

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SHANGHAI CHESTNUT OAK IMPORT & EXPORT COMPANY, LTD.	:	NO. 18-1859
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION
	:	
CATSKILL TIMBER INDUSTRIES, INC.	:	
	:	<i>Preliminary Objection:</i>
Defendant.	:	<i>Personal Jurisdiction</i>

**MEMORANDUM OPINION**

This matter concerns a contractual dispute between Plaintiff Shanghai Chestnut Oak Import & Export Company, Ltd. (“SCO”), a Chinese business enterprise located in Shanghai, China, and Defendant Catskill Timber Ind., LLC (“Catskill”),<sup>1</sup> a limited liability company incorporated in Delaware with its principal place of business located in New Jersey.<sup>2</sup> Before the Court is Catskill’s *Preliminary Objection* wherein Catskill argues this Court possesses neither general nor specific jurisdiction over the parties.<sup>3</sup> Conversely, SCO asserts that 42 Pa.C.S.A. § 5322 grants the Court jurisdiction as it was SCO’s understanding that it contracted with Catskill to “purchase ash [saw logs] harvested in Northern Pennsylvania.”<sup>4</sup>

On March 19, 2019, the Court heard argument regarding Defendant’s preliminary objection. The Court granted Plaintiff twenty days to submit a sworn affidavit detailing the facts that it would plead if allowed the opportunity to amend its complaint. On April

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<sup>1</sup> Defendant notes in its preliminary objection that it was improperly identified by Plaintiff in the case’s caption.

<sup>2</sup> Plaintiff’s Complaint, ¶¶1-2 (Dec. 13, 2018) [hereinafter “Plaintiff’s Complaint”]; Defendant’s Preliminary Objection, ¶¶2-4 (Feb. 8, 2019) [hereinafter “Defendant’s Objection”]; Defendant’s Ex. 1. Based on a corporate database search performed by Catskill, and undisputed by SCO, Catskill Timber Ind., LLC does not possess a principal place of business in Pennsylvania. Defendant’s Ex. 2.

<sup>3</sup> Defendant’s Objection, ¶23.

8, 2019, Plaintiff filed this sworn affidavit. The Court then permitted Defendant time to respond. On April 29, 2019, Defendant submitted its Response to the Court. On April 30, 2019, Plaintiff requested permission to file a reply, which the Court granted. On May 15, 2019, Plaintiff filed its *Brief in Opposition to Defendant's Preliminary Objections* ("Brief in Opposition"). Based on Plaintiff's May 15<sup>th</sup> Brief in Opposition attaching a new exhibit, Defendant requested an opportunity to file a reply. The Court granted Defendant's request and Defendant submitted its *Reply to Plaintiff's Opposition Brief* on June 3, 2019. Defendant's preliminary objection is now ripe for review.

### **DISCUSSION**

The international contract at issue concerns the delivery of "ASH SAW LOGS (FRAXINUS SPP)," which are required by the contract to possess a particular grade based on "US Logs Grading Rules."<sup>5</sup> The contract does not contain a forum-selection clause for litigious disputes.<sup>6</sup>

#### ***Parties' Contentions***

In SCO's Complaint, it alleges the following:

The Plaintiff engaged in discussions in the summer of 2018 for the purchase of ash logs *from Northern Pennsylvania*. These discussions culminated in a written agreement made July 17, 2018 (See Exhibit "A") for the purchase of 10 containers of northern Pennsylvania ash logs at a price of \$96,187.50 with 30% down. The agreement provided that the logs were being sold at a unit price of \$2,025.00/mbf. The agreement did not provide for any cherry logs. [] The agreement also provided that time was of the essence and that the logs would be shipped promptly and prior to the imposition of punitive tariffs by the Chinese government on September 24, 2018 incident to an on-going trade war with the United

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<sup>4</sup> Plaintiff's Answer to Preliminary Objections, ¶6 (Mar. 7, 2019) [hereinafter "Plaintiff's Answer"].

