

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DISH NETWORK L.L.C.,
SLING TV L.L.C., and
NAGRASTAR LLC

Plaintiffs,

vs.

CASE NO. 2022-cv-00603-KKM-SPF

JASON LABOSSIERE
SEAN BEAMAN,
STEFAN GOLLNER
OSIVETTE BRITO,
Individually and collectively
d/b/a EXPEDITE TV,
MUNDO TV, and MUST TV

Defendants.

**DEFENDANT'S MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION WITH INCORPORATED MEMORANDUM OF LAW**

Defendant, Stefan Gollner ("Gollner"), by and through his undersigned counsel and, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, hereby moves this Court for an order dismissing Gollner from this action filed by Plaintiffs, Dish Network L.L.C., Sling TV L.L.C., and Nagrastar LLC ("Plaintiffs") due to lack of personal jurisdiction. In support of this motion, Gollner states as follows:

Factual Background

Plaintiffs provide television programming via satellite and internet to subscribers throughout the United States. (Complaint ¶1). On March 15, 2022, Plaintiffs filed their complaint (the "Complaint") asserting three causes of action related to alleged rebroadcasting of Plaintiffs' copyrighted streaming television content without Plaintiffs' authorization. The three counts allege two violations of the Federal Communications

Act, 47 U.S.C. § 605 and one violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201.

Plaintiffs are citizens of Colorado (Complaint ¶¶2-4). The defendants are individuals residing in California and Florida (Complaint ¶¶4-7). It is alleged in the Complaint that personal jurisdiction exists by virtue of Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure and that the defendants “purposefully directed their conduct toward and purposefully availed themselves of the privileges of conducting business in Florida” and caused injury to Plaintiffs in Florida (Complaint ¶¶11).

The conduct of the defendants that allegedly occurred in Florida consists of the following: 1) use of a Florida fictitious business name; and 2) processing payments to Expedite TV through Florida entities (Complaint ¶¶ 30). It is not alleged that Gollner has any offices or employees in Florida, or that he conducted any business while in Florida. It is unclear from the Complaint what minimum contacts that Plaintiffs contend that Gollner has with the state of Florida which would be sufficient for a Florida court to exercise personal jurisdiction over him. In fact, ascertaining the basis for Plaintiffs’ claim that Gollner purposefully availed himself of the privileges of conducting business in Florida has been rendered much more difficult due to the fact that the complaint is clearly deficient in distinguishing between the conduct of Gollner and that of the other defendants and constitutes a prohibited shotgun pleading.¹ Likewise, Plaintiffs do not identify a specific basis for personal jurisdiction under Florida’s long-arm statute, §48.193, Fla. Stat. For the reasons set forth below, Plaintiffs have failed to establish a

¹ One “type of shotgun pleading is a complaint that ‘assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.’” Barnapov v. Amuial, 986 F.3d 1321, 1325 (11th Cir. 2021) (quoting Weiland v. Palm Beach Cnty. Sheriff’s Off., 792 F.3d 1313, 1321 (11th Cir. 2015)).

basis for personal jurisdiction under the Florida long arm statute or sufficient minimum contacts between Gollner and the state of Florida to satisfy the due process clause of the Fourteenth Amendment to the United States Constitution.

Gollner's Supporting Affidavit

Gollner has contemporaneously filed an affidavit in support of this motion. In the affidavit, Gollner affirms his lack of contacts with the state of Florida. Gollner is not a resident of Florida (Gollner Affidavit ¶4). Gollner owns no real or personal property located in Florida (Id ¶5). Gollner has no ownership interest in any Florida business entity or in any bank account. (Id ¶6, ¶9). Gollner maintains no office in Florida and has no license to operate a business in Florida. (Id at ¶7, ¶13). Gollner had no contact with any customers of Expedite TV in Florida or elsewhere. (Id at ¶18). Further, Gollner had no involvement in Set TV LLC or the related litigation (Id. at ¶14, ¶17). When a defendant submits an affidavit contesting personal jurisdiction, the burden of proof shifts to the plaintiffs to produce evidence that supports jurisdiction. See Louis Vuitton Mallatier SA v. Mosseri, 736 F.3d 1339, 1350 (11th Cir. 2013.)

