

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DISH NETWORK L.L.C.,
SLING TV L.L.C., and
NAGRASTAR LLC

Plaintiffs,

vs.

CASE NO. 2022-cv-00603-KKM-SPF

JASON LABOSSIÈRE
SEAN BEAMAN,
STEFAN GOLLNER
OSIVETTE BRITO,
Individually and collectively
d/b/a EXPEDITE TV,
MUNDO TV, and MUST TV

Defendants.

**DEFENDANT'S MOTION FOR RELIEF FROM ORDERS DATED APRIL 6, 2022
AND APRIL 25, 2022 AND INCORPORATED MEMORANDUM OF LAW**

Defendant, Stefan Gollner ("Gollner"), moves this Court for relief from the orders dated April 6, 2022 (Doc. 14) and April 25, 2022 (Doc. 25) (collectively "Scheduling Orders") setting deadlines relating to a Motion for Preliminary Injunction and Asset Freeze (Doc. 13) filed by Plaintiffs, Dish Network, L.L.C., Sling TV L.L.C. and Nagrastar L.L.C. and states as follows:

1. On April 6, 2022, Plaintiffs filed a Motion for Preliminary Injunction and Asset Freeze (Doc. 13) together with voluminous affidavits and exhibits.
2. On the same date, this Court entered an order (Doc. 14) setting deadlines for Plaintiffs to serve the complaint and Motion for Preliminary Injunction

and Asset Freeze (Doc. 13) on the defendants and for the filing of responses to the Motion for Preliminary Injunction and Asset Freeze (Doc. 13).

3. On April 7, 2022, Gollner filed a Motion to Dismiss for Lack of Jurisdiction (Doc. 17) in accordance with Rule 12(b)(2).

4. On April 25, 2022, this Court entered an order (Doc. 25) extending the deadline for Plaintiffs to respond to Gollner's Motion to Dismiss for Lack of Jurisdiction (Doc. 17) and the deadline for Defendants to respond to Plaintiffs' Motion for Preliminary Injunction and Asset Freeze (Doc. 13) such that the responses to such motions are due on May 19, 2022 and May 20, 2022 respectively.

5. The order (Doc. 25) extending the deadlines for filing was entered on an agreed motion (Doc. 24) seeking such an extension of time for the purpose of facilitating settlement discussions between the parties.

6. Regardless of the dates that the response to the Motion to Dismiss for Lack of Jurisdiction (Doc. 17) and the Motion for Preliminary Injunction and Asset Freeze (Doc. 13) are ultimately due, Gollner requests that this Court resolve the jurisdictional challenge prior to disposing of the Motion for Preliminary Injunction and Asset Freeze.

7. In this case, the most feasible and prudent course of action is for this Court to first resolve the jurisdictional issue prior to considering the Motion for Preliminary Injunction and Asset Freeze (Doc. 13).

8. Neither Gollner nor the Court should be required to incur the substantial resources which will be required to address the legal and factual issues set forth in

the Motion for Preliminary Injunction and Asset Freeze (Doc. 13) and the voluminous affidavits and exhibits that are incorporated in the motion until such time as the jurisdictional challenge has been decided.

9. Likewise, Gollner wishes to avoid the possibility that it might be found to have waived his challenge to personal jurisdiction by active participation in the case arising from his defense of the Motion for Preliminary Injunction and Asset Freeze (Doc. 13).

10. Consequently, Gollner respectfully requests that the Scheduling Orders be modified to reflect that his response to the Motion for Preliminary Injunction and Asset Freeze (Doc. 13) shall be due on a date following the disposition of his Motion to Dismiss for Lack of Jurisdiction (Doc. 17).

Incorporated Memorandum of Law

Under Fed. R. Civ. P. 6(b), the Court has discretion to grant relief from the requirements of the Scheduling Orders (Doc. 14) and should grant such relief here.

District courts have broad discretion in managing their cases. *Chrysler Int'l Corp. v. Chenaly*, 280 F.3d 1358, 1360 (11th Cir.2002). The broad discretion given to the court includes the management of pretrial activities such as discovery and scheduling. *Id.* (citing *Johnson v. Bd. of Regents of Univ. Georgia*, 263 F.3d 1234, 1269 (11th Cir.2001)).

Allianz Global Risks U.S. Ins. Co. v. Singlesource Roofing Corp., No. 2:05-cv-603-FtM-29SPC, 2006 WL 5112608 *1 (M.D. Fla. Nov. 14, 2006). See also *SIPCO, LLC v. Control4 Corp.*, No. 1:11-cv-0612-JEC, 2012 WL 526074 *4 (N.D. Ga. Feb. 16, 2012).

In this case, the Motion for Preliminary Injunction and Asset Freeze (Doc. 13)

and incorporated affidavits and exhibits exceed 1,000 pages. The exhibits include numerous documents that are not properly authenticated and that relate to a prior lawsuit between the plaintiffs and other defendants. Gollner was not a party to the prior lawsuit (notwithstanding an erroneous statement to the contrary in paragraph 15 of the complaint). In the prior lawsuit, the plaintiffs claimed that the named defendants were operating a business known as “SetTV” that was engaged in the unlawful retransmission of the plaintiffs’ television programming without the plaintiffs’ authorization. According to paragraph 9 of the affidavit of Kevin Gideon (Doc. 13-2) that was filed in support of the Motion for Preliminary Injunction and Asset Freeze, the claims in the prior filed lawsuit are the subject of a settlement agreement dated October 23, 2018. Gollner was not a party to the settlement agreement.

