

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

ROTONDO WEIRICH ENTER., INC., : CIVIL ACTION  
et al. :  
 :  
v. :  
 :  
 :  
 :  
GLOBAL EMPLOYMENT SOLUTIONS, :  
INC. : NO. 99-CV-3661

M E M O R A N D U M

**Padova, J.**

November 22, 1999

Plaintiffs, Rotondo Weirich Enterprises, Inc. ("RWE") and Rotondo Weirich & Associates, LLC ("RWA"), have filed suit against Global Employment Solutions, Inc. ("Global") alleging breach of contract, negligence, and fraudulent misrepresentation. Plaintiffs allege that Global contracted to provide temporary workers for RWE's construction project in San Diego, California ("California project") and RWA's construction project in Tutwiller, Mississippi ("Mississippi project"). Because Global allegedly failed to adequately screen the applicants interviewed for the two projects, Plaintiffs contend that Global ended up hiring unskilled and incompetent workers. Global's alleged negligence caused monetary losses and damage to Plaintiffs' business reputation.

Global has filed the instant Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) and (b)(3) for lack of

personal jurisdiction and improper venue. For the reasons that follow, the Court denies Defendant's Motion.

**I. Personal Jurisdiction**

**A. Standard of Review**

When a defendant raises the defense of the court's lack of personal jurisdiction, the plaintiff bears the burden of producing sufficient facts to establish that jurisdiction is proper. Mellon Bank (East) PSFS, Nat'l Assoc. v. Farino, 960 F.2d 1217, 1223 (3rd Cir. 1992). To sustain this burden, plaintiffs must go beyond the pleadings and make affirmative proof through competent evidence. Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66-67 n.9 (3rd Cir. 1984).

District courts have latitude as to the modes of proof they may demand when resolving jurisdictional disputes. Local 336, Amer. Federation of Musicians, AFL-CIO v. Bonatz, 475 F.2d 433, 436 (3rd Cir. 1973). The court may allow the plaintiff to meet his burden by presenting facts through affidavit, deposition, or in an evidentiary hearing. Bonatz, 475 F.2d at 436. If the court does not conduct an evidentiary hearing, the plaintiff need only plead a prima facie case to survive the initial motion to dismiss. Carteret Savings Bank, F.A. v. Shushan, 954 F.2d 141, 142 n.1 (3rd Cir. 1992)(citing Marine Midland Bank v. Miller, 664 F.2d 899, 904 (2d Cir. 1981)). However, the plaintiff must eventually establish jurisdiction by a preponderance of the

evidence at trial. Cameron v. Children's Hosp. Medical Ctr., 131 F.3d 1167, 1170 (6th Cir. 1997)(citing Cutco Indus. Inc. v. Naughton, 806 F.2d 361, 365 (2d Cir. 1986)); Boit v. Gar-Tec Products, Inc., 967 F.2d 671, 676 (1st Cir. 1992); Federal Deposit Ins. Corp. v. Oaklawn Apartments, 959 F.2d 170, 174 (10th Cir. 1992); Carteret, 954 F.2d at 142 n.1; Data Disc Inc. v. Sys. Tech. Assoc., 557 F.2d 1280, 1285 (9th Cir. 1977); LaRose v. Sponco Mfg., Inc., 712 F. Supp. 455, 458 (D.N.J. 1989).

If the district court requires only proof through affidavit, a plaintiff presents a prima facie case for the exercise of personal jurisdiction by establishing with reasonable particularity sufficient contacts between the defendant and the forum state. Provident Nat'l Bank v. California Fed. Sav. & Loan Assoc., 819 F.2d 434, 437 (3rd Cir. 1987). In ascertaining whether a plaintiff has established a prima facie case, the Court does not act as a fact-finder. Rather, the Court must accept the plaintiff's allegations as true for the purposes of the analysis and construe all disputes of fact in the plaintiff's favor. Carteret, 954 F.2d at 142 n.1; Kishi Int'l, Inc. v. Allstates Textile Machinery, Inc., No. Civ. A. 96-6110, 1997 WL 186324, at \*2 (E.D.Pa. Apr. 11, 1997); DiMark Marketing, Inc. v. Louisiana Health Service and Indemnity Co., 913 F. Supp. 402, 405 (E.D.Pa. 1996).

## **B. General Personal Jurisdiction**

A federal district court may assert personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state. Fed.R.Civ.P. 4(e). The Pennsylvania Long-Arm Statute provides in relevant part that:

the jurisdiction of the tribunals of this Commonwealth shall extend ... to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.

42 Pa. Cons. Stat. Ann. § 5322(b) (West 1999). The Due Process Clause of the Fourteenth Amendment of the United States Constitution limits the reach of long-arm statutes so that a court may not assert personal jurisdiction over a nonresident defendant who does not have certain minimum contacts with the forum such that the maintenance of suit against him does not offend traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L.Ed 95 (1945); Provident, 819 F.2d at 436-37.

