

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

**COHEN, SEGLIAS, PALLAS, GREENHALL & FURMAN,
 P.C.**

Plaintiff

v.

999 LLC, a/k/a/ NINE NINETY NINE, LLC,

JJC999, LLC,

FLC999, LLC

JOSEPH CORRADO and FRANK CORRADO

Defendants

: February Term, 2012

: Case No. 04040

: Commerce Program

: Control No. 12060255

UNRECORDED
 FEB 27 2013
 C. HART
 CIVIL JUSTICE

Cohen, Seglias, Pallas, Greenhall & Furman P.C. V-OPFLD



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AMENDED OPINION

The preliminary objections require this court to determine whether Pennsylvania may assert *in personam* jurisdiction over Delaware-based defendants who solicited legal counsel in Pennsylvania to obtain legal representation in Delaware. For the reasons below, this court holds that Pennsylvania may assert *in personam* jurisdiction over said defendants.

Background

Plaintiff Cohen, Seglias, Greenhall, Pallas & Furman, P.C. (“Plaintiff” or “CSGP&F,”) is a professional corporation engaged in the practice of law. CSGP&F has an address at 30 South 17th Street, in Philadelphia, Pennsylvania. Roy S. Cohen, Esquire, is an attorney at the Philadelphia, Pennsylvania offices of CSGP&F. Defendant,

999 LLC, is a limited liability company engaged in the construction business and based in the State of Delaware. Defendant JJC999, LLC, is a limited liability company based in the State of Delaware. Individual defendant Joseph J. Corrado (“Joseph Corrado,”) is the sole owner of JJC999, LLC. Joseph Corrado owns an interest in 999 LLC through his sole ownership of JJC999, LLC.¹ Defendant FLC999, LLC, is a limited liability company based in the State of Delaware. Individual defendant Frank Corrado (“Frank Corrado,”) is the brother of Joseph Corrado and the sole owner of defendant FLC999, LLC. Frank Corrado owns an interest in 999 LLC through his sole ownership of FLC999, LLC.² Whenever necessary hereinafter, the above defendants shall be collectively identified as “Defendants.”

Before commencement of the instant litigation, Joseph Corrado hired CSGP&F to perform legal work in Delaware on behalf of certain businesses in which Joseph Corrado had an interest. At the time, Joseph Corrado knew that Roy S. Cohen, Esquire, was an attorney based in the Philadelphia, Pennsylvania offices of CSGP&F.³

Also before commencement of the instant litigation, 999 LLC became involved in a number of lawsuits in the State of Delaware, including a lawsuit involving its former attorney, Richard Forsten (*hereinafter* the “Forsten Litigation.”) Joseph Corrado placed an initial call to Roy S. Cohen, Esquire, to inquire whether CSGP&F would represent 999 LLC in the Forsten Litigation.⁴ On August 6, 2007, Roy S. Cohen, Esquire, sent an engagement letter to 999 LLC in response to the inquiries. The letter was typed on

¹ Deposition of Joseph Corrado dated September 26, 2012, p. 10:5–10, Exhibit 2 to the supplemental memorandum of law of CSGP&F in opposition to the preliminary objections of Defendants.

² Deposition of Frank Corrado dated September 26, 2012, p. 4:18–24, Exhibit 1 to the supplemental memorandum of law of CSGP&F in opposition to the preliminary objections of Defendants.

³ Deposition of Joseph Corrado dated September 26, 2012, p. 23:4–7, Exhibit 2 to the supplemental memorandum of law of CSGP&F in opposition to the preliminary objections of Defendants.

⁴ *Id.* p. 24:13–17.

letterhead which identified the law firm of CSGP&F and its attorney, Roy S. Cohen, and disclosed exclusively the Philadelphia, Pennsylvania address thereof.⁵ The letter also stated:

Gentlemen:

In response to the emails ... I wanted to lay out my game plan for the successful resolution of at least the dispute involving your former counsel, Richard Forsten [the Forsten Litigation] and his three law firms....

