

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WELLS FARGO BANK, N.A.,	:	
Plaintiff	:	DOCKET NO. 10-01764
	:	CIVIL ACTION – LAW
vs.	:	
	:	PRELIMINARY
KENNETH H. BREON, JR. and JAMES A. DOUGLAS,	:	OBJECTIONS
Defendants	:	

**OPINION AND ORDER**

Defendant James A. Douglas, a Florida resident, has filed preliminary objections to Plaintiff's complaint, challenging this Court's personal jurisdiction over him and seeking dismissal of the complaint. For the reasons set forth below, Defendant Douglas's objection to this Court's jurisdiction is SUSTAINED.

**Factual Background**

The facts as asserted in Plaintiff's complaint, and viewed in the light most favorable to Plaintiff, the non-moving party, are as follows: On September 30, 2011, Plaintiff filed a Complaint in the above-captioned matter with this Court, alleging five counts: I) Breach of Note, II) Money Loaned, III) Account Stated, IV) Unjust Enrichment, and V) Legal Fees and Costs.<sup>1</sup> In its complaint, Plaintiff alleged that Defendant James A. Douglas (Defendant Douglas) was an adult individual with an address in Cape Coral, Florida. On October 14, 2011, Defendant Douglas was individually served with the Case Monitoring Notice, Notice to Defend – Civil, and the Complaint with exhibits in Cape Coral, Florida. *See* Aff. of Service, 11/02/11.

The note in issue names Defendants as Borrowers. It lists both Defendants' address as 1445 Dewey Avenue, Williamsport, Pennsylvania 17701. This property appears to be the

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<sup>1</sup> Pursuant to the Honorable Dudley N. Anderson's December 20, 2011 Order, Counts II, III, and V of the complaint were stricken.

property securing the note.<sup>2</sup> The note contains a clause on the governing law; this clause provides that “[t]his note shall be governed by federal law and, to the extent not preempted by federal law, the laws of the State where the Property securing this loan is located....” Note, 5. The note does not contain a forum selection clause.

### Discussion

Plaintiff contends that Lycoming County is the appropriate jurisdiction and venue to bring this suit against Defendant Douglas, yet Plaintiff has not provided this Court with any support for this theory. Plaintiff cannot bring this suit against Defendant Douglas in this Court unless this Court can exercise *in personam* jurisdiction (i.e. personal jurisdiction) over him.

Preliminary objections that would result in the dismissal of an action should be sustained only when the objections are free and clear from doubt. *Garzone v. Kelly*, 593 A.2d 1292, 1296 (Pa. Super. Ct. 1991). When deciding whether to dismiss a case for lack of personal jurisdiction, courts should “consider the evidence in the light most favorable to the non-moving party.” *Id.* (citing *Kenneth H. Oaks, Ltd. v. Josephson*, 568 A.2d 215, 216 (Pa. Super. Ct. 1989)).

Pennsylvania courts may exercise two types of jurisdiction over out-of-state defendants. Pursuant to 42 Pa. C.S. § 5322, Commonwealth courts may exercise specific personal jurisdiction over an out-of-state defendant. Additionally, pursuant to 42 Pa. C.S. § 5301, Commonwealth courts may exercise general personal jurisdiction over an out-of-state defendant.

Defendant Douglas argues that this Court lacks jurisdiction over him; he properly raised the issue of jurisdiction in his preliminary objections. Pa. R.C.P. 1028(a)(1). After a defendant asserts a lack of personal jurisdiction, the burden is on the plaintiff to prove that the court may

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<sup>2</sup> Neither party has plead, or even argued, that Defendant Douglas owns this real estate in Williamsport.

exercise personal jurisdiction over the defendant. *Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n*, 819 F.2d 434, 437 (3d Cir. 1987). The plaintiff must establish with reasonable particularity sufficient contacts between the defendant and the forum state. *Mellon Bank (East) PSFS v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992).

This Court agrees with Defendant Douglas. This Court's exercise of jurisdiction over Defendant Douglas does not comport with either: 1) both the Commonwealth's long-arm statute and the Due Process Clause to the Fourteenth Amendment, or 2) the Commonwealth's general personal jurisdiction statute.

1. Specific Personal Jurisdiction

In the Commonwealth, the exercise of specific personal jurisdiction by a court over a non-resident defendant must comply with both the Commonwealth's long-arm statute, 42 Pa. C.S. § 5322, and the Due Process Clause to the Fourteenth Amendment of the United States Constitution. *See Asahi Metal Indus. Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102 (1987); *Kenny v. Alexson Equip. Co.*, 432 A.2d 974 (Pa. 1981); *Kubik v. Letteri*, 614 A.2d 1110 (Pa. 1992).

In this case, the Pennsylvania long-arm statute does not confer personal jurisdiction over Defendant Douglas. The Pennsylvania long-arm statute, 42 Pa. C.S. § 5322, provides that:

**§ 5322. Bases of personal jurisdiction over persons outside this Commonwealth.**

**(a) General rule.** – A tribunal of this Commonwealth may exercise personal jurisdiction over a person... who acts directly or by an agent, as to a cause of action or other matter arising from such person:

(1) Transacting any business in this Commonwealth....

\* \* \* \* \*

(3) Causing harm or tortuous injury by an act or omission in this Commonwealth.

\* \* \* \* \*

(5) Having an interest in, using, or possessing real property in this Commonwealth.

\* \* \* \* \*

**(b) Exercise of full constitutional power over nonresidents.** - - In addition to the provisions of subsection (a) the jurisdiction of the tribunals of this Commonwealth shall extend to all persons who are not within the scope of section 5301 (relating to persons) to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with the Commonwealth allowed under the Constitution of the United States.

