

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION

Estate of Benjamin Glassman, Deceased  
O.C. No. 138 DE of 2006  
Control No. 068069

OPINION

Procedural Background

Petitioner Yetta Glassman and her husband Benjamin Glassman resided for more than thirty years at 7901 Henry Avenue in Philadelphia. After Benjamin died on December 29, 2005, Yetta filed a petition to enforce her rights as an electing spouse under 20 Pa.C.S. § 2201. The decedent's two sons by a prior marriage—Joel and Norman Glassman—resisted this petition and filed preliminary objections asserting lack of subject matter jurisdiction because decedent was not domiciled in Pennsylvania at the time of his death. They also asserted that this court lacked in personam jurisdiction over them.

The preliminary objections raised issues of fact both as to subject matter and personal jurisdiction. This court issued an opinion, which is incorporated herein, and an order directing the parties to file briefs on the threshold issue of personal jurisdiction over Joel and Norman Glassman. Upon review of those briefs and supporting documentation, this court concludes that it has personal jurisdiction over both defendants. The preliminary objections as to in personam are therefore overruled. The remaining factual issues as to subject matter and in rem jurisdiction shall be decided in a hearing as set forth in a contemporaneously issued order.

## Factual Background

According to her amended petition, Yetta and Benjamin Glassman were married on February 11, 1974 before Rabbi Kazen.<sup>1</sup> For the next 32 years, they resided together at 7901 Henry Avenue in Philadelphia.<sup>2</sup> In February or March 2005, Benjamin Glassman was diagnosed with metastatic head and neck cancer. The petitioner states that her husband, who at the time was 90 years old and in a very weakened condition, was given a prognosis of only three months to live.<sup>3</sup>

In her brief, petitioner asserts that after respondents Joel and Norman Glassman became aware of their father's "devastating diagnosis," they "set in motion a plan calculated to minimize their step-mother's share of their father's estate."<sup>4</sup> Thus, they retained a Pennsylvania attorney, James R. Beam, Esquire to prepare a General and Durable Power of Attorney naming Joel Glass as agent and Norman Glass as successor agent. The General Durable Power of Attorney document invokes Pennsylvania law at two points. Its notice provision states:

The Powers and Duties of an Agent Under a Power of Attorney are explained more fully in 20 Pa.C.S.Ch. 56.<sup>5</sup>

In addition, paragraph 27 outlining "General Powers" provides as follows: "The laws of the Commonwealth of Pennsylvania shall govern all questions as to the validity of this power and the construction of its provisions."<sup>6</sup>

Petitioner asserts that Joel and Norman Glassman came to Philadelphia for approximately one week to discuss settlement of Petitioner's claims against her dying

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<sup>1</sup> 9/1/2006 Amended Petition at ¶ 8.

<sup>2</sup> 9/1/2006 Amended Petition at ¶ 1.

<sup>3</sup> 12/1/2006 Petitioner's Brief at 10.

<sup>4</sup> 12/1/2006 Petitioner's Brief at 10.

<sup>5</sup> 12/1/2006 Petitioner's Brief, Ex. I (Durable Power of Attorney).

<sup>6</sup> 12/1/2006 Petitioner's Brief, Ex. I (Durable Power of Attorney), ¶ 27.

husband's estate and to arrange for the execution of the Power of Attorney by Benjamin Glassman on March 21, 2005.<sup>7</sup> They also attended a meeting, she maintains, with her sons, Leonard and Marvin Goldenberg, during which the respondents offered to pay petitioner the sum of \$200,000 in settlement of her claims against the estate. The respondents' attorney subsequently informed petitioner's attorney that they would not sign any agreement.<sup>8</sup>

According to Yetta Glassman, the respondents thereafter told her that they intended to take her husband of thirty-one years to Arizona despite her objections.<sup>9</sup> To accomplish this move, Joel Glassman sent the following facsimile to the hospital where his father was a patient:

May 2, 2005  
To: Ben Glassman  
From: Joel Glassman  
  
Subject: Yetta moving to Arizona

Dad:

Hope all is going well with you. This should be the last week of treatment. Some decisions need to be made.

