

DIVISION OF ST. THOMAS AND ST. JOHN

Plaintiff)

ACTION FOR: NEGLIGENCE

VS

**BLUE SERENITY, LLC
MITCHELL & RANDY STEINBERG
MCLAUGHLIN ANDERSON**

Defendant

TO: J. RUSSELL B. PATE, ESQ.
DOUGLAS CAPDEVILLE, ESQ. (340) 773-7996
GARRY GARTEN, ESQ.
MICHAEL SANFORD, ESQ., mike@saastx.vi
JUDGES, MAGISTRATES, LAW CLERKS OF THE
SUPERIOR COURT
IT, LEGAL COUNSEL, ESTRELLA H. GEORGE,
ACTING CLERK OF THE COURT

Dated: December 11, 2014

Estrella H. George
Acting Clerk of the Court

CAMEIL A. CLARKE
COURT CLERK II

DIVISION OF ST. THOMAS AND ST. JOHN

Plaintiffs,

vs.

) CASE NO. ST-13-CV-523

**BLUE SERENITY, LLC, MITCHELL AND
RANDY STEINBERG, McLAUGHLIN
ANDERSON LUXURY VILLAS, WORLD
TRAVEL HOLDINGS COMPANY a/k/a
LUXURY TRAVEL HOLDINGS COMPANY
d/b/a VILLAS OF DISTINCTION,**

Defendants.

MEMORANDUM OPINION

Pending before the Court is a motion to dismiss for lack of jurisdiction filed by Defendant World Travel Holdings Company (“WTH”) a/k/a Luxury Travel Holdings Co. d/b/a Villas of Distinction (“VOD,” collectively “Defendant”).¹ For the following reasons, Defendant’s motion will be denied without prejudice.

STANDARD

“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

¹ Although VOD and WTH are distinct legal entities, both Plaintiffs and Defendant have treated them as one entity for the purposes of this litigation. See Complaint, Defendant's motion to dismiss, and Defendant's reply to Plaintiffs' opposition to Defendant's motion.

that jurisdiction is proper.”² The plaintiff must establish personal jurisdiction by a preponderance of the evidence.³

In order determine if personal jurisdiction is proper, the Court must analyze (1) whether jurisdiction is authorized by the Virgin Islands Long Arm Statute and (2) whether Defendant had certain “minimum contacts” with the Virgin Islands that would justify this Court to exercise jurisdiction over Defendant in accordance with the due process provisions of the United States Constitution.⁴

The Virgin Islands Long Arm Statute provides:

- (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;⁵
 - (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.⁶

² *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir.1996) (internal citations omitted).

³ *Carteret Sav. Bank, F.A. v. Shushan*, 954 F.2d 141, 146 (3d Cir.1992).

⁴ *Yusuf v. Adams*, 2004 WL 3178044 (D.V.I.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)).

⁵ “Transacting business is a term of art which means less than doing business but more than performing some inconsequential act within a jurisdiction.... [T]ransacting business requires a defendant to engage in some type of purposeful activity within the territory.” *Hendrickson v. Reg O Company*, 17 V.I. 457, 462–63 (D.V.I.1980) *aff'd*, 657 F.2d 9 (3d Cir.1981).

⁶ 5. V.I.C. § 4903. The Long Arm Statute has been interpreted as applying as widely as the Constitutional requirements permit. See *Urgent v. Tech. Assistance Bureau, Inc.*, 255 F.Supp.2d 532 (D.V.I.2003) (“[B]y adopting the Uniform Act, rather than developing its own long-arm statute or adopting the long-arm statute of some other jurisdiction, the Virgin Islands’ Legislature likely intended the reach of the Virgin

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.'"⁷

ANALYSIS

Plaintiffs, residents of Georgia,⁸ assert that they "booked" a villa on St. Thomas "advertised and promoted" by Defendant and locally managed by McLaughlin Anderson Luxury Villas ("MALV").⁹ ¹⁰ Plaintiff Patricia Power signed a travel reservation contract with VOD on July 21, 2011.¹¹ Upon arriving at the villa on or about October 12, 2011,¹² Plaintiffs were not informed how to use the alarm system on the property.¹³ On or about October 13, 2011, Plaintiffs noticed that some of their money and jewelry was missing from the villa.¹⁴ Plaintiffs reported the incident to the police and contacted MALV in order to determine how to operate the alarm system.¹⁵ Plaintiffs were purportedly informed that they should refrain from using the alarm system because it was not operating properly and were assured that the villa was located in a safe neighborhood.¹⁶ On or about October 15,

Islands' long-arm statute to be coextensive with the exercise of personal jurisdiction permitted by the due process clause."); see also *Urgent v. Amazon Hospitality, Inc.*, Civil No.2002-115, 2004 U.S. Dist. LEXIS 12836, at *3 (D.V.I. July 9, 2004) (unpublished).

