

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

<p>CAROLINE MAZZONE, Plaintiff, -vs- GRANT WILFLEY CASTING, et al. Defendants.</p>	<p>CIVIL ACTION NO. 05-CV-2267 (WHW)</p>
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**MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANTS MASSEY, SABEL & RYMAN'S MOTION
FOR SUMMARY JUDGMENT**

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PRELIMINARY STATEMENT

The description of the legal and factual state of this case has already been well developed in the submissions from other defendants in this action also submitting summary judgment motions. Defendants Massey, Sabel and Ryman (the “Associate Defendants”) adopt them all, and submit this motion merely to emphasize additional grounds for dismissal of this case.

The Associate Defendants are a present, and two former, casting associates who are alleged to have received, sometimes unwittingly, what can only be described as relatively trivial gifts from the plaintiff Caroline Mazzone. These gifts form the basis of plaintiff’s claim in this action. But, as the submissions particularly of defendants Grant Wilfley and Grant Wilfley Casting (collectively, “Grant Wilfley”) demonstrate, the record does not bear out any claim of illegality or even of a coherent quid pro quo arrangement of any sort. Not only this, but none of the activities complained of took place in this District, which is nothing more than plaintiff’s home state; there is no proof that any of the Associate Defendants directed any activity toward this District, and for that reason alone the case against them should be dismissed on the grounds of personal jurisdiction.

Discovery in this case, as set forth in the submissions by the various defendants, has revealed that the plaintiff is a sensitive person who placed a great deal of spiritual stock in her ability to succeed as a “background actor” (i.e., an “extra”) and invested a great deal – not, despite her allegations, financially, but mainly emotionally – in her relationship the Associate Defendants, who are approximately old enough to be her children. This investment turned out to be a very poor one. Despite her repeated

gestures of petty gift-giving, which the evidence indicates was of a decidedly modest level, the Associate Defendants did not reciprocate her interest in a social bond. Nor did they grant her special access to their professional decision-making as casting associates. All the available evidence also indicates that despite this, the plaintiff maintained a constant level of employment as a background actor. Any alleged “but for” increase in background acting opportunities is entire speculative. Both injury and damages are, therefore, by all the facts in the record, entirely fanciful. All evidence currently in the record is consistent with the Associate Defendants’ claims that they passed on all merchandise or other gifts received from the plaintiff to their employer, Grant Wilfley.

Besides the serious deficiencies of proof in terms of the factual allegations, there is a serious question here as to whether this Court properly has personal jurisdiction over the Associate Defendants, as well as the application of New Jersey law to actions alleged to have taken place entirely in New York, involving New York residents and businesses.

Plaintiff’s own testimony in this case provides ample material on which to base a summary judgment. This litigation is patently frivolous, and the tactic of naming the Associate Defendants, impoverished young part-time actors and casting associate, as individual defendants – presumably as a way of eliciting cooperation or helpful testimony – is particularly unfortunate. Now it is time to separate fact from fiction and bring the curtain down on this tawdry drama.

STATEMENT OF FACTS

The Associate Defendants adopt the Statement of Facts of Grant Wilfley, filed as part of his motion on this date, in whole, and asks that the Court incorporate them herein, adding only the following:

The Complaint alleges no facts that would support the allegation that the Associate Defendants in any way purposely directed their activities to this District, which is where plaintiff lives. There is no allegation that any of the Associate Defendants lives here, or that any of the events that form the basis of the claims against them took place in the District of New Jersey. Furthermore, in her deposition testimony, plaintiff admitted that she could not provide any factual basis for the allegation in ¶ 17, alleging the grounds for venue, that “a substantial number of the events giving rise to this action occurred in this judicial district.” Mazzone Dep. 1101:5-1104:9. That is because none of the events giving rise to this action occurred in this judicial district.

LEGAL ARGUMENT

I. SUMMARY JUDGMENT STANDARD

Summary judgment is granted under Fed. R. Civ. P. 56(c) if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. The substantive law identifies

which facts are critical or "material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A material fact raises a "genuine" issue "if the evidence is such that a reasonable jury could return a verdict" for the non-moving party. *Healy v. N.Y. Life Ins. Co.*, 860 F.2d 1209, 1219 n. 3 (3d Cir. 1988).

Therefore, on a summary judgment motion, the moving party must show, first, that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party makes this showing, the burden shifts to the non-moving party to present evidence that a genuine fact issue compels a trial. *Id.* at 324. The non-moving party must offer admissible evidence that establishes a genuine issue of material fact, *id.*, not just "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). If the non-moving party fails to demonstrate proof beyond a "mere scintilla" of evidence that a genuine issue of material fact exists, then the Court must grant summary judgment. *Big Apple BMW v. BMW of N. Am.*, 974 F.2d 1358, 1363 (3d Cir.1992).

