

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

THOMAS H. FRANCESKINO, JR. :
Plaintiff, :
 :
VS. : Civil No. 3:01CV1835 (AVC).
 :
MICHAEL O. WOMACK AND WOMACK :
MATERIAL HANDLING SYS., INC., :
Defendants :

RULING ON THE DEFENDANT WOMACK'S MOTION TO DISMISS

This is an action for damages alleging breach of a contract of employment. The defendant, Michael O. Womack, moves pursuant to Fed. R. Civ. P. 12(b)(2) to dismiss the action for want of personal jurisdiction. He argues that since he a resident of Florida and the complaint seeks damages against him for actions allegedly taken by him in his capacity as an employee and officer of a corporation, he is beyond the reach of Connecticut's long arm statute. Moreover, Womack asserts that requiring him to litigate in Connecticut would offend the due process clause of the Fourteenth Amendment to the United States Constitution.

The issues presented are: (1) whether the Connecticut long arm statute, Conn. Gen. Stat. § 52-59b, authorizes the exercise of jurisdiction over Womack; and (2) whether requiring Womack to litigate in Connecticut comports with the due process clause of the Fourteenth Amendment to the United States Constitution.

For the reasons hereinafter set forth, the court concludes that Womack is within the reach of the Connecticut long arm statute, and that requiring Womack to litigate in Connecticut

would not offend the due process clause of the Fourteenth Amendment. Accordingly, the motion to dismiss is DENIED.

FACTS

Examination of the complaint, pleadings, and affidavit accompanying the motion to dismiss, and the responses thereto, disclose the following undisputed, material facts. In July of 1978, the defendant, Michael O. Womack, founded a distribution company known as Womack Material Handling Systems, Inc. (WMHSI), in Wallingford, Connecticut. On October 20, 1980, Womack hired the plaintiff, Thomas H. Franceskino, to work in an undisclosed capacity and, in 1982 promoted him to the position of operations manager. In this capacity, the plaintiff alleges that, under the direction of Womack, he handled a variety of issues, including customer relations, company hiring, training, and the supervision of service technicians.

During February of 1985, Womack promoted the plaintiff to the position of Vice President and allegedly promised to give him a 10% equity position in WMHSI in consideration for his expanding role, his non-compensated efforts over the previous three years, and his continued and expanding commitment to WMHSI. (See Franceskino Aff. at ¶ 9). The complaint alleges that, in this regard, Womack promised the plaintiff, inter alia, that when he was ready to leave or retire, or when Womack sold WMHSI, Womack would assess a 10% value of WMHSI at a year end 1985 value and

then subtract that figure from the 10% value of WMHSI at the time of his departure. Womack would then pay the difference to the plaintiff as his equity position. (Franceskino Aff. at ¶ 9, compl. at ¶ 12).

In 1994, Womack moved to Florida but continued to conduct business in Connecticut. On or about February 11, 1996, the plaintiff met with Womack at Womack's condominium in Quarry Village in Cheshire, Connecticut. (Franceskino Aff. at ¶ 10). There, Womack allegedly told the plaintiff that he planned to sell WMHSI and that he would not be honoring the previously promised 10% equity position. On February 18, 1996, the plaintiff resigned from WMHSI and did not receive the allegedly promised equity. (Franceskino Aff. at ¶¶ 14,15). On September 12, 2001, the plaintiff filed the present action, seeking damages based on common law precepts concerning breach of contract, promissory estoppel and unjust enrichment.

The plaintiff asserts, and the defendants do not dispute, that from 1978 to 1994, Womack owned 100% of WMHSI's stock, and that from 1994 to 2000, Womack owned 70% of WMHSI's stock. (Franceskino Aff. at ¶ 17). The plaintiff further asserts, and the defendants do not dispute, that Womack no longer owns WMHSI but continues to own the real property upon which WMHSI sits (Franceskino Aff. at ¶ 8), collects revenue as the lessor of that property (Opposition Memo. at 6) and, in addition, owns another

business in Connecticut known as Precision Devices, Inc.

STANDARD

On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, a plaintiff bears the burden of showing that the court has jurisdiction over a defendant. Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 566 (2d Cir. 1996).

Where, as here, a defendant moves to dismiss for lack of personal jurisdiction prior to discovery, a plaintiff may defeat the motion with legally sufficient allegations of jurisdiction. Ball v. Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 197 (2d Cir. 1990). At that stage, the plaintiff's proof is satisfied by a prima facie showing. Hoffritz for Cutlery, Inc. v. Amajac, Ltd., 763 F.2d 55, 57 (2d Cir. 1985). Once discovery commences, the plaintiff's burden is more stringent and he must submit an averment of facts that, if credited by the trier of fact, would suffice to establish jurisdiction over the defendant. Ball, 902 F.2d at 197.

