

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

DIANE ZAMESKA, et al. : CIVIL ACTION
: :
v. : :
: :
SEGUROS ING COMMERCIAL : :
AMERICA, S.A. DE C.V., et al. : NO. 04-1895

MEMORANDUM

Bartle, J.

March 15, 2005

Plaintiffs, Diane Zameska and her husband George Zameska, filed this diversity action on April 30, 2004 against the following defendants: Seguros ING Commercial America, S.A. de C.V.; Hotel Camino Real Cancun; Hoteles Camino Real S.A. de C.V.; Hoteles Camino Real Co., Dallas; and Hilton Hotel. This court dismissed Hotel Camino Real Cancun and Hoteles Camino Real S.A. de C.V. for lack of personal jurisdiction in an order dated March 3, 2005. Diane Zameska claims she suffered personal injuries on or about April 28, 2002 while on vacation at the Hotel Camino Real Cancun in Cancun, Mexico. Her husband sues for loss of consortium. No counsel has entered any appearance for the remaining defendants. Plaintiffs have filed a "motion to correct and amend the original caption" to change the name of defendant Hoteles Camino Real, Dallas to Camino Real Hotels and Resorts.

Plaintiffs contend that they intended to name as a defendant Camino Real Hotels and Resorts in El Paso, Texas,

rather than the entity named and described in the complaint, Hoteles Camino Real, Dallas, 3102 Oak Lawn Avenue, Dallas, TX 75219. The Return of Service produced by plaintiffs reflects that the complaint was "delivered to front desk manager (would not give name) @ Camino Real Hotel, 101 S. El Paso St., El Paso, Texas, 79901" on August 27, 2004. Pl. Ex. A. This address was the same as was on a postage pre-paid envelope allegedly provided to plaintiff during her stay at the Hotel Camino Real, Cancun. Pl. Ex. B. Plaintiffs also attach a copy of a letter they maintain they sent to Dominique Vanden Broeck, Vice President of Operations, Camino Real Hotels and Resorts, at the same address to describe the incident. Pl. Ex. C. Dominique Vanden Broeck responded to plaintiffs' letter on letterhead with the following address: Dante 14, Col. Anzures, 11590 Mexico, D.I. Pl. Ex. D.

Thus, plaintiffs maintain that the caption should be amended to name Camino Real Hotels and Resorts. Plaintiffs rely on the misnomer rule, which "operates in cases where plaintiff has actually sued and served the correct party but has mistakenly used the wrong name of the defendant in the original caption." Flynn v. Best Buy Auto Sales, 218 F.R.D. 94, 97 (E.D. Pa. 2003); Munetz v. Eaton Yale and Towne, Inc., 57 F.R.D. 476, 479 (E.D. Pa. 1973). The "basic test" for the misnomer rule is "whether it would be reasonable to conclude that plaintiff had in mind the proper entity or person, merely made a mistake as to the name, and actually served the entity or person intended; or whether the

plaintiff actually meant to serve and sue a different person."

Id.

Here, as stated above, plaintiffs have produced evidence that they actually served "Camino Real Hotel" at "101 S. El Paso St., El Paso, Texas, 79901." Although this is not the entity named in the complaint, it is reasonable to conclude that plaintiff had this El Paso entity in mind and that they mistakenly named the Dallas entity. See id. Thus, we will allow plaintiffs to amend the complaint.

Defendants contend that Camino Real Hotels and Resorts is not an actual entity, proffering evidence that "Camino Real Hotel - El Paso" is a legally assumed name of "Hotel Paso del Norte, Inc.," a Texas business having nothing to do with the Camino Real Hotel Cancun. Whether Camino Real Hotels and Resorts is a true entity or is a proper defendant or whether it has any valid defenses has not been properly raised at this time and will have to await the filing of an appropriate motion.

Accordingly, we will grant the motion of plaintiffs to correct and amend the original caption.

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ORDER

AND NOW, this 15th day of March, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of plaintiffs Diane Zameska and George Zameska to correct and amend the original caption is GRANTED; and

(2) the caption of the complaint as well as any other references in the complaint to defendant "Hoteles Camino Real, Dallas, 3102 Oak Lawn Avenue, Dallas, TX 75219" are deleted and "Camino Real Hotels and Resorts, 101 S. El Paso St., El Paso, Texas, 79901" is substituted.

BY THE COURT:

/s/ Harvey Bartle III

J.