I am estimating that through the use of a lower associate, Eric Monzo, who bills at \$200 an hour, together with the guidance of Jim Harker, an experienced real estate attorney who handles both the transactional and litigation aspects for matters in Delaware, we should be able to put together a complaint both quickly and cost effectively. **As the senior partner of the firm, I will take the lead in the matter and handle all meetings, hearings, etc....**

I am enclosing CVs for myself, Jim Harker and Eric Monzo. Understand that Jim [Harker] will be primarily responsible for sifting through the complicated real estate issues. **I will be primarily responsible for pushing the litigation. My partner, Ed Seglias, will jump in on occasion if I need assistance or am out of the office. Ed [Seglias] is the managing partner of our Delaware office** and is an extremely accomplished litigator like myself....⁶

999 LLC accepted the engagement letter, and CSGP&F began to represent 999 LLC in the Forsten Litigation.⁷

In the course of the Forsten Litigation, Joseph Corrado, Frank Corrado, and other officers of 999 LLC, attended at least two meetings in the Philadelphia,

⁵ Letter dated August 6, 2007 from CSGP&F to 999 LLC, Exhibit 4 to the supplemental memorandum of law of CSGP&F in opposition to the preliminary objections of defendants.

⁶ *Id.* (emphasis supplied).

⁷ Deposition of Joseph Corrado dated September 26, 2012, p. 27:5–9, Exhibit 2 to the supplemental memorandum of law of CSGP&F in opposition to the preliminary objections of Defendants.

Pennsylvania office of CSGP&F, to prepare for mediation and to review litigation documents.⁸ Throughout litigation, 999 LLC was invoiced for legal work performed by CSGP&F. The invoices originated from the Philadelphia, Pennsylvania office of CSGP&F, and Joseph Corrado was aware that payments should be sent to Pennsylvania. Indeed, several payments were sent to the Philadelphia, Pennsylvania office of CSGP&F.⁹

At some point in the Forsten Litigation, 999 LLC concluded that it had been paying excessive legal fees to CSGP&F because “there was too many [*sic*] lawyer involved.”¹⁰ A dispute ensued, and CSGP&F filed the instant action in Pennsylvania to recover any unpaid balance allegedly owed by 999 LLC, Joseph Corrado, Frank Corrado and the other defendants.¹¹

On June 1, 2012, Defendants filed preliminary objections to the first amended complaint. The preliminary objections ask this court to dismiss the first amended complaint for lack of personal jurisdiction over Defendants. In addition, the preliminary objections seek dismissal of the first amended complaint on grounds that the State of Delaware has a greater interest than Pennsylvania in the adjudication of the instant action.

On August 30, 2012, this court issued an Order directing the parties to conduct discovery as to personal jurisdiction, and to file supplemental briefs thereon by October 12, 2012. The parties conducted discovery on personal jurisdiction. In addition, various individuals involved in the instant action were deposed on September 26, 2012,

⁸ *Id.*, p. 32:15–24, p. 33:1–22.

⁹ *Id.* p. 35:4–7, p. 35:19–22.

¹⁰ *Id.* p. 40:5–9.

¹¹ In turn, Defendants *herein* filed a lawsuit in the State of Delaware against CSGP&F. In the Delaware action, Defendants *herein* assert that CSGP&F negligently represented 999 LLC in the underlying Forsten Litigation. The Delaware action also seeks recovery of fees which 999 LLC allegedly overpaid to CSGP&F.

including defendant Joseph Corrado and his brother, defendant Frank Corrado. At the deposition of Joseph Corrado, the following exchange took place:

- Q. Were you aware that [CSGP&F] lawyers were performing work on behalf of 999 [LLC in the Forsten Litigation] from their offices in Philadelphia and Pittsburgh?
- A. And Wilmington.
- Q. So all three?
- A. Yes.¹²

After discovery and depositions, the parties timely filed their supplemental briefs. Oral arguments were held on the issue of personal jurisdiction on December 5, 2012.

Discussion

The standard for preliminary objections is well settled:

All material facts set forth in the complaint as well as all inferences reasonably deducible therefrom are admitted as true.... The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.¹³

I. Personal Jurisdiction.

Pennsylvania courts may exercise two types of personal jurisdiction over out-of-state defendants, (1) specific jurisdiction (under 42 Pa. C.S.A. § 5322), based upon the specific acts of the defendant which gave rise to the cause of action, and (2) general personal jurisdiction (under 42 Pa. C.S.A. § 5301), based upon a defendant's general activity within the state.

