

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JOHN TOE #2, :
 :
 : C.A. No. 09C-12-033 WLW
 :
 Plaintiff, :
 :
 :
 :
 v. :
 :
 :
 BLESSED HOPE BAPTIST CHURCH, :
 INC. OF HARFORD COUNTY, a :
 Maryland corporation; BLESSED ROCK :
 ACADEMY aka THE MITCHELL'S :
 HOME FOR BOYS; FAITH BAPTIST :
 CHURCH; PASTOR ALLEN RYMAN, :
 individually and in his official capacity; :
 PASTOR BILL HANKS, individually :
 and in his official capacity; GEORGE C. :
 MITCHELL, II, individually and in his :
 official capacity; SHANNON :
 MITCHELL, individually and in her :
 official capacity, :
 :
 :
 Defendants. :

Submitted: October 28, 2011
Decided: January 31, 2012

ORDER

Upon Defendants' Blessed Hope Baptist Church, Inc. of Harford
County and Pastor William J. Hanks' Renewed Motion to Dismiss.
Granted.

Thomas C. Crumplar, Esquire and Jordan J. Ponzo, Esquire of Jacobs & Crumplar,
P.A., Wilmington, Delaware and Raeann Warner, Esquire of The Neuberger Firm,
P.A., Wilmington, Delaware; attorneys for Plaintiff.

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Barry M. Willoughby, Esquire and Maribeth L. Minella, Esquire of Young Conaway Stargatt & Taylor, LLP, Wilmington, Delaware and Robert K. Beste, III, Esquire of Smith Katzenstein & Furlow, LLP, Wilmington, Delaware; attorneys for Defendants Blessed Hope Baptist Church of Harford County, Inc. And Pastor William J. Hanks.

WITHAM, R.J.

FACTS

_____ On December 18, 2009, Jane Toe #1 filed this action as the mother and guardian *ad litem* of Plaintiff John Toe #2 (hereinafter “Plaintiff”). On February 4, 2010, the Court granted a Motion to Substitute Parties, making John Toe #2 the sole Plaintiff in this action. Plaintiff alleges that he was sexually abused by Shannon Mitchell (hereinafter “Shannon”), a teacher at the Blessed Rock Academy (hereinafter “Academy”). Shannon’s now ex-husband, George Mitchell (hereinafter “George”), who operated and taught at the Academy, is also a named defendant. Pastor Bill Hanks (hereinafter “Hanks”) is the Pastor at Blessed Hope Baptist Church, Inc. (hereinafter “Blessed Hope”). Plaintiff contends that the Academy is essentially a subsidiary of Blessed Hope, maintaining that Defendants operated the Academy on land owned by Hanks’s wife, and that Academy students were required to attend Sunday services at Blessed Hope. Plaintiff alleges that Hanks played an important role in the operation of the Academy, including providing transportation and acting as a disciplinarian. Defendant Hanks lives in Maryland and does not conduct any business or own any real property in Delaware. Blessed Hope is located in Maryland, incorporated in Maryland, and conducts no business in Delaware. Blessed Hope alleges that it has no employees, and as such, it never employed Shannon or George Mitchell. On June 30, 2010, the Court issued an order deferring Blessed Hope’s and Pastor Bill Hanks’ Motion to Dismiss. In that order, the Court expressed considerable doubt that Plaintiff could obtain jurisdiction in Delaware. Nevertheless, the Court could not conclude that the claim of personal jurisdiction over Defendants

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was frivolous, and the Court allowed further discovery on the issue of personal jurisdiction. Defendants, Blessed Hope and Hanks, renew their motion to dismiss under Delaware Rule of Civil Procedure 12(b)(2), lack of personal jurisdiction.

Standard of Review

To establish personal jurisdiction over a nonresident defendant, a plaintiff must satisfy both the statutory and constitutional requirements of jurisdiction.¹ The statutory requirements of personal jurisdiction are set forth in Delaware's long-arm statute, 10 *Del. C.* § 3104. "Section 3104 is to be construed liberally, thus favoring the exercise of jurisdiction."² Section 3104(c) provides that a court may exercise personal jurisdiction over a nonresident who in person or through an agent:

- (1) Transacts any business or performs any character of work or service in the State;
- (2) Contracts to supply services or things in this State;
- (3) Causes tortious injury in the State by an act or omission in this State;
- (4) Causes tortious injury in the state or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State;
- (5) Has an interest in, uses or possesses real property in the State; or
- (6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation, or agreement located, executed or to be

¹*Shoemaker v. McConnell*, 556 F. Supp. 2d 351, 353 (D. Del. 2008).

²*Tell v. Roman Catholic Bishops of Diocese of Allentown*, 2010 WL 1691199, at *8 (Del. Super. Apr. 26, 2010) (citing *Daily Underwriters of America v. Maryland Auto. Ins. Fund*, 2008 WL 3485807, at *3 (Del. Super. July 31, 2008)).

