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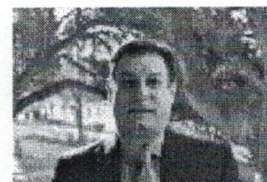
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To Cross the Delaware: When is A New Jersey Corporate Client Subject to the Jurisdiction of a Pennsylvania Commonwealth Court?

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There is No Such Thing as Justice – In or Out of Court.[2]



Increasingly parties are hauled into "foreign" jurisdictions. Indeed, as the country gets smaller due to technological advances, more frequently jurisdictional lines are blurred. These issues become more acute living in a "Tri-State" region. For instance, when is Pennsylvania the appropriate jurisdiction to bring suit against a New Jersey defendant? In other words, how wide is the expanse of the Delaware River?

Under the applicable authority, a plaintiff can only file suit against a defendant if the forum court can exercise *in personam* jurisdiction (i.e. personal jurisdiction) over the defendant. Like many jurisdictions, Pennsylvania courts may assert jurisdiction over out-of-state defendants based on two separate and distinct avenues. First, pursuant to 42 Pa. C.S. § 5322, Commonwealth Courts may exercise *specific* personal jurisdiction over an out-of-state defendant. Second, pursuant to 42 Pa. C.S. § 5301, Commonwealth courts may exercise *general* personal jurisdiction over an out-of-state defendant. To prevent clients from becoming embroiled in a hostile venue, it is up to the attorney to determine whether jurisdiction over a party is appropriate under either avenue.

SPECIFIC PERSONAL JURISDICTION

Under Pennsylvania law, the exercise of specific personal jurisdiction by a court over a non-resident defendant must comply with both the Commonwealth's long-arm statute, 42 Pa. C.S. § 5322, and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. See *Asahi Metals Indus. Co., Ltd. v. Superior Court of California, Solano Cnty.*, 480 U.S. 102 (1987); *Kenny v. Alexson Equip. Co.*, 432 A.2d 974 (Pa. 1981); *Kubik v. Letteri*, 614 A.2d 1110 (Pa. 1992).

The Pennsylvania long-arm statute provides that:

§ 5322. Bases of personal jurisdiction over persons outside this Commonwealth.

(a) General rule. – 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:

- (1) Transacting any business in this Commonwealth....
- (2) Contracting to supply services or things in this Commonwealth.

* * *

(b) Exercise of full constitutional power over nonresidents. - - In addition to the provisions of subsection (a) the jurisdiction of the tribunals of this Commonwealth shall extend to all persons who are not within the scope of section 5301 (relating to persons) 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. §5322.

A plaintiff must allege more than simply that the defendant entered into an agreement with a Pennsylvania resident. A plaintiff must also plead other facts surrounding the signing of the agreement or the extent of defendant's contacts with the Commonwealth to assert that a Pennsylvania court may properly exercise personal jurisdiction over a defendant. Generally, a New Jersey corporation operating exclusively in New Jersey is not subject to the jurisdiction of the Commonwealth's Courts.

In addition to assessing whether there is jurisdiction under the Commonwealth's long-arm statute, one must also determine if the exercise of personal jurisdiction complies with the Fourteenth Amendment's due process requirements. The Due Process Clause of the Fourteenth Amendment

protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.' *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945). But requiring that individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,' *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (STEVENS, J., concurring in the judgment), the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

It is well-established that to assert personal jurisdiction over a non-resident defendant, "due process requires . . . a defendant . . . if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co.*, 326 U.S. at 216 (citing *Miliken v. Meyer*, 311 U.S. 457, 463 (1940)). In *World-Wide Volkswagen Corp.*, the Supreme Court of the United States stated the two functions of the minimum contacts test:

It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

444 U.S. at 291-2 (1980).

Thus, a defendant must purposefully establish minimum contacts with Pennsylvania. Contact with the forum state must be more than signing an agreement with a Pennsylvania resident. However, one may consider whether the agreement was signed in Pennsylvania, that defendant solicited plaintiff's services in Pennsylvania or that defendant received any services under the agreement in Pennsylvania when determining if a defendant purposely established minimum contacts with the forum to anticipate subjection the court's exercise of jurisdiction.

