

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHASE BANK USA, N.A.

CIVIL ACTION NO. 1:08cv00121- JJE

Plaintiffs,

Vs.

HESS KENNEDY CHARTERED, LLC.,
Et al.

Defendants.

MOTION TO DISMISS AND INCORPORATED MEMORANDUM OF LAW FOR
LACK OF PERSONAL JURISDICTION, IMPROPER VENUE AND/OR IN THE
ALTERNATIVE FORUM NON-CONVENIENS

COMES NOW, the Defendants HESS KENNEDY CHARTERED,
LLC.; LAURA L. HESS, LAURA HESS & ASSOCIATES, P.A.; HESS KENNEDY
HOLDINGS, LTD.; HESS KENNEDY COMPANY CHARTERED BWI; THE
CONSUMERLAW CENTER, LLC.; THE CAMPOS CHARTERED LAW FIRM; JEFF
CAMPOS, P.A.; and JEFFREY CAMPOS, by and through undersigned counsel and
hereby files this Motion to Dismiss and Incorporated Memorandum of Law For Lack of
Personal Jurisdiction, Improper Venue and/or In the Alternative Forum Non-Conveniencs
and in support thereof sets forth the following:

SUMMARY OF ARGUMENT

1. This action should be dismissed with prejudice as a matter of law because this Court lacks personal jurisdiction over the Defendants as the Defendants do not have any minimum contacts with this State nor have the Plaintiffs asserted the

appropriate jurisdictional facts which would show this Court has personal jurisdiction over the Defendants. Therefore, this Court does not have the requisite authority to issue decisions regarding this controversy.

2. Even if this Court does have personal jurisdiction over the Defendants, which the Defendants vehemently dispute, this Court should still dismiss the complaint for improper venue based on the fact that all of the Defendants are located in the State of Florida and there are already multiple actions pending in Florida regarding the subject matter of this litigation.
3. In the alternative, this case should be dismissed and/or transferred to the Southern District of Florida based upon the doctrine of forum non-conveniens as all of the Defendants reside in Florida, conduct their business in Florida, all witnesses are in Florida, all discovery production is in Florida and all of the alleged causes of action arose from conduct that occurred in the State of Florida.
4. If this case is not dismissed, then an additional rationale for transferring this action to the Southern District of Florida is because all of the multiple actions pending against the Defendants can then be consolidated into a single action in a single district and thus fulfill the goal of saving the Court's resources.

STATEMENT OF FACTS

The Defendants are all entities providing legal services that are adversarial to the credit card industry in that the Defendants assist in counseling their clients to challenge credit card company billing practices based on Federal Laws (hereafter "The Defendants' Services"). The Defendant entities are all owned and operated by

Attorneys. Said Attorneys are either licensed to practice law in the State of Florida and/or only operate and transact business from offices located in the State of Florida. More specifically the Defendants offices are all located in Coral Springs, Florida which is covered by the Federal District Court map system as being located in the Southern District of Florida for Federal Court jurisdictional purposes. The Defendants do not maintain any offices in the state of this presently pending Federal action, nor have they ever traveled to said state and conducted any provision of legal services nor any other business related services for that matter in said state.

On or about February 22, 2008 the State Attorney General for the State of Florida filed an action in Broward County, Florida (the "Broward Action") involving The Defendants' Services after multiple complaints by the credit card industry. The Broward Action seeks relief against all of the Defendants based on The Defendants' Services and identifies each of the Defendants in this action. The Broward Action is located in Broward County, Florida which is part of the Southern District of Florida.

Thereafter, on or about February 29, 2008 Chase Bank USA, N.A. filed an action in United States District Court for the District of Delaware (the "Chase Action") against the Defendants and/or their affiliated entities. The Chase Action specifically references the pleadings from the Broward Action and even more interesting the Chase Action does not specify any conduct by the Defendants in any state other than Florida. Rather the Chase action asserts that its customers have stopped paying based on legal advice received as a result of The Defendants' Services. The Chase Action alleges a claim for injunctive relief, a claim for tortious interference, abuse of process, deceptive trade practices, consumer fraud and

conspiracy. (See Exhibit "A") The Chase Action does not allege with any specificity as to what the alleged wrongdoing of the Defendants was in the State of Delaware other than to complain that Defendants' clients are now objecting to Plaintiff Chase Bank's billing practices and refusing to pay their credit cards.

Thereafter, and in almost plagiaristic fashion, on or about March 6, 2008 Capital One Bank filed an action in the United States District Court For the Eastern District of Virginia, Richmond Division (the "Capital One Action"). In the Capital One Action, just as in the Chase Action, there are claims for injunctive relief, tortious interference and conspiracy (See Exhibit "B"). Also, just as in the Chase Action, the Capital One Action does not in any way explain how any of the Defendants could possibly have venue asserted against them in the State of Virginia, rather, the Capital One Action asserts that The Defendants' Services are influencing the clients of the Defendants to challenge their credit card bills. In addition, the Capital One Action and the Chase Action include the same Defendants and/or their affiliated enterprises.

