

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

PATRICK J. O'CONNOR,	:	CIVIL ACTION
MARIE M. O'CONNOR	:	
	:	04-2436
Plaintiffs,	:	
	:	
v.	:	
	:	
SANDY LANE HOTEL CO., LTD,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

JOYNER, J.

April , 2005

Plaintiffs bring this personal injury action in diversity against Defendant, Sandy Lane Hotel Company, Ltd. ("Sandy Lane"), for damages arising out of a slip and fall injury that occurred while Plaintiffs were staying at Defendant's resort in Barbados. Via the instant summary judgment motion, Defendant seeks to dismiss this action for lack of personal jurisdiction, or, in the alternative, for forum non conveniens.

Facts

Defendant Sandy Lane operates a luxury hotel and resort in St. James, Barbados. Defendant is not engaged in any other business outside the island of Barbados.

Plaintiff Patrick O'Connor, a Pennsylvania resident, initially learned about the Sandy Lane resort through friends and travel agents in Pennsylvania. After Mr. and Mrs. O'Connor made

a reservation to stay at Sandy Lane, Defendant mailed informational materials about the resort's spa to Plaintiff's home. Plaintiffs then exchanged numerous telephone calls and e-mails with Defendant to schedule spa treatments and golf tee times in advance of their visit. Defendant also mailed a letter of confirmation regarding Plaintiffs' accommodations to American Express Travel in Ardmore, Pennsylvania, a company that apparently provided services in connection with Plaintiffs' trip.

While at the Sandy Lane resort, Plaintiff Patrick O'Connor slipped on a tile floor in the spa shower after receiving a massage, and suffered a torn rotator cuff. Plaintiffs now contend that Defendant Sandy Lane was negligent in failing to keep its premises in a safe condition, and failing to warn its patrons of the potentially hazardous shower floor.

Jurisdictional Standards

Federal Rule of Civil Procedure 4(e) authorizes district courts to exercise personal jurisdiction over out-of-state defendants to the extent permitted by the long-arm statute of the forum state. Fed. R. Civ. P. 4(e)(1). Because Pennsylvania law extends jurisdiction to the fullest extent possible under the Due Process Clause of the United States Constitution, this Court may only exercise personal jurisdiction over a defendant who has purposefully established "minimum contacts" with Pennsylvania or

purposely directed his activities toward Pennsylvania residents. Resnick v. Manfredy, 52 F. Supp. 2d 462, 466 (E.D. Pa. 1999) (citing Asahi Metal Industries Co., Ltd. v. Superior Court of California, 480 U.S. 102, 108 (1987)).

There are two theories under which a defendant may be subject to personal jurisdiction. Where a defendant has maintained continuous and systematic contacts with the forum state, he will be subject to "general jurisdiction"; where, instead, the plaintiff's cause of action arises from the defendant's more limited forum-related activities, he may be subject to "specific jurisdiction." Resnick 52 F. Supp. 2d at 466 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). Under both theories, however, the defendant must have constitutionally sufficient "minimum contacts" with the forum to be subject to its jurisdiction.

Once a jurisdictional challenge has been raised by a defendant, the plaintiff bears the burden of producing sufficient facts to establish that jurisdiction is proper. See Mellon Bank (East) PSFS, N.A. v. Farino, 960 F.2d 1217, 1223 (3rd Cir. 1992). In deciding whether the plaintiff has made a prima facie showing of personal jurisdiction, a court is required to accept the plaintiff's allegations as true, and construe disputed facts in his favor. Directory Dividends, Inc. v. SBC Communications., Inc., No. 01-1974, 2003 U.S. Dist. LEXIS 19560 at 4 (E.D. Pa.

2003).

Discussion

I. Defendant Sandy Lane is Not Subject to General Jurisdiction

General jurisdiction over a non-resident corporate defendant exists where the corporation carries on a "continuous or systematic part of its general business within this Commonwealth." Weintraub v. Walt Disney World Co., 825 F. Supp. 717, 718 (E.D. Pa. 1993); 42 Pa. Cons. Stat. Ann. § 5301(a)(2)(iii). The threshold for establishing general jurisdiction is very high, and requires a showing of "extensive and persuasive" facts demonstrating connections with the forum state. Reliance Steel Products Co. v. Watson, Ess, Marshall & Enggas, 675 F.2d 587, 589 (3rd Cir. 1982); see also Colantonio v. Hilton Int'l Co., 2004 U.S. Dist. LEXIS 10693 (E.D. Pa. 2004). For example, the Third Circuit has refused to exercise general jurisdiction over an out-of-state medical school which solicited students by placing advertisements in national publications, sent representatives on a media tour to Philadelphia in order to gain exposure in the medical community, appeared on Pennsylvania radio and television shows, established a joint academic program with a Pennsylvania college, and received tuition from Pennsylvania residents. Gehling v. St. George's School of Medicine, Ltd, 773

F.2d 539 (3rd Cir. 1985). We likewise find in this action that Defendant Sandy Lane's contacts with Pennsylvania are not sufficiently substantial or pervasive to subject it to general jurisdiction.

