

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

VICTOR SHTATNOV : CIVIL ACTION  
 :  
v. :  
 :  
MAYA VLADIMEROVNA KUTCHORKOVA : NO. 04-224

MEMORANDUM

Dalzell, J.

April 28, 2004

Defendant Victor Shtatnov is a Pennsylvania citizen of indeterminate occupation.<sup>1</sup> Plaintiff Maya Kutchorokova is a Russian citizen and United States permanent resident who is embroiled in complex divorce proceedings with her husband, an American who amassed a fortune in the bottled water business in Russia and now lives in Hawaii with their four children. See Letter of Bryant to Wolf of 8/27/03, at 2 (Pl.'s Mot. Ex. 6).

Dissatisfied with the progress of her divorce case in the Russian courts, Kutchorokova moved to Philadelphia in March of 2003 in order to establish residency in Pennsylvania and file for divorce here. On April 16, 2003, Kutchorokova entered into a "Contract for Investigation of Marital Property Rights" with Shtatnov, whom she had met through her Russian legal advisers, and granted him an "Unlimited Power of Attorney Coupled with an Interest."<sup>2</sup>

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1. At his deposition earlier this month, Shtatnov stated that he owns a number of businesses and is variously involved in telecommunications, mergers and acquisitions, and "international trade, et cetera." Shtatnov Dep. of 4/13/04, at 10 (Def.'s Ex. 25).

2. The Contract and Unlimited Power of Attorney are, to say the least, (continued...)

Shtatnov allegedly performed his duties under the Contract until Kutchorkova terminated their relationship on September 19, 2003. Shtatnov then filed this action in state court on December 11, 2003. According to Shtatnov's counselled complaint, he seeks a declaratory judgment that the assignment of marital property was irrevocable, compensatory damages of \$10 million, \$200,000 on a claim for unjust enrichment<sup>3</sup>, and "a permanent injunction restraining defendant from exercising any rights that directly or indirectly conflict with the Unlimited Power of Attorney Coupled with an Interest."<sup>4</sup> Compl. ¶¶ 9, 12, 14, and 20.

Kutchorkova timely removed the case to federal court on January 20, 2004. In the motion now before us, Shtatnov seeks

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2. (...continued)

least, eyebrow-raising documents that are the subject of a separate Rule 12(b)(6) motion to dismiss on the ground that they violate public policy. In the contract, Shtatnov agrees to provide Kutchorkova with \$5,000 a month while he investigates her marital property rights in exchange for a percentage of her divorce "recovery." In the event that Kutchorkova and her husband had reached a settlement "approved by Shtatnov" within six months of the commencement of divorce proceedings, Shtatnov would have received one hundred percent of the amount above \$100 million. Contract ¶¶ 2-4 (Def.'s Ex. 1.A). In the Unlimited Power of Attorney, Kutchorkova granted Shtatnov the right "to accept or reject any settlement of my marital property rights . . . ." Power of Attorney ¶ 1 (Def.'s Ex. 1.B).

3. The complaint does not say what benefits Shtatnov has conferred upon Kutchorkova. See Schenck v. K.E. David, Ltd., 666 A.2d 327, 328 (Pa. Super. 1995) (setting forth elements of unjust enrichment).

4. Shtatnov and his counsel apparently contemplate that a court will enjoin Kutchorkova from entering into a property settlement without his approval and spending any money or disposing of any property she receives in such a settlement.

remand on the ground that there is no diversity of citizenship because, at the time of filing, Kutchorkova was still domiciled in Pennsylvania.<sup>5</sup> Kutchorkova contends that she permanently abandoned her home in Pennsylvania in October of 2003 and has been domiciled in Hawaii since December 3, 2003. For the reasons provided below, we conclude that Kutchorkova's citizenship was diverse from Shtatnov's at the time of filing and removal, and we therefore deny the motion to remand.

#### Discussion

The removing defendant in a diversity action must establish that the parties were citizens of different states at both the commencement of the action and the time of removal.<sup>6</sup> Citizenship is synonymous with domicile, and under long-established law, domicile requires physical presence in the state with the intent to remain there indefinitely. Krasnov v. Dinan, 465 F.2d 1298, 1300 (3d Cir. 1972). When physical presence and

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5. In accordance with our Court of Appeals' decision in Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 456 (3d Cir. 2003), we granted Shtatnov's request to engage in jurisdictional discovery. The parties conducted depositions and filed supplemental briefs on the remand issue.

6. The fact that Kutchorkova is a permanent resident alien does not affect our analysis of the state citizenship question. See 28 U.S.C. § 1332(a) ("For the purposes of this section, . . . an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled."). Because Shtatnov is a United States citizen, this action does not present the constitutional problem that might arise where a permanent resident alien sues as the sole defendant a permanent resident who, for statutory purposes, is deemed the citizen of another state. See Singh v. Daimler-Benz AG, 9 F.3d 303, 311 (3d Cir. 1993).

intention to remain concur, the party acquires domicile instantly. Id. As our Court of Appeals has noted, "[p]ersuasive evidence of intent can include establishment of a home, place of employment, location of assets, . . . registration of car, and, generally, [the] centering [of] one's business, domestic, social, and civic life in a jurisdiction." Juvelis v. Snider, 68 F.3d 648, 654 (3d Cir. 1995) (internal citations omitted).

With this standard in mind, we turn to consider whether Kutchorkova was a citizen of Hawaii at the relevant times.