Only if a court decides that an out-of-state defendant purposefully established minimum contacts with a forum state will the court then determine if its assertion of personal jurisdiction over the defendant would comport with "fair play and substantial justice." *Int'l Shoe Co.*, 326 U.S. at 320; *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 476 (1985). In such cases, the appropriate test evaluates "the burden on the defendant," "the forum

State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." *Id.* at 476-7.

A court must determine whether exercising jurisdiction over defendant comports with traditional notions of fair play and substantial justice. A plaintiff must allege facts showing defendants' presence, dealings or contacts with the Commonwealth to assert personal jurisdiction.

GENERAL JURISDICTION

In addition, one must also determine whether a court has general jurisdiction over a defendant pursuant to 42 Pa. C.S. § 5301(a)(1). The statute provides in relevant part that:

§ 5301. Persons

(a) General rule. – The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:

(1) Individuals. –

- (i) Presence in this Commonwealth at the time when process is served.
- (ii) Domicile in this Commonwealth at the time when process is served.
- (iii) Consent, to the extent authorized by the consent.

42 Pa. C.S. § 5301(a)(1).

Factors such as: where defendant was served; whether it is a New Jersey company; and whether it consented to jurisdiction within the Commonwealth are all relevant to the analysis. See 42 Pa. C.S. § 5301(a)(1). Many factors are considered when evaluating a claim for general personal jurisdiction based on substantial, continuous, systemic, extensive or pervasive contact with the Commonwealth. Courts consider such factors as: where the entity is incorporated; where its principal place of business is located; whether it registered to do business in the Commonwealth; whether it designated an agent for service of process in the Commonwealth; whether it ever opened any offices or hired any employees in the Commonwealth; whether it sold product and conducted business in the Commonwealth; paid income taxes to Pennsylvania; maintained any offices; owned or leased property; or maintained bank accounts in Pennsylvania; or was listed in any Pennsylvania telephone directory. All are considered when determining if there is a basis for courts to exercise general personal jurisdiction over a defendant.

It is also important to note that choice-of-law provisions in agreements do not automatically constitute consent to the jurisdiction of a Pennsylvania Court if there is no discussion of forum or venue. As the Supreme Court of the United States explained "a [choice of law] provision standing alone would be insufficient to confer jurisdiction." *Burger King Corp.* 471 U.S. at 482; *see also Bancorp Group, Inc. v. Pirgos, Inc.*, 744 A.2d 791, 794 (Pa.Super. 2000) ("a provision in an agreement that the laws of a particular forum are to govern disputes arising under the agreement is not the equivalent of a consent to personal jurisdiction.").

Burger King is particularly instructive. The *Burger King* defendants entered into a franchise contract with Burger King Corp. to open a restaurant in Michigan. *Burger King Corp.* 471 U.S. at 464-5. Burger King was incorporated in Florida and a choice-of-law clause in the contract in dispute indicated that Florida law controlled. *Id.* All financial obligations owed to Burger King were sent to Florida and defendants received training in

Florida. *Id.* An economic downturn led to decreased sales and defendants failed to meet their obligations under the contract. *Id.* at 467-8. Justice Brennan, writing for the Court, held that a *choice-of-law provision is insufficient, on its own, to confer jurisdiction over a defendant.* *Id.* at 482. Instead, what is "critical to due process analysis" is "the foreseeability that . . . the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being hauled into court there." *Id.* at 474. The court concluded the choice of law provision insufficient to confer jurisdiction over defendant. Thus, one must allege conduct or a connection to Pennsylvania such that defendant would reasonably anticipate being hauled into court there.

As technology progresses and the country becomes increasingly "smaller" practioners are more frequently exposed to multi-jurisdictional claims. As such, issues can surface in a variety of contexts. When evaluating whether specific or general jurisdiction can be exercised over a defendant one must be cognizant of the foregoing analysis to effectively represent their clients.

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