

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
TRANS WORLD AIRLINES, et al.,	)	Case Nos. 01-00056 (PJW)
	)	
_____	)	
	)	
TWA INC.POST CONFIRMATION ESTATE,	)	
	)	
Plaintiff,	)	
	)	
V.	)	Adv. Proc. No. 03-70129
	)	
GREATER TORONTO AIRPORTS	)	
AUTHORITY,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION**

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Date: May 6, 2003

**WALSH, J.**

Pending before the Court is the Greater Toronto Airports Authority's ("GTAA") motion to dismiss the complaint for lack of personal jurisdiction (the "Motion") (Docket #6). For the reasons set forth below, a final ruling on the Motion will be deferred to permit the plaintiff to conduct limited discovery.

#### **BACKGROUND**

Plaintiff TWA Inc. Post Confirmation Estate (the "Estate"), is the post-confirmation estate formed pursuant to TWA's Chapter 11 plan of liquidation which was confirmed on June 14, 2002. The Estate initiated this adversary proceeding in December 2002, seeking the return of allegedly preferential payments made to GTAA in an amount slightly in excess of \$172,000. The payments arose out of a contractual relationship between TWA and GTAA relating to rent, landing fees and ground terminal charges. In lieu of an answer, GTAA moved to dismiss the complaint for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.<sup>1</sup>

#### **DISCUSSION**

In order for a defendant to be subject to jurisdiction in

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<sup>1</sup>Rule 12(b) of the Federal Rules of Civil Procedure is made applicable to adversary proceedings by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure.

a United States court, it must have "minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). GTAA asserts that it does not have sufficient minimum contacts with the United States to be subject to a United States court. Memorandum of Law in Support of Defendant's Motion to Dismiss the Complaint for Lack of Personal Jurisdiction (Doc. No. 8) ("Defendant's Memorandum"), p.1.

GTAA is a Canadian corporation responsible for management and operation of Toronto-Lester B. Pearson International Airport ("Pearson"). It asserts that it has no offices, real property, or bank accounts in the United States. See id. at 2. GTAA further asserts it has not registered to conduct business anywhere in the United States and pays no United States taxes. See id. at 3. Finally, it notes that its leases and operating agreements with TWA were negotiated and executed in Canada and that payments due under those agreements were sent to GTAA in Canada and deposited into a Canadian bank account. See id. at 2-3. In response, the Estate notes that the GTAA routinely invoiced TWA at its headquarters in St. Louis, Missouri. See Plaintiff's Response to Defendant's Motion to Dismiss the Complaint for Lack of Personal Jurisdiction (Doc. No. 14) ("Plaintiff's Opposition"), p.2.

In determining whether sufficient minimum contacts exist

to permit the exercise of *in personam* jurisdiction, “[w]here a federal statute such as [the Bankruptcy Code] confers nationwide service of process, ‘the question becomes whether the party has sufficient contacts with the United States, not any particular state.’” Securities Investor Protection Corp., v. Vigman, 764 F.2d 1309, 1315 (9th Cir. 1985) (internal citation omitted). See also Pinker v. Roche Holdings LTD., 292 F.3d 361, 369 (3d Cir. 2002) (“Where Congress has spoken by authorizing nationwide service of process . . . the jurisdiction of a federal court need not be confined by the defendant's contacts with the state in which the federal court sits.”). GTAA concedes that the “national contacts” standard applies to adversary proceedings in Bankruptcy Court. See Defendant’s Memorandum, p.4.

As the plaintiff in this action, the Estate bears the burden of showing that GTAA has sufficient minimum contacts with the forum, in this case the United States as a whole, to permit the exercise of either specific or general personal jurisdiction over GTAA. See BP Chemicals LTD. v. Formosa Chemical & Fibre Corp., 229 F.3d 254, 259 (3d Cir. 2000). Specific personal jurisdiction exists when the defendant has “purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that ‘arise out of or related to’ those activities.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985). General personal jurisdiction exists when the defendant's contacts with the

forum, whether or not related to the litigation, are "continuous and systematic." Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 416 (1984). In order for there to be minimum contacts, there must be "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Burger King Corp., 471 U.S. at 475.

The Estate argues that GTAA has continuous and substantial contacts with the United States sufficient to subject it to general personal jurisdiction.<sup>2</sup> See Plaintiff's Opposition, pp.3-5. Specifically, the Estate asserts that GTAA has had continuous and substantial contact with the United States by contracting with and invoicing at least ten United States-based airlines. See id. at 4.

No evidence has been presented with respect to whether GTAA invoiced any airline other than TWA in the United States. I do not find GTAA's invoicing of TWA at its St. Louis headquarters to be sufficient minimum contacts with the United States to permit the exercise of *in personam* jurisdiction. Simply by sending invoices to St. Louis, GTAA did not purposefully avail itself the benefits or burdens of United States law. Presumably, had TWA defaulted under the contracts, any judicial action would have been

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<sup>2</sup>The Estate does not assert that GTAA is subject to specific personal jurisdiction.

taken in Canada under Canadian law.

However, rather than grant GTAA's Motion at this time, I will grant the Estate permission to conduct limited discovery on the jurisdictional issue and will defer a final ruling on the Motion until that discovery is completed. It is within the court's discretion to permit discovery when jurisdictional facts are disputed. See Massachusetts School of Law at Andover, Inc. v. American Bar Ass'n., 107 F.3d 1026, 1042 (3d Cir. 1997) ("Our rule is generally that jurisdictional discovery should be allowed unless the plaintiff's claim is "clearly frivolous."). Here, based on the Estate's ascertainment that up to 30% of the daily flights arriving at Pearson are from United States locations on airlines domiciled in the United States, I agree with the Estate that it is possible GTAA may have such additional ties to the United States arising out of those flights that a finding of *in personam* jurisdiction may be warranted. Furthermore, it is entirely possible that GTAA's dealings with other United States based airlines for landing rights and other rights at Pearson significantly exceed the limited dealings GTAA had with TWA. Finally, GTAA may have significant dealings with United States based entities other than airlines. The Estate should have an opportunity to examine such matters.

**CONCLUSION**

For the foregoing reasons, I will defer a final ruling on GTAA's Motion until the Estate has an opportunity to conduct limited discovery regarding jurisdictional facts.