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performed within the State at the time the contract is made, unless the parties otherwise provide in writing.³

The constitutional requirements mandate that the Court “determine whether the exercise of personal jurisdiction violates the Due Process Clause of the Fourteenth Amendment.”⁴ “Under due process analysis, the Court must consider whether the nonresident party had sufficient ‘minimum contacts’ with the forum state so that jurisdiction over the party ‘does not offend traditional notions of fair play and substantial justice.’”⁵ “The nonresident’s conduct and connection to the forum state must be such that the party ‘should reasonably anticipate being haled into court there.’”⁶

On a motion to dismiss for lack of personal jurisdiction, “the plaintiff bears the burden of demonstrating the basis for the Court’s exercise of jurisdiction over a nonresident defendant.”⁷ All factual allegations in the complaint must be accepted as true, and all factual inferences must be viewed in the light most favorable to the plaintiff.⁸ Affidavits in support of personal jurisdiction cannot be mere vague or

³10 *Del. C.* § 3104(c).

⁴*Tell*, 2010 WL 1691199, at *9.

⁵*Id.* (citing *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)).

⁶*Id.* (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 294, 297 (1980)).

⁷*Id.* (citing *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 437 (Del. 2005)).

⁸*Id.* (citing *Daily Underwriters*, 2008 WL 3485807, at *2).

general assertions, without factual specificity.⁹

DISCUSSION

Initially, Plaintiff argued that there was an employment relationship between Shannon and Blessed Hope.¹⁰ In Plaintiff's Answering Brief in Opposition to the Renewed Motion to Dismiss, this is no longer alleged. Instead, Plaintiff advances several theories for personal jurisdiction over Blessed Hope and Hanks. First, Plaintiff states that Blessed Hope and Hanks are susceptible to personal jurisdiction under 10 *Del. C.* § 3104(c)(4). Second, Plaintiff states that there was an apparent agency relationship sufficient for personal jurisdiction under 10 *Del. C.* § 3104(c)(1), (3), and (4). Third, Plaintiff alleges that personal jurisdiction can be held via an alleged conspiracy by the defending parties.

Plaintiff's first argument for jurisdiction under 10 *Del. C.* § 3104(c)(4) fails. Even if the Court allows that Plaintiff's affidavit establishes knowledge on the part of Hanks that Shannon had abused minors before,¹¹ which would establish that Hanks had a possible duty to tell parents of this knowledge, there is no evidence that he "regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed

⁹See *Greenly v. Davis*, 486 A.2d 669, 670 (Del. 1984).

¹⁰Compl. at ¶¶ 43-49.

¹¹Pl. ex. J.

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in the State”¹² Hanks may have assisted in bringing children to revival meetings in Delaware from time to time,¹³ but general jurisdiction under (c)(4) requires “a greater, more continuous pattern of contacts” with the forum state than required for a finding of specific jurisdiction.¹⁴ Indeed, under (c)(4) there must be a showing that defendant or its agent is “generally present” in the forum state.¹⁵ On this basis, neither Hanks, nor Blessed Hope can be said to have had a sufficient pattern of contacts, or considered to be “generally present” in Delaware.

Plaintiff’s second argument as to apparent agency must fail for a similar reason that the actual agency argument failed in *Tell*. In *Tell*, the Court found that the abuse suffered was outside the scope of employment, and thus, agency could not supply personal jurisdiction.¹⁶ Plaintiff argues apparent agency between Blessed Hope and Hanks on the one hand and Shannon and/or George on the other. “A principal is bound by an agent’s apparent authority which he knowingly permits the agent to assume [or] which he holds the agent out as possessing.”¹⁷ The second factor

¹²10 *Del. C.* § 3104(c)(4).

¹³Pl. ex. B at 18-19.

¹⁴*Dassen v. Boland*, 2011 WL 1225579, at *4 (Del. Super. Mar. 23, 2011) (quoting *Computer People, Inc. v. Best Int’l Group, Inc.*, 1999 WL 288119, at *5 (Del. Ch. Apr. 27, 1999)).

¹⁵*Naples v. Diocese of Trenton*, 2010 WL 1731827, at *2 (Del. Super. Apr. 29, 2010) (quoting *Boone v. Oy Partek Ab*, 724 A.2d 1150, 1155 (Del. Super. 1997)).

¹⁶*Tell*, 2010 WL 1691199, at *10-11.

¹⁷*Crumlish v. Price*, 266 A.2d 182, 183-84 (Del. 1970).

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required by apparent agency is that “an agent can bind the principal on an apparent authority basis only if the third person involved reasonably concludes that the agent is acting for the principal.”¹⁸ With regard to this second requirement, the Delaware Supreme Court went on to say:

In dealing with the agent the third person must act with ‘ordinary prudence and reasonable diligence,’ in ascertaining the scope of the agent’s authority and he will not be permitted to claim protection if he ignores facts illustrating the agent’s lack of authority. In this regard, the third person must make a preliminary investigation as to the agent’s apparent authority and additional investigations if the facts so warrant.¹⁹

Blessed Hope and Hanks authorized George Mitchell to open a Blessed Hope Baptist Church M&T bank account for the benefit of the Mitchell Home.²⁰ This action was taken for the ostensible reason of allowing parents to take a tax write off. Beyond this, Plaintiff alleges that Hanks helped transport boys who resided at the Mitchell Home and acted as a disciplinarian. This is supported by Plaintiff’s affidavit and the affidavit of his mother, which alleges that weekend passes had to be approved by Hanks.²¹ Thus, Plaintiff can establish for the purposes of this motion to dismiss that Blessed Hope and Hanks knowingly established a limited financial relationship and some sort of limited oversight capacity carried by Hanks.