MEMORANDUM OF LAW

I. Failure to Sufficiently Plead Grounds for Personal Jurisdiction

Defendants have failed to plead facts necessary to establish personal jurisdiction over Gollner. Plaintiffs have the burden of alleging a prima facie case for personal jurisdiction. See Thompson v. Carnival Corp., 174 F. Supp.3d 1327, 1333 (S.D. Fla. 2016.) It is well established that a plaintiff's obligation to provide the grounds of its entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. See Ashcroft v. Iqbal, 556 U.S.

662 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Here, the allegations of the Complaint as to personal jurisdiction fall well short of this standard.

The allegation in paragraph 11 of the complaint that defendants “purposefully directed their conduct toward and purposefully availed themselves of the privileges of conducting business in Florida” provides no facts to support the conclusory statement. This statement is no more than a formulaic recitation. See Sargeant v. Maroil Trading Inc., No. 17-81070-CIV-BLOOM/REINHART, 2018 WL 3031841, at *1 (S.D. Fla. May 30, 2018); Storms v. Haugland Energy Group, LLC, 18-CV-80334-BLOOM/REINHART, 2018 WL 4347603 at *2 (S.D. Fla. Aug. 17, 2018). Although the allegation that a defendant purposefully avails himself or herself of the privilege of conducting business in the forum state is an element of the due process analysis required to establish personal jurisdiction, that allegation, by itself, is insufficient to support extension of personal jurisdiction and, again, is simply a conclusory statement bereft of factual support. See George & Co. LLC v. Spin Master Corp., No. 2:18-cv-154-FtM-38MRM, 2018 WL 5268754 at *3 (M.D. Fla. September 13, 2018) (“a plaintiff must allege more than labels and conclusions amounting to a formulaic recitation of the elements of a cause of action”).) Additionally, the allegation in the complaint that the defendants “caused injury to Plaintiffs in Florida” is a similar formulaic recitation and conclusory statement. Id. There is no allegation in the Complaint as to what injury Gollner caused to Plaintiffs that occurred in Florida or what injury to Florida residents resulted from Gollner’s conduct. Accordingly, the Complaint should be dismissed for failure to plead grounds to establish personal jurisdiction.

II. The Conduct Alleged Fails to Meet the Requirements for Establishing Personal Jurisdiction

In addition to the pleading deficiencies outlined above, the conduct alleged in the Complaint, even if taken as true, does not support the exercise of personal jurisdiction in Florida over Gollner. See Ashcroft, 556 U.S. at 686-687 (“the Federal Rules do not require courts to credit a complaint's conclusory statements without reference to its factual context”). When considering the applicability of Rule 4(k)(1)(a), a court must conduct a two-step inquiry to determine whether personal jurisdiction would exist in a court of general jurisdiction in the state where the federal district is located. See Mut. Serv. Ins. Co. v. Frit Indus., Inc., 358 Fed.3d 1312, 1319 (11th Cir. 2004). First, the court must “determine whether the exercise of jurisdiction is appropriate under the forum state’s long arm statute.” Id. Second, the court must “examine whether the exercise of personal jurisdiction over the defendant would violate the due process clause of the Fourteenth Amendment to the United States Constitution...” Id. Accordingly, the court must look to state law in determining whether personal jurisdiction can be extended. See Daimler AG v. Bauman, 571 U.S. 117, 125 (2014.)

III. Grounds Under The Long Arm Statute

To obtain specific jurisdiction under Florida’s long-arm statute, the Supreme Court of Florida has set forth a two-step inquiry: (1) does the complaint allege sufficient jurisdictional facts to bring the action within the ambit of the statute; and, if it does (2) do sufficient “minimum contacts” exist between the defendant and the forum to satisfy due process requirements. See Venetian Salami Co. v. Parthenais, 554 So.2d 499, 500 (Fla. 1989.). The exercise of jurisdiction over a defendant lacking minimum contacts to the forum state runs afoul of “traditional notions of fair play and substantial justice.” Int’l Shoe Co. v. Wash., 326 U.S. 310, 316 (1945).

