

Leuthner v Homewood Suites by Hilton

2015 NY Slip Op 30112(U)

January 5, 2015

Supreme Court, Queens County

Docket Number: 702441/2013

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

KURT LEUTHNER and ADA LEUTHNER, Index No.: 702441/2013

Plaintiffs, Motion Date: 09/10/14

- against - Motion No.: 115

HOMEWOOD SUITES BY HILTON, BRANTLEY Motion Seq.: 1
HOTEL GROUP and BRANTLEY ENTERPRISES,
INC.,

Defendants.

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The following papers numbered 1 to 13 were read on this motion by
the defendants for an order pursuant to CPLR 3211(a)(8)
dismissing the plaintiffs' complaint due to lack of in personam
jurisdiction; or in the alternative for an order pursuant to CPLR
3016 declaring that foreign law is applicable in this matter; and
for an order pursuant to CPLR 327(a) dismissing the plaintiff's
action on the ground of forum non conveniens:

Papers
Numbered

Notice of Motion-Affirmation-Affidavits-Exhibits..1 - 4
Affirmation in Opposition-Exhibits.....5 - 9
Reply Affirmation.....10 - 13

This is an action for damages for personal injuries
sustained by plaintiff, Kurt Leuthner, on July 21, 2011, when he
purportedly slipped and fell in the shower/bathtub in a hotel
known as The Homewood Suites by Hilton, located at 4850 Leesburg
Pike, Alexandria, Virginia.

The plaintiffs, residents of Queens County, commenced an
action by filing a summons and complaint in Queens County Supreme
Court on June 26, 2013. Issue was joined by service of an answer
on behalf of the defendants, Homewood Suites by Hilton, Brantley
Hotel Group and Brantley Enterprises, Inc., dated July 26, 2013.

The defendants' answer contains eighteen affirmative defenses including lack of in personam jurisdiction, the applicability of Virginia law, and forum non conveniens.

In support of the motion, defendants submit an affidavit from Darrin L. Payne, the controller for Brantley Enterprises, Inc. and Suite Venture Associates. He states that the subject hotel is owned by Suite Venture Associates. Brantley Enterprises, the management company for the subject hotel has its principle place of business in Fairfax, Virginia and does not maintain any offices outside the State of Virginia. Mr. Payne states that Suite Venture does business solely in the State of Virginia. He states that Suite Venture and Brantley have no presence in New York and are not affiliated with any New York Hotels and do not advertise in New York. Mr. Payne states that the Homewood Suites in Alexandria is maintained by Brantley staff in Virginia. He states it would be a burden on the defendants employees to have to travel to New York for depositions and for trial.

Defendants' counsel, Scott W. Driver, Esq., contends that based upon the affidavit of Mr. Payne it is clear that the defendants do business exclusively in Virginia, do not transact any business within the State of New York and therefore, there is no basis for long arm jurisdiction in New York. Secondly, defendants assert that New York is an inconvenient forum because the accident and all related events took place in Virginia, the defendants are business entities organized and located in Virginia and doing business in Virginia, and the witnesses reside in Virginia. In addition, counsel contends that Virginia law applies to all claims against the defendants. Citing Babcock v Jackson, 12 NY2d 473 [1963], defendants assert that the controlling law should be given "to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issues raised in the litigation." Defendants also assert that the Court of Appeals has held, that in applying the interest analysis approach to conflict of laws problems, the significant contacts are almost always the parties' domiciles and the site of the tort (citing Schultz v Boy Scouts of America, 65 NY2d 189 {1985}). Counsel asserts that Virginia law, which in this case would include contributory negligence, should apply herein as the accident occurred in Virginia and the defendants are Virginia business entities.

Defendants also contend that trying the matter in New York would place a burden on the New York Courts by requiring it to oversee extensive out of state discovery and to apply Virginia law. It is alleged that plaintiffs' residence in New York does

not outweigh the numerous contacts this case has in Virginia. Therefore, defendants assert that pursuant to CPLR 327(a), Virginia is a more convenient forum given that the accident occurred in Virginia and the witnesses to the accident, including the employees of the hotel reside in Virginia.

Counsel for plaintiffs, Joseph N. Cotilletta, Esq., opposes the motion on the ground that in personam jurisdiction has been obtained by long arm jurisdiction because Homewood Suites by Hilton has real property situated in New York, advertises in New York, transacts business in New York, and engages in persistent conduct in New York. Plaintiff has annexed copies of internet web pages showing Homewood Suites by Hilton locations in Manhattan, Queens County, and Long Island. With respect to Brantley Enterprises, counsel asserts that the Court has jurisdiction over Brantley Enterprises based upon its ownership of the Homewood Suites franchise. Further, counsel asserts that the motion is premature as discovery has not yet been conducted and there are issues which remain relative to the relationship between Homewood Suites and Brantley Enterprises, such as whether a franchise agreement is in place, whether Brantley derives income from New York franchisees, and whether the franchisee receives support in New York from the Virginia Company.

