COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

DOWDNEY & ASSOCIATES, INC.	**:**	
Plaintiff	**:**	**CASE NO. 2012 CVH 02366**
vs.	**:**	**Judge McBride**
ALLIED DIES, INC., et al.	**:**	**DECISION/ENTRY**
Defendant	**:**	

Rendigs, Fry, Kiely & Dennis, LLP, Michael J. Chapman, counsel for the plaintiffs Dowdney & Associates, Inc. d/b/a Paramco, Inc., 600 Vine Street, Suite 2650, Cincinnati, Ohio 45202.

Frost Brown Todd LLC, Ryan S. Lett, counsel for the defendants Allied Dies, Inc. and Leigh Darrow, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202.

This cause is before the court for consideration of a motion to dismiss filed by the defendants Allied Dies, Inc. and Leigh Darrow.

The court scheduled and held an evidentiary hearing on the motion to dismiss on July 19, 2013. At the conclusion of the hearing, the court took the issues raised by the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE

The plaintiff Dowdney Associates, Inc. d/b/a Paramco, Inc. (hereinafter "Paramco") is a specialized sales agency that procures competitive bids for businesses requiring machinery parts, fabrication, or retooling for their plastics manufacturing processes.[1] The company is located in Clermont County, Ohio.[2]

The defendant Leigh Darrow is a Wisconsin resident and the defendant Allied Dies, Inc. is incorporated in and has its principal place of business in Wisconsin.[3]

Bill Dowdney, the sole owner of the plaintiff Paramco, became aware of the defendant Allied Dies, Inc. through trade shows. Allied Dies, Inc. is a company that designs and manufactures flat extrusion dies and related tooling.[4]

Dowdney contacted Allied Dies, Inc. via Leigh Darrow, the Vice President of Sales at Allied Dies, Inc.[5], in August 2010 and inquired as to whether Allied Dies, Inc. would like to submit price quotes for a project at a General Electric plant in Louisville, Kentucky.

Dowdney testified that Allied Dies, Inc. agreed to work with Paramco at a ten percent commission rate on the Louisville job. Allied Dies, Inc. submitted two quotes on

[1] Complaint at ¶ 3.
[2] Id. at ¶ 1.
[3] Leigh Darrow Aff. at ¶ 2; and, Affidavit of Doug Darrow at ¶ 3.
[4] Id. at ¶ 7.
[5] Affidavit of Leigh Darrow at ¶ 1.

August 27, 2010, one for the new sheet die and block and the other for having the existing die refurbished.[6] Dowdney testified that Allied Dies, Inc. sent the quotes to him and that he forwarded them to General Electric in Louisville.

A revised quote was submitted by Allied Dies, Inc. on September 3rd at the plaintiff's request. In November 2010, Bill Dowdney flew to Wisconsin to learn more about Allied Dies, Inc. This trip was Dowdney's idea and was funded solely by Dowdney. No representatives of Allied Dies, Inc. ever travelled to Ohio.

In late November 2010 and twice in February 2011, Dowdney made follow-up site visits to General Electric in Louisville. Dowdney suggested to Leigh Darrow that he also make a personal visit to the site but that never occurred. Further revised quotes were provided by Allied Dies, Inc. as requested several times throughout the process including during the months of March, April, and May 2011.

On June 8, 2011, General Electric provided its formal specifications for the project, which Dowdney forwarded to Allied Dies, Inc. The next day, Allied Dies, Inc. again sent revised quotes to Dowdney and he forwarded them to General Electric. Also in June, General Electric provided forms for Allied Dies, Inc. to fill out to be on its approved vendor list, and Dowdney forwarded the first forms and several revisions thereafter to Allied Dies, Inc.

Dowdney testified that during this entire time he had been requesting a formal written sales agreement from Allied Dies, Inc. but that one was never provided. Dowdney drafted a non-exclusive representative agreement in September 2011 and

[6] Complaint at ¶ 17 and Exhibits 1 and 2.

sent a copy to Allied Dies, Inc, but that agreement was never signed by Leigh or Doug Darrow or any other representative of Allied Dies, Inc.[7]

General Electric placed its orders with Allied Dies, Inc. in August and November 2011. In March 2012, Allied Dies, Inc. sent a three-percent commission payment to the plaintiff for the refurbished die job. Bill Dowdney disputed this amount and, after speaking with Leigh Darrow on the telephone and sending an email, Allied Dies, Inc. paid the plaintiff the balance of the ten-percent commission.

