

Danius v. Sun TV Network Ltd., 2011 NCBC 31.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

CHRISTY X. DANIOUS and LEEMA
PILLAI,

Plaintiffs,

v.

SUN TV NETWORK LIMITED, CNN-
IBN, NEW DELHI TELEVISION LTD.
and STAR INDIA PRIVATE LIMITED,

Defendants.

IN THE GENERAL COURT OF
JUSTICE
SUPERIOR COURT DIVISION
09 CVS 18696

ORDER & OPINION

Harrington Law, P.C. by James M. Harrington for Plaintiffs.

*Womble Carlyle Sandridge & Rice, PLLC by Jim D. Cooley and Sarah Motley
Stone for Defendant Sun TV Network Limited.*

Murphy, Judge.

THIS MATTER is before the Court on (1) Sun TV Network Limited's ("Sun TV") Motion to Set Aside Entry of Default; (2) Plaintiffs' Motion for Default Judgment against Sun TV; and (3) Sun TV's Motion to Dismiss.

Having considered the Court file, the parties' submissions, the arguments of counsel at a hearing held on February 10, 2011, the Court **GRANTS** Sun TV's Motion to Set Aside Entry of Default (thereby mooted Plaintiff's Motion for Default Judgment against Sun TV) and **GRANTS** Sun TV's Motion to Dismiss.

I.

FACTUAL BACKGROUND

{1} Plaintiffs filed this action against Sun TV and others for *slander per se* arising from injuries sustained by Plaintiff Christy X. Danius' then-pregnant wife, Smalin Jenita, in an automobile accident on July 31, 2007. Compl. ¶ 13.

{2} Sun TV is a private limited corporation organized and existing under the laws of the country of India and having its principal place of business in Chennai, India. Compl. ¶ 3.

{3} Sun TV is a broadcast television network originating in India and transmitted and sold throughout the United States via subscription satellite television services (including Dish Network) and via the internet. Compl. ¶ 14.

{4} Sun TV does not directly broadcast its television channels into the United States, but instead contracts with Dish Network and a few internet-based IPTV networks. Raja Aff. ¶ 9. Sun TV transmits its programs to Dish Network. Raja Aff. ¶ 9. Dish Network then transmits the programs to its United States subscribers. Raja Aff. ¶ 9. Sun TV has no control over where Dish Network's individual accounts are located. Raja Aff. ¶ 9.¹ Sun TV has never directly contracted with any subscribers in North Carolina. Raja Aff. ¶ 9.

¹ While the plaintiffs have the burden of proving prima facie that a statutory basis for jurisdiction exists, where the defendant submits an affidavit in support of its motion to dismiss for lack of personal jurisdiction, the court, in making its determination, shall "look to the uncontroverted allegations in the complaint and the uncontroverted facts in the sworn affidavit." *Brown v. Refuel Am., Inc.*, 186 N.C. App. 631, 634, 652 S.E.2d 389, 392 (2007). Here, Sun TV filed the sworn affidavit of V. Raja, Chief Editor for Sun TV, in support of its Motion to Dismiss. Plaintiffs do not contest any of the facts stated in Mr. Raja's affidavit, and, in fact, Plaintiffs contend that many of these facts support a finding of general personal jurisdiction over Sun TV. Pls.' Opp'n to Mot. to Dismiss 1-3.

{5} In their Complaint, Plaintiffs allege that Sun TV caused certain allegedly defamatory statements about Plaintiffs and their family to be transmitted and sold to persons in North Carolina through satellite television and the internet. Compl. ¶ 14, 47, 54.

{6} Plaintiffs allege that in November 2007 Sun TV broadcasted a news report alleging that Plaintiffs and their family were abusive toward Danius' wife, Smalin Jenita. Compl. ¶¶ 33, 47, 52.

{7} Plaintiffs' Complaint alleges that the "broadcasts began in November 2007, continued for several months, and continue to be published via Sun TV's Internet website." Compl. ¶ 52.

{8} Plaintiffs contend that jurisdiction over Sun TV is proper under section 1-75.4 of the North Carolina General Statutes in that this is an action claiming personal injury within this state arising out of an act or omission outside this state by Sun TV, and at or about the time of the injury, solicitation or services activities were carried on within this State on behalf of Sun TV. Compl. ¶ 8. Plaintiffs further contend that jurisdiction over Sun TV is proper because Sun TV "purposefully direct[s] [its] news stories to this State in an attempt to transact business with the large Indian and Indian-American population in this state." Compl. ¶ 12.

{9} Sun TV has not and has never done business in North Carolina. Raja Aff. ¶ 4. Sun TV does not own any property, maintain an office or have any employees located in North Carolina. Raja Aff. ¶¶ 5-7.

{10} The present case was filed on August 7, 2009.

{11} Plaintiffs filed their First Amended Complaint on November 3, 2009.

{12} After receipt of the Complaint, Sun TV attempted, albeit unsuccessfully, to find an attorney in North Carolina. Raja Aff. ¶ 14.

{13} On May 27, 2010, this case was designated as a mandatory complex business case and assigned to me.

{14} Because Sun TV had failed to appear in the case, Plaintiffs filed a Motion for Entry of Default as to Sun TV on September 27, 2010 and the Court entered default against Sun TV on October 7, 2010.

{15} Plaintiffs filed a Motion for Default Judgment against Sun TV on October 4, 2010 requesting over twelve million dollars (\$12,000,000) in damages.

{16} Upon receiving notice of Entry of Default, Plaintiffs' Motion for Default Judgment and Notice of Hearing, Sun TV retained North Carolina counsel to defend its interests. Raja Aff. ¶ 15.

{17} On December 6, 2010, Sun TV filed its Motion to Set Aside Entry of Default and Motion to Dismiss.

{18} On February 18, 2011, the Court held a hearing on (1) Sun TV's Motion to Set Aside Entry of Default; (2) Plaintiffs' Motion for Default Judgment against Sun TV; and (3) Sun TV's Motion to Dismiss.

II.

ANALYSIS

A.

Sun TV's Motion to Set Aside Entry of Default

{19} Rule 55(d) of the North Carolina Rules of Civil Procedure provides that “for good cause shown the court may set aside an entry of default, and, if a judgment by default has been entered, the judge may set it aside in accordance with Rule 60(b).” N.C.R. Civ. P. 55(d).

{20} “What constitutes ‘good cause’ depends on the circumstances in a particular case, and within the limits of discretion, an inadvertence which is not strictly excusable may constitute good cause, particularly where the plaintiff can suffer no harm from the short delay involved in the default and grave injustice may be done to the defendant.” *Peebles v. Moore*, 48 N.C. App. 497, 504, 269 S.E.2d 694, 698 (1980); *Auto. Equip. Distrib., Inc. v. Petroleum Equip. & Serv., Inc.*, 87 N.C. App. 606, 608, 361 S.E.2d 895, 896 (1987).

{21} “The law generally disfavors default and any doubt should be resolved in favor of setting aside an entry of default so that the case may be decided on its merits.” *Sec. Credit Leasing, Inc. v. D.J.'s of Salisbury, Inc.*, 140 N.C. App. 521, 528, 537 S.E.2d 227, 232 (2000) (quoting *Peebles*, 48 N.C. App. at 504-05, 269 S.E.2d at 698.).

{22} A motion to set aside an entry of default is addressed to the sound discretion of the trial judge. *Emick v. Sunset Beach & Twin Lakes, Inc.*, 180 N.C. App. 582, 590-91, 638 S.E.2d 490, 496 (2006).

{23} In making its determination in this case, the Court has considered the following factors: (1) whether Defendant was diligent in pursuit of this matter; (2) whether Plaintiffs suffered any harm by virtue of the delay; and (3) whether Defendant would suffer a grave injustice by being unable to defend the action. *See e.g., Auto. Equip. Distrib., Inc.*, 87 N.C. App. at 608, 361 S.E.2d at 896-97.

{24} From a time zone marked by a 10.5 hour differential from EST, and in the exercise of due diligence, Sun TV was unable to obtain North Carolina counsel in a timely manner after receiving the Complaint and before Plaintiffs filed and served their Motion for Entry of Default and Motion for Default Judgment. Upon receiving notice of Entry of Default, Plaintiff's Motion for Default Judgment and Notice of Hearing, Sun TV retained North Carolina counsel to defend its interests.

{25} No discovery has been conducted, no depositions have been taken, summary judgment has not been sought, and this case is still in its beginning stages.

{26} Plaintiffs seek over twelve million dollars (\$12,000,000) in damages from Sun TV. Pls.' Mot. for Default J. ¶¶ 24, 27.

