

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NAMRATA SHAH,	)	
	)	
Plaintiff,	)	Case No. 02 C 9334
v.	)	
	)	
CANODROS, S.A.,	)	Judge Joan B. Gottschall
	)	
Defendant.	)	

**ORDER**

Namrata Shah filed a complaint against Canodros S.A. (“Canodros”) alleging a claim of negligence for its operation of the ship M/V Galapagos Explorer II in the Galapagos Islands off the coast of Ecuador. Shah, while a passenger on defendant’s ship, allegedly injured her right thumb in her bathroom door after the ship shifted suddenly. Canodros moves to dismiss based on improper venue and lack of personal jurisdiction. Because the court bases its holding on a lack of personal jurisdiction, it need not reach defendant’s improper venue argument. For the reasons explained below, Canodros’ motion is granted.

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(2), plaintiff bears the burden of providing sufficient evidence to establish a *prima facie* case of personal jurisdiction. *Purdue Research Foundation v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003). In ruling on a 12(b)(2) motion, the court must accept as true the jurisdictional allegations in the complaint, unless defendants submit contravening affidavits. *Id.* Any conflicts among the parties’ affidavits must be resolved in favor of the plaintiff. *Id.* “However, the court will take as true all facts in the defendant’s affidavits that are unrefuted by the plaintiff.” *Haggerty Enters., Inc. v. Lipan Indus. Co.*,

*Ltd.*, No. 00 C 766, 2001 WL 968592, at \*2 (N.D. Ill. Aug. 23, 2001).

A federal district court exercising diversity jurisdiction<sup>1</sup> has personal jurisdiction over a defendant if a state court in the district in which it sits would have jurisdiction. *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1275 (7th Cir. 1997). The exercise of jurisdiction must be consistent with the Illinois long-arm statute and the Illinois and federal constitutions. *Id.* at 1276. Shah argues that Canodros falls within the Illinois long-arm statute because it “transact[s] . . . business within this State.” 735 ILCS § 5/2-209(a)(1).

In this case, Shah’s father contacted his travel agent, Allstar Travel, in Palatine, Illinois, to arrange for the purchase of cruise tickets. Allstar Travel contacted Canodros in Ecuador via the internet to inquire about booking a cruise. A marketing representative from Canodros emailed Allstar Travel and instructed it to contact Latin American Expeditions, its representative in Miami, Florida. Allstar Travel purchased cruise tickets for Shah and her family from Latin American Expeditions, who then forwarded vouchers, an itinerary, and tickets to Allstar Travel. Shah’s father ultimately received the vouchers, an itinerary and tickets at his home in Oak Brook, Illinois.

Based on the case of *Kadala v. Cunard Lines, Ltd.*, 226 Ill. App. 3d 302 (1st Dist. 1992), the court concludes that an Illinois court would not find that Canodros was transacting business in Illinois. In *Kadala*, plaintiff brought a personal injury suit based on an injury she sustained while at sea on a cruise ship operated by an English corporation. As here, the defendant cruise line owner was a foreign company which maintained an office in the United States (but not in Illinois). The Illinois Appellate Court considered the following in deciding that Illinois did not have personal

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<sup>1</sup> The court’s analysis of the Illinois long-arm statute applies equally to Shah’s assertion of the court’s admiralty jurisdiction. *See, e.g., In re Oil Spill by the Amoco Cadiz*, 699 F.2d 909, 914 (7th Cir. 1983).

jurisdiction over the English defendant:

[I]t was plaintiff who initiated the transaction with defendant. She, through her travel agent, contacted defendant. The contract was entered into in New York when defendant issued the passenger ticket to plaintiff's travel agent. Performance was to take place out of state and on the high seas.

226 Ill. App. 3d at 309-10.

The facts are nearly identical in this case. Plaintiff, through her travel agent, initiated the transaction with Canodros. The ticket was issued to her through the Miami, Florida office of Latin American Expeditions. Finally, performance took place not in Illinois, but in the seas off the coast of Ecuador. Shah failed to provide this court with any evidence that Canodros actively engaged in business in Illinois at the time she purchased her ticket.<sup>2</sup> The fact that Canodros sent a representative to a Chicago trade show for travel agents does not bring it under the Illinois long-arm statute as there is no allegation that this representative had any contact with Shah and, in any event, such an isolated occurrence cannot be sufficient to constitute "transacting business." *Kaye-Martin v. Brooks*, 267 F.2d 394, 397-98 (7th Cir. 1959). Based on the factual similarities between this case and *Kadala*,

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<sup>2</sup>It should be noted that the court considered only Canodros' connections to Illinois that existed at the time of Shah's alleged injury. *Volkswagen Ins. Co. v. Whittington*, 58 Ill. App. 3d 621, 624 (1st Dist. 1978). However, even if it were to take into account the actions of Francis Geller, an independent contractor who began working with Canodros *after* Shah was allegedly injured, it would still reach the same conclusion. Geller was an independent contractor who promoted different companies to travel agencies in the Midwest. Geller's job involved attending trade shows and making sales presentations to travel agencies and presenting information on Canodros. Geller did not contact customers directly, and there is no evidence that she was ever in contact with Shah. Again, the factual similarities between this case and the *Kadala* case are apparent. In *Kadala*, the defendant cruise line owner had a similar relationship with an independent contractor *at the time plaintiff purchased her ticket*. 226 Ill. App. 3d at 305. As here, that individual serviced local travel agencies and provided them with brochures and special offers on particular cruises. *Id.* Yet, the Illinois Appellate Court concluded that such an arrangement -- by which defendant solicited customers -- did not mean that the defendant transacted business in Illinois. *Id.* at 308-09.

the court must conclude that personal jurisdiction is lacking here.

In conclusion, Shah has not met the requirements of the Illinois long-arm statute. The court, therefore, need not reach the question of whether the federal minimum due process requirements have been met. Defendant's motion to dismiss is granted.

ENTER:



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JOAN B. GOTTSCHALL  
United States District Judge

DATED: March 4, 2004