

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

ETTA FELDMAN : CIVIL ACTION
: :
v. : :
: :
BALLY’S PARK PLACE, INC., : :
d/b/a CLARIDGE TOWER AT BALLY’S : :
& SCHINDLER ELEVATOR CORP. : NO. 05-5345

MEMORANDUM

Padova, J.

June 5, 2006

Presently before the Court is a Motion (Docket No. 5), submitted by Defendant Bally’s Park Place, Inc., d/b/a/ Claridge Tower at Bally’s to dismiss this action for lack of personal jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(2), and improper venue, pursuant to Federal Rule of Civil Procedure 12(b)(3), or in the alternative, to transfer this matter to the United States District Court for the District of New Jersey. For the reasons stated below, the Motion to Dismiss is denied and the request for a transfer is granted.

I. BACKGROUND

Plaintiff commenced this action on September 8, 2005 by filing a Praecipe to issue a Writ of Summons in the Court of Common Pleas of Philadelphia County. The Complaint states that, on September 10, 2003, Plaintiff was injured on an escalator, manufactured and maintained by Defendant Schindler Escalator Corp. and located at the entrance of Defendant Bally’s Park Place, Inc., d/b/a/ Claridge Tower at Bally’s (“Bally’s”) hotel and casino in Atlantic City, New Jersey. (Compl. ¶9.) Plaintiff claims that Defendant Bally’s knew, or should have known, that a dangerous condition existed on its premises and that Defendant Bally’s failed to either warn others of or repair the condition. (Compl. ¶¶ 17, 20.) Plaintiff allegedly sustained serious injuries, including fractured

vertebrae; fractured ribs; back, neck, leg, and shoulder problems; radiculopathy; and lacerations, contusions, abrasions, and scarring to her body. (Compl. ¶ 21.) On October 12, 2005, Defendants removed the action to this Court on the basis of diversity of citizenship. The Notice of Removal states that Plaintiff is a citizen of Pennsylvania, that Defendant Schindler Elevator Corp. is a Delaware corporation with its principal place of business in New Jersey, and that Defendant Bally's is a New Jersey corporation with its principal place of business in New Jersey. On October 31, 2005, Defendant Bally's filed the instant Motion.¹

II. DISCUSSION

“[I]n reviewing a motion to dismiss under Rule 12(b)(2), we ‘must accept all of the plaintiff’s allegations as true and construe disputed facts in favor of the plaintiff.’” Pinker v. Roche Holdings, Ltd., 292 F.3d 361, 368 (3d Cir. 2002) (quoting Carteret Sav. Bank, F.A. v. Shushan, 954 F.2d 141, 142 n.1 (3d Cir. 1992)). However, once a defendant has properly raised a jurisdictional defense, the plaintiff bears the burden of proving, either by sworn affidavits or other competent evidence, sufficient contacts with the forum state to establish personal jurisdiction. North Penn Gas Co. v. Corning Natural Gas Corp., 897 F.2d 687, 689 (3d Cir. 1990) (per curiam).

Under the Federal Rules of Civil Procedure, district courts are authorized to exercise personal jurisdiction over non-residents to the extent permissible under the law of the state in which the district court is located. Fed. R. Civ. P. 4(e); North Penn Gas, 897 F.2d at 689. In exercising

¹Defendant Bally's also moved, pursuant to Federal Rule of Civil Procedure 12(b)(6), for the dismissal of several parties named as original defendants in this action on the grounds that they are either non-juridical entities or do not own or operate the premises at which the incident giving rise to this action is alleged to have occurred. That portion of the instant Motion has been rendered moot by the stipulation dated May 18, 2006 (Docket No. 30), in which the parties agreed that certain named defendants should be dismissed without prejudice and that Defendant Schindler Elevator Corp. and Defendant Bally's are the proper defendants in this action.

personal jurisdiction, the court must first ascertain whether jurisdiction exists under the forum state's long-arm jurisdiction statute and then determine whether the exercise of jurisdiction comports with the due process clause of the Fourteenth Amendment to the Constitution. Van Buskirk v. Carey Canadian Mines, Ltd., 760 F.2d 481, 489-90 (3d Cir. 1985). This inquiry has been collapsed in Pennsylvania, as the Pennsylvania long-arm statute provides that: "the jurisdiction of the tribunals of this Commonwealth shall extend to all persons . . . to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b); Van Buskirk, 760 F.2d at 490. The reach of the Pennsylvania long-arm statute is thus "coextensive" with the due process clause. North Penn Gas, 897 F.2d at 690. The due process clause permits the court to assert personal jurisdiction over a nonresident defendant who has "certain minimum contacts with [the forum] such that the maintenance of [a] suit does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Wash., 326 U.S. 310, 316 (1945) (quotations omitted).

A. General Jurisdiction

Personal jurisdiction may be either general or specific. General jurisdiction is implicated when the claim arises from the defendant's non-forum-related activities. Helicopteros Nacionales de Colombia S.A. v. Hall, 466 U.S. 408, 414 n.9 (1984). In such a case, the plaintiff "must show significantly more than mere minimum contacts." Provident Nat'l Bank v. Cal. Fed. Sav. & Loan Ass'n, 819 F.2d 434, 437 (3d Cir. 1987). To assert general jurisdiction, the plaintiff must demonstrate that the defendant's contacts with the forum state were "continuous and substantial." Id.; Gehling v. St. George's Sch. of Med., 773 F.2d 539, 541 (3d Cir. 1985). "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., Civ. A. 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)). See also Surgical Laser Techs., Inc. v. C.R. Bard, Inc., 921 F. Supp. 281, 284 (E.D. Pa. 1996) (noting that the standard for general jurisdiction is difficult to meet). Even “continuous activity of some sorts [by a corporation] within a state is not enough to support [general jurisdiction over the corporation].” Nichols v. G.D. Searle & Co., 991 F.2d 1195, 1199 (4th Cir. 1993) (quoting International Shoe, 326 U.S. at 318). “Only when the ‘continuous corporate operation within a state [is] thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities’ may a court assert general jurisdiction over a corporate defendant.” Id. Federal courts sitting in Pennsylvania consider the following objective criteria in ascertaining the existence of general jurisdiction:

- (1) whether defendant is incorporated or licensed to do business in Pennsylvania;
- (2) whether the defendant has ever filed any tax returns with the Commonwealth of Pennsylvania;
- (3) whether the defendant files administrative reports with any agency or department of the Commonwealth;
- (4) whether the defendant regularly purchases products or supplies within Pennsylvania for use in its business outside of the state;
- (5) whether the defendant owns land or property within the state;
- (6) whether the defendant advertises in Pennsylvania; and

(7) whether the defendant maintains an agent in Pennsylvania.

Gaylord v. Sheraton Ocean City Resort & Conference Ctr., Civ. A. No. 93-0463, 1993 WL 120299, at *4 (E.D. Pa. Apr. 15, 1993) (citing Wims v. Beach Terrace Motor Inn, Inc., 759 F. Supp. 264, 269 (E.D. Pa. 1991)).

Defendant Bally's has submitted an affidavit from a member of its legal department averring that it is not licensed to do business in Pennsylvania; does not maintain offices in Pennsylvania; does not own, manage, or lease any properties in Pennsylvania; and does not have registered agents in Pennsylvania.² (N. Lynne Hughes Aff. ¶¶ 8-13.) Plaintiff contends that Defendant Bally's is subject to personal jurisdiction in Pennsylvania as a result of its advertising in Pennsylvania and other promotional efforts to attract Pennsylvania visitors to Claridge Tower. Plaintiff has provided the Court with spreadsheets from July 2001 through October 2005 showing that Defendant Bally's advertises, on behalf of Claridge Tower and Bally's two other Atlantic City casinos, roughly once or twice a month in a print source such as the Pennsylvania Official Visitors' Guide, the Philadelphia Inquirer, Philadelphia Magazine, Philadelphia Golf Magazine, and Philadelphia Style.³ (Michael Trageser, Bally's Director of Marketing Operations, Dep. Ex. 5; Colleen Cornell, Bally's Director of Advertising, Dep. at 9-11, 17, 53-70, Ex. 2, Jan. 20, 2006.) During the spring and summer months, Defendant Bally's also advertises on at least five different Pennsylvania radio stations.

²There is no evidence on the record that Defendant Bally's has ever filed tax returns or administrative reports with any agency or department of the Commonwealth of Pennsylvania, nor is there any evidence that Defendant Bally's regularly purchases products or supplies within Pennsylvania.

³In assessing whether a defendant's contacts are sufficiently continuous and systematic for the purposes of general jurisdiction, courts typically consider contacts for a reasonable period prior to the filing of the suit. See, e.g., Metro. Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 569-70 (2d Cir. 1996).

(Trageser Dep. Ex. 5; Cornell Dep. Ex. 2, Jan. 20, 2006.) In total, Defendant Bally's expended approximately \$238,889.41 or eight-and-one-half percent of its annual advertising budget in 2003, the year of the accident, on various media that would reach Philadelphia and surrounding counties. (Cornell Dep. at 51, Ex. 1, Jan. 20, 2006.) Defendant Bally's also solicits Pennsylvania citizens to visit its casinos through direct mailings offering food and coin redemption coupons as incentives. (Etta Feldman Aff. ¶ 5; Pl. Ex. J.) In addition, one of Defendant Bally's directors visits bus companies in Pennsylvania, albeit "infrequently," and makes non-contractual arrangements with them to encourage the daily transportation of Pennsylvania citizens to Defendant Bally's casinos. (Trageser Dep. at 23, 33, 62-73.) Bus companies submit proposals to Defendant Bally's; approved companies may assure passengers traveling to Claridge Tower that they will receive a coin voucher worth approximately twelve to eighteen dollars upon their arrival. (Trageser Dep. at 66-67, 70.) Defendant Bally's also pays for advertising for select bus companies in various newspapers throughout Pennsylvania, including the Allentown Call Chronicle and the Delaware County Daily Times, and promotes those companies in its own direct mailings. (Trageser Dep. at 77-78, 98-102, Ex. 4-5; Pl. Ex. J.) In September 2003, thirty-three percent of all people traveling on daily buses to Claridge Tower – 11,300 people – came from Philadelphia and surrounding Pennsylvania areas. (Trageser Dep. at 46-47, 60-61.)

Whether a defendant's contacts are sufficiently "continuous and substantial" to support general jurisdiction must be decided on a case-by-case basis. Kenney v. Coordinated Ranchers, Inc., Civ. A. No. 97-7581, 1998 WL 67549, at *1 (E.D. Pa. Feb. 19, 1998) (citing Gavigan v. Walt Disney World Co., 630 F. Supp. 148, 150 (E.D. Pa. 1986)). The advertising spreadsheets submitted by Plaintiff show that Defendant Bally's did advertise in Pennsylvania on a continuous basis during the

four years preceding the filing of this action. (Trageser Dep. Ex. 5; Cornell Dep. Ex. 2, Jan. 20, 2006.) However, courts in this judicial district have consistently held that advertisements and solicitations, including direct mailings and voucher offers, are not, by themselves, substantial enough to meet the high standard for the exercise of general personal jurisdiction. See, e.g., Blackwell v. Marina Assocs., d/b/a Harrah's Casino Hotel Atlantic City, Civ. A. No. 05-5418, 2006 WL 573793, at *1, 4 (E.D. Pa. Mar. 9, 2006) (finding that plaintiff's evidence that he and his wife regularly received promotional materials from defendant's New Jersey casino in the mail and visited the casino after receiving a voucher offering a complimentary overnight stay was not sufficient to demonstrate that defendant engaged in continuous and systematic contacts with Pennsylvania); Wims, 759 F. Supp. at 270 (concluding that yearly mailing of brochures to 1,133 Pennsylvania residents "can hardly be said to constitute 'extensive and pervasive' contact" in support of general jurisdiction); Johnson v. Summa Corp., 632 F. Supp. 122, 126 (E.D. Pa. 1985) (refusing to exercise personal jurisdiction over Nevada hotel that maintained a toll-free number in Pennsylvania, mailed a brochure directly to the Pennsylvania plaintiff, and distributed promotional materials to a Philadelphia travel agency). Cf. Nichols v. G.D. Searle & Co., 991 F.2d 1195, 1200 (4th Cir. 1993) (announcing as a rule that "advertising and solicitation activities alone do not constitute the 'minimum contacts' required for general jurisdiction"). Courts have declined to exercise general personal jurisdiction even where the defendant's advertising not only reached, but was targeted to, the Pennsylvania market. See, e.g., Schulman v. Walt Disney World Co., Civ. A. No. 91-5259, 1992 WL 38390, at *2-3 (E.D. Pa. Feb. 25, 1992) (noting that plaintiff's advertisements in local media, including a Philadelphia television channel, the Philadelphia Inquirer, and the Philadelphia Magazine, over a six-year period, were insufficient to support general jurisdiction); cf. Pepe v.