Since the March 2001 reopening of the Sandy Lane resort, representatives have visited Philadelphia on five occasions with the Barbados Tourist Board for the purpose of "promot[ing] Sandy Lane to the premium travel trade." On at least one visit, Sandy Lane representatives participated in a trade show for the travel industry, but there is no evidence to suggest that Defendant played any role in sponsoring or organizing the event. Thus, the two cases cited by Plaintiffs, in which general jurisdiction was found on the basis of trade show sponsorship in the forum state, are inapplicable. See National Paintball Supply v. Cossio, 996 F. Supp. 459, 462 (E.D. Pa. 1998); Fellheimer v. Fairmont Hotels & Resorts, Inc., 03-1677 (E.D. Pa. Nov. 19, 2003). On the contrary, this Court has found that discrete publicity visits to a forum state do not demonstrate that a continuous or systematic part of the defendant's business is carried out there. See Gehling, 773 F.2d at 543 (one-month media swing through Pennsylvania does not demonstrate continuous and substantial activity); compare with Weintraub, 825 F. Supp. at 721 (E.D. Pa. 1993) (general jurisdiction established where defendant continuously traveled throughout the forum state over a period of

four years for the purposes of staffing, publicity, and college relations). In sum, Defendant's five promotional visits to Pennsylvania fall short of the "regular" advertisement and business solicitation needed to establish general jurisdiction.

Plaintiffs further contend that general jurisdiction is appropriate because Defendant periodically mails newsletters to Pennsylvania residents who have either stayed at the Sandy Lane resort or requested a copy. The record before this Court indicates that the Sandy Lane newsletter has been mailed to 865 individuals and travel-related companies with Pennsylvania addresses. Because Defendant's newsletter is sent only to a targeted clientele of individuals who have independently sought out information, this limited interaction with Pennsylvania residents is insufficient to establish general jurisdiction. See Hlavac v. DGC Properties, No. 04-6112, 2005 U.S. Dist. LEXIS 6081 at 12 (E.D. Pa. 2005); Wims v. Beach Terrace Motor Inn, Inc., 759 F. Supp. 264, 270 (E.D. Pa. 1991) (mailing brochures to just over a thousand Pennsylvania residents "can hardly be said to constitute 'extensive and pervasive' contact").

Nor can general jurisdiction be grounded in the fact that Defendant's resort is listed in a variety of nationally distributed travel catalogs and directories. Advertising in international and national publications is generally insufficient to establish continuous and systematic contacts with a forum

state. See Gehling, 773 F.2d at 542; Zameska v. Seguros ING Commercial America, No. 04-1895, 2005 U.S. Dist. Lexis 3295 (E.D. Pa. 2005). Furthermore, because jurisdiction cannot be grounded in the independent acts of third parties, no general jurisdiction exists where, as here, a defendant's resort is featured in catalogs mailed by a third-party marketing organization to its members. Hlavac, 2005 U.S. Dist. LEXIS 6081 at 11-12.

For similar reasons, Defendant is not subject to general jurisdiction on the basis of its website or toll free phone number, both of which may be used by Pennsylvania residents. It is well-established that the mere existence of an internationally-available website is insufficient to establish personal jurisdiction over an out-of-state defendant, unless two elements are satisfied. First, the website must be highly "interactive" or allow customers the opportunity to enter directly into a contract with the defendant over the internet. Hlavac, 2005 U.S. Dist. LEXIS 6081 at 13-14. Further, much like an in-print advertising campaign, the website must either be "central" to the defendant's business in the forum state or specifically target residents of the forum state. Snyder v. Dolphin Encounters, 235 F. Supp. 2d 433, 440-41 (E.D. Pa. 2002) (citing Molnlycke Health Care AB v. Dumex Med. Surgical Prods. Ltd., 64 F. Supp. 2d 448, 452 (E.D. Pa. 1999)); see also Hurley v. Cancun Playa Oasis Int'l Hotels, No. 99-574, 1999 U.S. Dist.

LEXIS 13716 at 8 (E.D. Pa. 1999). Otherwise, any corporation with a website permitting online ordering or reservations would be subject to general jurisdiction in every state. Snyder, 235 F. Supp. 2d at 441. Plaintiffs have identified an interactive website where it is possible to make an online reservation for numerous luxury hotels, including the Sandy Lane. See http://www.preferredhotels.com/values/hotel_descr.asp?id=52403.¹ Sandy Lane's own website, however, does not allow reservations to be made online, but allows potential customers to inquire about availability through e-mail or via an online inquiry form. See <http://www.sandylane.com>. This Court has found, however, that email links and online inquiry forms are insufficiently "interactive" to ground personal jurisdiction. Hlavac, 2005 U.S. Dist. LEXIS 6081 at 16-17; Grutkowski v. Steamboat Lake Guides & Outfitters, Inc., No. 98-1453, 1998 U.S. Dist. Lexis 20255 at 13-14 (E.D. Pa. 1998). Significantly, neither website appears to target Pennsylvania residents, and Plaintiffs have produced no evidence to suggest that the websites are central to Defendant's business in Pennsylvania.