The Associate Defendants adopt and incorporate all the arguments of the other defendants in their motions for summary judgment filed on this date, particularly those of Grant Wilfley. Obviously, the case against that defendant is premised on the case against the Associate Defendants, and the submissions by Grant Wilfley make it eminently clear that there is no genuine issue of material fact on which defendants can rely to resist summary judgment on this record.

II. SUMMARY JUDGMENT SHOULD BE GRANTED TO THE ASSOCIATE DEFENDANTS ON THE GROUND OF A LACK OF PERSONAL JURISDICTION.

It is respectfully submitted that there is no serious fact question, based on the record developed in discovery, that this Court has no jurisdiction over the Associate Defendants, and for this reason summary judgment is appropriate as well. Under Fed. R. Civ. P. 4(e), a federal court has personal jurisdiction over a non-resident defendant only to the extent authorized by the law of the state in which that court sits. *North Penn Gas Co. v. Corning Natural Gas Corp.*, 897 F.2d 687, 689 (3d Cir.), *cert. denied*, 498 U.S. 847 (1990). In turn, under New Jersey Court Rule 4:4-4 enables the exercise of personal jurisdiction as far as is constitutionally permissible under the Due Process Clause of the Fourteenth Amendment. *Apollo Technologies Corp. v. Centrosphere Industrial Corp.*, 805 F. Supp. 1157, 1181 (D.N.J. 1992). The constitutional standards serve the dual function of protecting the defendant and ensuring "that the States . . . do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

Due process requires that there exist minimum contacts between the defendant and 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. State of Washington*, 326 U.S. 310, 316 (1945). See also *Ketcham v. Charles R. Lister Int'l, Inc.*, 167 N.J. Super. 5, 7 (App. Div. 1979) (personal jurisdiction may be exercised only " if the facts reasonably support the presence of the flexible concepts of 'fair play and substantial justice'").

In formulating the minimum contacts analysis, the United States Supreme Court posited that a non-resident defendant's enjoyment of the privilege and benefit of

conducting business in the forum state entails a concomitant obligation to possibly litigate within that forum. *International Shoe*, 326 U.S. at 317. The minimum contacts standard was subsequently refined in *Hanson v. Denckla*, where the Court required that "there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State . . ." 357 U.S. 235, 253 (1958). This requisite of a volitional contact underlies a defendant's reasonable expectation that he or she may be haled into the forum. *Kulko v. Superior Court*, 436 U.S. 84, 97-98 (1978); *American Tel. & Tel. Co. v. MCI Communications Corp.*, 736 F. Supp. 1294, 1302-03 (D.N.J. 1990); *Lebel v. Everglades Marina, Inc.*, 115 N.J. 317, 323 (1989).

The Associate Defendants pleaded a lack of personal jurisdiction as an affirmative defense in their Answer to the Second Amended Complaint, thereby preserving it. There is simply nothing in the record here to support an assertion that the Associate Defendants (or any of them) had even the most minimum contacts with this State. When asked what this case has to do with this District, this was plaintiff's response:

I can tell you that even though Grant Wilfley Casting is located in New York, I can tell you that a good amount of the people that he hires happen to reside in New Jersey.

Q But you're not a representative of a class of people, right, you're only suing on your own behalf?

A Okay. I reside in New Jersey.

Q You reside in New Jersey. Did Sabel, did Jennifer Sabel ever come to New Jersey to deal with you?

A To deal with me personally, no.

Q Are you aware of other instances where she came to New Jersey?

A I'm not specifically aware of other instances where she came to New Jersey, but there may be sets that she does visit that happen to be

filming in New Jersey through Grant Wilfley Casting while she was employed there.

Q But you're not aware of any case where she actually did that?

A I can't give you any specifics at this time, no.

Q How about Reba Massey?

A No, I can't give you any specifics while she was at Grant Wilfley Casting. I'm sure that there were commercials that were filmed in New Jersey to which Reba Massey was present, and also Ross Ryman.

Q Why are you so sure?

A I just am.

Q Did they ever tell you that they did?

A No, I haven't spoken to them.

Q Did someone else tell you that they did?

A No, no one else told me that.

Mazzone Dep. 1102:25-1004:9. Based on this, there was never any basis for plaintiff to sue the Associate Defendants in this District. It cannot possibly be argued that there has been "some act by which the defendant[s] purposefully avails [themselves] of the privilege of conducting activities within the forum State . . ." They have not done so. Furthermore, there is no basis here for asserting the existence of "a volitional contact" based on any of the Associate Defendants' "reasonable expectation that he or she may be haled into the forum," or, for that matter, that the laws of New Jersey would apply to them at any place. For this reason they should be dismissed from this action.

