

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, et al,)	
Plaintiffs)	
)	
v.)	Docket No. 2:12-cv-184
)	
KENNETH L. MILLER, et al,)	
Defendants)	

DEFENDANTS PHILIP ZODHIATES, VICTORIA HYDEN, AND RESPONSE
UNLIMITED, INC.'S RENEWED MOTION TO DISMISS IN LIGHT OF THE
U.S. SUPREME COURT'S FEBRUARY 25, 2014 DECISION IN *WALDEN V. FIORE*

Defendants Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc., through their attorneys, Gravel & Shea, P.C., hereby move this Court to consider the U.S. Supreme Court's February 25, 2014 decision in *Walden v. Fiore*, 2014 LEXIS 1635 and dismiss this action for lack of personal jurisdiction. In so moving, Defendants preserve, and do not waive arguments in favor of dismissal should leave to amend be granted and the Second Amended Complaint is filed. A Memorandum of Law accompanies this motion and explains the basis for dismissal in more detail.

Conclusion

The decision of the United States Supreme Court in *Walden v. Fiore* makes clear that the allegations set forth in Plaintiff's Second Amended Complaint do not support personal jurisdiction over Defendants Philip Zodhiates, Victoria Hyden, or Response Unlimited, Inc. The case against them should be dismissed.

Dated: Burlington, Vermont
March 10, 2014

/s/ Matthew B. Byrne

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For Defendants Philip Zodhiates, Victoria
Hyden and Response Unlimited, Inc.

UNITED STATES DISTRICT COURT

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DISTRICT OF VERMONT

JANET JENKINS, et al,
Plaintiffs

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Docket No. 2:12-cv-184

DEFENDANTS PHILIP ZODHIATES, VICTORIA HYDEN, AND RESPONSE
UNLIMITED, INC.'S MEMORANDUM IN SUPPORT OF THEIR RENEWED
MOTION TO DISMISS IN LIGHT OF THE
U.S. SUPREME COURT'S FEBRUARY 25, 2014 DECISION IN WALDEN V. FIORE

Preliminary Statement

On February 25, 2014, the United States Supreme Court ruled unanimously that personal jurisdiction over a defendant in a civil case requires contact with the forum state itself. In *Walden v. Fiore*, 2014 U.S. LEXIS 1635, the court reversed the Ninth Circuit Court of Appeals and determined there was no jurisdiction in Nevada over a Georgia police officer who seized gambling proceeds from two Nevada citizens when they were changing planes in Atlanta. The officer, Walden, had no contact with Nevada. After *Walden*, there is renewed clarity that there is no basis for personal jurisdiction in this matter over Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc. ("RUL"). *Walden* reemphasizes the need to focus on a defendant's connections to the forum state. It clarifies that a plaintiff's injury is alone insufficient to create jurisdiction, and that the discussion of injury in *Calder v. Jones*, 465 U.S. 783 (1984), occurred in a larger context where libel was alleged and significant connections to the forum state existed.

After *Walden*, there is no basis to claim that Plaintiffs have made out a *prima facie* case of personal jurisdiction. Plaintiffs' Second Amended Complaint¹ makes no allegations that Defendants traveled to, conducted activities within, contacted anyone in, or sent anything or anyone in Vermont. Defendants' actions created no connection with Vermont, the forum State.

Facts

The Second Amended Complaint makes the following allegations, which solely for the purpose of this motion are assumed to be true. Philip Zodhiates, Victoria Hyden, and RUL are residents of Virginia and Delaware who have been sued in Vermont (Second Amended Complaint ("SAC") ¶¶10-12). After Lisa Miller moved to Winchester, Virginia in the spring of 2008, she made contact with Philip Zodhiates, a resident of Waynesboro, Virginia on May 29, 2009. *Id.* ¶¶ 20, 24) On September 21, 2009, Lisa Miller and Isabella Miller-Jenkins were transported to the Canadian Border by Philip Zodhiates and at least one other RUL employee. *Id.* ¶ 31. In the days prior to September 21, 2009, Lisa Miller and Zodhiates conspired to buy a plane ticket to Nicaragua. *Id.* ¶ 32. In November 2009, Zodhiates arranged for some supplies and personal belongings to be sent to Lisa Miller. *Id.* ¶ 37. In May 2000, Zodhiates purchased some plants for his daughter's wedding. The funds from that transaction were then used to pay Andrew Yoder to bring cash to Timothy Miller. *Id.* ¶ 47. Based on these allegations, Plaintiffs

¹ Plaintiff filed a motion seeking permission to file a second amended complaint on December 12, 2013 in order to conform to the Court's October 24, 2013 decision on Defendants' Motions to Dismiss. The operative factual allegations as to Defendants Zodhiates, Hyden and Response Unlimited, Inc. are not changed from the original Complaint filed August 15, 2012. The Court has not yet ruled on the Motion to Amend, but those allegations are referenced in this motion. The jurisdictional defects in the Amended Complaint have not been addressed or cured in the putative Second Amended Complaint.

alleged that Zodhiates conspired to kidnap Isabella Miller-Jenkins and to hinder the State of Vermont's equal enforcement of the law. *Id.* ¶ 57, 59.

