

has filed a motion for a determination that the law of Tunisia is applicable to all issues in this litigation. Plaintiffs respond with a request that the law of Pennsylvania should be deemed applicable to all issues in the case. Plaintiffs have filed a motion for partial summary judgment on liability, as to Count I of their complaint, on the theory that, as a matter of law, respondeat superior principles render the defendant liable for the negligence of the driver of the minibus. Defendant opposes this motion, and has filed a counter-motion for partial summary judgment based upon an alleged disclaimer of liability in the travel contract between plaintiffs and defendant.

To the extent that plaintiffs can show that the defendant was negligent in entrusting its tour-participants to the Tunisia Explorer, defendant does not, and cannot, argue for non-liability. The purported release/disclaimer does not purport to relieve the defendant of liability for its own negligence. Thus, Counts II and III of plaintiffs' complaint remain for trial.

The disputed issues are whether respondeat superior applies, and what law is applicable to the various issues of liability and damages.

All of the arrangements between plaintiffs and the defendant were entered into in Pennsylvania. Plaintiffs are citizens and residents of Pennsylvania, and the defendant

conducted its business in Pennsylvania (among other states). Although the accident occurred in Tunisia, that country has no significant interest in the legal relationship between plaintiffs and defendant, or in the performance of defendant's contracts, and certainly not in the proper measure of damages which, in the event of liability, defendant or its (American) insurers would be required to pay. The only issue which might conceivably involve the application of Tunisian law is whether the driver of the minibus was negligent; and on that issue, it seems unlikely that there is any significant difference between Tunisian law and Pennsylvania law; at least, the parties have not identified any significant difference. Moreover, it is not unreasonable to suppose that, in the overall context of defendant's brochures and other travel documents, the defendant incurred an obligation to its customers to select overseas bus-companies which would exercise that degree of care regarded as reasonable in Pennsylvania (or, at the very least, an obligation to warn its customers about any significant difference in the standard of care applicable in Tunisia). I therefore conclude that Pennsylvania law will be applied as to all issues in the case; but this determination is subject to reconsideration with respect to the negligence of the driver of the minibus if a true conflict of laws can be shown.

Another remaining issue has to do with the

admissibility and significance of certain Tunisian judicial records. The driver of the Tunisia Explorer minibus was prosecuted and found guilty of speeding and careless driving, and was adjudged to have been responsible for plaintiffs' injuries. The conviction, if that is what it was, is on appeal to a higher court in Tunisia. The parties have submitted somewhat conflicting expert reports as to whether the pending appeal nullifies the lower court conviction until an appellate decision is rendered. And the records submitted are not models of intelligible translation. I am thus unable to reach any firm conclusions, except that the final judgment of the Tunisian courts, if a final decision has been rendered by the time of trial, should presumably be entitled to full faith and credit here; and that the Court will expect understandable translations of clearer opinions of Tunisia legal experts before a final ruling can be made. I note, however, that this evidentiary issue may not be of particular importance, given the availability of the testimony of the passengers, and the presumed availability of other evidence concerning the happening of the accident, and evidence as to defendant's pre-accident awareness of the tendencies of Tunisia Explorer drivers.

Defendant's counter-motion for summary judgment on the basis of the release/disclaimer will be denied. As the record has been developed thus far, I am unable to conclude that the

language relied upon was brought to plaintiffs' attention (apparently, it appears in only two places: in normal size print in the middle of an advertising brochure for a different tour package, and in inconspicuous print on the back of a computer-produced invoice). Denial of summary judgment on this issue does not preclude revisiting the question at trial, if additional evidence is forthcoming. Here again, however, the importance of the issue may be limited, since the release does not purport to relieve defendant of liability for its own negligence, or for breach of contract.

Finally, I agree with the defendant's argument that the negligence, if any, of Tunisia Explorer and its driver is not imputable to the defendant on respondeat superior principles, because Tunisia Explorer is an independent contractor, and its driver was not an employee of the defendant. Under the terms of its contractual arrangements with Tunisia Explorer, however, the defendant appears to have had a considerable measure of supervisory control. All of the circumstances must be factored into an analysis of whether the defendant fulfilled its own obligations to its customers; plainly, the defendant was obliged to exercise reasonable care for the protection of its travelers from foreseeable injury at the hands of its contractors.

An Order follows.

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

HENRY B. RUDISILL and : CIVIL ACTION
ABBY H. RUDISILL :
 :
v. :
 :
GRAND CIRCLE TRAVEL, INC. :
OVERSEAS ADVENTURE TRAVEL :
PARTNERS, INC. : NO. 98-2174

ORDER

AND NOW, this day of July, 1999, IT IS ORDERED:

1. Except to the limited extent set forth in the accompanying memorandum, Pennsylvania law will be applied to all issues in this case.

2. Defendant is not liable on a respondeat superior theory for the negligence, if any, of Tunisia Explorer or its driver.

3. Except as specified in the preceding paragraphs of this Order, all pending motions by either party are DENIED.

John P. Fullam, Sr. J.