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

JOHN B. FETTER	:	CIVIL ACTION
	:	
v.	:	
	:	
NORTH AMERICAN ALCOHOLS, INC., et al.	:	NO. 06-4088

MEMORANDUM AND ORDER

McLaughlin, J. February 15, 2007

The plaintiff alleges that he was employed by North American Alcohols, Inc. ("NAA"), to assist in raising capital and developing and implementing the corporation's business plan. He has sued NAA for breach of contract and the corporation and its individual directors for breach of quasi-contract. The plaintiff also brings a count against all individual defendants for tortious interference with contractual relations, and a count against NAA and defendant Stephen Reiser for defamation.

There are currently pending three motions: the plaintiff's motion to remand; the defendants' motion to transfer; and the defendants' partial motion to dismiss. The Court will deny the plaintiff's motion to remand and the defendants' motion to transfer. The Court will grant the defendants' partial motion to dismiss in part and deny it in part.

I. FACTS

Stephen Reiser, the President of NAA, incorporated the company in Florida to raise capital and find investors for a proposed ethanol manufacturing plant. The proposed plant would produce fuel-grade ethanol and certain bi-products on an approximately one-hundred-acre site in the Keystone Industrial and Port Complex, which is located in Bucks County, Pennsylvania. NAA is registered to do business in the Commonwealth of Pennsylvania and has made filings with the Secretary of State of Pennsylvania, listing NAA's registered office address as 1 Ben Fairless Drive, Fairless Hills, Pennsylvania. Prior to the filing of this lawsuit and its subsequent removal to this Court, representatives of NAA participated in meetings and negotiations with Pennsylvania state and local government officials, local labor unions, and potential local investors.

NAA nevertheless has no physical plant, employees, or assets in Pennsylvania. NAA has executed no sales or purchase contracts in Pennsylvania, and it neither owns nor leases office space in Pennsylvania. NAA's board members and officers are all Florida residents, and NAA has obtained backing exclusively from Florida investors. Indeed, all board meetings have been held in Florida, and the majority of NAA's books and records are also maintained in that state.

Stephen Reiser, the Founder, President, and Secretary of NAA, is a Florida resident. He currently spends sixty to seventy hours per week on NAA business, working out of his Florida home office. He travels to Pennsylvania to conduct business on behalf of NAA three to four days per month. Defendant Linda Reiser is a Florida resident and a director of NAA. She has visited Pennsylvania twice in the recent past, and during one of her visits, she had breakfast with the plaintiff. William Lightner ("Lightner") is a Florida resident and a director of NAA. He occasionally travels to Pennsylvania, and during one of his visits, he had a meeting with the plaintiff. Edward Grant ("Grant") is a Florida resident and a director of NAA. He travels to Pennsylvania occasionally, but he has never met the plaintiff in Pennsylvania.

The plaintiff alleges that in January of 2006, the defendants began soliciting him to join NAA's management team. This solicitation was conducted mostly by Stephen Reiser, although the plaintiff alleges that he also met with Linda Reiser and Lightner in Philadelphia on separate occasions to discuss potential employment with NAA. In particular, the plaintiff alleges that on January 25, 2006, he met Stephen Reiser and Lightner at the Union League in Philadelphia, where the group discussed NAA's planned business operations in Pennsylvania. Both Stephen Reiser and Lightner expressed strong interest in

having the plaintiff join the NAA management team and discussed how the plaintiff could assist them in raising capital and developing and implementing NAA's business plan. The group also discussed having the plaintiff introduce NAA to the plaintiff's numerous contacts in the energy industry.

The plaintiff further alleges that he and his wife had breakfast with Stephen Reiser and Linda Reiser in March of 2006. At breakfast, the group discussed development plans for the Pennsylvania site, the plaintiff's potential engagement as an officer of NAA, and the Reisers' desire that the plaintiff help develop and implement NAA's business plan. According to the plaintiff, Linda Reiser also questioned the plaintiff about his experience and expressed enthusiasm for him to join NAA's management team.

Following several weeks of negotiations and exchanges of draft documents, Stephen Reiser met the plaintiff on March 16, 2006, in Philadelphia, where the two allegedly discussed and executed the contracts that would govern the plaintiff's relationship with NAA. According to the plaintiff, the engagement agreement between himself and NAA included a substantial equity component. In accordance with this agreement, the plaintiff claims that he immediately began to fulfill his duties as NAA's COO. Specifically, he alleges that he expended substantial effort developing NAA's business plan, attending

meetings, raising capital, and locating investors. The plaintiff also claims that he introduced the defendants to his numerous contacts in the energy industry.

