

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 motion of the plaintiff, Kinergy Corporation (“Kinergy”), to vacate this court’s order of dismissal entered November 1, 1999. The court noted in the November opinion that Kinergy had failed to identify any contacts with Kentucky in the formation and execution of the purported conspiratorial scheme between Paul Wilson and Didion Manufacturing Company (“Didion Manufacturing”) by and through Michael Didion, its owner, to pirate Kinergy’s trade secrets and proprietary business information. The court thus concluded that having alleged only generally that a conspiracy was formed between the two, there were insufficient contacts with the Commonwealth for the defendants, Conveyor Dynamics Corporation (“Conveyor Dynamics”) and Didion, to be reached under the Kentucky long-arm statute, KRS 454.210.

On December 16, 1999, the court entered an order holding the November order of dismissal in abeyance and permitting limited discovery concerning the issue of personal jurisdiction. The court allowed the discovery after Kinergy filed an affidavit of Paul Wilson, the alleged coconspirator and former employee of Kinergy, and a telephone log documenting approximately sixty phone calls made from April to November of 1995 purportedly between Kinergy in Kentucky and Didion Manufacturing in Missouri. In permitting the discovery, the court stated that this newly discovered evidence offered by Kinergy might provide some substantiation to the allegation that a conspiratorial scheme was formulated and begun while Wilson was employed by Kinergy, and that its formulation

involved numerous contacts with Kentucky. The discovery has been done and the parties have rebriefed the issue of personal jurisdiction over the named defendants. For the reasons set forth below, the court will reinstate its order of dismissal.

Kinergy took a number of depositions in attempting to establish personal jurisdiction over the defendants. The key deposition was that of Paul Wilson, Michael Didion's partner in the Conveyor Dynamics venture. A review of that document reveals carefully framed answers which do not provide the jurisdictional connection which Kinergy seeks. Wilson does not deny that, while still employed by Kinergy, he contacted Michael Didion in Missouri about forming Conveyor Dynamics. He testified that he continued to work for Kinergy after the initial meeting in Missouri during which an agreement was reached that Conveyor Dynamics would be formed. He admitted that he had telephone conversations with Didion:

Q: Tell me about any contacts you had with Michael Didion following your October meeting leading up to your next trip to Didion.

A: I'm sure there were – again, there were several telephone conversations. I talked to Mike and/or Art Grillo on a pretty regular basis pertaining to projects, you know, ongoing, if they had a machine out in the field that may have been causing problems, well, how-do-you-fix-it type deal, or if we had a proposal ongoing. There were – at the end of the conversation, it would maybe lead to how are things going, you know, with the plans and the like of the company.

On cross-examination (Wilson depo., pgs. 70-79), it was made clear that any mention of the formation of Conveyor Dynamics was made as an addendum or an aside, and was referenced *in futuro*, as the company did not come into existence until December of 1995 after Wilson was fired by Kinergy. Wilson has admitted that he possessed some Kinergy conveyor detail drawings and a price list, but he has unequivocally denied that Didion ever mentioned or suggested that Wilson take these items for use in the Conveyor Dynamics venture. Wilson has testified that after being fired by Kinergy, he worked on conveyor designs at his home and made a number of sales calls in Kentucky prior to his move to Missouri. He has stated, however, that he did not receive a paycheck until he moved to Missouri, and that after being fired by Kinergy he was forced to live on savings

during the months that he remained in Louisville. While his activities in Louisville may have been preliminary “spade work” for what became Conveyor Dynamics, there is nothing which ties these activities to Didion Manufacturing or Michael Didion in Missouri at that time. Wilson is not a party to this lawsuit. Conveyor Dynamics did not come into existence until December of 1995. Wilson was not paid by Conveyor Dynamics until his move to Missouri in March of 1996.

Kinergy attempts to tie Didion Manufacturing, through Michael Didion, to Wilson and Conveyor Dynamics in order to find sufficient contacts with Kentucky. It fails to do so successfully for jurisdictional purposes. Didion Manufacturing and Conveyor Dynamics have not been shown to be other than completely separate and independent companies, despite Kinergy’s protestations to the contrary. Michael Didion owns Didion Manufacturing and the Michael Didion Living Trust owns a controlling interest in Conveyor Dynamics. The court has not been shown anything improper in these ownership interests. Kinergy makes much of the fact that the fledgling Conveyor Dynamics made use of Didion facilities and personnel when starting up. However, even if Didion Manufacturing was, in fact, operating Conveyor Dynamics in 1996, Wilson has testified that Didion Manufacturing’s contacts with Kentucky prior to December 1995 had to do with its own ongoing projects with Kinergy; not with Conveyor Dynamics business.

Finally, even if this court were to accept Kinergy’s assertion that the defendants have, in the words of the Kentucky long-arm statute, regularly done or solicited business in this Commonwealth, Kinergy has not established that the tortious injury that it has alleged suffered arose from the defendants’ doing or soliciting of business here. As this court stated in its original ruling, the course of business dealings between Didion Manufacturing and Kinergy provided the introduction of Wilson to Michael Didion. Wilson approached him about the possibility of forming Conveyor Dynamics and traveled to Missouri to engage in negotiations for this purpose. The new company was formed in Missouri at a time after Wilson was no longer employed by Kinergy. Wilson was not paid for his work until moving to Missouri. The purported utilization of trade secrets in the form

of detail drawings would have been utilized, if at all, by Didion Manufacturing and/or Conveyor Dynamics in Missouri where the machines were manufactured. Pricing lists were used at sometime thereafter in Missouri when machines were priced and sold. In attempting to pursue its allegations of conspiracy, Kinergy was met with unequivocal denials that any discussion of pirating proprietary materials was discussed or contemplated while Wilson was employed by Kinergy or at any other time..

Motion having been made and for the reasons set forth hereinabove and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the motion of the plaintiff, Kinergy Corporation, to vacate the court's November 1, 1999 order of dismissal is **DENIED**, and the order of dismissal (DN 10) is **REINSTATED** as of the date of entry of this order.

This ____ day of _____, 2000.

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

cc: Counsel of Record