<sup>5</sup> Plaintiff's Complaint, Ex. A.

<sup>6</sup> *Id.*

States.<sup>7</sup>

Among SCO's assertions are claims that Catskill materially breached the contract by failing to timely ship the ten containers as well as shipping lower quality lumber from southern and mid-Appalachia.<sup>8</sup>

SCO's April 8<sup>th</sup> Affidavit is sworn testimony by Thomas Han ("Mr. Han"), owner of SCO, who swears to the following:

1. From my knowledge and familiarity with the timber import/export business, Ulrich von Hollen and his company, [Catskill], regularly buys and sells ash trees from the Commonwealth of Pennsylvania. This is a significant portion of his business.
2. The Contract I entered into with [Catskill] was for the purchase and shipment of as[h] logs from Northern Pennsylvania. While this provision was not in the written agreement, this term was discussed and agreed with [by] Mr[.] von Hollen.
3. The ash logs delivered late and without proper documentation were from southern and western Pennsylvania. I know this from Mr. von Hollen's statements to me.
4. I wanted Northern Pennsylvania ash logs because their quality is higher and their value higher.<sup>9</sup>

In Catskill's April 29<sup>th</sup> Response, it argues that SCO's first and fourth statements are irrelevant to whether the instant contract required such course of dealing.<sup>10</sup> Regarding SCO's second and third statements, Catskill relies on the Pennsylvania Commercial Code for the proposition that "only conduct between [the parties] themselves would be relevant to modify or add to the contractual terms."<sup>11</sup> Catskill next relies on the parol

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<sup>7</sup> *Id.*, ¶¶5-6 (emphasis added).

<sup>8</sup> *Id.*, ¶8.

<sup>9</sup> Plaintiff Affidavit of Thomas Han 1, 1 (Apr. 8, 2019) [hereinafter "Han Affidavit"].

<sup>10</sup> Defendant's Response at 1, 2-3 (Apr. 29, 2019) [hereinafter "Defendant's Response"].

<sup>11</sup> *Id.* at 1 (citing 13 Pa.C.S.A. § 1303).

evidence rule pronouncement in *DeArmitt v. New York Life Insurance Company*.<sup>12</sup> Catskill asserts that the contract in this case is fully integrated and; thus, consideration of contemporaneous statements is improper.<sup>13</sup> In summary, Catskill argues that the Court does not possess jurisdiction in this matter because the fully integrated contract between the parties does not require Pennsylvania lumber to be supplied; and SCO has failed to aver facts which support a conclusion that Catskill otherwise availed itself of Pennsylvania's protections or benefits.<sup>14</sup>

In SCO's May 15<sup>th</sup> *Brief in Opposition*, it provides counter-argument to Catskill's assertions in its Response, but it also focuses on the standard applicable at this stage of the proceedings.<sup>15</sup> SCO argues that a case should only be dismissed on lack of personal jurisdiction grounds at the preliminary objections stage if the case is "free and clear from doubt."<sup>16</sup> SCO advocates for the Court's indulgence to allow SCO to conduct "limited" discovery since the instant matter is "controverted."<sup>17</sup> Ultimately, SCO asserts that the standard at the preliminary objection stage has been met by its well-pled pleadings.<sup>18</sup> Additionally, SCO attaches an exhibit to its brief which links to a webpage from the website CTILOGS.COM/logs.html.<sup>19</sup> A banner atop the webpage indicates "CTI Catskill Timber Industries, LLC" to the right of a business logo.<sup>20</sup> The title of "Quality Logs" is contained within a square border near the middle of the webpage and

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<sup>12</sup> *Id.* at 2 (quoting *DeArmitt v. New York Life Ins. Co.*, 73 A.3d 578, 589 (Pa. Super. Ct. 2013)).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 3.