On or about April 26, 2006, an entity named First Capital Partners, LLP ("FCP"), submitted a proposal to purchase NAA. The plaintiff claims that soon after the receipt of this offer, the defendants embarked upon a course of action designed to keep for themselves the benefits of the offer.

On May 8, 2006, Stephen Reiser emailed the plaintiff a "revised employment agreement," which reduced the equity component of the plaintiff's compensation. In response, the plaintiff traveled to Florida the following day to meet with the defendants at a meeting of NAA's board of directors. The meeting was attended by Stephen Reiser, Lightner, and Grant. At the meeting, the plaintiff alleges that the attendees wrongfully attempted to force him to agree to the terms of the revised employment agreement. The plaintiff declined to do so.

On May 10, 2006, the plaintiff traveled to Radnor, Pennsylvania, to attend a meeting with potential investors. Before the meeting, the plaintiff handed Stephen Reiser a letter that formally rejected the "revised employment agreement." Stephen Reiser responded by repudiating all agreements and forbade the plaintiff from entering the meeting.

In the meeting, the plaintiff alleges that Stephen Reiser made statements to the effect that the plaintiff was greedy, made unreasonable demands concerning his employment and equity position in NAA, and had foolishly refused to accept the terms of an employment agreement that were more than generous.

To date, the plaintiff has not received compensation for his work on behalf of NAA. The plaintiff filed the instant suit to recover such compensation on August 8, 2006, in the Court of Common Pleas of Philadelphia County. The defendants removed the case to this Court on September 13, 2006.

II. THE MOTION TO REMAND

The plaintiff, a citizen of Pennsylvania, moves to remand this case to the Court of Common Pleas on the ground that NAA's principal place of business is Pennsylvania, and therefore, diversity jurisdiction does not exist. The defendants respond by arguing that NAA's principal place of business at all times relevant to this matter was not Pennsylvania but Florida, and therefore, diversity jurisdiction exists.

The United States Court of Appeals for the Third Circuit set forth the test for determining a corporation's principal place of business for purposes of diversity jurisdiction in Kelly v. United States, 284 F.2d 850 (3d Cir. 1960). According to Kelly, a court must look to the "headquarters of day-to-day corporate activity and management" to

determine a corporation's principal place of business. Id. at 854. Other factors that are relevant to such a determination include the physical location of a corporation's plants, employees, and tangible property. Id.

In this case, NAA's principal place of business is Florida. The majority of NAA's corporate activities takes place in Florida, and the physical location of the corporation is in Florida. NAA has no employees in Pennsylvania to whom wages or salaries are paid. NAA is a start-up company and relies principally on its officers -- all of whom are located in Florida -- to perform whatever tasks are necessary to raise capital and find a site for the plant. Stephen Reiser spends the majority of his time working on NAA business out of his home office in Florida, which is the corporate address for NAA. NAA has no physical presence in Pennsylvania other than a "doing business as" address in preparation for future activity.

The plaintiff relies on the fact that plans are being made for substantial future activity in Pennsylvania. The Court, however, must look to the center of corporate activities at the time of the filing of the complaint (or in this case, the notice of removal) and not the future. In applying Kelly to the activities during that time frame, the Court concludes that Florida, not Pennsylvania, was NAA's principal place of business. The plaintiff's motion to remand will accordingly be denied.

III. THE MOTION TO TRANSFER

The defendants move to transfer this case to the United States District for the Southern District of Florida. Section 1404(a) states that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."[1] 28 U.S.C. § 1404(a) (2006). The party requesting the transfer has the burden of establishing that transfer is warranted. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995) (citations omitted). In ruling on a defendant's motion for transfer, the United States Court of Appeals for the Third Circuit has cautioned that "the plaintiff's choice of venue should not be lightly disturbed." Id.

To determine the forum that would best serve the interests of justice and convenience, the Court must consider both private and public interests. Id. Private factors may include: (i) the plaintiff's choice of venue; (ii) the defendant's preference; (iii) where the claim arose; (iv) the relative physical and financial condition of the parties; (v) the extent to which witnesses may be unavailable for trial in one of the fora; and (vi) the extent to which books and records could not be produced in one of the fora. Id. (citations omitted).

[1]The plaintiff does not dispute that this action could have been brought in the Southern District of Florida.