On July 1, 2012, Dowdney received an email from Doug Darrow of Allied Dies, Inc. stating that Allied Dies, Inc. "can not (*sic*) pay 10% on the new tooling[,]"and that Allied Dies, Inc. would pay plaintiff three percent of the net order. [8] Dowdney testified that this was the first time he was notified by Allied Dies, Inc. that it would not pay plaintiff the ten-percent commission rate.

Dowdney also testified that, during the relevant time period, he did an email blast approximately twice a month for all of the companies that the plaintiff represents to approximately 136 customers in Ohio. Dowdney also handed out a few dozen Allied Dies, Inc. brochures to his best customers. Those brochures were sent to Dowdney in Ohio at his request from Allied Dies, Inc. in Wisconsin.

Dowdney estimates that approximately fifteen to twenty emails were exchanged between him and Allied Dies, Inc. over the twenty-two months of their working relationship and that there were approximately twelve quotes provides during that time period. He further estimates that there were phone calls between him and either Leigh

[7] Complaint, Exhibit 4.
[8] Complaint, Exhibit 7.

Darrow or Doug Darrow every other week during this time. He stated that he worked primarily with Doug Darrow throughout this project.

Paramco filed the present action in December 2012, bringing claims for fraud, fraudulent inducement, negligent misrepresentation, breach of contract, and unjust enrichment. The defendants now move to dismiss this case for lack of personal jurisdiction.

LEGAL ANALYSIS

The defendants move this court to dismiss the present action pursuant to Civ.R. 12(B)(2) for lack of personal jurisdiction.

The plaintiff has the burden on a defendant's motion to dismiss for lack of personal jurisdiction to establish that the court does have such jurisdiction.[9] "When the trial court conducts an evidentiary hearing on the motion to dismiss, the plaintiff bears the burden of proving jurisdiction by a preponderance of the evidence."[10]

"When determining whether a state court has personal jurisdiction over a foreign corporation the court is obligated to engage in a two-step analysis. First, the court must determine whether the state's 'long-arm' statute and applicable civil rule confer personal jurisdiction, and, if so, whether granting jurisdiction under the statute and the rule would

[9] *Natl. City Commercial Capital Corp. v. All About Limousines Corp.* (March 16, 2009), 12th Dist. Nos. CA2005-08-226, et al., 2009-Ohio-1159, ¶ 5, citing *Giachetti v. Holmes*, 14 Ohio App.3d 306, 307, 471 N.E.2d 165 (Ohio App. 8th Dist., 1984).

[10] *Dahlhausen v. Aldred*, 187 Ohio App.3d 536, 932 N.E.2d 949, 2010-Ohio-2172, ¶ 21 (Ohio App. 12th Dist., 2010), citing *Giachetti*, supra.

deprive the defendant of the right to due process of law pursuant to the Fourteenth Amendment to the United States Constitution."[11]

Ohio's long-arm statute is codified as R.C. 2307.382 and reads in relevant part as follows:

> "(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:
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> (1) Transacting business in this state;
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> * * *
>
> (3) Causing tortious injury by an act or omission in this state;
>
> (4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
>
> * * *
>
> (6) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state[.]"

Similarly, Civil Rule 4.3(A)(1) provides:

> "Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. 'Person' includes an individual, an individual's executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who, acting directly or by an agent, has caused an event to occur out of which the

[11] *U.S. Sprint Communications Co. Ltd. Partnership v. Mr. K's Foods, Inc.* (1994), 68 Ohio St.3d 181, 183-184, 624 N.E.2d 1048, citing, e,g., *Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.* (1990), 53 Ohio St.3d 73, 559 N.E.2d 477.

> claim that is the subject of the complaint arose, from the person's:
>
> (1) Transacting any business in this state;
>
> * * *
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> (3) Causing tortious injury by an act or omission in this state;
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> (4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
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> * * *
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> (9) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when the person to be served might reasonably have expected that some person would be injured by the act in this state[.]"

