

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

KINERGY CORPORATION

PLAINTIFF

v.

CIVIL ACTION NO. 3:99CV-407-S

CONVEYOR DYNAMICS CORPORATION, et al.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter is before the court on motions of the defendants, Conveyor Dynamics Corporation (“CDC”) and Didion Manufacturing Company (“Didion”) to dismiss the complaint for lack of personal jurisdiction over each of them.

When a motion to dismiss is made, the court must take the allegations of the complaint as true and grant dismissal only when it is beyond doubt that the plaintiffs can prove no set of facts entitling them to relief. *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

The plaintiff, Kinergy Corporation (“Kinergy”), a Kentucky manufacturer of specialized vibratory machines, claims that the defendants misappropriated its trade secrets and proprietary information, engaged in unfair competition and trade practices, violated federal antitrust laws, committed conversion, and were unjustly enriched as a result of their conduct. (Complaint, ¶1). The following facts gleaned from the complaint are taken as true for purposes of considering the motions presently before the court:

1. From 1992 through 1996, Didion, a Missouri corporation, purchased machines from Kinergy for resale in the foundry industry in conjunction with its rotary shakeout machine, a device it developed to clean hot castings. (Complaint, ¶¶10-12).

2. The purchases were made from Kinergy in Kentucky. (Complaint, ¶12). Didion ceased doing business with Kinergy after approximately twenty-four purchases were made over a number of years.

3. Paul Wilson, a former Kinergy employee who had been involved with the Didion account, had access to confidential machine drawings and information during the course of his employment with Kinergy. (Complaint, ¶15).

4. In or about 1996, Didion conspired with Wilson and formed a Missouri corporation, CDC, to manufacture vibratory equipment based upon Kinergy's designs. (Complaint, ¶16).

5. In March of 1999, Kinergy discovered that CDC was manufacturing and selling vibratory machinery in competition with Kinergy. (Complaint, ¶17), and filed this action on June 25, 1999.

It is undisputed that CDC was formed in 1995, that it does manufacture and sell vibratory machinery in competition with Kinergy, and that Wilson went to work for CDC.

Kinergy contends that this court has personal jurisdiction over the defendants pursuant to KRS 454.210(2)(a)(1) because they "have transacted business in Kentucky and because they have caused tortious injury to Plaintiff in Kentucky arising from their business contacts in Kentucky and/or with Plaintiff in Kentucky." Complaint, ¶6.

The "business contacts" to which Kinergy refers were Didion's purchases of vibratory machines from Kinergy for a period of years, a series of sales which ceased, according to the complaint, in 1996.

CDC contends that long-arm jurisdiction pursuant to KRS 454.210 cannot be had over it, since it has never transacted business in Kentucky. CDC was formed in December of 1995 in Missouri. It has had no contacts with Kentucky since its formation. Didion claims that it too is beyond the reach of this court, as it has had no business dealings in Kentucky after January of 1994.¹

¹There is a dispute of fact between the parties concerning when Didion's business dealings (continued...)

Jurisdiction over CDC is claimed to be premised upon Didion's business contacts with Kentucky, which Kinergy then attempts to impute to CDC. Assuming *arguendo* that such a theory satisfied the minimum due process requirements for the exercise of jurisdiction over a corporation with no direct ties to Kentucky, jurisdiction could be had over it only if Didion's contacts were first found to be sufficient. We conclude that, although Didion transacted business with Kinergy in Kentucky over a number of years, the alleged tortious injury did not arise from Didion's business transactions here. Therefore the assertion of personal jurisdiction over both defendants fails.

KRS 454.210 requires that the tortious injury in question arise from the defendants' business transactions in Kentucky. Kinergy alleges that in 1996 its former employee conspired with Didion to pirate Kinergy's proprietary designs. The complaint states that "In furtherance of their scheme, Didion Manufacturing and its principals formed defendant Conveyor Dynamics as the instrumentality through which they would manufacture and market the vibratory machines..." ¶16. There are no allegations in this complaint that anything other than the purchase of machines from Kinergy occurred in Kentucky. There is no contention that these sales transactions themselves were in any way part of the conspiracy. It appears to be Kinergy's position that the "business relationship" between Didion and Kinergy in Kentucky provided the introduction of Wilson to Didion, and that it is from this introduction that the formulation of a conspiratorial objective between Wilson and Didion emerged. The purported conspiracy between Wilson and Didion to pirate proprietary designs was, however, unrelated to Didion's machine purchases.

Kinergy focuses on the alleged formation of a conspiratorial scheme in an attempt to tie the purported wrongs to activity in Kentucky, but does not allege a time or place when this supposed conspiracy came into being. In any event, as noted in *Prosser & Keeton on Torts, 5th Ed.* ch. 8, §46,

¹(...continued)
in Kentucky ceased. We must accept as true the allegations in the complaint. However, the precise time at which the business relationship was severed is of no significance in this analysis.

“...it is clear that the mere agreement to do a wrongful act can never alone amount to a tort, whether or not it may be a crime; and that some act must be committed by one of the parties in pursuance of the agreement, which is itself a tort. ‘The gist of the action is not the conspiracy charged, but the tort working damage to the plaintiff.’ [citation omitted]. It is only where means are employed, or purposes are accomplished, which are themselves tortious, that the conspirators who have not acted but have promoted the act will be held liable.” Kinergy acknowledges that the equipment purchases occurred in Kentucky before the formation of CDC. The formation of CDC in Missouri is the first act identified in the complaint allegedly taken in furtherance of a conspiratorial objective. As noted earlier, CDC has had no contacts with Kentucky since its formation.

Under the facts alleged, rather than arising from the business transactions between Kinergy and Didion, the tortious conduct alleged in the complaint arose between a former employee of Kinergy and Didion at a time after the business dealings between the two companies had ceased. We conclude that the court does not have personal jurisdiction over these defendants and the action must be dismissed without prejudice.

A separate order will be entered herein this date in accordance with this opinion.

This ____ day of _____, 1999.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record