Public factors may include: (i) the enforceability of the judgment; (ii) practical considerations that could make the trial easy, expeditious, or inexpensive; (iii) the relative administrative difficulty in the two fora resulting from court congestion; (iv) the local interest in deciding local controversies at home; (v) the public policies of the fora; and (vi) the familiarity of the trial judge with the applicable state law in diversity cases. Id. (citations omitted).

Upon consideration of these factors, the Court finds that transfer of this case is not in the interests of justice.

The plaintiff has chosen this forum, and as the court in Jumara instructed, "the plaintiff's choice of venue should not be lightly disturbed." Id. at 879. This factor weighs heavily against transfer. The defendant, on the other hand, has expressed a preference for the Southern District of Florida. This factor weighs in favor of transfer. The operative facts concerning the claim arose in both Florida and Pennsylvania. This factor is neutral. The relative physical and financial condition of the parties appears to be neutral. A critical factor is the extent to which witnesses may be unavailable for trial in Pennsylvania. The plaintiff has listed many non-party witnesses who are located in this district and whose testimony will be essential. Because these individuals would not be within the subpoena range of the Southern District of Florida, this

factor militates strongly against transfer. The books and records could be produced in either forum, so this factor is neutral.

The public factors are neutral in that some weigh in favor of transfer and some against.

Because the plaintiff has chosen this forum and because many non-party witnesses are available in this district but not in Florida, the Court will deny the motion to transfer.

IV. THE MOTION TO DISMISS

The defendants have moved pursuant to Federal Rule of Civil Procedure 12 to dismiss various portions of the plaintiff's complaint: individual defendants Linda Reiser, Lightner, and Grant have moved to dismiss for lack of personal jurisdiction; all individual defendants have moved to dismiss Count IV (breach of quasi-contract) and Count VI (tortious interference with contract) for failure to state a claim; and, all defendants have moved to dismiss Count V (slander) for failure to state a claim.

A. Lack of Personal Jurisdiction

1. Standard of Review

In considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), the Court accepts as true all allegations in the complaint. Dayhoff, Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1302 (3d Cir. 1996). Once a defendant raises this

jurisdictional defense, the plaintiff bears the burden of demonstrating, through affidavits or other competent evidence, that jurisdiction is proper. Id.

2. Analysis

Federal Rule of Civil Procedure 4(e) authorizes district courts to exercise personal jurisdiction over nonresident defendants to the extent permissible under the law of the state in which the district court sits. Fed. R. Civ. P. 4(e) (2006); Pennzoil Products Co. v. Colelli & Assoc., Inc., 149 F.3d 197, 200 (3d Cir. 1998). The Pennsylvania long-arm statute allows courts to exercise jurisdiction to the fullest extent permitted by the Constitution of the United States. 42 Pa. Cons. Stat. § 5322(b) (2006); Vetrotex Certainteed Corp. v. Consol. Fiber Glass Products Co., 75 F.3d 147, 150 (3d Cir. 1996).

The Due Process Clause of the Fourteenth Amendment places limits on the power of a court to exercise personal jurisdiction over a nonresident defendant. Vetrotex, 75 F.3d at 150 (citing Pennoyer v. Neff, 95 U.S. 714, 733 (1877)). This limitation is defined by a two-step test: first, the plaintiff must demonstrate that the defendant has constitutionally sufficient "minimum contacts" with the forum, and second, once these minimum contacts have been demonstrated, the Court must satisfy itself that exercising personal jurisdiction over the

nonresident defendant would "comport with traditional notions of fair play and substantial justice." Id. (citations omitted).

A court's exercise of personal jurisdiction over a nonresident defendant may be either general or specific. Dollar Sav. Bank v. First Sec. Bank of Utah, N.A., 746 F.2d 208, 211 (3d Cir. 1984). General jurisdiction exists when the defendant's contacts with the forum are "continuous and substantial." Pennzoil, 149 F.3d at 200. In such circumstances, the court may exercise personal jurisdiction over the defendant regardless of whether the plaintiff's claims have any connection to the forum. Id. Specific jurisdiction, by contrast, requires the plaintiff to demonstrate that the claim "is related to or arises out of" the defendant's contacts with the forum. Id. at 201.

The plaintiff does not allege that general jurisdiction exists over any of the individual defendants. The plaintiff instead contends that the Court may exercise specific personal jurisdiction over the individual defendants because "the transactions or occurrences out of which the causes of action arose ... took place in the city of Philadelphia." The Court will therefore confine its inquiry to whether it can exercise specific personal jurisdiction over the individual defendants.

