

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-5103**September Term, 2018****1:14-cv-01984-CRC****Filed On: August 7, 2019**

Edwin Moldauer,

Appellant

v.

Constellation Brands, Inc., et al.,

Appellees

BEFORE: Griffith, Wilkins, and Katsas, Circuit Judges

ORDER

Upon consideration of the motions for summary affirmance, the responses thereto, the replies, and the surreplies; the motion to appoint amicus curiae; the motion for an evidentiary hearing; the corrected motion for leave to adduce additional evidence; the motions to govern, the response thereto, the reply, the lodged surreply, and the motion for leave to file the surreply; the motion for compensation; the motion for de novo review; and the notices filed by appellant, it is

ORDERED that the motion for leave to file the surreply be denied. It is

FURTHER ORDERED that the motions for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). This court reviews de novo the district court's dismissal of the complaint for lack of subject matter jurisdiction, see DCH Regional Medical Center v. Azar, 925 F.3d 503, 505 (D.C. Cir. 2019), and for lack of personal jurisdiction, see Livnat v. Palestinian Auth., 851 F.3d 45, 48 (D.C. Cir. 2017). The district court correctly concluded that it lacked subject matter jurisdiction over appellant's claims against the Department of Labor. This circuit is not the appropriate forum to review the final order of the Secretary of Labor dismissing appellant's Sarbanes-Oxley Act whistleblower complaint, as appellant has not disputed that the alleged violations occurred in California, and that he resided in California at that time. See 18 U.S.C. § 1514A(b)(2)(A); 49 U.S.C. § 42121(b)(4)(A). And to the extent appellant seeks to file a lawsuit pursuant to the Sarbanes-Oxley Act's 180-day provision alleging retaliation, see 18 U.S.C. § 1514A(b)(1)(B), the Department is not subject to the provisions of the Act and is not a proper defendant in such an action, see id. § 1514A(a).

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Next, the district court properly held that appellant failed to “make a prima facie showing of the pertinent jurisdictional facts” establishing the court’s personal jurisdiction over appellee Constellation Brands, Inc. (“Constellation”). Livnat, 851 F.3d at 56-57 (internal quotation marks omitted). Appellant has not alleged that Constellation’s “suit-related conduct” created a “substantial connection” with the District, such that the court could exercise specific personal jurisdiction. Estate of Klieman v. Palestinian Auth., 923 F.3d 1115, 1120 (D.C. Cir. 2019) (citation and internal quotation marks omitted). Moreover, appellant has not shown that Constellation, which is neither incorporated nor headquartered in the District, has affiliations with the District that are “so continuous and systematic as to render [it] essentially at home,” so as to support the exercise of general jurisdiction. Daimler AG v. Bauman, 571 U.S. 117, 127 (2014) (internal quotation marks omitted); see also Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 926-27 (2011). And this court need not address appellant’s argument, raised for the first time on appeal, that Constellation is subject to general jurisdiction in the District due to its interactions with the government. See Keepseagle v. Perdue, 856 F.3d 1039, 1053 (D.C. Cir. 2017) (“It is well settled that issues and legal theories not asserted at the District Court level ordinarily will not be heard on appeal.” (citation and internal quotation marks omitted)). Finally, appellant’s contentions that Constellation consented to personal jurisdiction by intervening in an unrelated prior case and by failing to request a “special appearance” lack merit. See Fed. R. Civ. P. 12(b); GSS Grp. Ltd. v. Nat’l Port Auth., 680 F.3d 805, 816 n.7 (D.C. Cir. 2012).

Finally, appellant has not shown that the district court erred in denying leave to amend the complaint. See Hettinga v. United States, 677 F.3d 471, 480 (D.C. Cir. 2012) (per curiam) (“A district court may deny a motion to amend a complaint as futile if the proposed claim[s] would not survive a motion to dismiss.”). It is

FURTHER ORDERED that the motion to appoint amicus curiae, the motion for an evidentiary hearing, the corrected motion for leave to adduce additional evidence, and the motion for compensation be denied. It is

FURTHER ORDERED that the motion for de novo review be dismissed as moot to the extent this court is already applying de novo review. The motion is otherwise denied.

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Amanda Himes
Deputy Clerk