

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

CROWN CORK & SEAL CO., INC.,	:	DECEMBER TERM 2002
	:	
Plaintiff,	:	No. 03185
	:	
v.	:	
	:	
MONTGOMERY, McCRACKEN, WALKER & RHOADS, LLP.	:	
	:	
Defendant.	:	
CROWN, CORK & SEAL CO., INC.,	:	DECEMBER TERM, 2002
	:	
Plaintiff,	:	No. 03192
	:	
v.	:	COMMERCE PROGRAM
	:	
NINA SEGRE, ESQ., KAREN SENSER, ESQ., and SEGRE & SENSER, P.C.,	:	Control Nos. 101117, 101083
	:	
Defendants/Third Party Plaintiffs,	:	
	:	
v.	:	
	:	
ALAN W. WILKEN, ESQ., and LOEB & LOEB LLP,	:	
	:	
Add'l Defendants.	:	

ORDER

AND NOW this 26th day of April, 2004, upon consideration of the Preliminary Objections of additional defendants, Alan W. Wilken, Esq. and Loeb & Loeb LLP (“L&L”), to the Third-Party Complaint of Nina Segre, Esq., Karen Senser, Esq. and Segre & Senser, P.C. (“S&S”), the Preliminary Objections of S&S to L&L’s Preliminary Objections, the responses thereto, the memoranda in support and opposition, and all other

matters of record, and in accord with the Memorandum Opinion entered contemporaneous herewith, it is hereby

ORDERED that L&L's Preliminary Objections are **SUSTAINED in part** and Paragraphs 14 and 17 of the Third Party Complaint and the claims based upon those paragraphs are hereby dismissed because this court lacks personal jurisdiction over L&L with respect to those claims; and it is further

ORDERED that the remainder of L&L's Preliminary Objections are **OVERRULED**, and that S&S' Preliminary Objections are **DISMISSED** as moot.

L&L shall file an Answer to the remaining claim in the Third-Party Complaint within twenty (20) days of the date of entry of this Order.

BY THE COURT:

C. DARNELL JONES, II, J.

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	:	
Defendants/Third	:	
Party Plaintiffs,	:	
	:	
v.	:	
	:	
ALAN W. WILKEN, ESQ., and	:	
LOEB & LOEB LLP,	:	
	:	
Add'l Defendants.	:	

MEMORANDUM OPINION

Before the court are the Preliminary Objections of additional defendants, Alan Wilken, Esq. and Loeb & Loeb, LLP (collectively “L&L”) to the Third-Party Complaint of Nina Segre, Esq., Karen Senser, Esq., and Segre & Senser, P.C. (collectively “S&S”).¹

¹ S&S has also filed Preliminary Objections to L&L’s Preliminary Objections. S&S objects to L&L’s reliance in its Preliminary Objections upon the California choice of forum clause in the Engagement Letter between CC&S and L&L. However, the court does not rely upon that forum selection clause in reaching its decision on L&L’s Preliminary Objections, so S&S’ Preliminary Objections are dismissed as moot.

In this action, plaintiff Crown, Cork & Seal Co., Inc. (“CCS”) has asserted claims for legal malpractice against S&S in connection with the documents S&S drafted with respect to certain California property owned and subsequently sold by CCS (the “California Property”). Due to a dispute involving the meaning of certain terms in one of the documents drafted by S&S, CC&S was involved in litigation in California regarding the California Property, which litigation was eventually resolved against CC&S (the “California Litigation”). L&L represented CC&S in the California Litigation and allegedly in connection with the California Property as well. During the course of representing CC&S in the California Litigation, L&L prepared Karen Senser for, and represented her at, her deposition, and L&L defended the depositions of two other CC&S witnesses, all in Philadelphia (the “Pennsylvania Depositions”).

In its Third-Party Complaint, S&S claims that the harm allegedly suffered by CC&S was not caused by S&S, but rather by the malpractice of L&L in connection with: 1) the California Property; 2) the California Litigation; and/or 3) the Pennsylvania Depositions. L&L objects that it is not subject to personal jurisdiction in Pennsylvania on any of S&S’ claims against it.

