STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: January 9, 2012)

PAWTUCKET CREDIT UNION	:	
	:	
	:	
V.	:	**C.A. No. PC 2011-5473**
	:	
ROBERT C. GRADY	:	

DECISION

GIBNEY, P.J. Before this Court is a Motion to Dismiss, pursuant to Super. R. Civ. P. Rule 12(b)(2), arising out of a claim for breach of a promissory note brought by Plaintiff Pawtucket Credit Union ("Plaintiff") against Defendant Robert C. Grady ("Defendant"). Defendant seeks a dismissal of Plaintiff's underlying Complaint due to lack of personal jurisdiction or, on the grounds that the same action is currently ongoing in Florida.

I

Facts & Travel

Prior to February 15, 2010, Defendant, a member of Plaintiff Pawtucket Credit Union, contacted Plaintiff, a Rhode Island credit union, regarding a proposed short sale of the property located at 6 Capron Road in Smithfield, Rhode Island (the "subject property") to a third party. (Compl.) Plaintiff, who was the holder of a first priority mortgage on the subject property, determined that Defendant did not qualify for a short sale or modification. Id. However, Plaintiff later consented to Defendant's proposed short sale on the condition that he execute a promissory note to Plaintiff in the amount of $20,000. Id.

On February 15, 2010, Defendant agreed to Plaintiff's proposed condition and executed the promissory note for $20,000. Id. Defendant asserts that such promissory note was negotiated and executed in Florida.[1] Thereafter, on December 29, 2010, Plaintiff filed suit against Defendant in Florida. See Def.'s Ex. 1: Compl. Such action is still active in Florida, and discovery is underway. On September 22, 2011, an Order was entered in the Florida action granting Plaintiff's motion to strike Defendant's notice of taking deposition. See Def.'s Ex. 2: Order. The Florida Court further ordered that Defendant shall renotice the deposition and it will take place in Broward County, Florida. Id.

Subsequently, on September 22, 2011, Plaintiff filed the underlying Complaint against Defendant in this Court. The underlying Complaint alleges that Defendant is a resident of the State of Florida and the owner of real estate located at 6 Capron Road in Smithfield, Rhode Island and a member of the Pawtucket Credit Union. (Compl.) Defendant asserts that, to date, his account with Pawtucket Credit Union has a balance of $5. Defendant also denies having any ownership interest in the subject property.

II

Analysis

A

Personal Jurisdiction

"The question of personal jurisdiction is a mixed question of law and fact, in which the trial justice must first make a 'determination as to the minimum contacts that

[1] Plaintiff states in its Objection to the instant Motion that, "[u]pon information and belief, Defendant retained Rhode Island counsel, Attorney Melissa Dellena, to advise and negotiate on his behalf."

will satisfy the requirements of due process'—a finding that depends on the facts of each case." Cassidy v. Lonquist Management Co., 920 A.2d 228, 232 (R.I. 2007). To determine if Plaintiff has made a *prima facie* showing of jurisdiction, the Court must examine the pleadings, accepting all facts alleged by Plaintiff as true and resolving factual conflicts in Plaintiff's favor. Id.

Rhode Island's long-arm statute, G.L. 1956 (1985 Reenactment) § 9-5-33, provides for the exercise of jurisdiction over nonresident individuals and foreign corporations up to constitutional limits. See Almeida v. Radovsky, 506 A.2d 1373, 1374-1376 (R.I. 1986) (citing Conn v. ITT Aetna Finance Co., 105 R.I. 397, 252 A.2d 184 (1969)). As a constitutional minimum, a nonresident defendant's contacts with a forum state must be such that the exercise of personal jurisdiction does not offend "traditional notions of fair play and substantial justice." Id. (citing Roger Williams General Hospital v. Fall River Trust Co., 423 A.2d 1384, 1386 (R.I. 1981) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 102 (1945))). However minimal the burden of defending in a given foreign tribunal may be, a defendant nevertheless may not be called upon to so defend absent the minimum contacts with that state which are prerequisite to its exercise of power over him. Id. (citing Lucini v. Mayhew, 113 R.I. 641, 646, 324 A.2d 663, 666 (1974) (citing Hanson v. Denckla, 357 U.S. 235, 251, 78 S. Ct. 1228, 1238, 2 L. Ed. 2d 1283, 1296 (1958))). Also, the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state. Id. (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980)). Absent a finding that these minimum contacts exist, the due process clause of the

Fourteenth Amendment prohibits a state court from rendering a valid personal judgment against the defendant. Id.

