *Kubik*, 614 A.2d at 1113, citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The Pennsylvania Superior Court has recently held that a New York company, which merely entered into a contract with a Pennsylvania corporation, made several follow-up phone calls, and sent a payment invoice, could not be brought into court in Pennsylvania because it did not have sufficient minimum contacts with Pennsylvania. *Hall-Woolford Tank Co. v. Kilns*, 1997 Pa. Super. LEXIS 2118. Similarly, in the underlying case, there is not much more contact by Defendant Ryan with Pennsylvania. As stated above, Ryan merely performed two projects in Pennsylvania and maintained merely temporary offices at the site. The contract with Plaintiff Broad Top giving rise to the underlying action was to be executed in California. As the Superior Court held in *Hall-Woolford*, it cannot be said that Ryan "purposely availed itself of our state's benefits and protections such that it could reasonably anticipate being

called to defend itself in our courts.” *Id.*, at *11. For the above stated reasons, no specific personal jurisdiction can be exercised over Defendant Ryan in Pennsylvania.

However, even if specific jurisdiction does not exist, Pennsylvania courts may still be able to exercise general jurisdiction over Defendant Ryan. *McCall*, *supra*, at 578. General personal jurisdiction is based on that corporation’s general activity within the state, and need not be related to the defendant’s activities within Pennsylvania. *Derman*, *supra*, at 141. General personal jurisdiction over a corporation may be exercised if the corporation (a) is incorporated under the laws of Pennsylvania; (b) consents; or (c) carries on a continuous and systematic part of its business within Pennsylvania. 42 Pa.C.S.A. §5301(2). In the underlying case, the first two grounds are not applicable. Ryan is not incorporated in Pennsylvania, but in Massachusetts. The filing of preliminary objections asserting that Pennsylvania does not have jurisdiction makes it clear that Ryan does not consent to the exercise of jurisdiction in this state. The only remaining question then is whether Ryan has carried on systematic and continuous business in Pennsylvania.

Courts have looked at several factors in making the determination of whether a corporation is engaged in continuous and systematic business within this state. Such factors are the incorporation in Pennsylvania, whether the corporation has advertised in Pennsylvania, whether it maintains offices here, whether it pays taxes in the state, and the amount of business done within the state. *Derman v. Wilair Services*, 404 Pa. Super. 136, 150, 590 A.2d. 317 (1991). In this case, the only connection Defendant Ryan has to the state of Pennsylvania is the performance of a project in Willow Grove and a project at the Mechanicsburg Navy Depot in 1993. Even though Ryan maintained offices in Pennsylvania for the duration of the work in 1993, these offices were merely temporary and were dismantled after the job was completed. There are no allegations that Ryan has any other connection to Pennsylvania. While Ryan did enter into a contract with Broad Top, a Pennsylvania corporation, all the work was to take place in California. These facts do not establish that Ryan carries out continuous and systematic business within the Commonwealth as required under the statute. Considering all the

facts in the light most favorable to Plaintiffs, the court concludes that it lacks jurisdiction over the person of Defendant Ryan.

Additionally, the court also finds that Fulton County is an inconvenient forum pursuant to 42 Pa.C.S.A. § 5322(e). Since the occurrences giving rise to both causes of action against Ryan took place in California, it is expected that relevant witnesses can be found in California. It is in the interest of the efficient administration of justice to hear the case in California.

Conclusion

The court finds that it lacks personal jurisdiction over Defendant Ryan, and that Pennsylvania is an inconvenient forum for the causes of action against Defendant Ryan. The court therefore dismisses both counts against Defendant Ryan for lack of jurisdiction.

ORDER OF COURT

September 8, 1997, the court finds that Pennsylvania lacks personal jurisdiction over Defendant Ryan and dismisses The Ryan Corporation for lack of jurisdiction