Control No. 15100589

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

Timothy Dooley	:	
Plaintiff	:	
	:	November Term, 2013
vs.	:	
	:	No. 2651
Jacobs Engineering Group, Inc.,	:	
KMK Enterprises, Inc., and	:	
Kenneth R. Long, Jr.	:	
Defendants	:	

ORDER

And Now, this 2nd day of December, 2015, after considering the Motion for Summary Judgment filed by KMK Enterprises, Inc. and Kenneth R. Long, Jr., Plaintiff's Response thereto, and for the reasons set forth in Court Exhibit "A", attached hereto, it is hereby **ORDERED** that the Motion is **GRANTED in its Entirety**. The Plaintiff's Complaint is **Dismissed With Prejudice**.

DOCKETED
DEC 02 2015
N. ERICKSON
DAY FORWARD

BY THE COURT:

FREDERICA A. MASSIAH-JACKSON, J.

Dooley Vs Jacobs Engine-ORDER
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COPIES SENT PURSUANT TO Pa.R.C.P. 236(b) 12/02/2015

Court Exhibit "A"

This is really a Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction which must be Granted because Plaintiff-Timothy Dooley has provided no evidence of KMK's minimum contacts sufficient to establish specific jurisdiction, and, no evidence of systematic and continuous business by KMK to support general jurisdiction. The Court of Common Pleas of Philadelphia may not exercise *in personam* jurisdiction over these non-resident KMK Defendants.

In August, 2012, Timothy Dooley was working in Galloway Township, New Jersey, when a 50 foot pile pipe fell off a truck and struck him. As a result of serious and permanent injuries, Plaintiff-Dooley initiated this civil action against the KMK Defendants, New Jersey residents.

Mendel v. Williams, 53 A.3d 810 (Pa. Superior Ct. 2012) provides a comprehensive overview of Pennsylvania practice and described **general jurisdiction** at 817:

> "General jurisdiction in Pennsylvania is governed by Section 5301 of the Judicial Code. Section 5301(a) authorizes jurisdiction over a foreign corporation that carries on a 'continuous and systematic part of its general business within this Commonwealth.' 42 Pa. C.S.A. §5301(a)(2)(iii). When jurisdiction over a defendant is based on Section 5301(a), any cause of action may be asserted against the defendant, whether or not it arises from the defendant's conduct in Pennsylvania."

The Mendel Court explained **specific jurisdiction** at 820, when describing the Pennsylvania Long-Arm Statute, 42 Pa. C.S.A. §5322. 53 A.3d at 820-821:

> "A foreign defendant who does not have sufficient contacts with Pennsylvania to establish general jurisdiction may nevertheless be subject to specific jurisdiction . . . if a defendant's activities in Pennsylvania only give rise to jurisdiction under Section 5322(a) or (b), the plaintiff's cause of action is limited to those activities which formed the basis of jurisdiction. See, 42 Pa. C.S.A. §5322(e)."

Rule 1035 states that once a party presents a properly supported Motion for Summary Judgment, the opposing party may not rest on the allegations of the pleadings, but must set forth specific facts showing that a genuine factual dispute exists for a jury. In this case when the KMK Defendants have properly raised a challenge to personal jurisdiction, the burden of proving jurisdiction falls on the party asserting it. Schiavone v. Avelta, 41 A.3d 861 (Pa. Superior Ct. 2012).

No Evidence of Continuous and Systematic Business in Pennsylvania

Defendant-Kenneth Long submitted an Affidavit describing KMK Enterprises, Inc. as a New Jersey Corporation which operates almost exclusively in New Jersey. See Court Exhibit "1". In response, Plaintiff-Dooley refers to a non-specific "clean up job" on Girard Avenue in Philadelphia and vague comments about travels through the Commonwealth of Pennsylvania. Memorandum, pages 37, 43.

No evidence has been presented or referred to that KMK has a place of business, employees or bank accounts in Pennsylvania. The KMK Defendants have not been shown to purposefully deliver products in Pennsylvania, or keep office files or hold meetings here.