The gist of the current lawsuit is that, subsequent to the execution of the October 23, 2018 settlement agreement, “SetTV” was rebranded as “Expedite TV” and “Expedite TV” was then rebranded” as “MundoTV” and “MustTV” which now engage in the unlawful retransmission of the plaintiffs’ television programming without the plaintiffs’ authorization. As to Gollner, it isn’t clear from the Motion for Preliminary Injunction and Asset Freeze and supporting affidavits, what actions or omissions, if any, allegedly have been undertaken by Gollner as to “Expedite TV,” “MundoTV,” and “MustTV” which are the subject matter of the current lawsuit as opposed to “SetTV” which was the subject matter of the prior lawsuit and settlement agreement.

According to paragraphs 10-11 of the affidavit of Kevin Gideon (Doc. 13-2), Gollner received SetTV profit distributions through deposits made to Leisure Suit

Larry, LLC, a Florida limited liability company. In paragraph 12 of the affidavit it is also alleged that SetTV profits were distributed in accordance with an operating agreement for Set Broadcast, LLC, a Florida limited liability company. Gollner denies being a member of either of the two Florida companies as alleged and denies the authenticity of the operating agreements for the companies that are attached to the affidavit. In any event, the allegations in the affidavit pertaining to Leisure Suit Larry, LLC and Set Broadcast, LLC are further problematic in that it is not averred that either of the two companies ever had anything to do Expedite TV, Mundo TV or Must TV, the rebroadcasting services that are the subject matter of the pending complaint. In fact, according to the records of the Florida Department of State, both Leisure Suit Larry, LLC and Set Broadcast, LLC were involuntarily dissolved in 2019 following the execution of the settlement agreement.

The Motion for Preliminary Injunction and Asset Freeze and accompanying affidavits and exhibits which exceed 1000 pages involve a myriad of legal and factual issues and will require significant resources to address. On the other hand, Gollner's Motion to Dismiss for Lack of Personal Jurisdiction involves narrow and relatively straight forward issues concerning whether the Florida long arm statute has been satisfied and whether Gollner has sufficient minimum contacts to justify being haled into court in Florida.

In this case, the most feasible and prudent course of action is for this Court to first resolve the jurisdictional issue prior to considering the Motion for Preliminary Injunction and Asset Freeze. A district court should normally decide challenges to

personal jurisdiction before considering the merits of a preliminary injunction motion, unless it is clearly not feasible to do so. See *Bel-Ray Co. v. Chemrite (Pty) Ltd.*, 181 F.3d 435, 443 (3d Cir. 1999); *Wyrough & Loser, Inc. v. Pelmor Labs., Inc.*, 376 F.2d 543, 547 (3d Cir. 1967) (finding it proper for defendant to seek continuance of hearing on injunction in light of personal jurisdiction issue). Neither Gollner nor the Court should be required to incur the substantial resources which will be required to address the legal and factual issues set forth in the Motion for Preliminary Injunction and Asset Freeze and the voluminous affidavits and exhibits that are incorporated in the motion unless and until the jurisdictional challenge has been resolved.

Ruling upon personal jurisdiction prior to addressing the Motion for Preliminary Injunction and Asset Freeze will also alleviate the possibility of an unintended waiver of a jurisdictional defense by Gollner while defending the Motion for Preliminary Injunction and Asset Freeze. Compare *Nat. Union Fire Ins. Co. of Pittsburgh, PA v. Beta Constr. LLC*, No. 8:10-CV-1541-T-26TBM, 2010 WL 4316573, at *1 (M.D. Fla. Oct. 26, 2010) (defendant “waived his right to attack the personal jurisdiction of this Court by entering an appearance and participating in the case management conference without objecting to the Court’s personal jurisdiction.”) and *Manchester Farms, Inc. v. Supremas*, 165 F. Supp. 3d 1366, 1371 (M.D. Ga. 2016) (finding waiver of defense of lack of personal jurisdiction timely raised in answer by subsequent consent to a preliminary injunction), with *Sarvint Techs., Inc. v. Carre Techs., Inc.*, Civ. A. No. 1:15-69, 2015 WL 11718110, at *2-3 (N.D. Ga. July 2, 2015) (finding no waiver where motion to dismiss was filed before the court took motion for preliminary

injunction under advisement).

WHEREFORE, Defendant, Stefan Gollner, respectfully requests that the Scheduling Orders be modified to reflect that his response to Plaintiffs' Motion for Preliminary Injunction and Asset Freeze (Doc. 13) shall be due on a date following the disposition of Defendant's Motion to Dismiss for Lack of Jurisdiction (Doc. 17).

Local Rule 3.01(g) Certification

The undersigned certifies that on April 20, 2022, he conferred on behalf of the movant via email and by phone on April 22, 2022 with the plaintiff's counsel, Timothy Frank, Esq., in a good faith effort to resolve the foregoing motion but has been advised that the plaintiffs oppose the motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via the CM/ECF system which will provide copies to all parties who have appeared in the case and that a copy will be mailed to Osivette Brito on the 25th day of April 2022.

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