In 2009, Victoria Zodhiates (now Hyden) sent an email to co-workers at Liberty University, a Virginia educational institution located in Lynchburg, Virginia, First Am. Cmplt. ¶ 15. Hyden requested donations of supplies to send to Lisa Miller outside the country. (SAC ¶ 36). On September 20, 2009, Zodhiates and Hyden called Lisa Miller's father to assist in arranging transportation of Lisa Miller and Isabella Miller-Jenkins from Lynchburg, Virginia to Waynesboro, Virginia. (SAC ¶ 36). Based on these two allegations, Plaintiffs allege that Victoria Hyden conspired to kidnap Isabella Miller-Jenkins and to violate the rights of Janet Jenkins. (SAC ¶ 57, 59).

Plaintiffs' Second Amended Complaint contains no allegation that Zodhiates, Hyden or Response Unlimited ever visited Vermont, contacted anyone in Vermont, conducted any activities in Vermont, or sent anyone or anything to Vermont. The allegations are that Defendants' activities were solely with Lisa Miller and others in Virginia after she had moved to Virginia.

Discussion

In *Walden v. Fiore*, the United States Supreme Court clarified the rules for obtaining personal jurisdiction in intentional tort cases. 2014 U.S. LEXIS 1635. In doing so, the Court returned to the protective principles of the Due Process Clause. "Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant – not the convenience of plaintiffs or third parties." *Id.* at *12. As a result, any analysis of minimum contacts must be based on the relationship that the defendant has with the forum state. "[T]he relationship must arise out of contacts that the 'defendant himself' creates with the forum State."

Id. The Supreme Court has “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State.” *Id.* at *12-13.²

The Court also drew a distinction between the forum State and a resident of that State. “[O]ur minimum contacts analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* at *13-14. The Court again noted that the plaintiff is an insufficient connection between the defendant and the forum State to subject the defendant to jurisdiction. “But the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Id.* at *14. The “defendant’s relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.” *Id.* at *15. Here, the connection is one further step removed because Zodiates and Hyden have no connection with Jenkins. (There is no allegation that they knew her or ever even talked with her.) Their only connection is indirect; they allegedly know Miller, who then has the connection with Jenkins.

The *Walden* Court also distinguished *Calder v. Jones*, 465 U.S. 783 (1984). *Walden*, 2014 U.S. LEXIS at *16. The *Walden* Court noted that there were several intentional contacts in *Calder* with the forum state, California, including the defendant relying “on phone calls to ‘California sources’ for the information for the article,” writing a story about “the plaintiff’s activities in California,” and causing reputational injury “in California by writing an allegedly libelous article that was widely circulated in” California. *Id.* at *17. The Court noted that the

² Defendants continue to believe that they should be dismissed for the reasons stated in their motions to dismiss for lack of personal jurisdiction and venue and motion for interlocutory appeal. Defendants incorporate by reference the arguments made there.

assertion of jurisdiction was tied to the nature of the libel claim. “The strength of that connection was largely a function of the nature of the libel tort.” *Id.* at *18.

The *Walden* Court then described the important facts that it relied upon to determine that there was no jurisdiction in *Walden*. “Petitioner approached, questioned, and searched respondents, and seized the cash at issue, in the Atlanta airport. . . . Petitioner never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada.” *Id.* at *19-20.

These same facts are present here. The activity of defendants all occurred outside of Vermont. Zodiates and Hyden “never traveled to, conducted activities within, contacted anyone in, or sent anything to anyone to” Vermont. *Id.*

In its October 24, 2013 Opinion and Order, this Court held that Zodiates and Hyden were alleged to have aimed intentional tortious acts at *Janet Jenkins*. *Jenkins v. Miller*, 2013 U.S. Dist. LEXIS 152846, *30 (2013). The facts that supported the Court’s decision were that Zodiates “helped Kenneth Miller arrange the purchase of plane tickets, drove Lisa Miller and Isabella disguised as Amish Mennonites to the Canadian border, and arranged subsequent transportation of their belongings to Nicaragua.” *Id.* at *31. Zodiates “also arranged a false purchase of plants from the Miller family business to effect a transfer to Lisa Miller.” *Id.* For Hyden, the Court relied on allegations that Hyden “assisted in arranging Lisa Miller and Isabella’s transportation from the location where Miller abandoned her car to the location where she departed for Canada and Nicaragua the next day.” *Id.* None of these activities involved traveling to, conducting activities within, contacting anyone in, or sending anything or anyone in Vermont.

Conclusion

The decision of the United States Supreme Court in *Walden v. Fiore* makes clear that the allegations set forth in Plaintiff's Second Amended Complaint do not support personal jurisdiction over Defendants Philip Zodhiates, Victoria Hyden, or Response Unlimited, Inc. The case against them should be dismissed.

Dated: Burlington, Vermont
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