

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

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TRIAD ML MARKETING, INC., et al.	:	February Term 2005
	:	
Plaintiffs,	:	No. 0900
	:	
v.	:	
	:	Commerce Program
CLARK & TREVITHICK, P.C., et al.	:	
	:	Control No.: 050962
Defendants.	:	

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**ORDER**

**AND NOW**, this 1<sup>st</sup> day of September 2005, upon consideration of the Preliminary Objections of Defendant Clark & Trevithick, all responses in opposition, the respective memoranda, all matters of record, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** and **DECREED** that said Preliminary Objections are **SUSTAINED** and that Plaintiffs' Complaint is **DISMISSED** as to Clark & Trevithick for lack of personal jurisdiction.

**BY THE COURT:**

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**HOWLAND W. ABRAMSON, J.**

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**MEMORANDUM OPINION**

***HOWLAND W. ABRAMSON, J.***

Before the court are the Preliminary Objections of Defendant Clark & Trevithick (“C&T”) in the form of a Motion to Dismiss for Lack of Personal Jurisdiction. For the reasons fully set forth below, said Preliminary Objections are sustained.

**BACKGROUND**

According to the Complaint, Defendant Fineman, Krekstein & Harris, P.C. (“Fineman”), a Pennsylvania law firm, was hired by Plaintiffs to represent their interests in litigation pending in California (the “California Litigation”). C&T, a California law firm, was hired to serve as local counsel and the agreement was memorialized in an engagement letter which required Plaintiffs to cooperate with C&T. Pl. Resp. Exh. B. Thereafter, a dispute arose among the parties in connection with said representation. In December 2004, Fineman brought an action against Plaintiffs for the collection of outstanding legal fees in the matter styled Fineman, Krekstein & Harris, P.C. v. Triad ML Marketing, Inc., December Term, 2004, No. 1233 (Phila. Ct. Com. Pl.) (the “Collection Action”). In February 2005, Plaintiffs brought the instant action

against both C&T and Fineman asserting claims for negligence, breach of fiduciary duty and breach of contract (the “Legal Malpractice Action”). In March 2005, Plaintiffs filed a motion to consolidate the Legal Malpractice Action with the Collection Action, which was unopposed. The cases were subsequently consolidated by the court.

## **DISCUSSION**

C&T has filed the instant Preliminary Objections claiming that this court lacks personal jurisdiction over it. The court agrees.

### **I. This Court Lacks General Personal Jurisdiction Over C&T**

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 U.S. Dist. LEXIS 8166 (E.D. Pa. May 16, 2003).

Triad does not allege that C&T is incorporated in Pennsylvania, maintains offices in Pennsylvania, 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*, 2002 Pa. Super. LEXIS 462, 796 A.2d 370, 375 (2002). Instead, Plaintiffs allege that C&T placed dozens of phone calls, sent approximately 100 email messages and dozens of pieces of correspondence, including invoices, to Plaintiffs in Pennsylvania. Compl. ¶¶ 9-13. Plaintiffs also contends that both Fineman & C&T were part of a group of lawyers/law firms that

referred cases to each other.<sup>1</sup>

However, the court finds these contacts with Pennsylvania are not systematic and continuous enough to subject C&T 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.”); 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”); Crown Cork & Seal Co. v. Montgomery, 2004 Phila. Ct. Com. Pl. LEXIS 22 (Phila. 2004) (out-of-state law firm which served as local counsel to Pennsylvania firm not subject to general or specific jurisdiction based on insufficient contacts); Alti, Inc. v. Dallas European, 2002 Phila. Ct. Com. Pl. LEXIS 97 (Phila. 2002) (defendant not subject to general jurisdiction were “Pennsylvania customers represented less than one percent of defendant’s revenues”).

## **II. This Court Lacks Specific Personal Jurisdiction Over C&T**

Pennsylvania may exercise specific personal jurisdiction over C&T “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 [C&T] to *in personam* jurisdiction there must be some act by which [C&T] purposely avails itself of the privilege of conducting activities within [Pennsylvania], thus invoking its benefits and protections of its laws . . . such that [C&T] could reasonably anticipate being haled into court [here].

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<sup>1</sup> Plaintiffs also argue that C&T somehow consented to jurisdiction by failing to oppose Plaintiffs’ Motion to Consolidate the Legal Malpractice Action with the Collection Action. However, the court finds this fact to be of no consequence and certainly does not serve to establish personal jurisdiction over C&T in Pennsylvania.

Grimes v. Wetzler, 2000 Pa. Super. 90, 749 A.2d 535, 529 (2000).

The court does not find that Plaintiffs have satisfied their burden of proving specific jurisdiction. By Plaintiffs' own admission, C&T was hired to serve as local counsel in connection with litigation pending in California. C&T's activities in connection with the California Litigation "did not target this Commonwealth through [its] conduct" and should not be subject to jurisdiction in Pennsylvania. Id. at 541. 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, which is where the California Litigation took place. See Thomas v. Clark, 8 Pa. D.&C.3d 630, 634 (Phila. 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) ("[t]he 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 the California Litigation, which is the subject matter of the claims against C&T. See Kubik v. Letteri, 532 Pa.10, 21, 614 A.2d 1110, 1116 (1992) ("[t]here is no question that Pennsylvania has a strong interest in adjudicating a dispute involving real estate located in Pennsylvania.") As such, Plaintiffs claims against C&T for legal malpractice in connection with the California Litigation must be dismissed for lack of jurisdiction.

**CONCLUSION**

For the reasons fully set forth above, the Preliminary Objections of Defendant Clark & Trevithick for lack of personal jurisdiction are sustained. Plaintiffs' Complaint is dismissed in its entirety as to Clark & Trevithick for lack of jurisdiction.

**BY THE COURT:**

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**HOWLAND W. ABRAMSON, J.**