The determination of whether a court may exercise specific personal jurisdiction over a defendant is claim-specific. Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001).

A Court may therefore have specific personal jurisdiction over a defendant as to one particular claim contained in the complaint but not as to a different claim. Id.; see also Gehling v. St. George's Sch. of Med., Ltd., 773 F.2d 539, 544 (3d Cir. 1985) (finding personal jurisdiction over defendant in wrongful death action with regard to fraudulent misrepresentation and emotional distress but not as to plaintiffs' negligence and breach of contract claims). This claim-specific analysis may not be necessary in every multi-claim case, but because different considerations go into analyzing jurisdiction over contract claims and tort claims, such differentiation is appropriate here. Id. at 255-56.

a. The Breach of Quasi-Contract Claim

(1) Minimum Contacts

To demonstrate that the court may exercise specific personal jurisdiction over a defendant, the plaintiff must first show that the defendant possessed constitutionally sufficient "minimum contacts" with the forum state. Vetrotex, 75 F.3d at 150. The plaintiff must accordingly demonstrate that the defendant "purposefully directed" its activities toward residents of the forum or otherwise "purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." Imo Indus., Inc. v. Kiekert AG, 155 F.3d 254, 159 (3d Cir. 1998).

The Supreme Court has stated that in contract actions, a "highly realistic" approach is required when determining whether a nonresident defendant is subject to specific personal jurisdiction. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985). Instead of focusing on the contract alone, courts must look at "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." Id. Courts should also inquire into whether the defendant's contacts with the forum were instrumental in either the formation of the contract or its breach. Gen. Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001).

The Supreme Court has stated that even a single contact can support jurisdiction, so long as it creates a substantial connection with the forum. Burger King, 471 U.S. at 476 n.18. Single or occasional acts related to the forum, however, will not be sufficient to establish jurisdiction if their nature and quality create only an "attenuated" affiliation with the forum. Id. (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945)). For example, informational 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. Vetrotex, 75 F.3d at 152 (citing Stuart v. Spademen, 772 F.2d 1185, 1193 (5th Cir. 1985) (stating that an exchange of

communications between a resident and a nonresident in developing a contract is insufficient to establish purposeful activity invoking the benefits and protections of the forum state's laws)).

The plaintiff has failed to demonstrate that Linda Reiser, Lightner, or Grant possessed the minimum contacts required for this court to exercise personal jurisdiction over these defendants with regard to the quasi-contract claim.

As to Grant, the plaintiff has failed to allege even a single relevant contact with the forum.

As to Lightner, the sole relevant contact alleged by the plaintiff consists of the January 25, 2006, meeting. At the meeting, Lightner allegedly talked about NAA's planned business operations in Pennsylvania, expressed strong interest in having the plaintiff join the NAA management team, and discussed having the plaintiff introduce NAA to the plaintiff's numerous contacts in the energy industry. This singular contact did not involve any negotiation of contract terms, and it did not result in any agreement between the parties. It therefore did not create a substantial connection with the forum. The January 25 meeting instead consisted of Lightner exchanging information with the plaintiff and expressing a desire for the plaintiff to join the NAA management team in the future. As explained in Vetrotex, such an exchange of information in furtherance of a contract does

not establish the purposeful activity necessary for a valid assertion of personal jurisdiction. Id. at 152.

As to Linda Reiser, the sole relevant contact alleged by the plaintiff consists of the March, 2006, breakfast meeting. At the meeting, Linda Reiser allegedly discussed development plans for the Pennsylvania site, the plaintiff's possible engagement as an officer of NAA, and Linda Reiser's desire that the plaintiff help develop and implement NAA's business plan. Like the January 25 meeting discussed above, this meeting did not involve any negotiation of contract terms, and no agreement between the parties was reached. The parties instead simply exchanged information, and Linda Reiser expressed her desire for the plaintiff to join NAA. This meeting, like the January 25 meeting with Lightner, is therefore insufficient to establish the purposeful activity necessary for a valid assertion of personal jurisdiction.

The Court's determination that the individual defendants lack constitutionally required minimum contacts is consistent with previous district court decisions in this circuit. See, e.g., Sudofsky v. JDC, Inc., No. Civ.A. 03-CV-1491, 2003 WL 22358448, at *1-*4 (E.D. Pa. Sept. 8, 2003).

