

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

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LANCE SLIZEWSKI,

Plaintiff,

v.

JIM SCHWOCHERT, JOHN SHANDA  
DANIEL WESTFIELD, GARY KASZA  
and BARRY BRINKER,

Defendants.  
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ORDER

10-cv-665-bbc

Pro se plaintiff Lance Slizewski is proceeding on a claim that defendants recorded a conversation plaintiff had with his lawyer, in violation of the First Amendment, the Fourth Amendment and Title III of the Omnibus Crime Control and Safe Streets Act of 1968. Defendant Barry Brinker has filed a motion to dismiss for lack of personal jurisdiction, dkt. #36, on the grounds that he was not properly served under Fed. R. Civ. P. 4 and he does not have minimum contacts with the state of Wisconsin. I am granting the motion because plaintiff has failed to show that Brinker has minimum contacts with the state of Wisconsin. This moots Brinker's motion to stay the proceedings pending a decision on his motion to dismiss.

Plaintiff has the burden to show that subjecting the defendant to suit in this state is consistent with both Wisconsin's long arm statute, Wis. Stat. § 801.05, and the due process clause. Purdue Research Foundation v. Sanofi-Synthelabo, S.A., 338 F.3d 773, 782 n.11 (7th Cir. 2003); Hyatt International Corp. v. Coco, 302 F.3d 707, 713 (7th Cir. 2002). Giotis v. Apollo of the Ozarks, Inc., 800 F.2d 660, 664 (7th Cir. 1986). Because I am concluding that plaintiff has failed to meet his burden with respect to the due process clause, it is unnecessary to consider the requirements of the long arm statute.

Under the due process clause, the general question is whether the defendant has “certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). Contacts are not sufficient unless the defendant has “purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Hanson v. Denckla, 357 U.S. 235, 253 (1958). Stated another way, the question is whether the defendant has obtained a benefit from Wisconsin or inflicted an injury on one of its citizens that would lead him to reasonably anticipate being haled into court here. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

Personal jurisdiction under the due process clause is divided into two types, general

and specific. Mobile Anesthesiologists Chicago, LLC v. Anesthesia Associates of Houston Metroplex, P.A., 623 F.3d 440, 444 (7th Cir. 2010). General jurisdiction means that the defendant “may be called into court there to answer for any alleged wrong, committed in any place.” uBID, Inc. v. GoDaddy Group, Inc., 623 F.3d 421, 425-26 (7th Cir. 2010). This “is a demanding standard that requires the defendant to have such extensive contacts with the state that it can be treated as present in the state for essentially all purposes.” Id. Plaintiff does not suggest that he can meet that standard as to defendant Brinker.

The question for specific jurisdiction is whether the lawsuit “arises out of” or is “related to” a party’s minimum contacts with the forum state. Requiring a nexus between a party’s contacts and the parties’ dispute adds a degree of predictability to the legal system by allowing potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit. Hyatt International Corp., 302 F.3d at 716. The reason for this is simple:

Potential defendants should have some control over—and certainly should not be surprised by—the jurisdictional consequences of their actions. Thus, when conducting business with a forum in one context, potential defendants should not have to wonder whether some aggregation of other past and future contacts will render them liable to suit there.

Id.

In his declaration, defendant Brinker avers that he is the manager of national field operations for Embarq Payphone Services, Inc. He lives and works in the state of Oregon.

He has never been domiciled in Wisconsin and he does not own property here. He has traveled to Wisconsin only five times, twice for the purpose of doing business on behalf of Embark and three times on behalf of a former employer. He has managerial duties related to an account with the Dodge Correctional Institution (where plaintiff was housed when his conversation was recorded), but he did not “record, monitor or listen to any attorney phone calls referenced in the Plaintiff’s complaint” or “direct, approve, authorize or ratify anyone else to engage in any such activities.” Brinker Decl. ¶ 12, dkt. #38.

Plaintiff does not dispute any of defendant Brinker’s testimony. His only arguments are that Brinker “has a duty to provide adequate training to his subordinates” and “was responsible for setting up the phone systems for the Wisconsin Department of Corrections.” Plt.’s Br., dkt. #41, at 2. The first argument does nothing to show that Brinker has had sufficient contacts with Wisconsin. Plaintiff has no evidence to support his second argument, but even if he did, it would not provide a basis for the exercise of personal jurisdiction over Brinker. A few trips to Wisconsin to set up a phone system would not be sufficient for an exercise of general jurisdiction, so plaintiff must show a nexus between the lawsuit and Brinker’s contacts with Wisconsin. Plaintiff is not suing defendants for installing a telephone system, but for recording his conversations. He does not allege that Brinker had any hand in the decisions to record plaintiff’s conversations. Because plaintiff has failed to show that Brinker has contacts with the state related to this lawsuit, Brinker’s motion to

dismiss must be granted.

ORDER

IT IS ORDERED that

1. Defendant Barry Brinker's motion to dismiss for lack of personal jurisdiction, dkt. #36, is GRANTED. Plaintiff's amended complaint is DISMISSED as to defendant Brinker.
2. Defendant Brinker's motion to stay, dkt. #55, is DENIED as moot.

Entered this 23d day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge