

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
GENERAL DIVISION**

CITY OF HUBER HEIGHTS, OHIO.)	CASE NO: 2012-CV-02947
)	
Plaintiff,)	
)	
v.)	JUDGE MICHAEL TUCKER
)	
DON ALLEN HOLBROOK, LLC)	Third-Party Defendant Heather
)	Dobrott's Motion To Dismiss
Defendant /)	for Lack of Personal Jurisdiction and
Third-Party Plaintiff,)	Motion to Quash Service of Process
)	
v.)	
)	
HEATHER DOBROTT, et al.)	
)	
Third-Party Defendants)	

Third-Party Defendant Heather Dobrott respectfully requests that this Court dismiss Third-Party Plaintiff Don Allen Holbrook, LLC's claims against her for lack of personal jurisdiction under Ohio Rules of Civil Procedure 12(b)(2).¹ She also moves to quash service of process pursuant to Civ.R. 4.3(A)(9).

Ms. Dobrott is a Texas resident. She does not do business in Ohio and has not been to Ohio in decades. None of the allegations against her arise out of any act or omission that was committed in the State of Ohio. Moreover, even assuming—without conceding—that the allegations against her were true, a reasonable person could not have expected that Ms. Dobrott's

¹ This Motion is made in response to Defendant's Third-Party Complaint (filed 6.12.12), First Amended Third-Party Complaint (filed 6.21.12), and Second Amended Third-Party Complaint (filed 6.22.12), pursuant to Civ.R. 12(A)(2).

alleged acts or omissions would cause an injury to a person in Ohio. Under the analysis adopted by the Supreme Court of Ohio in *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St. 3d 81, 2010-Ohio-2551, 930 N.E.2d 784, Ms. Dobrott has not purposefully availed herself of the benefits and protections of Ohio's law.

Accordingly, and as further discussed in the attached Memorandum, this Court lacks personal jurisdiction over Ms. Dobrott. Nor can she cannot properly be served with legal process. Therefore, Third-Party Plaintiff Don Allen Holbrook, LLC's claims against her must be dismissed.

MEMORANDUM

I. STATEMENT OF THE CASE.

This case originally arose out of a contract dispute between the City of Huber Heights, Ohio ("the City") and Don Allen Holbrook, LLC ("Holbrook"). In sum, the City claimed that it hired Holbrook to create an economic development plan, and that Holbrook failed to comply with the terms of their agreement. *See generally* Pl's Complaint, Apr. 24, 2012. In response, Holbrook counter-sued the City. *See generally* Def's Answer & Counterclaim, May 29, 2012. Holbrook also filed a Third-Party Complaint against numerous individuals, newspapers, and websites, claiming that they conspired to defame Holbrook, which allegedly caused the City to breach the contract at issue. *See generally* Def's 2d Am. Third-Party Complaint, June 22, 2012. Heather Dobrott is one of the individuals whom Holbrook has named as a third-party defendant. Def's 2d Am. Third-Party Complaint, ¶2. According to Holbrook, Dobrott posted "defamatory, untrue, derogatory, and false statements" about Holbrook "sometime on or before February 29, 2012." Def's 2d Am. Third-Party Complaint, ¶26. In this motion, Dobrott contends that Holbrook's claims must be dismissed for lack of personal jurisdiction.

II. STATEMENT OF FACTS.

1. Heather Dobrott is an individual who resides in Garland, Texas. Dobrott Aff., ¶1.
2. Dobrott has not been to Ohio in more than twenty years. Dobrott Aff., ¶2.
3. Dobrott does not own property in Ohio. Dobrott Aff., ¶3.
4. Dobrott does not maintain bank accounts in Ohio. Dobrott Aff., ¶4.
5. Dobrott does not maintain a place of business in Ohio. Dobrott Aff., ¶5.
6. Don Allen Holbrook, LLC states that it is a limited-liability company registered in Arizona that “conducts business around the United States of America and elsewhere.” Def’s 2d Am. Third-Party Complaint, June 22, 2012, ¶1.
7. Holbrook’s only alleged factual basis for asserting jurisdiction against Dobrott is that she “posted and re-posted defamatory . . . statements on the internet . . . which [she] knew or had reason to know would be seen on the internet in Ohio.” Def’s 2d Am. Third-Party Complaint, June 22, 2012, ¶11; Dobrott Aff. ¶6.
8. Holbrook avers that the City breached its contract with him on February 29, 2012. He alleges that the City breached its contract because of Dobrott’s acts *prior* to February 29, 2012. Def’s 2d Am. Third-Party Complaint, June 22, 2012, ¶12.
9. All of the statements that Dobrott published on the internet regarding Don Allen Holbrook, LLC prior to February 29, 2012 are attached to this Brief as Exhibit A. Dobrott Aff., ¶6.
10. Dobrott’s published the statements on the attached Exhibit A under the username “soapboxmom” to the Nevada-based website “www.realscam.com.” Dobrott Aff., ¶7.
11. Dobrott’s published the statements on the attached Exhibit A from her home in Garland, Texas. Dobrott Aff., ¶8.
12. All of Dobrott’s publications on the attached Exhibit A concern Holbrook’s involvement with development projects in Pahrump, Nevada and Montgomery County, Texas. Dobrott Aff., ¶9.
13. None of Dobrott’s publications on the attached Exhibit A reference Holbrook’s activities in Ohio, the names of any residents of Ohio, or even the state of Ohio. See Exhibit A.

