SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3

Index No.: 101944/10
Motion No.:001

SALLY GOLDSTEIN,

Plaintiff

DECISION & ORDER

HON. JOSEPH J. MALTESE

against

DREW UNIVERSITY,

Defendant

The following items were considered in the review of the following motion to dismiss.

Papers	Numbered
Notice of Motion and Affidavits Annexed	**1**
Answering Affidavits	**2**
Replying Affidavits	**3**
Sur-Reply	**4**
Exhibits	**Attached to Papers**

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

The defendant, Drew University, moves to dismiss the plaintiff's complaint arguing that the plaintiff does not have personal jurisdiction over it. The defendant's motion is granted in its entirety.

Drew University ("Drew") is a located in the State of New Jersey with its campus located in Madison, New Jersey. Drew does not maintain a separate campus in New York, but does offer several programs that allow students to visit cultural, financial and international sites in New York City. In particular, students participating in these attend seminars on Wall Street, at the United Nations, and at various museums. Furthermore, Drew is not authorized to do business in New York. Here, the plaintiff was a spectator at her daughter's invitational basketball

tournament that took place on Drew's campus.

The defendant asserts that there are no grounds to justify subjecting it to personal jurisdiction in New York. First, the defendant argues that it is not subject to personal jurisdiction pursuant to CPLR § 301. At issue in this case is whether Drew was "doing business in New York" when it advertised that it offers three programs that take advantage of three locations within New York City.

The plaintiff directs the court's attention to an April 13, 20009 New York County, Supreme Court decision in *Arroyo v. Moutain School* wherein the trial court permitted the plaintiff to prosecute a personal injury law suit in New York that occurred in Vermont. But, the Appellate Division, First Department reversed the trial court on December 22, 2009 stating that the Vermont defendant was not subject to general jurisdiction under the "solicitation plus" doctrine.[1] While the plaintiff did not cite the Appellate Division, First Department's reversal in her initial opposition, it was dealt with in a subsequently filed sur-reply.

The Court of Appeals has held that personal jurisdiction requires a particularized fact finding by the court. The Court held that :

> [a] foreign corporation is amenable to suit in New York courts under CPLR 301 if it has engaged in such continuous and systematic course of "doing business" here that a finding of its "presence" in the jurisdiction is warranted. . . The test for "doing business" is a "simple [and] pragmatic one," which varies in its application depending on the particular facts of each case. . . The court must be able to say from the facts that the corporation is "present" in the State "not occasionally or casually, but with a fair measure of permanence and continuity."[2]

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[1] 68 AD3d 603, [1st Dept 2009].

[2] *Landoil Resources Corp. v. Alexander & Alexander Services, Inc.*, 77 NY2d 28, [1990](internal citations ommitted).

Here, Drew cannot be subject to personal jurisdiction pursuant to CPLR § 301 based on the offering of classes at institutions within New York City. To hold otherwise would allow a finding of personal jurisdiction under CPLR § 301 over educational institutions around the world. Drew does not have a campus in New York state, but makes use of New York City's financial, cultural and international centers to supplement classroom learning. To allow litigants to acquire personal jurisdiction under CPLR § 301over out of state educational institutions would have one of two possible effects: 1) it could open a flood gate of litigation; or 2) create a chilling effect across foreign educational institutions to all co-curricular learning in New York City if doing so would subject those institutions to personal jurisdiction in New York courts.

Equally unavailing are the arguments for personal jurisdiction pursuant to New York's long arm statute, CPLR § 302. It is the plaintiff's burden to demonstrate a substantial relationship between the defendant's activities in the state and the claim asserted.[3] Here, it is clear that the accident occurred in New Jersey. The plaintiff's complaint makes no reference to any activity that could constitute a "substantial relationship." The plaintiff's contention is that Drew benefitted from the five dollar admission to the invitational basketball tournament, but she fails to demonstrate that it was Drew that solicited the out of state residents to come into New Jersey.[4]

Accordingly, it is hereby:

ORDERED, that the defendant's motion to dismiss is granted and the complaint is dismissed; and it is further

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[3] *Kreutter v. McFadden Oil Corp.*, 71 NY2d 460, [1988].

[4] *Roldan v. Dexter Folder Co.*, 178 AD2d 589, [2d Dept 1991].

ORDERED, that the Clerk is directed to enter judgment accordingly.

ENTER,

DATED: November 22, 2010

Joseph J. Maltese
Justice of the Supreme Court