In Sudofsky, for example, the court reached the same conclusion that this Court reaches today on facts that are almost identical to the facts at hand. Id. at *4. There, the plaintiff

alleged a host of claims, including breach of contract, unjust enrichment, and tortious interference with contract, against a corporation and one of its non-resident officers. Id. at *1. The plaintiff claimed that at a meeting in Philadelphia, the officer misrepresented the terms of the plaintiff's proposed compensation agreement with the defendant corporation. Id. The Court concluded that this single event, standing alone, was insufficient to serve as a basis for exercising specific personal jurisdiction over the non-resident officer. Id. at *4.

In contrast, district courts that have exercised personal jurisdiction over a nonresident defendant by virtue of a single visit to the forum have uniformly required that the contract forming the basis of the suit be negotiated during that visit. E.g., Young v. Bury Bros., Inc., No. 03-CV-3353, 2004 WL 1173129, at *4 (E.D. Pa. April 2, 2004); see also, Rototherm Corp. v. Penn Linen & Uniform Serv., Inc., No. CIV. A. 96-6544, 1997 WL 419627, at *7 (E.D. Pa. July 3, 1997). In Young, for example, the court concluded that a single visit to the forum was sufficient for an exercise of personal jurisdiction, where the defendant's visit consisted of requesting pricing from the plaintiff for certain items, inspecting the items, and negotiating personnel and transportation terms of a contract that called for the installation of those items at a pharmaceutical facility located in Puerto Rico. Id. at *4. Likewise, in

Rototherm, the court concluded that a single visit to Pennsylvania provided the requisite minimum contacts, where the defendant agreed at the meeting to allow the plaintiff to install heat recovery equipment at the defendant's Pennsylvania plant and agreed to certain terms to be included in the contract. Id. at *2-*3.

Unlike the singular contacts that gave rise to personal jurisdiction over the defendants in Young and Rototherm, the meetings in the present case did not involve the negotiation of contract terms, and the meetings did not result in any agreement between the parties. These meetings were instead much more analogous to the meeting in Sudofsky, where the court concluded that an officer's discussion of a proposed employment agreement between the plaintiff and the officer's corporation was insufficient, by itself, to serve as the basis for exercising personal jurisdiction over the officer.

Because the plaintiff has failed to demonstrate that defendants Linda Reiser, Lightner, or Grant possessed constitutionally sufficient minimum contacts with the forum, the Court will grant these defendants' motion to dismiss for lack of personal jurisdiction as to the quasi-contract claim.

(2) Comportment with Traditional Notions of Fair Play and Substantial Justice

Because the Court has determined that the plaintiff has not demonstrated that defendants Linda Reiser, Lightner, or Grant possessed the requisite minimum contacts with the forum, it need not determine whether an exercise of personal jurisdiction over these defendants would comport with traditional notions of fair play and substantial justice.

b. The Tortious Interference with Contract Claim

(1) Minimum Contacts

The United States Court of Appeals for the Third Circuit has stated that a court may exercise personal jurisdiction over a nonresident defendant who expressly aimed its tortious conduct at the forum. Imo Indus., Inc. v. Kiekert, AG, 155 F.3d 254, 265 (3d Cir. 1998). To demonstrate that the court may exercise such jurisdiction, the plaintiff must satisfy the "effects test" announced in Calder v. Jones, 465 U.S. 783 (1984). Imo, 155 F.3d at 259-60. The "effects test" consists of three elements: (i) the defendant committed an intentional tort; (ii) the plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort; and (iii) the defendant expressly aimed his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity. Id. at 265-66.

In Remick, the United States Court of Appeals for the Third Circuit applied the "effects test" in the context of a claim for tortious interference with contract. Id. at 260. The plaintiff, a Pennsylvania resident, and one of the defendants, a professional boxer, entered into a contract under which the plaintiff would act as the boxer's special counsel in the procurement and negotiation of high-profile fights. Id. at 252-53. The plaintiff alleged that the boxer's brother and another defendant "set [the plaintiff] up to fail in the negotiations over [a fight] and ... publish[ed] and disseminat[ed] false and defamatory information about [the plaintiff]'s skill and ability with the intent to interfere [] and cause harm to [the plaintiff]'s contract with the boxer." Id. at 260 (internal quotations omitted).