In this case, Plaintiffs have failed to specify in the Complaint which ground under the Florida long arm statute that they contend is applicable to Gollner. Although not altogether clear, it appears that Plaintiffs may be contending that Gollner allegedly committed a tortious act in Florida within the meaning of §48.193(1)(a)2. See Louis Vuitton Mallatier SA, 736 F.3d at n. 8 (citing Chloé v. Queen Bee of Beverly Hills, LLC, 616 F.3d 58, 171 (2d Cir. 2010)) (holding that trademark infringement is a tort). In order to establish that a tortious act occurred in Florida, the conduct claimed must have occurred in Florida and have a causal connection with Plaintiffs' claim. See Magwitch LLC v. Pussers West Indies Ltd., 200 So.3d 216, 219 (Fla. 2d DCA 2019.) ("Specific jurisdiction requires a causal connection between the plaintiff's claim and the defendant's activity in the state..."); see also Stonepeak Partners v. Tall Tower Capital, 231 So.3d 548 (Fla. 2d DCA 2017.) Any allegations in the Complaint concerning tortious conduct being undertaken by Gollner, even if taken as true, do not establish the commission of a tortious act by Gollner in Florida. For example, in paragraphs 29 and 30 of the Complaint, it is alleged, in pertinent part, as follows:

Proceeds from the sale of ExpediteTV Device Codes were deposited into a bank account established by Gollner, among other accounts. Defendants also processed credit card payments for Device Codes sold through ExpediteTV.com using an entity and Florida fictitious business that are linked directly to LaBossiere and Beaman and from which payments flowed back to Brito and Gollner. Credit card payments for Device Codes to the Mundo TV and Must TV services were also processed through Florida entities connected to LaBossiere, Beaman, Gollner and Britto.

As explained in the supporting affidavit and herein, Gollner has no interest in or connection to a Florida business entity, or a foreign entity with a Florida fictitious name

registration or a Florida bank account and, therefore did not commit a tortious act in Florida within the meaning of §48.193(1)(a)2.

Alternatively, there is no merit to any contention that personal jurisdiction may exist based upon Gollner operating, conducting, engaging in or carrying on a business in Florida within the meaning of 48.193(1)(a)1. Factors to consider for this analysis include: 1) the presence of an office or operation in Florida, 2) the possession and maintenance of a license to do business in Florida, 3) the number of Florida clients served, and 4) the percentage of overall revenue gleaned from Florida clients. See Stonepeak Partners, LP, 231 So.3d 548 at 555 (citing RMS Titanic, Inc. v. Kingsmen Creatives, Ltd., 579 Fed.Appx. 779, 783 (11th Cir. 2014)).

Gollner has no offices in Florida and has no Florida business license. (Gollner Affidavit ¶7, ¶11, ¶13). Further, Gollner has not engaged in any solicitation or service activities in Florida or processed, serviced, or manufactured products, materials, or things that were used or consumed within Florida in the ordinary course of commerce, trade, or use since prior to 2013 (Id at ¶8). Accordingly, it cannot be said that Gollner was operating, conducting, engaging in or carrying on a business in Florida within the meaning of 48.193(1)(a)1.

IV. Gollner Lacks Sufficient Minimum Contacts to Satisfy Due Process

Even if the Court determines that sufficient jurisdictional facts have been alleged in the complaint to bring the action within the scope of Florida's long-arm statute, the next inquiry is whether such allegations satisfy due process requirements. See Wendt v. Harowitz, 822 So. 2d 1252, 1257 (Fla. 2002); Int'l Shoe Co., 326 U.S. at 319. The analysis required under the Due Process Clause employs a three-part test: 1) whether

the plaintiff's claims arise out of or relate to at least one of the defendant's contacts with the forum; 2) whether the nonresident defendant purposefully availed himself of the privilege of conducting activities with the forum state, and 3) whether the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice. See George & Co. LLC, 2018 WL 5268754 at *8.