Plaintiffs assert that New York law is applicable herein because Virginia has a pure contributory negligence doctrine whereas New York applies comparative negligence which favors the plaintiffs. Plaintiffs assert that because Homewood Suites conducts business and advertises in New York that they should be held accountable under New York law when a New York domiciliary chooses to take advantage of Homewood Suites located out of state. Plaintiffs assert that New York is an appropriate venue based upon the fact that plaintiffs are domiciliaries of New York and defendants have contacts in New York.

Upon review and consideration of the defendants' motion, plaintiffs' affirmation in opposition and defendants' reply thereto this Court finds as follows:

In Personam Jurisdiction

Personal jurisdiction under CPLR § 302(a)(1) may be obtained over a non-domiciliary "who in person or through an agent transacts any business within the state or contacts anywhere to supply goods or services in the state." In order to obtain jurisdiction under this statute, the following conditions must be met: (1) the defendant must transact business in the state; and (2) the cause of action must be directly related to, and arise from, the business so transacted (Storch v Vigneau, 162 AD2d 241 [1st Dept. 1990]).

In its complaint the plaintiff asserts that the Court may exercise jurisdiction over Homewood Suites by Hilton and Brantley Hotel Group because they are domestic corporations, foreign corporations or other legal entity organized and existing under the laws of the State of New York and each defendant conducted business within the State of New York. However, the plaintiffs have failed to show that either defendant transacts business in this state for purposes of in personam jurisdiction. The defendants have submitted proof that the hotel, Homewood Suits by Hilton is a franchise purchased and owned by Suite Venture Associates which is a Virginia Limited Liability Company doing business solely in the State of Virginia. Further, defendant submitted evidence that the management of the hotel was done by Brantley Enterprises and that Brantley is a Virginia Corporation that does business solely in the State of Virginia. The franchise agreement submitted by the defendants shows that the name of Homewood Suites has been licensed to Suite Venture Associates limited Partnership by Promus Hotels Inc., a Delaware Corporation.

Although plaintiff submits copies of internet websites showing locations of Homewood Suites in New York, the Homewood Suites in Virginia, where the plaintiff's accident occurred, is a franchised name owned by Venture Suites a Virginia Company. The courts have held that in cases involving internet activity, "personal jurisdiction over a defendant is not appropriate simply because the defendant maintains a website which residents of New York may visit." Hsin Ten Enter. USA, Inc. v Clark Enters., 138 F. Supp. 2d 449 [SDNY, 2000]. Here, the plaintiffs failed to show that Homewood Suites in Virginia has more than a mere presence on the internet, that the websites are more than informational, and that the hotel has substantial business activity in New York connected to the claims asserted (see Paterno v Laser Spine Inst., 112 AD3d 34 [2d Dept. 2013]; Grimaldi v Gunn, 72 AD3d 37 [2d Dept. 2010]). In addition, there has been no threshold showing that discovery would lead to any additional information to support a finding that the hotel in question purposefully transacted business in New York (see Daval Steel Products, Div. of Francosteel Corp. v M.V. Juraj Dalmatinac, 718 F. Supp. 159 [SDNY, 1989]).

In addition, there has been no proof that Brantley Enterprises, a management company with its principal place of business in Virginia has any connection to New York. The proof submitted by defendants established that the operations of Brantley and Suite Venture, the owner of the franchise, are exclusively in Virginia and those operations are the sole source of their revenue. The affidavit submitted also established that Brantley and Suite Venture do not conduct any business outside the State of Virginia and do not maintain any offices outside the state of Virginia.

The plaintiff has failed to show a nexus or substantial relationship between any business transacted by the defendants in New York and the instant action that would support specific jurisdiction under Section 302(a)(1) and as such this Court has not acquired in personam jurisdiction over defendants Homewood Suites by Hilton and Brantley Enterprises. Plaintiffs have not met their burden of proving defendants' activities meet the "doing business in state" threshold for assertion of personal jurisdiction (see Jeffers v Best Western Intl., Inc., 2010 NY Slip Op 31521(U) {Sup Ct. N.Y. Co. 2010}). Therefore, since, plaintiff's negligence claim against the defendants does not arise from any of defendants' business transactions in New York, Section 302(a)(1) cannot support personal jurisdiction over either defendant (see Tese-Milner v. Ad EFX Promotions, Inc., 2007 U.S. Dist. LEXIS 5397 {SDNY, 2007}). Therefore, this court finds that the complaint must be dismissed pursuant to CPLR 3211(a)(8).

The branch of the motion to dismiss the complaint on the grounds of forum non conveniens is denied as academic.

Dated: Long Island City, N.Y.
January 5, 2015

ROBERT J. MCDONALD
J.S.C.