

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DELAWARE MARKETING PARTNERS,)
LLC,)
)
Plaintiff,)
)
v.) Civ. No. 04-36-SLR
)
CREDITRON FINANCIAL SERVICES,)
INC. and TELATRON MARKETING)
GROUP, INC.,)
)
Defendants.)

Charles Snyderman, Esquire of Charles Snyderman P.A., Wilmington, Delaware. Counsel for Plaintiff.

John L. Reed, Esquire and Matt Neiderman, Esquire of Duane Morris, Wilmington Delaware. Counsel for Defendants. Of Counsel: Craig A. Markham, Esquire of Elderkin, Martin, Kelly & Messina, Erie, Pennsylvania.

MEMORANDUM OPINION

Dated: August 31, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff, Delaware Marketing Partners, a Delaware limited liability company, brought suit against defendants Creditron Financial Services, Inc. and Telatron Marketing Group, Inc., seeking damages for a breach of contract. (D.I. 1) Defendants, both Pennsylvania corporations with their principal places of business located in Erie, Pennsylvania, have moved to dismiss the complaint based on lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), and for improper venue pursuant to Fed. R. Civ. P. 12(b)(3). (D.I. 5) In the alternative, the defendants moved to transfer the action to the Western District of Pennsylvania. (D.I. 5) For the reasons that follow, the motion to transfer venue shall be granted.

II. FACTS

The following facts are taken from the pleadings, the motion papers, and the affidavits filed in connection with the motion:

- Defendants are Pennsylvania corporations with their principal places of business located in Erie, Pennsylvania.
- Defendants were approached by plaintiff with the proposition of a business deal that eventually led to a contractual agreement.

- The Student Loan Origination and Marketing Agreement (“the Agreement”) between plaintiff and the defendants was negotiated and executed in Pennsylvania.
- The Agreement states that it “shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.” (D.I. 7, ex. A, ¶ 18)
- To the extent defendants initiated any post-Agreement telephone calls to plaintiff, they were placed to Virginia, where plaintiff’s representatives were conducting business at the time.
- To the extent there were any post-Agreement meetings, they were held in Erie, Pennsylvania.
- Defendants performed all of their work and operations in or from offices in Erie, Pennsylvania.
- Defendants have contracts with third party credit agencies.

In response, plaintiff argues that it managed the following activities in Delaware as the agent of defendants in connection with the instant dispute:¹

- Plaintiff established the criteria for identifying

¹Plaintiff asserts that the cause of action against defendants is based upon defendants’ failure to pay what is owed for plaintiff’s services under the Agreement. Plaintiff’s “services consist primarily of knowing, based on information contained in millions of credit reports, which consumers should be targeted for [defendants’] marketing campaigns, and communicating those names to [defendants].” (D.I. 11)

consumers who should be targeted for defendants' promotional inquiries.

- Plaintiff, acting as defendants' agent in Delaware, requested consumer information consistent with the criteria from ChoicePoint Precision Marketing ("ChoicePoint").²
- Plaintiff, acting as defendants' agent in Delaware, manages defendants' consumer solicitations.

Defendants concede that plaintiff obtains listings of individuals who are believed to have outstanding student loans and posts those listings on its internet website for use by defendants in Erie, Pennsylvania. However, defendants argue that the criteria were established by plaintiff when it was operating out of Virginia, not Delaware. Moreover, according to defendants, it is ChoicePoint that: a) sorts through the consumer data to ascertain which consumers fit the criteria; b) sends lists of consumers who meet the established criteria to an outside party responsible for appending addresses and telephone numbers; and c) generates the promotional inquiries.

²ChoicePoint is a company operating out of Massachusetts that acts as a repository of consumer credit data and is in the business of reselling this consumer credit data.

III. STANDARD OF REVIEW

Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, a court may dismiss a suit for lack of jurisdiction over the person. According to the United States Supreme Court,

before a court may exercise personal jurisdiction over a defendant, there must be more than notice to the defendant and a constitutionally sufficient relationship between the defendant and the forum. There must also be a basis for the defendant's amenability to service of summons. Absent consent, this means there must be authorization for service of summons on the defendant.

Omni Capital Int'l, Ltd. V. Rudolph Wolff & Co., 484 U.S. 97, 104 (1987). The principle pronounced above is traditionally described as a two-step analysis: First, whether there is amenability to service and, second, whether the exercise of jurisdiction offends the defendants' right to due process.

Rule 4(e)(1) of the Federal Rules of Civil Procedure states that service of a summons may be effected "pursuant to the law of the state in which the district court is located." The Delaware long-arm statute, 10 Del. C. § 3104(c), has been construed broadly to confer jurisdiction to the maximum extent possible under the due process clause. LaNuova D & B S.p.A. v. Bowe Co., 512 A.2d 764, 768 (Del. 1986).