<sup>15</sup> Plaintiff's Brief in Opposition to Defendant's Preliminary Objections, 1-2 (May 15, 2019) [hereinafter "Plaintiff's Brief"].

<sup>16</sup> *Id.* at 2 (citing *Gaboury v. Gaboury*, 988 A.2d 672, 675 (Pa. Super. Ct. 2009)).

<sup>17</sup> *Id.* at 3 (quoting *Holt Hauling & Warehousing Sys., Inc. v. Aronow Roofing Co.*, 454 A.2d 1131, 1133 (Pa. Super. Ct. 1983)).

<sup>18</sup> *Id.*

underneath that title is a list of different types of lumber.<sup>21</sup> “Ash (FRAXINUS AMERICANA)” is listed under said title and described as: “Our veneer logs are purchased in southern PA, MD and VA. The grading is similar to the grading of Birch, Natural or White.”<sup>22</sup> While the bottom-right corner of the webpage indicates that it was last accessed on May 15, 2019 at 6:15 a.m., the webpage does not indicate when it was originally created or last updated.<sup>23</sup>

On June 3, 2019, Catskill submitted its *Reply to Plaintiff’s Opposition Brief* (“Reply”). Catskill’s Reply is a cover page introducing the three-page affidavit of Mr. Ulrich von Hollen (“Mr. Hollen”), the “sole owner and member of Catskill.”<sup>24</sup> Mr. Hollen asserts that Catskill: (a) has its principal place of business in New Jersey, (b) does not have an office or bank account in Pennsylvania, and (c) does not have a telephone number or “maintain a business presence” in Pennsylvania.<sup>25</sup> Mr. Hollen further asserts that:

5. CTI [Catskill] is in the business of purchasing logs from suppliers and then shipping those logs based upon customer demand.
6. CTI purchases the logs directly from its suppliers “F.O.B[.]” or at the port from which the logs will ship already loaded in shipping containers.
7. CTI has not purchased any logs from a supplier located in Pennsylvania for many years.
8. The last logs I purchased in Pennsylvania were purchased between ten (10) and twelve (12) years ago through a different business I then owned.

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<sup>19</sup> *Id.*, Ex. A.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Defendant’s Reply to Plaintiff’s Opposition Brief 1 (June 3, 2019); Defendant’s Affidavit of Ulrich von Hollen 1 (June 3, 2019) [hereinafter “Hollen Affidavit”].

<sup>25</sup> Hollen Affidavit 1.

9. All logs CTI presently buys are purchased from suppliers located in Ohio, Indiana, Kentucky, West Virginia, the New England states, and Ontario, Canada.
10. None of CTI's suppliers are located in either Pennsylvania or New York at the present.
11. The origin of the logs that my suppliers provide are from all over and, while some logs may originate from Pennsylvania, as logs are shipped across state lines all the time, CTI does not control the origin of the logs its suppliers purchase.
12. In a given transaction, CTI may purchase logs from a supplier located in Indiana with logs that originated in Kentucky or Indiana, or CTI may purchase logs from a supplier in Ohio with logs that originated in Kentucky, Indiana, Pennsylvania or sometimes West Virginia.
13. The written agreement at issue in the litigation filed by [SCO] to Lycoming County Court of Common Pleas Docket No. 18-1859 was entered into by and between a New Jersey company and a Chinese company (hereinafter "Litigation").
14. The written agreement does not specify Pennsylvania ash and there is no reference to Pennsylvania at all in the written agreement.
15. At no time relevant to the transaction at issue in the Litigation did CTI purchase logs from a supplier in Pennsylvania.
16. CTI does not regularly do business within the Commonwealth of Pennsylvania or with businesses located within Pennsylvania.
17. The logs at issue in the Litigation were not purchased from a supplier located in Pennsylvania and did not originate from Pennsylvania.
18. Any partial webpage screenshot attached to [SCO's] briefing in the Litigation is many years outdated and the webpage has not been updated to reflect the current nature of CTI's business.
19. That being said, even if logs sold originated in Pennsylvania, they were not purchased from a supplier located in Pennsylvania.
20. If I were deposed in connection with the Litigation, my testimony regarding the nature of CTI's business and its lack of contracts within Pennsylvania

