

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IMPACT LABS, INC.,)
)
 Plaintiff)
)
 v.) Civil Action No. 03-211 GMS
)
 X-RAYWORLD.COM, INC., and)
 RICHARD S. WARD,)
)
 Defendants.)

MEMORANDUM AND ORDER

I. INTRODUCTION

On February 21, 2003, the plaintiff, Impact Labs, Inc. (“Impact Labs”) filed the above-captioned action against the defendants, X-Rayworld.com (“X-Rayworld”) and Richard S. Ward (“Ward”) alleging claims for breach of contract, conversion, and unjust enrichment.

On April 30, 2003, Ward filed a motion to dismiss the complaint based on lack of personal jurisdiction, improper venue, and failure to state a claim. On June 16, 2003, Impact Labs answered Ward’s motion to dismiss and concurrently filed a motion to amend the complaint. For the following reasons, the court will grant Impact Labs’ motion to amend. It will further order the parties to engage in jurisdictional discovery for purposes of determining Ward’s amenability to personal jurisdiction in this district.

II. DISCUSSION

A. Personal Jurisdiction

Ward is currently a resident of the State of Virginia, although at one point he attended school and worked part-time in Delaware. X-Rayworld is a corporation organized under the laws of the State of Delaware. It maintains its principal place of business at 5972 Bridgetown Court, Burke,

Virginia. Ward is President and Chief Executive Officer of X-Rayworld.

Ward moves to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of jurisdiction over the defendant. In determining the presence or absence of personal jurisdiction, courts engage in a two step analysis. First, the court must decide whether the long-arm statute of the state in which the court sits authorizes jurisdiction. *Transportes Aeros de Angola v. Ronair, Inc.*, 544 F. Supp. 864-65 (D. Del. 1982). If jurisdiction is proper per the long-arm statute, the court must then determine whether exercising jurisdiction comports with the requirements of the Due Process Clause of the Fourteenth Amendment. *Id.* (noting, however, “intent of the legislature to exercise jurisdiction over non-residents whenever feasible”); *Compaq Computer Corp. v. Packard Bell Elec., Inc.*, 948 F. Supp 338, 342 (D. Del. 1996) (citation omitted). To satisfy the second prong of this analysis, the court must find the existence of “minimum contacts” between the defendant and the forum state, “such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citation omitted). Specifically, the plaintiff must show that the defendant “purposefully avail[ed] itself of the privilege of conducting activities within the forum State.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)); *see also Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 108-09 (1987). Unless the contacts are continuous and systematic, they must be related to the plaintiff’s cause of action. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414-15 (1984). In determining the jurisdictional question, the court must accept as true the allegations in the complaint. *Altech Industries, Inc. v. Al Tech Specialty Steel Corp.*, 542 F.Supp. 53, 55 (D. Del. 1982).

Because Ward has challenged the propriety of personal jurisdiction, it is Impact Lab's initial burden to demonstrate that Ward's activities fall within the ambit of the long-arm statute. *Jeffreys v. Exten*, 784 F. Supp. 146, 151 (D. Del. 1992). According to the statute, a non-resident person or corporation is deemed to submit to the jurisdiction of the Delaware courts by committing any one of several acts. DEL. CODE ANN. tit. 10, § 3401(b). These acts are: (1) transacting any business or performing any character of work within the state; (2) contracting to supply services or things in Delaware; (3) causing tortious injury in Delaware through an act committed in Delaware; (4) causing tortious injury in Delaware through an act committed outside Delaware if the person solicits business in Delaware, engages in regular conduct in Delaware, or derives substantial revenue from Delaware contacts; (5) having an interest in, using, or possessing real property in Delaware; or (6) contracting to act as a surety for a contract or other such obligation located, executed, or to be performed within Delaware at the time the contract is made. *Id.* § 3401(c)(1)-(6).

Impact Labs argues that Sections 3401(c)(1) and (c)(4) apply to Ward. The court will now discuss each purported basis for establishing personal jurisdiction in turn.

1. Section 3401(c)(1)

Section 3401(c)(1) authorizes a court to exercise jurisdiction over a nonresident defendant who in person or through an agent “[t]ransacts any business or performs any character of work or service in the State” DEL. CODE ANN. tit. 10 § 3401(c)(1). This section “is a ‘single act statute’ that enables the court to exercise jurisdiction over a nonresident ‘on the basis of a single act done or transaction engaged by the nonresident within the State.’” *RJ Assoc., Inc. v. Health Payors’ Organization L.P., HPA, Inc.*, 1999 WL 550350, *4 (Del. Ch. July 16, 1999) (quoting *Eudaily v. Harmon*, 420 A.2d 1175, 1180 (Del. Super. 1980)). While the cause of action must have a nexus

with the forum-related conduct, such a nexus may be shown by alleging specific contacts closely associated with the plaintiff's cause of action against the defendant. *See Dentsply Int'l, Inc. v. Pentron Corp.*, 648 F. Supp. 856, 859 (D. Del. 1986).

