

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

BARBARA POST HUTCHISON,) C.A. No. 05C-07-047 (JTV)
)
Plaintiff,)
)
v.)
)
JOHN T. BRUEHL, JR.,)
)
Defendant.)

Submitted: October 28, 2005

Decided: January 31, 2006

Nicholas H. Rodriguez, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff.

Patrick Scanlon, Esq., Milford, Delaware. Attorney for Defendant.

*Upon Consideration of
Defendant's Motion to Dismiss*
GRANTED

VAUGHN, President Judge

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OPINION

The defendant, John T. Bruehl, Jr., has filed a motion seeking dismissal of this action on the grounds that the court lacks jurisdiction over his person. The plaintiff opposes the motion.

FACTS

The plaintiff, Barbara Hutchison, alleges that her father, Marshall Post, had an interest in oil and gas leases on property located in West Virginia from which he was entitled to receive royalties. She alleges that he entered into an agreement with the defendant, a State of Maryland resident, under which the royalties were to be paid to the defendant.¹ Mr. Post died in 1984. The plaintiff alleges that at that time the right to receive the royalties reverted to her as her father's heir. She alleges, however, that the defendant wrongfully continued to receive and retain the royalties and wrongfully failed to pay the money over to her. This continued until 2004 when the necessary steps were taken to stop payment of the money to the defendant and to have the checks sent to the plaintiff. In this action, the plaintiff seeks to recover all of the money from the royalties which went to the defendant between 1984 and 2004.

STANDARD OF REVIEW

When in personam jurisdiction is challenged by a motion to dismiss, the plaintiff has the burden to show a basis for long-arm jurisdiction; however, this burden is met by a threshold *prima facie* showing that jurisdiction is conferred by

¹ No written agency agreement has been provided by either party. The record does not state what defendant was to do with the royalties once he received them.

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Delaware's long-arm statute.² The burden requires that "the plaintiff make a *specific* showing that the Delaware court has jurisdiction under the long-arm statute."³ All factual inferences must be viewed in a light most favorable to the plaintiff.⁴

CONTENTIONS OF THE PARTIES

The plaintiff claims that although the defendant is a resident of Maryland, Delaware has jurisdiction pursuant to 10 *Del. C.* § 3104(c) because he received funds due to a Delaware plaintiff, previously acted as agent for a Delawarean, and handled funds due plaintiff in an agency relationship.. All of this, the plaintiff contends, amounts to transacting business, acting as a surety, and contracting in this State.

The defendant's affidavit states that he has never done any business in the State of Delaware, that the claim sued upon has no relationship with the State of Delaware, and that he has no contractual relationship with the plaintiff.

DISCUSSION

10 *Del. C.* § 3104(c) is to be "broadly construed to confer jurisdiction to the maximum extent possible under the Due Process Clause."⁵ Under § 3104(c) a Delaware court may exercise personal jurisdiction over any non-resident if the action arises from any of the acts enumerated in the statute[.]⁶ The obvious intent of § 3104

² *Harmon v. Eudaily*, 407 A.2d 232, 233 (Del.Super.Ct. 1980), *aff'd* 420 A.2d 1175(Del. 1980); *see also Outokumpu Eng'g Enters., Inc. v. Kvaerner Enviropower, Inc.*, 685 A2d 724, 727 (Del.Super.Ct. 1996).

³ *Kane v. Coffman*, 2001 Del. Super. LEXIS 298 at 3 (*emphasis added*).

⁴ *Greenly v. Davis* 486 A.2d 669, 670 (Del. 1984).

⁵ *Smack v. Hayden*, 2003 Del. Super. LEXIS 196 at 3.

⁶ *Id.*

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is to afford Delawareans a means of redress against persons not subject to personal service within the state.⁷

In *Kane v. Coffman* the court considered whether a party was subject to personal jurisdiction by the Delaware courts.⁸ The plaintiff in that case established that she and the defendant formed a joint venture, that all the payments to the joint venture were received in Delaware and that the portion of the funds owed to defendant was mailed from Delaware. The plaintiff also proffered a letter written by the defendant to a business for which the joint venture provided work, confirming that the parties were involved in a joint business venture.⁹ The plaintiff also claimed that the defendant came to Delaware to further the joint venture and placed 144 telephone calls to the plaintiff in Delaware during its existence. The court did recognize that “mail and telecommunications [are] not sufficient minimum contact[s] to give in personam jurisdiction over non-residents.”¹⁰ The defendant’s presence in Delaware on joint venture business, along with the aforementioned telephone calls, was deemed sufficient to subject her to jurisdiction by the Delaware courts.¹¹ As to defendant’s husband, the court found that Delaware did not have personal jurisdiction over him because his only act was the posting of an electronic message on an internet

⁷ *Harmon* at 236.

⁸ 2001 Del. Super. LEXIS 298.

⁹ *Id.*

¹⁰ *Id.* citing *Bank of America Nat’l Trust and Sav. Ass’n. v. GAC Prop. Credit Inc.*, Del. Ch., 389 A2d 1304, 1310 (1978).

¹¹ *Id.*

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bulletin board which was later read by the plaintiff on her computer in Delaware.¹²

In this case, plaintiff has alleged that there was an agency and fiduciary relationship between defendant and the plaintiff and Mr. Post. She also alleges that the defendant has committed a tortious act which subjects him to jurisdiction in Delaware.

However, there is no evidence in this record that the defendant was ever present in Delaware in connection with this matter, or that he ever mailed or received correspondence to or from Mr. Post when Mr. Post was in Delaware, or that he ever engaged in any telephone conversations with Mr. Post across state lines. There seems to be an absence of any evidence at all linking the defendant to Delaware. The only apparent link to Delaware is the residence of the plaintiff, and, I infer, her father.

The facts alleged do not seem to support an insurer or surety relationship. There is nothing to suggest that the defendant has done business in Delaware. While it might conceivably be argued that the defendant has caused tortious injury in this state because the allegedly rightful recipient of the royalties resides here, there is no evidence that he did so by an act in this state, or that he does any business in this state that would support jurisdiction for acts outside the state.

I have examined each of the six subparagraphs of 10 *Del. C.* § 3104 (c), and I do not find that the facts alleged in this case come within the scope of any of those subparagraphs.

In the instant case, nothing in the plaintiff's complaint, motion, or affidavit

¹² *Kane* at 5.

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allege any *specific* action that would satisfy the requirements of Delaware's Long-Arm Statute.

Therefore, defendant's Motion to Dismiss for lack of personal jurisdiction is **granted.**

President Judge

oc: Prothonotary
cc: Order Distribution
File