I. This Court Lacks General Personal Jurisdiction Over L&L.

Pennsylvania courts may exercise general personal jurisdiction over a corporate defendant when the corporation carries on “a continuous and systematic part of its general business within” Pennsylvania. 42 Pa. C.S. § 5301(a)(2)(iii). “Since there is no established legal test to determine whether a corporation’s activities are sufficiently continuous and systematic to warrant the exercise of general jurisdiction, a court engages in a factual analysis that focuses on the overall nature of the activity, rather than its

quantitative character.” Bizarre Foods, Inc. v. Premium Foods, Inc., 2003 WL 21120690 *4 (E.D. Pa. May 16, 2003).

S&S does not allege that L&L is incorporated in Pennsylvania, maintains offices in Pennsylvania,² has agents or employees in Pennsylvania, pays taxes in Pennsylvania, is registered with the Commonwealth to conduct business in Pennsylvania, and/or owns or leases property in Pennsylvania, which are the traditional bases for finding general jurisdiction. *See Efford v. Jockey Club*, 796 A.2d 370, 375 (Pa. Super. 2002). Instead, S&S alleges that L&L lawyers have traveled to Pennsylvania to participate in legal matters unrelated to this litigation and that L&L has a website that may be accessed by Pennsylvanians.

A. L&L’s Unrelated Conduct of Business in Pennsylvania Does Not Subject It to Jurisdiction in Pennsylvania.

S&S alleges that out of the approximately 200 attorneys that comprise L&L at any given time, several have had contact with Pennsylvania at some point during the six and one-half year period spanning from February, 1997 through August, 2003:

2 are/were admitted to practice in Pennsylvania;

4 are/were admitted to practice before the Third Circuit;

5 requested admission *pro hac vice* in 7 different cases pending before the United States District Court for the Eastern District of Pennsylvania;

5 were involved in transactions occurring in, or connected with, Pennsylvania;

and

25 have appeared in Pennsylvania on business, often to meet with clients.

² L&L’s offices are located in Los Angeles, Chicago, Nashville, and New York

In addition, in 10 different cases, L&L has had Pennsylvania co-counsel and on several such occasions the Pennsylvania counsel has served as local counsel. Furthermore, L&L apparently solicited a small amount of additional business from CC&S, which L&L claims to have performed entirely in California. These sporadic visits to, and largely unconnected contacts with, Pennsylvania are not systematic and continuous enough to subject L&L to general personal jurisdiction in Pennsylvania. *See McCall v. Formu-3 International, Inc.*, 437 Pa. Super. 575, 580, 650 A.2d 903, 906 (1994) (no general jurisdiction over defendant who entered into joint venture (unrelated to cause of action) with Pennsylvania company and “engaged in a series of on-going contacts, meetings, and opportunities to exchange information with several Pennsylvania companies.”)

L&L claims to have earned approximately \$208,569 for the work that L&L attorneys performed in Pennsylvania between February, 1997 and August, 2003, which amount is equivalent to 0.033% of L&L’s total billings for that period. Such a minimum amount of “sales” generated in Pennsylvania is not sufficient to confer general personal jurisdiction over L&L. *See Derman v. Wilair Services, Inc.*, 404 Pa. Super. 136, 150, 590 A.2d 317, 324 (1991) (no general jurisdiction over defendant that “does a small portion of its total business (approximately 1.5%) with residents of Pennsylvania”); *Alti, Inc. v. Dallas European*, 2002 WL 31409948 *2 (Phila. Co. Sept. 20, 2002) (defendant not subject to general jurisdiction were “Pennsylvania customers represented less than one percent of defendant’s revenues”).

B. L&L’s Website Does Not Subject It to Jurisdiction in Pennsylvania

L&L maintains a website for both informational and general advertising purposes. Pennsylvania state and federal courts “addressing the relationship between personal jurisdiction and the foreign [defendant’s] Internet web sites ha[ve] established a ‘sliding scale’ of jurisdiction based largely on the degree and type of interactivity on the web site.” Efford v. The Jockey Club, 796 A.2d 370, 375 (Pa. Super. 2002). “A passive website that does little more than make information available to those who are interested in it is not grounds for the exercise of [general] personal jurisdiction.” *Id.* L&L’s website is such a passive website, available to all with internet access and not targeted to Pennsylvanians. Therefore, L&L’s website does not make it subject to general personal jurisdiction in Pennsylvania.

