

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TODD J. HOLLIS,

Plaintiff

vs.

TASHA C. JOSEPH,
individually, and as owner
and operator of
DONTDATEHIMGIRL.COM,
EMPRESS MOTION PICTURES,
doing business as THE CAVELLE
COMPANY, INC., MERITT
LATTIMORE DALLAS, ALESIA
ROSCOV, ANNA DOE,
BARBARA DOE, CATHERINE
DOE, DEBORAH DOE, and
EMILY DOE,

Defendants

CIVIL DIVISION

NO. GD06-012677

CODE: 008

MEMORANDUM AND ORDER OF COURT

HONORABLE R. STANTON WETTICK, JR.

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MEMORANDUM AND ORDER OF COURT

WETTICK, A.J.

This is a defamation action to recover damages from postings on a website. The preliminary objections of Tasha C. Joseph, individually, and as owner and operator of DontDateHimGirl.com, Express Motion Pictures, doing business as The Cavelle Company, Inc. ("Joseph Defendants") raising a lack of jurisdiction over the person are the subject of this Memorandum and Order of Court.

Plaintiff alleges that Tasha C. Joseph is the founder, owner, and operator of a website known as DontDateHimGirl.com. He alleges that Cavelle Company, Inc., is the registrant for the domain name "dontdatehimgirl.com." DontDateHimGirl.com is a website that permits women to make anonymous postings about men. On May 24, 2006, a profile of plaintiff appeared on the DontDateHimGirl.com website. Subsequently, additional profiles of plaintiff were posted.

Plaintiff alleges that the profiles of him falsely stated, *inter alia*, that (1) he has multiple children; (2) he has herpes; (3) he has transmitted a STD to an anonymous poster; and (4) he is gay or bisexual.

The Long-Arm Act permits this court to exercise jurisdiction over defendants to the fullest extent permitted by the Fourteenth Amendment. The relevant facts for determining whether the exercise of jurisdiction is permitted under the Fourteenth Amendment are as follows:

The server of DontDateHimGirl.com is located in Florida. All website operations took place in Florida. DontDateHimGirl.com is a minimally interactive website in that an individual posts information and that posted information appears in the form of a "profile." DontDateHimGirl.com does not specifically solicit residents of Pennsylvania to post profiles on the website. However, defendants know that residents of Pennsylvania will post profiles on the website.

DontDateHimGirl.com maintains on its server an online store where users of the website may purchase clothing and accessory items. The online store has sold approximately \$200.00 worth of merchandise to six Pennsylvania residents, which is less than five percent of the total sales of the online store.

DontDateHimGirl.com obtains revenue through advertising. Its primary source of advertising revenue is the Google AdSense program. While there are other sources of advertising not associated with this program, none are Pennsylvania residents.

The Google AdSense program operates as follows: Advertisers have contracts with Google to place their advertisements. Google places the advertisements on countless websites, including DontDateHimGirl.com, through contracts with the website operators. Google selects the websites on which it will place the advertisements. However, the advertiser might generally describe the types of websites where the advertisements should be placed. For example, a Pittsburgh dentist would request that his or her ads be placed to reach Pittsburgh residents using the website.

Google pays the website operator based on "clicks" on the link taking the viewer from the website of DontDateHimGirl.com to the website of the advertiser. Google knows the total amount of money it has paid defendants; however, it has no way of

knowing the amount of money that it has paid on profiles of people that are identified with Pennsylvania.

The case law supports the Joseph defendants' position that this court may not exercise jurisdiction over them.

In *Efford v. Jockey Club*, 796 A.2d 370 (Pa. Super. 2002), the Superior Court used the "sliding scale" developed by the case law in the Third Circuit District Courts to determine whether a foreign company's use of an Internet website permits a Pennsylvania court to exercise personal jurisdiction over a foreign company under Pennsylvania's Long-Arm Act.

The defendant's website permitted users, for a fee, to register their foals via the Internet. The Court described the website to be "general advertising with the added convenience of an on-line registry that was not directed to any particular state." *Id.* at 375. The Court ruled that the mere establishment of a website in which a user may register a horse on-line does not, on its own, suffice to establish general jurisdiction.

The Court stated:

The web site is available on the Internet and accessible by any person with access to the World Wide Web. Appellants did not allege that Appellee "directly mailed" the web site to persons. The web site appears from the record to be general advertising with the added convenience of an on-line registry and was not directed toward any particular state. Therefore, we find that the mere establishment of a web site in which a user may register a horse on-line does not, on its own, suffice to establish general jurisdiction. (Footnote omitted.) *Id.* at 375.

Plaintiff relies on *Mar-Eco, Inc. v. T&R and Sons Towing and Recovery, Inc.*, 837 A.2d 512 (Pa. Super. 2003), which held that the Pennsylvania courts could exercise

jurisdiction over a Maryland motor vehicle dealer because of its presence in Pennsylvania through its Internet website.

The defendant was in the business of buying, selling, and servicing motor vehicles; its principal place of business was in Maryland. The defendant's website permitted the defendant to perform a significant amount of commercial business over the Internet. Customers could use the website to apply for employment, search the new and used vehicle inventory, apply for financing to purchase a vehicle, order parts, and schedule service appointments. A user could request specific price quotes on specific vehicles and exchange trade-in information. The website stated: "We've made shopping for a car much easier for you by allowing you to shop and virtually complete the entire transaction via your computer." *Id.* at 517. The Court found that the website provided a basis for general personal jurisdiction because "the record demonstrates that this is a highly interactive website with an exchange of information that permitted Waldorf to perform a significant amount of commercial business over the Internet." *Id.* at 518.

The Court distinguished *Efford* on the ground that the "level of interaction rises beyond the mere registration capability of the website in *Efford*. Rather, in this case, the activity on the website was of a commercial nature that permitted extensive interaction with the host computer" *Id.* at 517.

In the present case, the Joseph Defendants do not perform a significant amount of commercial business over the Internet. Thus, the website is insufficient to establish general personal jurisdiction "because it [is] simply general advertising with the 'added convenience of an online registry.'" *Id.* at 517.

Hy Cite Corp. v. BadBusinessBureau.Com, 297 F.Supp.2d 1154 (W.D. Wis. 2004), is a case similar to the present case. The defendant was a limited liability company organized under the laws of St. Kitts/Nevis, West Indies. It operated a website, "The Rip-off Report," as a forum for consumer complaints about businesses. Consumers submit complaints about a product or service. The defendant posted these complaints on its website. Consumers had submitted at least 61,000 complaints to the defendant. The products of the plaintiff (a Wisconsin business) had been the subject of 30 to 40 of these complaints. The plaintiff instituted suit in Wisconsin in which it contended that the defendant had engaged in unfair competition, false advertising, disparagement and trademark infringement in violation of state and federal law.

The Court sustained the defendant's motion to dismiss the case for lack of jurisdiction over the person. The Court concluded that if the defendant's contacts with Wisconsin were deemed to be of a sufficient degree that it would be fundamentally fair to require the defendant to appear in the Wisconsin Courts, the defendant could be haled into court in any state. This is inconsistent with the United States Supreme Court's giving significance to territorial boundaries.

Defendant's website is accessible to anyone connected to the internet anywhere in the world. Under plaintiff's argument, defendant could be haled into court in any state for any controversy, regardless whether defendant had any contact with a resident of that state. This result would be inconsistent with the Supreme Court's understanding of the requirements of due process. *Id.* at 1162.

For these reasons, I enter the following Order of Court:

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CIVIL DIVISION

TODD J. HOLLIS,

Plaintiff

vs.

TASHA C. JOSEPH,
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BARBARA DOE, CATHERINE
DOE, DEBORAH DOE, and
EMILY DOE,

Defendants

NO. GD06-012677

ORDER OF COURT

On this 5 day of April, 2007, it is hereby ORDERED that the preliminary objections of Tasha C. Joseph, individually, and as owner and operator of DontDateHimGirl.com, and Express Motion Pictures, doing business as The Cavelle Company, Inc., raising a lack of jurisdiction over the person are sustained.

BY THE COURT:



WETTICK, A.J.