

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

IMAGE 1 STUDIOS, LLC

v.

KRISTINA YOUNGBLOOD

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JULY TERM, 2012

NO. 2203

COMMERCE PROGRAM

CONTROL NO. 12110865

ORDER

AND NOW, this 17th day of December, 2012, upon consideration of the preliminary objections of defendant, Kristina Youngblood, and any response thereto, it is hereby

ORDERED

that the said preliminary objections are **SUSTAINED** and plaintiff's second amended complaint is dismissed.

BY THE COURT:

GLAZER, J.

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

IMAGE 1 STUDIOS, LLC

v.

KRISTINA YOUNGBLOOD

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JULY TERM, 2012

NO. 01057

COMMERCE PROGRAM

CONTROL NO. 12110865

OPINION

GLAZER, J.

December 17, 2012

Before the court are the preliminary objections of defendant, Kristina Youngblood, to plaintiff's second amended complaint. For the reasons set for the below, defendant's preliminary objections are sustained.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff commenced the present action in Philadelphia on or about July 16, 2012 alleging: (1) breach of contract; (2) tortious interference; (3) unjust enrichment; (4) quantum meruit; and (5) "mandatory" injunction. After defendant's preliminary objections were filed, plaintiff filed an amended complaint on September 4, 2012. Further, on October 15, 2012, after defendant filed subsequent preliminary objections to plaintiff's amended complaint, plaintiff then filed a second amended complaint. Defendant now brings preliminary objections to plaintiff's second amended complaint. Moreover, before commencing the current action in Philadelphia, plaintiff filed a virtually identical lawsuit against defendant in Orange County, Florida ("Florida action"). The Florida action is still pending.

Plaintiff, Image 1 Studios, LLC, was formed in the State of Tennessee, having their principal place of business at 3130 Highway 25E South, Tazewell, Tennessee 37879. Plaintiff is a photography agency which contracts with photographers all over the county to provide services to its clients. Defendant, Kristina Youngblood, is a photographer and a resident of Florida. On or about January 27, 2011, plaintiff contracted defendant to serve as a photographer in Florida. Moreover, parties entered into a non-compete agreement. See plaintiff's amended complaint, exhibit A. The non-compete agreement states, "[f]or a period of 5 years, or as long as is enforceable under state laws wherein Image 1 operates, after the effective date of this Agreement, photographer/applicant will not directly or indirectly solicit business from, or attempt to sell, license or provide the same or similar products or services as are now provided to, any customer or client of Image 1." Id. Further, the agreement is governed by the laws of the State of Florida. Id.

Plaintiff alleges that defendant breached the non-compete agreement by contacting Stephanie Hurley and Brittany Rioux, parties with whom plaintiff had a contractual relationship with, to gain business from them directly. Brittany Rioux is a resident of the Commonwealth of Pennsylvania and was contacted while in Pennsylvania. Defendant now brings preliminary objections to plaintiff's second amended complaint.

DISCUSSION

When considering preliminary objections, all material facts and all inferences set forth in the complaint must be admitted as true. Haun v. Community Health Systems, Inc., 14 A.3d 120, 123 (Pa. Super. 2011). However, this court is not bound to accept as true any averments in the pleading that are in conflict with exhibits that are attached to the pleading. Philmar Mid-Atlantic, Inc. v. York Street Associates, 389 Pa. Super. 297, 299-301, 566 A.2d 1253, 1254

(1989). “Preliminary objections should be sustained only in cases that are clear and free from doubt. In ruling on whether preliminary objections were properly sustained, an appellate court must determine whether it is clear from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish a right to relief.” Uniontown Newspapers, Inc. v. Roberts, 576 Pa. 231, 839 A.2d 185, 196 (Pa. 2003) (quoting Pennsylvania AFL-CIO v. ex rel. George v. Commonwealth, 563 Pa. 108, 757 A.2d 917, 920 (Pa. 2000)).