In the present case, Impact Labs alleges that Ward is the President and Chief Executive Officer of X-Rayworld. It further contends that Ward "exercised control over a Delaware Corporation, established a principal place of business in Delaware, caused the corporation to enter into the Agreement in Delaware, expressly agreed that disputes under the Agreement would be subject to the jurisdiction of Delaware courts, and then used his control of a Delaware corporation to convert the Proceeds from the Agreement that rightly belonged to Impact Labs." *See* D.I. 24 at 8-9. As an initial matter, it is clear that Ward's status as a stockholder and officer of a Delaware corporation is an insufficient basis for the court to exert personal jurisdiction over him pursuant to Section 3401(c). *See Venoco, Inc. v. Marquez*, 2003 WL 21026787 (D. Del. May 5, 2003) (so holding). Although Impact Labs has submitted the Affidavit of Karl Yatovitz in support of the remainder of these assertions, his Affidavit merely reflects that Ward held out X-Rayworld's principal place of business as Delaware. The remaining recitations in the Affidavit are similar to the conclusory statements above with regard to Ward's personal involvement and control.

Thus, on the record as it currently stands, the court is not satisfied that the assertion of personal jurisdiction under Section 3401(c)(1) would be permissible. However, the Yatovitz Affidavit is sufficient to establish a colorable showing of personal jurisdiction. Accordingly, the court will permit the parties to engage in limited jurisdictional discovery for the purpose of further factual development with regard to the establishment of specific jurisdiction under this subsection. *See Massachusetts School of Law at Andover, Inc. v. American Bar Association*, 107 F.3d 1026,

1042 (3d Cir. 1997) (holding that, generally, “jurisdictional discovery should be allowed unless the plaintiff’s claim is “clearly frivolous.”).

2. Section 3401(c)(4)

Impact Labs argues in the alternative that Ward is subject to personal jurisdiction pursuant to Section 3401(c)(4) of the Delaware long-arm statute. To be amenable to personal jurisdiction pursuant to Section 3401(c)(4), Ward must have caused a tortious injury to Impact Labs in Delaware through an act committed outside Delaware, and he must have regularly conducted business in Delaware. In the present case, Impact Labs claims that the fact that “Ward operated and controlled a Delaware corporation that had its principal place of business in Delaware” and that “Ward established a Delaware office from which he conducted X-Rayworld’s operations,” “unequivocally establish [his] general presence within the state.” D.I. 24 at 9.

While the court must disagree that these sparse and somewhat conclusory allegations “unequivocally” establish Ward’s general presence in the state, the court will nevertheless permit jurisdictional discovery to proceed under this theory as well out of fairness and in the interests of justice. Were these the only allegations available for the court’s consideration of general personal jurisdiction, the court would be hesitant to find even an arguably colorable claim for purposes of permitting jurisdictional discovery to go forward. However, as the court has already determined that such discovery is warranted under subsection (c)(1), discovery under this subsection may proceed as well.¹

¹Although Ward also alleges improper venue as a result of the lack of personal jurisdiction, because the court cannot decisively determine whether personal jurisdiction exists at this time, it declines to reach Ward’s argument regarding venue. The court likewise need not reach the constitutional parameters of personal jurisdiction on the present record.

B. Amendment

Impact Labs also seeks leave to amend its complaint with regard to its conversion allegations against Ward. Ward and X-Rayworld object to this amendment solely on the grounds that the court lacks personal jurisdiction over Ward, and therefore, such an amendment would be futile. There is, however, no indication of undue delay, bad faith, failure to cure previous deficiencies, dilatory motives, or prejudice on the present record. With regard to futility, the court concludes that the more efficient route would be to allow Impact Labs to amend its complaint at the present time. Following the jurisdictional discovery, should it become clear that personal jurisdiction cannot lie as to Ward, those claims relating to him will simply be dismissed.

III. CONCLUSION

For the aforementioned reasons, IT IS HEREBY ORDERED that:

1. Impact Lab's Motion to Amend (D.I. 26) is GRANTED.
2. Ward's Motion to Dismiss (D.I. 15) is DENIED, with leave to re-file as necessary following limited jurisdictional discovery.
3. The parties shall be prepared to discuss the length and process of the jurisdictional discovery at the Rule 16.2b conference scheduled for July 28, 2003 at 11:00 a.m.

Dated: July 24, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE