

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RUSSIAN MEDIA GROUP, LLC, : 3:00cv1769
Plaintiff, :
 :
v. :
 :
TV RUSSIA NETWORK, INC. :
Defendant :

RULING ON DEFENDANT'S MOTION TO DISMISS OR TRANSFER

The plaintiff, Russian Media Group, LLC ("RMG"), has filed this action against defendant TV Russia Network, Inc. ("TVR"), seeking injunctive relief and damages to redress alleged ongoing misconduct by TVR. Specifically, RMG alleges that TVR is broadcasting Russian language video programming for which RMG holds an exclusive license [Count One]; TVR is making use of stolen trade secret information, in violation of the Connecticut Uniform Trade Secrets Act [CUTSA], C.G.S. §§ 35-50 et seq. [Count Two]; TVR is liable for double or treble damages for its wrongful theft and retention of RMG's assets pursuant to C.G.S. § 52-564 [Count Three]; TVR's conduct was unfair, deceptive, and anti-competitive in the conduct of a business, in violation of the Connecticut Unfair Trade Practices Act [CUTPA], C.G.S. 42-110(a) et seq.[Count Four]; RMG has provided financial benefit to TVR without compensation [Count Five]; TVR knowingly accepted the benefits provided by RMG by its use of RMG's information, equipment and materials

but has refused to compensate RMG for same [Count Six]; and TVR is liable to RMG for its unauthorized, wilful, malicious and intentional entry onto RMG's property [Count Seven].

TVR moves, pursuant to Fed.R.Civ.P. 12(b)(2), to dismiss the complaint for lack of personal jurisdiction, or in the alternative, for transfer of this action to the United States District Court for the District of New Jersey pursuant to 28 U.S.C. § 1404.

Facts

The complaint and moving papers reveal the following facts. RMG is a Connecticut limited liability company with headquarters in Fort Lee, New Jersey. RMG owns and operates a nationwide television network that provides Russian-language television programming to Russian-speaking viewers across the country. RMG purchased its business from SkyView World Media LLC ("SkyView") at a Chapter 7 bankruptcy auction in July 2000. RMG acquired SkyView's subscribers and subscriber lists, its right of entry agreements with property owners across the country to deliver a satellite signal to apartment buildings where subscriber's reside, and the equipment and wiring installed at those buildings to receive satellite signal and transmit it to subscribers' apartments. RMG also acquired SkyView's programming rights, including SkyView's

exclusive license to air programming produced and/or owned by the Russian company Obshestvennoe Russkoe TV ("ORT").

Defendant TVR is a Delaware corporation with headquarters in Fort Lee, New Jersey. TVR has commenced development of a new Russian-language television service in competition with RMG. TVR states that it does not maintain any office, own or lease any real property, maintain any bank account or have any employees or agents located in Connecticut. TVR acknowledges that it does business in other states in the United States, but New Jersey is the only state in which TVR is continuously doing business.

RMG alleges that TVR attempted to outbid RMG for SkyView's assets, but TVR's bid was rejected by the bankruptcy court. RMG asserts that TVR is attempting to create its competing nationwide Russian language television service through misappropriation and misuse of the assets and rights purchased by RMG in the Chapter 7 proceeding.

TVR claims that it lacks the contacts necessary under Connecticut's long-arm statute to make it subject to the jurisdiction of this Court, or in the alternative, that this action should be transferred to the United States District Court, District of New Jersey, for the convenience of the parties and in the interest of justice.

DISCUSSION

Motion to Dismiss for Lack of Personal Jurisdiction

On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, a plaintiff bears the burden of showing that the court has jurisdiction over a defendant. Metropolitan Life Insurance Co. v. Robertson-Ceco Corp., 84 F.3d 560, 566 (2d Cir. 1996), cert. denied, 519 U.S. 1006 (1996). Prior to discovery, a plaintiff may defeat a motion to dismiss by pleading in good faith legally sufficient allegations of jurisdiction. Ball v. Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 197 (2d Cir. 1990), cert. denied, 498 U.S. 854 (1990).

Connecticut's corporate long-arm jurisdictional statute, Conn. Gen. Stat. § 33-929, sets forth multiple grounds upon which the assertion of personal jurisdiction in Connecticut over a foreign corporation is properly based. For the purposes of this motion, § 33-929(e) states, in pertinent part, that "every foreign corporation which transacts business in this state in violation of § 33-920 [without a certificate of authority from the Secretary of State] ... shall be subject to suit in this state upon any cause of action arising out of such business."

In its memorandum of law in support of its motion to

dismiss, TVR noted that in RMG's original complaint, RMG alleged that TVR "has engaged in the wrongful conduct alleged herein in the State of Connecticut," yet failed to provide instance of any such Connecticut conduct. RMG filed an amendment to its original complaint on November 15, 2000. For the purposes of ruling on this motion, the Court construes the original complaint [doc.# 1] and the amendment [doc.# 17] as an amended complaint.