If Yetta is moving to Arizona with you, she has to do the following:

1. Make sure she has a living will.
2. Have a Power of Attorney completed—This cannot be you, Norm, or me as we cannot guarantee nor wish to make any medical or financial decisions involving her. One of her children most likely will need to be named.
3. Airline tickets need to be purchased. We think 1<sup>st</sup> class tickets will best suit your needs. Someone will have to accompany you on the flight.
4. Give notice to 7901 to terminate your lease.
5. Yetta has to be responsible for any individual, medical or Assisted Living extra charges that she incurs. Is she willing to do so and share in the extra monthly rent for a second person residing in an Assisted Living Apartment?
6. Yetta has to complete a screening evaluation before she can be admitted to Assisted Living. Here is the name and phone number of the social worker we are using for you. . . .

Joel<sup>10</sup>

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<sup>7</sup> 12/1/2006 Petitioner's Brief at 10.

<sup>8</sup> 12/1/2006 Petitioner's Brief at 11.

<sup>9</sup> 12/1/2006 Petitioner's Brief at 11.

<sup>10</sup> 12/1/2006 Petitioner's Brief, Ex.M (emphasis added).

Several weeks later, Joel Glassman, pursuant to his power of attorney, terminated the lease to Yetta and Benjamin Glassman's apartment, as evidenced by the following letter<sup>11</sup>:

May 20, 2005  
Delaware-Bay Management Corporation, Agent  
Henry on the Park Apartments  
7901 Henry Avenue  
Philadelphia, PA. 19128

RE: 90 Day Notification of Lease Termination Glassman Residence  
Apt. G-202

To Whom It May Concern:

As Power of Attorney for Benjamin Glassman, this letter is to provide you with a 90 day notification of his intention to terminate the lease on Apt. G-202. Henry, on the Park Apartments.

This notification is effective June 1, 2005. Enclosed is check #3414 in the amount of \$1083; which includes the rent and \$20 cable charge.

Thank you for your assistance.

Joel B. Glassman (POA)  
cc: Yetta Glassman

On May 22, 2005, petitioner maintains, Norman Glassman came to Philadelphia to escort his father to Arizona. She also maintains that he went with her to a safety box, removed jewelry bequeathed to her under Decedent's will, and took it back to Arizona.<sup>12</sup> In his answers to interrogatories, Norman Glassman denies any knowledge of this jewelry.<sup>13</sup> Both Norman and Joel Glassman admit that they were in Philadelphia between March 19-25, 2005 as well as at other discrete dates to visit their father.<sup>14</sup> They also agree that at the initiation of Yetta's sons, Marvin and Leonard, they had a meeting to discuss her claim of entitlement to 1/3 of Benjamin's estate as well as a possibility of a

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<sup>11</sup> 12/1/2006 Petitioner's Brief, Ex. N.

<sup>12</sup> 12/1/2006 Petitioner's Brief at 12.

<sup>13</sup> 12/1/2006 Petitioner's Brief, Ex. J (Norman Glassman Interrogatories) at ¶ 9.

<sup>14</sup> 12/1/2006 Petitioner's Brief, Exs. J & H, ¶¶1-2 (Interrogatories of Joel and Norman Glassman).

payment to her.<sup>15</sup> Joel Glassman admits that he spoke with two attorneys concerning the agreement, but did not engage anyone to assist in developing the agreement. More obscurely, he appears to state that he did employ lawyers to assist in the preparation of the Power of Attorney.<sup>16</sup> Norman Glassman denied hiring any attorney to prepare the power of attorney, asserting “I was not an attorney-in-fact.”<sup>17</sup>

In their preliminary objections in response to Yetta Glassman’s amended petition, Joel and Norman Glassman assert that this court lacks personal jurisdiction over them because they both reside in Arizona and do not do any business in Philadelphia. In their brief, they present arguments and precedent in support of this assertion.

### *Legal Analysis*

Preliminary objections that would result in dismissal of a petition should be granted only when they are free from doubt. Taylor v. FEDRA Int., Ltd., 2003 Pa. Super.233, 828 A.2d 378, 381 (2003)(citations omitted). Moreover, the evidence should be considered in the light most favorable to the nonmoving party. Derman v. Wilair Servs. Inc., 404 Pa. Super 136, 140, 590 A.2d 317, 319 (1991), citing Kenneth H. Oaks, Ltd. v. Josephson, 390 Pa. Super. 103, 568 A.2d 215 (1989). The parties agree that in reviewing preliminary objections challenging personal jurisdiction, “once the defendant properly raises the issue of jurisdiction, the plaintiff has the burden of proving that

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<sup>15</sup> 12/1/2006 Petitioner’s Brief, Exs. H & J, at ¶¶ 3-4 (Interrogatories of Norman and Joel Glassman).

