

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WAUSAU BENEFITS, INC.,

Plaintiff,

v.

MARK BALDINO; RICHARD
HARRIS AND THE HARRIS
LAW FIRM,

Defendants.

OPINION AND ORDER

05-C-0007-C

Plaintiff brought this suit against defendant Mark Baldino pursuant to 29 U.S.C. § 1132(a)(3) of the Employment Retirement Income Security Act of 1974. Plaintiff contended that it was entitled to \$40,347.62 from the proceeds of a settlement resolving defendant Baldino's personal injury suit because plaintiff had paid defendant Baldino's medical costs in this amount under an employee benefit plan that contained subrogation, reimbursement and third party liability provisions.

Plaintiff sought and was granted a temporary restraining order prohibiting defendant from disposing of any portion of the \$40,347.62 remaining in any location controlled by defendant until plaintiff's motion for a preliminary injunction could be heard and decided.

Thereafter, plaintiff sought a preliminary injunction; defendant filed a motion to vacate the temporary restraining order and to dismiss the complaint. I denied defendant's motion to vacate the temporary restraining order and granted plaintiff's motion for a preliminary injunction after finding that defendant had not shown conclusively that neither he nor his counsel had possession of any of the funds disbursed to him as a result of the settlement.

On March 17, 2005, plaintiff filed an amended complaint, adding Richard Harris, defendant's counsel, and Harris's law firm as defendants in this action and alleging that these defendants willfully and intentionally interfered with plaintiff's contractual relations with defendant Baldino and converted defendant Baldino's settlement payment intentionally and wrongfully. Plaintiff alleged that the Harris defendants are citizens of Nevada and contended that personal jurisdiction could be exercised over them under the supplemental jurisdiction statute, 28 U.S.C. § 1367. Defendant Baldino filed an answer to the amended complaint; the Harris defendants filed a motion to dismiss the amended complaint. That motion is before the court.

In support of the motion to dismiss, the Harris defendants have filed the affidavit of defendant Richard Harris, in which he avers that his firm is located in Las Vegas, Nevada; defendant Baldino retained him to represent Baldino in connection with injuries Baldino suffered in an accident on October 9, 2003; defendant Harris negotiated a settlement on Baldino's behalf in the amount of \$55,000; he disbursed the settlement funds minus

attorney fees and costs to Baldino on March 30, 2004 and June 16, 2004; in a telephone conversation with counsel for plaintiff, defendant Harris advised plaintiff that all recovered funds had been disbursed; he does not practice law in Wisconsin; he has no contacts with Wisconsin; and he has never been in the state of Wisconsin.

OPINION

In moving to dismiss, the Harris defendants assert that the court lacks personal jurisdiction over them. They argue correctly that a federal court sitting in Wisconsin cannot exercise personal jurisdiction over an out-of-state defendant unless a Wisconsin state court could do so. The Wisconsin long-arm statute is intended to reach to the fullest extent consistent with the due process clause, Mid-America Tablewares, Inc. v. Mogi Trading Co., 100 F.3d 1353, 1358-59 (7th Cir. 1996), but it does not extend to persons and entities that are residents of other states and have had no direct or indirect contact with the state of Wisconsin. Plaintiff's only response to defendants' assertion of lack of personal jurisdiction is that ERISA allows for nationwide service of process; thus, once personal jurisdiction attaches to plaintiff's ERISA claim, jurisdiction is proper as to the remaining state law claims under 28 U.S.C. § 1367, which authorizes the exercise of supplemental jurisdiction over state claims in certain situations. It is undisputed that supplemental jurisdiction can be exercised over state claims. The question plaintiff fails to address is whether the mere ability

to exercise supplemental jurisdiction over a state law claim allows a court to exercise personal jurisdiction over defendants who are not otherwise subject to nationwide service of process because they are not being sued under ERISA.

Although it is plaintiff's task to establish that the exercise of jurisdiction over the Harris defendants is proper, plaintiff cites no case holding that a federal court may exercise personal jurisdiction over a defendant added to a suit for the sole purpose of responding to state law claims simply because the plaintiff has initiated a suit under ERISA against a different defendant. In all of the cases it cites, the question was whether a plaintiff that brought a suit against a defendant under a statute that allowed for nationwide service could sue that same defendant on additional claims. See Robinson Engineering Co. v. Pension Plan & Trust v. George, 223 F.3d 445, 459-50 (7th Cir. 2000); IUE AFL-CIO Pension Fund v. Herrman, 9 F.3d 1049, 1056-57 (2d Cir. 1993); Medical Association v. United Healthcare Corp., 00-Civ. 2800 (LMM), 00 Civ. 7246 (LMM), 2001 U.S. Dist. LEXIS 10818 at *14 (S.D.N.Y. July 31, 2001); Miller Pipeline Corp. v. British Gas, 901 F. Supp. 1416, 1423 (S.D. Ind. 1995). It is sensible to allow a plaintiff who has brought a defendant into court under one statute to try all of its claims against that defendant in one court; that is the purpose of the supplemental jurisdiction statute. It is another matter to use the statute as a basis for obtaining personal jurisdiction over a defendant that could not otherwise be haled into court.

Plaintiff has failed to cite a case in support of its position, it has not shown any reason to believe that § 1367 was intended to operate in the way they wish it would and it has not mustered any argument that would persuade me that it is not a violation of the Harris defendants' right to due process to force them to defend state law claims in this court. It is not enough for plaintiff merely to assert that adding the Harris defendants to a suit brought against defendant Baldino under ERISA makes them subject to the nationwide service of process provisions of ERISA. It must support that assertion with precedent or persuasive reasoning. My own research has disclosed no reason to think that plaintiff is correct. Therefore, I will grant the Harris defendants' motion to dismiss for lack of personal jurisdiction without reaching the other grounds they raised to support dismissal, such as plaintiff's failure to state a claim against them on which relief could be granted.

ORDER

IT IS ORDERED that the motion of defendants Richard A. Harris and the Harris Law Firm to dismiss plaintiff Wausau Benefits' claims against them is GRANTED.

Entered this 21st day of October, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge

