

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

MATHEW CALABRO,	:	OCTOBER TERM, 2017
	:	
Plaintiff,	:	No. 00244
	:	
v.	:	COMMERCE PROGRAM
	:	
JON SOCOLOFSKY,	:	
	:	
Defendant.	:	

OPINION

Plaintiff Mathew Calabro appeals from this court's Order entered on March 5, 2018, in which the court sustained the Preliminary Objections of defendant Jon Socolofsky and dismissed plaintiff's Complaint due to lack of personal jurisdiction over defendant. The gravamen of plaintiff's Complaint was that the Wisconsin-based defendant unlawfully interfered with plaintiff's employment at an Illinois investment company, resulting in plaintiff's termination from that company.

As alleged in the Complaint,¹ between 2011 and 2015, plaintiff and defendant were both involved with the asset management firm Delaware Investments. Plaintiff was Chief Compliance Officer of Delaware Investments' Optimum Fund Trust (hereinafter "Optimum"). Optimum is organized as a Delaware trust with offices in Philadelphia. Plaintiff resided in Pennsylvania during his time at Delaware Investments.

Defendant serves as an independent Trustee of Optimum. Defendant resides in Wisconsin and has allegedly attended at least fifty quarterly meetings in Philadelphia since

¹ All facts set forth in this Opinion come from the Complaint unless a specific citation to the record indicates otherwise.

Calabro Vs Socolofsky-OPFLD



2003.² When in Philadelphia, defendant allegedly conducts his trustee business at Optimum’s Philadelphia offices.³ Defendant allegedly earned \$100,000 in fiscal year 2017 for his services to Optimum.⁴

Plaintiff and defendant had a poor relationship at Optimum. According to the Complaint, defendant “held a personal animus” against plaintiff and complained to plaintiff’s supervisor about plaintiff’s work performance. To “eliminate the aggravation” arising from defendant’s behavior, in March, 2015, Delaware reassigned plaintiff to a different fund known as the Macquarie Collective Funds. Around May, 2015, plaintiff received an unscheduled raise and an increase in his annual performance bonus.

Around that time, plaintiff was recruited by another investment company, Northern Trust Investments (hereinafter “Northern Trust”), a Delaware corporation doing business in Chicago, Illinois. In August, 2015, plaintiff resigned his position at Macquarie Collective Funds and agreed to join Northern Trust as a compliance Manager. Plaintiff “relocated from Pennsylvania to Illinois and commenced employment at Northern Trust on Sept. 30, 2015.”⁵ Plaintiff’s supervisor at Northern Trust allegedly said he was a “great hire.”

However, in October, 2015, plaintiff met with a member of Northern Trust’s legal team who told plaintiff that someone affiliated with Optimum had informed Northern Trust that plaintiff had been removed from Optimum because of poor work performance. “On October 26,

² Plaintiff’s Affidavit, attached as Exhibit 1 to his Response to the Preliminary Objections, ¶¶ 7, 12.

³ *Id.* at ¶ 9.

⁴ *Id.* at ¶ 11.

⁵ Calabro v. Northern Trust, 1-16-3079, p. 2 (Ill. App. Div. 1st, June 23, 2017) (non-precedential opinion affirming dismissal of Calabro’s petition for pre-suit discovery in which Calabro sought to uncover “the identity of a party who conveyed information to Northern Trust which led to the termination of his employment.”) Opinion is attached as Exhibit B to defendant’s Reply Brief.

2015, Northern Trust terminated [plaintiff] because he had failed to disclose his role with Optimum on his resume or at any time during the interview process.”⁶ Plaintiff now alleges, and defendant admits,⁷ that defendant placed the call that led to plaintiff’s termination from Northern Trust.

Defendant filed Preliminary Objections to the Complaint. He argued that this court lacks personal jurisdiction over him because he is domiciled in Wisconsin and none of the relevant acts occurred in Pennsylvania

Pennsylvania courts may exercise two types of personal jurisdiction over out-of-state defendants: (1) general personal jurisdiction based upon a defendant’s general activity within the state, and (2) specific jurisdiction based upon the specific acts of the defendant which gave rise to the cause of action.⁸ For the following reasons, this court lacks both general and specific jurisdiction over defendant Socolofsky.