<sup>16</sup> 12/1/2006 Petitioner’s Brief, Ex. H (Joel Glassman Interrogatories). In paragraph 7, Joel Glassman indicates that he spoke with 2 lawyers concerning the agreement but did not engage them to assist in developing it. When asked in paragraph 8 to identify the attorney who was retained to prepare the power of attorney, Joel Glassman referenced the prior Paragraph 7, naming James R. Beam, Esquire and his associate Stephanie Sanderson-Braem, Esquire.

<sup>17</sup> 12/1/2006 Petitioner’s Brief, Ex. J, ¶¶ 7-8.

jurisdiction is proper.” Derman v. Wiliar, Servs., 404 Pa. Super. at 140, 590 A.2d at 319.<sup>18</sup>

The propriety of exercising jurisdiction over a nonresident defendant is determined within the context of a state’s long-arm statute and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Kubik v. Letteri, 532 Pa. 10, 614 A.2d 1110, 1112 (1992). Under the Pennsylvania long-arm statute, 42 Pa.C.S.A. § 5322, Pennsylvania courts may exercise two kinds of in personam jurisdiction over a nonresident defendant: general and specific. General jurisdiction is premised upon a defendant’s general activities within the forum, requiring contacts that are continuous and systematic. Specific jurisdiction, in contrast, focuses on particular acts by the defendant that give rise to the underlying cause of action. Taylor v. FEDRA Intern., Ltd., 203 Pa. Super. 233, 828 A.2d 378, 381 (2003).

The Due Process Clause analysis focuses on protecting 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 relationships’” and requires that individuals have “fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985)(citations omitted). Once a court determines that a defendant has had minimum contacts with a forum, these contacts must be analyzed along with other factors to determine whether the assertion of jurisdiction would comport with principles of “fair

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<sup>18</sup> Some courts set forth a more elaborate shifting of burdens of proof. In Efford v. The Jockey Club, 2002 Pa. Super. 100, 796 A.2d 370, 372-73 (2002), for instance, the Superior Court observed: “When reviewing a challenge to the trial court’s exercise of jurisdiction, we note that the burden rests upon the party challenging the trial court’s jurisdiction, so we must consider the evidence in the light most favorable to the non-moving party. Once the movant has supported its jurisdictional objection, the burden shifts to the party asserting jurisdiction to prove that there is statutory and constitutional support for the trial court’s exercise of in personam jurisdiction.”

play and substantial justice.” Burger King, 471 U.S. at 476-77. Those factors include “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 in obtaining the most efficient resolution of controversies,” and the “shared interest of several States in furthering fundamental substantive social policies.” Burger King, 471 A.2d at 476-77 (citations omitted).

In the instant case, Yetta Glassman is asserting specific, rather than general, jurisdiction over Joel and Norman Glassman as set forth in the following provisions of 42 Pa.C.S. § 5322:

§ 5322. Bases of personal jurisdiction over persons outside the Commonwealth

(a) GENERAL RULE.—A tribunal of this Commonwealth may exercise personal jurisdiction over a person (or the personal representative of a deceased individual who would be subject to jurisdiction under this subsection if not deceased) 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 the Commonwealth. Without excluding other acts which may constitute transacting business in this Commonwealth, any of the following shall constitute transacting business for the purpose of this paragraph:

(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.

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

(7) Accepting election or appointment or exercising powers under the Authority of this Commonwealth as a:

(iii) Trustee or other fiduciary.

Where specific jurisdiction is asserted, the Due Process “fair warning” requirement is satisfied “if the defendant has ‘purposefully directed’ his activities at residents of the forum.” Burger King, 471 U.S. at 472. The specific grounds of personal jurisdiction

over Joel and Norman Glassman asserted by Yetta Glass must be analyzed within this dual rubric.

A. The Orphans' Court Has Jurisdiction Over Joel Glassman Based on His Actions Pursuant to the Power of Attorney Granted to Him By His Father, Benjamin Glassman under 42 Pa.C.S. § 5322(a)(7)(iii)

