

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREW OKULSKI,  
Plaintiff,

CIVIL ACTION

v.

CARVANA, LLC, PAUL BREAUX, AND  
KATELYN GREGORY,  
Defendants.

NO. 20-1328

**MEMORANDUM OPINION**

When a used Nissan car Plaintiff Andrew Okulski purchased from an online car dealer, Carvana, LLC (“Carvana”), malfunctioned he sued Carvana, as well as its Vice President and General Counsel Paul Breaux and employee Katelyn Gregory (collectively, “Defendants”), alleging a wide-ranging consumer fraud scheme, premised on the theory that the car’s defects are inconsistent with Carvana’s advertising and other documents Carvana gave him when he bought the car. In his Second Amended Complaint, Okulski brings claims of fraud and negligent representation, as well as violations of the Pennsylvania Board of Vehicles Act (“BVA”), 63 P.S. § 818.1 *et seq.*, and the Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. C.S.A. § 201-1 *et. seq.*, against all Defendants and a breach of contract claim against Carvana. Breaux has moved to dismiss all claims against him for lack of personal jurisdiction, and all three Defendants collectively move to dismiss the fraud, negligent misrepresentation, BVA, and UTPCPL claims for failure to state a claim.<sup>1</sup>

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On July 16, 2019, Okulski, a Pennsylvania resident, bought a used 2017 Nissan Versa

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<sup>1</sup> Carvana’s motion does not seek to dismiss the breach of contract claim.

(“the Vehicle”) from Carvana for just over \$16,000. Carvana is an e-commerce platform for buying and selling used cars. The company is publicly traded and has its principal place of business in Arizona. Defendant Breaux is an Arizona resident and works at Carvana’s headquarters.

In connection with the purchase, Okulski and Carvana executed a series of agreements, including the Retail Purchase Agreement (the “RPA”), the Retail Installment Contract and Security Agreement (the “RISC”), the Carvana Care Application (the “Application”), the Odometer Disclosure Statement, the Carvana Limited Warranty, and the GAP Addendum to Retail Installment Contract (collectively, the “Transaction Documents”).<sup>2</sup> Breaux executed the Transaction Documents on behalf of Carvana by remotely electronically signing them.

There is considerable disagreement as to where the Vehicle was purchased. Okulski maintains that it was purchased at “CARVANA PHILA,” where he signed the Transaction Documents and took possession of the car. Defendants respond that “CARVANA PHILA” is a pleading fiction invented by Plaintiff—it is not a separate legal entity or party in this case. Because Carvana is an online retailer, it maintains the purchase was made online. Notably, the RPA’s header states “Retail Purchase Agreement – Georgia” and the document identifies the dealership selling the car as Carvana, LLC, located in Winder, Georgia. By the terms of the

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<sup>2</sup> Okulski has attached these agreements, as well as the Vehicle’s CarFax report and screenshots of Carvana’s website, to his Complaint. Because the Complaint’s allegations rely on these documents, the Court may consider them in deciding the motion to dismiss. *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (explaining that courts may consider documents that are integral or explicitly relied upon in a complaint without converting a motion to dismiss into one for summary judgment).

Additionally, Defendants ask the Court, in ruling on their Motion to Dismiss to consider Carvana’s 2019 and 2020 Annual Reports. Because the Complaint cites to both documents and they are publicly filed with the Securities & Exchange Commission, the Court may consider them in ruling on this motion to dismiss. *See Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010) (explaining that on motion to dismiss under Rule 12(b)(6), a court may consider “matters of public record, as well as undisputedly authentic documents if the complainant’s claims are based upon these documents”).

contract, Okulski “agree[d] to accept title and ownership of the Vehicle” in Georgia. The Application and the RISC also identify the Winder, Georgia dealership as the seller, although the RISC has a choice of law provision stating “[t]his contract is governed by the law of Pennsylvania.”

Several months after the purchase and after driving the Vehicle for approximately 3,000 miles, the car began to have mechanical problems including engine misfires, a shorted engine coil, shuddering on acceleration and shaking when the car went over 40 miles an hour. Okulski took the Vehicle to a shop for repairs, which were performed pursuant to warranties at no cost to him. Okulski alleges that the repair shop discovered “numerous classic, tell-tale signs of damage, improper and incomplete repairs, and still existing damage”. Although at the time he bought the Vehicle, the CARFAX report did not show any reported accidents, and Defendant Gregory, a Carvana salesperson, represented to him that the only blemish was a small scratch under the right-side headlight, Okulski concluded that it had been involved in an accident,

The core of Okulski’s Complaint is that he was induced to purchase the Vehicle by Defendants’ representation to him that it had been “carefully inspected” and was “CARVANA CERTIFIED.” But, he contends that these representations were untrue: rather it was “in a damaged, defective, unfit, unmerchantable and unsafe condition.” He further alleges that Breaux was required to be licensed in Pennsylvania but was not, and therefore his signing the Transaction Documents constituted “licensing evasion.”

