

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

WILLIAM BLACKWELL	:	CIVIL ACTION
	:	
v.	:	
	:	
MARINA ASSOCIATES d/b/a	:	NO. 05-5418
HARRAH'S CASINO HOTEL	:	
ATLANTIC CITY	:	
	:	
O'NEILL, J.		MARCH 9, 2006

MEMORANDUM

Plaintiff, William Blackwell, filed an action in the Philadelphia Court of Common Pleas on September 9, 2005 against defendant, Marina Associates, doing business as Harrah's Casino Hotel Atlantic City, alleging that defendant's negligent maintenance of its premises caused plaintiff to suffer various injuries when a slot machine stool collapsed beneath him on the casino floor on January 4, 2004. Defendant removed this action to this Court on October 17, 2005. Before me now is defendant's motion to dismiss for lack of personal jurisdiction, Fed. R. Civ. P. 12(b)(2), and improper venue, Fed. R. Civ. P. 12(b)(3), or, in the alternative, motion to transfer and plaintiff's response thereto.

BACKGROUND

Blackwell is a citizen of Pennsylvania. Marina Associates is a New Jersey corporation with its principal place of business in New Jersey. Marina Associates alleges that it is not licensed to do business in Pennsylvania, does not conduct business in Pennsylvania regularly, does not have registered agents in Pennsylvania, does not own property in Pennsylvania that is related to this action, and does not maintain offices in Pennsylvania.

Blackwell disagrees and alleges that Marina Associates regularly conducted business in Philadelphia. In support of this position, Blackwell asserts that Harrah's Entertainment, Inc. is nationally traded on the New York Stock Exchange and "owns or manages through various subsidiaries more than 40 casinos in three countries, primarily under the Harrah's Caesars and Horseshoe brand names." Moreover, Blackwell asserts that "Harrah's has formed a specific corporation in Pennsylvania for the purpose of developing a racetrack and gambling venue in Chester, Pennsylvania and is believed to be soliciting assistance for this venture from individuals, investors, and corporations in and about Philadelphia." Harrah's advertises that its Chester Casino & Racetrack "will feature over 2,500 slot machines, a 5/8 mile harness racetrack, year 'round simulcasting and a variety of food & beverage offerings."

Blackwell traveled to Harrah's Atlantic City Casino on January 3, 2004 after receiving a promotional flier and voucher offering a complimentary overnight stay at Harrah's addressed to his wife (then fiancé) at their home in Philadelphia. Blackwell alleges that he and his wife receive similar promotional materials from Harrah's on a regular basis. Blackwell alleges that on the following day, January 4, 2004, he was injured when a slot machine stool collapsed beneath him.

STANDARD OF REVIEW

Once a defendant raises a jurisdiction defense, see Fed. R. Civ. P. 12(h)(1), plaintiff bears the burden of demonstrating a prima facie case that defendant has sufficient contacts with the forum state to establish personal jurisdiction. North Penn Gas v. Corning Natural Gas Corp., 897 F.2d 687, 689 (3d Cir. 1990). However, "[o]nce the plaintiff has made out a prima facie case of minimum contacts, the defendant must present a compelling case that the presence of some other

considerations would render jurisdiction unreasonable.” Grand Entertainment Group, Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 483 (3d Cir. 1993). “The burden on a defendant who wishes to show an absence of fairness or lack of substantial justice is heavy.” Id.

Initially, “courts reviewing a motion to dismiss a case for lack of in personam jurisdiction must accept all of the plaintiff’s allegations as true and construe disputed facts in favor of the plaintiff.” Carteret Sav. Bank, FA v. Shushan, 954 F.2d 141, 142, n. 1 (3d Cir. 1992). However, “a court is not precluded from revisiting the issue if it appears that the facts alleged to support jurisdiction are in dispute.” Id. “The plaintiff must sustain its burden of proof through sworn affidavits or other competent evidence.” North Penn, 897 F.2d at 689. A plaintiff may not “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.” Time Share, 735 F.2d at 66, n. 9; Peek v. Golden Nugget Hotel & Casino, 806 F. Supp. 555, 558 (E.D. Pa.1992) (“References in a brief, unsupported by affidavit, are not properly before the Courts as facts evidencing contact for jurisdictional purposes.”) (citations omitted).

DISCUSSION

I. Personal Jurisdiction

Federal Rule of Civil Procedure 4(e) grants a district court personal jurisdiction over nonresident defendants to the extent permissible under the law of the jurisdiction where the district court sits. Fed. R. Civ. P. 4(e); Grand Entertainment, 988 F.2d at 481. Pennsylvania’s

long arm statutes are “coextensive with the limits placed on the states by the federal Constitution.” Vetrotex v. Certaineed Corp. v. Consol. Fiber Glass Prods. Co., 75 F.3d 147, 150 (3d Cir. 1996); 42 Pa. Cons. Stat. §§ 5301 (general jurisdiction) & 5322 (specific jurisdiction).

The due process limits on the reach of personal jurisdiction are defined by a two prong test. See generally Vetrotex, 75 F.3d at 150-51. First, plaintiff must demonstrate that defendant has constitutionally sufficient “minimum contacts” with the forum. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (“the constitutional touchstone remains whether the defendant purposefully established ‘minimum contacts’ in the forum”). To determine whether minimum contacts exist, I must examine “the relationship among the forum, the defendant and the litigation,” Shaffer v. Heitner, 433 U.S. 186, 204 (1977), and determine whether defendant has “purposefully directed” its activities toward residents of the forum. Burger King, 471 U.S. at 472. In other words, 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.” Hanson v. Denckla, 357 U.S. 235, 253 (1958); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, (1980) (“[I]t is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.”).¹ Typically, as here, Courts’ analyses turn on the first step.

¹The Supreme Court has further examined the due process limits on a court’s exercise of personal jurisdiction over defendants:

Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant himself that create a “substantial connection” with the forum State. Thus where the defendant “deliberately” has engaged in significant activities within a State or has created “continuing obligations” between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by “the benefits and protections” of the forum’s laws it is

Second, if plaintiff demonstrates sufficient “minimum contacts,” I must determine whether the exercise of personal jurisdiction would comport with “traditional notions of fair play and substantial justice.” Grand Entertainment, 988 F.2d at 482 quoting Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). In deciding this second step, courts consider the following factors: (1) the burden on defendant; (2) the interests of the forum state; (3) plaintiff’s interest in obtaining relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; (5) and the shared interest of the several states in furthering fundamental substantive social policies. Grand Entertainment, 988 F.2d at 482 quoting Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 113 (1987). Because I find that Blackwell has not demonstrated sufficient minimum contacts, I do not address whether the exercise of personal jurisdiction would comport with traditional notions of fair play and substantial justice.

A. General Jurisdiction

There are two theories under which a defendant may be subjected to personal jurisdiction: general and specific jurisdiction.² First, a defendant may be subjected to general jurisdiction “when the plaintiff’s cause of action arises from the defendant’s non-forum related activities. In order to establish general jurisdiction, the plaintiff must show that the defendant has maintained continuous and substantial forum affiliations.” North Penn, 897 F.2d at 690 n. 2; 42 Pa. Cons. Stat. § 5301. “To establish general jurisdiction, the plaintiff must show that the defendant has

presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Burger King, 471 U.S. at 475-76.

²The parties do not recognize any distinction.

maintained ‘continuous and systematic’ contacts with the forum.” Vetrotex, 75 F.3d at 151 n. 3 citing Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414 n. 9 & 416 (1984); Burger King, 471 U.S. at 473 n. 15. “The threshold for establishing general jurisdiction is very high, and requires a showing of extensive and pervasive facts demonstrating connections with the forum state.” O’Connor v. Sandy Lane Hotel Co., Ltd., No. 04-2436, 2005 WL 994617, at *2 (E.D. Pa. Apr. 28, 2005) citing Reliance Steel Prods. Co. v. Watson, Ess, Marshall & Enggas, 675 F.2d 587, 589 (3d Cir. 1982).

Marina Associates appears to argue that general jurisdiction is not proper in this case because: (1) it is a citizen of New Jersey; (2) it is not licensed to do business in Pennsylvania; (3) it does not regularly conduct business in Pennsylvania; (4) it does not maintain offices in Pennsylvania or own property in Pennsylvania that is related to this action; and (5) all of the events giving rise to this action occurred in New Jersey. Blackwell disagrees and argues that general jurisdiction is proper because: (a) Harrah’s frequently pursues claims against Pennsylvania gamblers in Pennsylvania courts and files numerous cases in the Philadelphia Court of Common Pleas to enforce its New Jersey judgments; (b) a Harrah’s subsidiary is now involved in developing a racetrack in Chester, Pennsylvania; (c) “Harrah’s trades its stock on the New York Stock Exchange and it is quite likely that a good number of stockholders reside in Philadelphia”; and (d) by mailing promotional materials to him and his wife, among other Pennsylvanians, in order to solicit their gambling business at Harrah’s Casino in Atlantic City, New Jersey, Marina Associates is “purposefully availed itself” of jurisdiction in Pennsylvania.

