

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

TRINITY LOGISTICS, INC.)
)
 Plaintiff,)
)
 v.)
)
AURILIUS LLC, THE HOME)
DEPOT, INC. and MENARD, INC.)
)
 Defendants.)
)
)

C.A. No. N12C-07-077 CLS

Date Submitted: October 5, 2012
Date Decided: January 23, 2013

On Defendant Menard, Inc.'s Motion to Dismiss for Lack of Jurisdiction.

DENIED.

ORDER

Joseph C. Schoell, Esquire, 1100 North Market Street, Suite 1000, Wilmington, Delaware, 19801. Attorney for Defendant Menard, Inc.

Michael J. Barrie, Esquire and Sarah R. Stafford, Esquire, 222 Delaware Avenue, Suite 801, Wilmington, Delaware, 19801. Attorneys for Plaintiff.

Scott, J.

Introduction

Defendant Menard, Inc. (“Menard”) has moved to dismiss Plaintiff Trinity, Inc.’s (“Trinity”) Amended Complaint for lack of personal jurisdiction pursuant to Del. Super. Ct. R. 12(b)(2) and based on Delaware’s long-arm statute, 10 *Del. C.* § 3104. For the following reasons, Defendant Menard’s Motion to Dismiss is DENIED.

Facts

Trinity has alleged claims of breach of contract and unjust enrichment against, Aurilius, LLC (“Aurilius”), Menard and Home Depot, Inc. (“Home Depot”) arising out of the transportation of certain shipments. Trinity is a Delaware corporation, with its principal place of business in Delaware, engaged in a freight brokerage business in which it arranges for the transportation of the goods of others. Home Depot and Menard each operate home improvement stores; Menard operates stores throughout the Midwest. Menard is a corporation headquartered in Wisconsin and organized under Wisconsin law. Aurilius is a Delaware corporation with its principal place of business in Delaware.

Beginning around March 2012, Trinity and Aurilius entered into oral agreements in which Trinity would arrange for the transportation of Aurilius’ freight to certain destinations, including Home Depot and Menards locations, in

exchange for payment. Since that time, Trinity arranged for various shipments for Aurilius as agreed upon by the parties.

Aurilius, as shipper and/or owner of the freight property, contacted Trinity to arrange the shipments of the property. Home Depot and Menards were, respectively, the consignee and/or owner of the shipments at issue. Trinity selected and paid the motor carriers who properly transported the shipments. Home Depot and Menards accepted all shipments for which they were consignee and/or owner. Pursuant to the terms of payment, as set forth on Trinity's invoices issued to Aurilius, all expenses associated with the collection of the invoices including but not limited to attorney, legal, court and filing fees was the responsibility of the customer identified in the invoices. The defendants have not made full payment to Trinity for the freight charges incurred in connection with the brokerage and transportation of the shipments.

In the Amended Complaint, Plaintiff claims that, because Menard accepted the shipments as consignee and/or owner of the shipments, Menard owes Trinity principal freight charges as part of the total amount due. In addition, Plaintiff asserts that Defendants owe Trinity all fees and costs associated with the collection of the amounts outstanding and owing. Based upon these facts, Plaintiff has alleged breach of contract and unjust enrichment claims against Menard in Counts III and VI. In the breach of contract claim, Menard argues that “[b]y virtue of

Defendant Menards's acceptance of the Shipments as consignee and/or owner of the Shipments, Defendant Menard's became a party to the valid and enforceable Agreements between Defendant Aurilius and Trinity and is liable to Trinity for the freight charges as a matter of law."¹ In the claim for unjust enrichment, Trinity argued that "[a]s consignee and/or owner of the Shipments, upon acceptance of the Shipments, Defendant Menards is liable to Trinity for the unpaid freight charges related to the Shipments as a matter of law."²

Standard of Review

On a motion to dismiss for lack of *in personam* jurisdiction, the plaintiff bears the burden to make a prima facie showing that the defendant is amenable to the jurisdiction of a Delaware court, pursuant to Delaware's long-arm statute.³ The Court must accept the plaintiff's allegations as true and draw all reasonable inferences in favor of the plaintiff.⁴ Additionally, the Court is not limited to the pleadings and may consider affidavits, briefs, and the results of discovery.⁵ The Court's first inquiry is whether the long-arm statute confers jurisdiction. Then, if the statute applies, the Court determines whether the exercise of jurisdiction is in

¹ Compl., at ¶36.