The plaintiff's first argument in opposition to the motion to dismiss is that the defendants transacted business in Ohio based on the business dealings between the two companies.

The Ohio Supreme Court has recognized that both " * * * R.C. 2307.382(A)(1) and Civ.R. 4.3(A)(1) are very broadly worded and permit jurisdiction over nonresident defendants who are transacting any business in Ohio."[12]

> " 'Transact,' as defined by Black's Law Dictionary (5 Ed.1979) 1341, " * * * means to prosecute negotiations; to carry on business; to have dealings * * *. The word embraces in its meaning the carrying on or prosecution of business negotiations but it is a broader term than the word 'contract' and may involve business negotiations which have been either wholly or partly brought to a conclusion * * * ."[13]

[12] *Kentucky Oaks,* supra, 53 Ohio St.3d at 75.
[13] Id.

However, " * * * 'a nonresident's ties must 'create a 'substantial connection' ' 'with Ohio to find personal jurisdiction exists under R.C. 2307.328(A)(1)."[14] "Where a non-resident defendant contracts with an Ohio resident to create an ongoing business relationship, such defendant is 'transacting any business' in Ohio pursuant to the plain meaning of R.C. 2307.328(A)(1)."[15] "Whether a defendant has transacted any business in Ohio is a case-by-case determination."[16]

Two factors are helpful in determining whether a foreign corporation transacted business in Ohio within the meaning of the long-arm statute. "The first factor is whether the non-resident defendant initiated the business dealing."[17] Logically, if the foreign corporation reached out to the Ohio corporation to create the business relationship, that is one factor which would go toward finding that the nonresident transacted business in Ohio.[18] "The balance of the evidence must be considered to determine in which jurisdiction the parties undertook their discussions and communications and on what terms."[19] "The second factor to be considered is whether the parties conducted their negotiations or discussions in Ohio or with terms affecting Ohio."[20] There must additionally be some continuing obligation that connects the non-resident defendant to the state or some terms of the agreement that affect the state.[21]

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[14] *Buflod v. Van Wilhendorf, LLC* (Jan. 29, 2007), 12th Dist No. CA2006-02-022, 2007-Ohio-347, at ¶ 13, citing *U.S. Sprint* at 185.
[15] Id., citing *Kentucky Oaks* at 76.
[16] *All About Limousines*, supra, at ¶ 31, citing *U.S. Sprint* at 185.
[17] *Specialized Machinery Hauling and Rigging, LLC v. D&L Transport, LLC* (April 20, 2009), S.D.Ohio No. 3:08-CV-445, 2009 WL 1045908, *6, citing *Paglioni & Assoc., Inc v. WinnerComm, Inc.* (March 16, 2007), S.D. No. 2:06-CV-276, 2007 WL 852055, *9.
[18] Id.
[19] Id., citing *Ricker v. Fraza/Forklifts of Detroit*, 160 Ohio App.3d 634, 828 N.E.2d 205, 209 (Ohio App. 10th Dist., 2005).
[20] Id., citing *Shaker Construction Group, LLC v. Schilling* (Sept. 18, 2008), S.D.Ohio No. 1:08CV278, 2008 WL 4346777, *3.
[21] Id., citing *Kentucky Oaks* at 480.

There is no dispute in the present case that Bill Dowdney approached Allied Dies, Inc. and originally solicited its business. Therefore, Allied Dies, Inc. did not initiate the relationship between itself and the plaintiff and that factor weighs against a finding that the defendant transacted business in Ohio.

The plaintiff provided a service of representing Allied Dies, Inc. during the bid process for the General Electric job. Allied Dies, Inc. submitted up to twelve revised quotes during this process and would send said quotes to the plaintiff in Ohio who in turn would submit those bids to General Electric in Kentucky. There was phone and email communication between Dowdney in Ohio and representatives of Allied Dies, Inc. in Wisconsin regarding the quotes. At the start of their relationship, the parties spoke about the plaintiff representing Allied Dies, Inc. during the General Electric job for a ten percent commission on any accepted bids. As these conversations took place mostly by phone and at least one email, the negotiations occurred at least partially in Ohio.