The court concluded that this allegation was sufficient to satisfy the first two elements of the "effects test" because (i) it alleged an intentional tort, and (ii) the brunt of the harm caused by the alleged tort must necessarily have been felt by the plaintiff in Pennsylvania, the headquarters of his business. Id. The court then went on to conclude that the allegation was sufficient to satisfy the third element of the "effects test" because the tortious interference claim, albeit a tort, was necessarily related to the contract that the plaintiff entered into with the boxer. Id. Because the plaintiff was to perform the majority of his obligations under the contract in Pennsylvania, the effects of any intentional conduct by the

defendants designed to interfere with the plaintiff's contractual relations necessarily would have been felt in Pennsylvania. Id.

In this case, the plaintiff has alleged an intentional tort, and the brunt of the harm caused by the alleged tort must necessarily have been felt by the plaintiff in Pennsylvania. As explained in Remick, such an allegation is sufficient to satisfy the first two elements of the "effects test." Id. The plaintiff has alleged that he entered into a contract with NAA, whereby the plaintiff would carry out the majority of his responsibilities in Pennsylvania. Any intentional conduct by Linda Reiser, Lightner, or Grant designed to interfere with the plaintiff's contractual relations with NAA would be expressly aimed at injuring the plaintiff in Pennsylvania, where the plaintiff lived and worked. Under Remick, this allegation is sufficient to satisfy the third, and final, element of the "effects test." Id.

The plaintiff has demonstrated that Linda Reiser, Lightner, and Grant possessed the requisite minimum contacts with the forum for the Court to exercise personal jurisdiction over them with regard to the claim for tortious interference with contract.

(2) Comportment with Traditional Notions of Fair Play and Substantial Justice

Once the plaintiff has demonstrated that the nonresident defendant possessed the requisite minimum contacts with the forum, the Court must satisfy itself that exercising personal jurisdiction over the defendant would "comport with

traditional notions of fair play and substantial justice." Vetrotex, 75 F.3d at 150. To make this determination, the court may evaluate (i) the burden on the defendant, (ii) the forum state's interest in adjudicating the dispute, (iii) the plaintiff's interest in obtaining relief, (iv) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (v) the shared interest of the several states in furthering fundamental substantive social policies. Grand Entm't Group, Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 483 (3d Cir. 1993). The Supreme Court has been careful to note, however, that "[w]hen minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will satisfy even the serious burdens placed on the alien defendants." Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal., 4801 U.S. 102, 114 (1987).

The Court may exercise personal jurisdiction over Linda Reiser, Lightner, and Grant without offending traditional notions of fair play and substantial justice. Although the defendants must bear the burden of traveling from Florida, this burden is not great enough to outweigh the plaintiff's interest in obtaining relief and the forum state's interest in adjudicating the dispute. As discussed above, the plaintiff has listed many non-party witnesses who are located in this district and whose testimony will be essential. Exercising personal jurisdiction over these individual defendants in Pennsylvania would therefore

serve the interstate judicial system's interest in obtaining the most efficient resolution of controversies. And finally, the shared interest of the several states in furthering fundamental substantive social policies does not seem to weigh in favor of or against exercising personal jurisdiction over the defendants in this particular case.

The Court will deny these defendants' motion to dismiss for lack of personal jurisdiction with regard to the claim for tortious interference with contract.[2]

B. Failure to State a Claim

1. Standard of Review

In considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court accepts as true all allegations in the complaint and all reasonable inferences that can be drawn from them, after viewing the allegations in the light most favorable to the non-moving party. Taliaferro v.

[2]Under the doctrine of "pendent personal jurisdiction," once a district court has determined that it has personal jurisdiction over a defendant for one claim, it may "piggyback" onto that claim other claims over which the court lacks independent personal jurisdiction, provided all the claims arise from the same nucleus of operative fact. United States v. Botefuhr, 309 F.3d 1263, 1272 (10th Cir. 2002); see, generally, 4A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1069.7 (3d ed. 2002). The United States Court of Appeals for the Third Circuit has never decided whether a district court may use the doctrine. Even if the Court were to assume that it could use the doctrine, the Court would decline to exercise pendent personal jurisdiction over the defendants with regard to the quasi-contract claim because, as explained below, the plaintiff has failed to state a claim for tortious interference with contract.

Darby Twp. Zoning Bd., 458 F.3d 181, 188 (3d Cir. 2005). A Rule 12(b)(6) motion should be granted if it appears to a certainty that no relief could be granted under any set of facts that could be proved. Id.

2. Choice of Law

The defendants argue that the Court should apply Pennsylvania law to the plaintiff's claim for defamation and Florida law to his claims for breach of quasi-contract and tortious interference with contract. The plaintiff, on the other hand, does not directly address the issue of which law should apply. The plaintiff instead simply cites to cases applying Pennsylvania law in his opposition. The Court will assume that this reliance solely on Pennsylvania law indicates that the plaintiff believes Pennsylvania law governs all his claims.

Because the relevant laws of the two fora are nearly identical, and because the court's decision regarding the motion would be the same regardless of which law applies, the Court will consider both Pennsylvania and Florida law whenever appropriate.

3. Analysis

a. Breach of Quasi-Contract

In Count IV of the complaint, the plaintiff alleges that he conferred a benefit upon the defendants through the services he rendered to or on behalf of NAA, and therefore, he

should be paid for those services. Stephen Reiser[3] argues that the claim should be dismissed because the plaintiff has allegedly rendered services only to NAA, and only NAA had allegedly agreed to pay him.

Under Pennsylvania law, the doctrine of unjust enrichment (quasi-contract) imposes liability on a defendant in spite of the absence of an agreement, where the defendant is unjustly enriched at the expense of the plaintiff. See Commerce Bank/Pa. v. First Union Nat'l Bank, 911 A.2d 133, 143 (Pa. Super. Ct. 2006). In determining whether the doctrine applies, a court should not focus on the intention of the parties, but rather on whether the defendant has been unjustly enriched. Id. The elements of unjust enrichment are (i) a benefit conferred on the defendant by the plaintiff, (ii) appreciation of that benefit by the defendant, and (iii) retention of that benefit under circumstances that would be inequitable without payment to the plaintiff for the value thereof Id.

Courts have held that a plaintiff need not confer a benefit directly on the defendant to state a claim for unjust enrichment. Baker v. Family Credit Counseling Corp., 440 F.

[3]In their motion, all the individual defendants argue that Count IV should be dismissed for failure to state a claim; however, because the Court has determined that it does not have personal jurisdiction over defendants Linda Reiser, Lightner, and Grant with regard to the quasi-contract claim, the Court will address the claim only insofar as it relates to defendant Stephen Reiser.

Supp. 2d 392, 420 (E.D. Pa. 2006); see, e.g., D.A. Hill Co. v. CleveTrust Realty Investors, 573 A.2d 1005, 1009 (Pa. 1990) (stating that subcontractor could recover from owner on unjust enrichment theory, even if subcontractor did not have a direct contractual relationship with the owner). Indeed, courts have allowed claims of unjust enrichment to proceed against shareholders and officers of corporations to whom a plaintiff has conferred a benefit. E.g., United States v. Arrow Med. Equip. Co., Civ. A. No. 90-5701, 1990 WL 210601, at *4-*5 (E.D. Pa. Dec. 18, 1990).

Florida law regarding quasi-contract is virtually identical to that of Pennsylvania. See, e.g., Florida Power Corp. v. City of Winter Park, 887 So.2d 1237, 1241 n.4 (Fla. 1995). To bring a claim, a plaintiff must allege (i) a benefit conferred upon a defendant by the plaintiff, (ii) the defendant's appreciation of the benefit, and (iii) the defendant's acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof. Id.

In this case, the plaintiff has alleged that he conferred a benefit on Stephen Reiser not only by his work developing NAA's business plan, but also by introducing Stephen Reiser himself to the plaintiff's numerous contacts in the energy industry. The defendant has also alleged that Stephen Reiser has appreciated and retained these benefits. And finally, the

plaintiff has alleged that Stephen Reiser's retention of these benefits would be inequitable because NAA, through Stephen Reiser, had previously agreed to compensate the plaintiff for his efforts.

Stephen Reiser's argument that the unjust enrichment claim should be dismissed because he is an individual defendant is not persuasive. Neither Pennsylvania nor Florida law imposes a requirement that the plaintiff confer a benefit directly on the defendant. As discussed above, courts have held that in appropriate circumstances, conferral of an indirect benefit is sufficient. Baker, 440 F. Supp. 2d at 420; see also, D.A. Hill Co., 573 A.2d at 1009; see also, Arrow Med. Equip. Co., 1990 WL 210601, at *4-*5. Furthermore, neither Pennsylvania nor Florida law specifies that the plaintiff can only recover from the entity from whom he originally expected payment.