Neither the Chase Action nor the Capital One action specifies how venue would be appropriate with each Defendant but rather brushes over this issue by assuming venue would somehow be construed because the respective credit card companies have filed suit in their favored home state.

On or about March 7, 2008 the Defendants filed their own claim for Declaratory Relief in the United States District Court for the Southern District of Florida seeking a federal ruling confirming the legality of The Defendants Services and thus having the matter handled in the appropriate jurisdiction (the "Defendants' Federal Action"). A true and correct copy of the Defendants' Federal Action is

attached hereto as Exhibit "C". It is interesting to note that the Defendants' Action references that settlement discussion took place with one of the credit card companies by their retaining Florida counsel and having meetings at Florida law offices, hence another indication of the fact that venue is only appropriate in Florida.

Furthermore, it became apparent that there was a necessity for the Defendants to file the Defendants' Action in the Federal Court system in the State of Florida seeking Declaratory relief as it has become obvious that the credit card industry is seeking to assert financial hardship against Defendants, who should obviously be sued in the State of Florida, by taking the tact of suing across multiple state boundaries without any notion of the actual proper jurisdiction.

In addition, this Court should note that not only do all corporations and individuals operate out of the State of Florida with regards to the Defendants but that the Defendants have nearly one hundred employees and service providers who also reside in the Southern District of Florida and who will also presumably be potential witnesses in this case. As a result, there appears to be an obvious need to have this cause handled in the Federal Court System in the State of Florida.

MEMORANDUM OF LAW

Fed.R.Civ.P. 12(b)(2) permits dismissal of an action lacking the requisite personal jurisdiction. Kulik Photography v. Cochran, 975 F.Supp 812 (E.D.Va 1997)(Court dismissed action with prejudice because Defendant could not have reasonably foreseen being sued in forum state and lacked minimum contacts with forum state). Even when the cause of action is purely a federal question, a district

court applies the relevant state statute to determine whether the Court has personal jurisdiction. Autoscribe v. Goldman and Steinberg, 1995 U.S.App. Lexis 2848 (4th Cir. 1995).

Determining whether personal jurisdiction exists is a two step process which requires assessing (1) whether the particular facts and circumstances of a case fall within the state's statutory language and (2) whether the Due Process Clause of the Constitution would permit such jurisdiction to be asserted. Id., Alton v. Wang, 941 F.Supp. 66 (W.D.Va 1996).

When a Defendant challenges a court's exercise of personal jurisdiction, the Plaintiff must prove the existence of grounds for jurisdiction by a preponderance of the evidence. RZS Holdings AVV v. PDVSA Petroleos SA, 293 F.Supp.2d 645 (E.D.Va 2003). To survive a challenge, the Plaintiff must make a prima facie showing of a sufficient jurisdictional basis. Id. A district court should look to the fairness to the Defendant and weigh that against the federal interest involved in the litigation when making a determination of personal jurisdiction. Republic of Panaman v. BCCI Holdings, 119 F.3d 935, 945-46 (11th Cir. 1997).

There is no compelling interest to find minimum contacts with this forum state and hence no compelling reason to find personal jurisdiction, especially in light of the fact that a Federal Court in the Southern District of Florida, where all of the Defendants are located, is now undertaking the task of determining the legality of The Defendants' Services and said services are the crux of all of the other litigation.

Since all of the Defendants are residents of the State of Florida and are located in the Southern District of Florida, it is incumbent upon the Plaintiff to prove

jurisdiction of the Defendants pursuant to the forum state's applicable long arm statute and hence show minimum contacts. No such allegation of minimum contacts has been made in either the Chase Action or the Capital One Action. To the contrary the statement of facts in this motion directly dispute the establishment of minimum contacts and the Defendants have each verified and sworn to the accuracy of the statements made herein (See acknowledgement page at the end of this document) and thereby have specifically provided evidence to contradict the establishment of minimum contacts and hence personal jurisdiction. In particular the sworn acknowledgment page supports the assertion that all Defendants reside in Florida, as well as all witnesses and discoverable information. Furthermore, none of the Defendants have offices in or transact any business with the forum state.

Again, and not to belabor the point, there are no allegations of specific conduct against each of the Defendants that establishes any contact with the forum state in which this action is now presently pending.

At a bare minimum, the most that could ever be asserted by the Plaintiffs in this case is that they may have received a letter or telephone call from one of the Defendants but most certainly not even close to all of the Defendants. Courts nationwide have held that such sparse contact is not enough to confer jurisdiction. IMO Industries, Inc. v. Kiekert AG, 155 F.3d 254, 259 (3rd Cir. 1998), Shaffer v. Heitner, 433 U.S. 186 (1977).

The case of Village Lane Rentals, LLC v. The Capital Financing Group, 159 F.Supp.2d 910 (W.D.Va. 2001) is instructive in that it dealt with a law firm that had out of state clients. The District Court found that since the lawyers were not

licensed in the forum state, did not have offices in the forum state and never even had a post office box or telephone number in the forum state, that said lawyers could not be sued in the forum state.

