

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

STEAK QUAKE, LLC,	:	DECEMBER TERM, 2004
	:	
Plaintiff,	:	No. 03335
	:	
v.	:	COMMERCE PROGRAM
	:	
CONSTANTINE BOMIS,	:	Control No. 012586
	:	
Defendant.	:	

**ORDER**

**AND NOW**, this 17<sup>TH</sup> day of March 2005, upon consideration of defendant's Preliminary Objections to the Complaint, plaintiff's response in opposition, the briefs in support and opposition, all other matters of record and in accord with the Opinion being filed contemporaneously, it is **ORDERED** that the Objections are **OVERRULED**. The defendant shall file an Answer to the Complaint within twenty-two (22) days of the date of entry of this Order.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**

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**OPINION**

**Albert W. Sheppard, Jr., J. .... March 17<sup>th</sup>, 2004**

This action involves a dispute between former business associates involved in a cheesesteak franchise company known as Steak Quake, LLC. (“Steak Quake”). Steak Quake filed a complaint against one of its former employees, Constantine Bomis, who claims an ownership interest in, and apparently still purports to act on behalf of, Steak Quake. Bomis has filed Preliminary Objections to the Complaint, which are presently before the court.

**I. Defendant’s Objection Based On Lis Pendens Is Overruled.**

Bomis claims that this action is barred by a prior action pending between the parties in Florida. “In order to find lis pendens a valid objection to the immediate entertainment or continuation of a suit, the objecting party must demonstrate to the court that in each case the parties are the same, and the rights asserted and the relief prayed for are the same.” Virginia Mansions Condominium Assoc. v. Lampl, 380 Pa. Super.452, 456, 552 A.2d 275, 277 (1988).

The Florida action was brought by Steak Quake against Bomis for replevy of certain equipment, which Steak Quake evidently obtained. In that action, Bomis filed a counterclaim against Steak Quake and Ted Kanellopoulos for breach of contract for failure to repay a loan Bomis claims he made to the company, and for failure to pay him for his services. Bomis there, also sued for declaratory relief, conversion, fraud, and breach of fiduciary duty on the ground that Steak Quake failed to recognize and/or pay him for his ownership interest in Steak Quake.

Mr. Kanellopoulos is not a party to this action, so the parties in the two actions are not identical. Furthermore, although Bomis may intend to raise an identical counterclaim in this action, Steak Quake's claims in this action to enjoin Bomis from acting on behalf of Steak Quake, for a declaratory judgment that Bomis no longer has an ownership interest in Steak Quake, for an accounting of the funds removed from a Steak Quake bank account, and for bank fraud, are not that same as its claim for replevin in the Florida Action. Therefore, the pendency of the prior Florida action does not bar Steak Quake from prosecuting this action.

## **II. Defendant's Objection to Personal Jurisdiction Is Overruled.**

Bomis argues that he is not subject to personal jurisdiction in Pennsylvania since he currently resides in Florida. However, Steak Quake does not claim that Bomis is subject to general jurisdiction in Pennsylvania, but rather that he is subject to specific jurisdiction for actions arising out of contacts that he has had with Pennsylvania. Specifically, the complaint alleges that Bomis continues to exercise control over Steak Quake's Wachovia bank account, which is located in Philadelphia, and that he continues to assert an ownership interest in, and purports to act on behalf of, Steak Quake, which is a Pennsylvania limited liability company with

its principal place of business in Philadelphia.<sup>1</sup>

In other words, it is alleged that Bomis has, *inter alia*, transacted business in this Commonwealth, caused harm in this Commonwealth by an act or omission outside this Commonwealth, and exercised powers under the authority of this Commonwealth as a director, officer, or other fiduciary of a corporation. *See* 42 Pa. C.S. § 5322(a)(1), (4), (7). Furthermore, his alleged activities meet the minimum contacts requirement under the Constitution of the United States. *See* 42 Pa. C.S. § 5322(b), Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174 (1985) (Michigan franchisee was subject to jurisdiction in Florida based on his relationship with Florida franchisor); Colt Plumbing Co., Inc. v. Boisseau, 435 Pa. Super. 380, 645 A.2d 1350 (1994) (Virginia employee was subject to jurisdiction in Pennsylvania based on his relationship with Pennsylvania employer). Since all of Steak Quake's claims arise out of Bomis' alleged Pennsylvania activities, Bomis is subject to personal specific personal jurisdiction in Pennsylvania with respect to such claims. *See* 42 Pa. C.S. § 5322(c).

### **III. Defendant's Objection to Venue Is Overruled.**

It appears that Bomis also objects to Philadelphia as the appropriate venue for this action. However, Steak Quake alleges that several of the transactions or occurrences out of which the cause of action arose took place in Philadelphia, so this court is an appropriate venue for this action. *See* Pa. R. Civ. P. 1006(a).

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<sup>1</sup> Bomis does not address these specific allegations in his Preliminary Objections to the Complaint, so he has not sustained his burden of putting those facts in dispute. *See* Schmitt v. Seaspray-Sharkline, Inc., 366 Pa. Super. 528, 531, 531 A.2d 801, 803 (1987) ("The moving party has the burden of supporting its objections to the court's jurisdiction.")

## **CONCLUSION**

For these reasons, defendant's Preliminary Objections to plaintiffs' Complaint are overruled. The court will issue an Order consistent with this Opinion.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**