14. All of the web addresses that Holbrook identified in its third-party complaint(s) link to articles and discussions that were published *after* February 29, 2012—the date when its injury allegedly occurred:
- “<http://pvtimes.com/news/theme-park-contractor-holbrook-sued-by-ohio-town>” directs to an article that was published May 4, 2012
 - “<http://www.topix.com/wire/city/huber-heights-oh>” directs to a database of articles in which the City of Huber Heights is discussed. A search for “Holbrook” on this site reveals that the earliest article was published on April 10, 2012.
 - “<http://www.topix.com/wire/city/pahrump-nv?q=u:pvtimes.com>” is not an active web address
 - “http://blogs.houstonpress.com/hairballs/2012/05/earthquakes_don_holbrook_sued_huber_heights.php” links to an article that was published on May 3, 2012.
 - “<http://www.houstondinopark.com/discuss.php>” links to a discussion forum in which the earliest entry was published on May 25, 2012
 - “<http://kingwoodunderground.com/topic.jsp?topicId=11722526>” links to a discussion forum in which the earliest entry was published on March 29, 2012.

Dobrott Aff., ¶10.

III. ARGUMENT AND AUTHORITIES

The determination of whether an Ohio court has personal jurisdiction over a nonresident is a two-step process. *Fallang v. Hickey*, 40 Ohio St.3d 106, 107, 532 N.E.2d 117 (1988). First, the court must look to the words of the state's “long-arm statute” or applicable civil rule to determine whether there is jurisdiction under the facts of the particular case. *Id.* If it does, the court must decide whether the assertion of jurisdiction deprives the nonresident defendant of due process of law. *Id.* (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945)).

A. Holbrook cannot establish personal jurisdiction over Dobrott under the plain language of Ohio's Long Arm Statute and Rules for Service of Process.

Ohio's long-arm statute, R.C. 2307.382, enumerates specific acts that give rise to personal jurisdiction. The statute provides in pertinent part:

(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

* * *

(6) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state.

R.C. 2307.382(A)(6).

Similarly, Civ.R. 4.3 allows service of process on nonresidents in certain circumstances mirroring the long-arm statute:

(A) Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. 'Person' includes an individual * * * who, acting directly or by an agent, has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's:

* * *

(9) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when the person to be served might reasonably have expected that some person would be injured by the act in this state.

Thus, reading these provisions together, Holbrook cannot satisfy the requirements of R.C. 2307.382(A)(6) or Civ.R. 4.3(A)(9) unless he can demonstrate that: (1) Dobrott published defamatory statements outside of Ohio; (2) with the purpose of causing injury to an Ohio resident; and (3) Dobrott had a reasonable expectation that she inflicted an injury that would occur in Ohio. See *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St. 3d 81, 87, 930 N.E.2d 784, 792, 2010-Ohio-2551; *Clark v. Connor* (1998), 82 Ohio St.3d 309, 313, 695 N.E.2d 751. Holbrook cannot prove the latter two elements.

All of the alleged pre-February 29, 2012 defamatory statements² were published from Dobrott's home in Garland, Texas to a website that is based in Nevada. Def's 2d Am. Third-Party Complaint, p. 2–3 ¶ 1; Dobrott Aff., ¶¶7-8. *All* these alleged defamatory statements involved Holbrook's activities in Nevada and Texas. Dobrott Aff., ¶9. *None* of these statements make any reference to any Ohio resident, project, contract, or other business arrangement. See Exhibit A. Neither Dobrott nor Holbrook is a resident of Ohio. Dobrott Aff., ¶1. Her publications were not made with the purpose of inflicting an injury in Ohio, nor could she have "reasonably suspected" that her statements would have an allegedly tortious impact in Ohio. Dobrott Aff., ¶11.