A court's assertion of personal jurisdiction over a defendant may come in two ways: specific or general jurisdiction. See Helicopteros Nationales de Colombia v. Hall, 466 US 408 (1984). A court may assert specific jurisdiction over a nonresident defendant for a cause of action arising from that defendant's contacts with the forum state. Id. at 414. In the alternative, a court may assert general jurisdiction over that same defendant for any cause of action when that defendant's contacts with the state are continuous, purposeful, and systematic, regardless of whether they relate to or arise out of the nonresident defendant's contacts with the forum. Rose v. Firstar Bank, 819 A.2d 1247, 1250 (R.I. 2003).

1

General Jurisdiction

To justify the exercise of general jurisdiction, (1) the defendant must have sufficient contacts with the forum state, (2) those contacts must be purposeful, and (3) the exercise of jurisdiction must be reasonable under the circumstances. Cossaboon v. Maine Medical Center, 600 F.3d 25, 32 (1st Cir. 2010). A defendant's contacts with the forum must be "continuous, purposeful, and systematic" such that it will not offend the "traditional notions of fair play and substantial justice" to subject them to the forum's jurisdiction. Id. The contacts must be purposeful, in that the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. Id. Lastly, the exercise of jurisdiction must be reasonable under the circumstances. This inquiry requires a consideration of the Gestalt

factors of: (1) the defendant's burden of appearing; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining the most effective resolution of the controversy; and (5) the common interest of all sovereigns in promoting substantive social policies. Id. at 33.

Here, in assuming all allegations of Plaintiff to be true, Defendant's contact with Rhode Island included that he used to live in Rhode Island, that he has an account with Pawtucket Credit Union, and that he hired Rhode Island counsel for a promissory note he negotiated and executed in Florida.[2] Besides this, the underlying Complaint contains no further assertions of contacts with Rhode Island. In order to satisfy general jurisdiction, a defendant must have contacts with Rhode Island that are "continuous, purposeful, and systematic." Cossaboon v. Maine Medical Center, 600 F.3d 25, 32 (1st Cir. 2010). The record here does not demonstrate such contacts, as the existence of a bank account, whereby Defendant has a balance of $5, and the hiring of a Rhode Island attorney to assist in a promissory note negotiated and executed in Florida are minor contacts at most. Accordingly, this Court may not reasonably find that Defendant's contacts with Rhode Island satisfy general jurisdiction.

Furthermore, the exercise of jurisdiction over Defendant would be unreasonable under the circumstances of this matter. The burden imposed upon Defendant is rather high, as he is a resident of Florida with no form of housing in Rhode Island. Moreover, the State of Florida has significant interest in the resolution of this matter where

[2] At no time does Plaintiff deny Defendant's assertion that such promissory note was negotiated and executed in Florida. All Plaintiff alleges is that Defendant hired Rhode Island counsel.

Defendant negotiated and executed the promissory note in Florida and the same exact matter is already pending in Florida. The United States Supreme Court has held that the potential burdens on a transient defendant are slight, as "modern transportation and communications have made it much less burdensome for a party sued to defend himself" in a state outside his place of residence. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183 (1985) (quoting McGee v. International Life Ins. Co., 355 U.S. 220, 223, 78 S. Ct. 199, 201(1957)); Burnham v. Superior Court of California, County of Marin, 495 U.S. 604, 638, 110 S. Ct. 2105, 2125 (U.S. 1990). However, in this case, Defendant would be traveling a large distance for an action which arose from a promissory note executed in Florida, his state of residence, and when an action is already underway in Florida.