The Pennsylvania long-arm statute provides for jurisdiction over persons as to a cause of action arising from such person “transacting any business in this Commonwealth”<sup>19</sup> or “[a]ccepting election or appointment or exercising powers under the authority of this Commonwealth as: a Trustee or other fiduciary.” 42 Pa.C.S. §5322(a)(7)(iii). Petitioner has presented a copy of a General Durable Power of Attorney of Benjamin Glassman naming his son Joel Glassman as his agent, and Norman Glassman, as a successor agent. That document provides in its initial Notice that “[t]he powers and duties of an agent under a Power of Attorney are explained more fully in 20 Pa.C.S. Ch. 56.” Under 20 Pa.C.S. 5601(e) of the PEF code, an agent acting under a power of attorney is a “fiduciary,” thereby satisfying one of the threshold requirements of this provision of the long-arm statute. Not only was Joel Glassman named as his father’s agent in the Power of Attorney, but he acted pursuant to it in Pennsylvania as evidenced by his May 20, 2005 letter to Delaware-Bay Management Corporation in which Joel Glassman “as power of attorney” terminated his father’s lease on apartment G-202 in the Henry on the Park Apartments.<sup>20</sup> In acting pursuant to the Power of Attorney, Joel Glassman was implicitly “purposefully” availing himself “of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Burger King, 471 U.S. at 475. This is demonstrated both by the business activities Joel

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<sup>19</sup> 42 Pa.C.S. §5322(a)(1).

<sup>20</sup> 12/1/2006 Petitioner’s Brief, Ex. N.

Glassman was able to perform on his father's behalf within the Commonwealth, and by the explicit wording of the Power Attorney. That document, for instance, provides in paragraph 27 that "[t]he laws of the Commonwealth of Pennsylvania shall govern all questions as to the validity of this power and the construction of its provisions."<sup>21</sup> In Burger King, the United States Supreme court determined that a Florida court had jurisdiction over Michigan residents/franchisees over a contract dispute with a Florida corporation based, in part, by an analysis of the contract provisions that all disputes would be governed by Florida law. Although acknowledging that such a choice of law provision alone would not constitute a sufficient basis for jurisdiction, "[n]othing in our cases, however, suggests that a choice-of-law provision should be ignored in considering whether a defendant has 'purposefully invoked the benefits and protections of a State's laws' for jurisdictional purposes." Burger King, 471 U.S. at 482. If this is true for a franchise agreement, it is more so for a Power of Attorney that creates a fiduciary relationship with the attendant legal implications under state law. The PEF code, for instance, provides for the filing of an account by an agent "whenever directed to do so by the court." 20 Pa.C.S. § 5610.

As the Burger King court warned, there are no "talismanic jurisdictional formulas" for resolving issues of in personam jurisdiction so that "the facts of each case must always be raised." Burger King, 471 U.S. at 485-86. In asserting her rights as an electing spouse under 20 Pa.C.S § 2203, Yetta Glassman maintains that Joel and Norman sought to thwart this claim by coming to "Pennsylvania to remove Decedent (her husband, Benjamin) for the purpose of avoiding the consequences of the Commonwealth's spousal share laws" and that they took "specific actions for the sole

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<sup>21</sup> 12/1/2006 Petitioner's Brief, Ex. I.

purpose of financial gain.”<sup>22</sup> In support of these claims, she presented documentation that Joel Glassman used the Power of Attorney to implement this plan by canceling his father’s lease and by paying for the Assisted Living residence in Arizona.<sup>23</sup> The jurisdictional effect of actions taken pursuant to a power of attorney appears to be a question of first impression in this Commonwealth; at least neither party—nor this court—was able to find a Pennsylvania case directly on point since this jurisdictional issue is more usually framed in terms of accidents, contract disputes or other such facts. There is, however, a well reasoned Texas case that confronted similar facts and concluded that jurisdiction was proper.

In Smith v. Lanier, 998 S.W. 2d 324, 1999 Tex. App. LEXIS 5537 (Tex.Ct. App, 3d Dist. 1999), Theodore and Wylma Reid resided in Texas during their more than twenty year marriage and owned property valued at more than \$2,500,000. The husband granted a power of attorney to his daughter, who resided in South Carolina. The couple subsequently died in rapid succession: Wylma died first, in Texas. The surviving husband’s daughter thereafter came to Texas and used the power of attorney to marshal her father’s assets, before taking him back to South Carolina where he died. The wife’s will was admitted to probate in Texas; the husband’s in South Carolina. A dispute arose when the Texas executor of the wife’s will sought to retrieve assets that the husband’s daughter had removed to South Carolina. Among the issues raised was whether the Texas court could assert in personam jurisdiction over the nonresident daughter as representative of her deceased father’s estate.

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<sup>22</sup> 9/1/2006 Amended Petition, §§ 6-7..

<sup>23</sup> See, e.g., 12/1/2006 Petitioner’s Brief, Exs. N (May 20, 2005 letter from Joel Glassman, as POA, to Delaware-Bay Management Corporation) & O (checks signed by Joel Glassman, as agent under Power of Attorney, to Freedom Inn, Scottsdale).