Accordingly, Holbrook cannot meet the requirements of the Ohio long-arm statute to establish personal jurisdiction over Dobrott. Nor can service of process be legally made on Ms. Dobrott under Civ.R. 4.3.

B. Holbrook cannot establish personal jurisdiction over Dobrott under the due process standards mandated by the United States Constitution.

"Ohio's long-arm statute is not coterminous with due process." *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St. 3d 81, 2010-Ohio-2551, 930 N.E.2d 784, ¶45 (citing *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 237, 638 N.E.2d 541 (1994)). Therefore, even if Ohio's long-arm statute confers personal jurisdiction over Dobrott (which it does not), an Ohio court cannot exercise personal jurisdiction over her if doing so would violate her constitutional right to due process. Due process is only satisfied if Dobrott has "minimum contacts" with Ohio such that the maintenance of the suit does not offend "traditional notions of fair play and substantial

² Holbrook avers that it was solely Dobrott's pre-February 29, 2012 statements that caused the City to breach its contract with him. Any alleged statements after that date cannot be considered for jurisdictional purposes. See 16 JAMES WILLIAM MOORE, MOORE'S FEDERAL PRACTICE § 108.42[2][a], at 108-55 to 108-56 (3d ed. 2010) ("The proper focus in the specific jurisdiction analysis is on those contacts leading up to and surrounding the accrual of the cause of action. Later events are not considered.").

justice.” *Kauffman*, at ¶45 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154 (1945)). To establish such minimum contacts, a Holbrook must show that Dobrott, a nonresident third-party defendant, “purposefully [availed herself] of the privilege of conducting activities within [Ohio].” *Id.* (citing *Hanson*, 357 U.S. 235, 253, 78 S.Ct. 1228). The undisputed evidence plainly reflects that Holbrook cannot meet this standard.

When considering a jurisdictional challenge, this Court must first determine whether Holbrook is attempting to exercise “general” or “specific” jurisdiction over Ms. Dobrott. *Id.* at ¶46 (citing *Conti v. Pneumatic Prods. Corp.*, 977 F.2d 978, 981 (6th Cir. 1992)). “General jurisdiction is proper only where a defendant’s contacts with the forum state are of such a continuous and systematic nature that the state may exercise personal jurisdiction over the defendant even if the action is unrelated to the defendant’s contacts with the state.” *Id.* (quoting *Bird v. Parsons*, 289 F.3d 865, 873 (6th Cir. 2002)). Alternatively, specific jurisdiction applies when the suit arises out of or related to a defendant’s contacts with the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868 (1984). At the outset, it is important to note that Holbrook’s third-party complaint does not contain any allegations to suggest that Dobrott has “continuous and systematic contacts” with Ohio. Moreover, the undisputed facts recited above plainly establish that Dobrott is a Texas resident with no connections to the State of Ohio. Dobrott Aff. ¶¶1-11. Accordingly, in order to exercise jurisdiction of Ms. Dobrott, Holbrook’s allegations must satisfy the requirements for specific jurisdiction.

In *Kauffman Racing Equip., L.L.C. v. Roberts*, the Ohio Supreme Court adopted a three-part test to determine if exercise of specific jurisdiction is appropriate in a given case. *Kauffman*, 126 Ohio St. 3d 81, 2010-Ohio-2551, 930 N.E.2d 784, ¶48 (adopting the Sixth Circuit’s analysis

in *Southern Mach. Co. v. Mohasco Indus., Inc.*, 401 F.2d 374 (6th Cir. 1968) and *Bird v. Parsons*, 289 F.3d 865 (6th Cir. 2002)). Specifically, in order to find jurisdiction that comports with due process this Court must determine if:

1. Dobrott purposefully availed herself of the privilege of acting in Ohio or causing a consequence in Ohio;
2. The cause of action arose from Dobrott's activities in Ohio; and
3. The acts of Dobrott or consequences caused by Dobrott had a substantial connection Ohio to make the exercise of jurisdiction over Dobrott reasonable.

Kauffman, at ¶49.

