

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

DIANE ZAMESKA, et al. : CIVIL ACTION
: :
v. : :
: :
SEGUROS ING COMMERCIAL : :
AMERICA, S.A. DE C.V., et al. : NO. 04-1895

MEMORANDUM

Bartle, J.

March 3, 2005

Plaintiffs, Diane Zameska and her husband George Zameska, bring this diversity action against the following defendants: Seguros ING Commercial America, S.A. de C.V.; Hotel Camino Real Cancun; Hoteles Camino Real S.A. de C.V.; Hoteles Camino Real Co., Dallas; and Hilton Hotel. Diane Zameska claims she suffered personal injuries while on vacation at the Hotel Camino Real Cancun in Cancun, Mexico. Her husband sues for loss of consortium.

Defendants Hotel Camino Real Cancun and Hoteles Camino Real S.A. de C.V. have filed a motion to dismiss the complaint on the grounds that personal jurisdiction over them is lacking and that service of process was insufficient. See Fed. R. Civ. P. 12(b)(2) & 12(b)(5). In the alternative, they seek dismissal under the doctrine of forum non conveniens.

Since this court sits in Pennsylvania, we may exercise personal jurisdiction over a party to the extent authorized under Pennsylvania law as long as it is consistent with the Due Process

Clause of the Fourteenth Amendment to the United States Constitution. See International Shoe Co. v. Wash., 326 U.S. 310, 316 (1945) (citations omitted). The Pennsylvania long-arm statute directs its courts to exercise personal jurisdiction to the fullest constitutional extent. Mellon Bank (E.) PSFS v. Farino, 960 F.2d 1217, 1221 (3d Cir. 1992); Provident Nat'l Bank v. Cal. Fed. Sav. & Loan Ass'n, 819 F.2d 434, 436 (3d Cir. 1987); 42 Pa. Cons. Stat. Ann. §§ 5301, 5322. In order to pass constitutional muster, a defendant must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe, 326 U.S. at 316 (citations omitted). When determining whether defendant has sufficient "minimum contacts" with Pennsylvania to establish personal jurisdiction, we follow the factors discussed in International Shoe and its progeny. Under these cases, we ask: (1) whether defendant "purposefully avail[ed] itself of the privilege of conducting business" with Pennsylvania; and (2) if defendant's relationship with plaintiff and the forum state is such that the defendant "should reasonably anticipate being haled into court" in the forum state. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (citations omitted).

It is well established that "the plaintiff bears the burden of establishing with reasonable particularity contacts sufficient to support the court's exercise of personal jurisdiction." Harris v. Trans Union LLC, 197 F. Supp. 2d 200,

203 (E.D. Pa. 2003). Plaintiffs must demonstrate either that "the particular cause of action sued upon arose from defendant's particular activities in the forum state ('specific jurisdiction') or that the defendant had 'continuous and systematic' contacts with the forum state ('general jurisdiction')." Provident Nat'l Bank, 819 F.2d at 437 (citations omitted); 42 Pa. Cons. Stat. Ann. § 5322(a) and (b).

Plaintiffs, who are Pennsylvania citizens, were vacationing at the Hotel Camino Real Cancun in Cancun, Mexico on April 28, 2002 when plaintiff Diane Zameska allegedly slipped and fell as she stepped out of a bathtub. Where a defendant's alleged negligence and the plaintiff's resulting injury occurred outside Pennsylvania, "specific jurisdiction generally may not be exercised by courts sitting in Pennsylvania because the plaintiff's cause of action is not related to contact with the forum." Litman v. Walt Disney World Co., No. 01-CV-3891, 2002 WL 468707, *2 (E.D. Pa. Mar. 26, 2002). Plaintiffs cannot establish specific jurisdiction. Id.

Plaintiffs' argument in favor of general jurisdiction in this court over the two defendants in issue rests on the existence of a "www.caminoreal.com" internet website, several hotel advertisements in national or international publications, and an affidavit of a friend of plaintiffs.

The mere existence of a website is not sufficient to establish general personal jurisdiction. Hurley v. Cancun Playa Oasis Int'l Hotel, No. Civ. A. 99-574, 1999 WL 718556, *3 (E.D.

Pa. Aug. 31, 1999). Plaintiffs' reliance on Mar-Eco, Inc. v. T&R & Sons Towing & Recovery, Inc., 837 A.2d 512 (Pa. Super. 2003), is misplaced. While the state Superior Court upheld Pennsylvania's exercise of personal jurisdiction over a Maryland business due to its website, that website was "highly interactive." It was far different than what has been shown here. Furthermore, plaintiffs do not contend that they made their reservations through the "caminoreal.com" website. Rather, they did so through a travel agent.

Moreover, advertisements in national or international magazines or newspapers, not directed to a particular forum, likewise are not enough to establish jurisdiction over the person. In this case, the ads appeared in Conde Nast Traveler and Travel Weekly. There is no evidence that the ads in either publication were directed specifically toward persons in Pennsylvania. In fact, there is an undisputed affidavit in the record that defendants did not focus any ads specifically toward this forum. See Gehling v. St. George's Sch. of Med. Ltd., 773 F.2d 539, 542 (3d Cir. 1985); NAPA Dev. Corp., Inc. v. Pollution Control Finan. Auth., 346 F. Supp. 2d 730, 732-33 (E.D. Pa. 2004). In any event, plaintiffs learned about the hotel in Cancun through their friend, Dr. Oleg Jakubowicz. They do not claim that they ever viewed any of the cited ads before their trip or that the ads played any role in their decision to travel to Mexico. Indeed, it was not possible to make such an argument since the accident allegedly occurred in April, 2002 and the date

of the ads in the record were published much later, in September, November, and December, 2002.

Finally, the affidavit of their friend Dr. Jakubowicz is of no help to plaintiffs. He simply states that he has traveled repeatedly to Mexico and its resorts and that he learned about the Hotel Camino Real Cancun as a result of ads placed by third parties. These ads, which allegedly appeared in The Philadelphia Inquirer from 1988 to the present, are not part of the record. In any event, Dr. Jakubowicz states the ads were within the Apple Vacations advertising section of The Philadelphia Inquirer. Defendants cannot be held responsible for what a third party does, without further evidence not present here. See Cunningham v. Walt Disney World Co., Civ. A. No. 90-6164, 1991 WL 22062, *3 (E.D. Pa. Feb. 19, 1991). Simply because Dr. Jakubowicz travels to Mexico frequently does not establish that the defendants are subject to the general personal jurisdiction of this court.

The defendants do not have those minimum contacts with Pennsylvania which are consistent with notions of fair play and substantial justice. International Shoe, 326 U.S. at 316. Defendants should not "reasonably anticipate being haled into court" in this Commonwealth. Burger King, 471 U.S. at 474. Personal jurisdiction over defendants would violate the Pennsylvania long arm statute and due process.

Accordingly, we will dismiss the complaint as to defendants Hotel Camino Real Cancun and Hoteles Camino Real S.A. de C.V.¹

1. Because we are dismissing plaintiffs' complaint for lack of personal jurisdiction, we need not decide whether service of process was insufficient or whether forum non conveniens is applicable.

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ORDER

AND NOW, this 3rd day of March, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendants Hotel Camino Real Cancun and Hoteles Camino Real S.A. de C.V. to dismiss plaintiffs' complaint is GRANTED.

BY THE COURT:

/s/ Harvey Bartle III

J.