

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

AVIS RENT A CAR SYSTEM, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: CPU4-13-001143
	)	
COLLEEN HOLLY,	)	
	)	
Defendant/Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
FRANKLY LEGAL, LLC	)	
	)	
Third-Party Defendant	)	

Submitted: August 20, 2013  
Decided: September 27, 2013

David C. Malatesta, Esq.  
Kent McBride  
824 N. Market Street, Suite 805  
Wilmington, DE 19801  
*Attorney for Third-Party Plaintiff*

Sidney S. Liebesman, Esq.  
Montgomery, McCracken, Walker & Rhoads, LLP  
1105 N. Market Street, Suite 1500  
Wilmington, DE 19801  
*Attorney for Third-Party Defendant*

Daniel C. Kerrick, Esq. and Jeffrey P. Wasserman, Esq.  
Ciconte, Wasserman, Scerba & Kerrick, LLC  
1300 King Street  
Wilmington, DE 19801  
*Attorney s for Plaintiff*

**ORDER ON THIRD-PARTY DEFENDANT'S  
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

This is a consumer debt action arising from a vehicular accident. On June 27, 2013, Third-Party Defendant FranklyLegal, LLC filed the instant Motion to Dismiss for Lack of Personal Jurisdiction (the "Motion") pursuant to *Court of Common Pleas Civil Rule 12(b)(2)*.

On July 3, 2013, Defendant/Third-Party Plaintiff Colleen Holly filed a response in opposition to the Motion.

A hearing on the Motion was held on July 12, 2013, and the Court heard oral argument from all parties. At the conclusion of the hearing, the Court reserved decision. For reasons discussed herein, Third-Party Defendant Frankly Legal, LLC's Motion to Dismiss is **DENIED**.

### **Facts and Procedural History**

On April 9, 2013, Plaintiff, AVIS Rent A Car Systems, LLC ("Avis"), brought this action seeking judgment against Defendant/Third-Party Plaintiff, Colleen Holly ("Holly"), claiming that Holly was in default for failing to make payments on a consumer account. In the Complaint, Avis includes, *inter alia*, a letter from Great American Insurance Group, outlining the basic facts of the case. In the letter, Avis seeks \$21,975.06 in damages as a result of an automobile accident involving Holly. Holly, an employee of FranklyLegal, LLC, was operating an Avis rental car during a business trip to Minnesota when she allegedly lost control of the vehicle, drove over a patch of ice, and totaled the rental car.

On May 17, 2013, Holly filed an Answer denying Avis' allegations. On May 30, 2013, Holly filed a Third-Party Complaint against Third-Party Defendant, FranklyLegal, LLC ("FranklyLegal"), alleging that FranklyLegal is liable for any property damage resulting from the accident because, at the time of the accident, Holly was acting within the scope of her employment with FranklyLegal. Holly also avers that the vehicle she operated was rented pursuant to an agreement between FranklyLegal and Avis. In the Third-Party Complaint, Holly identifies FranklyLegal as "a foreign limited liability company."

On June 27, 2013, Frankly Legal filed the instant Motion to Dismiss for Lack of Personal Jurisdiction pursuant to *Court of Common Pleas Civil Rule 12(b)(2)*. On July 3, 2013, Holly filed a response in opposition to the Motion.

On July 12, 2013, a hearing on the Motion was held, and the Court heard oral argument from all parties. At the hearing, FranklyLegal stated that it is a series limited liability company under the master company, Frankly Companies, LLC. Frankly Companies, LLC, and all entities within the series are organized under Delaware law.

### **Parties' Contentions**

It is FranklyLegal's position that this Court does not have personal jurisdiction over it because FranklyLegal does not have any connections with Delaware beyond the fact that Delaware is its state of incorporation. Frankly Legal asserts that, although incorporated in Delaware, it has no other connection with this State: its principal place of business is in Philadelphia, Pennsylvania; it does not conduct any business in Delaware; the contract between Avis and FranklyLegal was not signed in Delaware, and; the accident did not occur in Delaware. Thus, FranklyLegal concludes, the claims involved in this dispute are not suited to be heard in a Delaware court.

FranklyLegal further argues that Delaware's Long Arm Statute cannot confer personal jurisdiction over FranklyLegal because none of the subsections provided in the statute are applicable to FranklyLegal. Furthermore, FranklyLegal asserts, even if the Court were to find that Delaware's Long Arm Statute confers jurisdiction, due process precludes this Court's exercise of personal jurisdiction for two reasons: (1) FranklyLegal does not have sufficient minimum contacts with Delaware, and; (2) The Court's exercise of personal

jurisdiction over FranklyLegal would violate traditional notions of fair play and substantial justice, and would not be fair and reasonable.