However, since the Delaware Supreme Court has not determined that the long-arm statute is coextensive with federal due process, the court must determine whether the exercise of personal jurisdiction is compatible with both the specific

requirements of the Delaware long-arm statute and with defendant's constitutional rights to due process. Intel Corp. v. Silicon Storage Tech., Inc., 20 F.Supp.2d 690, 694 (D. Del. 1998); see generally, International Shoe Co. v. Washington, 326 U.S. 310 (1945).

Once a jurisdictional defense is raised, the burden is on the plaintiff to demonstrate with reasonable particularity that sufficient minimum contacts have occurred between the forum state and defendant to support jurisdiction. Provident National Bank v. California Federal Savings & Loan Assoc., 819 F.2d 434, 437 (3d Cir. 1987). To meet this burden, the plaintiff must demonstrate either specific or general jurisdiction. Specific jurisdiction arises when the particular cause of action arose from the defendant's activities within the forum state. In contrast, general jurisdiction does not require that the defendant's connections be related to the particular cause of action, but that the defendant has continuous or systematic contacts with the forum state. American Bio Medica Corporation v. Peninsula Drug analysis Co, Inc., No. 99-218, 1999 WL 615175 (D. Del. 1999).

The Delaware long-arm statute provides that personal jurisdiction is proper over any nonresident who, in person or through an agent:

- (1) Transacts any business or performs any character of work or service in the State;
- (2) Contracts to supply services or things in this State;
- (3) Causes tortious injury in the State by an act or omission in this State;
- (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State;
- (5) Has an interest in, uses or possesses real property in the State; or
- (6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

10 Del. C. § 3104(c). The above provisions have been construed "liberally so as to provide jurisdiction to the maximum extent possible" in order "to provide residents a means of redress against those not subject to personal service within the State." Boone v. Oy Partek AB, 724 A.2d 1150, 1156-57 (Del. Super. 1997).

In the past, Delaware courts have recognized that an agency relationship between a party acting within Delaware and a

defendant can be the basis for jurisdiction. See Applied Biosystems, Inc. v. Cruachem, Ltd., 772 F. Supp. 1458, 1463 (D. Del. 1991) (citing Waters v. Deutz Corp., 460 A.2d 1332, 1334-37 (Del.Super. 1983) and Phoenix Canada Oil Co. v. Texaco, Inc., 842 F.2d 1466, 1477 (3d Cir. 1988)). "[T]he existence of a principal/agent relationship between two corporations does not obviate the necessity of satisfying the requirements of the Delaware long-arm statute"; therefore, agent actions taken on behalf of a principal must still satisfy § 3104(c) before this court can exercise jurisdiction. Id. at 1463. In order for actions by an agent to meet the requirements of § 3104, the plaintiff must show that the defendants were directing or controlling the activities within Delaware. See Applied Biosystems, 772 F. Supp. at 1467; Sears, Roebuck & Co. v. Sears plc, 744 F. Supp. 1297, 1305 (D. Del. 1990).

IV. DISCUSSION

Defendants argue that they have no contacts with Delaware that can serve as the basis for personal jurisdiction. Plaintiff argues that it acted as defendants' agent within the State of Delaware and, as such, its actions can be attributed to the defendants and be the basis for personal jurisdiction.³

³ Because the actions plaintiff claims it performed on defendants' behalf fall under only three of the categories in § 3104, only those three are discussed here.

Subsection (c) (1) of Delaware's long-arm statute allows this court to exercise specific jurisdiction over defendants if they were conducting business in Delaware. Subsection (c) (4) allows the court to exercise general jurisdiction over defendants if they are engaged in consistent business within the state. Plaintiff has not alleged that defendants were directing actions, nor that defendants were in control of its work in Delaware. There is no allegation that plaintiff reported to defendants, other than providing them with lists. Instead, plaintiff performed its obligations under the contract independent of direction from the defendants. Because plaintiff carries the burden of showing minimum contacts sufficient to support jurisdiction and has failed to assert conduct within Delaware that was controlled by the defendants, this court does not have jurisdiction under subsections (c) (1) or (c) (4) of Delaware's long-arm statute.

Subsection (c) (2) of Delaware's long-arm statute allows this court to exercise specific jurisdiction over defendants if they contracted to provide services in Delaware. As a specific jurisdictional provision, it requires a nexus between the cause of action and the conduct used as the basis for jurisdiction. See Siemens Aktiengesellschaft v. LG Semicon Co., 69 F. Supp.2d 622, 625 (D. Del. 1999). Plaintiff argues that the defendants were contractually obligated to extend credit offers to 64,000

Delaware citizens. These obligations, however, do not support a finding of personal jurisdiction in this case because plaintiff's complaint alleges breach of contract by defendants. Defendants' obligation to extend lines of credit to Delaware citizens stems from defendants' contract with Experian and not from the contract at issue. Defendants' obligation to Delaware citizens is not related to this action; therefore, it cannot be the basis for specific personal jurisdiction.

V. CONCLUSION

To rectify the lack of personal jurisdiction and prevent any subsequent statute of limitations problems, defendants' motion to transfer venue is granted.