DISCUSSION

Connecticut utilizes a familiar two-step analysis to determine if a court has personal jurisdiction over a party brought before it. Savage v. Scripto-Tokai Corp., 147 F. Supp.2d 86, 90 (D. Conn. 2001). The court must first inquire whether, under the facts of the case, the state's long arm statute may be asserted as a basis for jurisdiction over the defendant. Frazer

v. McGowan, 198 Conn. 243, 246, 502 A.2d 905 (1986). Once jurisdiction has been attached under the long-arm statute, the court must then determine whether the exercise of jurisdiction satisfies the federal constitutional requirement of due process. Bensmiller v. E.I. Dupont de Nemours & Co., 47 F.3d 79, 81 (2d Cir. 1995).

1. Connecticut Long Arm Jurisdiction

Womack first asserts that the plaintiff has failed to establish personal jurisdiction over him under the Connecticut long arm statute because he is not a resident of Connecticut and the conduct alleged concerns actions he took in his capacity as an employee and officer of a corporate defendant. In response, the plaintiff maintains that long arm jurisdiction is indeed authorized, as Womack transacted business within the state, committed tortious conduct in Connecticut and, in addition, owns real property within the state. Further, the plaintiff argues that, contrary to Womack's assertion, the corporate defendant is incapable of shielding Womack from the reach of this court's jurisdiction.

Having considered the arguments and evidence presented, the court concludes that the plaintiff has succeeded in presenting one legally sufficient allegation of long arm jurisdiction. The Connecticut long arm statute, Conn. Gen. Stat. § 52-59b(a) provides, in relevant part:

As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident individual. . . who in person or through an agent: (1) Transacts any business within the state; or (2) commits a tortious act within the state. . . or (4) owns, uses or possesses any real property situated within the state.

Id. Under the fiduciary shield doctrine, however, "[i]f an individual has contact with a particular state only by virtue of his acts as a fiduciary of [a] corporation, he may be shielded from the exercise, by that state, of jurisdiction over him personally on the basis of that conduct." Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 902 (2d Cir. 1981). The underpinning of this doctrine "is the notion that it is unfair to force an individual to defend a suit brought against him personally in a forum with which his only relevant contacts are acts performed not for his own benefit but for the benefit of his employer." Id. Consequently, "[i]f the corporation is merely a shell, it is equitable. . . to subject its owner personally to the court's jurisdiction to defend the acts he has done on behalf of his shell." Id. at 902. In determining whether a cause of action arises from any of the acts enumerated in § 52-59b, Connecticut courts look to both Connecticut case law and New York case law. Zatolas v. Nisenfeld, 184 Conn. 471, 474, 440 A.2d 179, 181 (1981).

A. Transacting Business

In order for a plaintiff to show that a defendant transacts business within this state sufficient to serve as a predicate for long arm jurisdiction, the plaintiff must establish that the defendant transacted business within the state at the time the plaintiff commenced the action. Russell v. Quinn, No. 96civ8026, 1997 WL 124121 (S.D.N.Y. March 19, 1997)(quoting Lancaster v. Colonia Motor Freight Line, 177 A.D.2d 152, 581 N.Y.S.2d 283, 287 (1st Dep't 1992)). Further, the plaintiff must demonstrate a substantial relationship between the business transacted by the defendant in the state and the plaintiff's cause of action. Beacon Enterprises, Inc. v. Menzies, 715 F.2d 757, 763 (2d Cir. 1983); see also Lancaster, 581 N.Y.S.2d at 287.

The record reflects that, at the time the plaintiff commenced the action on September 12, 2001, Womack resided in Florida, no longer owned WMHS but continued to conduct business in Connecticut. The record does not reflect the specific type of business Womack transacted and hence, the court is unable to determine whether any relationship exists between Womack's business in Connecticut and the plaintiff's breach of contract claim. Consequently, the plaintiff has failed to show that Womack transacted business within Connecticut sufficient to authorize long arm jurisdiction.