In its amended complaint, RMG asserts that this Court has personal jurisdiction over TVR. RMG complains that TVR has been and is transacting business in the State of Connecticut in an ongoing and systematic way, by seeking to provide its television service to subscribers in the state of Connecticut, and by soliciting business relationships with property owners and subscribers in the state. RMG alleges that TVR has entered into contracts with property owners and subscribers in the state, transacting such business without having obtained a certificate of authority to transact business in the State of Connecticut from the Secretary of State, as required by C.G.S. § 33-920(a). In addition, RMG alleges that TVR has wrongfully and knowingly made use of RMG's trade secret information to identify and target property owners and subscribers in the State of Connecticut, and has made wrongful use of plaintiff's

equipment and wiring at properties in the State of Connecticut.

Section 33-929(e) of the Connecticut General Statutes expressly states that every foreign corporation which transacts business in the state without the benefit of a certificate of authority from the Secretary of State to do business in Connecticut shall be subject to suit in this state *upon any cause of action arising out of such business* [emphasis added]. There is no dispute between the parties that TVR had not acquired the required certificate of authority at the time of the pleadings. TVR also acknowledges that it has customer relationships in Connecticut that are limited to the installation of equipment in less than a "handful of buildings," with subsequent broadcast of satellite television to those buildings, and that TVR has not used or misappropriated any equipment belonging to RMG.

RMG's amended complaint has alleged that TVR is transacting business in the State of Connecticut. TVR is thereby in violation of C.G.S. § 33-920, by not acquiring the proper certificate of authority to transact business in the State of Connecticut. As a result of this violation, § 33-929(e) provides that TVR shall be subject to suit in Connecticut upon any cause of action arising out of such

business. The plain language of the statute, the pre-discovery claims of the plaintiff asserting legally sufficient allegations of jurisdiction, and the acknowledgment of TVR that it is doing business in Connecticut directs this Court to find personal jurisdiction over TVR. This Court will now address TVR's alternative motion to transfer the action to the United States District Court, District of New Jersey.

Motion to Transfer

Section 1404(a) of Title 28 of the United States Code provides that "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The factors to be considered under § 1404(a) are: (1) plaintiff's choice of forum; (2) where the operative facts occurred; (3) the convenience of the parties; (4) the convenience of the material witnesses; (5) the availability of process to compel the appearance of unwilling witnesses; and (6) other considerations affecting the interests of justice. Van Ommeren Bulk Shipping, B.V. v. Tagship, Inc., 821 F.Supp. 848, 850 (D.Conn. 1993). "Motions to transfer pursuant to § 1404(a) are addressed to the discretion of the court, with due consideration afforded to factors such as the convenience of the parties and witnesses

and the ease of access to sources of proof. The burden is on the defendant, when it is the moving party, to establish that there should be a change of forum." Combustion Engineering v. NEI International Combustion, LTD., 798 F.Supp. 100, 106 (D.Conn. 1992). Courts should generally not order a transfer which would merely switch the burden of inconvenience from one party to another. Van Ommeren Bulk Shipping, B.V., 821 F.Supp at 850.

Under the first factor this Court must consider under § 1404(a), the plaintiff RMG has chosen the District of Connecticut as a forum. "Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947). The second factor, where the operative facts occurred, has been adequately pled by RMG to show that the misconduct alleged occurred in Connecticut. Based on the pleadings, the convenience of the parties [factor three] is inconsequential here. RMG points out in its opposition to the motion to dismiss that the travel differential from TVR's Fort Lee, New Jersey, headquarters is approximately thirty miles between the two forums. When we approach factors four and five, the convenience of the material witnesses and the availability of process to compel the appearance of unwilling

witnesses, RMG points out that its ability to litigate this action with respect to its Connecticut properties, located mainly in the Hartford-New Haven-New London areas, will be greatly imperiled if the action should be moved out of Connecticut. Third party witnesses could potentially reside more than 100 miles from the federal court in Newark, and be out of reach of the authorized service of subpoena under Fed.R.Civ.P. Rule 45(b)(2), thus hindering RMG's ability to produce such witnesses at trial.

TVR also claims that Bridgeport is a *forum non conveniens* because the Newark court is in close proximity to Newark airport, and witnesses who live outside New Jersey would have easy access to the court there. RMG counters that Bridgeport is easily accessible to witnesses flying into LaGuardia, JFK, or Westchester airports, and that these airports have regular commuter transportation available to Bridgeport.

Taking into consideration the reluctance of this Court to disturb the plaintiff's choice of forum, the close proximity of the two forums, and the varied locations of the myriad of parties and potential witnesses in this action, this Court fails to see where hardship would befall either party if the action were to be transferred, with the exception of RMG's being able to call property owner witnesses in its case. RMG

would be thereby subjected to a hardship it would not face if the case remains in the District of Connecticut. This factor tips the scales in favor of adhering to the plaintiff's choice of forum. Therefore, in the interest of justice, this Court will not transfer the instant action to the District of New Jersey, but retains jurisdiction over the case.

The plaintiff is instructed to file an amended complaint that includes the allegations claimed in its amendment to the original complaint. This amended complaint must be filed within fifteen days of the filing of this ruling.

For the reasons stated above, the defendant TVR's motion to dismiss is DENIED, and its motion to transfer is DENIED.

SO ORDERED.

WARREN W. EGINTON, Senior U.S. District
Judge

Dated this ___ day of June, 2001, at Bridgeport, Connecticut.