

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

HEIDI BINDER,)
)
Plaintiff,)
)
v.)
)
PATRICK McVEY, LISA McVEY, and)
S/V SEAHORSE, Official No.)
992295, Hull Identification)
No. TYA371490678, her tackle,)
engines, tender, sails and)
equipments, and the M/V)
MERMAID, her tackle, engines)
and equipment,)
)
Defendants.)
_____)

Civil No. 2005-137

ATTORNEYS:

A. Jeffrey Weiss, Esq.
St. Thomas, U.S.V.I.
For the Plaintiff.

Gregory H. Hodges, Esq.
St. Thomas, U.S.V.I.
For the Defendants.

ORDER

GÓMEZ, C.J.

Before the Court is the motion of defendants Patrick McVey ("P. McVey") and Lisa McVey (together, the "McVeys") to dismiss this matter for lack of personal jurisdiction.

The undisputed facts in this matter are as follows:¹

¹ The undisputed facts are as stated by P. McVey in a signed declaration attached to the McVeys' motion to dismiss. Despite several extensions, the plaintiff has not filed an opposition to the McVeys' motion.

1. The McVeys are residents of Arizona.
2. While on an around-the-world sailing trip, the McVeys anchored their boat, the S/V Seahorse (the "Seahorse"), in the territorial waters of the U.S. Virgin Islands, from December 23, 2003 through December 27, 2003.
3. On December 27, 2003, the McVeys sailed the Seahorse to Jost Van Dyke, British Virgin Islands.
4. In the early morning on January 1, 2004, while leaving a bar and restaurant on Jost Van Dyke, P. McVey was asked by several individuals, including plaintiff Heidi Binder ("Binder"), for a ride on his dinghy back to their boats, which were anchored off the coast of Jost Van Dyke.
5. While P. McVey and those individuals, including Binder, were in the dinghy, the dingy was struck by a motorboat. Binder sustained injuries in the collision.

Binder brought this action against the McVeys, alleging that they had negligently operated the dinghy.² The McVeys now move

² Binder asserts that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332 and 1333. 28 U.S.C. § 1333 provides, in pertinent part:

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

to dismiss for lack of personal jurisdiction, or to dismiss on *forum non conveniens* grounds.

"In deciding a motion to dismiss for lack of personal jurisdiction, [the Court] take[s] the allegations of the complaint as true. But once a defendant has raised a jurisdictional defense, a plaintiff bears the burden of proving by affidavits or other competent evidence that jurisdiction is proper." *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir. 1996) (internal citations omitted). The plaintiff must establish personal jurisdiction by a preponderance of the evidence. *In re Kelvin Manbodh Asbestos Litigation Series*, Civ. No. 324-1997, 2005 V.I. LEXIS 21, at *14-15 (Terr. Ct. 2005) (citing *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981)).

Under Virgin Islands law, to establish personal jurisdiction, Binder must demonstrate that the Court has jurisdiction over the McVeys both under the Virgin Islands long-arm statute and under the requirements of the Constitution.³

³ Where a plaintiff asserts that the Court has jurisdiction under 28 U.S.C. § 1333, personal jurisdiction must still be established over a defendant pursuant to the Virgin Islands long-arm statute and the Constitution. See, e.g., *Sevison v. Cruise Ship Tours*, Civ. No. 1996-57, 1997 U.S. Dist. LEXIS 12728, at *30-38 (D.V.I. Aug. 15, 1997) (analyzing whether personal jurisdiction over the defendant was established under the Virgin Islands long-arm statute and the due process requirements of the

Yusuf v. Adams, Civ. No. 2003-76, 2004 U.S. Dist. LEXIS 27178, at *4-5 (D.V.I. Nov. 9, 2004); see also *Fin. Trust Co. v. Citibank, N.A.*, 268 F. Supp. 2d 561, 566 (D.V.I. 2003) (citing *Int'l Shoe v. Washington*, 326 U.S. 310 (1945)).

The Virgin Islands Long-Arm Statute provides that

- (a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person[]
- (1) transacting any business in this territory;
 - (2) contracting to supply services or things in this territory;
 - (3) causing tortious injury by an act or omission in this territory;
 - (4) causing tortious injury in this territory by an act or omission outside this territory if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this territory;
 - (5) having an interest in, using, or possessing real property in this territory; or
 - (6) contracting to insure any person, property, or risk located within this territory at the time of contracting.
 - (7) causing a woman to conceive a child, or conceiving or giving birth to a child; or
 - (8) abandoning a minor in this Territory.

