

Ex-Trump Aide Tells 7th Circ. Defamation Suit Belongs In Ill.

By Celeste Bott

Law360 (April 21, 2021, 4:38 PM EDT) -- A former adviser for Donald Trump's 2016 presidential campaign told the Seventh Circuit on Wednesday that an Illinois federal court prematurely tossed his defamation claims accusing Perkins Coie LLP and the Democratic National Committee of disseminating false information about him.

Carter Page argued that he should have been allowed to conduct jurisdictional discovery in the case. But Perkins Coie and the DNC contended during oral arguments before an appellate court panel that the former adviser is forum shopping, piecing together "tenuous" Illinois connections to be able to sue in Illinois. They say the Northern District of Illinois got it right when it dismissed for lack of jurisdiction Page's lawsuit claiming Perkins Coie was paid \$12.6 million to conduct opposition research that fueled a dossier "replete with falsehoods" about him.

"This is the second unsuccessful lawsuit plaintiffs have filed against these defendants," said Stephen Barry of Latham & Watkins LLP, arguing for the DNC, the international law firm and Perkins Coie attorneys Marc Elias and Michael Sussmann. "And it was simply too late to file defamation claims, without at least the possible application of a saving statute, like Illinois but not D.C., and not what most other jurisdictions provide."

The claims are largely linked to Washington, D.C., Barry said, with weak ties to Illinois, such as the "vague" allegation that some Perkins Coie attorneys in Chicago had significant ties to a political law group led by Elias in the firm's D.C. office.

"But we don't know what those significant ties were, which Perkins Coie lawyers in Chicago were supposedly involved and what they purportedly did," Barry said. "There's not a single well-plead fact that plausibly suggests anyone in Chicago had any involvement whatsoever with the events that purportedly led to a defamatory statement."

But James Kelly of Pierce Bainbridge PC, representing Page, said the case was a "tale of two cities" between Washington, D.C., and Chicago, and that **allegations** about the role of Perkins Coie's Chicago-based general counsel Matthew Gehringer in the conduct at issue sufficiently links the firm to Illinois.

Personal jurisdiction arises from claims of "Mr. Gehringer funneling DNC money to pay for and fund the dossier and the agency relationship that the law firm had in service to its client, the DNC," Kelly said.

Though much of the district court's opinion dismissing the case focused on specific personal jurisdiction,

with the court holding that Page hadn't established that either the firm or the DNC make Illinois their "home," much of the discussion on Wednesday centered on diversity jurisdiction.

The firm and the DNC point to the U.S. Supreme Court's holding in *Carden v. Arkoma Assocs.*, in which it ruled diversity jurisdiction in a suit against a partnership depends on the citizenship of each of its members, and the Seventh Circuit's 2003 finding in *ISI International Inc. v. Borden Ladner Gervais LLP*, in which it found no diversity jurisdiction when one of the defendant law firm's partners was a U.S. citizen living outside the United States. Those principles also apply here, as there are Perkins Coie partners who are U.S. citizens living in China, they said.

Kelly argued on Wednesday that no final determination has been made as to whether there was indeed a stateless partnership, and at the time the complaint was originally filed, Page hadn't known whether there was a domiciled member of the firm in China or elsewhere, hence the need for jurisdictional discovery.

"All we're seeking is more information. We've made these allegations based upon information and belief and in good faith," he said.

But U.S. Circuit Judge Amy J. St. Eve also pressed Kelly to answer as to whether the appellate court would need to overrule its own precedent in *ISI International* to find subject matter jurisdiction for Page.

"I think it would be premature to make any type of conclusion that these folks in China, Hong Kong, Beijing, wherever they may be, are necessarily domiciled there when they're still in the U.S. considered to be U.S. citizens," he said.

Barry countered that the three stateless Perkins Coie attorneys submitted sworn affidavits with the firm's brief to the appellate court testifying to where they live and work, and neither in briefing nor in argument has Page disputed anything in those declarations or called into question their veracity.

"Absent some specific, well-founded dispute as to the facts in those affidavits, I don't think there's any reason for the court to allow the sort of broad brush jurisdictional discovery that plaintiff has generally suggested it might need here," he said.

Page's January 2020 lawsuit claimed that in September 2016, during that year's heated presidential campaign, he catapulted into prominence after media reports described references to him in a dossier of opposition research concerning then-candidate Trump.

The dossier alleged Page met with two Russian officials in his capacity as a "foreign affairs adviser" to the Trump campaign, and Page claims that he "had not and to this day has not met with either of those individuals." He further alleged that even though the DNC and its attorneys knew the information in the dossier about him was false, they still directed a private investigator to disseminate the dossier to media outlets.

U.S. Circuit Judges Michael Scudder, Amy St. Eve and Thomas Kirsch sat on the panel for the Seventh Circuit.

Page is represented by John Pierce, James Kelly and Andrew Calderon of Pierce Bainbridge PC and Charles Philbrick of Rathje Woodward LLC.

Perkins Coie and the DNC are represented by Terra Reynolds and Stephen Barry of Latham & Watkins LLP.

The case is Carter Page et al. v. Democratic National Committee et al., case number 20-2781, in the U.S. Circuit Court of Appeals for the Seventh Circuit.

--Additional reporting by Kevin Penton and Lauraann Wood. Editing by Nicole Bleier.

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