

RONALD E. UNGER, JR., Plaintiff, v. MORRIS L. GAYHEART, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action No. 2006-3287

*Personal Jurisdiction; General Jurisdiction; Specific Personal Jurisdiction;  
Internet Sales Jurisdiction*

1. A preliminary objection on the basis of personal jurisdiction over the defendant is governed by Pa. R.C.P. 1028(a)(1).
2. General jurisdiction can be obtained over individuals, corporations and partnerships, allows suit on any claim against the defendant, and is determined under 42 Pa. C.S. §5301.
3. Presence, domicile and consent are the only three bases of general jurisdiction over individuals in Pennsylvania.
4. Specific jurisdiction is determined by the United States Constitution and the Pennsylvania long-arm statute, 42 Pa. C.S. §5322.
5. Specific jurisdiction can be obtained against individuals, corporations and partnerships, but due process allows jurisdiction only on claims related to the defendant's purposeful use of the forum. Random, fortuitous and attenuated contacts will not support jurisdiction.
6. When specific jurisdiction is based on an internet sale via a website created by the defendant, a sliding scale approach weighs the interactivity of the website to determine if the defendant has purposefully used the forum.
7. When jurisdiction stems from the sale of an item through an internet website that is not created by the defendant, the sliding scale approach is inapplicable, unless the defendant "adopts" the website as his own through regular and systematic use.
8. If the "sliding scale" and "adoption" theories do not apply to a case predicated on an internet sale, then the Court must determine whether it has jurisdiction over the defendant by a traditional due process analysis that indexes the plaintiff's claims with the defendant's contacts with the forum.

Appearances:

Bryan W. Shook, Esq., *Counsel for Plaintiff*

W. Scott Arnoult, Esq., *Counsel for Defendant*

OPINION

Walsh, J., September 6, 2007

Facts

The Court must decide the preliminary objection of defendant, Morris Gayheart, to the personal jurisdiction of this Court. In reaching its decision, the Court has considered only the complaint of the plaintiff, Ronald Unger, the defendant's preliminary objection, the plaintiff's answer, and the briefs filed by both parties. Finally, the Court presumes that all facts in the plaintiff's complaint are true. Hall-Woolford Tank Co. Inc. v. R.F. Kilns Inc., 698 A.2d 80, 82 (Pa. Super. Ct. 1997). The salient facts follow.

The plaintiff lives in Orrstown, Pennsylvania; however, the defendant resides in Nashport, Ohio. Apparently, the defendant has sold several restored cars on eBay. Although the plaintiff's complaint is silent on how often the defendant makes such sales, the plaintiff's brief in opposition to the defendant's preliminary objection alleges three additional, unrelated eBay car sales that the defendant has concluded in 2007.

On June 19, 2006, the defendant placed a 1975 Dodge Dart up for auction on eBay. The car was to be sold "as is, where is," and the website listed Newark, Ohio as the location of the car. Cashier's check, money order, and cash constituted the only acceptable forms of payment, with a ten percent deposit required within three days of the close of the auction and the balance due in ten days. Furthermore, the buyer had to pay the cost of shipping. On June 26, 2006, the auction concluded with the plaintiff placing the winning bid of \$7,000. Subsequently, the plaintiff drove to the defendant's residence in Ohio, paid for the car, and placed it on a trailer for transportation to Pennsylvania. But, upon trailering the Dart, the plaintiff became dissatisfied, believing that the car was not in its advertised condition. Still, though, the plaintiff took the Dart back to Orrstown.

Next, on October 26, 2006, the plaintiff sued the defendant in Franklin County Court alleging breach of contract, breach of implied warranty of merchantability, breach of express warranties, fraud and false advertisement, unfair and deceptive trade practices under the Pennsylvania "Consumer Protection Law," and negligence. All claims stemmed from the June sale of the Dodge Dart on eBay. Under Pa. R. Civ. P. 1028(a)(1), the defendant filed a timely preliminary objection to this Court's personal jurisdiction over the defendant, and the plaintiff filed a timely answer. Both parties filed briefs in support of their positions and submitted the issue to the Court for decision on the briefs and without oral argument or an evidentiary hearing. The case is ripe for decision.

### Discussion

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In order to determine a preliminary objection to personal jurisdiction, the Court "must consider the evidence in the light most favorable to the nonmoving party." Hall-Woolford Tank Co. Inc., 698 A.2d at 82. Initially, the burden lies on the defendant to support its jurisdictional objection, but then the burden shifts to the plaintiff to demonstrate that Constitutional and statutory support exists for the Court's jurisdiction. Id. Here, the defendant asserts that the sale of the car occurred in Ohio after the plaintiff observed an ad on a passive website and initiated contact with the defendant. These facts satisfy the defendant's burden of challenging jurisdiction, and the plaintiff must now prove that the facts in his complaint support the Court's jurisdiction under the Constitution and the relevant Pennsylvania statutes. Under the United States Constitution and the laws of the Commonwealth, a Court may exercise either general or specific personal jurisdiction over a defendant. The Court will examine each form of jurisdiction.

#### A. General Jurisdiction

The Pennsylvania general jurisdiction statute authorizes general jurisdiction over three types of "persons"; these "persons" are individuals, corporations, and partnerships. 42 Pa.C.S.A. §5301. Morris Gayheart, the defendant, is an individual, and presence, domicile, and consent constitute the only bases of general personal jurisdiction over an individual. <sup>[1]</sup> 42 Pa.C.S.A. §5301(a)(1). In his complaint, the plaintiff has failed to allege the existence of any of these predicate jurisdictional facts. Instead, the plaintiff concentrates on the amount of business the defendant conducts in Pennsylvania, but this is irrelevant under 42 Pa.C.S.A. §5301(a)(1). Accordingly, the Court concludes that it lacks general personal jurisdiction over the defendant, Morris Gayheart.

#### B. Specific Jurisdiction

The United States Constitution and the Pennsylvania long-arm statute govern specific jurisdiction,

which is an exercise of jurisdiction by the Court based upon "the specific acts of the defendant which gave rise to the cause of action." Kubik v. Letteri, 614 A.2d 1110, 1113 (Pa. 1992). However, since Pennsylvania's long-arm statute, 42 Pa.C.S.A. §5322, has the maximum reach permitted by the United States Constitution, any Constitutional contact with Pennsylvania automatically confers jurisdiction under the long-arm statute. Id. at 1113-14. Thus, the Court must identify any minimum contacts that satisfy the Due Process Clause of the Fourteenth Amendment.

A minimum contact satisfies the Due Process Clause of the Fourteenth Amendment and affords specific jurisdiction, when 1) the defendant has purposefully directed his activities at residents of the forum and purposely availed himself of the privilege of conducting activities within the forum state and 2) the assertion of in personam jurisdiction comports with fair play and substantial justice. Burger King Corporation v. Rudzewicz, 471 U.S. 462, 475 (1985). This is a fact specific inquiry decided on a case-by-case basis. Letteri at 1114. "Random, fortuitous or attenuated" contacts with the forum do not suffice for purposeful availment. Burger King, 471 U.S. at 475. Fair play and substantial justice exist when a court balances five factors<sup>[2]</sup> and determines it is reasonable and fair for the defendant to conduct his defense in the forum state. Id.

The Court analyzes this case solely on the first prong of the test for specific jurisdiction, the "purpose" element, and does not reach the "fair play and substantial justice" component. In this case, the plaintiff has alleged only one contact with Pennsylvania, and that contact consists of the defendant's use of eBay to sell the Dodge Dart. Internet jurisdiction cases decided in Pennsylvania generally resolve the issue through a "sliding scale" approach initially utilized by a United States District Court in Zippo Mfg. Co. v. Zippo Dot Com Inc. Zippo Mfg. Co., 952 F. Supp. 1119 (W.D. Pa. 1997). Recently, the Pennsylvania Superior Court approved this methodology. Mar-Eco, Inc. v. T&R Sons Towing and Recovery, Inc., 837 A.2d 512, 516-17 (Pa. Super. Ct. 2003). Under the "sliding scale," "purpose" is likely to be found if a defendant has created an interactive website, while "purpose" is unlikely to be found for a merely passive website. Zippo Mfg. Co., 952 F. Supp. at 1124. In the middle ground, a court cross-indexes the amount of interactivity of the defendant's website with the type of interactivity on the website in order to determine if "purpose" is present. Id.