42 Pa. C.S.A. § 5322.

In the instant case, Defendant Douglas entered into a note in favor of Plaintiff. In that note, a Pennsylvania address was listed under both Defendant Douglas and Defendant Breon’s names. This address is the only information that this Court has received concerning Defendant Douglas’s transaction within the Commonwealth. This Court has not received any evidence regarding any other facts surrounding the signing of the note by Defendant Douglas or the extent of Defendant Douglas’s contacts with the Commonwealth. In Plaintiff’s complaint, Plaintiff avers that Defendant Douglas’s address is in Cape Coral, Florida. Additionally, in Plaintiff’s Response to Defendants’ Preliminary Objections, Plaintiff admits that Defendant Douglas is a resident of Florida. Based on the pleadings before the Court at this time, this Court cannot find that a Pennsylvania address on the note, beneath both Defendants’ names, confers personal jurisdiction over Defendant Douglas under the Commonwealth’s long-arm statute.

In addition to not complying with the state’s long-arm statute, an exercise of personal jurisdiction by this Court over Defendant Douglas would not comply with the Fourteenth Amendment’s due process requirements. The Due Process Clause of the Fourteenth

Amendment:

protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful “contacts, ties, or relations.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945). By requiring that individuals have “fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,” *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977)

(STEVENS, J., concurring in judgment), the Due Process Clause “gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit,” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). *See also* 614 A.2d at 1113.

In order for a state to assert personal jurisdiction over a non-resident defendant, “due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co.*, 326 U.S. at 316 (emphasis in original) (citing *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). *See also* 614 A.2d at 1113. In *World-Wide Volkswagen Corp.*, the Supreme Court of the United States stated the two functions of the minimum contacts test.

It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

*World-Wide Volkswagen Corp.*, 444 U.S. at 291-92.

First, this Court will examine the first prong of the minimum contacts test: whether an out-of-state defendant purposefully established minimum contacts with Pennsylvania. *See Int’l Shoe Co.*, 326 U.S. at 320; *Burger King Corp.*, 471 U.S. at 476.

In the case at bar, this Court holds that Defendant Douglas did not purposefully established minimum contacts with Pennsylvania. The only contact that Defendant Douglas is alleged to have with this forum is an address listed on the top of a note that he signed. Plaintiff has not provided this Court with any other evidence of any other contact that Defendant Douglas has with this forum. Plaintiff has admitted that Defendant Douglas resides in Florida and in fact served Defendant Douglas in Florida. Plaintiff has not provided this Court with any evidence

establishing where the note was signed or any other evidence establishing Defendant Douglas's ties with Pennsylvania. Therefore, this Court cannot hold that Defendant Douglas has purposefully established minimum contacts with this forum so that he could anticipate being subject to this Court's exercise of jurisdiction over his person.

Next, this Court will examine the second prong of the constitutional minimum contacts test. Once a court decides that an out-of-state defendant purposefully established minimum contacts with a forum state, a court must determine if its assertion of personal jurisdiction over the defendant would comport with "fair play and substantial justice." *Int'l Shoe Co.*, 326 U.S. at 320; *Burger King Corp.*, 471 U.S. at 476. "Thus courts in 'appropriate [cases]' may evaluate 'the burden on the defendant,' 'the forum State's interest in adjudicating the dispute,' 'the plaintiff's interest in obtaining convenient and effective relief,' 'the interstate judicial system's interest obtaining the most efficient resolution of controversies,' and the 'shared interest of the several States in furthering fundamental substantive social policies.'" *Burger King Corp.*, 471 U.S. at 476-77 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 292).

In the instant case, this Court believes that exercising jurisdiction over Defendant Douglas would not comport with traditional notions of fair play and substantial justice. In this instance, Plaintiff has not provided this Court with any evidence regarding the appropriateness of this forum. The only information provided to this Court by the parties is that Defendant Douglas resides in Florida and is contesting this Court's jurisdiction over his person. Therefore, Defendant Douglas does not have minimum contacts with this forum nor does this Court's exercise of jurisdiction over his person comport with traditional notions of fair play and substantial justice.

2. General Personal Jurisdiction

Finally, this Court does not have general jurisdiction over Defendant Douglas pursuant to 42 Pa. C.S. § 5301(a)(1). 42 Pa. C.S. § 5301(a)(1) governs the Commonwealth's exercise of general personal jurisdiction over individuals; the statute provides that:

**§ 5301. Persons**

**(a) General rule.** – The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:

(1) Individuals. –

- (i) Presence in this Commonwealth at the time when process is served.
- (ii) Domicile in this Commonwealth at the time when process is served.
- (iii) Consent, to the extent authorized by the consent.

42 Pa. C.S. § 5301(a)(1).

Applying this statute to the instant case, this Court cannot exercise general personal jurisdiction over Defendant Douglas. Defendant Douglas was served in Florida. Plaintiff admits that Defendant Douglas resides in Florida. Lastly, Defendant Douglas has not consented to jurisdiction within the Commonwealth. Therefore, pursuant to 42 Pa. C.S. § 5301(a)(1), this Court cannot exercise general personal jurisdiction over Defendant Douglas in the case at bar.

In short, this Court does not have the authority to exercise specific or general jurisdiction over Defendant Douglas in the case at bar.

**ORDER**

AND NOW, this 17<sup>th</sup> day of February, 2012, after a hearing and argument on the objection of Defendant James A. Douglas to this Court's jurisdiction over his person, it is hereby ORDERED and DIRECTED that this objection is SUSTAINED. This action is DISMISSED as to Defendant James A. Douglas.

BY THE COURT,

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Date

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Richard A. Gray, J.

RAG/abn

cc: Jacob Theis, Esquire  
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