² Amended Compl., at ¶ 54

³ *Boone v. Oy Partek Ab*, 724 A.2d 1150, 1154 (Del. Super. 1997).

⁴ *Id.* at 1155; *Aeroglobal Capital Management, LLC v. Cirrus Indus., Inc.*, 2003 WL 77007, *3 (Del. Super.).

⁵ *Hartsel v. Vanguard Group, Inc.*, 2011 WL 2421003, *7 (Del. Ch.) *aff'd*, 38 A.3d 1254 (Del. 2012) *cert. denied*, 133 S. Ct. 32 (2012).

accord with due process.⁶ Due process requires the Court to determine whether defendant has minimum contacts with the forum state, and whether asserting personal jurisdiction comports with “traditional notions of fair play and substantial justice.”⁷

Discussion

Delaware’s long-arm statute lists six circumstances under which any nonresident or personal representative thereof, who in person or through an agent, is considered amenable to the jurisdiction of Delaware courts.⁸ The statute is “broadly construed to confer jurisdiction to the maximum extent possible under the due process clause.”⁹ Plaintiff argues that its claim against Menard, a nonresident, is based on Menard’s status as a party to certain agreements between Trinity and Aurilius, both Delaware corporations, through of Menard’s acceptance of shipments as consignee and owner of those shipments.¹⁰

The Court finds that § 3104(c)(1) is most applicable to Plaintiff’s claims. Section 3104(c)(1) permits jurisdiction where a nonresident “[t]ransacts any business or performs any character of work or service in the State”.¹¹ An act on

⁶ *Id.*

⁷ *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Boone*, 724 at 1158.

⁸ 10 *Del. C.* §§ 3104(b) and 3014(c).

⁹ *Aeroglobal Capital Management*, 2003 WL 77007 at *4.

¹⁰ Amended Compl., at ¶ 36; Pl. Opp. to Mot., at ¶ 8.

¹¹ 10 *Del. C.* §3104(c)(2).

the part of the defendant must have occurred in Delaware and the plaintiff's claims must have arisen from that act.¹² The statute is construed as a "single act" statute in which only a single transaction or act is sufficient for jurisdiction over a claim arising out of the conduct of "transacting business."¹³ Where "a claim arises out of the transaction of business or the non-performance of a contract, then this Court need seek no other indicia of the defendant's activity in this state, but that contract or transaction."¹⁴

The single act of being a party to a contract is insufficient for jurisdiction to be established under §3104(c)(1).¹⁵ However, in cases where the defendant or a defendant's personal representatives visited Delaware for reasons related to the contract, courts have found such conduct to be sufficient for the "transacts business" requirement of §3104(c)(1).¹⁶ Delaware courts follow the courts of Illinois when interpreting Delaware's long-arm statute because it is based on the Illinois long-arm statute.¹⁷ In *American Funeral Computer Service, Inc. v. Floyd*,

¹² *Boone*, 724 A.2d at 1156.

¹³ *Int'l Playtex, Inc. v. B & E Machinery Co.*, 1987 WL 17178, *2 (Del. Super.).

¹⁴ *Id.* (citing *LaNuova D&B, S.p.A. v. Bowe Co., Inc.*, 513 A.2d 764, 768 (Del. 1986)).

¹⁵ See *Blue Ball Properties, Inc. v. McClain*, 658 F. Supp. 1310, 1316 (D. Del. 1987); *Matter of Rehabilitation of Nat'l Heritage Life Ins. Co.*, 656 A.2d 252, 258-59 (Del. Ch. 1994)(citing *Newspan, Inc. v. Hearthstone Funding Corp.*, 1994 WL 198721, *6 (Del. Ch. 1994)).

¹⁶ E.g., *Speakman Co. v. Harper Buffing Mach. Co., Inc.*, 583 F. Supp. 273,275 (D. Del. 1984); *Hide Power and Equipment Co., Inc. v. Strates Enterprises, Inc.*, 1993 WL 258701, *2 (Del. Super.); *Mid-Atlantic Mach. & Fabric, Inc. v. Chesapeake Shipbuilding, Inc.*, 492 A.2d 250, 255 (Del. Super. 1985).