2

Specific Jurisdiction

When a defendant's contacts with the forum are insufficient to exercise general jurisdiction, "a court may exercise specific personal jurisdiction over the nonresident defendant if the claim sufficiently relates to or arises from any of a defendant's purposeful contacts with the forum." Rose v. Firstar Bank, 819 A.2d 1247, 1251 (R.I. 2003). This is accomplished by demonstrating a "relationship among the defendant, the forum, and the litigation." Cerberus Partners, L.P. v. Gadsby & Hannah, LLP, 836 A.2d 1113, 1119 (R.I. 2003). The relationship need not be "terribly robust," and proof sufficient to find specific jurisdiction "is a far less onerous burden" than that necessary to prove general jurisdiction. Id. For specific personal jurisdiction to exist, however, there must be "some act by which the defendant purposefully avails itself of the privilege of

conducting activities within the forum state, thus invoking the benefits and protections of its laws." Maryland Central Collection Unit v. Board of Regents for Education of the University of Rhode Island, 529 A.2d 144, 151 (R.I. 1987) (quoting Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958)).

In the case at bar, the underlying claim arose out of Defendant's negotiation and execution of a promissory note with Plaintiff. In McGee v. International Life Ins. Co., the United States Supreme Court held that a single contact with a forum state can sustain personal jurisdiction over an out-of-state defendant, so long as the cause of action arises out of that contact. 355 U.S. 220, 78 S. Ct. 199 U.S. 1957; Rose 819 A.2d at 1251. Here, Defendant contacted Plaintiff, a Rhode Island credit union, in order to execute the promissory note. Even though such promissory note was negotiated and executed by Defendant while he was in Florida, he still took action to contact Plaintiff in Rhode Island in order to do such.[3]

Furthermore, when Defendant contacted Plaintiff in order to negotiate the promissory note, which was based upon the underlying short sale of his Rhode Island property, he was still a resident of Rhode Island.[4] Thus, the underlying claim is based upon a contact by Defendant with a resident of Rhode Island, which creates a substantial connection between Defendant and the forum state of Rhode Island.

Therefore, this Court reasons that Defendant has engaged in the requisite minimum contacts with Rhode Island based on its contacts with Plaintiff in order to negotiate and execute the promissory note for the short sale of the Rhode Island property.

[3] A promissory note also entails a party to make continuous payments to the promisor.
[4] Defendant is unsure if he was a resident of Rhode Island or Florida at the time he signed the underlying promissory note.

The "cornerstones upon which the concept of purposeful availment rest are voluntariness and foreseeability." Cerberus Partners, L.P. v. Gadsby & Hannah, LLP, 836 A.2d 1113, 1121 (R.I. 2003). "[T]he foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum [s]tate are such that he should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp., 444 U.S. 286, 297 (1980). By contacting Plaintiff, and by understanding that Plaintiff was a credit union located in Rhode Island, it was foreseeable and reasonable that Defendant could subject himself to a suit in Rhode Island courts. As such, Defendant's purposeful availment of the privilege of making a promissory note with a Rhode Island credit union subjects him to specific personal jurisdiction of this State.

B

Forum Non Conveniens

Defendant asserts that, alternatively, this matter should be dismissed because Plaintiff has already elected Florida as a forum for this controversy. Such argument will be assessed under a forum non conveniens standard. As such, since this Court finds that it possesses specific in personam jurisdiction over Defendant in this matter, we should look to determine whether this Court should dismiss the action on forum non conveniens grounds. The doctrine of forum non conveniens allows "a court [to] resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." Kedy v. A.W. Chesterton, 946 A.2d 1171, 1178 (R.I. 2008) (quoting Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507 (1947)). The doctrine is "founded in considerations of fundamental fairness and sensible and effective judicial administration" and may be used by the trial courts to achieve the "orderly and expeditious disposition of cases."