Blackwell relies predominantly on two cases, Peek v. Golden Nugget Hotel & Casino, 806 F. Supp. 555 (E.D. Pa. 1992) and Gavigan v. Walt Disney World, Inc., 646 F. Supp. 786

(E.D. Pa. 1986), to support its general jurisdiction arguments. Peek does not support Blackwell's argument. In Peek, this Court held that plaintiff who was injured in a slip and fall in defendant's hotel/casino in Nevada failed to establish general jurisdiction because: (i) defendants did not own any property, pay any taxes, operate any offices, incorporate, or lease any space in Pennsylvania; and (ii) there was no evidence to show that defendants consciously targeted Pennsylvania consumers or advertised in Pennsylvania print, radio, or television media. Peek, 806 F. Supp. 555. Blackwell presumes that "if the plaintiff [in Peek] had been able to show target[ed] mailings to him, there would have been jurisdiction over [defendant]." See id. However, the mere fact that defendant mailed promotional materials to at least two Pennsylvania residents (Mr. & Mrs. Blackwell) is not sufficient to demonstrate that defendant engaged in continuous and systematic contacts with Pennsylvania.³

Gavigan is easily distinguishable. In Gavigan, this Court held that plaintiff who was injured in a motor vehicle accident at defendant's complex had demonstrated general jurisdiction over Disney World because the evidence demonstrated that Disney World had engaged in a promotional campaign in a well known Philadelphia department store, had advertised in Pennsylvania newspapers and television stations, had conducted six month advertising campaign directed at Philadelphia residents, had conducted "Disney Salutes Philadelphia" promotional campaign, had dispatched Mickey Mouse to award honorary Disney World citizenship on Mayor of Philadelphia, and had sent Disney's chef to participate in cooking festival in Philadelphia.

³Although plaintiff alleges that defendant mailed promotional materials to numerous other Pennsylvanians, he does not support this allegation with any evidence.

Gavigan, 646 F. Supp. 786. By contrast, Blackwell's evidence only demonstrates Marina Associates/Harrah's sent promotional fliers to at least himself and his wife.

This Court frequently has held that such advertisements are not sufficient to establish general jurisdiction. See, e.g., O'Connor, 2005 WL 994617 (refusing to find general jurisdiction where defendant mailed newsletter 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, [and] this limited interaction with Pennsylvania residents is insufficient to establish general jurisdiction."); Inzillo v. The Cont'l Plaza, No. 99-0100, 2000 WL 1752121, (M.D. Pa. 2000) (holding that plaintiff's allegations that travel agents placed at least two of defendant's advertisements in Pennsylvania were not sufficient to support a finding of general jurisdiction; there was no evidence that defendant had ever employed an agent, maintained a mailing address, maintained a bank account, paid any tax in Pennsylvania, advertised in any newspapers, magazines, or other media in Pennsylvania); Wims v. Beach Terrace Motor Inn, Inc., 759 F. Supp. 264, 267-68 (E.D. Pa. 1991) (declining to exercise general jurisdiction over New Jersey motel because defendant's yearly mailing of 1,133 brochures to potential Pennsylvania customers and evidence that a substantial number of its guests were Pennsylvania residents was not sufficient to constitute substantial and continuous contacts); Johnson v. Summa Corp., 632 F. Supp. 122 (E.D. Pa. 1985) (failing to find general jurisdiction over Nevada hotel because defendant's maintenance of toll free telephone number, mailing of brochures to plaintiff, and the presence of promotional materials at a Philadelphia travel agency did not constitute extensive and persuasive contact with Pennsylvania); see also Gehling v. St. George's Sch. of Med., Ltd., 773 F.2d 539 (3d Cir. 1985) (refusing to exercise

personal jurisdiction over Grenada medical school because although the medical school solicited students by placing advertisements in national publications, sent representatives on media tour to Philadelphia to increase school's exposure in medical community, appeared on Pennsylvania radio and television programs, established joint academic program with Pennsylvania college, and received tuition from Pennsylvania residents, these contacts with Pennsylvania were not substantial and continuous).

Blackwell's assertion that defendant uses the Pennsylvania courts to pursue judgment against Pennsylvania gamblers is not supported by any evidence. Even assuming that defendant has filed lawsuits in Pennsylvania to vindicate its legal rights, there is no allegation that Blackwell's personal injury claim has any relationship with any of these other actions. Without such a relationship, the fact that defendant has brought suit in Pennsylvania as a plaintiff is immaterial to the question of whether it can be haled into a Pennsylvania court as a defendant via general or specific jurisdiction. As my colleague Judge Padova stated in a similar case:

Plaintiffs' argument seems to improperly conflate purposeful availment--a specific jurisdiction concept--with general jurisdiction to argue that once a defendant makes use of the Commonwealth's court system it has opened itself to being sued in the Commonwealth on any claim. Filing even nineteen lawsuits, without more, cannot constitute continuous and systematic activity so as to establish general jurisdiction. The unrelated lawsuits are also too random, fortuitous and attenuated to support any finding of specific jurisdiction.

Merlino v. Harrah's Entertainment, Inc., No. 05-6660, 2006 WL 401847, at *3 (E.D. Pa. Feb. 17, 2006).

Blackwell's assertion that Harrah's trades its stock on the NYSE is immaterial to the determination of whether defendant maintains continuous and systematic contacts with Pennsylvania sufficient for general jurisdiction. Blackwell's assertion that many stockholders

may reside in Philadelphia similarly is immaterial and is not supported by any evidence.

Blackwell's assertion that Harrah's has or will be opening a subsidiary in Chester, Pennsylvania is also without merit. See generally Action Mfg. Co., Inc. v. Simon Wrecking Co., 375 F. Supp. 2d 411, 420 (E.D. Pa. 2005). "[A] foreign corporation is not subject to the jurisdiction of the forum state merely because of its ownership of the shares of stock of a subsidiary doing business in that state." Lucas v. Gulf & Western Indus., Inc., 666 F.2d 800, 805-06 (3d Cir. 1981) (abrogated on other grounds). In other words, "a parent-subsidary relationship is by itself an insufficient reason to pierce the corporate veil in the jurisdictional context." Action Mfg., 375 F. Supp. 2d at 420 quoting Dutoit v. Strategic Minerals Corp., 735 F. Supp. 169, 171 (E.D. Pa. 1990) (refusing to find jurisdiction over a foreign corporation with a subsidiary in Pennsylvania because "plaintiffs have not shown that corporate formalities have been disregarded in any significant way" nor did plaintiff demonstrate that the subsidiary acted as the parent's agent in Pennsylvania). Accordingly, in order to impute the jurisdictional contacts of Harrah's Chester operations, Blackwell must present prima facie evidence to overcome the general rule that mere ownership of a subsidiary does not subject the parent corporation to

personal jurisdiction in the state of the subsidiary.⁴ See id. Here, Blackwell has presented no evidence to overcome this presumption.

B. Specific Jurisdiction

Second, defendant may be subjected to specific jurisdiction “when the cause of action arises from the defendant’s forum related activities. To establish specific jurisdiction a plaintiff must show that the defendant has minimum contacts with the state such that the defendant should reasonably anticipate being haled into court there.” Vetrotex, 75 F.3d at 151 n. 3 quoting North Penn, 897 F.2d at 690 and World-Wide Volkswagen, 444 U.S. at 297 (internal quotations omitted); 42 Pa. Cons. Stat. § 5322. In other words, “specific jurisdiction is established when a non-resident defendant has purposefully directed his activities at a resident of the forum and the injury arises from or is related to those activities.” Gen. Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001) citing Burger King, 471 U.S. 462, 472 (1985).

Here, Blackwell’s stool injury does not arise out of Marina Associates’ promotional mailings. Blackwell nevertheless appears to argue that Marina Associates’ promotional mailings to him and his wife in order to solicit their gambling business at Harrah’s Casino in Atlantic City creates specific jurisdiction. Although “[m]ail and telephone communications sent by a defendant into the forum may count toward the minimum contacts that support jurisdiction,”

⁴The Court of Appeals has set forth numerous factors to be considered in determining whether a court may impute the jurisdictional contacts of a subsidiary to its parent corporation: (1) whether the subsidiary corporation played a part in the transactions at issue; (2) whether the subsidiary was merely the alter ego or agent of the parent; and (3) whether the independence of the separate corporate entities was disregarded. Lucas, 666 F.2d at 806. This Court has added another factor: (4) “whether the subsidiary is necessarily performing activities that the parent would otherwise have to perform in the absence of the subsidiary.” Arch v. Am. Tobacco Co., Inc., 984 F. Supp. 830, 837 (E.D. Pa. 1997).

Grand Entertainment, 988 F.2d at 482, this Court routinely has held that “advertising contracts with the forum state will not give rise to specific personal jurisdiction over defendants charged with tortious injury occurring outside the state.” O’Connor, 2005 WL 994617, at *2 (refusing to find specific jurisdiction because the causal link between plaintiff’s injury in defendant’s spa shower and defendant’s mailed spa brochures was too attenuated to suggest that the injury arose from defendant’s advertising activities in Pennsylvania). Accordingly, I do not have specific jurisdiction over Marina Associates in this case.