If a party is subject to general jurisdiction in the forum state, that party can be called to answer any claim against it, regardless of whether the subject matter of the cause of action has any connection to the forum. Farino, 960 F.2d at 1221. In the instant case, Plaintiffs do not argue, and the record before the Court shows no basis, for general personal jurisdiction over Global. Rather, Plaintiffs assert that Global is subject to specific personal jurisdiction in Pennsylvania. Specific

jurisdiction arises when the plaintiff's claim is related to or arises out of the defendant's contacts with the forum. Id.

### **C. Specific Jurisdiction**

A finding of specific personal jurisdiction requires a two step analysis. First, the court must find that the relationship between the defendant, the cause of action, and the forum satisfies the minimum contacts framework outlined in International Shoe and its progeny. Id. at 1222. Second, the court must conclude that the exercise of jurisdiction would comport with traditional notions of 'fair play and substantial justice.' Id.

#### **1. Minimum Contacts**

Minimum contacts is a "fair warning" requirement of due process that is satisfied if the defendant has purposely directed his activities at forum residents and availed itself of the privilege of doing business there. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182, 85 L.Ed.2d 528 (1985); Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958). The defendant's conduct and connections with the forum must have been such that the defendant could have reasonably anticipated his amenability to suit in the forum. Shaffer v. Heitner, 433 U.S. 186, 204, 97 S. Ct. 2569, 2580, 53 L.Ed.2d 683 (1977).

Defendants can have minimum contacts where they deliberately

engage in significant activity within the forum or create continuing obligations between themselves and forum residents. Burger King, 471 U.S. at 475-76, 105 S. Ct. at 2183. In contract cases, the court should use a "highly realistic" approach to its analysis and should take into account "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." Farino, 960 F.2d at 1224. Courts may also consider contacts that occur after the contract has been executed and after a contractual dispute has arisen. Id.

Global is a Colorado corporation with its principal place of business in Colorado. As an initial matter, I note that there is some dispute as to whether Global is the proper defendant in the case since Global claims that it is not a party to any of the contracts at issue. Apparently, Global is a holding company and the parent of a wholly-owned subsidiary, Temporary Placement Service, Inc., which itself is a holding company and the parent corporation of Temporary Placement Service of Augusta, Inc. d/b/a TPS Staffing & Recruiting (hereinafter "TPS"). TPS is a Georgia corporation with its principal place of business therein. Without resolving the question of whether Global is the proper defendant, the Court will examine the facts as alleged by the parties.

Global claims that neither entity has advertised, solicited,

or done any business in Pennsylvania. Both the California and Mississippi projects were located outside Pennsylvania and no acts related to those projects took place in Pennsylvania. Global also denies conducting any contract negotiations in Pennsylvania. For these reasons, Global argues that the Court does not have personal jurisdiction over it.

Plaintiffs allege a continuing series of contacts in Pennsylvania to support personal jurisdiction. In 1997, after an initial phone conversation with the President of RWE and RWA, Steven Weirich ("Weirich"), TPS' regional manager sent a letter and marketing materials to Weirich in Pennsylvania to solicit business for TPS. (See Pl. Reply Exh. B.) Global and/or TPS representatives negotiated the provision of TPS' services for a project located in Georgia over the telephone with Weirich while he was at Plaintiffs' office in Pennsylvania. (Weirich Aff. ¶ 7.)

In 1998 and 1999, Global and/or TPS representatives contacted Plaintiffs to solicit additional business. (Weirich Aff. ¶ 8; Laspina Aff. ¶ 3.) The solicitations led to contracts with TPS for the California and Mississippi projects. The California project contract was signed by Global outside of Pennsylvania, but was then mailed to Pennsylvania for Weirich's signature and was eventually executed in Pennsylvania. (Weirich Aff. ¶¶ 10, 11.) Both project contracts were administered in

whole or part in Pennsylvania in terms of managing the billing and monitoring the parties' compliance with the contract.

(Weirich Aff. ¶ 12; Laspina Aff. ¶¶ 5, 6.) Global and/or TPS also sent invoices to Plaintiffs' Pennsylvania offices. (Weirich Aff. ¶ 12.)

Plaintiffs additionally point to frequent telephone conferences between their employees in Pennsylvania and Global and/or TPS representatives on substantive issues relating to both of the project contracts. (Laspina Aff. ¶ 6.) Global and/or TPS representatives, including Michael Sizemore ("Sizemore") who is the president of Global, contacted RWE personnel by mail and telephone in Pennsylvania to discuss issues relating to the California project, including billing, payment, and performance of the contracts. (Weirich Aff. ¶ 13; Laspina Aff. ¶¶ 6, 8.) After the dispute over the quality of temporary employees provided for the projects, Sizemore participated in a meeting at RWE's Pennsylvania office to discuss the status of the various projects. (Weirich Aff. ¶ 14; Laspina Aff. ¶ 10.)

Although Global disputes many of these facts, the Court is required to accept Plaintiffs' allegations as true and resolve all disputes of fact in their favor. See Carteret, 954 F.2d at 142 n.1. Under that standard, I find that Plaintiffs have presented sufficient facts to establish a prima facie case of this Court's personal jurisdiction over Defendant.



