

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

FRANK MADOTTO : CIVIL ACTION
: :
Plaintiff : :
: :
v. : :
: :
GARY ROSMAN, M.D., et al., : :
: :
Defendants : No. 98-3221

M E M O R A N D U M

Padova, J.

December , 1998

Plaintiff Frank Madotto ("Madotto") has sued a physician, Gary Rosman, M.D. ("Rosman"), a hospital, the Atlantic City Medical Center (the "Hospital") and the Red Cross Blood Bank for allegedly giving him Hepatitis-contaminated blood in a transfusion, thereby causing him to contract the disease. Defendants Rosman and the Hospital have filed Motions to Dismiss based on improper venue, pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C.A. § 1391(a) (West 1993 & Supp. 1998). The Hospital also claims improper service pursuant to Rule 12(b)(4) and failure to state a claim pursuant to Rule 12(b)(6). For reasons stated below, the Motions to Dismiss will be granted and the Complaint will be dismissed without prejudice.

I. BACKGROUND

Plaintiff Madotto alleges that he resides in Pennsylvania, that Defendant Rosman is licensed to practice

medicine in New Jersey and has his offices there and the Hospital and the Red Cross are incorporated and have their principal places of business in New Jersey. He claims subject matter jurisdiction on the basis of 28 U.S.C.A. § 1332 (West 1993 & Supp. 1998), diversity jurisdiction, and venue on the basis of 28 U.S.C.A. § 1391(a), which sets out the requirements for venue based on diversity.

Plaintiff alleges the following: On or about June 26, 1989, he reported to the emergency room of the Hospital, complaining that he had had abdominal cramps and loose red stools for approximately two days. He was admitted, diagnosed, and treated by Defendant Rosman. The following day, Rosman advised Plaintiff that he required a transfusion of two units of blood. Plaintiff initially refused, but was told that such refusal would be life-threatening. Plaintiff was not properly informed of the dangers of the transfusion. He was transfused with two units of blood and was discharged on June 29, 1989. The Red Cross provided the blood, which was contaminated with the Hepatitis C virus, and Plaintiff contracted Hepatitis C because of the unnecessary transfusion. Plaintiff did not learn of the contamination until August 2, 1996, when blood tests revealed that he carried Hepatitis C antibodies.

The Complaint comprises the following Counts:
Negligence against Rosman (Count I); Lack of Informed Consent

against Rosman and the Hospital (Count II); Negligence against the Hospital (Count III); Negligence against the Red Cross Blood Bank (Count IV); and Absolute Liability, Strict Liability, Implied Warranty, and Outrageous Conduct (Punitive Damages) against all three Defendants (Counts V, VI, VII, and VIII).

II. DISCUSSION

A. Subject Matter Jurisdiction

As this Court has stated on numerous occasions, "federal courts have an ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue sua sponte." Liberty Mut. Ins. Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995). See also Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1049 (3d Cir 1993) ("It is axiomatic that federal courts are courts of limited jurisdiction, and as such are under a continuing duty to satisfy themselves of their subject matter jurisdiction before proceeding to the merits of any case.")

In this case, Plaintiff claims subject matter jurisdiction based on diversity of citizenship, pursuant to 28 U.S.C.A. § 1332. He alleges that the Red Cross Blood Bank is a corporation organized and existing under the laws of New Jersey. In fact, the American Red Cross¹ is a federally chartered

¹Plaintiff has sued the "Red Cross Blood Bank." The "American Red Cross" responded. The name given the organization

corporation, existing as "a body corporate and politic in the District of Columbia." 36 U.S.C.A. §§ 1, 1a (West 1988). It is therefore a citizen of the District of Columbia for purposes of diversity jurisdiction. Burton v. United States Olympic Committee, 574 F. Supp. 517, 519 (C.D. Cal. 1983) (holding a federal corporation has national citizenship only unless by statute it is a "body corporate" of a particular state); Patterson v. American Nat. Red Cross, 101 F. Supp. 665, 657 (S.D. Fla. 1951) (holding Red Cross is a citizen of District of Columbia for purposes of diversity jurisdiction). Assuming that Plaintiff is a citizen of Pennsylvania, in addition to being a resident, and that Rosman, who is licensed to practice medicine and has his offices in New Jersey is also a citizen of that state, there is complete diversity and this Court has subject matter jurisdiction.