Clearly K.M.K. Pennsylvania is a separate, distinct and unrelated entity. See Court Exhibit "2", attached. Under the guidance of Mendel v. Williams, supra, and numerous cases cited at 53 A.3d 817-820, this Court is unable to find that the Due Process Clause would sustain the exercise of general jurisdiction. It is well-settled that random, fortuitous or attenuated contacts between a defendant and the forum state will not support an exercise of jurisdiction. **Compare**, Sulkava v. Glaston Finland Oy, 54 A.3d 884 (Pa. Superior Ct. 2012), ten years of documented business and payments of Pennsylvania corporate taxes; Aventis Pasteur, Inc. v. Alden Surgical Co., Inc., 848 A.2d 996 (Pa. Superior Ct. 2004), defendant engaged in a course of dealing of purchases in Pennsylvania; Gulentz v. Fosdick, 466 A.2d 1049 (Pa. Superior Ct. 1983), defendant's trucks drove 2½ million miles in Pennsylvania annually, **with**, Hall-Woodford Tank Co. v. R.F. Kilns, Inc., 698 A.2d 80 (Pa. Superior Ct. 1997), when considering the totality of contacts the forum-related actions were insufficient to support jurisdiction; McCall v. FORMU-3 International, Inc., 650 A.2d 903 (Pa. Superior Ct. 1994), entering into a joint venture with a Pennsylvania company was too minimal; Derman v. Wilair Servicers, Inc., 590 A.2d 317 (Pa. Superior Ct. 1991), contacts were minimal, no advertising, no taxes paid, no offices in Pennsylvania; Whalen v. Walt Disney Co., 418 A.2d 389 (Pa. Superior Ct. 1980), one-time purchase of merchandise is insufficient.

The Lease Agreement With Ryder Does Not Establish Specific Jurisdiction

A New Jersey defendant that does not have sufficient continuous contacts with Pennsylvania may be subject to specific jurisdiction if the conduct which forms the basis for the suit falls under one of the ten paragraphs of 42 Pa. C.S.A. §5322(a). In this case

Plaintiff-Dooley asserts that the lease agreement with Ryder originated in Philadelphia. See, Memorandum, page 43. The KMK Defendants dispute that contention and state that the tractor was leased from Ryder in Wall Township, New Jersey. See Affidavit, Paragraph 5. Both locations are identified on the Agreement from Ryder Truck Rental, Inc. Nevertheless, Pennsylvania precedent is clear that a contract alone will not automatically establish jurisdiction.

In Fidelity Leasing, Inc. v. Limestone County Board of Education, 758 A.2d 1207, 1211 (Pa. Superior Ct. 2000), the Superior Court quoted Kubik v. Letteri, 614 A.2d 1110 (Pa. 1992), as follows:

> "It is well-settled that an individual's contract with a non-resident *alone* cannot automatically establish sufficient minimal contacts in the other party's home state." (emphasis in original)

See also, Hall-Woolford Tank Co., Inc., supra, 698 A.2d at 83, with cases cited. In the case at bar, even assuming arguendo that the Ryder lease did originate in Philadelphia, that lease alone does not provide this Court with jurisdiction over Kenneth Long or KMK Enterprises, Inc.

The Defendants Did Not Waive Their Jurisdictional Challenges

On November 25, 2013 Plaintiff-Dooley filed his Complaint. On June 13, 2014 before any Court made any rulings, Timothy Dooley filed an Amended Complaint. On July 3, 2014, the KMK Defendants filed Preliminary Objections challenging jurisdiction. The Preliminary Objections were overruled on August 4, 2014 and KMK filed an Answer to the Amended Complaint.

While it is true that under certain circumstances defendants might waive jurisdictional challenges, those circumstances are not present here. See, e.g. Rosenberg v. Nicholson, 597 A.2d 145 (Pa. Superior Ct. 1991), where the Appellate Court distinguished O'Barto v. Glossers Store, Inc., 324 A.2d 474 (Pa. Superior Ct. 1974), explaining that when defendant filed preliminary objections, waiver does not occur; Roskwitalski v. Reiss, 487 A.2d 864 (Pa. Superior Ct. 1985), when the first filing from a defendant "immediately disputes" jurisdiction there is no waiver; Martin v. Gerner, 481 A.2d 903 (Pa. Superior Ct. 1984), when a plaintiff files an amended complaint on his own volition and without a court ruling, the defendant may raise challenges to venue or jurisdiction in preliminary objections to the amended complaint. Compare, Plaintiff's Memorandum at pages 32-34, 43.

