

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 7
	:	
CAL DIVE INTERNATIONAL, INC., et al.,	:	Case No.: 15-10458 (CSS)
	:	(Jointly Administered)
Debtors.	:	
	:	
	:	
<hr/>	:	
DAVID W. CARICKHOFF, not individually	:	
but solely as Chapter 7 Trustee for Cal Dive	:	
Offshore Contractors, Inc.,	:	
	:	
	:	
Plaintiff,	:	
v.	:	Adv. No.: 17-50145 (CSS)
	:	
OCCUPATIONAL MEDICINE CLINICS,	:	Docket No.: 19
	:	
	:	
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Defendant.	:	

ORDER

Before this Court is the Defendant Occupational Medicine Clinics' (the "Defendant") *Motion to Dismiss for Lack of In Personam Jurisdiction*¹ (the "Motion") filed on September 21, 2017, and the Trustee's response thereto.² In the Motion, the Defendant asserts that it does not have minimum contacts with the State of Delaware, thus, traditional notices of fair play and substantial justice, as well as its

¹ Adv. D.I. 19.

² Adv. D.I. 23.

due process rights, would be violated if the Defendant had to respond the above-captioned avoidance action in Delaware.

A. Jurisdiction

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(F). Venue is proper before the United States Bankruptcy Court for the District of Delaware under 28 U.S.C. §§ 1408 and 1409. Furthermore, this Court has the judicial power to enter a final order.

B. Parties' Arguments

The Defendant asserts that it is a Louisiana Limited Liability Company and maintains its principal place of business in Louisiana. The Defendant asserts that it does not maintain nor has it ever maintained a place of business, nor has employees, servants or agents employed within the State of Delaware. The Defendant continues that it is not a resident of the State of Delaware and is not required to maintain nor does it maintain a registered agent for service of process in the State of Delaware. The Defendant continues that it does not have any assets or systematic contracts within Delaware. The Defendant concludes asserting that this Court has no personal jurisdiction over it and for this Court to exercise *in*

personam jurisdiction would be contrary to traditional notions of fair play and substantial justice and the constitutional requirement of due process.

The Plaintiff responds that (i) the Defendant improperly appears *pro se* as the Defendant is a corporation, thus, cannot appear *pro se* and must retain licensed counsel to appear in federal court; (ii) this Court has personal jurisdiction over the Defendant because the Defendant has sufficient contacts with the United States to establish personal jurisdiction and such exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

C. Standard of Review

Rule 12(b)(2) of the Federal Rules of Civil Procedure, incorporated into Rule 7012(b) of the Bankruptcy Rules, provides that a case may be dismissed for lack of personal jurisdiction.³ “When the court does not hold an evidentiary hearing on the motion to dismiss, the plaintiff need only establish a *prima facie* case of personal jurisdiction and is entitled to have its allegations taken as true and all factual disputes drawn in its favor.”⁴ The Court held no evidentiary hearing on the

³ See Fed. R. Bankr. P. 7012(b).

⁴ *Charan Trading Corp. v. Uni-Marts, LLC (In re Uni-Marts, LLC)*, 399 B.R. 400, 406 (Bankr. D. Del. 2009) (citations, quotation marks, and internal modifications omitted). See also *Astropower Liquidating Trust v. Xantrex Tech., Inc. (In re Astropower Liquidating Tr.)*, No. 04-10322(MFW), 2006 WL 2850110, at *2 (Bankr. D. Del. Oct. 2, 2006) (“The overwhelming authority in the Third Circuit establishes that the Plaintiff has a burden of proving, by concrete evidence and not merely the

Motion. Thus, it will base its decision on the allegations in the Complaint.⁵ Furthermore, the Defendant, in its Motion, stated that it is conducting business in Louisiana.⁶

D. Factual History

The above-captioned debtors (the “Debtors”) filed voluntary petitions under chapter 11 of the Bankruptcy Code in March 2015. Thereafter, the Debtors commenced the above-captioned avoidance action against the Defendant, Adv. Pro. No. 17-50145 (the “Avoidance Action” commenced by the filing of the “Complaint”). After the filing of this avoidance action, the Debtors’ cases converted to cases under chapter 7 and the chapter 7 trustee was substituted as plaintiff⁷ (the “Plaintiff”).

The Complaint alleges two payments made to the Defendant during the preference period totaling \$24,008. In response, the Defendant filed the Motion. The Motion is fully briefed and is ripe for the Court’s consideration. This is the Court decision thereon.

allegations in its complaint, that the Merrill Lynch Defendants have the minimum contacts necessary to establish personal jurisdiction.” (citations omitted)).

⁵ See Complaint at Exh. A.

⁶ Motion at ¶ I.

⁷ Adv. Pro. D.I. 8.