would be consistent with my statements contained herein.<sup>26</sup>

### ***Personal Jurisdiction***

“A nonresident defendant may be subject to personal jurisdiction in a given state under either general or specific personal jurisdiction.”<sup>27</sup> As outlined by the United States District Court for the Eastern District of Pennsylvania:

General jurisdiction allows suits to be brought against a nonresident corporation on causes of action arising from dealings distinct from its activities within the forum. For a corporation, the “paradigm forum for the exercise of general jurisdiction is ... one in which the corporation is fairly regarded as at home.” Specific jurisdiction, on the other hand, exists when the defendant has “purposefully directed [its] activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities.”<sup>28</sup>

Pennsylvania law allows for the exercise of general jurisdiction over a corporation if one of the following applies to the entity: “(i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth[,] (ii) Consent, to the extent authorized by the consent[,] or (iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth[ . . . .]”<sup>29</sup> Pursuant to Pennsylvania’s long-arm statute, the Commonwealth may exercise specific personal jurisdiction over an

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<sup>26</sup> Hollen Affidavit at 1-3.

<sup>27</sup> *Neopart Transit, LLC v. CBM N.A. Inc.*, 314 F. Supp. 3d 628, 643 (E.D. Pa. 2018) (citing *Brooks v. Bacardi Rum Corp.*, 943 F.Supp. 559, 561 (E.D. Pa. 1996)).

<sup>28</sup> *Shipman v. Aquatherm L.P.*, 2018 WL 6300478, at \*1 (E.D. Pa. 2018) (internal citations omitted).

<sup>29</sup> 42 Pa.C.S.A. § 5301(a)(2). Recently, the United States District Court for the Eastern District of Pennsylvania held that subsection (i), which demands consent in order to be incorporated in Pennsylvania, is unconstitutional. See *In re Asbestos Prod. Liab. Litig.* (No. VI), 2019 WL 2399738, at \*9 (E.D. Pa. 2019) (“[T]he Pa. Statutory Scheme allows Pennsylvania to impermissibly extract consent at a cost of the surrender of a constitutional right. Absent voluntary consent, *Daimler* teaches that a corporation is only subject to general jurisdiction where it is ‘at home.’ The Pa. Statutory Scheme impermissibly re-opens the door to nation-wide general jurisdiction that *Daimler* firmly closed. Therefore, the Court concludes that the Pa. Statutory Scheme violates the Due Process Clause and is unconstitutional.”). If general jurisdiction is found, this Court would have jurisdiction over Defendant “regardless of whether the claim for relief has any relation to the forum.” *Weintraub v. Walt Disney World Co.*, 825 F. Supp. 717, 719 (E.D. Pa. 1993).

out-of-state “person” if the person is “[t]ransacting any business in this Commonwealth” or “[c]ontracting to supply services or things in this Commonwealth.”<sup>30</sup> Although not an exhaustive list, the following constitute “transacting business”:

(i) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object.

(ii) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.

(iii) The shipping of merchandise directly or indirectly into or through this Commonwealth.

(iv) The engaging in any business or profession within this Commonwealth, whether or not such business requires license or approval by any government unit of this Commonwealth.

(v) The ownership, use or possession of any real property situate within this Commonwealth [. . .].<sup>31</sup>

If this Court finds that said person is “transacting any business” or “contracting to supply services” in the Commonwealth, then the Court must ensure that its analysis is consistent with the due process clause of the United States Constitution.<sup>32</sup> Alternatively, the Commonwealth’s long-arm statute also permits the exercise of jurisdiction over a party not meeting the definition of “person,” “to the fullest extent allowed under the

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<sup>30</sup> 42 Pa.C.S.A. § 5322(a)(1), (a)(2). In this specific jurisdictional context, “person” includes corporations. See 42 Pa.C.S.A. § 5301(a)(2).

