

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

HAYNES CONSTRUCTION COMPANY,	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 3:03CV1669(MRK)
v.	:	
	:	
INTERNATIONAL FIDELITY	:	
INSURANCE COMPANY, SPECIALTY	:	
SURFACES INTERNATIONAL, INC.	:	
d/b/a SPRINTURF and	:	
BRUCE CHESKIN,	:	
Defendants.	:	

**RULING AND ORDER**

\_\_\_\_\_ In this action, Plaintiff Haynes Construction Co. ("Haynes") sues a number of defendants for various causes of action arising out of a construction project in Trumbull, Connecticut. Defendant Bruce Cheskin has filed a Motion to Dismiss [doc. # 17] the claims against him on the ground of lack of personal jurisdiction. The Motion is DENIED.

The First Amended Complaint (the "Complaint") [doc. # 26] alleges that in or about June 2002, the Town of Trumbull hired Specialty Surfaces International, Inc. d/b/a Sprinturf ("Sprinturf") to supply and install a synthetic turf system on soccer fields in the Town (the "Project"). Sprinturf in turn subcontracted with Haynes to supply certain services and materials for the Project. Mr. Cheskin is President of Sprinturf. The Complaint alleges that "[t]o encourage Haynes to enter into a subcontract with Sprinturf, Mr. Cheskin executed a personal guarantee on June 21, 2002 (the "Guarantee"), promising, among other things, that he would be personally liable for payment for all purchases of materials and services by Sprinturf from

Haynes for the Project." The Guarantee, which is labeled a "personal guarantee," states that it is to be governed by the laws of the State of Connecticut and that Mr. Cheskin has waived "all rights to notice and hearing provided for under Conn. Gen. Stat. § 52-278a to § 52-278g inclusive and any other statutory or constitutional right . . . to notice and hearing prior to the use of attachment, garnishment, or other prejudgment procedures by Haynes." *See* Complaint, Ex. C.

Haynes alleges that it supplied materials and services to the Project pursuant to the subcontract with Sprinturf and in reliance on the Guarantee and that Sprinturf failed to fully pay Haynes for the amounts invoiced, leaving a balance due Haynes of \$109,906.27. Haynes asserts breach of contract and several other common law and statutory causes of action against Sprinturf. Only one count of the Complaint is brought against Mr. Cheskin. In Count Five, Sprinturf sues Mr. Cheskin for breach of the Guarantee. That count alleges that Haynes was induced to enter into the subcontract with Sprinturf as a result, in part, of the Guarantee executed by Mr. Cheskin and that despite demands, Mr. Cheskin has not made payment to Haynes of the amounts due Haynes under the Guarantee.

In his Motion to Dismiss, Mr. Cheskin argues that this Court lacks personal jurisdiction over him since he is a resident of Pennsylvania and has no connections with Connecticut. In an affidavit [doc. # 16] submitted in support of his motion, Mr. Cheskin disputes that he executed the Guarantee in his personal capacity and claims that he signed the Guarantee in his corporate capacity only. He states that he executed the Guarantee at his office in Pennsylvania. Mr. Cheskin also denies that he executed the Guarantee as an inducement for Haynes to subcontract with Sprinturf for the Project in Trumbull.

In opposition to the motion, Haynes has submitted an affidavit [doc. # 21] from its

Controller, Mr. Frank Mascia, who avers that at all times Haynes believed that Mr. Cheskin had executed the Guarantee in his personal capacity, that Haynes would not have subcontracted with Sprinturf and provided Sprinturf credit unless Mr. Cheskin personally guaranteed the amounts advanced, and that Sprinturf had at least one other project in Connecticut during the relevant time period and that Mr. Cheskin was involved in negotiating a contract for that project as well.

When, as here, a defendant moves to dismiss an action for lack of personal jurisdiction under Rule 12(b)(2) of the *Federal Rules of Civil Procedure*, the plaintiff has the burden of establishing that the court has jurisdiction over the defendant. *See In re Magnetic Audiotape Antitrust Litig.*, 334 F.3d 204, 206 (2d Cir. 2003); *see also Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 566 (2d Cir. 1996). Before discovery, a plaintiff may defeat a motion to dismiss by making a *prima facie* showing through affidavits and other evidence that the defendant's conduct was sufficient to warrant the exercise of personal jurisdiction. *See DiStefano v. Carozzi North Am., Inc.*, 286 F.3d 81, 85 (2d Cir. 2001); *see also Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981); *Indymac Mortgage Holdings, Inc. v. Reyad*, 167 F. Supp. 2d 222, 231-32 (D. Conn. 2001). In this case, discovery was not complete at the time the motion to dismiss was filed, so that Haynes may defeat the motion to dismiss by making a *prima facie* showing of personal jurisdiction. The Court concludes that Haynes has done so.