The supporting cases are legion. See, e.g., Rushton v. Marina Associates, No. 04-1889, 2005 WL 2176835 (W.D. Pa. Aug. 18, 2005) (recommending that defendant’s motion to dismiss be granted because plaintiff’s allegations of defendant’s negligence for failure to maintain properly the slot stool did not arise out of defendant’s conduct in Pennsylvania, namely its provision of a tour bus to take plaintiff to its casino in Atlantic City) (Hay, M.J.); Inzillo, 2000 WL 1752121 (declining to find specific jurisdiction where defendant paid commissions to travel agencies and placed advertisements in Pennsylvania newspapers because causal link between defendant’s activities in Pennsylvania and plaintiff’s slip and fall at defendant’s resort in Mexico was too attenuated); Peek, 806 F. Supp. 555 (refusing to find specific jurisdiction where Pennsylvania citizen was injured in a slip and fall in defendant’s hotel/casino in Nevada because: (i) she did not provide the Court with any evidence to support her assertion that defendants benefitted from long and continuous campaigns of advertising, travel industry promotions, and sales agreements with Pennsylvania residents (she only provided an affidavit of unknown origin and a general brochure); and (ii) even assuming that defendants’ brochures were displayed in Pennsylvania, plaintiff failed to show that defendants purposefully distributed the these brochures

in Pennsylvania or that they induced plaintiff to travel to defendant's resort); Wims, 759 F. Supp. 264 (holding that patrons injured at motel in New Jersey could not establish specific jurisdiction in Pennsylvania despite alleging that they were solicited to visit the motor inn by advertising directed to them in Pennsylvania because the causal link between the brochures and the injury was too remote to say that the injury arose from defendant's activities in Pennsylvania); Johnson, 632 F. Supp. 122 (failing to find specific jurisdiction because Pennsylvania resident's injury at Nevada hotel did not arise from defendant's advertising in Pennsylvania or maintenance of toll free telephone number).⁵

Notwithstanding my lack of personal jurisdiction over defendant, I believe it to be in the interests of justice to transfer this action to the District of New Jersey. See 28 U.S.C. § 1631 (“Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed. . . .”). Personal jurisdiction and venue are proper in the District of New Jersey because New Jersey has general jurisdiction over Marina Associates, Marina Associates resides in New Jersey, and the relevant events giving rise to Blackwell's personal injury claim occurred in New Jersey. See N.J. Stat. § 4:4-4; Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004); 28 U.S.C. § 1391(a) & (c). Transfer is in the interests of justice because jurisdiction and venue are clearly proper in the District of New Jersey and the Court's interests in judicial economy will be served by obviating the need for plaintiff to refile his claim in New Jersey. See Lawman Armor Corp. v.

⁵Marina Associates also argues that venue is improper in this Court under 28 U.S.C. § 1391(a). However, because I hold that personal jurisdiction is not proper in this case, I need not discuss the parties' arguments with respect to venue.

Simon, 319 F. Supp. 2d 499, 507 (E.D. Pa. 2004) (“Normally transfer will be in the interest of justice because dismissal of an action that could be brought elsewhere is time-consuming and justice-defeating.”) citing Goldlawr, Inc. v. Heiman, 369 U.S. 463, 467 (1962) and Societe Nouvelle Generale de Promotion v. Kool Stop Int’l, Inc., 633 F. Supp. 153, 155 (E.D. Pa. 1985) (“If the lack of in personam jurisdiction is in doubt, sound judicial administration requires transfer to a district where it clearly could have been brought.”).⁶ This action will be transferred to the District of New Jersey.

An appropriate order follows.

⁶Blackwell argues that I should not transfer this case to the District of New Jersey because plaintiff’s choice of forum generally is a “paramount consideration in any determination of a transfer request.” See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995) (Section 1404(a) transfer). However, I note that personal jurisdiction is not proper in this Court and even when considering a Section 1404(a) transfer of venue “a plaintiff’s choice of forum receives less weight where none of the operative facts occurred in the selected forum.” See, e.g., Zeevi v. Am. Home Prods. Corp., No. 99-20277, 2002 WL 92902, at *1 (E.D. Pa. Jan. 24, 2002).

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v.	:	
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MARINA ASSOCIATES d/b/a	:	NO. 05-5418
HARRAH'S CASINO HOTEL	:	
ATLANTIC CITY	:	

ORDER

AND NOW, this 9th day of March 2006, upon consideration of defendant's motion to dismiss for lack of personal jurisdiction and improper venue or, in the alternative, motion to transfer and plaintiff's response thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED that defendant's motion to transfer is GRANTED. This action is TRANSFERRED to the United States District Court for the District of New Jersey.

s/ Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR, J.