Kedy, 946 A.2d at 1179, 1180 (citations omitted). Essentially, "a court may decline to exercise jurisdiction when the plaintiff's chosen forum is significantly inconvenient and the ends of justice would be better served if the action were brought and tried in another forum." Id. at 1178. A finding of "significant inconvenience" requires a trial court to establish either that "trial in the chosen forum would 'establish oppressiveness and vexation to a defendant out of all proportion to plaintiff's convenience' or [that] the 'chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems.'" Id. at 1182-83 (quoting American Dredging Co. v. Miller, 510 U.S. 443, 447-48 (1994)). A trial court is afforded "much discretion" to grant or deny a motion for dismissal for forum non conveniens. Id. at 1185-86.

If jurisdiction and venue in the present forum are proper, the trial court entertains a two-pronged analysis to determine whether dismissal is nonetheless appropriate. Kedy, 946 A.2d at 1184. "First, the court must decide whether an alternative forum exists that is both available and adequate to resolve the disputed legal issues . . . Second, the court must determine the inconvenience of continuing in the plaintiff's chosen forum by weighing private- and public-interest factors." Id. Trial courts are to examine all private- and public-interest factors and need not put "central emphasis . . . on any one private- or public-interest factor." Id. at 1184.

In evaluating the first prong—the availability and adequacy of an alternative forum—a court queries whether "the defendant is amenable to process in the other jurisdiction," id. at 1183 (quoting Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 n.22 (1981)), and then verifies that the new forum is not "so clearly inadequate or

unsatisfactory that it is really no remedy at all." Id. at 1184 (quoting Piper Aircraft Co., 454 U.S. at 254).

The second prong requires the court to balance the private and public interest factors with respect to each party. Id. at 1184. The private-interest factors comprise a non-exhaustive list, but include "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process for attendance of unwilling witnesses; (3) the cost of obtaining the attendance of willing witnesses; (4) the possibility of view[ing the] premises, if view would be appropriate to the action; (5) all other practical problems that make the trial of a case easy and inexpensive; (6) the enforceability of a judgment in the alternative forum; and (7) the advantages and obstacles to a fair trial." Id. at 1184–85 (quoting Gulf Oil Corp., 330 U.S. at 508) (numbering added).

The public-interest factors include (1) court administrative difficulties when "litigation is piled up in congested centers instead of being handled at its origin;" (2) the burden of jury duty "imposed on people of a community which has no relation to the litigation;" (3) the "local interest in having localized controversies decided at home;" (4) the interest of the community in seeing a trial that affects many held "in their view and reach rather than in a remote part of the country;" and (5) the appropriateness of having a trial in a forum that is "at home with the state law that must govern the case, rather than having a court in some other forum untangle [another forum's laws]." Id. at 1185 (quoting Gulf Oil Corp., 330 U.S. at 508–09).

Overarching the two prongs in the forum non conveniens analysis is the strong deference a court gives to a plaintiff's initial choice of forum and the heavy burden a defendant shoulders when persuading a court that a case should be dismissed. Our

Supreme Court in Kedy clearly stated that dismissal requires "the plaintiff's chosen forum [to be] significantly inconvenient and the ends of justice . . . better served if the action were brought and tried in another forum." Id. at 1178. As such, a "defendant invoking forum non conveniens ordinarily bears a heavy burden in opposing the plaintiff's chosen forum[,]" id. at 1183 (quoting Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 430 (2007)), and "carries the burden of persuasion at each stage of the forum non conveniens inquiry [.]" Id.

Here, the first prong is easily satisfied, as litigation has been ongoing, including discovery, in Florida for this same action. Prior to filing the underlying claim here in Rhode Island, Plaintiff filed the same action in Florida. Thus, Defendant and Plaintiff are amenable to process in such jurisdiction, since Plaintiff served Defendant and Defendant has answered and proceeded with discovery, and such forum is not so clearly inadequate or unsatisfactory that it is really no remedy at all. Given that litigation has been ongoing in Florida, it would certainly suffice as an alternative forum to Rhode Island.

