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

TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA,

Plaintiff,

v.

FAMILY BUSINESS AND OFFICE
SCHOOL, LLC, MIAMI
INTERNATIONAL EXECUTIVE
EDUCATION, LLC, and HERNÁN
FUENTES,

Defendants.

OCTOBER TERM, 2021

NO. 01558

COMMERCE PROGRAM

Control No. 22070587

DOCKETED

JUN 22 2023

R. POSTELL
COMMERCE PROGRAM

ORDER

AND NOW, this 22nd day of June 2023, upon consideration of the Preliminary Objections of defendants Miami International Executive Education, LLC and Hernán Fuentes, the responses thereto, and all other matters of record, and in accord with the Opinion issued simultaneously herewith, it is **ORDERED** as follows:

1. The Preliminary Objections are **SUSTAINED in part** and all claims against defendant Hernán Fuentes are **DISMISSED with prejudice** for lack of personal jurisdiction; and
2. The remainder of the Preliminary Objections are **OVERRULED**, and defendant Miami International Executive Education, LLC shall file an Answer to the Complaint within twenty (20) days of the date of entry of this Order.

BY THE COURT

211001558-Trustees Of The University Of Pennsylvania Vs Fami



21100155800050

RAMY I. DJERASSI, J.

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

TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA,	:	OCTOBER TERM, 2021
	:	
Plaintiff,	:	NO. 01558
	:	
v.	:	COMMERCE PROGRAM
	:	
FAMILY BUSINESS AND OFFICE SCHOOL, LLC, MIAMI INTERNATIONAL EXECUTIVE EDUCATION, LLC, and HERNÁN FUENTES,	:	Control No. 22070587
	:	
	:	
Defendants.	:	

OPINION

The question in this case is whether the cart may come before the horse. After discovery and due consideration, the court concludes that the horse of personal jurisdiction must come before the cart of piercing the corporate veil.

Plaintiff, the Trustees of the University of Pennsylvania (the “Wharton School”) alleges it entered into a contract with defendant Family Business and Office School [LLC] (“FBOS”) for the 2017 academic year, and subsequently that it entered into two contracts with Family Business and Office School [LLC]/Miami International Executive Education [LLC] (“MIEE”) for the 2018 and 2019 academic years. However, FBOS and MIEE allegedly did not remit to the Wharton School all the amounts due under those contracts. As a result, the Wharton School commenced this action to recover the sums due. It has already obtained a default judgment against FBOS in the amount of \$272,000, but the Wharton School claims that more is due to it under the contracts.

The Wharton School apparently believes that FBOS and MIEE are companies without assets, so it also sued as a defendant in this action Hernán Fuentes, who is the CEO of both FBOS and MIEE. In the Counts of the Complaint pled against Mr. Fuentes, the Wharton School “demands that the court pierce the corporate veil and enter judgment in its favor against Hernán Fuentes for FBOS and MIEE’s liability.”¹

The problem for the Wharton School is that FBOS, MIEE, and Mr. Fuentes are all based in Florida, and they do not have constitutionally significant contacts with Pennsylvania. However, in the 2017 school year contract, FBOS, acting through its agent and CEO, Mr. Fuentes, expressly agreed that “FBOS and Wharton hereby consent to the personal jurisdiction and venue of the state and federal courts of Philadelphia County, Pennsylvania.”²

Furthermore, in the 2018 and 2019 school year contracts, “Family Business and Office School/Miami International Executive Education (FBOS)”³ acting through their joint agent and CEO, Mr. Fuentes,⁴ expressly agreed that “FBOS and Wharton hereby consent to the personal jurisdiction and venue of the state and federal courts of Philadelphia County, Pennsylvania.”⁵

It is clear that in all three contracts, Family Business and Office School LLC consented to personal jurisdiction in Pennsylvania. However, “FBOS” as used in the context of the latter two

¹ Complaint, Count III. *See also id.* Counts I-II and IV-V.

² *Id.*, Ex. A, ¶ 18.

³ *Id.*, Ex. B, ¶ 1; Ex. C, ¶ 1.

⁴ The signature lines of the 2018 and 2019 contracts state:

Name and title: HERNÁN FUENTES –CEO
For and on behalf of Family Business and Office School/Miami International Executive Education.
Complaint, Ex. B, p. 7; Ex. C, p. 7.

⁵ *Id.*, Ex. B, ¶ 18; Ex. C, ¶ 18.

contracts is ambiguous because it could mean just “Family Business and Office School, [LLC]” or “Family Business and Office School [LLC] doing business as Miami International Executive Education,” the latter being merely a trade name, or “Family Business and Office School [LLC] AND Miami International Executive Education [LLC].” That issue will have to be resolved at a later stage in these proceedings.

Mr. Fuentes signed the contracts in his capacity as Chief Executive Officer of FBOS/MIEE; he did not sign any of the contracts in his individual capacity. Therefore, he never consented to personal jurisdiction, individually, in Pennsylvania.⁶ Plaintiff also has not proffered any evidence that Mr. Fuentes, in his individual capacity, has any contacts with Pennsylvania that would subject him to personal jurisdiction here.⁷ Instead, the Wharton School’s argument appears to be that, because Mr. Fuentes underfunded FBOS and MIEE and entered into contracts on their behalf with the Wharton School, which is located in Pennsylvania, he has somehow personally appeared or done business in Pennsylvania.

The court cannot deem the two companies to be alter egos of Mr. Fuentes for personal jurisdiction purposes without first deciding to overlook their corporate form, which is the

⁶ “Whenever a corporation makes a contract, it is the contract of the legal entity of the artificial being created by the corporate charter, and not the contract of the individual members. Thus, the breach of the contract is the breach of a promise made by the corporation, and not the breach of any promise extended by the corporate officer. It follows that only the corporation may ordinarily be held liable for contract damages.” Loeffler v. McShane, 372 Pa. Super. 442, 448, 539 A.2d 876, 879 (1988).

⁷ “The Due Process Clause of the Fourteenth Amendment to the United States Constitution limits the authority of a state to exercise *in personam* jurisdiction over nonresident defendants. The extent to which the Due Process Clause proscribes jurisdiction depends on the nature and quality of the defendant’s contacts with the forum state. Where a defendant has established no meaningful contacts, ties or relations with the forum, the Due Process Clause prohibits the exercise of personal jurisdiction. However, where a defendant has purposefully directed his activities at the residents of the forum, he is presumed to have fair warning that [he] may be called to suit there.” Fulano v. Fanjul Corp., 236 A.3d 1, 12–13 (Pa. Super. 2020).

ultimate relief requested by the Wharton School in this action.⁸ In order to assert jurisdiction over him, the court would first have to determine that FBOS/MIEE is/are liable to the Wharton School, that they were underfunded and unable to pay the Wharton School, that Mr. Fuentes substantially intermingled personal and company affairs, and/or they are otherwise being used as vehicles for fraud by Mr. Fuentes.⁹ It would be manifestly unfair for this court to require Mr. Fuentes to litigate this matter in its entirety just to prove that he is, or is not, subject to this court's jurisdiction.

The court notes that the Wharton School is not left without a potential recovery from Mr. Fuentes. To the extent that the Wharton School obtains judgment(s) against FBOS/MIEE in this action, it may seek to domesticate such judgment(s) in Florida and attempt to execute against FBOS/MIEE. If it is unsuccessful in recovering from them, it may use such mechanisms as the laws of Florida permit to pierce their corporate veils, collect any assets they improperly transferred, and/or proceed against Mr. Fuentes individually.

⁸ "There is a strong presumption in Pennsylvania against piercing the corporate veil. Any court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception." Mortimer v. McCool, 255 A.3d 261, 268 (Pa. 2021).

⁹ "[T]he corporate form may be disregarded whenever one in control of a corporation uses that control, or uses the corporate assets, to further his or her own personal interests. [The] factors relevant to the piercing inquiry [are]: undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs, and use of the corporate form to perpetrate a fraud." Mortimer, 255 A.3d at 268.

CONCLUSION

For all the foregoing reasons, defendants' Preliminary Objections are sustained in part and overruled in part, and the claims against Mr. Fuentes are dismissed.

June 22, 2023

BY THE COURT



RAMY I. DJERASSI, J.