¹⁷ *O'Neal v. Huxley*, 558 F. Supp. 462,465 (D. Del.1983)(citing *Wilmington Supply Co. v. Worth Plumbing & Heating, Inc.*, 505 F. Supp. 777, 779-50 (D. Del. 1980)).

165 Ill. App.3d 309, (Ill. App. Ct. 1988), an in-state computer manufacturer alleged that a nonresident defendant failed to make payment on a contract whereby plaintiff provided a computer along with related goods and services. The court stated that the mere fact that the defendant entered into a contract in the forum state for the sale and shipment of a computer to him from Illinois, with payment to be made in Illinois, would be insufficient to constitute the transaction of business in Illinois and that jurisdiction could only be founded upon other independent facts.¹⁸ The Court affirmed a circuit court's holding that the defendant voluntarily sought the benefits and protections of Illinois law after noting that the defendant initiated the proposal for the contract, knew the computer was to be sent from and paid for in Illinois, and went to Illinois to receive information regarding the operation of the computer.¹⁹

Plaintiff has not made a prima facie showing that this Court has personal jurisdiction over Menard. Plaintiff argues that, by accepting the shipments, Menard became a party to the agreements. The Court adopts the rationale discussed above in *Floyd*: the mere fact that Menard became a party to the agreements by accepting shipments from Delaware corporations, even if payment would be made in Delaware, is insufficient to establish jurisdiction. There are no facts alleged to suggest that Menard sent any representatives to Delaware or acted

¹⁸ *Id.* at 312.

¹⁹ *Id.* at 314-15.

in any other way which would be construed as “transacting business” for the purposes of §3104(c)(1).

Even if the Court were to find that the long-arm statute confers jurisdiction over Menard, the Court’s exercise of jurisdiction would be restricted by the Due Process Clause. In *Burger King, Corp. v. Rudzewics*, 471 U.S. 462 (1985), the U.S. Supreme Court held, *inter alia*, that a resident party’s contract with an out-of-state party could not, in and of itself, automatically establish sufficient minimum contacts with the in-state party’s home forum.²⁰ The Court stated:

It is these factors—prior negotiations and contemplated future consequences, along with the terms of the contract and the parties’ actual course of dealing—that must be evaluated in determining whether defendant purposely established minimum contacts with the forum.²¹

Plaintiff requests, in the alternative, that the Court exercise its discretion to reserve decision in order to grant Trinity a reasonable opportunity to take jurisdictional discovery as to Menard’s additional contacts with the Delaware. Specifically, Plaintiff requests discovery

on topics including but not limited to (i) whether Menard is affiliated with any Delaware entities; (ii) whether Menard has entered into contracts with Delaware entities beyond Trinity and Aurilius; (iii) the extent of Menard’s relationship with Aurilius to purchase goods; (iv)

²⁰ *Id.* at 478.

²¹ *Id.* at 479.

whether Menard has engaged in contractual negotiations in the State of Delaware; (v) whether Menard has placed any products in the “stream of commerce” in the State of Delaware; and (vi) whether Menard has advertised in the state of Delaware.²²

It is true that the Court may reserve decision in order to grant Plaintiff reasonable opportunity to conduct jurisdictional discovery.²³ Although the Court has discretion to do so, the Court will not ordinarily preclude a plaintiff from conducting reasonable discovery to aid plaintiff in making out a prima facie factual showing of discovery.²⁴ Accordingly, the Court will allow Plaintiff to conduct limited discovery for the sole purpose of determining Menard’s contacts with the State. After discovery is completed, Defendant Menard may move for summary judgment if it so chooses.

Conclusion

Based on the foregoing, Defendant Menard, Inc.’s Motion to Dismiss for Lack of Jurisdiction is **DENIED WITHOUT PREJUDICE.**

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

²² Pl. Opp. to Mot., at ¶ 12.

²³ *Hartsel v. Vanguard Group, Inc.*, 2011 WL 2421003, at *15 (Del. Ch. 2011); *Klita v. Cyclo3pss Corp.*, 1998 WL 749637, *4 (Del. Super.) (citing *Hart Holding Co., Inc. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 539 (Del. Ch. 1991).

²⁴ *Hart Holding Co.*, 593 A.2d at 539.