

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

YUN SEOK KIM	:	CIVIL TRIAL DIVISION
Appellant,	:	
	:	JUNE TERM, 2006
v.	:	No. 502
	:	
BO CHEON SEO AND HALLELUJAH	:	
DRIVING SCHOOL	:	Superior Court Docket No.
Appellees	:	3071 EDA 2007
	:	

**OPINION**

**Tereshko, J.**

**PROCEDURAL HISTORY**

Plaintiff, Yun Seok Kim appeals from the Order dated October 16, 2007, wherein the trial Court granted Defendants' Preliminary Objections as to Defendants Bo Cheon Seo and Hallelujah Driving School (collectively known as defendants) and dismissed plaintiff's Complaint.

**FACTUAL BACKGROUND**

On June 9, 2004, Yun Seok Kim (hereinafter plaintiff) was a passenger in a vehicle being driven by Bo Cheon Seo (hereinafter Seo) westbound on interstate 10 near Normandie Avenue in Los Angeles, California. (Complaint, ¶4). At the time of this incident, Seo was operating the automobile as an employee and agent of Hallelujah Driving School. (hereinafter Hallelujah) (Complaint, ¶5). Plaintiff paid Seo fifty (\$50.00) dollars to drive her from a driver's license test at the California Department of Motor Vehicles. (Complaint, ¶10). It is alleged that Seo's vehicle was traveling at an

excessive speed as he exited Interstate 10 onto an exit ramp whereby he caused an accident by striking another vehicle. (Complaint, ¶5-10).

As a result of this accident plaintiff sustained injuries which are generally described as aches and, severe physical pain and mental anguish. (Complaint, ¶19).

On June 8, 2006, plaintiff commenced this action for negligence against the defendants alleging that Seo as the driver of the vehicle and agent of Hallelujah failed to keep his vehicle in a safe manner resulting in the aforementioned injuries to plaintiff. (See Complaint). Although initially listed as a major jury case by plaintiff, this Court remanded the case to arbitration after a case management conference was held.

Seo filed preliminary objections to plaintiff's Complaint on September 20, 2007. (See Docket). On the same date the prothonotary entered a default judgment against Hallelujah for failure to file an Answer to the Complaint (See Docket). Hallelujah then petitioned the Court to open the default judgment on October 10, 2007 and also filed its preliminary objections to plaintiff's Complaint. (See Docket). The petition to open the default judgment was not assigned or disposed of by this Court, rather it was designated as moot by civil administration.

By Order dated October 16, 2007, this Court granted defendants' preliminary objections and dismissed this action with prejudice. This Order was docketed on October 19, 2007. Hallelujah's petition to open the default judgment was marked as moot pursuant to this Court's Order granting the preliminary objections.

Plaintiff filed her notice of appeal on November 19, 2007 and issued their statement of matters accordingly.

The sole issue on appeal is whether this Court committed an error of law or abused its discretion in granting defendants' preliminary objections and dismissing plaintiff's Complaint.

### **LEGAL ANALYSIS**

Plaintiff contends that Philadelphia, Pennsylvania is the appropriate jurisdiction and venue in which to bring this action, yet they have shown no support for this theory.

The plaintiff cannot bring this action in a Pennsylvania Court unless in personam jurisdiction (i.e. personal jurisdiction) exists over the defendants.

When preliminary objections, if sustained, would result in the dismissal of an action, such objections should be sustained only in cases that are clear and free from doubt. *Garzone v. Kelly*, 406 Pa. Super. 176, 183, 593 A.2d 1292, 1296 (1991).

Moreover, when deciding a motion to dismiss for lack of personal jurisdiction, the court must consider the evidence in the light most favorable to the nonmoving party. *Id.*

Our Superior Court has held that dismissal for lack of personal jurisdiction in personal injury cases is warranted where plaintiff fails to show personal jurisdiction exists over a defendant(s) if either of the following two bases is present: (1) specific jurisdiction (under 42 Pa.C.S.A. § 5322) based upon specific acts of the defendant which gave rise to the cause of action, and (2) general personal jurisdiction (under 42 Pa.C.S.A. § 5301), based upon a defendant's general activity within the state.... The question of whether a state may exercise specific jurisdiction over a non-resident defendant must be tested against both the state's long-arm statute (here 42 Pa.C.S.A. § 5322) and the due process clause of the fourteenth amendment. *Bloom v. Fine*, 439 Pa. Super. 350 , 653 A.2d 1292 (1995).

Although the early cases dealing with the assertion of personal jurisdiction over non-residents dealt with corporate defendants, the United States Supreme Court made it clear in *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985), that the analysis and standards applied in corporate cases are equally well-suited and are thus applicable to cases dealing with individual defendants.

Once a defendant asserts a lack of personal jurisdiction, the burden to prove otherwise is on the plaintiff. *Provident Nat. Bank v. California Fed. Sav. & Loan, Inc.*, 819 F.2d 434, 437 (3d Cir. 1987). To satisfy this burden, a plaintiff must establish with reasonable particularity sufficient contacts between the defendant and the forum state. *Mellon Bank (East) PSFS v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992).

First, this Court will address whether Pennsylvania may exercise in personam jurisdiction over these non-residents defendant pursuant to both the state's long-arm statute and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Kenny v. Alexson Equipment Co.*, 495 Pa. 107, 432 A.2d 974 (1981).