¹⁸*Int’l Boiler Works Co. v. General Waterworks Corp.*, 372 A.2d 176, 177 (Del. 1977).

¹⁹*Id.*

²⁰Pl’s ex. G.

²¹Pl’s exs. D, J.

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Plaintiff has a much more difficult line to tow in demonstrating that it was reasonable for him or his mother to conclude that Shannon or George were acting in the capacity of agents when she was allegedly engaging in abuse both in Maryland and Delaware, and he was allegedly concealing such abuse. Although Plaintiff's affidavit and his mother's affidavit make fairly specific factual allegations as to the statements of Hanks,²² none of these statements, nor any of Hanks's conduct, amount to what a reasonable person would believe was approval on the part of Hanks of the conduct of Shannon or George in committing or concealing alleged sexual abuse.²³ Nor did Hanks or Blessed Hope hold out or knowingly permit Shannon or George to assume the authority to abuse or conceal abuse. Thus, it was not reasonable, under a theory of apparent agency under any section of 10 *Del. C.* § 3104(c), for Plaintiff or Plaintiff's mother to assume that Shannon or George were acting on behalf of Blessed Hope and Hanks in conducting or concealing abuse.

Even if an agency relationship did exist, exercising personal jurisdiction over Hanks and Blessed Hope would not comport with due process in this case. "Under

²²Notably, in exhibit J, Plaintiff states that he had a conversation with Hanks in which Hanks stated that he knew of an allegation of an inappropriate relationship between Shannon and a minor at the Reclamation Ranch in Tennessee.

²³This determination of what is reasonable, when dealing with apparent agency, is typically left to the jury. *Fulton v. Quinn*, 1993 WL 19674 (Del. Super. Jan. 12, 1993). It is, nevertheless, counterintuitive to the Court that Plaintiffs in other cases, *see, e.g., Dassen*, 2011 WL 1225579; *Naples*, 2010 WL 1731827, not be permitted jurisdiction under actual agency and this Court allow personal jurisdiction because apparent agency is typically a jury question. The Court, therefore, conducts a full apparent agency analysis.

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due process analysis, the Court must consider whether the nonresident party had sufficient ‘minimum contacts’ with the forum state so that jurisdiction over the party ‘does not offend traditional notions of fair play and substantial justice.’”²⁴ “The nonresident’s conduct and connection to the forum state must be such that the party ‘should reasonably anticipate being haled into court there.’”²⁵ Assuming, *arguendo*, that Plaintiff had a successful argument, and Shannon and/or George were apparent agents of Blessed Hope and Hanks, it is untenable on these facts that Blessed Hope and Hanks, both based in Maryland, purposefully directed activities toward Delaware or engaged in conduct such that either could reasonably anticipate being hauled into court in Delaware for the conduct of Shannon or George.

Plaintiff also advances jurisdiction under the conspiracy theory of jurisdiction allowed by the Delaware Supreme Court in *Istituto Bancario Italiano v. Hunter Engineering Company, Inc.*²⁶ That case sets out a five part test for establishing jurisdiction for which the key factor is conspiracy to defraud.²⁷ Plaintiff alleges two conspiracies. First, a conspiracy to defraud the parents of the residents of the Mitchell Home by hiding the fact that Shannon had previously engaged in a sexual relationship with a minor. This is easily disposed of as there is no evidence on the

²⁴*Tell*, 2010 WL 1691199, at *9 (citing *International Shoe Co. V. Washington*, 326 U.S. 310 (1945)).

²⁵*Id.* (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 294, 297 (1980)).

²⁶449 A.2d 210, 225 (Del. 1982).

²⁷*See id.*

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record of an agreement between George or Shannon Mitchell and Hanks. Second, Plaintiff alleges that by allowing checks to be written to Blessed Hope for the Mitchell Home, Hanks and George Mitchell engaged in a conspiracy to defraud the State of Delaware. This action is not taken on behalf of the State of Delaware. Further, *Istituto Bancario Italiano* and a later Court of Chancery case *Chandler v. Ciccoricco*,²⁸ both involved conspiracies to entrench corporate officers through improper stock issuance. This is not even close to the issue at hand. As such, conspiracy theory jurisdiction must fail.

CONCLUSION

Plaintiff has failed to satisfy the statutory or the constitutional requirements for personal jurisdiction over Pastor Bill Hanks or Blessed Hope Baptist Church, Inc. Therefore, the renewed motion to dismiss is hereby granted.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

Resident Judge

WLW/dmh

²⁸2003 WL 21040185 (Del. Ch. May 5, 2003).