

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

IMAGE 1 STUDIOS, LLC : JULY TERM, 2012
: :
: NO. 02206
v. : :
: :
: COMMERCE PROGRAM
JARED BOND and THE AGENT : :
STUDIO, LLC : :
: :
: CONTROL NO. 12113196

DOCKETED
JAN 04 2013
F. CLARK
DAY FORWARD

ORDER

AND NOW, this 4th day of January, 2013, upon
consideration of the preliminary objections of defendants, Jared Bond and the Agent Studio,
LLC, and any response thereto, it is hereby

ORDERED

that the said preliminary objection, as to personal jurisdiction, is **SUSTAINED** and plaintiff's
second amended complaint is dismissed.

BY THE COURT:



GLAZER, J.

Image 1 Llc Vs Bond-ORDOP



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	:	COMMERCE PROGRAM
JARED BOND and THE AGENT	:	
STUDIO, LLC	:	CONTROL NO. 12113196
_____	:	

OPINION

GLAZER, J.

January 4, 2013

Before the court are the preliminary objections of defendants, Jared Bond and the Agent Studio, LLC, to plaintiff's second amended complaint. For the reasons set for the below, defendants' preliminary objection, as to personal jurisdiction, is sustained and plaintiff's second amended complaint is dismissed.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff commenced the present action on or about July 16, 2012 alleging: (1) breach of contract; (2) tortious interference; (3) unjust enrichment; (4) quantum meruit; and (5) preliminary injunction. See plaintiff's second amended complaint. After defendants filed preliminary objections to the complaint, plaintiff filed an amended complaint on September 20, 2012. Further, on November 1, 2012, after defendants filed subsequent preliminary objections to plaintiff's amended complaint, plaintiff then filed a second amended complaint. Defendants now bring preliminary objections to plaintiff's second amended complaint based on lack of personal jurisdiction and legal insufficiency of the pleadings.

Plaintiff, Image 1 Studios, LLC, was formed in the State of Tennessee, having its principal place of business in Tazewell, Tennessee. Plaintiff is a photography agency which contracts with photographers all over the county to provide services to its clients. Defendant, Jared Bond (“defendant Bond”), is a photographer and a resident of Texas. Defendant, the Agent Studio, LLC (“defendant Agent Studio”), has its principal place of business in Texas. Further, defendant Bond is the founder of the Agent Studio, LLC. On or about October 26, 2012, plaintiff contracted defendant Bond to serve as a photographer in Texas. Moreover, plaintiff and defendant Bond entered into a non-compete agreement. See plaintiff’s second amended complaint, exhibit A. The non-compete agreement states, “[f]urther, for a period of 5 years, or as long as is enforceable under state law, after the effective date of this Agreement, photographer/applicant will not directly or indirectly solicit, induce or attempt to induce any employee of Image 1 to terminate his or her employment with Image 1.” Id. The agreement is governed by the laws of Texas. Id.

Plaintiff alleges that defendants breached the non-compete agreement by contacting Stephanie Hurley and Brittany Rioux, parties with whom plaintiff had a contractual relationship with, to lure them to work for defendants and not for plaintiff. Brittany Rioux is a resident of the Commonwealth of Pennsylvania and was allegedly contacted while in Pennsylvania. Additionally, plaintiff asserts that defendant Bond and defendant Agent Studio conduct executive photography in violation of the non-compete agreement. Further, plaintiff alleges that defendants solicited business from the plaintiff’s clients. However, plaintiff does not state which clients were solicited or if they were negatively affected by this solicitation. Defendants now bring preliminary objections to plaintiff’s second amended complaint.

DISCUSSION

When considering preliminary objections, all material facts and all inferences set forth in the complaint must be admitted as true. Haun v. Community Health Systems, Inc., 14 A.3d 120, 123 (Pa. Super. 2011). However, this court is not bound to accept as true any averments in the pleading that are in conflict with exhibits that are attached to the pleading. Philmar Mid-Atlantic, Inc. v. York Street Associates, 389 Pa. Super. 297, 299-301, 566 A.2d 1253, 1254 (1989). “Preliminary objections should be sustained only in cases that are clear and free from doubt.” Uniontown Newspapers, Inc. v. Roberts, 576 Pa. 231, 839 A.2d 185, 196 (Pa. 2003) (quoting Pennsylvania AFL-CIO v. ex rel. George v. Commonwealth, 563 Pa. 108, 757 A.2d 917, 920 (Pa. 2000)). In evaluating an objection to personal jurisdiction, the objecting party initially bears the burden of proof. Barr v. Barr, 749 A.2d 992, 994 (Pa. Super. 2000). However, “once the moving party supports its objections to personal jurisdiction, the burden of proving personal jurisdiction is upon the party asserting it. Id.”

I. Lack of Jurisdiction

Pursuant to the Judiciary Act, 42 Pa. C.S.A. §§ 5301-5329, Pennsylvania courts may exercise either general or specific jurisdiction. General jurisdiction is founded upon the general activities of the defendant within the forum, as evidenced by systematic and continuous contacts with the forum state. Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984). “General jurisdiction... exists regardless of whether the cause of action is related to the defendant’s activities in Pennsylvania, as long as the defendant’s activities are continuous and substantial.” Garzone v. Kelly, 406 Pa. Super. 176, 183 593 A.2d 1292, 1296 (1991). Alternatively, specific jurisdiction is premised upon a particular act of the defendant that gave rise to the underlying cause of action. Nutrition Mgmt. Servs. v. Hinchcliff, 926 A.2d 531

(Pa.Super. 2007). Regardless of whether general or specific in personam jurisdiction is asserted, it must be tested against the Pennsylvania Long Arm Statute, 42 Pa.C.S.A. § 5322, and the Due Process Clause of the Fourteenth Amendment.

