

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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IN RE: CONVERGENT TELEPHONE : Master Dkt. No. 3:13-md-
CONSUMER PROTECTION ACT : 2478(AWT)
LITIGATION : MDL No. 2478
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-----X Pretrial Order No. 14
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THIS DOCUMENT RELATES TO: :
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JOHN J. TAURO, : Civ. No.: 3:14-cv-1528(AWT)
:
Plaintiff, :
:
v. :
:
CONVERGENT OUTSOURCING, INC., :
:
Defendant. :
:
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:
JERRY WILLIAM ROBINSON, : Civ. No.: 3:14-cv-1606(AWT)
:
Plaintiff, :
:
v. :
:
CONVERGENT OUTSOURCING, INC., :
:
Defendant. :
:
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ORDER RE MOTIONS ATTACKING CONSTITUTIONALITY OF MDL STATUTE

Pro se plaintiff John J. Tauro has filed a motion attacking the constitutionality of the multidistrict litigation statute, 28 U.S.C. § 1407 (the "MDL Statute"). He claims "improper venue, and lack of in personam jurisdiction." (Motion to

Declare the Transfer from the Western District of Pennsylvania to the District of Connecticut Unconstitutional as Applied (Doc. No. 40) ("Tauro Motion") at 1.) In addition, he argues that the MDL Statute violates due process as applied to 47 U.S.C. § 227 ("TCPA"). He states in his Notice of Constitutional Question:

Question: Is the MDL transfer of individual cases to distant courts unconstitutional as applied?

State Attorneys General must file in their respective Federal court within their state; but individual cases are being transferred to MDL selected states with no connection to either plaintiff or Defendant.

(Notice of Constitutional Question (Doc. No. 39).)

Pro se plaintiff Jerry Robinson argues that the Judicial Panel on Multidistrict Litigation lacks the authority to transfer his case "or any other matter to a jurisdiction outside of the jurisdiction in which the violation took place without the consent of the plaintiff." (Motion to Remand (Doc. No. 33) at 1.)

Authority of the Judicial Panel on Multidistrict Litigation

The Supreme Court has recognized that Congress has the power to constrict or expand the jurisdiction of the federal courts within the bounds of Article III of the Constitution. As the Court explained in Palmore v. United States, 411 U.S. 389 (1973):

The judicial power of the United States . . . is (except in enumerated instances, applicable exclusively to this court) dependent for its

distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) . . . and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.

Id. at 401 (quoting Cary v. Curtis, 44 U.S. (3 How.) 236, 245 (1845)). Congress is empowered to pass legislation that is “conducive to the due administration of justice’ in federal court, and is ‘plainly adapted’ to that end” Jinks v. Richland Cnty., S.C., 538 U.S. 456, 462 (2003) (quoting M’Culloch v. State, 17 U.S. 316, 417, 421 (1819)).

Here, the authority of the Judicial Panel on Multidistrict Litigation to transfer these cases to this district is derived directly from the MDL Statute. As the United States observed in its memorandum, the “MDL Statute is an example of a valid exercise of Congress’s power to regulate the lower federal courts by expanding the general statutory rules of personal jurisdiction and proper venue originally established by Congress in Sections 11 and 51 of the Judiciary Act.” (United States’ Memorandum in Support of the Constitutionality of the Multidistrict Litigation Statute (Doc. No. 59) at 7.)

In Personam Jurisdiction and Venue

The arguments raised by the plaintiffs here with respect to in personam jurisdiction and venue were considered and rejected

by the Second Circuit in In re Agent Orange Prod. Liab. Litig. MDL No. 381, 818 F.2d 145 (2d Cir. 1987). There, quoting an opinion of the Judicial Panel on Multidistrict Litigation, the court stated:

Appellants contend that the district court was barred by the due process clause of the fifth amendment from exercising personal jurisdiction over class members who lack sufficient contacts with New York as defined in International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), and its progeny. However, appellants concede, as they must, that Congress may, consistent with the due process clause, enact legislation authorizing the federal courts to exercise nationwide personal jurisdiction. See Mississippi Publishing Corp. v. Murphree, 326 U.S. 438, 442, 66 S.Ct. 242, 245, 90 L.Ed. 185 (1946) ("Congress could provide for service of process anywhere in the United States"). One such piece of legislation is 28 U.S.C. § 1407 (1982), the multidistrict litigation statute. In the instant case, the district court was acting pursuant to a valid transfer order of the Judicial Panel on Multidistrict Litigation that was created by that statute. As the Panel has recognized,

Transfers under Section 1407 are simply not encumbered by considerations of in personam jurisdiction and venue.... Following a transfer, the transferee judge has all the jurisdiction and powers over pretrial proceedings in the actions transferred to him that the transferor judge would have had in the absence of transfer.

In re FMC Corp. Patent Litigation, 422 F.Supp. 1163, 1165 (J.P.M.D.L.1976) (citations omitted). See also In re Sugar Industry Antitrust Litigation, 399 F.Supp. 1397, 1400 (J.P.M.D.L.1975) (rejecting due process challenge similar to that raised by appellants in the instant case). Appellants' argument therefore fails.

Id. at 163. See also In re Revenue Properties Co., 309 F. Supp. 1002, 1004 (J.P.M.L. 1970) ("Unlike section 1404(a), venue is

not particularly relevant to the selection of a transferee court under section 1407.").

Tauro's As-Applied Challenge

Tauro's argument with respect to due process is as follows:

3. State attorneys general may bring the exact same claims; carrying the same remedies; but the [TCPA] Statute, 47 USC 227, mandates that the attorneys general must file in Federal District Court within their state. . . .

4. To mandate that attorneys general must file within their respective state; while private actions filed in the same state are removed to a distant court in a state, where no violations occurred; violates due process guaranteed by the Fourteenth Amendment. Further, said transfer flies in the face of the Federal Rules of Civil Procedure.

(Tauro Motion at 1-2.)

Plaintiff Tauro misreads 47 U.S.C. § 227(g), the subsection of the TCPA that pertains to actions brought by states. Clause (g)(1) provides that:

Whenever the attorney general of a State . . . has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents

47 U.S.C. § 227(g)(1) (emphasis added). Clause (g)(4) provides that:

Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in

such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

47 U.S.C. § 227(g)(4) (emphasis added). Clause (g)(2) provides that federal courts have exclusive jurisdiction over claims brought under this subsection. Thus, pursuant to subsection (g), an attorney general of a state may file a TCPA suit in another state if that is where the defendant is found, and there is no language in the statute that prevents the Judicial Panel on Multidistrict Litigation from transferring a TCPA action filed by a state attorney general to a multidistrict litigation in a district in another state, just as it may transfer a private TCPA action pursuant to the MDL statute.¹

¹ In its memorandum in support of the constitutionality of the MDL Statute, the United States also cites 47 U.S.C. § 227(e)(6). As plaintiff Tauro does not bring a claim for the provision of inaccurate caller identification information, this section of the TCPA statute is inapplicable in the instant case. However, even if it were applicable, Tauro's challenge would fail because claims brought under subsection (e)(6) are subject to the venue requirements of 28 U.S.C. § 1391, which Congress overrode by enacting 28 U.S.C. § 1407. See 47 U.S.C. § 227(e)(6)(E)(i) ("An action brought under subparagraph (A) shall be brought in a district court of the United States that meets applicable requirements relating to venue under section 1391 of Title 28."); Matter of New York City Mun. Sec. Litig., 572 F.2d 49, 51 (2d Cir. 1978) ("Realistically, therefore, the question must be faced whether, by exacting [Section] 1407, Congress intended to override to this extent the venue provision of the National Bank Act, as it clearly did the various venue provisions of Title 28, ch. 87 [, which includes Section 1391].").

Conclusion

For the reasons set forth above, Tauro's Motion to Declare the Transfer from the Western District of Pennsylvania to the District of Connecticut Unconstitutional as Applied (Doc. No. 40) and Robinson's Motion to Remand (Doc. No. 33) are hereby DENIED.

It is so ordered.

Dated this 26th day of August 2015, at Hartford,
Connecticut.

/s/
Alvin W. Thompson
United States District Judge