E. Analysis⁸

Rule 7004(d) provides for nationwide service of process and, therefore, provides the statutory basis for this Court's *in personam* jurisdiction.⁹ Bankruptcy

Rule 7004(f) provides that:

If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.¹⁰

"Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure generally limits *in personam* jurisdiction of the federal courts over non-resident defendants to that which a court of general jurisdiction in the forum state would have. However, this limitation does not apply where extra-territorial service of process is

⁸ Plaintiff also raises the issue that Defendant improperly appears *pro se*. "It is well-settled that a corporation must retain licensed counsel to appear in federal court." *Gavin Solmonese LLC v. True Line Wire (In re Boomerang Sys., Inc.)*, No. 15-11729 (MFW), 2017 WL 4221095, at *3 (Bankr. D. Del. Sept. 21, 2017) (citations omitted). Here, the Motion was signed by a non-attorney, Dr. Tony Leon Alleman, Managing Member of the Defendant, a limited liability company. Consequently, the Court directs the Defendant to retain counsel before it may appear or file any further pleadings.

⁹ *Zazzali v. Swenson (In re DBSI, Inc.)*, 451 B.R. 373, 376 (Bankr. D. Del. 2011).

¹⁰ Fed. R. Bankr.P. 7004(f).

'authorized by a federal statute.' Bankruptcy Rule 7004(d), which allows nationwide service of process in bankruptcy cases, is just such a statute."¹¹

Where Congress has spoken by authorizing nationwide service of process, . . . the jurisdiction of a federal court need not be confined by the defendant's contact with the state in which the federal court sits." *Pinker [v. Roche Holdings, Ltd.]* held that "a federal court's personal jurisdiction may be assessed on the basis of the defendant's national contacts when the plaintiff's claim rests on a federal statute authorizing nationwide service of process."¹²

Courts in the Third Circuit have applied the Fifth Amendment Due Process Clause's "fair plan and substantial justice" restrictions on nationwide service of process.¹³

The Court's as a two-part inquiry to determine whether Defendant has sufficient contacts with the relevant forum. First, as Rule 7004(d) provides for nationwide service of process, the relevant forum is the United States.¹⁴ Thus, as

¹¹ *Charan Trading Corp v. Uni-Marts, LLC (In re Uni-Marts, LLC)*, 399 B.R. 400, 406 (Bankr. D. Del. 2009) (citations omitted); *DBSI, Inc.*, 451 B.R. at 376. See also *Nordberg v. Granfinanciera, S.A. (In re Chase & Sanborn Corp.)*, 835 F.2d 1341, 1344 (11th Cir.1988) ("Bankruptcy Rule 7004(d) provides for nationwide service of process and thus is the statutory basis for personal jurisdiction in this case"), *rev'd on other grounds*, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989).

¹² *DBSI, Inc.*, 451 B.R. at 376 (quoting *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 369 (3d Cir. 2002)).

¹³ *Id.*

¹⁴ *Id.*

long as Defendant has sufficient contacts with the United States which is admitted in the Motion,¹⁵ the relevant forum is the United States.

Second, the Court must determine if its exercise of personal jurisdiction over [Defendant] comports with 'traditional notions of fair play and substantial justice.' This inquiry requires balancing the burdens placed upon [Defendant] against the interest in furthering the policies of the Bankruptcy Code."¹⁶ Defendant claims that it maintains its offices in Louisiana and has never engaged in business in Delaware.¹⁷ However, Defendant provided no evidence regarding its ability to bear the financial burden of litigation in Delaware and, *even if* Defendant were able to make such a showing, this burden would not outweigh the benefits of having this case heard in the Trustee's selected forum. A bankruptcy trustee's duty is maximize the value of the estate and does this, among other avenues, through filing avoidance actions.¹⁸ Accordingly, the traditional notions of fair play and substantial justice are not offended.

¹⁵ See Motion at ¶ I ("OMC is a Louisiana Limited Liability Company organized pursuant to the laws of and maintains its principal place of business in Louisiana.").

¹⁶ *DBSI, Inc.*, 451 B.R. and 377.

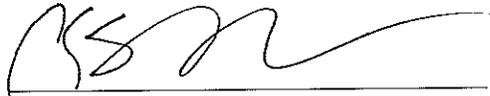
¹⁷ See Motion at ¶¶ II-VII.

¹⁸ *Official Committee of Unsecured Creditors v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 243 (3d Cir. 2000) ("A paramount duty of a trustee or debtor in possession in a bankruptcy case is to act on behalf of the bankruptcy estate, that is, for the benefit of the creditors. To fulfill this duty, trustees and debtors in possession have a variety of statutorily created powers, known as avoidance

As a result, the Court has *in personam* jurisdiction over Defendant and finds that the Plaintiff may pursue the Avoidance Action against Defendant in this Court.

F. Conclusion

The Court will **DENY** the Motion. IT IS SO ORDERED.



Christopher S. Sontchi
United States Bankruptcy Judge

Date: January 16, 2018

powers, which enable them to recover property on behalf of the bankruptcy estate." (citations and internal quotation marks omitted)).