

Sullivan v. Starwood Hotels and Resorts Worldwide, Inc.

MEMORANDUM

TAURO, District Judge.

I. Introduction

Plaintiffs Robert Sullivan (“Mr. Sullivan”) and Mary Sullivan (“Mrs. Sullivan”) bring this suit against Starwood Hotels and Resorts Worldwide, Inc. (“Starwood”) for negligence and loss of consortium. Mr. Sullivan claims that while vacationing in China, he fell over a hazardous object in the parking garage of a hotel operated and controlled by Starwood. For the reasons set forth below, Starwood’s motion to dismiss is denied.

II. Factual Background

Mr. and Mrs. Sullivan are residents of Byfield, Massachusetts. Starwood is a corporation organized under the laws of Maryland and registered to transact business in Massachusetts. Mr. and Mrs. Sullivan allege that Starwood owns, operates, and controls the Westin Beijing at Chaoyang Hotel and its parking garage, located in Beijing, China.

In 2010, Mr. and Mrs. Sullivan traveled to Beijing, China. Mr. Sullivan claims that on October 12, 2010, he tripped and fell over a hazardous object in the hotel’s parking garage. Mr. Sullivan was with Mrs. Sullivan, Dennis DeCosta, and Daniel Tao at the time of the fall. After the fall, Mr. DeCosta and Mr. Tao drove Mr. Sullivan to the SOS Clinic in Beijing. The SOS Clinic then transferred Mr. Sullivan to the Beijing United Family Hospital, where he underwent surgery. Following his return to the United States, Mr. Sullivan received treatment at the Lahey Clinic in Burlington, Massachusetts. Mr. and Mrs. Sullivan now bring claims against Starwood for negligence and loss of consortium.

III. Discussion

A. Forum Non Conveniens

Starwood moves for dismissal under the doctrine of forum non conveniens. Starwood argues that China is an adequate alternative forum and that convenience and judicial efficiency favor litigating this case in China.

The decision to grant or deny a motion to dismiss for forum non conveniens is committed to the discretion of the district court. A plaintiff’s choice of forum should rarely be disturbed. Accordingly, Starwood bears a heavy burden in seeking dismissal.

To prevail, Starwood must demonstrate that there is an adequate alternative forum and that considerations of convenience and judicial efficiency strongly favor litigating the claim in the alternative forum.

1. Adequate Alternative Forum

An alternative forum is adequate if it addresses the types of claims brought and if the defendant is amenable to service of process there. The sufficiency of the defendant's showing depends on the facts of the case, and supporting materials must not contain substantial gaps.

Starwood has not met its burden of demonstrating that China is an adequate forum. Starwood relies primarily on a website printout purporting to reflect provisions of Chinese law. It has not provided an affidavit or testimony from a person knowledgeable about Chinese law to verify its interpretation. Nor has Starwood shown the availability of a comparable cause of action for loss of consortium, the accessibility of Chinese courts to American plaintiffs, or whether a statute of limitations would bar plaintiffs' claims.

Without competent evidence, the court cannot conclude that China provides an adequate alternative forum. Accordingly, Starwood's motion is denied on this ground.

2. Private and Public Interest Factors

Even if China were an adequate forum, dismissal would still be inappropriate because the balance of private and public interest factors favors retaining the case in Massachusetts.

a. Private Interest Factors

The relevant private interest factors include access to sources of proof, availability and cost of witnesses, the possibility of viewing the premises, and other practical considerations affecting the ease and expense of trial.

Most key witnesses are located in Massachusetts, including eyewitnesses to the incident and physicians who treated Mr. Sullivan after his return to the United States. Starwood has not identified witnesses it intends to call who are located in China.

Although initial medical treatment occurred in China, plaintiffs have obtained certified translations of the relevant medical records. Starwood has not demonstrated that a jury view of the garage is necessary or appropriate.

Mr. Sullivan is a sixty-nine-year-old Massachusetts resident who alleges permanent disability as a result of the fall. Starwood is a United States corporation that regularly litigates in United States courts. On balance, plaintiffs face greater hardship litigating in China than Starwood faces litigating in Massachusetts.

b. Public Interest Factors

Public interest factors include court congestion, local interest in the dispute, familiarity with governing law, avoidance of conflict-of-law issues, and fairness in imposing jury duty.

Starwood has provided no evidence regarding the relative congestion of Chinese courts. Massachusetts has a strong interest in providing a forum for its residents, and the United

States has an interest in resolving disputes involving its citizens. Even if foreign law were to apply, that fact alone would not outweigh deference to plaintiffs' chosen forum.

Imposing jury duty on Massachusetts residents is not unfair given the substantial connection of this dispute to the forum.

IV. Conclusion

For the foregoing reasons, Starwood's motion to dismiss is denied.