

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-014436

11/06/2007

HON. EDWARD O. BURKE

CLERK OF THE COURT
T. Melius
Deputy

MONTANA HOLDINGS LTD

KIMBERLY A WARSHAWSKY

v.

JOHN DOE

LOUIS J HOFFMAN

MINUTE ENTRY

The Court has received and reviewed Defendant, John Does I-X's ("Doe") Motion to Dismiss and to Quash Subpoenas and Plaintiff, Montana Holdings Ltd.'s ("Montana") Response and Motion to Compel Production, and, having heard oral argument thereon and reviewed the cases cited, makes the following ruling.

FACTS

Montana is a Bahamian corporation involved in the development of the Rum Cay Resort Marina in Rum Cay, Bahamas (the "Resort"). In July of 2007, John Mittens, Montana's CEO became aware of the "Resortbuyerbeware.com" website (the "Website"). The Website allegedly contained false and defamatory statements about the Resort project and the people directly involved in its development. The Website was allegedly created by Doe using the pseudonym "Peter Evans." The Website was registered through Domains By Proxy, Inc. ("DBP"), a domain name registrar that protects the anonymity of the registrant. DBP is a subsidiary of GoDaddy.com, Inc. ("GoDaddy"), another domain name registrar. Both registrar entities are domiciled in Arizona.

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Montana's counsel sent a cease and desist e-mail on July 31, 2007 asking Doe to remove the Website. Because Doe chose not to remove the Website as Montana had requested, Montana served subpoenas on both DBP and GoDaddy requesting certain documents and information, including, but not limited to: contact information for the person who registered or developed the Website, all copies of all versions of the Website, documents reflecting the number of the visitors to the Website, and any and all communications between the registrar and the registrant of the domain name. Doe seeks to dismiss the case and quash the subpoenas in order to protect his anonymity.

Personal Jurisdiction

Personal jurisdiction allows a court to enter a binding judgment on a party. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72, (1985). Arizona's long-arm statute, Rule 4.2(a) of Civil Procedure, allows the exercise of personal jurisdiction over a non-resident to the full extent permitted by the Due Process Clause of the U.S. Constitution. Absent customary foundations for personal jurisdiction, such as domicile, physical presence, etc., due process requires that the defendants in an action have purposeful minimum contacts with the forum state so that the state's exercise of personal jurisdiction over the defendant does not offend "traditional notions of fair play and substantial justice." Int'l Shoe Co. v. State of Washington, 326 U.S. 310, 316 (1945).

Plaintiff bears the burden of establishing personal jurisdiction. Ziegler v. Indian River County, 64 F.3d 470, 473 (9th Cir.1995) (citing Farmers Ins. Exch. v. Portage La Prairie Mut. Ins. Co., 907 F.2d 911, 912 (9th Cir.1990)). To determine if sufficient minimum contacts exist with the forum state so the exercise of personal jurisdiction over the defendant does not offend the Due Process Clause, courts examine "the relationship among the defendant, the forum, and the litigation." Shaffer v. Heitner, 433 U.S. 186, 204, (1977). "The nature of the defendant's contacts with the forum state will determine whether the court exercises general or specific jurisdiction over the defendant." Travelers Cas. & Sur. Co., 252 F. Supp.2d 917, 930 (D. Ariz. 2003).

General jurisdiction is appropriate when the defendant's contacts with the forum state are "substantial" or "continuous and systematic." Helicopteros Nacionales de Columbia v. Hall, 466 U.S. 408, 413-14 (1984). That is not the case here. In the absence of general jurisdiction, a three part test is used to determine whether specific jurisdiction is appropriate, i.e.: "(1) the defendant performed some act or consummated some transaction within Arizona by which he purposefully availed himself of the privilege of conducting activities in Arizona; (2) the claim arises out of or relates to the defendant's Arizona-related activities; and (3) the exercise of jurisdiction would be reasonable." Austin v. Crystaltech Web Hosting, 211 Ariz. 569, 574, 125 P.3d 389 (App. 2005).

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In tort cases, the “purposeful availment” requirement is met if the defendant’s “tortious conduct is purposefully directed at and causes the brunt of its effect in the forum state.”

As in Austin, supra, neither Plaintiff nor Defendant are Arizona residents or live in Arizona, Arizona has no interest in resolving a dispute between a Bahamian corporation and a non-Arizona resident, and Arizona has no interest in the substantive law of the Bahamas. The fact that Defendant, Doe is using DBP as a front to protect his identity does not constitute sufficient minimum contacts with Arizona to support the exercise of specific jurisdiction over Doe.

Accordingly, Doe’s Motion to Dismiss and to Quash Subpoenas is GRANTED.

Montana’s Motion to Compel Production is DENIED as moot.