The Texas court rejected the daughter's argument that it could not assert personal jurisdiction over her, in her individual capacity or as representative of her father's estate because she was a South Carolina resident and the disputed property was located in South Carolina. She argued that except for a trip to Texas to help move her father into a retirement home, every action she had taken in Texas had been pursuant to her father's power of attorney. The court, however, rejected her argument that her status as agent shielded her from the jurisdiction of the Texas probate court. On the contrary, it reasoned:

Agency is an affirmative defense to personal liability. An agency relationship does not shield an individual from jurisdictional contacts with a state, only from possible liability flowing from the activities conducted within the forum state. As attorney in fact, Smith took advantage of the laws of the State of Texas to exercise control over her father's assets. She purposefully directed her activities toward numerous Texas residents and institutions, activities that resulted in the removal from the state of the property that is the basis of the dispute. Furthermore, she was on active notice that the property might be subject to the jurisdiction of the Texas probate court. Under these circumstances, the assertion of personal jurisdiction over Smith does not offend traditional notions of fair play and substantial justice.  
Smith v. Lanier, 998 S.W. 2d at 334-35(citations omitted).

Similarly, in the instant case it is undisputed not only that Joel Glassman was agent under his deceased father's power of attorney, but Petitioner has documented that Joel Glassman used this authority to pay for the legal services of Stradley Ronan out of decedent's Bank of America checking account and to pay decedent's assisted living accommodations in Arizona.<sup>24</sup> According to the record, Joel Glassman also used that authority to engage in transactions with Pennsylvania citizens as evidenced, for instance, by the letter terminating his father's lease. In so doing, Joel Glassman was on notice that he might be haled into court to answer for these actions. Consequently, the assertion

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<sup>24</sup> 12/1/2006 Petitioner's Brief, Ex. O.

of personal jurisdiction as to him would not offend traditional notions of fair play and substantial justice. The same cannot be said, however, for Norman Glassman who was merely named as substitute agent and who does not appear to have exercised any actions under that authority. Hence, personal jurisdiction cannot be asserted against him pursuant to 42 Pa.C.S. § 5322(a)(7)(iii). Personal jurisdiction can, however, be asserted under the other provision cited by petitioner.

B. Personal Jurisdiction may be asserted as to Joel and Norman Glassman based on 42 Pa.C.S. § 5322(a)(1)(ii)

The Pennsylvania long-arm statute also provides that a court has personal jurisdiction over a person based on 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.” 42 Pa.C.S. § 5322(a)(1)(ii).

According to petitioner, Norman Glassman’s sought to achieve pecuniary gain by coming to Pennsylvania to remove his father to Arizona.<sup>25</sup> “This act, “ the Petitioner maintains, “was the culmination of the plans set in motion by Respondents in an attempt to effectuate a change of Decedent’s domicile that, if successful, would preclude Petitioner from ever exercising her right to receive her spousal share of Decedent’s estate.”<sup>26</sup> In addition, the respondents took other actions to achieve this objective, including engaging an attorney to prepare a power of attorney, facilitating the execution of this power by their father, coming to Philadelphia to negotiate with their father’s wife concerning her entitlement to the estate, “imposing their will upon Decedent requiring him to leave Philadelphia,” terminating their father’s lease in Philadelphia, removing Yetta

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<sup>25</sup> 12/1/2006 Petitioner’s Brief at 13.

<sup>26</sup> 12/1/2006 Petitioner’s Brief at 13.

Glassman's jewelry from the Commonwealth, and taking their father out of the Commonwealth.<sup>27</sup>

The respondents reject this assertion of jurisdiction over them on various grounds. First, they emphasize that under 42 Pa.C.S. §5322(c), when specific jurisdiction is asserted against nonresident individuals “only a cause of action or other matter arising from acts enumerated in subsection (a)” ... “may be asserted against him.”<sup>28</sup> According to respondents, “because Petitioner alleges that Pennsylvania has specific jurisdiction over Respondents, Respondents’ specific acts in this Commonwealth must have given rise to Petitioner’s cause of action.”<sup>29</sup> The respondents argue that petitioner’s claim did not arise from any alleged acts by respondents in the Commonwealth, but instead arise from statute, from her marriage and from her effort to enforce her elective share of decedent’s estate under 20 Pa.C.S. §2203(a)(4) and (6).

The respondents’ argument that their actions in Pennsylvania did not give rise to petitioner’s effort to assert her statutory right of election against her husband’s estate is disingenuous and hyper technical. Petitioner’s right to assert an elective share clearly arises under statutory authority, but her practical ability to exercise this statutory right—she maintains—has been thwarted by the actions of the respondents in removing her husband from the Commonwealth. The exact nature and location of the assets in dispute unfortunately remains unclear; that issue will have to be addressed in the hearing to be held concerning subject matter jurisdiction which entails a determination of the decedent’s domicile at the time of his death.

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<sup>27</sup> 12/1/2006 Petitioner’s Brief at 13-14.

<sup>28</sup> 12/26/2006 Respondent’s Brief at 2; 42 Pa.C.S. § 5322(c).

<sup>29</sup> 12/26/2006 Respondent’s Brief at 3.

The respondents attempt to support their argument that this court lacks specific jurisdiction over them under 42 Pa.C.S. § 5322(c) by citing Cottrell v. Zisa, 535 F.Supp. 59, 61 (E.D. Pa. 1982), which, they argue, establishes a “but for” test analysis; in other words, whether “but for” respondents’ visits to Pennsylvania, “her claim for an elective share would not have arose.”<sup>30</sup> There are, however, numerous problems with this argument. First, the facts of Cottrell, a 1982 decision by a federal district court, are clearly distinguishable. Cottrell involved a personal injury claim by a Pennsylvania plaintiff who fell on the premises of a gas station located in New Jersey that was leased and operated by a defendant who was a citizen of New Jersey, and then Virginia. The plaintiff attempted to assert personal jurisdiction over the New Jersey/Virginia defendant based on the defendant’s interview in Pennsylvania with a Sun Oil Company representative to obtain a lease for the gas station. The district court properly concluded that under the Pennsylvania long arm statute this interview could not be the basis of specific jurisdiction because it was totally unrelated to the personal injury action plaintiff was asserting against the defendant. Cottrell, 535 F.Supp. at 60-61.

The facts of the instant dispute are clearly distinguishable. Here the petitioner’s claim to her elective share has allegedly been thwarted by the actions of both respondents in removing her husband from the Commonwealth. The links between the respondents’ Pennsylvania acts and petitioner’s claim for her elective share are thus inextricable.

Respondents also assert that petitioner’s claim for personal jurisdiction over them based on their negotiations to settle her claim against the estate is invalid because public policy disfavors the use of settlement negotiations as a basis for personal jurisdiction.<sup>31</sup>

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<sup>30</sup> 12/26/2006 Respondents’ Brief at 6.

<sup>31</sup> 12/26/2006 Respondents’ Brief at 6.

To support this argument, respondents invoke two federal cases from Minnesota and one from Pennsylvania with facts unrelated to the present dispute. In Red Wing Shoe Company v. Hockerson-Halberstadt, Inc., 148 F.3d 1355 (8<sup>th</sup> Cir. Minn. 1998), for instance, a shoe manufacturer brought a declaratory judgment against a Louisiana corporation whose business was licensing and enforcing rights associated with two patents after it sent letters to the plaintiff asserting that it had violated those patents and offering to negotiate a licensing agreement. The plaintiff attempted to use these letters as the basis for personal jurisdiction over the Louisiana corporate defendant. The federal court, however, characterized these contacts as cease and desist letters which should be given wide latitude under the requisite due process analysis of “fair play and substantial justice” which would afford a patentee wide latitude to inform others of its rights. Red Wing Shoe Company, 148 F.3d at 1360-61. As a secondary analysis it noted that this offer to license was “more closely akin to an offer for settlement of a disputed claim than an arms-length negotiation in anticipation of a long-term business relationship.” While observing that under Federal Rules of Evidence promising to accept consideration to compromise a claim is not admissible to establish liability, the Court also emphasized that the Rules did not explicitly make such negotiations inadmissible to establish personal jurisdiction although the general policy of fostering settlements should be encouraged. Id. at 1361. The other patent case cited by Respondents, All-Luminum Prods. Inc. v. Salibra, 2002 U.S. Dist. LEXIS 11411 (E.D.Pa. 2002) cites Red Wing for the proposition that it “is well-settled, however, that a patentee’s act of sending an infringement letter, without more, is insufficient to satisfy the requirements of due process when exercising jurisdiction over an out-of-state patentee.” This combined highly specific patent

precedent thus offers little support to respondent's argument that the alleged effort by Norman and Joel Glassman to resolve Yetta's claim for an elective share while physically present in the Commonwealth should not be considered as a specific contact with the Commonwealth.