For all of the reasons set forth above the Motion for Summary Judgment filed by the KMK Defendants is Granted and the Amended Complaint is Dismissed With Prejudice.

GOLDBERG SEGALLA LLP	
Sean T. Stadelman, Esquire Identification No. 201636 1700 Market Street, Suite 1418 Philadelphia, PA 19103 PH: 267-519-6800 FX: 267-519-6801 E-mail: sstadelman@goldbergsegalla.com	Attorneys for Defendants KMK Enterprises, Inc. and Kenneth R. Long, Jr. (incorrectly identified as Kenneth R. Long, Jr. d/b/a KMK Enterprises, Inc.).

Timothy Dooley *Plaintiff*	: COURT OF COMMON PLEAS : PHILADELPHIA COUNTY
v.	: November Term, 2013
Jacobs Engineering *et al.* *Defendants*	: No. 2651

AFFIDAVIT OF KENNETH R. LONG, JR.

I, KENNETH R. LONG, JR., of full age, hereby certify as follows:

1. I am an owner of KMK Enterprises, Inc., a New Jersey corporation.

2. KMK Enterprises, Inc. is not incorporated, nor is it registered as a foreign corporation, under the laws of the Commonwealth of Pennsylvania.

3. KMK Enterprises, Inc. does not advertise or solicit business in the Commonwealth of Pennsylvania.

4. KMK Enterprises, Inc. does not maintain a website on the internet.

5. The tractor described in Plaintiff's Amended Complaint was leased from Ryder located in Wall Township, New Jersey.

6. KMK Enterprises, Inc. operates almost exclusively in New Jersey and does not as a general part of its business have continuous and systematic shipments to Pennsylvania.

I hereby certify that the above statements made by me are true to the best of my knowledge. I am aware that if any of the above statements made by me are willfully false, I am subject to punishments.

Date: July 31 2014

KENNETH R. LONG, JR.

3042253.1

Court Exhibit "1"

Timothy Dooley *Plaintiff*	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
v.	:	November Term, 2013
Jacobs Engineering *et al.* *Defendants*	:	No. 2651

AFFIDAVIT OF MICHAEL A. KATZ

1. My name is Michael A. Katz.

2. I am over twenty-one (21) years of age.

3. I am competent to make this affidavit.

4. The factual statements contained in this affidavit are true and correct to the best of my knowledge, information and belief.

5. I am the Michael A. Katz referred to in the Articles of Incorporation of K.M.K. Enterprises, Inc. located at 2307 Bristol Pike, Cornwells Heights, Pennsylvania, Bucks County ("Pennsylvania KMK"). The Articles of Incorporation attached hereto as KMK000034-37 are true and correct copies of the Articles of Incorporation filed on September 5, 1972, as Certified by the Secretary of the Commonwealth of Pennsylvania.

6. Through my position as an owner and director of Pennsylvania KMK, I have personal knowledge of the information necessary to make the statements within this affidavit.

7. I, along with Mr. Moretti (deceased) and Mr. Kirtley, Jr., started and were directors of Pennsylvania KMK. We had intended to operate a business using the K.M.K. acronym (Katz, Moretti, Kirtley, Jr.) as our company's name. However, that business never really got started operating and for all intents and purposes ceased to exist shorty after we filed for incorporation. I was unaware until recently that it was even still considered a corporation.

8. At no time in my life have I ever known or been an owner, partner or otherwise a business associate of Ken Long or a New Jersey corporation named K.M.K Enterprises, Inc.

9. At no time was Pennsylvania KMK ever affiliated with any other entity, including any New Jersey corporation named K.M.K Enterprises, Inc.

Court Exhibit "2"

10. Nobody by the name of Ken Long was ever employed by, an agent of, or otherwise a business associate of Pennsylvania KMK.

11. Pennsylvania KMK was never in the trucking, transportation or logistics business.

12. Pennsylvania KMK was, and to the extent it is still legally active, is a separate and distinct company from any other entity using the name KMK Enterprises.

Michael A. Katz

State of PA, County of Bucks
Signed and Sworn to before me
on May 26, 2015.

Notary Public

Notarial Seal
Alexandra Weremijenko, Notary Public
Yardley Borough Bucks County
My Commission Expires November 9, 2015