II. This Court Has Limited Specific Personal Jurisdiction Over L&L.

Pennsylvania may exercise specific personal jurisdiction over L&L “to the fullest extent allowed under the Constitution of the United States . . . based on the most minimum contact with this Commonwealth allowed.” 42 Pa. C.S. § 5322(b).

In order to subject [L&L] to *in personam* jurisdiction there must be some act by which [L&L] purposely avails itself of the privilege of conducting activities within [Pennsylvania], thus invoking its benefits and protections of its laws . . . such that [L&L] could reasonably anticipate being haled into court [here].

Grimes v. Wetzler, 749 A.2d 535, 529 (Pa. Super. 2000).

S&S’ has asserted three claims for contributory malpractice against L&L. Firstly, that L&L committed malpractice when advising CC&S with respect to the California Property. *See* Third Party Complaint ¶ 14 . Secondly, that L&L committed malpractice in connection with the Pennsylvania Depositions. *See id.* ¶ 15. Lastly, that L&L

committed malpractice with respect to its conduct of the remainder of the California Litigation. *See id.* ¶ 17. The court must determine whether specific jurisdiction exists with respect to each claim brought against L&L because it is possible that the court will have jurisdiction with respect to some, but not all, of the claims. *See Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001).

A. This Court Has Jurisdiction Over L&L With Respect to Its Alleged Malpractice In Connection With the Pennsylvania Depositions.

In connection with the Pennsylvania Depositions, L&L traveled to and stayed in Pennsylvania and thereby purposely availed itself of the benefits and protections of Pennsylvania laws. Therefore, this court does have specific personal jurisdiction over L&L with respect to S&S' claim that L&L committed malpractice in connection with the Pennsylvania Depositions.

B. This Court Lacks Jurisdiction Over L&L With Respect to Its Alleged Malpractice In Connection With the California Property and the California Litigation.

With respect to the remainder of L&L's conduct of the California Litigation and its activities in connection with the California Property, if any, L&L "did not target this Commonwealth through [its] conduct" and should not be subject to jurisdiction in Pennsylvania. *See Grimes v. Wetzler*, 749 A.2d 535, 541 (Pa. Super. 2000). Phone calls and/or letters into the forum are not sufficient to establish minimum contacts for jurisdictional purposes where, as here, the focus of the dispute is outside the forum where the California Property was located and the California Litigation took place. *See Thomas v. Clark*, 8 Pa. D&C 3d 630, 634 (Phila. Co. 1978) ("the foreign attorney really has no contacts with Pennsylvania other than those required by the representation of a Pennsylvania resident in a non-Pennsylvania cause of action, with a Pennsylvania

attorney as co-counsel.”); Lynch v. New Jersey Automobile Full Insurance Underwriting Assoc., 762 F. Supp. 101, 104 (E.D. Pa. 1991) (“The placing of telephone calls or the sending of letters into the forum by a party to a contract is not sufficient.”).

Furthermore, California has a far greater interest than Pennsylvania in both the California Litigation and the California Property, which are the subject matter of the claims against L&L. See Kubik v. Letteri, 532 Pa.10, 21, 614 A.2d 1110, 1116 (1992) (“There is no question that Pennsylvania has a strong interest in adjudicating a dispute involving real estate located in Pennsylvania.”) Therefore, S&S’ claims against L&L for malpractice in connection with the California Property and the California Litigation (other than the Pennsylvania Depositions) must be dismissed.

CONCLUSION

For all the foregoing reasons, additional defendants’ Preliminary Objection to the Third-Party Complaint are sustained in part and overruled in part, and third-party plaintiffs’ Preliminary Objections to additional defendants’ Preliminary Objections are dismissed as moot.

BY THE COURT,

C. DARNELL JONES, II, J.

Dated: April 26, 2004