In *Buflod v. Van Wilhendorf, LLC* (Jan. 29, 2007), 12th Dist No. CA2006-02-022, 2007-Ohio-347, an Ohio resident contracted to purchase three dogs from a Connecticut corporation and sued that company when he received the dogs and found each of them to have health problems.[22] The parties negotiated the purchases via numerous telephone calls and emails and the contracts were executed and sent via facsimile.[23] The appellate court noted that these were three isolated sales which did not create an ongoing business relationship with the Ohio resident.[24] The court also noted that the defendant never sold any other dogs in Ohio, did not solicit business in Ohio, and

[22] *Buflod*, supra, at ¶¶ 3-4.
[23] Id. at ¶ 3.
[24] Id. at¶ 13.

neither owned property nor maintained a statutory agent in this state.[25] The court concluded that the trial court lacked personal jurisdiction pursuant to the long-arm statute.[26]

In *Alpha Telecommunications, Inc. v. ANS Connect* (June 19, 2008), 8th Dist. No. 90173, 2008-Ohio-3069, an Ohio consulting firm entered into a contract to provide consulting services to a Georgia corporation.[27] The contract negotiations took place via telephone and the defendant sent work to the plaintiff by fax, regular mail, or email.[28] The defendant did not initiate the initial contact between the parties and it signed the contract in Georgia and faxed it to Ohio after the plaintiff solicited its business.[29] The appellate court noted that the plaintiff "merely provided information to [the defendant]" and had no say in the defendant's out-of-state business transactions between the defendant and its customers.[30] The court concluded that there was no personal jurisdiction over the defendant under the Ohio long-arm statute because the defendant did not initiate the contract, but instead simply forwarded matters to be reviewed via fax, mail, or email and the plaintiff returned the completed work via the same means.[31]

In *Natl. Court Reporters, Inc. v. Rebecca N. Strandberg & Assoc.* (May 14, 2009), 8th Dist. No. 92035, 2009-Ohio-2271, the plaintiff was an Ohio corporation that contracted with the defendant, a Maryland corporation, to perform court reporting and

[25] Id. at ¶ 14.
[26] Id.
[27] *Alpha Telecommunications* at ¶¶ 1-2.
[28] Id. at ¶¶ 13-14.
[29] Id. at ¶ 16.
[30] Id. at ¶ 22.
[31] Id. at ¶ 23.

litigation services.[32] While setting up court-reporting services for depositions to be held in Maryland and Kansas, the parties exchanged several telephone calls and faxes.[33]

The appellate court held that such communications were sufficient to find that the defendant transacted business in Ohio within the meaning of the long-arm statute.[34] In making its ruling, the court set forth the following discussion:

> "Regardless of whether [the defendant] knew that it was dealing with an Ohio company, the fact remains that it did 'transact' business within this state under the broad definition used in *Kentucky Oaks.* The parties entered into negotiations for court reporter and litigation support services, they reached an agreement on those services, and they memorialized their contract with faxes and telephone calls. [The defendant] sent a payment to [the plaintiff's] address. These were not one-time events, but part of a month-long course of dealing in which [the plaintiff] provided court reporter services on several occasions and for multiple depositions scheduled both in Maryland and in Kansas. These acts were 'business negotiations' and thus constituted 'transacting any business' for purposes of R.C. 2307.382(A)(1)."[35]

In *N. Am. Software, Inc. v. James I. Black & Co.* (July 8, 2011), 1st Dist. No. C-100696, 2011-Ohio-3376, the court found that the defendant corporation had not transacted business in Ohio.[36] In so finding, the court noted that the plaintiff initiated the contact between the two companies and that there was no evidence of active negotiation of terms of any agreement.[37] While the court acknowledged that the defendant sent the plaintiff data to be integrated on five different occasions, it held that

[32] *Natl. Court Reporters* at ¶ 1.
[33] Id. at ¶¶ 6-7.
[34] Id. at ¶ 8.
[35] Id.
[36] *N. American Software* at ¶ 16.
[37] Id.

this did not create a substantial enough connection with Ohio to demonstrate that the defendant transacted business in this state.[38]

In *Barnabus Consulting Ltd. v. Riverside Health Sys, Inc.* (June 30, 2008), 10th Dist. No. 07AP-1014, 2008-Ohio-3287, the CEO of the defendant, a Virginia company, contacted the plaintiff, an Ohio company, and expressed an interest in obtaining plaintiff's consulting services.[39] The plaintiff's representative visited the defendant in Virginia and, after the representative returned to Ohio, the parties negotiated a contract through telephone and email for the consulting services.[40] The plaintiff sent a copy of a consulting services agreement to the defendant but it was never signed.[41] Most of the work performed by the plaintiff on the project occurred in Ohio and the defendant remitted contractual payments to the plaintiff in Ohio.[42] The court found that the plaintiff made a *prima facie* showing that the defendant transacted business in Ohio.[43]

Finally, in *Ricker v. Fraza/Forklifts of Detroit*, 160 Ohio App.3d 634, 828 N.E.2d 205, 2005-Ohio-1945 (Ohio App. 10th Dist., 2005), the Ohio plaintiff alleged that the Delaware plaintiff entered into an oral agreement to pay the plaintiff for insurance consulting services.[44] The court found that preliminary negotiations occurred between the parties and that the defendant submitted payment to the plaintiff's Ohio office.[45] The court found that this was sufficient to find that the defendant transacted business in Ohio.[46]

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[38] Id.
[39] *Barnabus* at ¶ 3.
[40] Id.
[41] Id.
[42] Id. at ¶ 16.
[43] Id.
[44] *Ricker* at ¶ 2.
[45] Id. at ¶ 14.
[46] Id.

In the case at bar, the plaintiff alleges that Allied Dies, Inc. agreed to pay the plaintiff a ten percent commission on bids accepted by General Electric. The plaintiff agreed to represent the defendant during the bid process and acted as a go-between for the defendant with General Electric. Allied Dies, Inc. would prepare its quotes and send them to the plaintiff in Ohio, knowing that the plaintiff would forward the bids to General Electric on the defendant's behalf. The parties spoke by telephone every other week and communicated via 15-20 emails during this twenty-two month process. Allied Dies, Inc. submitted one commission payment to Ohio and the second commission is what is at dispute in the present action. Interpreting the term "transacting business" broadly, as it is in Ohio law, the court finds that the plaintiff has shown by a preponderance of the evidence that Allied Dies, Inc. transacted business in Ohio.

However, there are two defendants in the present case and it is important to consider them and their conduct separately. Leigh Darrow, the owner of Allied Dies, Inc. has been named as an individual defendant in this action.

Leigh Darrow is alleged in the present case to have agreed to the ten percent commission on behalf of Allied Dies, Inc. There is no dispute that Bill Dowdney and Leigh Darrow spoke to each other in their representative capacities and were discussing a potential business relationship between their respective companies. However, while a corporate officer generally enjoys the protection of the corporate veil, there is support in Ohio law for the proposition that directors and corporate officers generally may be held personally liable for fraud even though the corporation may also be held liable.[47]

[47] See, e.g., *Prymas v. Kassai*, 168 Ohio App.3d 123, 858 N.E.2d 1209, 2006-Ohio-3726, ¶¶ 55-57 (Ohio App. 8th Dist., 2006), citing *Centennial Ins. Co. of N.Y. v. Vic Tanny Internatl. of Toledo, Inc.* (1975), 46 Ohio App.2d 137, 141, 75 O.O.2d 115, 346 N.E.2d 330. See, also, *Interior Servs., Inc. v. Iverson* (March 14, 2003), 1st Dist. No. C-

The plaintiff argues that R.C. 2307.382(A)(3), (4) and/or (6) apply in this case to provide personal jurisdiction. As set forth above, R.C. 2307.382(A)(6) provides for personal jurisdiction over individuals "[c]ausing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state."

Leigh Darrow is a Wisconsin resident who is the Vice President of a Wisconsin corporation. However, the plaintiff alleges that Darrow verbally agreed to utilize Paramco's services in exchange for the payment of a ten percent commission. The plaintiff further alleges that this promise constituted fraud, in that it was made falsely, with knowledge of its falsity or with such utter disregard and recklessness as to its truth or falsity that knowledge may be inferred. If Darrow did in fact make a promise to Paramco to pay a ten percent commission with knowledge that said promise would not be fulfilled, he would have been causing a tortious injury to an Ohio resident with the purpose of injuring the plaintiff, and he should have reasonably expected that the plaintiff company would be injured by that action in Ohio.