## **II. ANALYSIS**

### **A. Breaux’s Motion to Dismiss for Lack of Personal Jurisdiction**

As a preliminary matter, Defendant Breaux asserts that the Second Amended Complaint as it pertains to him should be dismissed under Rule 12(b)(2) because the Court lacks personal

jurisdiction over him in that he is an Arizona citizen with no substantial contacts in Pennsylvania.

To survive a motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2), “the plaintiff bears the burden of establishing personal jurisdiction.” *O’Connor v. Sandy Lane Hotel, Co.*, 496 F.3d 312, 316 (3d Cir. 2007). “[W]hen the court does not hold an evidentiary hearing on the motion to dismiss, the plaintiff need only establish a prima facie case of personal jurisdiction and the plaintiff is entitled to have its allegations taken as true and all factual disputes drawn in its favor.” *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 97 (3d Cir. 2004); *Carteret Sav. Bank, F.A. v. Shushan*, 954 F.2d 141, 142 n.1 (3d Cir. 1992).<sup>3</sup>

“A Rule 12(b)(2) motion . . . is inherently a matter which requires resolution of factual issues outside the pleadings, i.e. whether in personam jurisdiction actually lies.” *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66 n.9 (3d Cir. 1984). Thus,

once the defense has been raised, then the plaintiff must sustain its burden of proof in establishing jurisdictional facts through sworn affidavits or other competent evidence. [A]t no point may a plaintiff rely on the bare pleadings alone in order to withstand a defendant’s Rule 12(b)(2) motion to dismiss for lack of in personam jurisdiction. Once the motion is made, plaintiff must respond with actual proofs, not mere allegations.

*Patterson v. FBI*, 893 F.2d 595, 603-04 (3d Cir. 1990). Thus, once Breaux moved to dismiss for lack of personal jurisdiction, Okulski had the burden of coming forth with competent evidence demonstrating that Breaux had sufficient contacts to justify the Court’s exercise of personal jurisdiction. *See BP Chems. Ltd. v. Formosa Chem. & Fibre Corp.*, 229 F.3d 254, 259 (3d Cir. 2000) (citation omitted).

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<sup>3</sup> “A district court . . . may require more than a prima facie showing of jurisdiction by holding a quasi-evidentiary hearing. . . .” C. Wright & A. Miller, *Federal Practice & Procedure* § 1067.6. “[I]f the Court conducts an evidentiary hearing, the plaintiff has the more substantial burden of proving that personal jurisdiction is proper by a preponderance of the evidence.” *Steinfeld v. EmPG Intern., LLC*, 97 F. Supp.3d 606, 611-12 (E.D. Pa. 2015) (internal quotations and citations omitted). The Court has reviewed the exhibits attached to their briefs by the parties and, having done so, does not find it necessary to hold an evidentiary hearing.

Personal jurisdiction over a non-resident defendant is proper only if permitted by Pennsylvania's long-arm statute and the United States Constitution. *See Pennzoil Prods. Co. v. Coelli & Assocs., Inc.*, 149 F.3d 197, 200 (3d Cir. 1998). Pennsylvania's long-arm statute authorizes personal jurisdiction to the extent permitted by the Fourteenth Amendment of the Constitution. *See Pa. C.S.A. § 5322(b); Vetrotex Certaineed Corp. v. Consol. Fiber Glass Prods. Co.*, 75 F.3d 147, 150 (3d Cir. 1996). Thus, the personal jurisdiction inquiry merges into a single due process analysis under the Constitution. *O'Connor*, 496 F.3d at 316.

There are two basic forms of personal jurisdiction: general and specific. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile. . . ." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011); *see also Decker v. Dyson*, 165 F. App'x 951, 953 (3d Cir. 2006) ("Under Pennsylvania law, general jurisdiction arises over an individual, non-corporate defendant if the person's domicile or presence was in the state at the time of service of process, or there was consent to suit."). Okulski's Complaint does not indicate where Breaux lives. Neither has he attached to his opposition to the Rule 12(b)(2) motion any declaration or exhibits to remedy this lacuna. *See Patterson*, 893 F.2d at 603-04 (explaining that "once the [jurisdictional] defense has been raised, then the plaintiff must sustain [her] burden of proof in establishing jurisdictional facts through sworn affidavits or other competent evidence"). Breaux on the other hand has attached a sworn declaration to the motion to dismiss in which he states that he has never lived in Pennsylvania and has been domiciled in Arizona since 2015. Accordingly, there is no general jurisdiction over Breaux in Pennsylvania.

"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

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