Concord Ranch, Inc., Civ. A. No. 88-727, 1990 WL 10348, at *2 (D. Del. Feb. 1, 1990) (finding no general jurisdiction where defendant advertised in a state news journal and also on a local radio broadcast). The Court finds that, although the advertisements and solicitations alleged in this case may be more substantial, in terms of their frequency and the variety of channels through which they were disseminated, than the advertisements and solicitations that other courts in this judicial district have considered inadequate for the exercise of general personal jurisdiction, they are not sufficiently more so such that jurisdiction is warranted. Accordingly, the Court concludes that Defendant Bally's direction of advertisements and solicitations to Pennsylvania citizens, on behalf of itself and select bus companies, standing alone, does not justify the exercise of general personal jurisdiction over Defendant Bally's.

Defendant Bally's advertisements and solicitations constitute the bulk of Defendant's contacts with Pennsylvania. The evidence on the record that Defendant Bally's also facilitated the transportation of Philadelphia citizens to its casinos by having one of its managers visit particular bus companies and pledge to have passengers greeted with vouchers once they arrived at Claridge Tower in New Jersey does not then make the exercise of personal jurisdiction reasonable. Such "infrequent[]" visits do not independently constitute the kind of continuous and substantial business contacts that give rise to general jurisdiction. See Helicopteros, 466 U.S. at 417 (noting that forum visits in connection with training and purchases, even if occurring at regular intervals, are an insufficient basis for general jurisdiction); O'Connor, 2005 WL 994617, at *2 (explaining 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.") Even considering the cumulative effect of Defendant Bally's advertising contacts and forum visits, the Court finds that the heavy requirements for general

jurisdiction are not met.⁴ In Gehling v. St. George's Sch. of Med., Ltd., 773 F.2d 539 (3d Cir. 1985), the United States Court of Appeals for the Third Circuit refused to exercise general jurisdiction over an out-of-state medical school whose contacts with Pennsylvania included a combination of advertisements and forum visits, and also a long-term arrangement with a Pennsylvania school. Id. at 541-43. The defendant in Gehling solicited students by placing advertisements in national publications circulated in Pennsylvania, conducted a media tour in Pennsylvania that included television and radio appearances, established a joint academic program with a Pennsylvania college, and received tuition from Pennsylvania residents. Id. The Court concludes that the advertisements and forum visits alleged by the Plaintiff in this case are not more extensive and pervasive than the contacts found to be insufficient to support general personal jurisdiction in Gehling.⁵ Cf. Helicopteros, 466 U.S. at 416-17 (holding that the standard for general jurisdiction was not met where defendant corporation sent its chief operating officer to the forum state to negotiate a contract,

⁴Nor is the Court persuaded that the exercise of general jurisdiction is appropriate because thousands of Pennsylvania citizens use Defendant Bally's preferred bus companies to travel to its casinos each year. See Provident Nat'l Bank, 819 F.2d at 437-38 (noting that absolute amount of the defendant's customers from Pennsylvania is not persuasive proof of substantial "continuous and systematic" activity in Pennsylvania, and that the size of the percentage of the defendant's total business represented by its Pennsylvania contacts is generally irrelevant to the issue of personal jurisdiction); Wims, 759 F. Supp. at 269-70 (stating that mere fact that about twenty-five percent of hotel's guests resided in Pennsylvania did not establish that the defendant maintained substantial and continuous contacts with Pennsylvania).

⁵Plaintiff attempts to distinguish Gehling based on the fact that the advertisements in that case were placed in national news sources circulated in Pennsylvania rather than sources intentionally targeted to Pennsylvania consumers. As discussed, infra, that difference is not determinative. Plaintiff also emphasizes that the media tour referenced in Gehling lasted one month while the advertising techniques used by Defendant Bally's were implemented over a longer period of time. The Court finds this distinction unpersuasive; there is no reason to look only at the time frame of the media tour when comparing the two cases, since the defendant in Gehling had other contacts with Pennsylvania that were ongoing.

made almost \$4 million in purchases from forum state distributors, accepted almost \$5 million in payments in the form of checks drawn from a forum state bank, and sent personnel to the forum state for training).

The one case that Plaintiff cites as analogous to the instant situation, Cresswell v. Walt Disney World Prods., 677 F. Supp. 284 (M.D. Pa. 1984), is distinguishable because the contacts in that case were more extensive and pervasive than the advertisements and solicitations combined with forum visits alleged in this case. The claims in Cresswell were brought by plaintiffs who suffered injuries during a monorail fire at the defendant's resort. Id. at 285. The court held that the exercise of general personal jurisdiction over the defendant was reasonable. Id. at 288. In Cresswell, however, plaintiffs averred not only that the defendant advertised in Pennsylvania newspapers and on Pennsylvania radio stations and regularly sent representatives to Philadelphia to encourage Pennsylvania citizens to visit its entertainment complex and to recruit employees. Id. at 285. They also averred that the defendant sold Walt Disney products and services in Pennsylvania, broadcast the Walt Disney Channel in Pennsylvania, provided a 1-800 number that Pennsylvania citizens could use to make reservations at defendant's entertainment complex, and conferred honorary Disney World citizenship on the Mayor of Philadelphia. Id. The court in Cresswell additionally considered the findings of the court in Gavigan v. Walt Disney World Co., 630 F. Supp. 148, 150-51 (E.D. Pa. 1986), that the defendant had entered into joint ventures with at least two Pennsylvania entities and sought and received the cooperation of the City of Philadelphia in its promotional campaign. Id. at 286-87. Since many of the activities evaluated by the Cresswell court, such as product sales and the establishment of joint ventures, have not been conducted by Defendant Bally's, Cresswell does not support the exercise of general jurisdiction in this case. The Court concludes that Plaintiff has not

established that Defendant Bally's contacts with Pennsylvania have been both continuous and substantial, and accordingly, the requirements for the exercise of general personal jurisdiction are not met.

B. Specific Jurisdiction

Plaintiff argues that even if the exercise of general personal jurisdiction is not appropriate, the Court should exercise specific personal jurisdiction over Defendant Bally's. Specific jurisdiction applies where the plaintiff's cause of action arises from the defendant's forum-related activities. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985); North Penn Gas, 897 F.2d at 690. "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.'" North Penn Gas, 897 F.2d at 690 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). Plaintiff maintains that specific jurisdiction is appropriate in this case because her injuries arose out of Defendant Bally's failure to oversee the entrance of bus passengers into Claridge Tower via the escalator at the bus depot. Thus, according to Plaintiff, the allegations in the Complaint are directly related to the activities of Defendant Bally's in soliciting bus passengers from Pennsylvania to come to Claridge Tower.

"When a plaintiff brings an action for personal injuries suffered in another state, as a result of the defendant's negligent activities within that state, courts have concluded that the cause of action does not arise from the defendant's forum contacts for the purposes of asserting personal jurisdiction." Peek v. Golden Nugget Hotel & Casino, 806 F.Supp. 555, 558 (E.D. Pa. 1992) (quotations omitted). Plaintiff's injuries in this case occurred in New Jersey, where Plaintiff contends Defendant Bally's allowed a dangerous condition to exist on its escalator without warning

to casino patrons. Plaintiff's cause of action, therefore, does not arise out of Defendant Bally's contacts with Pennsylvania. That remains true even if, as Plaintiff declared (Feldman Aff. ¶ 5), she only visited Claridge Tower because she received direct mailings from Defendant Bally's that included coupons and other promotions. For the purposes of assessing the appropriateness of personal jurisdiction, the definition of "arising out of" more closely resembles proximate cause than a mere "but for" connection. See Borel v. Pavichevich, Civ. A. No. 01-1395, 2001 WL 1549538, at *2 (E.D. Pa. Dec. 4, 2001) (finding that although plaintiff probably would not have traveled to defendant's Florida condominium but for the advertisement she read in the Philadelphia Inquirer, the link between the advertising contact and the injury is "too attenuated for the latter to arise from the former" and specific jurisdiction is not appropriate). See also Rushton v. Marina Assocs., Civ. A. No. 04-1889, 2005 WL 2176835, at *4 (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 properly maintain a slot stool did not arise out of defendant's contact in Pennsylvania, namely its provision of a tour bus to take plaintiff to its casino in Atlantic City); Blackwell, 2006 WL 573793, at *6 (citing cases in support of the proposition that advertising and promotional contacts with the forum state will not give rise to personal jurisdiction over defendants charged with tortious injury occurring outside the state). Accordingly, the Court holds that the exercise of specific personal jurisdiction is not proper in this case.⁶

Though the Court lacks personal jurisdiction over Defendant Bally's, the Court concludes

⁶Defendant Bally's also argues the Court should dismiss this action on the ground that venue is improper in this Court under 28 U.S.C. § 1391(a), (c). However, because the Court holds that the lack of personal jurisdiction provides a basis for the dismissal of this case, it need not discuss the parties' arguments with respect to venue.

that transferring this action to the District of New Jersey better serves the interests of justice than dismissing it. 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 with respect to both Defendant Bally’s and Defendant Schindler Elevator Corp. N.J. Court Rule 4:4-4(c); 28 U.S.C. § 1391(a), (c); see also Charles Gendler & Co. v. Telecom Equip. Corp., 508 A.2d 1127, 1131 (N.J. 1986). The Court concludes that a transfer is in the interest of justice because it will prevent the duplication of filing costs as well as the statute of limitations problems that would likely arise from a dismissal at this point. See Lawman Armor Corp. v. 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.” (quoting In re Ski Train Fire in Kaprun, Austria on November 11, 2000, 257 F. Supp. 2d 717, 734 (S.D.N.Y.2003))).

An appropriate Order follows.

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

ETTA FELDMAN	:	CIVIL ACTION
	:	
v.	:	
	:	
BALLY'S PARK PLACE, INC.,	:	
d/b/a CLARIDGE TOWER AT BALLY'S	:	
& SCHINDLER ELEVATOR CORP.	:	NO. 05-5345

ORDER

AND NOW, this 5th day of June, 2006, upon consideration of Defendant Bally's Park Place, Inc., d/b/a/ Claridge Tower at Bally's "Motion for to Dismiss" (Docket No. 5), and all documents filed in connection therewith, **IT IS HEREBY ORDERED** as follows:

1. Defendant Bally's Park Place, Inc.'s Motion is **DENIED** to the extent it seeks dismissal for lack of personal jurisdiction and improper venue;
2. Defendant Bally's Park Place, Inc.'s Motion is **DISMISSED** as moot to the extent it seeks dismissal for failure to state a claim upon which relief may be granted;
3. Defendant's Motion is **GRANTED** to the extent it seeks a transfer of this matter to the United States District Court for the District of New Jersey, a district court with personal jurisdiction over all Defendants and in which venue may be properly laid.

BY THE COURT:

/s/ John R. Padova, J.
John R. Padova, J.