The Court will accordingly deny Stephen Reiser's motion to dismiss the breach of quasi-contract claim.

b. Slander

In Count V of the complaint, the plaintiff alleges that Stephen Reiser made false and defamatory statements to the effect that Fetter was greedy, had made unreasonable demands concerning his employment and equity position in NAA, and had foolishly refused to accept the terms of a revised engagement agreement that were more than generous. The defendants argue that the

claim should be dismissed because the alleged statements are not defamatory.

Under Pennsylvania law, slander is defamation by words spoken. Sobel v. Wingard, 631 A.2d 520, 522 (Pa. 1987). Whether a statement is capable of defamatory meaning is a question of law for the court to decide in the first instance. Kryeski v. Schott Glass Tech., Inc., 626 A.2d 595, 600 (Pa. Super. Ct. 1993). A statement is defamatory if it tends to harm the reputation of another so as to "lower him in the estimation of the community or to deter third persons from associating or dealing with him." Tucker v. Fischbein, 237 F.3d 275, 281 (3d Cir. 2001) (citing Corabi v. Curtis Publ'g Co., 273 A.2d 899, 904 (Pa. 1971)). Pennsylvania courts have held, however, that certain statements, although undoubtedly offensive to the subject, are not actionable. Kryeski, 626 A.2d at 600-01. For example, statements of opinion are not defamatory. Id. at 601. Similarly, statements that are simply annoying, embarrassing, or no more than rhetorical hyperbole are not defamatory. Id.

Stephen Reiser's statements are not capable of a defamatory meaning. The alleged statements to the effect that the plaintiff was greedy, unreasonable, or foolish reflect personal opinion and therefore do not constitute defamation. The Court will accordingly grant the defendants' motion to dismiss the plaintiff's slander claim.

c. Tortious Interference with Contract

In Count VI of the complaint, the plaintiff alleges that the individual defendants tortiously interfered with his alleged employment contract with NAA. The individual defendants argue that the claim should be dismissed because they were acting in their roles as directors of NAA, and therefore, they were incapable of interfering with their own corporation's contract.

Under Pennsylvania law, agents or officers of a corporation cannot be held liable for tortiously interfering with the corporation's contracts when these individuals are acting within their official capacities. Nix. v. Temple Univ. of the Commonwealth System of Higher Educ., 596 A.2d 1132, 1137 (Pa. Super. Ct. 1991). Florida law is identical in this regard. Abruzzo v. Haller, 603 So.2d 1338, 1339-40 (Fla. Dist. Ct. App. 1992).

There is no allegation here that the individual defendants were acting outside the scope of their official capacity. These defendants were officers and directors of NAA, and as such, they were acting within the scope of their official capacity when they caused NAA to repudiate the alleged employment agreement with the plaintiff.

An appropriate order follows.

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

JOHN B. FETTER	:	CIVIL ACTION
	:	
v.	:	
	:	
NORTH AMERICAN ALCOHOLS, INC., et al.	:	NO. 06-4088

ORDER

AND NOW, this 15th day of February, 2007, upon consideration of the plaintiff's motion to remand (Doc. No. 7), defendant's opposition, and plaintiff's response thereto; defendants' motion to transfer (Doc. No. 4), plaintiff's opposition; and, defendants' motion to dismiss (Doc. No. 5), plaintiff's opposition and defendants' reply thereto, IT IS HEREBY ORDERED that for the reasons stated in the accompanying memorandum:

1. The plaintiff's motion to remand (Doc. No. 7) is DENIED.

2. The defendants' motion to transfer (Doc. No. 4) is DENIED.

3. The defendants' motion to dismiss (Doc. No. 5) is GRANTED in part and DENIED in part:

A. To the extent the motion seeks dismissal of the complaint as to Linda Reiser, Lightner, and Grant for lack of

personal jurisdiction with regard to the claim for breach of quasi-contract, the motion is GRANTED.

B. To the extent the motion seeks dismissal of the complaint as to Linda Reiser, Lightner, and Grant for lack of personal jurisdiction with regard to the claim for tortious interference with contract, the motion is DENIED.

C. To the extent the motion seeks dismissal of Count IV (breach of quasi-contract) as to Stephen Reiser for failure to state a claim, the motion is DENIED.

D. To the extent the motion seeks dismissal of Count V (slander) as to all defendants for failure to state a claim, the motion is GRANTED

E. To the extent the motion seeks dismissal of Count VI (tortious interference with contract) as to all individual defendants for failure to state a claim, the motion is GRANTED.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.