<sup>31</sup> 42 Pa.C.S.A. § 5322(a), (c) (“When jurisdiction over a person is based solely upon this section, only a cause of action or other matter arising from acts enumerated in subsection (a), or from acts forming the basis of jurisdiction under subsection (b), may be asserted against him.”).

<sup>32</sup> 42 Pa.C.S.A. § 5308 (“The tribunals of this Commonwealth may exercise jurisdiction under this subchapter only where the contact with this Commonwealth is sufficient under the Constitution of the United States.”); see also *Clark v. Matsushita Elec. Indus. Co.*, 811 F. Supp. 1061, 1065 (M.D. Pa. 1993) (noting the “statutory assessment of jurisdiction collapses into the constitutional one” under § 5322(b)).

Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.”<sup>33</sup>

In either context, due process under the United States Constitution demands the following:

“[A] court may not exercise personal jurisdiction over a non-resident defendant unless there are certain minimum contacts between the defendant and the forum state.” The minimum contacts with the forum state must be “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Having minimum contacts, i.e., having purposefully directed his activities toward the residents of the state, provides “fair warning” to a defendant that he may be subject to suit in that forum. In evaluating whether personal jurisdiction exists, the Court may only consider the actions taken by the defendant individually.<sup>34</sup>

The federal due process clause can be applied to general or specific jurisdictional claims.<sup>35</sup>

### ***Analysis***

Preliminarily, the Court must address Catskill’s parol evidence argument that the contract in this case is fully integrated and consideration of contemporaneous statements is improper.<sup>36</sup> Under the Pennsylvania Commercial Code (“PCC”), a “contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.”<sup>37</sup>

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<sup>33</sup> 42 Pa.C.S.A. § 5322(d).

<sup>34</sup> *Nationwide Contractor Audit Serv., Inc. v. Nat’l Compliance Mgmt. Servs., Inc.*, 622 F. Supp. 2d 276, 283 (W.D. Pa. 2008) (internal citations omitted).

<sup>35</sup> *Id.* at 283-84.

<sup>36</sup> Defendant’s Response at 2 (quoting *DeArmitt v. New York Life Ins. Co.*, 73 A.3d 578, 589 (Pa. Super. Ct. 2013)).

<sup>37</sup> 13 Pa.C.S.A. § 2204(a); see also 13 Pa.C.S.A. §§ 2102, 2105(a) (“ ‘Goods’ means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Division 8) and things in action[ . . . .]”).

The PCC also addresses parol evidence, allowing a final agreement to be “explained or supplemented” by prior or contemporaneous oral agreements regarding “evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.”<sup>38</sup>

The Court finds that the contract at issue is “complete and exclusive.” The Pennsylvania Supreme Court has advised trial courts to evaluate whether the contract leaves any “ ‘uncertainty as to the object or extent of the parties’ engagement’ ” when evaluating whether the contract is complete.<sup>39</sup> In the case *sub judice*, the object of the agreement is clear. That is, the parties agreed to the type and grade of lumber.<sup>40</sup> SCO contracted with Catskill for “Ash Saw Logs” (also known as *Fraxinus* SPP) and required the following “Grade”: “2 SC AND BETTER, FRESH CUT, NO EXCESSIVE END CHECKS, ROT[,] SPLITS, OR BEND, GRADED TO US LOGS GRADING RULES. WAXED AND S-HOOKED.”<sup>41</sup>

Based on the parties contracting as to the quality (i.e. grade) of the lumber, SCO’s argument that origin is synonymous with quality and value is unpersuasive. The origin of the lumber was an additional term that the parties did not consider, or considered and decided not to include in the written contract. To the extent that SCO is arguing the parties’ failure to specify the origin of the lumber in the contract renders the

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<sup>38</sup> 13 Pa.C.S.A. § 2202. Mr. Han’s affidavit does not suggest the “course of performance, course of dealing or usage of trade” exception to the parol evidence rule.