Finally, there can be no dispute that the maintenance of a

¹ This website appears to be established by Preferred Hotels & Resorts Worldwide, described on the site as "a global brand of independently owned luxury hotels and resorts." Defendant has admitted that Preferred Hotels is an "international marketing organization" of which Sandy Lane a member. It is unclear to what extent, if any, Defendant is involved with the Preferred Hotels website.

toll-free number is not a forum contact significant or continuous enough to ground general jurisdiction. See, e.g. Johnson v. Summa Corp., 632 F. Supp. 122, 126 (E.D. Pa. 1985); Romero v. Holiday Inn, Utrecht, No. 98-2192, 1998 U.S. Dist. LEXIS 19997 at 5 (E.D. Pa. 1998).

II. Defendant Sandy Lane is Not Subject to Specific Jurisdiction

Specific personal jurisdiction is established where a cause of action arises from the defendant's contacts with the forum state, and where those contacts are sufficient to satisfy due process requirements. As this Court finds that Plaintiffs' cause of action did not arise from Defendant's contacts with Pennsylvania, it is unnecessary to engage in an inquiry of whether "minimum contacts" have been satisfied.

Plaintiff contends that his injury in the Sandy Lane spa shower arose directly from Defendant's contacts with Pennsylvania because the spa brochure sent to his home instructed Plaintiff to set up a spa appointment before arriving at the resort, and because Plaintiff subsequently exchanged phone calls and emails with Defendant to make the appointment. Plaintiff had already made a reservation to stay at the Sandy Lane resort at the time that these contacts occurred, and does not allege that the brochure itself induced him to make a spa appointment that he

would not have otherwise made.

Typically, contractual or advertising contacts with the forum state will not give rise to specific personal jurisdiction over defendants charged with tortious injury occurring outside the state. Wims, 759 F. Supp. 264, 267; see also Gehling, 773 F.3d at 544 (insufficient causal connection, for jurisdictional purposes, between tortious injury to student at out-of-state medical school and acceptance letter mailed to student in the forum state); Scheidt v. Young, 389 F.2d 58, 60 (3rd Cir. 1968) (defendant's forum state advertisements and telephone calls, and receipt of monies mailed from the forum state, were insufficient to ground jurisdiction for tortious injury at out-of-state establishment). In fact, this Court has explicitly held that jurisdiction for negligent maintenance of an out-of-state hotel will not lie even where the plaintiff contends that he would not have visited the establishment but for a brochure mailed to the forum state, finding that "the causal link between the brochures and the injury is simply too attenuated to say that the injury arose from [Defendant's] activities in the Commonwealth of Pennsylvania." Wims, 759 F. Supp. at 268-69; see also Peek v. Golden Nugget Hotel & Casino, 806 F. Supp. 555, 558-59 (E.D. Pa. 1992) (forum state display of brochures does not establish specific jurisdiction over allegedly negligent out-of-state hotel and casino). Plaintiffs in this action have offered no

explanation of how their situation can be distinguished from that in Wims, or why this Court's holding in that case should not apply to the instant action. Thus, this Court must find that Plaintiffs have failed to make a prima facie showing of specific jurisdiction over Defendant Sandy Lane.

Conclusion

Because Plaintiffs have failed to demonstrate that Defendant Sandy Lane's contacts with Pennsylvania have been continuous or systematic, or that Plaintiff's injury arose from Defendant's limited contacts with Pennsylvania, this Court lacks personal jurisdiction over Defendant. The instant Motion for Summary Judgment, more properly recognized as a 12(b)(2) motion to dismiss for lack of personal jurisdiction or in the alternative to transfer, must be granted in part. This action shall be transferred to Plaintiffs' secondary choice of venue, the United States District Court for the Southern District of New York, where the offices of two Sandy Lane representative are located.

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

PATRICK J. O'CONNOR,	:	CIVIL ACTION
MARIE M. O'CONNOR	:	
	:	04-2436
Plaintiffs,	:	
	:	
v.	:	
	:	
SANDY LANE HOTEL CO., LTD,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this day of April, 2005, upon consideration of Defendant's Motion for Summary Judgment For Lack of Personal Jurisdiction (Doc. No. 14), and all responses thereto (Docs. No. 15, 16, 17, 18), it is hereby ORDERED that the Motion is GRANTED in part and DENIED in part. The Clerk of Court is hereby DIRECTED to TRANSFER the above-captioned case to the Clerk of Court for the United States District Court for the Southern District of New York.

BY THE COURT:

J. CURTIS JOYNER, J.