B. Personal Jurisdiction

Even where there is federal subject matter jurisdiction, in order for a particular federal court to hear a case, two other independent requirements must be satisfied: personal jurisdiction and proper venue, unless these are waived. See Charles Wright, Arthur Miller, and Edward Cooper, 15 Federal

by statute is the "American National Red Cross". 36 U.S.C.A. § 1a (West 1988). For purposes of this action, the Court will consider all three to be the same.

Practice and Procedure § 3801 at 5-7 (2d ed. 1986). Venue may exist where personal jurisdiction does not and vice versa. Id. The Hospital does not contest this Court's personal jurisdiction, but the other Defendants do.

1. Defendant Rosman

While Defendant Rosman denominates his Motion as one to Dismiss for Lack of Venue, in the memorandum accompanying it, he also challenges the Court's personal jurisdiction over him. The Court will consider the question of personal jurisdiction first. Leroy v. Great Western United Corp., 443 U.S. 173, 180, 99 S. Ct. 2710, 2715 (1979) ("The question of personal jurisdiction, which goes to the court's power to exercise control over the parties, is typically decided in advance of venue, which is primarily a matter of choosing a convenient forum."); see also Bookout v. Beck, 354 F.2d 823, 825 (9th Cir. 1965) ("jurisdiction must be found over the subject matter and the person before one reaches venue").

"In deciding a motion to dismiss for lack of personal jurisdiction, we take the allegations of the complaint as true. But once a defendant has raised a jurisdictional defense, a plaintiff bears the burden of proving by affidavits or other competent evidence that jurisdiction is proper." Dayhoff v. H.J. Heinz Co., 86 F.3d 1287, 1302 (3d Cir. 1996) (citations omitted).

This Court, sitting in diversity, applies Pennsylvania law to the issue of personal jurisdiction. Fed. R. Civ. P. 4(e). Pennsylvania's long-arm statute authorizes the exercise of personal jurisdiction over nonresidents "to the fullest extent allowed under the Constitution of the United States . . . based on the most minimum contacts with this Commonwealth allowed under [that] Constitution." 42 Pa. Cons. Stat. Ann. § 5322(b) (West 1981). The Pennsylvania long-arm statute sets out a variety of examples of sufficient contacts.

The Complaint alleges no contacts that Rosman had with Pennsylvania. None of the facts alleged in the Complaint provides a basis for personal jurisdiction over Rosman, and Plaintiff has submitted no additional documentation or argument for this Court's personal jurisdiction over Rosman.

For his part, Rosman has submitted an affidavit to the effect that he has not practiced medicine or maintained an office in Pennsylvania at any time relevant to this case. The Court concludes that Plaintiff has not met his burden of demonstrating that this Court has personal jurisdiction over Rosman. It therefore cannot hear the case as to Rosman.²

2. The Hospital

²Because this Court cannot hear the case against Rosman, it will not consider Rosman's arguments against venue in this District.

The Hospital has moved to dismiss the Complaint on three grounds: failure to state a claim,³ improper service, and improper venue. With respect to its second claimed ground for dismissal, improper service, the Hospital, citing no law and presenting no argument, states that it is a corporation organized under the laws of the State of New Jersey, that it was not licensed to do business in this District and was not doing business here, that it is not subject to service of process within the Eastern District of Pennsylvania, and that it has not been properly served with process in this action. This appears to be an argument against personal jurisdiction, although the Hospital does not call it that and seems to have confused personal jurisdiction with venue. In its Reply Brief, the Hospital argues that there is "no basis for jurisdiction over [it] pursuant to 28 U.S.C. § 1391 et seq."

The Complaint provides no basis for personal jurisdiction over the Hospital in this District; however,

³In support of its position that the Complaint has failed to state a claim against it, the Hospital states that, because none of the co-defendants is or was an employee of the Hospital at the time of the alleged incident, there is no basis set forth for a claim against the Hospital. It cites no law, nor does it make any further argument on this point. The Complaint alleges that the Hospital provided the contaminated blood with which Plaintiff was transfused. Plaintiff could prove, consistent with the allegations in the Complaint, that the Hospital, acting through its agents, provided the tainted blood. Plaintiff does not have to name the agents as co-defendants in this suit in order to state a claim against the Hospital.

information provided by the Red Cross in its Response to the other Defendants' Motions appears to provide such a basis. The information is in the Red Cross's self-executing disclosure ("Disclosure"), which was attached to Plaintiff's Response to the Motions, and in an affidavit from Elizabeth Guido, R.N., an administrator in its local Blood Services Donor Health Department ("Affidavit"), which was attached to the Red Cross's Response. The Affidavit indicates that the Red Cross's blood collection efforts in eastern Pennsylvania and parts of New Jersey are combined in a "Penn-Jersey Region" whose offices are located in Philadelphia. Nurse Guido states in her affidavit that the blood given to Plaintiff was donated and tested in Philadelphia. If the hospital gets blood donated and tested in Pennsylvania from an organization with its local offices in Pennsylvania, that would seem to provide sufficient minimum contacts for personal jurisdiction. Plaintiff makes oblique reference to these facts in arguing for jurisdiction over the Hospital. He asserts that the Hospital "maintains ties within this jurisdiction every time it has dealings with the Red Cross." (Pl.'s Resp. to Hospital's Mot.) If the Complaint were repleaded so as to be compatible with the information provided by the Red Cross, it appears that the Court could exercise jurisdiction over the Hospital.

C. Venue

Plaintiff, the Hospital, and the Red Cross all argue as to whether venue in this District is proper under 28 U.S.C.A. § 1391(a), which applies to actions in which jurisdiction is based only on diversity.⁴ The statute provides:

(a) A civil action wherein the jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C.A. § 1391(a).

It should be noted that the Complaint alleges no specific basis for venue in this District. In arguing against dismissal for improper venue, Plaintiff relies on facts presented in the Red Cross's Disclosure and Affidavit. He does not, however, seek to amend his Complaint. In Order to bring the case against the remaining Defendants in this District, Plaintiff would have to make his Complaint compatible with the facts he argues in support of it. Because those facts are now before the Court, the Court will, in the interest of judicial economy,

⁴There is also another basis for this Court's jurisdiction over the Red Cross, but Plaintiff did not chose to invoke it. The federal charter of the Red Cross grants it "the power to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." 36 U.S.C.A. § 2 (West 1988).

discuss whether they would provide a basis for venue in this District against the Hospital and the Red Cross.

1. The Hospital

The Hospital argues that venue in this District is improper. Relying on the allegations of the Complaint, the Hospital states that none of the requirements of 28 U.S.C.A. § 1391(a) is met for venue in this District; however, it does not discuss the facts of the Complaint in light of the three bases for venue under 28 U.S.C.A. § 1391 or say why they do not satisfy the statute. In other words, the legal analysis is missing.

2. The Red Cross

The Red Cross argues that venue in this District is proper, at least as to it. While it takes no position as to whether venue is proper here for the other Defendants, the Red Cross argues that all of the events concerning its alleged liability in this law suit took place in this District. As discussed above, the Red Cross presents evidence that it collected and tested the allegedly contaminated blood with which Plaintiff was transfused in this District.

Plaintiff advances three arguments to justify bringing the case in this District, one under each of the subsections of 1391(a). First, with regard to 1391(a)(1), Plaintiff argues that

if that section is read together with 1391(c), this Court "has appropriate jurisdiction to hear this matter." (Pl.'s Responses to Rosman's and Hospital's Motions (unpaginated).) Subsection 1391(a)(1) provides that an action founded only on diversity may be brought in "a judicial district where any defendant resides, if all defendants reside in the same State." Subsection 1391(c) states that, for purposes of federal venue, a defendant corporation "shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." Plaintiff's reasoning is that, on the basis of the Red Cross's Self-Executing Discovery ("Disclosure"), which identifies the Red Cross Defendant as operating in the "Penn-Jersey Region," the Red Cross may be deemed to reside in Pennsylvania, as well as in New Jersey, under subsection 1391(c). (Pl.'s Resp to Rosman's Mot., attachment.) Therefore, under 1391(a), the case may be brought in the "judicial district where any defendant resides [Eastern District of Pennsylvania]", "if all defendants reside in the same state [New Jersey]." Plaintiff argues that the Red Cross "provides the necessary link to the Eastern District of Pennsylvania." (Pl.'s Responses to Rosman's and Hospital's Motions.)