Having found personal jurisdiction over both defendants under the long arm statute, the court must now consider whether granting jurisdiction under the statute and the rule would deprive the defendant of the right to due process of law.

"The United States Supreme Court has held that in order for a state court to subject a foreign corporation to a judgment *in personam,* the corporation must 'have certain minimum contacts with [the state] such that the maintenance of the suit does not

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020501, 2003-Ohio-1187, ¶¶ 12-13 (finding that the court lacked personal jurisdiction over the individual defendant because the plaintiff made no allegations that his conduct rose to the level of fraud).

offend 'traditional notions of fair play and substantial justice.' "[48] "In formulating this rule, the United States Supreme Court emphasized that the analysis 'cannot simply be mechanical or quantitative,' but rather whether due process is satisfied depends 'upon the quality and nature of the activity.' "[49] "Under the *International Shoe* doctrine, a nonresident corporation submits to a state's personal jurisdiction when the activities of the company within the state are systematic and continuous."[50] "Thus where the defendant 'deliberately' has engaged in significant activities within a State * * *, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well."[51]

" 'Minimum contacts' is defined as conduct that requires a substantial connection to the forum state, that creates continuing obligations between a defendant and a resident of the forum state, or that mandates conducting significant activities within a forum state."[52] A nonresident should not be subject to the jurisdiction of a foreign court based upon random, fortuitous, or attenuated contacts.[53]

"As a general rule, the use of interstate lines of communication such as mail services, facsimiles, and telephones is not automatically a purposeful availment of the

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[48] *U.S. Sprint*, supra, 68 Ohio St.3d at 186, quoting *Internatl. Shoe Co. v. Washington* (1945), 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed.2d 95.
[49] Id., quoting *Internatl. Shoe* at 319.
[50] Id., quoting *Internatl. Shoe* at 319.
[51] Id. at 187, quoting *Burger King Corp. v. Rudzewicz* (1985), 471 U.S. 462, 475-476, 105 S.Ct. 2174, 85 L.Ed.2d 528.
[52] *Century Marketing Corp. v. Aldrich* (March 21, 2003), 6th Dist. No. WD-02-045, 2003-Ohio-1390, ¶ 12, citing *Hercules Tire & Rubber Co. v. Murphy*, 133 Ohio App.3d 97, 101, 726 N.E.2d 1080 (Ohio App. 3rd Dist., 1999).
[53] Id. at ¶ 19, citing *Hack v. Fisher-Bord Worldwide Moving* (July 31, 2001), 9th Dist. No. 20914, 2002-Ohio-3863, citing *Burger King* at 475-476.

privileges of conducting commerce in a forum state such that the nonresident should anticipate being haled into court there."[54]

"The Due Process Clause permits a court to obtain either general or specific jurisdiction over a non-resident defendant."[55] "Specific jurisdiction exists when a plaintiff's cause of action is related to, or arises out of, the defendant's contact with the forum state. Conversely, general jurisdiction exists when a court exercises personal jurisdiction over a defendant in a cause of action that does not arise out of or relate to the defendant's contacts with the forum state."[56]

"For a court to exercise general jurisdiction over a non-resident defendant, that defendant must have 'continuous and systematic' contacts with the forum state."[57] The plaintiff has made no demonstration in the case at bar that either defendant had continuous and systematic contacts with Ohio which would allow for general jurisdiction.

"Specific personal jurisdiction is established when (1) the non-resident defendant has purposefully availed itself of the privilege of conducting activities in the forum state; (2) the plaintiff's claims arise out of those activities directed at the forum state; and (3) the acts of the defendant or consequences caused by the defendant have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable."[58]

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[54] Id. at ¶ 17, citing *Fritz-Rumer-Cooke Co., Inc. v. Todd & Sargent* (Feb. 18, 2001), 10th Dist. No. 00AP-817, 2001 WL 102267. See, also, *Epic Communications v. ANS Connect* (July 17, 2008), 8th Dist. No. 90364, 2008-Ohio-3548, ¶ 12.

[55] *Parshall v. PAID, Inc.* (June 26, 2008), 10th Dist. No. 07AP-1019, 2008-Ohio-3171, ¶ 23, citing *Helicopteros Nacionales de Colombia v. Hall* (1984), 466 U.S. 408, 414, 104 S.Ct. 1868, 80 L.Ed.2d 404.

[56] Id., citing *Joffe v. Cable Tech, Inc.*, 163 Ohio App.3d 479, 839 N.E.2d 67, 2005-Ohio-4930, ¶ 27 (Ohio App. 10th Dist., 2005).

[57] *Parshall*, supra, at ¶ 27, citing *Helicopteros* at 416.

[58] *EnQuip Technologies Group, Inc. v. Tycon Technoglass, S.R.L.* (Jan. 8, 2010), 2nd Dist. Nos. 2009-CA-42 and 2009-CA-47, 2010-Ohio-28, ¶ 75.

In the *Buflod* case discussed above, the court found that there were no minimum contacts with Ohio such that the defendant should have reasonably anticipated being haled into court here.[59] The court noted that the sales of three dogs to an Ohio resident were isolated acts initiated by the plaintiff himself and the defendant sold no other dogs in Ohio nor did it have any other business activities within this state.[60]

In the *Natl. Court Reporters* case, the appellate court found that, despite finding jurisdiction under the broadly-interpreted long-arm statute, the plaintiff failed to establish that the exercise of personal jurisdiction over the defendant comported with due process. The court held that, although the defendant transacted business in Ohio, it did not have a substantial connection with this state.[61] The court noted that the Ohio corporation solicited the defendant's business via a website and that site did not indicate or suggest in any way that the plaintiff was an Ohio company or that plaintiff's customers would be doing business in Ohio.[62] Furthermore, the court reporters provided were Maryland court reporters for a Maryland company.[63] The defendant's contacts with Ohio in that case were nonexistent apart from the telephone calls and emails procuring the deposition services and a one-time payment mailed to the plaintiff.[64]

In *Epic Communications v. ANS Connect* (July 17, 2008). 8th Dist. No. 90364, 2008-Ohio-3548, the plaintiff, an Ohio consulting firm, contracted with the defendant, a Georgia company, to provide consulting services regarding federal programs providing

[59] *Buflod*, supra, at ¶¶ 17-19.
[60] Id. at ¶ 18.
[61] *Natl. Court Reporters*, supra, ¶ 10.
[62] Id. at ¶ 11.
[63] Id.
[64] Id. at ¶ 12.

grant money.[65] The contract was negotiated via telephone and the defendant was required to make payments to the plaintiff in Ohio.[66] The court found no minimum contacts sufficient to establish personal jurisdiction, noting that the plaintiff solicited business from the defendant, who was located in Georgia.[67] The court emphasized that it is the actions of the defendant that determine whether there is a substantial connection with the forum state and it found insufficient actions on the part of the defendant to establish personal jurisdiction.[68]

In the *Barnabus* case discussed above, the court found that Ohio's exercise of jurisdiction over the foreign corporation would comport with due process.[69] In that case, the CEO of the foreign corporation initiated contact with the Ohio company.[70] The parties negotiated and agreed to a consulting contract via telephone.[71] The majority of the work to be performed was done in Ohio.[72] Lengthy communications were conducted between the defendant and the plaintiff's subcontractors via telephone and email.[73] Further, the defendant sent payment under the contract to the plaintiff's Ohio address.[74]

The *Barnabus* court noted that the email and telephone contacts alone would not be sufficient to satisfy the "minimum contacts" requirement.[75] However, taking those communications in conjunction with the other facts of the case, the court found that a

[65] *Epic Communications*, supra, 2008-Ohio-3548, at ¶ 2.
[66] Id. at ¶ 7.
[67] Id. at ¶ 12.
[68] Id.
[69] *Barnabus*, supra, at ¶ 27.
[70] Id. at ¶ 19.
[71] Id.
[72] Id.
[73] Id.
[74] Id.
[75] Id. at ¶ 20.