In diversity cases, personal jurisdiction is determined by the law of the state in which the district court sits. *See Padilla v. Rumsfeld*, 352 F.3d 695, 709 (2d Cir. 2003); *see also Savin v. Ranier*, 898 F.2d 304, 306 (2d Cir. 1990). Conn. Gen. Stat. § 52-59b(a) provides that a court may exercise jurisdiction over a nonresident defendant who "(1) transacts any business within the

state." Mr. Cheskin argues that since he executed the Guarantee only in his corporate capacity and did so in Pennsylvania, not Connecticut, there is no basis for exercising jurisdiction over him under § 52-59b(a) and that any attempt to do so would also run afoul of the Due Process Clause because it was not reasonably foreseeable that he would be sued in Connecticut. *See, e.g., Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The Court disagrees.

Haynes has made a *prima facie* showing of the following facts, all of which this Court must accept as true at this stage of the proceeding. First, Mr. Cheskin executed the Guarantee in his personal capacity, not in his corporate capacity. Second, Mr. Cheskin executed the personal guarantee for the purpose of inducing Haynes, a Connecticut corporation, to enter into a subcontract with Sprinturf and to provide Sprinturf credit for a Project that both Sprinturf and Haynes would undertake in Connecticut. Third, the materials, services, and credit that Haynes agreed to provide Sprinturf as a result of Mr. Cheskin's execution of the Guarantee would all be provided to Sprinturf in Connecticut. Fourth, the Guarantee called for application of Connecticut law and expressly contemplated that Haynes might seek a prejudgment remedy in Connecticut to enforce the Guarantee.

Numerous courts have held that in similar circumstances a court has personal jurisdiction over the guarantor under a forum state's long-arm statute, even if the guarantor signs the guarantee outside the state in which the lawsuit is filed. *See, e.g., A.I. Trade Fin., Inc. v. Petra Bank*, 989 F.2d 76, 80 (2d Cir. 1993) (a non-domiciliary's execution of a financial guarantee payable in New York is sufficient to support jurisdiction under New York's long-arm statute); *Marathon Metallic Build. Co. v. Mountain Empire Constr. Co.*, 653 F.2d 921, 923 (5th Cir. 1981) (Colorado resident's execution of guarantee of payments to Texas company sufficient to

support exercise of personal jurisdiction by Texas courts); *Indymac*, 167 F. Supp. 2d at 232 ("The execution of a guaranty may serve as one basis for a court's finding that a defendant transacted business in Connecticut."); *Bankers Trust Co. v. Nordheimer*, 746 F. Supp. 363, 368 (S.D.N.Y. 1990) (New York federal court may exercise personal jurisdiction over Florida domiciliaries who executed guarantees in favor of New York banks under provisions of New York's long-arm statute); *Gaines Serv. Leasing Corp. v. Ashkenazy*, 635 F. Supp. 805, 807 (E.D.N.Y. 1986) (court may assert jurisdiction over non-domiciliary based on his obligation to make payments on a guarantee to in-state corporation); *Zemina v. Petrol Plus, Inc.*, No. CVNH 97128590, 1998 WL 279819, at \*2 (Conn. Super. Ct. Mar. 3, 1998) (the terms "transacts any business" in Conn. Gen. Stat. 52-59b extends to warranty deed in real estate in Connecticut executed outside of Connecticut); *but see N.E. Contract Packers v. Beverage Servs.*, No. 100039, 1992 WL 157435, at \*3 (Conn. Super. Ct. June 17, 1992) (execution of personal guarantee alone insufficient under Connecticut's long-arm statute). The Court agrees with those courts and holds that Haynes has made a *prima facie* showing that this Court has personal jurisdiction over Mr. Cheskin on the basis of Connecticut's long-arm statute.

Mr. Cheskin's due process arguments are equally unavailing for the reasons explained by the above-cited courts. Given the facts that Mr. Cheskin knew that his company's project was in Connecticut and was for a Connecticut municipality, that Haynes was located in Connecticut and would provide Sprinturf credit and materials in Connecticut, that the Guarantee would be performed by making payments to Haynes in Connecticut, that the Guarantee was governed by Connecticut law, and that it expressly contemplated that Haynes could seek a prejudgment remedy under Connecticut law to enforce the Guarantee, Mr. Cheskin cannot credibly argue that

he lacked fair warning that his activities could subject him to suit in Connecticut. To the contrary, it is clear that Mr. Cheskin had far more than merely "minimal contacts" with Connecticut and that this Court's exercise of personal jurisdiction over him comports with traditional notions of fair play and substantial justice. *See, e.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *Indymac*, 167 F. Supp. 2d at 233-34; *Under Par Assocs., LLC v. Wash Depot A., Inc.*, 47 Conn. Supp. 319, 327 (2001).

For the foregoing reasons, Defendant Bruce Cheskin's Motion to Dismiss [doc. # 17] is DENIED.

IT IS SO ORDERED,

/s/ Mark R. Kravitz  
United States District Judge

Dated at New Haven, Connecticut: June 23, 2004