Unless, however, the Court invents a legal fiction that the defendant, Gayheart, has adopted eBay as his own website, then the sliding scale approach seems inapposite. Indeed, the sliding scale finds "purpose" for a defendant who uses his own internet site to engage in conduct which has historically been transacted through more traditional mediums that are readily amenable to Due Process analysis. Zippo Mfg. Co., 952 F. Supp. 1119. Here, though, defendant Gayheart has not created his own website but has only employed eBay to make a relatively isolated sale. Since Gayheart has apparently not systematically and regularly used eBay as a surrogate for his own personal website, the Court declines to employ any legal fiction with regard to the defendant's adoption of eBay as his own website. But, in closing, the Court notes that if this case merited the adoption fiction, then the Court believes it could find "purpose" from the defendant, Gayheart.

Having decided that the defendant's use of eBay does not constitute "purpose" in and of itself, the Court will now proceed to analyze the case under the classic rubric provided by the United States Supreme Court in Burger King Corporation v. Rudzewicz. Namely, the Court analyzes the transaction as a whole as it relates to the defendant's purposeful activities within the forum. Burger King, 471 U.S. at 475. In such an inquiry, the Court must juxtapose the claims of the plaintiff with any contacts the defendant may have with the forum. Id. Accordingly, the Court must keep the claims of the plaintiff in the foreground. Here, the plaintiff has raised the six following claims: 1) breach of contract, 2) breach of implied warranty of merchantability, 3) breach of express warranties, 4) fraud/false advertisement, 5) deceptive trade practices under the Pennsylvania Consumer Protection Law, and 6) negligence. The Court analyzes each in turn.

First, in conducting its analysis of whether the defendant has purposefully availed himself of using the forum with respect to the breach of contract claim, the Court considers "the parties' prior negotiations, contemplated future consequences, actual course of dealing, and the terms of the contract." Letteri at 1114. In this case, the car was sold "as is, where is," and payment and pick up occurred in Ohio. The parties negotiated on eBay and bids came from anywhere in the United States; Pennsylvania was in no way specially targeted by the defendant. These circumstances seem far closer to "random, fortuitous, or attenuated" contacts than to the purposeful use of the forum required for specific jurisdiction. Indeed, in Scordato v. Dyess, under virtually identical facts to those in this case, the Court of Common Pleas of Centre County rejected just such a claim of specific personal jurisdiction for a breach of contract claim founded on an eBay car sale. Scordato v. Dyess, 2005 WL 3635104 (Pa. Com. Pl.). This Court agrees with the result in that case and finds the reasoning informative. The Centre County Court concluded that any contact from the website was simply "random, fortuitous, or attenuated" and not proof of purposeful use of the forum by the defendant. Id. Accordingly, this Court finds that the defendant has not purposefully availed himself

of conducting business in Pennsylvania for purposes of the plaintiff's contract claim.

Second, the Court examines the plaintiff's claim of breach of implied warranty to determine if the defendant's contacts on this claim rise to the level of purposeful use of Pennsylvania. To the extent that the claim is predicated on the contract between the parties, the Court reiterates its prior analysis for breach of contract. Additionally, however, the Court notes that any warranties would have been breached at the time that the car was tendered to the plaintiff at the defendant's home in Ohio. Thus, there simply is no contact in this case sufficient to support a finding that the defendant purposely availed himself of using the forum for any claim of breach of implied warranty.