Even if specific personal jurisdiction does not exist[,] Pennsylvania courts may still be able to exercise general

¹² Deposition of Joseph Corrado, *Id.* p. 32:7–14.

¹³ *Empls. Ins. of Wausau v. DOT*, 581 Pa. 381, 389; 865 A.2d 825, 830 (Pa. 2005).

personal jurisdiction if the defendant has carried on a continuous and systematic part of its general business within the Commonwealth.¹⁴

In this case, Plaintiff CSGP&F concedes that “[g]eneral jurisdiction is not an issue ... and will not be discussed;”¹⁵ therefore, the court shall focus exclusively on the issue of specific *in personam* jurisdiction.

The question of whether a state may exercise specific jurisdiction over a non-resident defendant must be tested against both the state's long-arm statute (here 42 Pa. C.S.A. § 5322) and the due process clause of the fourteenth amendment.¹⁶

Under the Pennsylvania long-arm statute, a tribunal in this Commonwealth may exercise personal jurisdiction over a person who transacts business in the Commonwealth by engaging, *inter alia*, in a single act or in a series of similar acts “for the purpose of ... accomplishing an object.”¹⁷

If jurisdiction may be conferred by the state's long arm statute, a tribunal must next determine whether the defendant has established minimum contacts with the forum state.¹⁸

[D]etermination of whether sufficient minimum contacts exist for the assertion of *in personam* jurisdiction is based on a finding that the defendant's conduct and his connection with the forum State are such that he should reasonably anticipate being haled into court there.

Critical to the analysis of whether a defendant should reasonably anticipate being haled into court in the forum state is the determination that the defendant purposefully directed his activities at residents of the forum and

¹⁴ *McCall v. Formu-3 Int'l*, 437 Pa. Super. 575, 578-579; 650 A.2d 903, 904 (Pa. Super. 1994).

¹⁵ Plaintiff's Brief in Opposition to Defendants' Preliminary Objections, pp. 4–5.

¹⁶ *McCall v. Formu-3 Int'l*, 437 Pa. Super. at 579; 650 A.2d at 905 (Pa. Super. 1994).

¹⁷ 42 Pa. C.S.A. §5322(a)(i); § 5322(a)(ii).

¹⁸ *McCall v. Formu-3 Int'l*, 437 Pa. Super. at 579; 650 A.2d at 905 (Pa. Super. 1994).

purposefully availed himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws. Contacts with the forum that are random, fortuitous or attenuated are not sufficient for the assertion of personal jurisdiction nor is unilateral activity in the forum by others who claim some relationship with the defendant.¹⁹

A. Minimum contacts

In the preliminary objections, Defendants argue that personal jurisdiction has not been triggered because all of the court appearances in the Forsten Litigation “took place in the State of Delaware,” “most if not all” the meetings in the Forsten Litigation took place in Delaware, and Plaintiff “maintains an office for the practice of law in the State of Delaware.”²⁰ According to Defendants, such minimum contacts are “random,” “fortuitous” or “attenuated,” and insufficient to place Defendants under the reach of a tribunal in this Commonwealth.²¹ However, CSGP&F states in its supplemental memorandum in opposition to the preliminary objections that Joseph Corrado reached out to CSGP&F in Pennsylvania to obtain legal representation in the Forsten Litigation, and had “full knowledge that the attorney whom [Joseph Corrado] was engaging was based in Philadelphia, Pennsylvania.”²² CSGP&F concludes that these actions are sufficient to place Defendants under personal jurisdiction in Pennsylvania, pursuant to Remick v. Manfredy, 238 F.3d 248 (2001), a case filed in the U.S. Court of the Eastern District of Pennsylvania.

In Remick, a professional boxer, Manfredy, solicited from his home in the State of Indiana, Mr. Remick, an attorney based in Pennsylvania, to obtain legal counsel

¹⁹ Kubik v. Letteri, 532 Pa. 10, 17-18; 614 A.2d 1110, 1114 (Pa. 1992).

²⁰ Defendants’ preliminary objections, ¶¶ 12–14.

²¹ Defendants’ memorandum of law in support of preliminary objections, p. 6.

