

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.

June 20, 2005

Via the instant motion, Defendant Sandy Lane Hotel Co., Ltd. ("Sandy Lane") moves for reconsideration of this Court's Order dated April 28, 2005 transferring this action to the United States District Court for the Southern District of New York. Via cross-motion, Plaintiffs Patrick and Marie O'Connor move for reconsideration of the above Order's finding that no personal jurisdiction exists over Defendant in Pennsylvania. For the reasons that follow, this Court will grant Defendant Sandy Lane's Motion for Reconsideration and deny Plaintiffs Patrick and Marie O'Connor's Cross-motion for Reconsideration.

Factual Background

The present action arises from personal injuries incurred by Plaintiff Patrick O'Connor while vacationing at a hotel operated by Defendant Sandy Lane on the island of Barbados.

During his stay at Defendant's hotel, Plaintiff slipped and

fell on a tile floor in the spa shower and suffered a torn rotator cuff. Plaintiffs allege that Defendant Sandy Lane was negligent in allowing hazardous conditions to persist on its premises and failing to warn its guests of the potentially dangerous shower floor.

Defendant moved for summary judgment, seeking to dismiss the action for lack of personal jurisdiction. Defendant's representatives had visited Pennsylvania five times since 2001 while participating in promotional "road shows" organized by the Barbados Tourism Authority to promote tourism on the island of Barbados. In addition, Defendant mailed informational materials to 865 Pennsylvania travel agencies and residents. This Court found that these contacts were not continuous or systematic enough to establish personal jurisdiction in Pennsylvania. This Court then transferred the case to the U.S. District Court for the Southern District of New York, on the grounds that the offices of Susan Magrino Agency and Wagner Associates, Inc., two Sandy Lane "representatives," are located there. O'Connor v. Sandy Lane Hotel Co., No. 04.2436, 2005 U.S. Dist. Lexis 7397, 2005 WL 994617 (E.D. Pa. 2005).

Defendant Sandy Lane now seeks reconsideration of the portion of this Court's April 28, 2005 Order transferring the case to New York, contending that this Court's decision was based on a factual misunderstanding of Defendant's relationship with

the "representatives" in New York. Defendant asserts that Magrino and Wagner are not representatives of Sandy Lane Hotel, but that they are two independent companies who count Defendant Sandy Lane among their many clients. Arguing that no basis exists for personal jurisdiction in the Southern District of New York, Defendant requests that this action be dismissed entirely for lack of personal jurisdiction.

In addition, Plaintiffs seek reconsideration of the portion of this Court's Order finding a lack of personal jurisdiction in Pennsylvania, arguing that the ruling was based on misapprehension of critical facts regarding Defendant's activities in the forum. Specifically, Plaintiffs claim that promotional visits to Philadelphia by Defendant's employees, the mailing of informational material to Pennsylvania residents, and other related activities are sufficient to establish personal jurisdiction in this forum.

Standard of Review

The purpose of a motion for reconsideration is to correct manifest errors of law or to present newly discovered evidence. Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). A motion to reconsider must be based on one of three grounds: (1) the discovery of evidence that was unavailable at the time of the previous motion; (2) an intervening change in controlling law; or (3) the need to correct an error of law or to prevent a manifest

injustice. Hartford Fire Ins. Co. v. Huls Am., Inc., 921 F. Supp. 278, 279 (E.D. Pa. 1995). A motion to reconsider cannot be brought merely to request that the court "rethink what [it] had already thought through." Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993).

I. Defendant's Motion to Reconsider the Transfer to the Southern District of New York.

While the propriety of jurisdiction in New York is generally an issue best decided by New York courts, the principle of judicial efficiency dictates that a case should not be transferred to a forum where it is evident that jurisdiction is not proper. Transferring the present case to the U.S. District Court for the Southern District of New York is improper because Defendant's contacts in that forum are insufficient to establish personal jurisdiction under New York law. This Court now recognizes that the portion of its Order transferring this action to New York contained an error of law.

New York courts may exercise personal jurisdiction over a foreign defendant under two circumstances. First, a defendant will be subject to general jurisdiction if it is engaged in continuous or systematic business activity in the forum. Heidle v. Prospect Reef Resort, Ltd., 364 F. Supp. 2d 312, 314 (W.D.N.Y. 2005) (interpreting N.Y. C.P.L.R. § 301). This activity must go

beyond merely soliciting business in the forum. Andrei v. DHC Hotels and Resorts, Inc., 2000 WL 343773 at *3 (S.D.N.Y. Mar. 31, 2000). It is well-established in New York law that, in order to subject a foreign hotel to personal jurisdiction, a New York-based agent must have independent authority to confirm reservations on behalf of the hotel. Heidle, 364 F. Supp. 2d at 315. (citing Brown v. Grand Hotel Eden, 2003 WL 21496756 at *3 (S.D.N.Y. Jun. 30, 2003)).

Defendant Sandy Lane's relationships with New York-based public relations and marketing firms fall far short of the level of continuous or systematic activity necessary to establish general jurisdiction. In addition, Plaintiffs have offered no evidence showing that either agency possessed the requisite independent authority to confirm reservations on behalf of Sandy Lane. Therefore, Defendant Sandy Lane is not subject to general jurisdiction in New York under Section 301.

A foreign defendant may also be subject to long-arm jurisdiction if the defendant "transacts any business" in the state, either in person or through an agent. N.Y. C.P.L.R. § 302(a)(1). In such cases, however, the plaintiff's cause of action must directly arise out of the defendant's purposeful business activities in the forum. Pro-Fac Coop., Inc. v. Alpha Nursery, Inc., 205 F. Supp. 2d 90, 97 (W.D.N.Y. 2002) (citing CutCo Indus., Inc. v. Naughton, 806 F.2d 361, 365 (2d Cir.

1986)). To satisfy this condition, a nexus between the business transacted and the plaintiff's claim is essential. CutCo Indus., 806 F.2d at 365.

The facts of the instant case illustrate that the second condition of the long-arm statute is not met and, therefore, Defendant Sandy Lane is not subject to personal jurisdiction in New York. While the nature and extent of Defendant's relationship with the two New York companies may be debatable, it is clear that Plaintiffs have identified no nexus or direct connection between their claim and Defendant's activities in New York. Plaintiffs are Pennsylvania residents who sought the services of a Pennsylvania travel agency. Plaintiffs' claim arises directly from events and injuries which occurred on the island of Barbados. Absent some nexus with Defendant's activities in New York, this Court cannot find a basis for personal jurisdiction over Defendant in the Southern District of New York.

In a case factually similar to the present controversy, a tourist sued a foreign resort for injuries suffered on the defendant's premises while on vacation. Hinsch v. Outrigger Hotels Hawaii, 153 F. Supp. 2d 209, 211 (E.D.N.Y. 2001). The out-of-state resort marketed to New York residents and accepted reservations through New York travel agencies. Id. The court held that advertising in the forum is merely solicitation,

insufficient to establish general jurisdiction under Section 301. Id. at 213. The court also held that because the plaintiff failed to show the requisite nexus between his claim and the defendant's activities in the forum, no long-arm jurisdiction existed under Section 302. Id.

Because jurisdiction over Defendant is clearly improper in New York, this Court made an error of law in transferring the present case to that forum. Therefore, Defendant's Motion for Reconsideration is granted.

II. Plaintiffs' Cross-motion to Reconsider the Ruling that no Jurisdiction over Defendant Exists in Pennsylvania.

Because this Court has fully understood and considered the facts and law in previously finding a lack of personal jurisdiction in Pennsylvania, no grounds exist for Plaintiffs' Cross-motion for Reconsideration.¹

Plaintiffs contend that because Defendant's visits to Pennsylvania were legally sufficient to establish jurisdiction,

¹ Defendant correctly asserts that Plaintiffs' Cross-motion is untimely. According to Local Rule 7.1 (g), Motions for Reconsideration must be filed within ten days of the entry of the order or judgment in question, not including Saturdays, Sundays, or legal holidays. E.D. Pa. Loc. R. Civ. P. 7.1(g). Three additional days - counting Saturdays, Sundays, and holidays - are added if the order in question was mailed to the parties. Meachum v. Temple U., 56 F. Supp. 2d 557, 557 (E.D. Pa. 1999) (footnote 1). This Court's Order was filed and mailed on April 28, 2005, which makes the deadline for filing motions May 16, 2005. Plaintiffs' cross-motion was filed on May 17, 2005. Despite the untimeliness, this Court will address the merits of Plaintiffs' cross-motion.