Plaintiff cites no authority for this strained reading of the subsection, and the Court is not convinced that it was meant to be read in this manner, so that the judicial district in

which one Defendant resides and in which venue is sought need not be in the state in which the other Defendants reside. The more likely reading is that section 1391(a)(1) was meant to apply to a situation in which one state is divided in to several judicial districts, with defendants residing in different districts. The Commentary to the subsection in the United States Code Annotated supports this interpretation. It states:

The first venue offering of the new subdivision (a), that contained in clause (1), is a district where any defendant resides, but with the proviso that when there are several defendants, all of the defendants must be shown to reside in the same state. If they do, the district of residence of any one of them -- this of course supposes that the state is among those divided into two or more districts -- is a proper venue. . . . If they do not, however; if the defendants reside in different states, the defendant's-residence venue standard will not serve and the plaintiff will have to turn to one of the other criteria, relying on clause (2) or (3) . . .

28 U.S.C.A. § 1391, Commentary.

Second, Plaintiff argues that venue in this District is proper under subsection 1391(a)(2), because a substantial part of the events upon which the claims were based occurred in this District. If the Complaint were amended so as to be compatible with the Red Cross's evidence, it appears that venue would be proper on that basis.

Third, to bring the case under subsection 1391(a)(3), Plaintiff argues that, because at least one Defendant, the Red Cross, is subject to personal jurisdiction in this District, the

action may be brought here. However, Plaintiff concedes that the second part of subsection (3), that "there is no district in which the action may otherwise be brought," is not satisfied. 28 U.S.C.A. § 1391(a)(3). He admits the action could have been brought in the District of New Jersey.

It should be noted that, although it mentions personal jurisdiction, subsection 1391(a)(3) relates only to proper venue. It cannot confer personal jurisdiction. Vogel v. Tenneco Oil Co., 276 F. Supp. 1008, 1010 (D.C.D.C. 1967) ("Section 1391(c) relates only to the proper placing of venue once jurisdiction has been found; it cannot be used in itself as a basis for jurisdiction."). The House Committee considering the venue statute stated that, as to subsection (a)(3), the statute did not provide a basis for personal jurisdiction. See H.R. Rep. 101-734, 110th Cong., 1st Sess., at 23 (1990) ("If personal jurisdiction cannot be brought in a single federal court, this proposal does not create any new basis for personal jurisdiction. Instead two actions must be brought in separate courts.").

In summary, if Plaintiff were to amend his Complaint, he could make a plausible argument that venue is proper in this District under section 1391(a)(2). Based on evidence provided by the Red Cross, a substantial part of the events upon which the claims were based occurred here.

III. CONCLUSION

The Court concludes that it has no jurisdiction over Defendant Rosman. On the basis of the Complaint, venue is not proper in this District and the Complaint will be dismissed without prejudice. If the Complaint were properly pleaded, the Court would likely have jurisdiction over the Hospital and venue would likely be proper in this District under 28 U.S.C.A. § 1391(a)(2). In repleading this case, Plaintiff could file two actions, one against Defendant Rosman in New Jersey and one against the other Defendants in this District, or it could file a single action against all three Defendants in New Jersey. It appears to the Court that the latter course of action is the better one. There are common facts and issues that weigh against the piecemeal trying of this case. The Affidavit states that, while the test used to screen for Hepatitis C had not been approved at the time of Plaintiff's transfusion, when the donor who provided the blood for Plaintiff was tested subsequently, he showed no Hepatitis C antibodies. If, as this suggests, the donor who supplied the units of blood transfused into Plaintiff was not the source of Plaintiff's disease, that will affect the claims against all of the Defendants, not just those against the Red Cross.

An appropriate Order follows.

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FRANK MADOTTO	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
GARY ROSMAN, M.D., et al.,	:	No. 98-3221
	:	
Defendants	:	

O R D E R

AND NOW, this day of December, 1998, upon consideration of the Motions to Dismiss of Defendant Gary Rosman, M.D. (Doc. No. 5) and the Atlantic City Medical Center (Doc. No. 6), the Responses of Plaintiff Frank Madotto (Doc. No. 11 & 12) and Defendant the American Red Cross (Doc. No. 10), and all submissions and replies thereto, it is **HEREBY ORDERED** that:

1. Said Motions are **GRANTED**; and
2. The Complaint is **DISMISSED WITHOUT PREJUDICE**.

BY THE COURT:

JOHN R. PADOVA, J.