We begin with a chronology of Kutchorkova's whereabouts in 2003 and January of 2004. Kutchorkova traveled from Russia to New York in March of 2003, met with Shtatnov at the Waldorf Astoria Hotel, and filed for divorce in the Philadelphia County Court of Common Pleas on March 31st. After returning to Russia, she executed the Contract and Unlimited Power of Attorney, and then, in early May, she came back to America and took up residence in an apartment on Alnus Street in Northeast Philadelphia that she had rented in 2001. From May until mid-October, Kutchorkova worked briefly for a furniture store in Philadelphia and traveled extensively. According to her affidavit, she decided to leave Philadelphia when her lawyer advised her to establish residency in Hawaii and pursue her divorce there.<sup>7</sup> Kutchorkova Aff. ¶¶ 14-15 (Def.'s Ex. 1). On

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7. As matters turned out, Kutchorkova's lawyer was correct. The Court of Common Pleas dismissed the divorce action on November 10, 2003. See Kutchorkova v. Nicol, No. D03038614 (Phila. County (continued...))

October 15, 2003, Kutchorkova filled out a change of address card directing the Postal Service to send her mail to a friend in Los Angeles, and she then flew to Russia.<sup>8</sup>

On December 2-3, 2003, Kutchorkova traveled from Moscow to Maui and checked into an apartment suite that her husband maintains at the Aston Kaanapali Shores resort in Lahaina, where he and the children live. See Def.'s Ex. 16 (bill showing 12/3/03 check-in date); Kutchorkova Dep. of 4/13/04, at 82-87 (Def.'s Ex. 14) (stating that, although her husband controls access to the apartment and the hotel required her to pay for her stay, she considers it a marital asset).

On December 4th, Kutchorkova opened a checking account at First Hawaiian Bank and began looking for an apartment in the local papers. She also filed for divorce in the Hawaiian courts, declaring under penalty of perjury that she is "currently domiciled on the Island of Maui" and giving the hotel as her address. Kutchorkova Dep. of 2/5/04, at 31-33 (Def.'s Ex. 22); Compl. & Matrimonial Action Information (Def.'s Ex. 4). Four days later, Kutchorkova rented a mailbox at Westside Copy and Graphics in Lahaina, arranged for the Postal Service to deliver her mail there, and notified her credit card company of the new

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7. (...continued)  
Court of Common Pleas Nov. 10, 2003) (Def.'s Ex. 3) (finding that Kutchorkova was not a bona fide resident of Pennsylvania for six months prior to the commencement of the divorce action).

8. Kutchorkova states that she abandoned a television, DVD player, roller blades, a table, a lamp, and some towels when she left Philadelphia. K. Aff. ¶ 6.

mailing address. App. for Delivery of Mail Through Agent (Def.'s Ex. 17); Letter from Individualized BankCard Services to Kutchorkova of 2/27/04 (Def.'s Ex. 18) (confirming change of address on 12/8/03). During her time in Lahaina, Kutchorkova also took several day trips to Honolulu on legal business and spent time with her children. K. Dep. of 4/13/04, at 26-27; K. Dep. of 2/5/04, at 32.

On December 16th, Kutchorkova flew back to Moscow for the Christmas season. After returning to Lahaina on January 12, 2004, she temporarily moved into a condominium at Whaler's Village in Lahaina. She also found a part-time job at a jewelry shop and registered for some community college courses. Toward the end of the month, she signed a lease for a one-bedroom, furnished apartment commencing February 1, 2004. K. Dep. of 4/13/04, at 87-89, 94-99; Rental Agreement of 1/30/04 (Def.'s Ex. 11).

Based on this record, it is obvious that Kutchorkova was physically present in Hawaii on December 11th, and her actions, family ties, and declarations show that she intends to remain there indefinitely. She left the Philadelphia apartment in mid-October, and she lost any reason to live there once the Court of Common Pleas dismissed her divorce action on November 10th. Moreover, by December 11th she had found temporary lodgings in Lahaina, established a mailing address and bank account there, declared that she was living in Hawaii on court documents, and had started the process of finding a place to

live. By January 20th, Kutchorkova had returned to Lahaina from her holiday travels and had intensified her search for a job and apartment. Most important of all, Kutchorkova's four young children live in Lahaina, and her efforts to be near them and secure a divorce with custodial rights show that Hawaii is the center of her family life for the indefinite future.

In support of his motion to remand, Shtatnov makes much of the fact that Kutchorkova has not yet obtained a Hawaii driver's license. We acknowledge that Hawaiian law requires Kutchorkova to have obtained a license by now. However, we are constrained to note that it is not uncommon for a newcomer who, like Kutchorkova, possesses a valid license from another state to stave off the unpleasantness of a visit to the Department of Motor Vehicles.

Finally, we note that the only evidence Shtatnov has produced that links Kutchorkova to Philadelphia after she went to Lahaina is her copy of the Ladies' Home Journal for March of 2004, which the Postal Service delivered to the apartment on Alnus Street. See Pl.'s Ex. 7. The editors and readers of the Journal will surely forgive us if we decline to attach any significance to the fact that Kutchorkova has neglected to update her subscription information.

In sum, Kutchorkova has established that she was domiciled in Hawaii on December 11, 2003 and January 20, 2004. She was therefore diverse from Shtatnov at the time of filing and

removal, and we must deny his motion to remand. An appropriate Order follows.

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ORDER

AND NOW, this 28th day of April, 2004, upon consideration of plaintiff's motion to remand (docket entry # 5), defendant's response, and the parties' supplemental briefs, and in accordance with the accompanying Memorandum, it is hereby ORDERED that:

1. The motion is DENIED; and
2. Plaintiff shall RESPOND to defendant's motion to dismiss by May 12, 2004.

BY THE COURT:

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Stewart Dalzell, J.