Constitution in a matter where jurisdiction was predicated on 28 U.S.C. § 1333); see also *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione, etc.*, 937 F.2d 44, 50 (2d Cir. 1991) (noting that "the law of the forum state . . . governs the issue of personal jurisdiction in admiralty cases"); *Bay Fireworks, Inc. v. Frenkel & Co.*, 359 F. Supp. 2d 257, 266 (S.D.N.Y. 2005) ("In federal admiralty practice, personal jurisdiction is proper in any district in which valid service of process may be had on the defendant. The question of whether a non-domiciliary defendant is amenable to service is determined in accordance with the applicable state long-arm statute.") (internal citation and quotation omitted).

V.I. Code Ann. tit. 5. § 4903.

Binder does not explain how the long-arm statute reaches the McVeys. The only allegation Binder makes concerning the McVeys' ties to the U.S. Virgin Islands is their ownership of a boat that was anchored in the territorial waters of the U.S. Virgin Islands and departed for the British Virgin Islands in late December, 2003. Based on this allegation, it is unclear what portion of the long-arm statute would apply to the McVeys. Binder offers no evidence that the McVeys transacted business in the U.S. Virgin Islands; contracted to supply services or things here; caused a tortious injury here; regularly do or solicit business here; or have an interest in real property here. Thus, there is simply insufficient evidence before the Court to find jurisdiction over the McVeys under the Virgin Islands long-arm statute.⁴

⁴ To the extent that Binder attempts to assert jurisdiction over the McVeys by virtue of the McVeys' ownership of the Seahorse, personal jurisdiction would still not be established. *In rem* jurisdiction in the admiralty context only exists for the enforcement of a maritime lien. See *Rainbow Line, Inc. v. M/V Tequila*, 480 F.2d 1024, 1027-28 (2d Cir. 1973) (citing, *inter alia*, *The Resolute*, 168 U.S. 437, 440 (1897)). Here, Binder has not alleged the existence of a maritime lien. Furthermore, claims for a maritime lien may be maintained both *in rem* against the vessel, and *in personam* against the owner. See generally *American Oil Trading, Inc. v. M/V SAVA*, 47 F. Supp. 2d 348 (E.D.N.Y. 1999); *O'Hara Corp. v. F/V North Star*, 212 B.R. 1 (D. Me. 1997). However, *in personam* jurisdiction may be invoked if the plaintiff establishes that the court has personal jurisdiction over the named defendant in the action. *Constructive Hands, Inc. v. Baker*, 446 F. Supp. 2d 88, 90 n.2 (S.D.N.Y. 2006). Here, Binder has failed to establish personal jurisdiction over

Binder has failed to meet her burden of proof that this Court has personal jurisdiction over the McVeys under the Virgin Islands long-arm statute. Therefore, the Court need not address whether jurisdiction over the McVeys conforms with the due process requirements of the Constitution.⁵ See, e.g., *Four Winds Plaza Corp. v. Caribbean Fire & Assocs.*, Civ. No. 2005-201, 2007 U.S. Dist. LEXIS 44920, at *19-20 (D.V.I. April 18, 2007); cf. *Paradise Motors, Inc. v. Toyota de P.R., Corp.*, 314 F. Supp. 2d 495, 498 (D.V.I. 2004). Accordingly, the McVeys' motion to dismiss will be granted for lack of personal jurisdiction.

For the reasons stated above, it is hereby

ORDERED that the motion is **GRANTED**; it is further

the McVeys.

⁵ Ordinarily, once a plaintiff has established jurisdiction over the defendant under the Virgin Islands long-arm statute, she must also establish that jurisdiction conforms with the due process requirements of the Constitution. Due process requires that a non-resident defendant have minimum contacts with the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). Additionally, "subjecting the defendant to the court's jurisdiction [must] comport[] with 'traditional notions of fair play and substantial justice.'" *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 369 (3d Cir. 2002) (quoting *Int'l Shoe*, 326 U.S. at 316). In determining the sufficiency of the defendant's minimum contacts with the forum, "jurisdiction is proper if the defendant has taken 'action . . . purposefully directed toward the forum State.'" *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 370 (3d Cir. 2002) (quoting *Asahi Metal Indus. Co., Ltd. v. Super. Court of Cal.*, 480 U.S. 102, 112 (1987) (plurality opinion of O'Connor, J.)).

Binder v. McVey, et al.
Civil No. 2005-137
Order
Page 7

ORDERED that this matter is **DISMISSED** for lack of personal jurisdiction; and it is further

ORDERED that the Clerk of Court shall **CLOSE** this matter.

Dated: November 8, 2007

S_____
CURTIS V. GÓMEZ
Chief Judge

copy: Hon. Geoffrey W. Barnard
A. Jeffrey Weiss, Esq.
Gregory H. Hodges, Esq.
Carol C. Jackson
Lydia Trotman
Claudette Donovan
Olga Schneider
Gregory Laufer