The second prong of the forum non conveniens analysis requires the trial court to weigh private- and public-interest factors to assess the convenience of the plaintiff's chosen forum. Kedy, 946 A.2d at 1184.

Our Rhode Island Supreme Court directly instructs the trial court to examine whether the plaintiff's "forum choice appears to be based on legally valid reasons such as convenience and expense," which also justifies deference to the chosen forum regardless whether it is the plaintiff's home forum. Id. at 1185. In contrast, "the private interest of a defendant should be afforded more weight when a plaintiff's choice appears to be motivated by forum-shopping objectives such as tactical attempts to harness more

favorable laws and remedies," or the intention to choose an inconvenient forum to "vex, harass, or oppress the defendant." Id. (quoting Gulf Oil Corp., 330 U.S. at 508); see also Piper Aircraft Co., 454 U.S. at 241 (quoting Koster, 330 U.S. at 524) (holding that a plaintiff's case should be dismissed "when trial in the chosen forum would [burden the defendant] out of all proportion to plaintiff's convenience"). For example, "when [a] plaintiff has selected a distant place where trial will inflict undue expense and inconvenience upon the defendant," the forum non conveniens doctrine would apply. Kettenbach v. Demoulas, 822 F. Supp. 43, 45 (D. Mass. 1993) (quoting Park v. Didden, 695 F.2d 626, 633 (D.C. Cir. 1982)).

Overall, affording deference to a plaintiff's legitimate forum choice keeps Rhode Island law within the spirit of the federal rules upon which it relies. See, e.g., Iragorri v. United Technologies Corp., 274 F.3d 65, 71–72 (2d Cir. 2001) ("The more it appears that a domestic or foreign plaintiff's choice of forum has been dictated by reasons that the law recognizes as valid, the greater the deference that will be given to the plaintiff's forum choice."). Finally, this Court notes that the deference inquiry focuses on the plaintiff's convenience and does not give "appreciable weight" to counsel's convenience to access the chosen forum. Kedy, 946 A.2d at 1185.

Here, the general list of private interest factors are not fully conclusive on whether this action should be dismissed in Rhode Island. The promissory note could be easily accessed whether in Rhode Island or Florida, as for other sources of proof, and the witnesses live in both Florida and Rhode Island. However, judgment would be more enforceable in Florida, as Defendant is a resident of Florida.

The main issue here is that Plaintiff has already commenced the same exact action in Florida. As such, Plaintiff has taken the Florida Circuit Court's time to address the claim, including recent litigation over an Order regarding a deposition. See Def.'s Ex. 2. Also, having already begun litigation in Florida, which began over a year ago, the local interest also factors in, as the public has an interest to have a Florida case decided in Florida, not Rhode Island. Allowing such case to stay in Rhode Island would essentially allow Plaintiff to forum shop after it already commenced the same action in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. Therefore, this Court holds that Plaintiff's decision to bring the underlying action in Florida and then Rhode Island appears to be motivated by forum-shopping objectives, such as to obtain more favorable laws or remedies. Also, in allowing such case to stay, this Court would provide an inconvenient forum for Defendant, and such would allow for Plaintiff to harass or oppress the Defendant. These concerns are the rationale behind the doctrine of forum non conveniens.

III

Conclusion

In light of the foregoing analysis, this Court finds that Defendant's contacts with the State of Rhode Island are sufficient to permit the invocation of in personam jurisdiction over him. However, allowing such case to proceed in Rhode Island when there already is ongoing litigation in Florida for the same action would be significantly inconvenient and would only harass or oppress Defendant or simply be a means to allow Plaintiff to forum shop. Finding that trying the within action in Florida would better

serve the ends of justice, this Court grants Defendant's Motion to Dismiss on the ground of forum non conveniens.