Docket: **2018-03399-BLS2**
Parties: **STEWARD HEALTH CARE SYSTEM LLC, Plaintiff VS. CHSPSC, LLC, Defendant**
Date: **August 20, 2019**
Judge: **/s/Janet L. Sanders Justice the Superior Court**

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS

This case arises from contractual agreements between the plaintiff Steward Health Care System LLC (Steward) and the defendant CHSPSC, LLC and its parent company CHS/ Community Health Systems (collectively, CHSPSC). These contracts were negotiated when Steward's principal place of business was in Boston, Massachusetts. Disputes arose between the parties concerning performance of the agreements, and in September 2018, CHSPSC sent a demand letter to Steward threatening to cut off certain services. Steward filed the instant lawsuit on October 30, 2018 seeking an injunction to prevent this. Three days later, on November 2, 2018, CHSPSC filed its own lawsuit against Steward in Tennessee (the Tennessee Action). The Tennessee Action arises from the same contractual disputes. The case is now before this Court on CHSPSC's Motion to Dismiss pursuant to Rule 12(b) (2), Mass.R.Civ. P., alleging that this Court does not have personal jurisdiction against CHSPSC, a Tennessee based company. In the alternative, CHSPC moves to dismiss pursuant to the doctrine of forum non conveniens. G.L.c. 223 §5. After hearing, this Court concludes that the Motion must be DENIED.

-1-

BACKGROUND

The following can be gleaned from the pleadings and from affidavits submitted by the parties which lay out facts that are in large part undisputed. CHSPSC is a Delaware limited liability company with a principal place of business in Franklin, Tennessee. Steward is a national health care company that operates private hospitals through the United States. Up until February 18, 2018, its principal place of business was in Boston, Massachusetts, with all of its key employees and corporate offices located here. Steward has since relocated to Dallas, Texas but still maintains a Boston office with some personnel splitting their time between Boston and Dallas.

In early 2016, a CHSPSC executive, Ken Hawkins, contacted Mark Rich, Steward's CFO, about a business proposal. Discussions ensued, and on February 17, 2017, Steward entered into an Asset Purchase Agreement (the APA) under which it agreed to purchase substantially all of the assets of certain affiliates of CHS, including assets used in the operation of eight hospitals. These hospitals were located in Ohio, Pennsylvania and Florida. In connection with the APA, Steward executed various transition services agreements (the TSAs), including the four agreements at issue in this lawsuit. Under the terms of the TSAs, CHSPSC was to provide certain services for a one-year period to facilitate the transition of ownership and operation of the eight hospitals. During that period, Steward would have use of CHSPSC's computer network that permitted Steward to access legacy patient data.

All of the communications leading up to the formation of these agreements took place when Steward maintained Boston as its principal place of business. Representatives of CHSPSC initiated many of these communications, which included numerous emails and hundreds of telephone calls. The communications were with Steward's Boston legal counsel or with

-2-

employees of Steward who were at that time all in Massachusetts. Following the execution of the agreements, the communications between the parties

continued. Representatives of Steward and CHSPSC held twice-daily telephone calls for a two-week period in May 2017 and CHSPSC emailed to Steward weekly reports. Again, these communications took place while Steward was based in Boston.

Disputes arose among the parties regarding performance under the agreements, and in June 2018, Steward stopped making payments to CHSPSC. On September 18, 2018, CHSPSC sent a letter demanding payment (the Demand Letter), and pointed out that certain of the TSAs had by their terms expired. The Demand Letter was sent to Steward's legal counsel in Boston and to Steward's Boston office. The Demand Letter stated that "if Steward does not bring its account current...PSC [CHSPSC] will take steps to cease providing Steward any services under the expired TSAs and to disconnect Steward's access to any PSC computer network" at the hospitals covered by the TSAs. The threats to shut down access continued through mid October. From Steward's standpoint, cutting off that access would interfere with its ability to provide adequate medical care to patients at those hospitals. Consequently, on October 30, 2018, it filed the instant lawsuit seeking injunctive relief. Three days later, CHSPSC filed the Tennessee Action, which sought among other things a declaratory judgment from the Tennessee court that it had the right to cut Steward off from its information technology network.

DISCUSSION

In support of its Motion, CHSPSC first argues that it is not subject to personal jurisdiction in this forum. It notes that it has no offices in Massachusetts, owns no real estate and has no license to do business here. Moreover, all of the services performed under the applicable agreements are provided elsewhere. In response, Steward contends that both CHSPSC's pre-

contract and post contract contacts with this state easily satisfy the requirements of both the Massachusetts Long Arm Statute, G.L.c. 223 §3 and the Due Process Clause of the United States Constitution. See Good Hope Industries, Inc. v. Ryder Scott Co., 378 Mass. 1, 5-6 (1979) (setting forth the two part test for the assertion of personal jurisdiction over a non-resident defendant). This Court agrees.

Section 3(a) of the Long Arm Statute permits a court to exercise jurisdiction over a defendant as to a cause of action that arises from the defendant's "transacting any business" in the Commonwealth. The term "transacting business" has been "broadly construed" and includes "anything but the most incidental commercial contact." Cannonball Fund, Ltd. v. Dutchess Capital Management, LLC, 84 Mass.App.Ct. 75 98 (2013) (internal citations omitted). The claim must also arise from the business the defendant has transacted, but that requirement too has been construed liberally, in favor of the assertion of jurisdiction. See e.g. Tatro v. Manor Care, Inc., 416 Mass. 763, 769-771 (1994). Where the cause of action is contract-based, the focus is typically on the contacts relating to the formation of the contract, although post-contract communications are also relevant. Saturn Management LLC v. GEM-Atreus Advisors, LLC, 754 F.Supp.2d 272, 278 (D.Mass. 2010). In the instant case, the contacts with Massachusetts relating to the APA and the TSAs are more than enough to satisfy Section 3(a).

The affidavits submitted by Steward show that CHSPSC sent numerous emails and made many telephone calls to Steward representatives at a time when Steward had its principal place of business in Massachusetts.[1] These communications culminated in the execution of the APA and the TSAs from which this claim arises. Those emails and phone calls continued after the contracts were executed. Moreover, in billing for its services, CHSPSC sent invoices to a

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[1]This Court sees no reason to draw a distinction between CHS and CHSPSC in this analysis, since CHS would have been acting on behalf of as CHSPSC.

-4-

Steward representative in Massachusetts and accepted payments form Steward's Massachusetts bank accounts. That the hospitals to which these agreements pertained were outside of Massachusetts and that the services at issue relate to those hospitals does not change the fact that, for jurisdictional purposes, Steward was transacting business in Massachusetts and that this business gave rise to the claims before the Court.

This Court is also satisfied that the assertion of jurisdiction meets constitutional requirements. The touchstone for that analysis is whether the defendant had "minimum contacts" with the state. Tatro, 416 Mass. at 772. To make that determination, the court must find that: a) the defendant purposefully availed itself of the privilege of conducting activities within the state so as to invoke the benefits and protections of its laws; b) the claims arise out of or relate to the defendant's contacts with the forum; and c) the assertion of jurisdiction does not offend "traditional notions of fair play and substantial justice." Bulldog Investors General Partnership v Secretary of Commonwealth, 457 Mass. 210, 217 (2010) (internal citations omitted). This Court has already discussed one of those requirements: the claims at issue arise out of CHSPSC's contacts with Massachusetts. This Court also concludes that those contacts were purposeful and that the assertion of jurisdiction would not be constitutionally unfair. CHSPSC knew from the outset that Steward was a Massachusetts company, it affirmatively solicited Steward in Massachusetts about the prospect of doing business together and it signed agreements to maintain an ongoing relationship with Steward at a time when Steward was and remained for some period an entity with its principal place of business here. Given those contacts, it was reasonably foreseeable that CHSPSC could be haled into a Massachusetts court.