Similarly, in this case, the Defendants are law firms owned and operated by lawyers who are not licensed in the forum state, do not have offices in the forum state, do not have telephone numbers in the forum state and do not travel to the forum state. (See sworn acknowledgement page to this motion support this statement).

The unilateral activity of the Plaintiff or third parties is not enough to satisfy the minimum contacts requirement. Burger King v. Rudzewicz, 471 U.S. 462 (1985). Hence, just because the Plaintiff filed suit in this state and/or just because a client of the Defendants may have affected the finances of the Plaintiff, that in and of itself does not confer jurisdiction upon the Defendants.

Not only do the Defendants not transact business in the forum state, but also the Defendants do not in any stretch of the imagination reside in the forum state as is blatantly obvious from the Plaintiff's own jurisdictional statement in its complaint. Just as importantly, 28 U.S.C. Section 1391 provides for the three situations for which venue can be asserted. The Plaintiff has failed to allege any substantial events or omissions by the Defendants in this forum state, which is the third section of the statute and which is the only portion of the statute which the Plaintiffs may argue as applicable. Hence, any allegation of venue in this state must fail. In addition, the Plaintiffs have failed to make any allegations which support personal jurisdiction over the Plaintiffs and hence likewise venue must fail based on

the language of the statute and the requirement that there be personal jurisdiction in order to lay venue.

Furthermore, the doctrine of forum non-conveniens allows a district court, for the convenience of the parties and witnesses and in the interest of justice, to transfer any civil action to any other district or division where it might have been brought. 28 USC Section 1404(a). Agilent Technologies, Inc. v. Micromuse, Inc., 316 F.Supp.2d 332 (E.D.Va. 2004).

Since all of the Defendants reside in South Florida and all offices, records, witnesses, computers, files and tangible evidence that could arise in this case is also in South Florida, litigation in the Southern District of Florida before the judge presently presiding over the Defendants' Federal Action seems most appropriate.

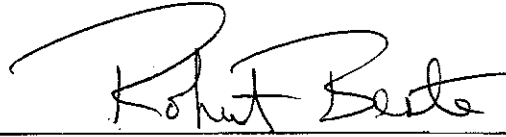
Such a ruling would be consistent with not only saving judicial resources but also help with saving the litigants resources as the access to the sources of proof including witnesses and discovery documents are located in Florida and this should be a significant consideration of a court. Id.

A district court may dispose of an action by a forum non conveniens dismissal, by passing on questions of subject-matter and personal jurisdiction, when considerations of convenience, fairness and judicial economy so warrant. Sinochem International Co. v. Malaysia International Shipping, 127 S.Ct. 1184 (2007); American Dredging Co. v. Miller, 510 U.S. 443 (1994).

CONCLUSION

The Defendants assert that this Court has no jurisdiction over them and that this cause should be dismissed. In the alternative, even if this Court were to find it had

jurisdiction, the proper jurisdiction for this federal action should be where a presently pending federal action already exists in the Southern District of Florida.



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Listed Defendants

SWORN TO ACKNOWLEDGEMENT

We the undersigned are Defendants in Federal lawsuits pending outside of the State of Florida. We hereby acknowledge that we have read this motion to dismiss and acknowledge that we do not maintain any offices, phone numbers, employees or do any business or dealings in the forum state. We operate our services from offices located in the State of Florida and all witnesses, documents, and matters to be

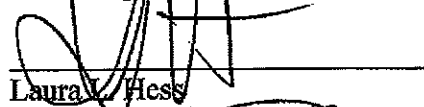
provided in discovery are similarly located in the State of Florida. We have read the statements made in the motion to dismiss and they are true and correct and all of the information contained therein is accurate based on my personal knowledge. I the undersigned have full authority to sign this document which is to be utilized in the aforementioned motion to dismiss and I make this submission under penalty of perjury.

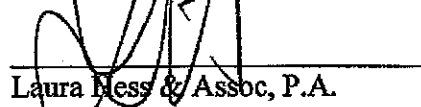

Hess Kennedy Chartered, LLC.


Hess Kennedy Holdings, LTD.

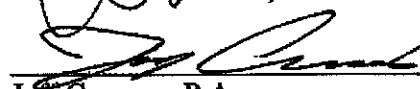

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Laura L. Hess


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Hess Kennedy Company Chartered BWI


Jeff Campos, P.A.


Jeffrey Campos

Defendants:

HESS KENNEDY CHARTERED, LLC.,; LAURA L. HESS, LAURA HESS & ASSOCIATES, P.A.; HESS KENNEDY HOLDINGS, LTD.; HESS KENNEDY COMPANY CHARTERED BWI; THE CONSUMERLAW CENTER, LLC.; THE CAMPOS CHARTERED LAW FIRM; JEFF CAMPOS, P.A.; and JEFFREY CAMPOS