A. General Jurisdiction

General jurisdiction may be exercised over a non-resident individual defendant if he/she (i) is present in Pennsylvania when process is served; (ii) is domiciled in Pennsylvania when process is served; or (iii) consents to the location of the suit. 42 Pa. C.S.A. § 5301(a)(1).

Moreover, general jurisdiction over corporations may be exercised if (i) the corporation is incorporated or qualifies as a foreign corporation under the laws of this Commonwealth; (ii) the corporation consents; or (iii) the corporation carries on a continuous and systematic part of its business in this Commonwealth. 42 Pa. C.S.A. § 5301(a)(2)(i)-(iii).

The court lacks general jurisdiction over both defendants. Plaintiff does not assert any of the elements required for general jurisdiction. Defendant Bond is domiciled in Texas.

Moreover, defendant Agent Studio is also located in Texas. Plaintiff does not assert that either party consented to this jurisdiction. The only contact related to Pennsylvania that is an alleged phone call to Brittany Rioux, a resident of Pennsylvania. Given the lack of evidence to establish general jurisdiction, the court finds that it lacks general jurisdiction over both defendants.

B. Specific Jurisdiction

The court must now determine whether it can exercise specific jurisdiction over the defendants. Specific jurisdiction is governed by the provision set forth in 42 Pa. C.S.A. § 5322(a). The section states, in pertinent part, that:

A tribunal of this Commonwealth may exercise personal jurisdiction over a person ...who acts directly or by an agent, as to a cause of action or other matter arising from such person: ...

(3) Causing harm or tortious injury by an act or omission in this Commonwealth...

42 Pa. C.S.A. § 5322(a). In addition, Section 5322(b) directs that jurisdiction over non-residents, who do not fall within the scope of § 5301, is extended “to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with the Commonwealth allowed under the Constitution of the United States.” 42 Pa. C.S.A. § 5322(b).

For a court to exercise specific jurisdiction over a non-resident, “(1) the non-resident defendant must have sufficient minimum contacts with the forum state, and (2) the assertion of in personam jurisdiction must comport with fair play and substantial justice.” Kubik v. Letteri, 614 A.2d 1110, 1114 (Pa. 1992), citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 85 L. Ed. 528, 105 S. Ct. 2174 (1985). The facts of each case must always be weighed in determining whether jurisdiction is proper. Id. at 17, 614 A.2d at 1114.

Finding whether sufficient minimum contacts exist is based on a determination that the “defendant’s conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there.” Id. The court must determine that “the defendant purposely directed [its] activities at residents of the forum and purposefully availed [itself] of the privileges of conducting activities within the forum state, thus invoking the benefits and protection of its laws.” Id. at 19, 614 A.2d at 1115. Additionally, “the cause of action must arise from the defendant’s activities within the forum state.” Id. at 19, 614 A.2d at 1115.

Along with satisfying the minimum contacts, a court’s exercise of specific jurisdiction must also conform to notions of fair play and substantial justice. The court should consider:

(1) the burden of 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 several states in furthering fundamental substantive social policies.

Id. at 18, 614 A.2d at 1114.

Plaintiff's jurisdiction is based on the fact defendant telephonically contacted Brittany Rioux. Brittany Rioux is a Pennsylvania resident and was allegedly contacted in Pennsylvania. Plaintiff argues that the phone call made to Brittany Rioux was a breach of the non-compete agreement. See plaintiff's second amended complaint, ¶ 11. Plaintiff does not allege any harm or damages that occurred from the contact. Plaintiff does not allege that defendants even spoke with Brittany Rioux. Defendants were not in Pennsylvania when the call was made. Additionally, the parties non-compete agreement is governed by the laws of the state of Texas.

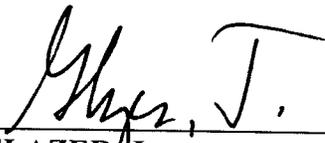
After considering the elements necessary to exercise specific jurisdiction, the court finds that it lacks jurisdiction. Plaintiff does not specifically state how the alleged phone call damaged them. Plaintiff merely claims, "defendant's breach of his contractual duties has caused plaintiff substantial damage, including harm to its ongoing business operations." See plaintiff's second amended complaint, ¶ 23. Additionally, the court cannot find that adjudicating the matter in Pennsylvania would satisfy the notions of fair play and justice. Because plaintiff has failed to adduce evidence demonstrating that there is a basis for asserting jurisdiction over the moving party, the preliminary objection, as to personal jurisdiction, is sustained.¹

CONCLUSION

In light of the pleadings in the second amended complaint and exhibits attached, the preliminary objection of defendants, Jared Bond and the Agent Studio, LLC, to the second amended complaint of plaintiff, Image 1 Studios, LLC, is sustained and the second amended complaint is dismissed.

¹ Due to this court's ruling on the preliminary objection to personal jurisdiction, the court did not address defendants' remaining preliminary objections.

BY THE COURT:



GLAZER, J.