

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

IRENE SOWONSKI : CIVIL ACTION
 :
 v. :
 :
 AMTRAK et al. : NO. 98-6390

MEMORANDUM AND ORDER

HUTTON, J.

June 23, 1999

Presently before the Court are Defendant First Class Coach Company, Inc.'s Motion to Dismiss (Docket No. 6) and Plaintiff Irene Sowonski's response thereto (Docket No. 10). Also before the Court are Defendant Martz Bus Transportation Company's Motion to Dismiss (Docket No. 7) and Plaintiff's response thereto (Docket No. 11). For the following reasons, the motions are denied.

I. BACKGROUND

This is a personal injury action. Plaintiff Irene Sowonski purchased a ticket from Defendant Amtrak at the 30th Street Station in Philadelphia, Pennsylvania. The Plaintiff purchased a round-trip ticket from Philadelphia to Port Charlotte, Florida, by way of Orlando, Florida.

On June 12, 1997, Defendant Amtrak transported Plaintiff by train to Orlando. One of the remaining Defendants-- First Class

Coach Company, Inc., Martz Bus Transportation Company, First Class Coach, or Thruway Bus-- then transported Plaintiff from Orlando to Port Charlotte by bus. This part of the trip occurred without incident.

On June 25, 1998, Plaintiff began the return part of her trip. Again, one of the bus defendants-- First Class Coach Company, Inc., Martz Bus Transportation Company, First Class Coach, or Thruway Bus-- was responsible for transporting Plaintiff from Port Charlotte to Orlando by bus. During the trip, Plaintiff observed that the driver was being inattentive and swerved suddenly. This alleged carelessness caused Plaintiff to suffer various injuries.

On November 9, 1998, Plaintiff filed a civil action in the Court of Common Pleas of Philadelphia County against Defendants Amtrak, First Class Coach Company, Inc., Martz Bus Transportation Company, First Class Coach, and Thruway Bus. In her action, Plaintiff alleges that she was injured as a result of the negligent operation of the bus. Defendant Amtrak removed the case to this Court. See 28 U.S.C. § 1349 (1994) (permitting jurisdiction over companies which federal government owns more than half of its corporate stock).

On February 24, 1999, Defendant First Class Coach Company, Inc. filed a motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).

Also on February 24, 1999, Defendant Martz Bus Transportation Company filed a motion to dismiss for insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5). The Court addresses both motions.

II. DISCUSSION

A. Motion to Dismiss of First Class Coach

Defendant First Class Coach moves to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). Under Federal Rule of Civil Procedure 4(e), this Court may exercise personal jurisdiction over non-resident defendants to the extent permitted by Pennsylvania's long-arm statute. See Fed. R. Civ. P. 4(e). Pennsylvania exercises jurisdiction over non-residents to the fullest extent allowed under the Due Process Clause of the Fourteenth Amendment of the Constitution. See 42 Pa. Cons. Stat. Ann. § 5322(b) (West 1981 & Supp. 1998).

The constitutional limitations on the exercise of personal jurisdiction differ depending upon whether a court seeks to exercise general or specific jurisdiction over a non-resident defendant. General jurisdiction permits a court to exercise personal jurisdiction over a non-resident for non-forum related activities when the defendant has engaged in "systematic and continuous" activities in the forum state. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-16 (1984). In the absence of general jurisdiction, specific jurisdiction

permits a court to exercise personal jurisdiction over a non-resident defendant for forum-related activities where the "relationship between the defendant and the forum falls within the 'minimum contacts' framework" of International Shoe Co. v. Washington, 326 U.S. 310, (1945), and its progeny.

Once a defendant asserts lack of personal jurisdiction, the burden is upon the plaintiff to make a prima facie showing with sworn affidavits or other competent evidence that such jurisdiction exists. See Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66-67 n.9 (3d Cir. 1984); Leonard A. Fineberg, Inc. v. Central Asia Capital Corp., 936 F. Supp. 250, 253-54 (E.D. Pa. 1996). To make such a showing, a plaintiff must demonstrate "with reasonable particularity" contacts between the defendant and the forum sufficient to support an exercise of personal jurisdiction. See Mellon Bank (East) PSFS Nat'l Assoc. v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992).

In this case, Plaintiff asserts that further inquiry and discovery is warranted in assessing First Class Coach Company, Inc.'s claim of lack of personal jurisdiction. See, e.g., Marine Midland Bank NA v. Miller, 664 F.2d 899, 904 (2d Cir. 1981). Parties are entitled to a "fair opportunity to engage in jurisdictional discovery" to obtain "facts necessary for thorough consideration of the [jurisdictional] issue." Federal Ins. Co. v. Richard I. Rubin & Co., Inc., 12 F.3d 1270, 1285 n.11 (3d Cir.

1993). However, jurisdictional discovery may, in the court's discretion, be denied where the party that bears the burden of establishing jurisdiction fails to establish a "threshold prima facie showing" of personal jurisdiction. Rose v. Granite City Police Dep't, 813 F. Supp. 319, 321 (E.D. Pa. 1993). A prima facie case requires factual allegations that suggest "with reasonable particularity" the possible existence of the requisite "contacts between [the party] and the forum state." Mellon Bank PSFS v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992). In ascertaining whether Plaintiff has established a prima facie case, the Court does not act as a fact-finder. "It accepts properly supported proffers of evidence by the plaintiff as true." See Carteret Savings Bank, F.A. v. Shushan, 954 F.2d 141, 142 n.1 (3d Cir. 1992).

In this case, Plaintiff presented sufficient evidence to establish a "threshold prima facie showing" of personal jurisdiction. In her response to Defendant's motion, Plaintiff submitted evidence that Frank B. Henry, First Class Coach Company, Inc.'s President, may have an office address in Pennsylvania. Moreover, Plaintiff attached a report by M. Burr Keim Company that states First Class Coach Company, Inc. may have a fictitious name registration in Pennsylvania. Finally, Plaintiff submitted evidence that there may be some contractual relationship between First Class Coach and Amtrak. Therefore, the Court will permit

Plaintiff to conduct discovery for thirty (30) days on matters relevant to the presence or absence of personal jurisdiction in this district over First Class Coach Company, Inc. The Court will not, however, grant any extensions of this discovery. Accordingly, insofar as Defendant's motion is predicated upon Rule 12(b)(2), the Court denies the motion without prejudice to renew at the close of that discovery.

B. Motion to Dismiss of Martz Bus Transportation Company

Defendant Martz Bus moves for dismissal based upon insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5). Martz Bus maintains that Plaintiff served them by certified mail, which is improper for actions initiated inside Philadelphia County. Plaintiff admits that she served Martz Bus by certified mail. Plaintiff states, however, that she already corrected this defect by properly serving Martz Bus. Therefore, the Court denies the motion as moot.

An appropriate Order follows.

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O R D E R

AND NOW, this 23rd day of June, 1999, upon consideration of the Defendant First Class Coach's Motion to Dismiss and Defendant Martz Bus Transportation Company's Motion to Dismiss, IT IS HEREBY ORDERED that:

(1) Defendant First Class Coach's Motion to Dismiss is **DENIED WITH LEAVE TO RENEW** after thirty (30) days of discovery with no extensions; and

(2) Defendant Martz Bus Transportation Company's Motion to Dismiss is **DENIED AS MOOT**.

BY THE COURT:

HERBERT J. HUTTON, J.