In analyzing whether a non-resident has the requisite minimum contacts with a foreign state to justify personal jurisdiction, courts should determine whether the non-resident's conduct with the forum state is such that the non-resident would reasonably anticipate being haled into court. See World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 296 (1980). The relevant contacts are contacts "with the forum State itself, not the defendant's contacts with persons who reside there." Volt, LLC v. Volt Lighting Group, LLC, 369 F.Supp.3d 1241 1247 (M.D. Fla. 2019). The proper question is whether the defendant's conduct connects him to the forum in a "meaningful way." Walden v. Fiore, 572 U.S. 277, 290-291 (2014). The necessary contacts must be made by defendant and must not be "random, fortuitous, or attenuated." Aviation One of Fla., Inc. v. Airborne, Isn. Consultants (PTY), Ltd., 722 F. App'x 870, 880 (11th Cir. 2018)

Gollner very clearly lacks sufficient contacts with Florida to reflect submission to jurisdiction in a Florida court. Gollner is not a resident of Florida and has not been since 2013 (Complaint ¶7.) Gollner has no property, offices, professional licenses, bank accounts, employees, or business entities in Florida. (Gollner Affidavit ¶5, ¶9, ¶11-13).

As to the "purposeful availment" prong of the due process requirements, the test requires determination of whether the defendant's contacts 1) are related to the plaintiff's cause of action, 2) involve some act by which the defendant purposefully

availed himself of the privileges of doing business within the forum, and 3) are such that defendant should reasonably anticipate being haled into court in the forum. See Louis Vuitton Mallatier SA, 736 F.3d at 1355. In order for a non-resident to anticipate being haled into a Florida court there must be some act by which a defendant purposely avails himself of the privilege of conducting activities within Florida which invokes the benefits and protections of its laws. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 747-475 (1985); Arch Aluminum & Glass Co., Inc. v. Haaney, 964 So. 2d 228, 233 (Fla. 4th DCA 2007).

Gollner has not engaged in solicitation or service activities in Florida (Gollner Affidavit, ¶8). Gollner does not own an interest in any Florida business entity. (Id. at ¶9). Gollner maintains no employees or offices in Florida and has no Florida professional or business license (Id. at ¶11-13). The lack of any semblance of activities by Gollner within Florida which would invoke the benefits and protections of Florida law is fatal to any contention that Gollner purposefully availed himself of the privilege of conducting activities in Florida.

Finally, for due process purposes, the Court must determine whether the exercise of personal jurisdiction comports with fair play and substantial justice. Id. at 1358. This determination requires consideration of 1) the burden on the defendant, 2) the forum's interest in adjudicating the dispute, 3) the plaintiff's interest in obtaining convenient and effective relief, and 4) the judicial system's interest in resolving the dispute.

In this case, litigating across the country from his residence in California would create an undue burden and expense for Gollner related to attending depositions,

hearings, and trial. Conversely, Florida has little interest in adjudicating this dispute as none of the plaintiffs is based in Florida, no alleged injury occurred to residents of Florida, and Gollner lacks sufficient contacts with Florida to support the exercise of personal jurisdiction over him.

CONCLUSION

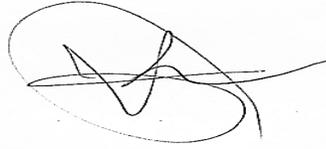
For the reasons set forth above, Plaintiffs have failed to establish a basis for the exercise of personal jurisdiction over Gollner under the Florida long arm statute and sufficient minimum contacts between Gollner and the state of Florida are lacking which would satisfy the due process clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE Defendant, Stefan Gollner, respectfully requests that this Court enter an order (i) granting this motion, (ii) dismissing Stefan Gollner from this action due to a lack a personal jurisdiction, and (iii) granting Stefan Gollner any further relief deemed appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via the CM/ECF system to James A. Boatman, Jr., Boatman Ricci 3021 Airport-Pulling Road North, Suite 202 Naples, Florida 34105. (courtfilings@botamanricci.com) on the 7th day of April 2022.

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A handwritten signature in black ink, appearing to be 'J. Walters', enclosed within a faint rectangular border.

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