reasonable person could conclude that minimum contacts with Ohio existed.[76] The court also noted that this was not a "one-shot deal."[77] The contract at issue in that case, if performed in full, would have required up to nineteen months to complete.[78] The court found that such a relationship, while not as lasting or involved as some, was "certainly more significant than a single contract for the sale of goods."[79] Finally, the court held that, "[b]ecause appellant's action is for breach of that consulting agreement, the litigation naturally arises from [defendant's] Ohio activities."[80]

In *Hammill Mfg. Co. v. Quality Rubber Prod., Inc.*, 82 Ohio App.3d 369, 612 N.E.2d 472 (Ohio App. 6th Dist., 1992), the court held as follows:

> "In light of the guidelines * * * and after a thorough review of the record before us, it is apparent that QRP purposely directed activities at an Ohio-based corporation, so that it could reasonably anticipate being haled into an Ohio court.
>
> QRP initiated the contract and conducted negotiations of the contract terms by telephone with an Ohio-based corporation. QRP intentionally and purposely directed activities at Ohio when it agreed to the contract terms, issued the purchase order in California, and sent it to Ohio to be accepted by Hammill. The contract required Hammill to produce a packaging machine in Ohio and ship it to California. It also required Hammill representatives to go to California and install it. QRP was also required to make three payments by mailing checks from California to the Ohio-based appellant. Further, QRP representatives travelled to Ohio in order to examine the machine after modifications were made by Hammill. Therefore, we hold that QRP had purposefully established minimum contacts with Ohio."[81]

[76] Id.
[77] Id. at ¶ 23.
[78] Id.
[79] Id.
[80] Id. at ¶ 24.
[81] *Hammill*, supra, 82 Ohio App.3d at 375-376.

In the case sub judice, Allied Dies, Inc. entered into an alleged commission agreement with an Ohio company and the terms of that agreement were negotiated on the telephone while Dowdney was in Ohio. Per said alleged agreement, Allied Dies, Inc. agreed to pay Paramco a ten percent commission for representing them during the entire bidding process with General Electric. Allied Dies, Inc. sent up to twelve separate quotes to Paramco in Ohio to be forwarded to General Electric. Allied Dies, Inc. also sent payment under the contract to Paramco's office in Ohio. While these facts are not as strong as those in the *Hammill* and *Barnabus* cases, the court finds that these facts are sufficient to establish the requisite minimum contacts to satisfy federal due process. Allied Dies, Inc. purposely availed itself of the privilege of conducting activities in Ohio for over a year and a half by utilizing Paramco's representative services with respect to the ongoing General Electric quotes. The plaintiff's claims arise out of these activities and the acts and consequences of these acts have a sufficiently substantial connection with Ohio to make the exercise over Allied Dies, Inc. reasonable. Based on these factors, the assertion of personal jurisdiction in this case would also not violate the notions of fair play and substantial justice.

For these same reasons, the plaintiff has demonstrated that Leigh Darrow had the requisite minimum contacts with Ohio to support a finding of specific jurisdiction. The plaintiffs allege that Darrow fraudulently promised on behalf of Allied Dies, Inc. that the company would pay Paramco a ten percent commission on any bids accepted by General Electric. While Darrow did not initiate this contact, he negotiated this alleged deal with Paramco for the benefit of receiving representative services from that Ohio company. This alleged fraudulent promise created an ongoing relationship between

Allied Dies, Inc. and Paramco and, if said promise is found to be fraudulent, it can be said that this action caused harm in Ohio to the plaintiff and that such harm was foreseeable.

While the court acknowledges that this is a close question, particularly with respect to the individual defendant, the court finds that Ohio's exercise of personal jurisdiction over both Allied Dies, Inc. and Leigh Darrow would not violate federal due process in the present case.

CONCLUSION

The defendants' motion to dismiss the present action pursuant to Civ.R. 12(B)(2) is not well-taken and is hereby denied.

A telephone case management Conference will be held in this case on Friday, November 8, 2013, at 9:50 a.m.

IT IS SO ORDERED.

DATED:_____ _____
Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 1st day of October 2013 to all counsel of record and unrepresented parties.

_____
Administrative Assistant to Judge McBride