I. Pendency of a Prior Action

Pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(6), preliminary objections may be filed on the grounds of pendency of a prior action. The question of pending prior action is “purely a question of law determinable from an inspection of the pleadings.” Davis Cookie Co. v. Wasley, 389 Pa. Super. 112, 121 (1989). Further, “lis pendens is a valid defense only when the parties, causes of action and relief sought are the same in both actions.” Procacina v. Susen, 301 Pa. Super. 392, 447 A.2d 1023, 1025 (Pa. Super. 1982). The moving party has the burden to show that the parties, the rights asserted, and the relief sought is all the same. Id.

Plaintiff argues that, while the parties are the same, the rights and relief sought are distinguishable. Plaintiff alleges that, “the breach and subsequent harm resulted from defendant’s contract with Keller Williams office in Orange County, Florida.” See plaintiff’s memorandum of law in support of plaintiff Image 1 Studios, LLC’s response to preliminary objections of defendant Kristina Youngblood, pp. 5. However, plaintiff’s second amended complaint in Florida states that defendant breached the non-compete clause by, “[s]pecifically, defendant ... contacted Stephanie Hurley and Brittany Rioux, both plaintiff’s employees, in an attempt to lure them away from plaintiff’s employ and work with her.” Id. at exhibit 2.

Although plaintiff further states that defendant solicited business from Keller Williams, the right asserted, with respect to the phone call to Brittany Rioux, is still covered in the Florida action.

Additionally, plaintiff states that the requests for relief are different because the Florida complaint does not request punitive damages nor does it specify an amount. In the Florida complaint, plaintiff “demands judgment for damages against defendant Kristina Youngblood, together with any interest permitted under the law, court costs in bringing this litigation, and such other relief this Court deems proper.” Id. Plaintiff neither limits the amount nor the type of damages that are requested in the Florida complaint. Further plaintiff does not even specify the type of damages requested in the Florida complaint. Therefore, pursuant to Rule 1028(a)(6) of the Rules of Civil Procedure, plaintiff’s second amended complaint is dismissed.

II. Lack of Jurisdiction

Further, defendant brings preliminary objections based on lack of personal jurisdiction. Pennsylvania courts may exercise either general or specific jurisdiction. General jurisdiction is founded upon the general activities of the defendant within the forum, as evidenced by systematic and continuous contacts with the forum state. Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984). Alternatively, specific jurisdiction is premised upon a particular act of the defendant that gave rise to the underlying cause of action. Nutrition Mgmt. Servs. v. Hinchcliff, 926 A.2d 531 (Pa.Super. 2007). The objecting party has the initial burden of proof. Id. at 537. However, “[o]nce that party has provided proof, the burden then shifts to the non-moving party to adduce evidence demonstrating there is a basis for asserting jurisdiction over the moving party.” Haas v. Four Seasons Campground, Inc., 952 A.2d 688, 691 (Pa.Super.Ct. 2008).

Plaintiff's jurisdiction is based on the fact defendant contacted Brittany Rioux. Brittany Rioux is a Pennsylvania resident and was contacted in Pennsylvania. Plaintiff argues that the phone call made to Brittany Rioux was a breach of contract because defendant tried to, "lure them away from plaintiff and to work with her." See plaintiff's second amended complaint, ¶ 11. Plaintiff does not allege any harm or damages that occurred from the contact. Moreover, plaintiff does not allege that defendant even spoke with Brittany Rioux. Defendant was not in Pennsylvania when she made the call. Therefore, plaintiff has failed to adduce evidence demonstrating that there is a basis for asserting jurisdiction over the moving party.

CONCLUSION

In light of the pleadings in the second amended complaint and exhibits attached, the preliminary objections of defendant, Kristina Youngblood, to the second amended complaint of plaintiff, Image 1 Studios, LLC, are sustained and the second amended complaint is dismissed.

BY THE COURT:

GLAZER, J.