A. This Court Lacks General Personal Jurisdiction Over Defendant.

A court may assert general jurisdiction over an individual defendant if the defendant is (1) present in the Commonwealth at the time when process is served (2) is domiciled in the Commonwealth at the time when process is served, or (3) consents to jurisdiction.⁹ Plaintiff does not claim to have served defendant with process in Pennsylvania. There is also no evidence that defendant consented to jurisdiction in Pennsylvania, nor that he was domiciled in

⁶ *Id.*

⁷ Defendant’s Affidavit, attached as Exhibit B to Preliminary Objections, ¶ 6.

⁸ See McCall v. Formu-3 Int’l, Inc., 437 Pa. Super. 575, 578–579; 650 A.2d 903, 904 (1994).

⁹ 42 Pa.C.S. § 5301.

Pennsylvania. Plaintiff therefore has not shown any of the conditions required for the assertion of general jurisdiction over defendant.

B. This Court Lacks Specific Personal Jurisdiction Over Defendant.

A foreign defendant lacking sufficient contacts with the Commonwealth to establish general jurisdiction may still be subject to specific jurisdiction pursuant to Pennsylvania's long-arm statute, 42 Pa.C.S. § 5322.¹⁰ That statute contains ten paragraphs that specify the kinds of contacts sufficient to warrant a court's exercise of specific jurisdiction.¹¹ Only three of those paragraphs are claimed by plaintiff to be applicable here. However, none of those confer jurisdiction on this court over defendant with respect to plaintiff's claims.

1. The long-arm statute's "doing business" provision does not apply to this dispute because the alleged harm does not arise out of defendant's business transactions.

Plaintiff argues that defendant is subject to jurisdiction under 42 Pa.C.S.A. § 5322(a)(1), which allows a court to assert jurisdiction over a defendant when the cause of action arises out of a defendant's transacting any business in this Commonwealth.¹² Transacting business for the purposes of the statute includes:

- (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.

¹⁰ See Mendel v. Williams, 53 A.3d 810, 820 (Pa. Super. 2012).

¹¹ 42 Pa.C.S. § 5322(a).

¹² *Id.* at § 5322(a)(1).

(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.¹³

Plaintiff claims that defendant regularly and systematically transacts business in Pennsylvania as one of Optimum's Trustees. Plaintiff argues that defendant used information he could only have known by virtue of his role at Optimum when he contacted plaintiff's new employer and got him fired.

This court cannot assert jurisdiction over this dispute under any "transacting business" rationale because the alleged conduct at issue here – a Wisconsin resident making a single phone call to an Illinois company - was not a form of transacting business within the Commonwealth. There is no allegation that defendant made the phone call in or to the Commonwealth, nor that he made it for pecuniary profit, nor that he made it as part of his business or professional dealings within the Commonwealth. Therefore, he is not subject to personal jurisdiction for doing business in this Commonwealth when he made the phone call that allegedly caused plaintiff to be terminated in Illinois.

2. The long-arm statute's relevant tort provisions do not apply to this dispute because the alleged tort and its resulting harm occurred entirely outside of the Commonwealth.

Plaintiff argues defendant is subject to specific jurisdiction under 42 Pa.C.S.A. § 5322(a)(4), which confers jurisdiction over a defendant who causes tortious injury in Pennsylvania by an act or omission outside Pennsylvania. To satisfy this statute and the requirements of due process, plaintiffs must show the following:

(1) the defendant committed an intentional tort;

¹³ *Id.* at § 5322(a)(1)(i)-(v). Clearly, subparagraphs (iii) and (v) are not applicable to this controversy.

