

DOCKET NO.: CV-01-0811205-S : SUPERIOR COURT
: :
AMERICAN RECYCLING COMPANY, INC. : JUDICIAL DISTRICT OF
: HARTFORD
: :
V. : AT HARTFORD
: :
DIRECT MAILING AND FULFILLMENT :
SERVICES, INC., d/b/a DIRECT GROUP : SEPTEMBER 24, 2001

**PLAINTIFF’S SUR-REPLY MEMORANDUM OF LAW
IN OPPOSITION TO MOTION TO DISMISS**

On November 21, 2001, defendant moved to dismiss the plaintiff’s complaint “on the grounds that this Court lacks personal jurisdiction under Conn. Gen. Stat. § 52-59b” because defendant allegedly did not “transact business” in Connecticut within the meaning of that long-arm statute. Plaintiff’s opposition clarified that

- (1) the applicable long-arm statute, C.G.S. § 33-929(f) does not require the transaction of business in Connecticut;
- (2) this action arises out a “contract made in this state or to be performed in this state” and involves the defendant’s distribution of goods to Connecticut within the meaning of the applicable long-arm statute; and
- (3) defendant had the constitutionally required minimum contacts with Connecticut because it (a) entered a contract with a Connecticut corporation that anticipated the performance of services by the Connecticut corporation primarily in Connecticut, (b) sold products for use in Connecticut; and (c) sent correspondence to Connecticut and made telephone calls to Connecticut in connection with the business transaction. See Plaintiff’s Opposition Brief.

Plaintiff submitted an affidavit in support of its opposition that attested to the foregoing facts, in addition to stating that defendant’s officers met with representatives of plaintiff in Connecticut to discuss defendant’s purchase of equipment and the contract at issue. Id., Exhibit A.

On May 16, 2002, defendant filed a Reply Memorandum in support of its motion to dismiss. Defendant did not dispute any of the facts or supporting law related to paragraphs (1) through (3), above, all of which establish that Connecticut has jurisdiction over this action. Defendant's only response is an affidavit of one of its officers claiming that the visit to Connecticut described in plaintiff's affidavit was "an isolated incident" that "had no relationship to the lawsuit or the contract between the plaintiff and defendant." Reply Brief, p.3. The defendant has clearly failed to meet its burden to justify dismissal.

First, the court has jurisdiction regardless of whether defendant's officers **ever** stepped foot in Connecticut based upon defendant's other contacts. See Advanced Claims Service v. Franco Enterprises, 2000 Conn. Super. LEXIS 269 at * 10-11 (October 13, 2000) (Melville, J.); Thornton & Company, Inc. v. Pennsak, Inc., 1998 Conn. Super. LEXIS 3474 at * 8-9 (November 20, 1998) (Robinson, J.); Senior v. American Institute for Foreign Study, 1996 Conn. Super. LEXIS 343 at *6-7 (February 7, 1996) (Karazin, J.); Salisbury Group v. Alban Institute, 1996 Conn. Super. LEXIS 1702 (July 3, 1996) (Pickett, J.) (All attached to plaintiff's Opposition brief). Consequently, plaintiff did not even rely upon defendant's physical presence in Connecticut in its opposition brief, much less "seize[] upon an isolated instance in which the defendant's [sic] made one visit to Connecticut . . . to claim that this Court has jurisdiction." Reply Brief, p.3.

Second, dismissal would be inappropriate even assuming *arguendo* that the court's jurisdiction hinged upon the purpose of defendant's visit to Connecticut, because this issue is a disputed fact. Standard Tallow Corp. v. Jowdy, 190 Conn. 48, 56, 459 A.2d 503 (1983). Plaintiff submitted an affidavit testifying that defendant's visit to Connecticut was related to the parties' contract, and defendant has submitted an affidavit claiming that the visit was unrelated

to the parties' contract. Compare Trouden affidavit and Burton Affidavit. Thus, at minimum, "due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses." Standard Tallow Corp., at 56.

For the foregoing reasons, in addition to those set forth in plaintiff's opposition brief, plaintiff respectfully requests that the court deny the defendant's motion to dismiss.

The Plaintiff,
American Recycling Company, Inc.

By:

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