{27} For these reasons, the Court concludes that: (1) Sun TV diligently pursued this action; (2) Plaintiffs would not suffer any harm by virtue of any delay

occasioned by granting Sun TV the relief it seeks; and (3) Sun TV stands to suffer a grave injustice by virtue of its inability to defend this action.

{28} The Court, in the exercise of its sound discretion, hereby **GRANTS** Sun TV's Motion to Set Aside Entry of Default. **WHEREFORE**, it is **ORDERED** that the default entered against Sun TV be set aside and the case against Sun TV shall proceed on its merits.

B.

Plaintiffs' Motion for Judgment of Default

{29} The Court **GRANTS** SunTV's Motion to Set Aside Entry of Default. Therefore, Plaintiffs' Motion for Judgment of Default is rendered **MOOT**.

C.

Sun TV's Motion to Dismiss

{30} Sun TV filed a Motion to Dismiss pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure for lack of personal jurisdiction and Rule 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

{31} Sun TV argues that the Court lacks personal jurisdiction over Sun TV because Sun TV does not have sufficient contacts with the state of North Carolina.

{32} When evaluating personal jurisdiction, a trial court must engage in a two-step inquiry. *Cameron-Brown Co. v. Daves*, 83 N.C. App. 281, 283, 350 S.E.2d 111, 113 (1986).

{33} First, a basis for jurisdiction must exist under North Carolina's long arm statute, section 1-75.4 of the North Carolina General Statutes. *Id.*; *Ash v. Burnham Corp.*, 80 N.C. App 459, 460, 343 S.E.2d 2, 2 (1986).

{34} North Carolina's long arm statute allows North Carolina courts to exercise personal jurisdiction in "any action claiming injury to person or property within this State arising out of [the defendant's] act or omission outside this State" if "solicitation or services activities were carried on within this State by or on behalf of the defendant." N.C. Gen. Stat. § 1-75.4(4)(a) (2011).

{35} Here, it is questionable at best whether services activities were carried on within this state on behalf of Sun TV. Sun TV transmits its programs to Dish Network pursuant to the terms of an undisclosed contract (the Complaint does not allege the existence of any arrangement between Sun TV and Dish Network or whether Dish Network is a North Carolina corporation); Sun TV has no control over where Dish Network's individual accounts are located; and Sun TV has never directly contracted with any subscribers in the State of North Carolina. Compl. ¶ 14; Raja Aff. ¶ 9. From a review of the Complaint and the Affidavit of V. Raja, it is unclear to the Court whether Dish Network acted on behalf of Sun TV or on its own behalf to deliver programming to subscribers in North Carolina. The Court, therefore, cannot conclude as a matter of law that there is a basis for personal jurisdiction under North Carolina's long arm statute.

{36} Assuming *arguendo*, however, that for purposes herein, personal jurisdiction exists pursuant to the long arm statute, the Court must then consider

the second inquiry: “whether the defendant has the minimum contacts with North Carolina necessary to meet the requirements of due process.” *Bruggeman v. Meditrust Acquisition Co.*, 138 N.C. App. 612, 617, 532 S.E.2d 215, 218 (2000).

{37} State courts may exercise personal jurisdiction over an out-of-state defendant who has “certain minimum contacts with [the state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

{38} *International Shoe’s* progeny has differentiated between specific, case-linked jurisdiction and general jurisdiction. See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952).

{39} Specific jurisdiction depends on a relationship between the underlying controversy and the forum, and the principal question is whether the activity or occurrence giving rise to the claim took place in the forum state and should, therefore, be subject to the state’s regulation. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No. 10-76, 2011 WL 2518815, at *2 (U.S. June 27, 2011).

{40} Here, the Court lacks specific jurisdiction to adjudicate this case because the broadcast of the allegedly slanderous news report occurred in India, not North Carolina.

{41} “A court may assert general jurisdiction over foreign corporations to hear any and all claims against them when their affiliations with the state are so

‘continuous and systematic’ as to render them essentially at home in the forum state.” *Goodyear*, 2011 WL 2518815, at *2 (citing *Int’l Shoe*, 326 U.S. at 317).

{42} Plaintiffs contend that Sun TV is subject to general jurisdiction in North Carolina based on its “continuous and systematic” contacts with the state through its “broadcast of a 24-hour television network to satellite television subscribers.” Pls.’ Br. in Opp’n to Sun TV’s Mot. to Dismiss 5.

{43} The Court finds Plaintiffs’ argument unavailing for the reasons set forth below.

{44} Plaintiffs rely primarily on the “stream of commerce” theory of general jurisdiction, as set forth in a North Carolina Court of Appeals opinion that was recently overruled by the Supreme Court of the United States. *See Brown v. Meter*, 199 N.C. App. 50, 63, 681 S.E.2d 382, 391 (2009) (holding that “the appropriate question that must be answered in order to determine whether Defendants are subject to the jurisdiction of the courts of this state is whether Defendants have purposefully injected their product into the *stream of commerce* without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina.”), rev’d *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No. 10-76, 2011 WL 2518815 (U.S. June 27, 2011).

{45} The Court, however, finds that the “stream of commerce” theory of general jurisdiction is not properly applied to causes of action other than products liability claims. *See Goodyear*, 2011 WL 2518815, at *9 (acknowledging that “the stream of commerce metaphor has been invoked . . . [to permit] jurisdiction in

products liability cases”). *See also, Considine v. West Point Dairy Prods., Inc.*, 111 N.C. App. 427, 430, 432 S.E.2d 412, 415 (1993) (holding that “the stream of commerce analysis [did] not apply” to a negligent loading of a truck claim because “[t]he cases which have applied stream of commerce theory have been products liability cases”).

{46} No court in North Carolina has ever applied the “stream of commerce” analysis to a defamation case, and this Court declines to do so here.

{47} Even if the “stream of commerce” theory of general jurisdiction applied in this case, Sun TV does not have “continuous and systemic” contacts with North Carolina necessary to satisfy the requirements of the federal due process clause.

{48} In *Goodyear*, the Supreme Court reversed the North Carolina Court of Appeals decision, which had held that the trial court had general jurisdiction over the defendants, several European tire manufacturers, because the defendant’s tires had reached North Carolina through the “stream of commerce.” *Goodyear*, 2011 WL 2518815, at *1.

{49} *Goodyear* involved a suit for wrongful-death damages filed by the survivors of two North Carolina residents who died in a bus accident outside of Paris, France. *Id.* The plaintiffs attributed the accident to a defective tire manufactured by the defendants, foreign subsidiaries of Goodyear USA, which were organized and operating in Turkey, France and Luxembourg. *Id.*

{50} These defendants were not registered to do business in North Carolina, had no place of business, employees or bank accounts in the state, did not design,

manufacture or advertise their tires in North Carolina, and did not solicit business in the state or sell or ship tires to North Carolina customers. *Id.* at *5. A small number of the defendants' tires, however, were distributed in North Carolina by other Goodyear USA affiliates. *Id.*

{51} The Supreme Court concluded that the defendants' "attenuated connections to the State . . . fell far short of the 'continuous and systematic general business contacts' necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State." *Id.* at *10 (quoting *Helicopteros*, 466 U.S. at 416).

{52} Sun TV, like the tire manufacturers in *Goodyear*, has not done business in North Carolina and has no property, place of business, or employees in the state. Raja Aff. ¶¶ 5-7.

{53} Furthermore, like the defendants in *Goodyear* who did not directly distribute their tires in North Carolina, Sun TV does not directly transmit its programming in North Carolina. The only "attenuated connection" that Sun TV has with North Carolina is that it contracts with Dish Network, which provides satellite service to its subscribers in the state. *Goodyear*, 2011 WL 2518815, at *10.

{54} This Court cannot conclude that Sun TV has put its television programming into the "stream of commerce" in North Carolina merely because some Dish Network subscribers in the state have access to Sun TV programming.

{55} The Court, therefore, concludes that Sun TV does not have "continuous and systematic" connections with the state, necessary for general jurisdiction.

{56} Sun TV's connections to North Carolina are insufficient for either specific or general jurisdiction under the due process analysis. The Court, therefore, lacks personal jurisdiction over Sun TV in this case because jurisdiction does not comport with the requirements of due process.

{57} Because the Court concludes that it lacks personal jurisdiction over Defendant Sun TV, it need not consider Sun TV's alternative grounds for dismissal under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

{58} For these reasons, the Court hereby **GRANTS** Sun TV's Motion to Dismiss.

III.

CONCLUSION

{59} The Court hereby **GRANTS** Sun TV's Motion to Set Aside Entry of Default and **GRANTS** Sun TV's Motion to Dismiss. The Court concludes that it lacks personal jurisdiction over Defendant Sun TV and therefore, all claims against Sun TV in Plaintiffs' Complaint are hereby **DISMISSED** with prejudice.

SO ORDERED, this the 12th day of August, 2011.