this Court erred in finding a lack of personal jurisdiction in Pennsylvania. In support of their proposition, Plaintiffs cite two cases in which a court allowed personal jurisdiction over a defendant, Walt Disney World, who sent agents to Pennsylvania to promote its enterprise. Gavigan v. Walt Disney World, Inc., 646 F. Supp. 786, 788 (E.D. Pa. 1986); Cresswell v. Walt Disney Productions, 677 F. Supp. 284, 285 (M.D. Pa. 1987). Those cases, however, do not establish that Defendant Sandy Lane's more limited contacts with the state of Pennsylvania are sufficient to support personal jurisdiction.

For example, in Gavigan, Disney engaged in a series of television and print media advertisements specifically targeted at the entire Philadelphia market. 646 F. Supp. at 788. In addition to making numerous visits to Philadelphia to promote the campaign, entitled "Disney Salutes Philadelphia," Disney sought and received cooperation from the City of Philadelphia in its promotional efforts. Id. Disney also entered into joint ventures with two Philadelphia companies and set up in-store exhibits to directly solicit local residents to visit Disney World. Id. at 790. In addition, Walt Disney Travel tailored their activities to entice a steady stream of Pennsylvania residents to visit Disney. Id. at 789.

In contrast, Defendant Sandy Lane's activities in the forum are far more limited. Defendant's employees have visited

Pennsylvania five times since 2001 to participate in trade shows, organized by the Barbados Tourism Authority. These shows are not specifically targeted at Pennsylvania, but are designed to promote Barbados tourism throughout many geographic regions of the United States and the world. Defendant's employees have attended shows in New York, Boston, Philadelphia, Connecticut, New Jersey, and Florida. Defendant also mailed informational materials to 865 Pennsylvania residents and travel agents.

In its Order, this Court carefully weighed Defendant Sandy Lane's activities and correctly determined that the activities were not continuous or systematic, and they did not directly give rise to Plaintiffs' injuries. They were insufficient, therefore, to subject Defendant to personal jurisdiction in Pennsylvania. O'Connor, 2005 U.S. Dist. WL 994617 at *5.

As Plaintiffs have identified no newly acquired evidence or errors of fact or law in this Court's previous Order, no grounds exists for a Motion for Reconsideration. Therefore, Plaintiffs' cross-motion for reconsideration on the issue of personal jurisdiction in Pennsylvania must be denied.

Conclusion

Because Defendant Sandy Lane does not meet the criteria for personal jurisdiction over foreign defendants under New York law, this Court erred in transferring this case to the U.S. District

Court for the Southern District of New York. In addition, Defendant's activities in Pennsylvania fall short of the standard required to establish personal jurisdiction. Therefore, Defendant's Motion for Reconsideration must be granted, and Plaintiffs' Cross-motion for Reconsideration must be denied. This action shall be dismissed entirely for lack of personal jurisdiction.

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Plaintiffs,	:	
	:	
v.	:	
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SANDY LANE HOTEL CO., LTD,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 20th day of June, 2005, upon consideration of Defendant Sandy Lane's Motion for Reconsideration (Doc. No. 20) of this Court's Order dated April 28, 2005 (Doc. No. 19), Plaintiffs Patrick and Marie O'Connor's Cross-motion for Reconsideration (Doc. No. 21), and all responses thereto (Doc. No. 22, 23), it is HEREBY ORDERED that:

- (1) Defendant's Motion is GRANTED.
- (2) Plaintiffs' Motion is DENIED.

It is FURTHER ORDERED that the language in this Court's previous Order, dated April 28, 2005, transferring the above-captioned case to the United States District Court for the Southern District of New York is STRICKEN and this case is DISMISSED for lack of personal jurisdiction.

BY THE COURT:

s/J. Curtis Joyner

J. CURTIS JOYNER, J.