It is Holly's position that this Court can exercise jurisdiction over FranklyLegal because FranklyLegal is a limited liability company organized under Delaware law, and thus it availed itself to the jurisdiction of the Delaware courts.<sup>1</sup> Holly, who resides in Delaware herself, maintains that FranklyLegal cannot "reap the multitude of benefits associated with formation in [Delaware]" and then claim that this Court does not have personal jurisdiction over it. Holly argues that FranklyLegal's status as a Delaware limited liability company in and of itself supports the position that jurisdiction properly lies in this Court.

Holly further argues that FranklyLegal's long-arm and due process analysis is misplaced, as it focuses on the method Delaware courts employ when determining personal jurisdiction over a nonresident. Holly argues that such an analysis is inappropriate because FranklyLegal is a domestic entity formed in the State of Delaware.

### **Discussion**

On a motion to dismiss for lack of personal jurisdiction under *Court of Common Pleas Civil Rule* § 12(b)(2), the burden is on the plaintiff to establish a basis for the Court's jurisdiction over the defendant, and all inferences will be drawn in the light most favorable to the plaintiff.<sup>2</sup> "The court may look beyond the complaint to affidavits and other discovery when deciding a motion to dismiss for lack of personal jurisdiction."<sup>3</sup>

---

<sup>1</sup> Prior to the July 12, 2013 hearing, there was some confusion as to whether or not FranklyLegal was in fact a Delaware limited liability company, due to the fact that Holly did not know that FranklyLegal was organized as a series LLC instead of an independent LLC.

<sup>2</sup> *Aveta Inc. v. Olivieri*, 2008 WL 4147565, at \*1 (Del. Super. July 28, 2008).

Holly argues that FranklyLegal is a domestic entity formed in the State of Delaware, which has gleaned the benefits of incorporating in this State, and thus it is subject to jurisdiction in Delaware. Holly maintains that FranklyLegal’s proposed analysis of nonresident jurisdiction is inapplicable, as FranklyLegal—a Delaware corporation—is not a nonresident of this State.

FranklyLegal, on the other hand, argues that this Court lacks jurisdiction because Delaware’s Long Arm Statute does not confer personal jurisdiction over FranklyLegal, and even if it did, due process would preclude the exercise of jurisdiction. FranklyLegal suggests that mere incorporation in Delaware does not subject it to the jurisdiction of this State under 10 *Del. C.* § 3104(c), Delaware’s Long Arm Statute. Under 10 *Del. C.* § 3104(c), the Court may exercise jurisdiction over any nonresident who:

- (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.<sup>4</sup>

---

<sup>3</sup> *Id.* (citing *Amaysing Technologies Corp. v. Cyberair Communications, Inc.*, 2005 WL 578972, at \*3 (Del. Ch. March 3, 2005)).

<sup>4</sup> 10 *Del.C.* § 3104

For purposes of jurisdiction, a corporation is considered a citizen of the state in which it incorporated.<sup>5</sup> By its own admission, Frankly Legal is a Delaware corporation. At the hearing on the Motion, FranklyLegal conceded that it is incorporated under Delaware law. FranklyLegal's status as a Delaware corporation is further confirmed by the affidavit of Francis P. Welch, which FranklyLegal attached to the Motion. Since FranklyLegal is incorporated in Delaware, it is considered a resident of this State for jurisdictional purposes and Delaware's Long Arm Statute is inapplicable. Accordingly, FranklyLegal is subject to this Court's jurisdiction.<sup>6</sup>

### **Conclusion**

For the foregoing reasons, it is hereby ORDERED that Third-Party Defendant's Motion to Dismiss is **DENIED**. Each party shall bear its own costs.

**IT IS SO ORDERED this 27<sup>th</sup> day of September, 2013.**

---

**Alex Smalls, Chief Judge.**

---

<sup>5</sup> *Zazanis v. Jarman*, 1990 WL 58158, at \*3 (Del. Super. March 20, 1990) ("It is generally accepted that, at very least for jurisdictional purposes, a corporation is considered a citizen of the state that created it"); See *Petroplast Petrofisa Plasticos S.A. v. Ameron Intern Corp.*, 2009 WL 3465984, at \*6 (Del. Ch. Oct. 28, 2009) ("Ameron is incorporated in Delaware, and, therefore, a citizen of this State").

<sup>6</sup> *Medi-Tec of Egypt Corp. v. Bausch & Lomb Surgical*, 2004 WL 315251, at \*3 (Del. Ch. March 4, 2004) ("Defendant . . . is a Delaware corporation and therefore subject to this Court's jurisdiction").