²² Plaintiff’s supplemental memorandum of law in opposition to Defendants’ preliminary objections, p. 6.

in the procurement and negotiation of boxing matches. Manfredy and Remick eventually entered into a contract whereby Remick agreed to procure boxing matches for Manfredy, and Manfredy agreed to pay Remick a percentage of the purse secured in each match.²³ Approximately two years after the parties had entered into the contract, Manfredy terminated his contract with Remick. Subsequently, Manfredy negotiated a new boxing match on his own, and Remick claimed to be entitled to a percentage of the purse therefrom. Eventually Remick filed a lawsuit against Manfredy in a Pennsylvania Court of Common Pleas. Defendant removed the case to the U.S. District Court for the Eastern District of Pennsylvania, and Manfredy subsequently challenged the lawsuit for lack of *in personam* jurisdiction.²⁴ The U.S. District Court for the Eastern District of Pennsylvania dismissed the case for lack of *in personam* jurisdiction, and Remick appealed. The U.S. Court of Appeals for the Third Circuit reversed the District Court's order dismissing for lack of *in personam* jurisdiction. The Court of Appeals stated:

Manfredy sought Remick out by placing a telephone call to Remick's associate ... at their office in Philadelphia [Pennsylvania]. This solicitation eventually resulted in the fee agreement between Remick and Manfredy.... In addition, at least one payment was sent by Manfredy to Remick at his Philadelphia office. Most of the services performed by Remick were conducted at Remick's Philadelphia office, and Manfredy certainly should have expected as much as he knew that Remick's home office is in Philadelphia. [W]e conclude that the District Court has personal jurisdiction over Manfredy for Remick's breach-of-contract claim....²⁵

Review of the record shows that Joseph Corrado, as indirect owner of an

²³ *Remick v. Manfredy*, 238 F3d 248, 252-253 (2001).

²⁴ *Id.* at 252-253.

²⁵ *Id.* at 256-257.

interest in 999 LLC, placed an “initial call” to Roy S. Cohen, Esquire, to secure legal representation on behalf of 999 LLC in the Forsten Litigation.²⁶ At that time, Joseph Corrado already knew that Roy S. Cohen, Esquire, was an attorney based in the law office of CSGP&F in Philadelphia, Pennsylvania.²⁷ Review of the record also shows that Roy S. Cohen, Esquire, responded to the inquiry by forwarding an engagement letter which clearly stated that Roy S. Cohen would be “primarily responsible for pushing [the Forsten] Litigation.” Consequently, Joseph Corrado should have expected that much of the Forsten Litigation would be conducted in Pennsylvania because the attorney primarily involved in that litigation operated in Pennsylvania.²⁸ Finally, Joseph Corrado and other Defendants traveled at least twice to the Philadelphia office of CSGP&F to prepare for mediation and review documents, and Defendant 999 LLC forwarded a number of payments from Delaware to the Philadelphia, Pennsylvania office of CSGP&F. This evidence shows that Joseph Corrado invoked the benefits and protections of this Commonwealth on behalf of Defendants by purposefully directing his activities at a resident of Pennsylvania, and by purposefully availing himself and his companies of the privilege of conducting activities therein. The court finds that the facts in Remick are nearly identical to those in the instant case and the logic therein is persuasive, even though Remick was decided in the federal courts. Accordingly, this

²⁶ Deposition of Joseph Corrado dated September 26, 2012, p. 24:13–17, Exhibit 2 to the supplemental memorandum of law of CSGP&F in opposition to the preliminary objections of Defendants.

²⁷ Id. at 23:4–7.

²⁸ Defendants’ opening brief in support of preliminary objections states: “at the outset of the Forsten Litigation, Cohen advised that the litigation would be managed out of the law firm’s offices located in Wilmington, Delaware. In fact, in the August 6, 2007 engagement letter Mr. Cohen ... specifically named the attorneys who would be working on the Forsten Litigation[,] those attorneys being Eric Monzo, James Harker and Edward Seglias, Esquire the managing partner of the Wilmington office.” See Defendants’ opening brief in support of preliminary objections, p. 3, incorporating the Affidavit of Joseph Corrado at ¶ 4. However, a reading of the engagement letter shows that the language therein did not advise or imply in any way that the Forsten Litigation would be managed out of the offices of CSGP&F in Wilmington, Delaware.

court finds that Defendants established sufficient minimum contacts with Pennsylvania.