<sup>39</sup> *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436 (Pa. 2004) (quoting *Gianni v. Russell & Co.*, 126 A. 791, 792 (Pa. 1924)).

<sup>40</sup> The contract does not contain an integration clause, which would be a secondary avenue—a “clear sign”—to prove that the agreement is fully integrated; however, the lack of such a clause is not dispositive. See *DeArmitt v. New York Life Ins. Co.*, 73 A.3d 578, 589–90 (Pa. Super. Ct. 2013) (quoting *Toy v. Metropolitan Life Ins. Co.*, 928 A.2d 186, 204 (Pa. 2007) (“An integration clause stating the parties intend the writing to represent their entire agreement is a ‘clear sign’ the writing ‘expresses all of the parties’

contract incomplete, the Court disagrees. In *Watson town Car Manufacturing Company v. Elmsport Lumber Company*, the Pennsylvania Supreme Court held that parol evidence was inappropriate when the lumber contract did not specify the origin of the lumber and only required general “oak lumber.”<sup>42</sup> The Supreme Court found the trial court erred when it allowed “extrinsic testimony” that, while the agreement was silent on the matter, the parties intended for a specific “lot of logs” to be the subject of the contract.<sup>43</sup> The Supreme Court easily dispensed with this red herring:

The court admitted the evidence for the purpose of showing that the defendants saw this particular lot of logs, and that they knew what they were contracting about. We think this was error. It was unnecessary to show that the defendants had seen any particular lot of logs before the written contract was made, simply because the contract was not made for that or any other particular lot.<sup>44</sup>

Based on *Watson town Car Manufacturing Company*, this Court considers it reasonable to expect sophisticated merchants to reduce origin requirements to writing if such a term is material to the contract. Because such a term was not included in the contract here, the only reasonable interpretation of intent is that the origin of the lumber was not pertinent to the parties. Because the parties’ contract is exclusive and complete, the Court will not consider Mr. Han’s statements in his affidavit related to what Mr. Hollen allegedly stated.<sup>45</sup>

Having addressed the parol evidence, the Court now turns its attention to the affidavits themselves. The Court is permitted to resolve personal jurisdiction raised in

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negotiations, conversations and agreements made prior to its execution.’ ”); *Locca*, 854 A.2d at 499.

<sup>41</sup> Plaintiff’s Complaint, Ex. A.

<sup>42</sup> See *Watson town Car Mfg. Co. v. Elmsport Lumber Co.*, 1882 WL 13356, 99 Pa. 605, 609 (1882).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See *AstenJohnson, Inc. v. Columbia Cas. Co.*, 562 F.3d 213, 220 (3d Cir. 2009).

preliminary objections based on affidavits submitted by the parties as long as the affidavits are congruous.<sup>46</sup> In this case, SCO's affidavit of Mr. Han does not conflict with Catskill's affidavit of Mr. Hollen. Mr. Han's statements in his affidavit concern only what he knows of the industry and his beliefs of Mr. Hollen's business operations.<sup>47</sup> Specifically, that Catskill "regularly buys and sells ash trees from the Commonwealth of Pennsylvania."<sup>48</sup> Mr. Hollen's affidavit does not dispute this fact, but clarifies that Catskill's business model is in the purchasing and shipping of pre-filled containers by suppliers, and recent suppliers have not required Catskill to traipse into Pennsylvania and purchase shipping containers. While Catskill admits that its current suppliers based in "Ohio, Indiana, Kentucky, West Virginia, the New England states, and Ontario, Canada" could acquire lumber from the Commonwealth, Catskill does not direct those decisions.<sup>49</sup> Therefore, Mr. Han has failed to include statements in his affidavit that would create a factual conflict between the affidavits.

