

Krentsel v Loews Miami Beach Hotel Operating Co., Inc.
2009 NY Slip Op 31386(U)
June 25, 2009
Supreme Court, New York County
Docket Number: 103823/08
Judge: Walter B. Tolub
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

WALTER B. TOLUB

PRESENT: _____

PART _____

Index Number : 103823/2008

KRENTSEL, HEATHER

vs

LOEWS HOTELS HOLDING

Sequence Number : 001

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

_____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is denied in accordance with the accompanying memorandum opinion.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

JUN 26 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/25/09

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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HEATHER KRENTSEL

Plaintiff,

Index No.103823/08
Mtn Seq.001

-against-

LOEWS MIAMI BEACH HOTEL OPERATING
COMPANY, INC.,

Defendant.

FILED
JUN 26 2009
COUNTY CLERK'S OFFICE
NEW YORK

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WALTER B. TOLUB, J.:

This is Defendant's motion for an order dismissing Plaintiff's complaint for forum non conveniens pursuant to CPLR §327; or, alternatively, an order retaining jurisdiction and applying Florida substantive law.

Facts

Plaintiff Heather Krenstel, a resident of New York, claims that her wedding band and engagement ring were taken from her room while she was staying at Defendant Loews Miami Beach Hotel on February 16, 2008. Plaintiff values the rings at \$10,000 and \$60,000, respectively in her Bill of Particulars; however, in her statement to the Miami Beach Police, Plaintiff reported the value of the rings as \$5,000 and \$35,000. (Exhibit H p.2). Also in her statement to police, Plaintiff claimed that she "had removed her both [sic] rings from her finger and placed [them] on the top of [the] room cabinet. On Saturday 02-16-08 at about

0900 hours she left the room but vaguely thinks that she left [them] where [they were] placed the previous night." Plaintiff additionally stated that she did not realize the rings were missing until February 17th, when "she made a thorough search of the room without success." (Exhibit H, p.2). Plaintiff further reported that she had owned the rings for four years, that they were uninsured, and that she would not be able to furnish a receipt for them. (Exhibit H, p.2).

According to the police, the room showed no signs of forced entry, its door and lock functioned properly, and the hotel had no security cameras monitoring the door. Plaintiff claims that the rings were taken due to Defendant's negligence in its hiring and supervision of employees as well as in its maintenance and operation of the hotel.

Defendant now seeks an order to dismissing the case for forum non conveniens. Alternatively, Defendant seeks an order applying Florida substantive law. Defendant contends that Florida is the appropriate forum for the instant action because it is the site of the tort and the residence of the witnesses for the defense. If the case remains in New York, the defendant argues that Florida's law should apply because the parties are residents of different states with conflicting laws that favor their respective domiciliaries, and because Florida is the place of injury.

Discussion:

Forum Non Conveniens

Pursuant to CPLR §327(a), the court has the power to stay or dismiss actions which, in the interest of substantial justice, should be heard in another forum. (Barr, Altman, Lipshie, and Gerstman; New York Civil Practice Before Trial, [James Publishing 2007] §36:500) While the residence of the plaintiff is generally considered the most important factor in determining whether to dismiss for forum non conveniens, residence in the forum state will not preclude dismissal if the defendant can show a "balance of factors" weighing heavily in its favor. (CPLR §327 [a]); (Sweeney v. Herz Corp., 250 A.D.2d 385, 386 [1st Dept. 1998]). The defendant must meet an "onerous burden of proof to divest the resident plaintiffs of their chosen forum." (Kronengold v. Hilton Hotels Corp., 166 A.D.2d 325, 326 [1st Dept. 1990]).

In the case at bar, Defendant argues, without further elaboration, that all of its witnesses are residents of Florida who "would suffer undue hardship if compelled to appear in the State of New York." (Notice of Motion to Dismiss p.8). Inconvenience of the defense's witnesses does not automatically prevent an action in the New York courts, especially when the defense has provided no evidence that its witnesses would be unwilling or unable to testify here. (Kronengold v. Hilton Hotels Corp., 166 A.D.2d 325 [1st Dept. 1990]).

Defendant's assertion that this case should be moved to Florida because Plaintiff's residency is the only nexus to New York is unpersuasive. The solicitation of customers in New York establishes contacts with the state sufficient to deny a motion under CPLR §327(a). (Schneider v. Safety Harbor Spa, Inc., 56 A.D.2d 762 [1st Dept. 1977], Kronengold v. Hilton Hotels Corp., 166 A.D.2d 325 [1st Dept. 1990]). Since Loews solicited customers (including the plaintiff) in New York, there is a substantial nexus to this State, and there has been no showing of hardship. This case will remain in New York, and defendant's motion to dismiss for forum non conveniens is denied.

Choice of Law

Defendant's alternative theory of relief focuses on the applicability of Florida law over the laws of the State of New York. When faced with the challenge of determining which state's law should apply, the courts must first determine whether there is a conflict between the statutes at issue. A "true conflict" exists when the parties are domiciliaries of different states, and each state's law prevents its own domiciliary from bearing full liability. (Cooney v. Osgood Machinery, Inc., 81 N.Y.2d 66, 73 [1993]).

Looking first to New York law, the court notes that New York General Business Law (GBL) §201 provides that innkeepers will not

be held liable for the loss of a guest's personal property in excess of five hundred dollars unless that loss was caused by the innkeeper's negligence. (GBL §201). Applied to the instant facts, under the New York statute, Defendant would bear the entire cost of the missing rings if found negligent.

The applicable Florida Statute (Florida Statute §509.111) is similar to GBL §201 except for one crucial distinction. The statute says that innkeepers are liable to guests for the loss of personal property if the loss is due to the innkeeper's negligence, but that liability will never exceed five hundred dollars. (Fla. Stat. §509.111). Consequently, under the application of Florida law, if found negligent, Defendant would only be responsible for a maximum of five hundred dollars, leaving Plaintiff to bear the loss for the ring's remaining value.

Since, upon a finding of negligence, New York law (GBL §201) would require Defendant to compensate Plaintiff for the full value of the rings while Florida law (Fla. Stat. §509.111) would result in a loss to Plaintiff, a true conflict exists between the two statutes.

When two states have "conflicting rules of recovery in tort actions," the court must then apply an interest analysis (Schultz v. Boy Scouts of America, Inc., 65 N.Y.2d 189, 197 [1985]). "[I]nterest analysis, . . . [seeks] to effect the law

of the jurisdiction having the greatest interest in resolving the particular issue." (Cooney, Inc., 81 N.Y.2d 66, 72). The first step in applying the interest analysis is determining the location of the significant contacts. (Id.). in the instant case, the significant contacts are the residences of the parties and the location of the tort. Plaintiff is a resident of New York while Defendant is a resident of Florida, and the alleged tort occurred in Florida; therefore, there are sufficient contacts to apply either Florida or New York law.

When there is a conflict of law and sufficient contacts with the plaintiff's chosen forum, the court must then determine what type of laws are at play: loss allocating statutes or statutes that regulate behavior. Behavior-regulating statutes are those that "involve the appropriate standards of conduct," (Schultz, 65 N.Y.2d 189,198), while loss allocating laws are "those that allocate losses after the tort occurs (such as vicarious liability rules)." (Cooney, 81 N.Y.2d 66, 72). Although both the Florida and New York laws provide some behavioral guidelines such as notice requirements, the primary purpose of both statutes is to limit innkeeper liability after property has been lost or stolen. (Millhiser v. Beau Site Co., 251 N.Y. 290 [1929]; Carlton v. Beacon Hotel Corp., 3 A.D.2d 28 [1st Dept. 1956]; Great American Ins. Co. v. Coppedge, 405 So.2d 732 [Fla. Dist. Ct. App. 4th Dist. 1981]). Both laws thus fall into the loss-

allocation category. While the court notes that in Kronengold, the Appellate Division declined to apply Florida law in a case closely analogous to the instant action on a theory of *lex loci delictus*, the statute in question in that case was behavior-regulating. (Kronengold v. Hilton Hotels Corp., 166 A.D.2d 325 [1st Dept. 1990]). Because the statutes in this case allocate loss, the court should apply one of the three rules set forth in Neumeier v. Kuehner, 31 N.Y.2d 121 [1972],” rather than follow Kronenberg analysis (Bodea v. TransNat Express, Inc., 286 A.D.2d 5, 10 [4th Dept. 2001]; Schultz, 65 N.Y.2d 189; Cooney, 81 N.Y.2d 66, 72).

The first Neumeier rule pertains to parties that are residents of the same state, and is therefore inapplicable here. (Neumeier v. Kuehner, 31 N.Y.2d 121 [1972]). The second and third Neumeier rules both concern “split-domiciliary” cases, and both generally utilize a “place of injury test;” however, the second rule specifically applies when the parties are residents of different states, the tort occurred in one of the states of

Despite Plaintiff’s contention that the Neumeier line of cases are inapplicable because they often deal with guest statutes, the Court of Appeals held in Schultz v. Boy Scouts of America, Inc., 65 N.Y.2d 189 [1985], that there is no “logical basis for distinguishing guest statutes from other loss-distributing rules because they all share the characteristic of being post-event remedial rules designed to allocate the burden of losses resulting from tortious conduct.” (Neumeier v. Kuehner, 31 N.Y.2d 121 [1972]). It follows that the Neumeier rules apply in the instant case.

which a party is a resident, and the law of each parties' state favors its own residents. (Cooney, 81 N.Y.2d 66, 72). Since this is precisely the type of conflict at issue in this case, the second Neumeier rule applies.

The second Neumeier rule further "provides that when the . . . (defendant's) conduct occurred in the State of domicile and that State would not impose liability, the [defendant] should not be exposed to liability under the law of the victim's domicile." (Cooney v. Osgood Machinery, Inc., 81 N.Y.2d 66, 72 [1993]). In other words, since (1) the alleged tort occurred in Florida, (2) Defendant is a domiciliary of that state, and (3) Florida limits innkeeper liability to a maximum of five hundred dollars, Defendant should not be subject to full liability under New York law.

From a public policy perspective, exposing the defendant to liability under GBL §201 would essentially strip both the New York and Florida statutes of much of their meaning. Both laws were created to limit innkeepers' liability (Carlton, Millhiser); however, absent a place of injury test, those laws would only apply if hotel's guests happened to be a codomiciliaries. Since the nature of a hotel's business is to attract travelers, the innkeeper would likely be at the mercy of the laws of its guests' residences, therefore drastically reducing effectiveness of innkeeper statutes and divesting innkeepers of adequate notice.

In order to effectuate the goals of the innkeeper statutes in question and the Interest Analysis as applied in Neuemeier, Florida law applies in this case.

As such it is

ORDERED that the portion of defendant's motion which seeking dismissal and/or transfer of this case pursuant to CPLR 327 is denied; and it is further

ORDERED that the balance of this case, which seeks to apply Florida substantive law to this action is granted.

Counsel for the parties are directed to appear for a Preliminary Conference in IA Part 15, Room 335, 60 Centre Street, New York, New York at 11:00 on September 4, 2009.

This constitutes the decision and order of the court.

Dated:

6/21/09



HON. WALTER B. TOLUB, J.S.C.

FILED
JUN 26 2009
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