(2) [Pennsylvania] was the focal point of the harm suffered by the plaintiff as a result of the tort;

(3) [Pennsylvania] was the focal point of the tortious activity in the sense that the tort[ious conduct] was expressly aimed at the forum.¹⁴

An intentionally tortious act against a forum resident that occurs outside the forum is not sufficient by itself to confer specific jurisdiction over the alleged tortfeasor.¹⁵ And while it is essential that the defendant know that the plaintiff is located in or resides in Pennsylvania, such knowledge does not necessarily mean the tortious conduct is targeted at the forum.¹⁶ What is required is foreseeability of harm within Pennsylvania, accompanied by conduct directed at the forum such that the defendant may reasonably anticipate being haled into the Commonwealth's courts.

Tortious interference with contractual relations is an intentional tort under Pennsylvania law.¹⁷ However, the long arm statute and principles of due process do not allow this court to assert jurisdiction over defendant here because Pennsylvania was not the target of the intentionally tortious activity, nor was it the focal point of the harm suffered by plaintiff. Instead the focal point of harm was Illinois, the state where the phone call was received, the state to which plaintiff relocated for his new employment at Northern Trust, and the state in which he was terminated. Although plaintiff moved back to Pennsylvania after his termination from

¹⁴ GoInternet.net Inc. v. SBC Communs., Inc., 64 Pa.D.&C.4th 353, 361 (C.P. Phila. 2003).

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ *See Empire Trucking Co. v. Reading Anthracite Coal Co.*, 71 A.3d 923, 933 (Pa. Super. 2013) (The elements of tortious interference with a contractual relationship are as follows: "(1) [T]he existence of a contractual relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of defendant's conduct.")

Northern Trust, the brunt of his injury - the loss of his job in Illinois - occurred outside of Pennsylvania.

Moreover, defendant's allegedly tortious conduct was not targeted at the Pennsylvania forum. Again, defendant admits to making the phone call from Wisconsin to Northern Trust's offices in Illinois. While telephone calls alone may be sufficient to give rise to specific jurisdiction, such communications must generally be directed toward the forum state. That was not the case here.

Plaintiff argues that, but for defendant's contacts with the forum state, defendant would not have had the requisite information needed to make the Wisconsin-based phone call to plaintiff's Illinois headquarters. However, that connection to Pennsylvania is too attenuated to serve as a sufficient basis for specific jurisdiction over the dispute where the tortious act itself - and the damage suffered by plaintiff - took place entirely outside of the forum. Therefore, plaintiff fails to allege facts sufficient to confer specific personal jurisdiction over defendant.

3. The long-arm statute's trust provision does not apply to this dispute because Optimum is a trust under the authority of Delaware, not Pennsylvania.

Plaintiff argues that defendant is subject to specific personal jurisdiction because he has served continuously as a Trustee of Optimum in Pennsylvania. The relevant statute states in pertinent part that a Pennsylvania court has jurisdiction over a dispute arising from a defendant:

(7) [a]ccepting election or appointment or exercising powers under the authority of this Commonwealth as a:

- (i) Personal representative of a decedent.
- (ii) Guardian of a minor or incapacitated person.
- (iii) Trustee or other fiduciary.
- (iv) Director or officer of a corporation.¹⁸

¹⁸ 42 Pa.C.S. § 5322(a)(7)(iii).

A plain reading of the statute shows that it allows for the exercise of jurisdiction over only those trustees “acting under the authority of the Commonwealth” of Pennsylvania.

Delaware Investments and its Trustees, such as defendant, operate under the authority of the State of Delaware, not Pennsylvania.

Even if this Court were to construe the statute broadly to include trustees of foreign trusts doing business in Pennsylvania, that would not convey jurisdiction over defendant here because there is no allegation that defendant tortiously interfered with plaintiff’s employment as an exercise of his powers as an independent trustee for Optimum.

CONCLUSION

For all the foregoing reasons, this court respectfully requests that its March 5, 2018 Order be affirmed on appeal.

Dated: June 13, 2018

BY THE COURT,


PATRICIA A. McINERNEY, J.