Based on the evidence before the Court, the Court does not possess general jurisdiction over Catskill pursuant to § 5301(a)(2), as there is no evidence of the "carrying on of a continuous and systematic part of its general business within this Commonwealth."<sup>50</sup> Similarly, the Court does not possess specific jurisdiction pursuant to § 5322 because Catskill has not transacted business or contracted to supply services

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<sup>46</sup> See *Slota v. Moorings, Ltd.*, 494 A.2d 1, 2 (Pa. Super. Ct. 1985); see also *Stern v. Prudential Fin., Inc.*, 836 A.2d 953, 955 (Pa. Super. Ct. 2003) ("Once the facts were disputed in conflicting affidavits, Judge Sheppard should have ordered the parties to present additional evidence by depositions, written interrogatories, or other discovery."). Likewise, a single affidavit submitted with preliminary objections is insufficient because the opposing party is not given an opportunity to respond. See *A.T. Chadwick Co. v. PFI Const. Corp.*, 2004 WL 2451372, at 2 (Phil. Com. Pl. July 27, 2004).

<sup>47</sup> As previously noted, the Court will not consider contemporaneous statements in Mr. Han's affidavit.

<sup>48</sup> Han Affidavit 1.

<sup>49</sup> Hollen Affidavit 2.

in the Commonwealth.<sup>51</sup> In fact, it cannot be said that § 5322(a)'s minimal threshold of “doing a single act in this Commonwealth” or “shipping [] merchandise directly or indirectly into or through this Commonwealth” has been shown since there is no evidence Catskill directed the shipping of lumber in this matter.<sup>52</sup> Further, even if the tenets of § 5322(a) were met, the Court cannot find that it possesses general or specific jurisdiction over Catskill according to the “minimum contacts” of § 5322(b) or federal due process.<sup>53</sup> Not a modicum of evidence exists on the record which supports the position that Catskill is “at home” in this Commonwealth or that it has purposefully directed its activities at residents of this Commonwealth.

For these reasons, SCO's request to perform limited discovery is **DENIED**. The Court will not hold Catskill hostage and require it to succumb to exorbitant temporal and monetary pressures in the pursuit of proving a negative. Alternatively, the Court is unwilling to waste valuable judicial resources and haul Catskill into court to testify consistent with Mr. Hollen's affidavit.<sup>54</sup>

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<sup>50</sup> 42 Pa.C.S.A. § 5301(a)(2)(iii).

<sup>51</sup> 42 Pa.C.S.A. § 5322(a)(1), (2).

<sup>52</sup> See *Graham v. Mach. Distribution, Inc.*, 599 A.2d 984, 987 (Pa. Super. Ct. 1991) (“But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed towards the forum State.”); accord *Columbia Metal Culvert Co. v. Kaiser Indus. Corp.*, 526 F.2d 724, 729 (3d Cir. 1975) (finding indirect shipment pursuant to long-arm statute when one defendant directed another defendant to ship merchandise to the plaintiff).

<sup>53</sup> 42 Pa.C.S.A. § 5322(b); *Nationwide Contractor Audit Serv., Inc.*, 622 F. Supp. 2d at 283.

<sup>54</sup> See *Ambrose v. Cross Creek Condo.*, 602 A.2d 864, 870 (Pa. Super. Ct. 1992) (noting jurisdictional disputes may be resolved by an evidentiary hearing.).

**CONCLUSION**

For the reasons discussed above, Defendant's Preliminary Objection is  
**SUSTAINED**. Plaintiff's Complaint is **DISMISSED with prejudice**.

**IT IS SO ORDERED this 3<sup>rd</sup> day of July 2019.**

BY THE COURT,

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Eric R. Linhardt, Judge

cc:

James Best, Esq.  
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J. Michael Wiley, Esq.  
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