Third, the Court notes that the plaintiff's claim of breach of express warranty also can not be a basis for purposeful use since any express warranties were breached when the defendant tendered the car to the plaintiff in Ohio. Thus, under an identical analysis to that just conducted for breach of implied warranty, the Court concludes, for purposes of adjudicating the plaintiff's claim for breach of express warranty, that the defendant has not purposely availed himself of conducting business in Pennsylvania.

Fourth, the Court evaluates the issue of whether the defendant purposely availed himself of using the forum in the context of the plaintiff's claim of fraud/ false advertisement. The plaintiff alleges no communication with the defendant besides the information the plaintiff saw on eBay. There is no allegation that the defendant purposely directed his statements to Pennsylvania or to Pennsylvanians. Additionally, any harm the plaintiff suffered occurred when the car was tendered to him in Ohio. Moreover, the Court has already determined that the eBay website, without more, does not constitute purposeful use of the forum. Accordingly, the Court concludes that the defendant has not purposely availed himself of the forum for the plaintiff's claim of fraud/ false advertisement.

Fifth, the Court analyzes the purposeful use issue in the context of the plaintiff's claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law. 73 Pa.C.S.A. § 201-1 et. seq. The claim centers on the defendant's alleged false advertising on the eBay site. The plaintiff alleges no contact by the defendant with the forum other than the eBay website, nor does the plaintiff put forth any evidence that the defendant specifically targeted Pennsylvania for his allegedly false statements. Accordingly, the Court concludes that the defendant's activities do not constitute purposeful use for the Pennsylvania Consumer Protection Law claim.

Sixth, the Court addresses whether the defendant has purposely used the forum based upon the plaintiff's negligence claim. Once again, the plaintiff alleges only eBay as a contact with Pennsylvania, and the Court has found this, in and of itself, to be insufficient. Nowhere does the plaintiff claim that any of the defendant's conduct occurred in Pennsylvania, was directed at Pennsylvania, or even that the alleged harm occurred in the forum. Thus, the Court rules that the defendant has not purposely availed himself of engaging in any activity within the forum that would support specific personal jurisdiction over the defendant on the basis of the plaintiff's negligence claim.

### Conclusion

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After examining the foregoing precedent, the plaintiff's complaint, the defendant's preliminary objection, the plaintiff's answer, and the briefs filed by both parties, the Court rules that it has no personal jurisdiction over the defendant. The Court concludes that general personal jurisdiction does not exist since the plaintiff has not pleaded the defendant's presence, consent, or domicile in the state. Also, there can be no specific jurisdiction over the defendant on any of the plaintiff's claims, because the defendant's lone contact with the forum consists of the eBay website on which he posted sale information. This is insufficient to constitute a minimum contact proving that the defendant purposely availed himself of the privileges of acting in the forum as required by the United States Constitution and the Pennsylvania long-arm statute. Indeed, any contacts that the defendant has with Pennsylvania seem far too "random, fortuitous, and attenuated" to provide a basis for this Court to exercise personal jurisdiction over the defendant. Accordingly, the plaintiff has failed to carry his burden of demonstrating a Constitutional or statutory basis for personal jurisdiction over the defendant. Thus, the defendant's preliminary objection to the personal jurisdiction of this Court is sustained, and the plaintiff's complaint is dismissed with prejudice.

September 6, 2007, this matter having come before the Court on Defendant's Preliminary Objection, and the Court having reviewed the record, the preliminary objection, the Plaintiff's and the Defendant's briefs, and the law, it is hereby ordered that Defendant's Preliminary Objection is sustained and the plaintiff's complaint is dismissed with prejudice.

[1] **(a) General rule.**--The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person . . . and . . . to render personal orders against such person:

(1) Individuals.--

(i) Presence in this Commonwealth at the time when process is served.

(ii) Domicile in this Commonwealth at the time when process is served.

(iii) Consent, to the extent authorized by the consent.

[2] Factors to be considered include (1) the burden on the defendant, (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies and (5) the shared interest of the several states in furthering fundamental substantive social policies.