B. Tortious Conduct

The plaintiff next argues that long arm jurisdiction is

authorized under Conn. Gen. Stat. § 52-59b (a)(2) for tortious acts committed in the state, on grounds that, the gravamen of his breach of contract claim is Womack's tortious act in Connecticut of "misrepresenting his intentions to compensate [the] plaintiff for his services. . . and denying that an oral agreement existed." (Opposition Memo. at 5). While the argument is an interesting one, the complaint simply fails to state any cause of action grounded in tort and, instead, is composed of claims arising in contract and quasi-contract. Consequently, long arm jurisdiction is not authorized under § 52-59b (a)(2). See e.g., Brown v. Atlantic Casualty Ins. Co., No. CV98-0415999S, 1998 WL 811368, *2 (Conn. Super. Ct. Nov. 13, 1998) (plaintiff can not invoke long arm jurisdiction for tortious conduct where complaint alleges only breach of contract and statutory claims).

C. Real Property

The plaintiff next argues that long arm jurisdiction is authorized over Womack under § 52-59b (a)(4) on the ground that Womack uses or possesses real property situated in the state. The court agrees.

Conn. Gen. Stat. § 52-59b (a)(4) authorizes long arm jurisdiction over a non-resident individual who owns, uses or possesses any real property situated within the state. Id. "Like transacting business, . . . use or possession of real property as a basis for in personam jurisdiction requires that

the real property interests involved be related to the subject matter of the litigation." Chemical Bank v. Schlesinger, No. CV920122878S, 1993 WL 540159, *2 (Conn. Super. Ct. Dec. 21, 1993). The real property need not be the subject of the lawsuit, but the plaintiff must show that "a substantial connection exists between the basis of the cause of action and the ownership of the property." Id. at *3 (quoting Darmath v. Reintz, 485 So.2d 881, 883 (Fla. 1986)).

The gravamen of this action is that Womack breached a contract of employment with the plaintiff, in that he breached a promise to pay the plaintiff 10% of his business, a business in which the Connecticut property is part and parcel. Hence, there is a substantial relationship between Womack's real property in Connecticut and the basis for this lawsuit. Further, Womack may not avail himself of the fiduciary shield doctrine because the predicate for jurisdiction here is his ownership of real property in Connecticut, not some action he took in Connecticut on behalf of a corporate employer. Accordingly, Womack is subject to the court's jurisdiction under Conn. Gen. Stat. § 52-59b (a)(4).

2. Due Process and the Fourteenth Amendment

Womack also asserts that the court is without personal jurisdiction over him because requiring him to litigate in Connecticut would violate the due process clause of the Fourteenth Amendment to the United States Constitution. He does

not, however, submit any argument on this issue and, in any event, the court concludes that any argument would be without merit.

In determining whether the exercise of personal jurisdiction in a particular case violates due process, the Supreme Court has provided broad guidance which centers on a court's inquiry into whether the assertion of jurisdiction comports with "traditional notions of fair play and substantial justice." Nielsen v. Sioux Tools, Inc., 870 F. Supp. 435, 438 (D. Conn. 1994) (citing International Shoe v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945)). "The focus for application of this broad standard has been consideration of whether there are 'minimum contacts' between the defendant and the forum state." Neilsen, 870 F. Supp. at 438. There is no requirement that such contacts be continuing at the time the suit is filed, id., and are sufficient where a plaintiff simply shows "some act by which the defendant purposely avails [him]self of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of the laws." Neilsen, 870 F. Supp. at 438 (quoting Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228 (1958)). "In addition to the minimum contacts analysis, the reasonableness of the exercise of jurisdiction in each case will depend upon an evaluation of the interests of the forum state and the plaintiff's interest in obtaining relief." Id. (citing

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 313, 100 S.Ct. 559, 568 (1980)).

The court is of the opinion that the assertion of jurisdiction over Womack is entirely reasonable and would not offend traditional notions of fair play and substantial justice. There is no question that Womack purposely availed himself of the privilege of conducting activities within Connecticut-- he has lived here, continues to own real property and at least one business here, and he has prospered here. He also engaged the plaintiff in a contract of employment in this state, a contract that is now the subject of this litigation. Although Womack now resides in Florida, that is of little significance. Womack could "reasonably anticipate being haled into court [in Connecticut]" to answer for any injury caused by his breach of that employment contract. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). Furthermore, the plaintiff has a strong interest in obtaining relief in the state in which he resides, and the state of Connecticut clearly has an interest in providing a forum for any citizen aggrieved by a breach of contract. Accordingly, Womack's due process rights are not offended by the assertion of the court's jurisdiction.

CONCLUSION

For the foregoing reasons, Womack's motion to dismiss the complaint for want of personal jurisdiction (document no. 15) is

DENIED.

It is so ordered this 25th day of January, 2002 at Hartford,
Connecticut.

Alfred V. Covello
Chief United States District Judge