In the other precedent cited by respondents, Digi-Tel Holdings v. Proteq Telecommunications, 89 F.3d 519, 525 (8<sup>th</sup> Cir. Minn. 1996), the Federal court concluded that personal jurisdiction could not be asserted by a Minnesota company against a Singapore company where all negotiations, meetings, productions and delivery were centered in Singapore. In so doing, the court did refuse to premise jurisdiction on certain settlement discussions noting that "courts have hesitated to use unsuccessful settlement discussions as "contacts" for jurisdictional purposes" under public policy concerns that to do so will discourage settlement. Id. at 525. It is significant, however, that the Digi-Tel court's rationale was based on an analysis of a record bereft of any contacts by the Singapore company with the Minnesota forum. Id. at 525 ("The contacts with Minnesota appear at best inconsequential rather than substantial under the circumstances").

While the parties in this matter characterize the discussions between Yetta Glassman's sons and decedent's sons as an attempted settlement of Yetta Glassman's claim for an elective share of her husband's estate, those discussions are more properly characterized as an assertion of Yetta Glassman's claim and notice to her husband's sons of her intent to seek assets which they apparently considered to belong to them and their father. Consequently, in resisting Yetta Glassman's claim, they were acting to further their own pecuniary advantage. These acts would therefore fall within the purview of section 5322(a)(1)(ii) of the Pennsylvania long-arm statute which would premise specific

personal jurisdiction on “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.” According to Yetta Glassman, after Joel and Norman Glassman were alerted of her claim for an elective share of their father’s estate, they allegedly engaged in a series of actions to thwart this claim culminating in their removal of their father from the Commonwealth. These acts included: engaging a Pennsylvania attorney to prepare Benjamin Glassman’s power of attorney, coming to Philadelphia to discuss Yetta Glassman’s claim in her husband’s estate, “imposing their will upon decedent requiring him to leave Philadelphia,” terminating their father’s 31 year lease of an apartment in Pennsylvania and removing their father from Pennsylvania with an effort to establish his putative legal domicile in Arizona.”<sup>32</sup>

Once it is determined that defendants have purposefully established minimum contacts with Pennsylvania, these contacts must be analyzed in the context of other considerations to establish whether the exercise of personal jurisdiction “would comport with fair play and substantial justice.” Burger King, 471 U.S. at 476. The factors to consider include: “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 in obtaining the most efficient resolution of controversies,” and the “shared interest of the several states in furthering fundamental substantive social policies.” Burger King, 471 U.S. at 477.

In weighing these factors, the balance falls in favor of asserting jurisdiction over these two respondents. Petitioner asserts that by removing her husband to Arizona, the respondents effectively sought to deny her the opportunity to elect against his estate

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<sup>32</sup> 12/1/2006 Petitioner’s Brief at 13-14.

because “Arizona law makes no provision under the circumstances of this case for a surviving spouse who has been disinherited.”<sup>33</sup> Respondents do not dispute this assertion. In terms of the burden on the respondents to travel to Pennsylvania, they have done so frequently in the past.<sup>34</sup> Indeed, Petitioner asserts that the respondents came into the Commonwealth to further their pecuniary interests by removing their father to Arizona. By accepting to act as a fiduciary under Pennsylvania law, Joel Glassman was put on notice that he could be haled into a Philadelphia court for such purposes as filing an account of his actions pursuant to the power of attorney.<sup>35</sup> Significantly, the power of attorney executed by Benjamin Glassman provided for his right to elect against his wife Yetta’s estate should she predecease him.<sup>36</sup>

Pennsylvania, as the forum state, has a profound interest in adjudicating the issue of Yetta Glassman’s spousal right of election in light of “the long existing public policy of Pennsylvania to protect a surviving spouse’s rights.” In re: Estate of Inter, 444 Pa. Super. 417, 424, 664 A.2d 142, 146 (1995).<sup>37</sup> In 1978, the Pennsylvania legislature enacted the Elective Share of Surviving Spouse Act “which created in a surviving spouse the right to an elective share of one-third of the decedent’s augmented estate irrespective of an existing will.” Bialczak v. Moniak, 373 Pa. Super. 251, 255, 540 A.2d 962, 964

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<sup>33</sup> 12/1/2006 Petitioner’s Brief at 14-15 (citing Revised Arizona Code, Article 3, Spouse and Children unprovided for in Will, §§14-2301, 14-2302).