B. Fair play and substantial justice.

In the memorandum of law in support of preliminary objections, Defendants argue that this court could still dismiss the action under traditional notions of fair play and substantial justice. Specifically, Defendants assert that the action should be dismissed because requiring Defendants “to litigate its lawsuit in Delaware against Plaintiffs for negligence and improper billing[,] while at the same time defending the instant action in Pennsylvania, falls squarely within the parameters” of the law on fair play and substantial justice.²⁹ The law cited by Defendants states:

Notwithstanding the determination that a non-resident defendant purposefully established minimum contacts with the forum, *in personam* jurisdiction may only be asserted ... when the nature and quality of that defendant’s activities are such as to make it reasonable and fair to require him to conduct his defense in the state.

Factors to be considered include

- (1) the burden on the defendants,
- (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 interest in obtaining the most efficient resolution of controversies and
- (5) the shared interest of the several states in furthering fundamental substantive social policies.³⁰

After analyzing the factors listed above, this court concludes that it is reasonable and fair to require Defendants to conduct their defense in Pennsylvania. First, the offices of individual Defendants Joseph and Frank Corrado are located in Wilmington,

²⁹ Defendants’ memorandum of law in support of their preliminary objections, p. 10.

³⁰ Memorandum of law in support of preliminary objections, pp. 9–10 (citing Kubik v. Letteri, 532 Pa. 10, 17–18; 614 A.2d 1110, 1114 (Pa. 1992)).

Delaware, within a relatively short car drive or train ride from Philadelphia, Pennsylvania; second, this Commonwealth has a significant interest in providing a forum to redress the alleged failure of Defendants to pay legal fees of \$218,040; third, Plaintiff has a clear interest in obtaining convenient and effective relief in Pennsylvania; fourth, the interstate judicial system's interest in obtaining the most efficient resolution of controversies is not diminished by Pennsylvania's assertion of personal jurisdiction over Defendants; and fifth, the shared interest of the several states in furthering fundamental substantive social policies are in no way compromised by the assertion of *in personam* jurisdiction. For the reasons above, Pennsylvania may assert *in personam* jurisdiction over Defendants in the instant action.

II. Plaintiff may maintain the claim of breach of suretyship contract against Joseph and Frank Corrado.

Defendants' preliminary objections assert that the claim of breach of suretyship contract, asserted against individual Defendants Joseph and Frank Corrado, should be dismissed. The preliminary objections assert that under the statute of frauds, a suretyship contract must be documented in writing. Here, according to Defendants, Plaintiff has failed to attach copy of such a contract because individual Defendants never agreed in writing to guarantee payment of legal fees. Defendants conclude that without any writing, the claim of breach of the suretyship contract fails, and the claim must be dismissed.

In Pennsylvania,

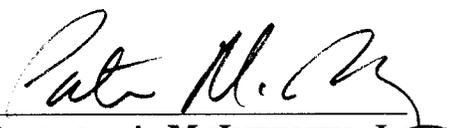
[n]o action shall be brought whereby to charge ... the defendant, upon any special promise, to answer for the debt or default of another, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be

charged therewith, or some other person by him authorized. However, the ... rule that a promise to answer for the debt of another must be in writing does not apply if the main object of the promisor is to serve his own pecuniary or business purpose. This exception has been called the leading object or main purpose rule.

The leading object rule applies whenever a promisor, in order to advance some pecuniary or business purpose of his own, purports to enter into an oral agreement even though that agreement may be in the form of a provision to pay the debt of another.³¹

In this case, the Amended Complaint asserts that when Joseph and Frank Corrado “agreed to guarantee payment to [CSGP&F], their leading object and main purpose was to benefit their own business interest by inducing [CSGP&F] to continue to provide legal representation to their company, 999 LLC.” Admitting as true all inferences reasonably deducible from such allegation, the court cannot conclude with any certainty that no recovery is possible under the claim of breach of the suretyship contract. For this reason, CSGP&F may maintain the claim of breach of suretyship contract asserted in Count II of the Amended Complaint.

By The Court,


PATRICIA A. MCINERNEY, J.

³¹ Biller v. Ziegler, 406 Pa. Super. 1, 8 (Pa. Super. 1991) (citing 33 P.S. § 3 (2012)).