

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

BUCKEYE RETIREMENT CO., LLC, LTD.	:	December Term 2004
	:	
Plaintiff,	:	No. 03257
	:	
v.	:	
	:	Commerce Program
MICHAEL W. LLOYD	:	
	:	Control No. 030575
Defendant.	:	

ORDER and MEMORANDUM

AND NOW, this 8TH day of April 2005, upon consideration of Defendant's Motion to Dismiss For Lack of Jurisdiction, all responses in opposition, the respective memoranda, all matters of record, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** and **DECREED** that said Motion **DENIED**.

Defendant is directed to file an answer to Plaintiff's Complaint within twenty (20) days from the date of entry of this Order.

BY THE COURT:

HOWLAND W. ABRAMSON, J.

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MEMORANDUM OPINION

Before the court is Defendant's Motion to Dismiss for Lack of Jurisdiction. For the reasons fully set forth below, said Motion is **denied**.

DISCUSSION

Defendant has filed the instant Motion asserting lack of personal jurisdiction. Where a party objects to a court's exercise of personal jurisdiction, the non-moving party bears the burden of demonstrating contacts with the forum state sufficient to justify the assertion of personal jurisdiction. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Barr v. Barr, 2000 Pa. Super. 99, 749 A.2d 992 (2000). Pursuant to the Judiciary Act, 42 Pa.C.S.A. §§ 5301, *et seq.*, Pennsylvania courts may exercise two types of *in personam* jurisdiction over a non-resident defendant. One type of personal jurisdiction is general jurisdiction, which is founded upon a defendant's general activities within the forum as evidenced by continuous and systematic contacts with the state. The other type is specific jurisdiction, which has a more defined scope and is focused upon the particular acts of the defendant that gave rise to the underlying cause of action. Mar-Eco, Inc. v. T & R & Sons Towing & Recovery, Inc., 2003 Pa.

Super. 444, 837 A.2d 512 (2003). Regardless of whether general or specific *in personam* jurisdiction is asserted, the propriety of such an exercise must be tested against the Pennsylvania Long Arm Statute, 42 Pa.C.S.A. § 5322, and the Due Process Clause of the Fourteenth Amendment. Id.

Plaintiff argues that Defendant consented to Pennsylvania jurisdiction, citing language in the Demand Note which states “[t]he loan evidenced hereby has been made and this Note has been delivered at Philadelphia, Pennsylvania and shall be governed by and construed in accordance with the laws of Pennsylvania.” Compl. Exh. A. However, this clearly is a choice of law provision, not a forum selection clause, and therefore, alone, can not be the basis of personal jurisdiction over Defendant. Tandy Computer Leasing, Div. of Tandy Electronics, Inc. v. Demarco, 388 Pa. Super. 128, 564 A.2d 1299 (1989).

This language in the Demand Note, however, is pertinent in another regard. In order to meet constitutional muster, a defendant's contacts with the forum state must be such that the defendant could “reasonably anticipate being called to defend itself in the forum.” Taylor v. Fedra Int'l, Ltd., 2003 Pa Super 233, 828 A.2d 378 (2003). The facts must demonstrate that defendant “purposefully directed its activities to the forum and conducted itself in a manner indicating that it has availed itself to the forum's privileges and benefits such that it should also be subjected to the forum state's laws and regulations.” Id. This court finds that by entering into a loan agreement with a Pennsylvania bank, Defendant availed himself of the laws of the Commonwealth and that it was reasonably foreseeable that if he defaulted on the Demand Note, which was made and delivered in Philadelphia, he could be sued in that forum. The fact that the Note was later assigned to another financial institution does not alter this conclusion.

Accordingly, Defendant’s Motion to Dismiss for Lack of Jurisdiction is denied.

Defendant is directed to file an answer to Plaintiff's Complaint within twenty (20) days from the date of entry of this Order.

BY THE COURT:

HOWLAND W. ABRAMSON, J.