



## BLOGS

Choice of Forum/Venue

# Delaware Federal Court Declines to Dismiss Hotel Guest's Claims Against Franchisor Based on Alleged Sexual Assault at Turkish Hotel

A hotel guest has sued a Turkish franchisee and several Wyndham entities in Delaware federal court, alleging she was sexually assaulted during her stay at a franchised Wyndham hotel in Istanbul. *Roe v. Wyndham Worldwide, Inc.*, 2020 WL 707371 (D. Del. Feb. 12, 2020). The Wyndham defendants moved to dismiss the negligence and vicarious liability claims against them, arguing both that the doctrine of forum nonconveniens barred litigation in the United States and that the guest had failed to state a valid claim against them. The court denied both grounds for dismissal.

In evaluating the Wyndham defendants' *forum nonconveniens* argument, the court considered four factors: (1) the availability of an adequate alternative forum, (2) the amount of deference to be afforded to the plaintiff's choice of forum, (3) the balance of private interest factors, and (4) the balance of public interest factors. The court agreed that the Wyndham defendants had established — through the affidavit of a Turkish attorney — that Turkey was both an available and adequate forum. The court also found that the balance of private interest factors weighed in favor of dismissal and public interest factors weighed "marginally" in favor of dismissal. For example, the court found that the ease of access to sources of proof, the practical problem that some of the foreign defendants were not subject to the court's jurisdiction, and the burdens associated with resolving conflict of law issues and applying foreign law weighed in favor of dismissal. The court held, however, that the Wyndham defendants' showing, together, was still not enough to overcome the strong deference afforded to a plaintiff's choice of forum.

The court also denied the Wyndham defendants' motion to dismiss for failure to state a claim because the court could not resolve on a motion to dismiss the parties' factual dispute over whether the Wyndham defendants had the requisite degree of control over the franchise to establish liability. The court did, however, dismiss claims against the Turkish franchisee and the UK-based Wyndham franchisor entity because the court lacked personal jurisdiction over the claims alleged against them.

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