

CONFIRMED COPY

WINDSOR SUPERIOR COURT
DOCKET NO. S204-4-97 Wrcv

[illegible]

—

MOTION TO DISMISS

CONFIRMED COPY

CONFIRMED COPY

CONFIRMED COPY

CONFIRMED COPY

On June 23, 1997, CID filed a Motion to Dismiss for lack of personal jurisdiction, under V.R.C.P. 12(b)(2). CID is a Texas corporation not doing business in Vermont, and claims that it has not had sufficient minimum contacts with Vermont to support personal jurisdiction. PVCC alleges that there are sufficient contacts with Vermont to support its claim of CID's tortious interference with PVCC's contract with HCC resulting in injury with effects in Vermont. The undisputed facts show that CID knew that PVCC had previously done design work on the same project that CID was asked to take over working on for HCC; that CID made phone calls to PVCC in Vermont to get information off a data tape that PVCC had developed for HCC, and which CID was using for its own design work on the same project; and that CID kept making phone calls to PVCC in Vermont and left messages about the purpose of the calls, but received no response until it was told by PVCC not to call any more.

In order to invoke personal jurisdiction, the defendant must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Northern Aircraft v. Reed, 154 Vt. 36, 41 (1990) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945), and Milliken v. Meyer, 311 U.S. 457, 463 (1940)). A plaintiff opposing a defendant's motion to dismiss for lack of personal jurisdiction need only demonstrate a *prima facie* case of jurisdiction in order to resist the motion, for the purpose of permitting discovery and conducting an evidentiary hearing. Godino v. Cleanthes, 163 Vt. 237, 239 (1995). Defendant has not requested an evidentiary hearing, and there do not appear to be disputed issues of facts, or questions of credibility. Therefore, the court is relying on the undisputed facts in the affidavits in making this ruling. Id.

The Vermont Supreme Court has indicated that personal jurisdiction can rest upon a single out-of-state tort with in-state effects. See Robinson v. International Industries Limited, Inc., 139 Vt. 444, 446-47 (1981). Also see Calder v. Jones, 465 U.S. 783 (1983) (California had jurisdiction over Florida defendant because it was foreseeable that a magazine article about the actress plaintiff would affect her in California). Where jurisdiction is based on the tortious activity, the

FILED

AUG 20 1997

GAIL P. BRADY
WINDSOR COUNTY CLERK

plaintiff must show *prima facie* evidence of the tort. The record in this case suffices to support a case of tortious interference with contract rights. See Williams v. Chittenden Trust Co., 145 Vt. 76 (1984) (*prima facie* evidence of tort where defendant who knew about plaintiff's contract took over performance of architectural services, including use of plaintiff's work product); Lyon v. Bennington College, 137 Vt. 135 (1979) (pleading of wrongful interference with college faculty member's employment contract included essentials of an actionable tort); Mitchell v. Aldrich, 122 Vt. 19 (1960) (lead case on tortious interference). In this case there are facts from which it can be reasonably inferred that CID knew about PVCC's contract with HCC. There is a reasonable inference that CID intended to interfere with PVCC's contract rights, in the sense that interference was substantially certain to occur as a result of its action. Williams at 81. It is fair to view CID's course of conduct as purposefully directed toward Vermont because it inevitably affected persons in this state. Pasquale v. Genovese, 136 Vt. 417, 419 (1978).

The court concludes that plaintiff has presented a *prima facie* case of jurisdiction sufficient to meet the requirement set forth in Godino v. Cleanthes, 163 Vt. 237, 239 (1995).

ORDER

Defendant's Motion to Dismiss is DENIED.

Dated this 20th day of August, 1997.

Mary Miles Teachout
Hon. Mary Miles Teachout,
Presiding Superior Court Judge

FILED

AUG 20 1997

GAIL P. BRADY
WINDSOR COUNTY CLERK