Pennsylvania's long-arm statute (42 Pa.C.S.A. §5322) states in pertinent part: Basis of personal jurisdiction over persons outside this Commonwealth

(a) GENERAL RULE.-- A tribunal of this Commonwealth may exercise personal jurisdiction over a person (or the personal representative of a deceased individual who would be subject to jurisdiction under this subsection if not deceased) who acts directly or by an agent, as to a cause of action or other matter arising from such person:

(3) Causing harm or tortious injury by an act or omission in this Commonwealth.

(b) EXERCISE OF FULL CONSTITUTIONAL POWER OVER NONRESIDENTS.-- In addition to the provisions of subsection (a) the jurisdiction of the tribunals of this Commonwealth shall extend to all persons who are not

within the scope of section 5301 (relating to persons) to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.

Plaintiff's Complaint alleges that she was injured in Los Angeles, California. Thus, neither of the defendants caused harm or tortious injury to plaintiff in the Commonwealth of Pennsylvania within the meaning of the long-arm statute.

Additionally, the contacts which defendants had with Pennsylvania were not sufficient to satisfy the constitutional requirements necessary to justify the exercise of personal jurisdiction pursuant to 42 Pa.C.S.A. § 5322(b). §5322(b) authorizes personal jurisdiction to the fullest extent allowable under the United States Constitution.

Consistent with constitutional requirements of due process, the non-resident defendant is required to have certain "minimum contacts" with the forum state. *DeFay v. McMeekin*, 352 Pa.Super. 409, 508 A.2d 324 (1986) citing *International Shoe Company v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945) and *Pecot, Inc. v. Sirianni*, 295 Pa.Super. 462, 441 A.2d 1324 (1982). The policy underlying the "minimum contacts" test were clarified in the case of *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559 (1980) as follows, "It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And, it acts to ensure that the states, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." Id. at 567.

In order for "minimum contacts" to be present, a foreign entity must "purposefully avail itself of the privilege of conducting activities within the forum state" so that the defendant has "clear notice that it is subject to suit there." Id. at 567.

In the case, *sub judicie*, Pennsylvania does not have a strong interest in applying its laws in this controversy. With Seo and Hallelujah both having addresses in California, they would suffer significant inconvenience and additional cost if forced to litigate this matter in Pennsylvania. The most convenient location for the litigation is California because California: 1) is the location of the accident; 2) is the location of where the injury occurred; 3) is the location of the both defendants; and 4) is where all witnesses to the accident reside.

Plaintiff has not provided any specific evidence that would enable her to prove that Seo and Hallelujah conducted business in Pennsylvania so as to “purposefully avail” themselves of conducting business in this state. Plaintiff attempt to allege that because plaintiff used the “services” of Hallelujah and, Seo as its employee, for purposes of taking and passing the California license exam, this conduct amounts to conducting business in Pennsylvania. (Response to Motion to Determine Preliminary Objections, ¶5-14). However, all the “services” of Seo and Hallelujah provided to plaintiff for obtaining her California driving license were offered in the state of California and not Pennsylvania. Plaintiff also reiterates that Hallelujah is a “well-established institution that draws clients from all over the nation due to California’s lenient license requirements” in a further attempt to establish business contacts in Pennsylvania. (Response to Motion to Determine Preliminary Objections, ¶5-14). However, the do not allege any specific contacts, which would indicate that Hallelujah and Seo have minimum contacts with the state of Pennsylvania. These are the only facts they allege for arguing that jurisdiction in proper in Pennsylvania and in this venue.

Thus, plaintiff has failed to prove that personal jurisdiction in Pennsylvania is proper under either the long-arm statute or the constitutional standards as set forth in Fourteenth Amendment Due Process Clause of the United States Constitution.

Finally, this Court addresses whether the state of Pennsylvania has general jurisdiction over Seo and Hallelujah pursuant to 42 Pa.C.S.A. §5301(a)(2) to exercise personal jurisdiction over Seo as an individual defendant and Hallelujah as a corporate defendant. According to 42 Pa.C.S.A. §5301(a)(2):

(a) The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:

(1) Individuals.

- (i) Presence in this Commonwealth at the time when process is served.
- (ii) Domicile in this Commonwealth at the time when process is served.
- (iii) Consent, to the extent authorized by the consent.

(2) Corporations.—

- (i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.
- (ii) Consent, to the extent authorized by the consent.
- (iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

In applying the statute to the case at bar, neither Seo nor Hallelujah meet any the criteria listed to assert jurisdiction in Pennsylvania. Seo is a resident of Torrance, California, was served in California and never consented to jurisdiction in the state of Pennsylvania. Hallelujah is not incorporated or registered as a foreign corporation under the laws of Pennsylvania, nor have they consented to jurisdiction in the state of Pennsylvania. Hallelujah has a business address located in Cerritos, California and was

served in California. The accident also occurred in California. Lastly, Hallelujah does not carry on continuous and systematic business within the state of Pennsylvania and plaintiff has been unable to establish specific evidence to the contrary. Therefore, plaintiff has improperly asserted personal jurisdiction to be in the state of Pennsylvania and as a result this action was properly dismissed.

### **CONCLUSION**

For the foregoing reasons, this Court believes that the Order dated October 16, 2007 granting the Defendants' Preliminary Objections and dismissing the case should be affirmed.

**BY THE COURT:**

**3-12-2008**

Date

**ALLAN L. TERESHKO, J.**

cc:

Hae Yeon Baik, Esq. for Appellant

Samantha Jennifer Evian, Esq. for Appellees