⁷ *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)).

⁸ Complaint, at page 1.

⁹ Complaint, at page 2.

¹⁰ MALV is a business entity established under the laws of the Virgin Islands. See Complaint, at page 2.

¹¹ Plaintiffs' Exhibit A to their opposition to Defendant's motion to dismiss for lack of jurisdiction.

¹² The reservation contract with Defendant indicates that Plaintiffs rented the villa starting on October 12, 2011, and ending on October 19, 2011.

See Plaintiffs' Exhibit A, at page 1.

¹³ Complaint, at page 3.

¹⁴ *Id.*, at page 4.

¹⁵ *Id.*

¹⁶ *Id.*

2011, two masked gunmen entered the villa, and robbed and assaulted Plaintiffs.¹⁷ Plaintiffs allege that Defendant and MALV had a duty as advertisers, promoters, managers, and/or agents of the owners of the property to use reasonable care to protect [Plaintiffs] from harm and physical injury.”¹⁸

With respect to the jurisdictional issue, Plaintiffs argue that Defendant is subject to this Court’s jurisdiction under the Long Arm Statute because Defendant is transacting business in the territory by advertising and renting property in the Virgin Islands. Plaintiffs also contend that Defendant contracted for services and contracted to insure people, property, or risk in the Virgin Islands; committed a tortious injury by acts and omissions within and outside the Virgin Islands; and used or possessed property in the Virgin Islands.

In opposition, Defendant has submitted an affidavit of WTH’s Chief Financial Officer who testified that Defendant does not “have any agents” in the USVI, “does not conduct any regular business on the [USVI],” “did not rent the property to” Plaintiffs, “does not own, lease or manage the property ... or provide any services regarding [the] property,” “did not enter into any contract, lease or business relationship in the [USVI],” and “had no business agreement or contract with any party in the Virgin Islands.”¹⁹

The record is not clear as to whether Defendant actually advertises in the Virgin Islands. Defendant maintains a website that advertises properties located in the Virgin Islands and throughout the world, but the website itself exists in cyberspace and not in the Virgin Islands.

¹⁷ Complaint, at page 4.

¹⁸ *Id.*, at page 6.

¹⁹ Defendant’s Exhibit A to Defendant’s motion to dismiss.

The operation of a passive website alone would not confer jurisdiction over Defendant in this matter for due process purposes.²⁰ However, “operating even a passive website in conjunction with ‘something more’—conduct directly targeting the forum—is sufficient to confer personal jurisdiction.”²¹ For instance, “non-internet contacts such as serial business trips to the forum state, telephone and fax communications directed to the forum state, purchase contracts with forum state residents, contracts that apply the law of the forum state, and advertisements in local newspapers” may constitute evidence that the defendant purposefully availed itself of conducting activity in the forum state.²²

While Plaintiffs also assert that Defendant rented the villa to them, it is not clear whether Defendant’s payment collection practices for the rental property have a connection with the Virgin Islands. The payment instructions clause of the contract indicates that wire payments were to be made to a bank account of WTH in California and checks were to be sent to VOD’s office in Wilmington, Massachusetts.²³ Moreover, VOD and WTH do not maintain any offices or have any employees in the Virgin Islands.²⁴ VOD is a New York limited liability company with a principal place of business in New York.²⁵ VOD is a

²⁰ See *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, No. CIV. 2005-46, 2008 WL 2235337, at *4 (D.V.I. May 29, 2008) (citing *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446 (3d. Cir.2003)). See also *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir.2007) (“We consistently have held that a mere web presence is insufficient to establish personal jurisdiction.”).

²¹ *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1129 (9th Cir. 2010) (quoting *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir.2002)).

²² *Unlimited Holdings, Inc. v. Bertram Yacht, Inc.*, No. CIV. 2005-46, 2008 WL 2235337, at *5 (D.V.I. May 29, 2008) (quoting *Toys “R” Us, Inc.*, 318 F.3d at 454).

²³ Plaintiffs’ Exhibit A, at page 2. Several other pages of the contract list VOD’s address as the Wilmington address described in the payment clause. See *id.*, at pages 6 and 7.

²⁴ Defendant’s Exhibit A, at page 2.

²⁵ *Id.*, at page 1.

subsidiary of WTH, a Delaware corporation with a principal place of business in Massachusetts.²⁶

On the other hand, the contract contains several provisions indicating that Defendant's responsibilities extended beyond advertising the property on its website, establishing a travel reservation, and collecting the reservation payments. The contract states that VOD and the Owners have "the absolute right to require any occupant, individual or client to vacate a villa property for disruptive or inappropriate behavior without a refund in the sole discretion of the VOD and/or the Owners."²⁷ VOD also identified itself as a contact for remedying any problem with the villa property arising during the rental period.²⁸ Moreover, VOD indicated that while it does not own the villa property, it was "acting ... as agent for Owner."²⁹

For the Long Arm Statute to apply when a contract is involved, "all that is required by a literal interpretation of the statutory language is that the contract be performed in the Virgin Islands and that the cause of action arise out of the contract."³⁰ However, a contract alone is not a sufficient minimum contact for purposes of due process analysis.³¹

²⁶ Defendant's Exhibit A, at pages 1 and 2.

²⁷ Plaintiffs' Exhibit A, at page 4.

²⁸ *Id.* The contract specifies that the telephone number the client should use for VOD in the event of a problem with property is the telephone number listed in the Arrival Voucher. See *Id.* The Arrival Voucher contains "Villa travel and arrival information, including addresses, driving directions, telephone numbers and contact person's names" and was to be released within 14 days of the client's arrival to the villa once the total price for the villa was paid. *Id.*, at page 3. While it is not clear when or where Plaintiffs received the Arrival Voucher, it appears based on its contents that it was designed to be carried into the Virgin Islands to be used there.

²⁹ *Id.*, at page 5.

³⁰ *Godfrey v. Int'l Moving Consultants, Inc.*, Civil No. 79-188, 1980 U.S. Dist. LEXIS 8956 (D .V.I. Dec. 12, 1980).

³¹ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985).

Here, the contract provisions describe Defendant's capacity to act in the Virgin Islands but there is no evidence that the contract was actually performed in the Virgin Islands.³²

Notwithstanding, "[i]f a plaintiff presents factual allegations that suggest 'with reasonable particularity' the possible existence of the requisite 'contacts between [the parties] and the forum state,' the plaintiff's right to conduct jurisdictional discovery should be sustained."³³ The Court finds that the contract provisions, which give Defendant the power to evict individuals from the property and to manage problems on the property, justify jurisdictional discovery to determine whether Defendant has sufficient minimum contacts with the Virgin Islands. As a result, Defendant's motion to dismiss will be denied without prejudice.

An Order consistent with this Opinion shall follow.

Dated: December 8, 2014

ATTEST: Estrella George
Acting Clerk of Court

by:

Lon Boynes-Tyson
Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

³² Moreover, the contract appears to have been negotiated outside the territory. Plaintiff Patricia Power, a resident of Georgia, signed the contract on June 21, 2011. The record is devoid of evidence indicating that Plaintiffs had contact with the Virgin Islands prior to their arrival date on or about October 12, 2011.

³³ See *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir.2003) (quoting *Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino*, 960 F.2d 1217, 1223 (3d Cir.1992))).

DIVISION OF ST. THOMAS AND ST. JOHN

VS.

) CASE NO. ST-13-CV-523

Defendants.

ORDER

without prejudice and Plaintiffs are permitted to engage in jurisdictional discovery; and it is

ORDERED that a copy of this Order shall be directed to counsel of record and to the Superior Court's IT Division.

Dated: December 8, 2014

ATTEST: Estrella George
Acting Clerk of Court

by:

Lon. B. Tyson

Court Clerk Supervisor

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS