

STATE OF MAINE
CUMBERLAND, ss

SEP 27 2006
SUPERIOR COURT
Civil Action
Docket No. CV-06-159 ✓
TELEPHONE ROOM

COAST TO COAST ENGINEERING
SERVICES, INC.,

Plaintiff

v.

DECISION AND ORDER

EVANS ENGINEERS, LLC and
JOHN M. EVANS,

DONALD L. GARBRECHT
LAW LIBRARY

Defendants

OCT 27 2006

I. BEFORE THE COURT

Defendant's motion to dismiss for lack of personal jurisdiction.

II. PROCEDURAL HISTORY AND BACKGROUND

The plaintiff's complaint asserts that this case arose in a dispute between parties to a franchise agreement that was signed in Portland, Maine on June 14, 1990. The defendant traveled to Maine on two occasions to execute the agreement, for training and to attend a franchise conference. The plaintiff asserts that the defendant breached a non-compete provision of the agreement by continuing to provide services in the same area after termination of the agreement.

The plaintiff filed suit in this court accompanied by a motion for a preliminary injunction. With the court's permission, the defendant filed a late response to the complaint in the form of a Motion to Dismiss for lack of personal jurisdiction.

III. DISCUSSION

Under Maine's long arm statute, 14 M.R.S.A. 704-A (2005), and due process requirements, this state may exercise jurisdiction over a nonresident defendant when the court finds: "(1) Maine has a legitimate interest in the subject matter of the litigation;

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(2) the defendant, by his or her own conduct, reasonably could have anticipated litigation in Maine; and (3) the exercise of jurisdiction by Maine's courts comports with traditional notions of fair play and substantial justice." *Commerce Bank & Trust Co. v. Dworman*, 2004 ME 142, ¶ 14, 861 A.2d 662, 666 (citations omitted).

After the plaintiff proves the first two prongs, the burden shifts to the defendant to prove that by exercising personal jurisdiction, the court is violating traditional notions of fair play and substantial justice. *Id.* "The record is construed in the manner most favorable to the plaintiff." *Bickford v. Onslow Mem'l Hosp. Fund*, 2004 ME 111, ¶ 10, 855 A.2d 1150, 1155.

The state has "an interest in regulating and/or sanctioning parties who reach out beyond one state and create continuing relationships and obligations with Maine citizens' for the consequences of their activities." *Elec. Media Int'l v. Pioneer Communications*, 586 A.2d 1256, 1259 (Me. 1991)(citations omitted). "To reasonably anticipate litigation in a particular jurisdiction, one must purposefully avail oneself of the privilege of conducting activities within the jurisdiction and benefit from the protection of its laws." *Commerce Bank & Trust Co. v. Dworman*, 2004 ME 142, ¶ 16, 861 A.2d 662, 667 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, (1985). "Due process demands that the defendant have sufficient contact with Maine to 'make it reasonable ... to require the [defendant] to defend the particular suit which is brought [here].'" (citing *Interstate Food Processing Corp. v. Pellerito Foods, Inc.*, 622 A.2d 1189, 1192 (Me. 1993) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). A defendant may waive personal jurisdiction by consenting to the jurisdiction of the court. *Burger King Corp. v. Rudzewicz*, 471 U.S. at 473 (1985). (such as a stipulation in advance to submit controversies to a particular jurisdiction).

Here, the defendant entered into a contract while he was in Maine on June 14,

1990. The contract specifically states that the agreement “shall be interpreted and governed by the laws and construed under the laws” of the State of Maine.¹ Pl.’s Opp’n Mem. to Def.’s Mot. to Dismiss for Lack of Personal Jurisdiction Ex. A at 20.

Considering that this case concerns an action alleging breach of the contract executed here, Maine is the appropriate jurisdiction in which to bring this suit. By signing the agreement the defendant consented to be bound by the laws of Maine regarding litigation arising from this contract.

Furthermore, Maine has an interest in this case because the plaintiff is a Maine corporation and the defendant sought out and continued a fifteen-year relationship with the plaintiff. Compl. at ¶ 8 & 13. The defendant came to Maine to enter the relationship, which entailed ongoing obligations resulting from a contract the two parties executed in Maine in 1990. *Id.* Therefore, Maine has a high interest in regulating the parties regarding that relationship.

The defendant reasonably could have anticipated litigation in Maine due to his conducting business with a Maine corporation, executing a contract in Maine, and agreeing in a contract to be bound by Maine law and continuing the relationship for well over a decade. *Id.* at ¶ 2, 6 & 8. Given the ongoing relationship that defendant solicited and maintained with a Maine company, the defendant could have reasonably anticipated that any litigation arising from the relationship would occur in Maine.

The defendant has failed to provide a reason, other than inconvenience to him and his company, why Maine courts exercising jurisdiction in this case violates

¹ Paragraph 19 of the agreement states:

This Agreement was accepted in the State of Maine and shall be interpreted and governed by the laws and construed under the laws thereof except to the extent governed by the United States Trademark act of 1946, as amended, and unless inconsistent with any specific state law applicable to franchisee concerning termination, non-renewal or other material aspects of the relationship, in which such state law shall control. (emphasis added)

traditional notions of fair play and substantial justice.

As a result of this relationship, the defendant has had sufficient contact with the plaintiff in Maine to make it reasonable for this court to retain jurisdiction.

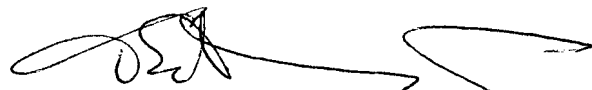
IV. DECISION AND ORDER

The clerk will make the following entries as the Decision and Order of the court:

Defendants' Motion to Dismiss on grounds of lack of personal jurisdiction is denied.

SO ORDERED.

Dated: October 13, 2006



Thomas E. Delahanty II
Justice, Superior Court

COAST TO COAST ENGINEERING SERVICES INC - PLAINTIFF

SUPERIOR COURT

CUMBERLAND, ss.

Docket No PORSC-CV-2006-00159

Attorney for: COAST TO COAST ENGINEERING SERVICES INC
TIMOTHY BRYANT - RETAINED 03/13/2006
PRETI FLAHERTY BELIVEAU PACHIOS & HALEY
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PO BOX 9546
PORTLAND ME 04112-9546

DOCKET RECORD

Attorney for: COAST TO COAST ENGINEERING SERVICES INC
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ONE CITY CENTER
PO BOX 9546
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vs

EVANS ENGINEERS LLC - DEFENDANT

Attorney for: EVANS ENGINEERS LLC
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75 PEARL STREET
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JOHN M EVANS - DEFENDANT

Attorney for: JOHN M EVANS
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Filing Document: COMPLAINT
Filing Date: 03/13/2006

Minor Case Type: CONTRACT

Docket Events:

03/13/2006 FILING DOCUMENT - COMPLAINT FILED ON 03/13/2006

SUMMARY SHEET. AD
A (GM)

4-10-06 EXHIBIT

03/14/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
ATTORNEY - RETAINED ENTERED ON 03/13/2006
Plaintiff's Attorney: TIMOTHY BRYANT

03/14/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
ATTORNEY - RETAINED ENTERED ON 03/13/2006
Plaintiff's Attorney: JAMES C BUSH

03/14/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
MOTION - MOTION PRELIMINARY INJUNCTION FILED ON 03/13/2006
OF PLAINTIFF'S; AFFIDAVIT OF PETER HOLLANDER; REQUEST FOR HEARING; PROPOSED ORDER. AD

04/25/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 04/25/2006

04/25/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 04/03/2006
UPON DEFENDANT JOHN EVANS AS REGISTERED AGENT FOR EVANS ENGINEERS, LLC. (DY)

04/28/2006 Party(s): EVANS ENGINEERS LLC
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 04/28/2006
OF DEFENDANTS' IN WHICH TO RESPOND TO PLAINTIFF'S COMPLAINT AND MOTION (GM)

04/28/2006 Party(s): EVANS ENGINEERS LLC
ATTORNEY - RETAINED ENTERED ON 04/27/2006
Defendant's Attorney: CHRISTOPHER B BRANSON

Party(s): JOHN M EVANS
ATTORNEY - RETAINED ENTERED ON 04/27/2006
Defendant's Attorney: CHRISTOPHER B BRANSON

04/28/2006 Party(s): EVANS ENGINEERS LLC
ATTORNEY - RETAINED ENTERED ON 04/27/2006
Defendant's Attorney: KELLY MCDONALD

Party(s): JOHN M EVANS
ATTORNEY - RETAINED ENTERED ON 04/27/2006
Defendant's Attorney: KELLY MCDONALD

05/04/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
MOTION - AFFID & REQUEST DEFAULT/JUDG FILED ON 05/03/2006
AGAINST DEFENDANTS, EVANS ENGINEERS, LLC AND JOHN M. EVANS (GM) NOT ENTERED AS
DEFENDANTS GIVEN LEAVE TO ANSWER BY 6-26-06 (GM)

05/04/2006 Party(s): EVANS ENGINEERS LLC
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 05/04/2006
ROLAND A COLE , JUSTICE
MOTION TO ENLARGE TO 5-26-06 IS GRANTED. 5-4-06 COPY MAILED TO TIMOTHY BRYANT AND
CHRISTOPHER BRANSON ESQS

- 05/30/2006 Party(s): EVANS ENGINEERS LLC, JOHN M EVANS
MOTION - MOTION TO DISMISS FILED WITH AFFIDAVIT ON 05/26/2006
OF DEFENDANTS TO DISMISS FOR LACK OF PERSONAL JURISDICTION UNDER RULE 12(B)(2) WITH
INCORPORATED MEMORANDUM OF LAW, FAXED AFFIDAVIT OF JOHN EVANS, PROPOSED ORDER AND REQUEST
FOR HEARING (DC)
- 05/30/2006 Party(s): EVANS ENGINEERS LLC, JOHN M EVANS
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 05/26/2006
OF DEFENDANTS (AGREED-TO) WITH PROPOSED ORDER (DC)
- 05/31/2006 Party(s): EVANS ENGINEERS LLC, JOHN M EVANS
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 05/31/2006
ROLAND A COLE , JUSTICE
IT IS HEREBY ORDERED THAT DEFS JOHN M EVANS AND EVANS ENGINEERING LLC SHALL HAVE 21 DAYS
AFTER THE ENTRY OF A RULING BY THIS ORDER ON THEIR MOTION TO DISMISS FOR LACK OF PERSONAL
JURISDICTION TO FILE ANY OPPOSING TO PLAINT IFF'S MOTION FOR PRELIMINARY INJUNCTION.
COPIES MAILED TIMOTHY BRYANT, ESQ, JAMES BUSH, ESQ, KELLY MCDONALD ESQ AND CHRISTOPHER
BRANSON ESQ ON 5-31-06 (DC)
- 06/01/2006 Party(s): JOHN M EVANS
OTHER FILING - AFFIDAVIT FILED ON 06/01/2006
OF JOHN M. EVANS IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL
JURISDICTION (GM)
- 06/16/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/15/2006
OF PLAINTIFF TO DEFENDANTS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION WITH
EXHIBITS A & B (GM)
- 06/20/2006 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 06/20/2006
THOMAS E DELAHANTY II, JUSTICE
- 06/26/2006 Party(s): EVANS ENGINEERS LLC, JOHN M EVANS
OTHER FILING - REPLY MEMORANDUM FILED ON 06/23/2006
OF DEFENDANTS JOHN EVANS AND EVANS ENGINEERS, LLC IN SUPPORT OF THEIR MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION. (DY)
- 08/29/2006 Party(s): EVANS ENGINEERS LLC, JOHN M EVANS
MOTION - MOTION TO CONTINUE FILED ON 08/29/2006
OF DEFENDANTS' CONSENTED TO MOTION FOR CONTINUANCE OF HEARING. AD
- 08/30/2006 Party(s): EVANS ENGINEERS LLC, JOHN M EVANS
MOTION - MOTION TO CONTINUE GRANTED ON 08/30/2006
THOMAS E DELAHANTY II, JUSTICE
IT IS HEREBY ORDERED THAT THE HEARING ON THE PENDING MOTION TO DISMISS IN THIS CASE BE
CONTINUED UNTIL THE NEXT AVAILABLE HEARING DATE--OCTOBER 12, 2006. AT THE DIRECTION OF THE
COURT, THIS ORDER SHALL BE INCORPORATED INTO THE DOCKET BY REFERENCE. RULE 79(A). ON 08-
30-06 COPIES MAILED TO TIMOTHY BRYANT, CHRISTOPHER BRANSON AND JAMES BUSH, ESQS. AD
- 09/01/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
LETTER - FROM PARTY FILED ON 08/30/2006
FROM TIMOTHY BRYANT, ESQ. ENCLOSING A CERTIFIED COPY OF A RECENT DECISION FROM HONORABLE
ROLAND COLE. AD

09/18/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
MOTION - MOTION TO CONTINUE FILED ON 09/14/2006
OF PLAINTIFF, COAST TO COAST ENGINEERING SERVICES, INC. D/B/A CRITERIUM ENGINEERS. AD

09/19/2006 Party(s): COAST TO COAST ENGINEERING SERVICES INC
MOTION - MOTION TO CONTINUE GRANTED ON 09/14/2005
THOMAS E DELAHANTY II, JUSTICE
HEARING ON MOTION TO DISMISS IS RESCHEDULED TO OCTOBER 10, 2006 AT 10:45 A.M. ON 09-14-06
COPIES MAILED TO JAMES BUSH, TIMOTHY BRYANT, KELLY MCDONALD AND CHRISTOPHER BRANSON, ESQS.
AD

10/12/2006 HEARING - MOTION TO DISMISS HELD ON 10/10/2006
THOMAS E DELAHANTY II, JUSTICE
Defendant's Attorney: CHRISTOPHER B BRANSON
Plaintiff's Attorney: TIMOTHY BRYANT
HEARING HELD ON DEFENDANTS, EVANS ENGINEERING, LLC AND JOHN M. EVANS MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION.

10/12/2006 Party(s): EVANS ENGINEERS LLC, JOHN M EVANS
MOTION - MOTION TO DISMISS UNDER ADVISEMENT ON 10/10/2006
THOMAS E DELAHANTY II, JUSTICE
Defendant's Attorney: LOUIS BUTTERFIELD
Plaintiff's Attorney: BRENDAN RIELLY
COURT TAKES MATTER UNDER ADVISEMENT. NO RECORD MADE.

10/16/2006 Party(s): EVANS ENGINEERS LLC, JOHN M EVANS
MOTION - MOTION TO DISMISS DENIED ON 10/13/2006
THOMAS E DELAHANTY II, JUSTICE
THE CLERK WILL MAKE THE FOLLOWING ENTRIES AS THE DECISION AND ORDER OF THE COURT:
DEFENDANTS' MOTION TO DISMISS ON GROUNDS OF LACK OF PERSONAL JURISDICITON IS DENIED. SO
ORDERED. ON 10-16-06 COPIES MAILED TO JAMES BUSH, TIMOTHY BRYANT, CHRISTOPHER BRANSON AND
KELLY MCDONALD, ESQS., MS DEBORAH FIRESTONE, GOSS MIMEOGRAPH, THE DONALD GARBRECHT LAW
LIBRARY AND LOISLAW. COM INC. AD

A TRUE COPY
ATTEST:


Clerk