<sup>34</sup> See, e.g., 12/1/2006 Petitioner’s Brief, Exs. J & H, ¶¶1-2 (Interrogatories of Joel and Norman Glassman).

<sup>35</sup> 20 Pa.C.S. § 5610 (“An agent shall file an account of his administration whenever directed to do so by the court and may file an account at any other time. All accounts shall be filed in the office of the clerk in the county where the principal resides”).

<sup>36</sup> See Ex. I, paragraph 3 (General Durable Power of Attorney of Benjamin Glassman), 12/1/2006 Petitioner’s Brief.

<sup>37</sup> The Superior Court in In re Estate of Inter, traced the legislative history and intent behind spousal election: “Because 20 P.S. §301.11 and its recodification as 20 Pa.C.S. § 6111 were enacted to prevent a spouse from defrauding the surviving spouse of his or her marital rights and to confirm a long existing public policy of Pennsylvania to protect a surviving spouse’s rights, a surviving spouse had the right to elect against a tentative trust.” In re Estate of Inter, 444 Pa. Super. at 424-25, 664 A.2d at 146 (citations omitted).

(1988)(citing 20 Pa.C.S. §2203). With the enactment of section 2203 after the repeal of Section 6111 in 1978, the Pennsylvania legislature sought to consolidate the spousal election provisions previously dispersed throughout the PEF code. The intent, according to the Official Comment, was “to broaden the property subject to a surviving spouse’s election.” Estate of Inter, 444 Pa. Super. at 425, 664 A.2d at 146.

The statutory provision is particularly significant in the instant case where the decedent Benjamin Glassman executed a will dated June 8, 1993 that left the residue of his estate to his two sons, Joel and Norman Glassman.<sup>38</sup> The petitioner believes that her deceased husband’s assets included investment accounts with The Vanguard Group and Merrill Lynch as well as checking and savings accounts with the Bank of America and Citizen’s Bank with an approximate value of \$780,000. These assets, Yetta Goldman believes, were titled jointly with the decedent and his two sons, although all of the assets were contributed by the decedent.<sup>39</sup>

Under Pennsylvania precedent these assets may be subject to the right of spousal election, although additional facts as to the nature of the assets is necessary.

Pennsylvania courts have held, for instance, that a wife may assert a claim of spousal election against real property that a deceased husband held in joint tenancy with his son. In re Hart, 2002 Pa. Super. 187, 801 A.2d 599 (2001). Numerous cases have held that a spouse may assert a claim of spousal election against joint bank accounts with the right of survivorship that the deceased spouse held with other individuals. See, e.g., Lazewski Estate, 18 Fid. Rep. 2d 439 (O.C. Allegheny Cty 1996); Rush Estate, 26 Fid. Rep. 212 (O.C. Northampton Cty. 1976); Hetrick Estate, 17 Fid. Rep. 317 (O.C. Dauphin Cty.

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<sup>38</sup> See Ex. A, Last Will of Benjamin Glassman dated June 8, 1993 (Paragraph 3), 3/9/2006 Petition..

<sup>39</sup> Petitioner’s 9/1/2006 Amended Petition, ¶ 10.

1965); Hershey Estate, 10 Fid. Rep. 390 (O.C. Fulton Cty. 1960). Finally, there is Pennsylvania precedent that bank accounts that the deceased spouse held in trust for another individual could likewise be subject to spousal election. In re: Inter, 444 Pa.Super. 417, 664 A.2d 142 (1995); Kuestner Estate, 26 Fid. Rep. 220 (O.C. Philadelphia Cty. 1976). Unfortunately, despite the additional discovery conducted by the parties, the exact nature of the assets at issue awaits further exploration at a hearing.

The petitioner's interest in obtaining relief in Pennsylvania is emphasized in her petition and brief, where she notes that she and her husband had been married for over thirty years during which they lived their entire married life in Pennsylvania. Consequently, Pennsylvania has a strong interest both in the efficient resolution of this dispute involving long term residents as well as in safeguarding the social policy of protecting the right of election of a surviving spouse.

Conclusion

For all of these reasons, the preliminary objections asserting lack of in personam jurisdiction over Joel and Norman Glassman are overruled. A hearing shall be convened on June 4 at 1 p.m. to consider the objections relating to lack of subject matter jurisdiction due to the disputed domicile of Benjamin Glassman as explained in greater detail in the opinion dated August 17, 2006.

BY THE COURT:

Date: \_\_\_\_\_

\_\_\_\_\_  
John W. Herron, J.