CHSPSC argues in the alternative that, even if this Court can assert personal jurisdiction over it, the case should still be dismissed based on forum non conveniens. Although dismissal

-5-

on these grounds is left to the Court's discretion, case law makes clear that this discretion should rarely be exercised so as to disturb the plaintiff's choice of forum. Kearsarge Metallurgical Corp. v. Peerless Ins. Co., 383 Mass. 162, 169 (1981). There must not only be an alternative forum available but the balance of both private and public considerations must also "strongly favor the defendant's motion." Gianocaostas v. Interface Group-Massachusetts, Inc., 450 Mass. 715, 723 (2008); see also Universal Adjustment Corp. v. Midland Bank, Ltd., 381 Mass. 303, 313 (1933) (the doctrine provides for dismissal only where the "the ends of justice strongly indicate that the controversy may be more suitably tried elsewhere"). This Court concludes that CHSPSC has not met that heavy burden.

In support of its position, CHSPSC notes that all of the services provided under the TSAs are for hospitals located elsewhere – in Ohio, Pennsylvania and Florida. Documents and witnesses are located in those states as well as in Tennessee where CHSPSC has its headquarters. Although Steward was located in Massachusetts until February 2018, it has since relocated to Dallas, Texas. And the TSAs provide that Delaware law applies to the contract claims. The problem is that none of those facts firmly point to a single state, including Tennessee. Moreover, in this age of electronic discovery and videotaped depositions, the burden of litigating in Massachusetts cannot be said to be particularly onerous. Massachusetts does

have some interest in this suit since it arose from events that occurred when Steward was located almost exclusively in this state. Although CHSPSC has since instituted a lawsuit in Tennessee arising from the same events, this occurred after Steward initiated the instant lawsuit, entitling it to some preference. See Holmes Group Inc. v. Hamilton Beach/Proctor Silex, Inc., 249 F.Supp. 2d 12, 1516 (D.Mass 2002) (explaining the first to file rule).

-6-

CHSPSC argues that this presumption in favor of the first-filed action should not apply because of Steward's "procedural gamesmanship." It states that it had already prepared its complaint in anticipation of litigation in Tennessee and that Steward only won the "race to the courthouse" because it was tipped off to CHSPSC's plans as a result of the Demand Letter sent September 21, 2018. Steward then bought itself time to file in Massachusetts by a replies to that letter stating that it was "framing our position" and "finalizing our statement." The Demand Letter, however, did much more than threaten litigation: it stated that CHSPSC would disconnect Steward from the information technology that Steward needed to access patient health information at the hospitals covered by the TSAs. Seeking injunctive relief from this Court to prevent that thus suggests that Steward was motivated by something more than simply being the first to file. Moreover, there was nothing that Steward did or (through its counsel) said to dissuade CHSPSC from instituting litigation in Tennessee before the instant lawsuit was filed here on October 30, 2018. In short, this is not the kind of "special circumstances" that the courts have recognized as nullifying the presumption in favor of the first filed action. See Holmes Group, Inc., 249 F.Supp.2 at 16.[2]

Accordingly, for the foregoing reasons and for other reasons set forth in Steward's memoranda in opposition, the Motion to Dismiss is DENIED.

/s/Janet L. Sanders Justice the Superior Court

-2-

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[2]This Court acknowledges that having two actions pending in separate forums about the same subject matter will cause complications. Indeed, the Tennessee action has already proceeded to a bench trial on the issue of whether the pertinent contracts permit CHSPSC to cut off Steward's access to patient data pending litigation of the parties' other claims. There are other ways of dealing with these difficulties, however. In any event, the pendency of two actions relating to the same subject matter is not a relevant consideration for purposes of forum non conveniens.

-7-

-8-