Although merely entering into a contract with a Pennsylvania resident is an insufficient basis upon which to assert personal jurisdiction, Mellon Bank (East) v. DiVeronica, 983 F.2d 551, 557 (3rd Cir. 1993), Plaintiffs have submitted affidavits establishing that Defendant deliberately engaged in a course of conduct designed to cultivate an ongoing relationship. See Mickleburgh Machinery Co., Inc. v. Pacific Econ. Dev. Co., 738 F. Supp. 159, 162 (E.D.Pa. 1990). Defendant initially mailed marketing materials to Plaintiffs' business location in Pennsylvania and over a two year period actively solicited further business. The frequency and content of the mail and telephone communications between the parties indicate a substantive relationship as opposed to merely ministerial or informational communications in furtherance of the contract. See Sun Belt Corp. v. Noble, Denton & Assoc., Inc., 5 F.3d 28, 32 (3rd Cir. 1993)(stating that informational communications do not establish the purposeful activity necessary to validly assert personal jurisdiction).

On the basis of these contacts, the Court finds that Plaintiffs have presented sufficient evidence of Defendant's contacts with Pennsylvania to support a prima facie case and satisfy the minimum contacts requirement. Furthermore, the causes of action involved in this suit are related to Defendant's in-state contacts since they allege breaches of contracts either executed or administered in Pennsylvania and the contracts

resulted from Defendant's active solicitation of Plaintiffs' business.

## 2. Fair Play and Substantial Justice

Having concluded that Defendant has the necessary minimum contacts with Pennsylvania to justify asserting personal jurisdiction in this action, the Court must next consider whether the assertion of personal jurisdiction would comport with the principles of 'fair play and substantial justice.' Burger King, 471 U.S. at 476, 105 S. Ct. at 2184.

The relationship between the defendant and the forum must be such that it is reasonable to require him to defend the suit there. International Shoe, 326 U.S. at 317, 66 S. Ct. at 158. This reasonableness determination requires the court to evaluate the following factors: (1) the burden on the defendant; (2) the plaintiff's interests in obtaining convenient and effective relief; (3) the forum state's interest in adjudicating the dispute; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversies; and (5) the shared interests of the states in furthering fundamental substantive social policies. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292, 100 S. Ct. 559, 564, 62 L.Ed.2d 490 (1980). If a defendant who has purposefully directed his activities at a forum resident seeks to defeat jurisdiction, he must present a compelling case that the presence of some other consideration would render jurisdiction unreasonable. Burger King, 471 U.S. at 477, 105 S. Ct. at 2184.

Global has not alleged any facts nor presented any argument showing that the assertion of personal jurisdiction would cause any severe or inequitable burden. Pennsylvania has an interest in protecting its residents from out-of-state corporations, as well as an interest in providing residents with a means of redress for injuries inflicted by out-of-state defendants. Mesalic v. Fiberfloat Corp, 897 F.2d 696, 701-2 (3rd Cir. 1990); Mickleburgh, 738 F. Supp. at 163. There is no indication that judicial resources would be wasted here or that the interests of justice would be better served in another forum. Therefore, the Court concludes that asserting personal jurisdiction over Global comports with traditional notions of fair play and substantial justice.

Having determined that Plaintiffs have established prima facie sufficient minimum contacts with Pennsylvania and concluded that the exercise of specific personal jurisdiction over Defendant is fair, the Court denies Defendant's Motion to Dismiss for lack of personal jurisdiction.<sup>1</sup>

## **II. Venue**

Having concluded that Plaintiff has established a prima facie case for personal jurisdiction over Defendant, I will now consider Defendant's Motion to Dismiss for improper venue.

28 U.S.C. § 1391(a) applies to civil actions founded solely

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<sup>1</sup>The Court notes that its decision today is provisional in nature. Plaintiff must still prove those facts necessary to support the Court's exercise of personal jurisdiction at trial by a preponderance of the evidence.

in diversity of citizenship and advises that suit may be brought in a judicial district where any defendant resides if all defendants reside in the same State. 28 U.S.C. § 1391(a) (1994). A corporation is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time of commencement of the action. 28 U.S.C. § 1391(c) (1994). Since the Court has concluded that it has personal jurisdiction over Defendant, venue in this district is proper.<sup>2</sup> Defendant's Motion is denied.

An appropriate order follows.

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<sup>2</sup>Again, the Court's decision today does not relieve Plaintiff of the burden of proving those facts necessary to support personal jurisdiction and venue by a preponderance of the evidence at trial.

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O R D E R

**AND NOW**, this day of November, 1999, upon consideration of Defendant's Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue (Doc. No. 4), Plaintiffs' Response thereto (Doc. No. 6), and Defendant's Reply (Doc. No. 8), **IT IS HEREBY ORDERED THAT** Defendant's Motion is **DENIED**.

BY THE COURT:

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John R. Padova, J.