1. Dobrott did not “purposefully avail” herself of the benefits and protections of Ohio law.

Regarding the first factor, “purposeful availment” is present when the defendant's contacts with the forum state “proximately result from actions by the defendant [herself] that create a ‘substantial connection’ with the forum State.” *Kauffman*, at ¶49-51. The defendant's conduct and connection with the forum must be such that she “should reasonably anticipate being haled into court there.” *Id.* (internal citations omitted). This requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts,” or of the “unilateral activity of another party or third person.” *Id.* (citing *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774, 104 S.Ct. 1473(1983) and *Helicopteros Nacionales*, 466 U.S. at 417).

This is a defamation case, and Ohio courts have been especially reluctant to find personal jurisdiction in cases involving statements made by non-Ohio residents about subjects and matters that they could not reasonably expect to have an effect in Ohio.

In *Reynolds v. International Amateur Ath. Fedn.*, 23 F.3d 1110 (6th Cir. 1994), the Sixth Circuit considered the case of an Ohio athlete, who brought a defamation claim against non-Ohio

residents who reported that that he tested positive for banned substances following an international competition in Monaco. The Sixth Circuit held that Ohio courts could not exercise personal jurisdiction on the grounds that: (1) the statements concerned activities in Monaco, not Ohio; (2) the athlete was an international competitor whose professional reputation is not centered in Ohio; (3) the statement was not published or circulated specifically for consumption in Ohio; (4) Ohio was not the ‘focal point’ of the press release, and the fact that it might have been foreseen that the report would be circulated and have an effect in Ohio was not, in itself, enough to create personal jurisdiction; (5) although the athlete lost Ohio corporate-endorsement contracts and appearance fees in Ohio, there was no evidence that the defendant knew of the contracts or of their Ohio origin. *Reynolds v. Internatl. Amateur Ath. Fedn.*, 23 F.3d 1110, 1116-20 (6th Cir. 1994).

All of the above factors that the Sixth Circuit noted to find against jurisdiction are present in this case: (1) Dobrott’s statements concerned Holbrook’s activities in Nevada and Texas; (2) Holbrook states it “conducts business around the United States of America and elsewhere”; (3) Dobrott did not make her statements specifically for consumption in Ohio; (4) Ohio was not the ‘focal point’ of Dobrott’s statements and had no reason to think that it would be circulated or have an effect in Ohio; (5) although Holbrook allegedly lost a contract in Ohio, Dobrott published nothing about said contract until after it was allegedly breached.

The Sixth Circuit has also extended *Reynolds* to internet communications. In *Cadle Co. v. Schlichtmann*, a Massachusetts resident created a website to expose what he believed to be the unlawful activities of an Ohio based-debt collector who was operating in Massachusetts. *Cadle Co. v. Schlichtmann*, 6th Cir. No. 04-3145, 123 Fed. Appx. 675 (Feb. 8, 2005). The Sixth Circuit held that Ohio courts had no jurisdiction over the Massachusetts defendant. *Id.* As in *Reynolds*,

no personal jurisdiction existed because the alleged defamatory statements were not topical to any activities in Ohio. *Id.* at 680. Importantly, the Sixth Circuit held that the fact that the statements were published on the internet—which is obviously accessible in Ohio—did not mean that jurisdiction was automatically appropriate. *Id.* at 679 (“The law does not require that people avoid using the internet altogether in order to avoid availing themselves of the laws of every state.”)(citing *Revell v. Lidov*, 317 F.3d 467, 473 (5th Cir. 2002)).

Similarly, in *Oasis Corp. v. Judd*, Oklahoma residents made a website to complain about the products of an Ohio corporation. *Oasis Corp. v. Judd*, 132 F.Supp.2d 612, 614 (S.D. Ohio 2001). The Oklahoma residents had not purchased any items from the Ohio corporation, but were upset that a product made by the company had caused a fire in a building the defendants were renting. *Id.* The *Oasis* court held that personal jurisdiction was inappropriate because: (1) the subject of the defamatory statement was topical to Oklahoma, not Ohio; (2) the plaintiff was an international company whose reputation is not centered in Ohio; (3) the website did not specifically target an Ohio audience; and (4) there was no evidence to suggest that the website was viewed by anyone in Ohio other than the plaintiff. *Id.* at 621. Importantly, the court concluded, “[t]he fact that [Defendants] could foresee that [their proclamations would be viewed] and have an effect in Ohio is not, in itself, enough to create personal jurisdiction.” *Id.* at 624 (quoting *Reynolds*, at 1120).

The same result should follow here. All of Dobrott’s statements regarding Holbrook concerned its activities in Nevada and Texas, not in Ohio. Dobrott published her statements from her home in Texas to a website that is based in Nevada. Neither the State of Ohio, nor its residents, nor any transactions that took place in Ohio were even mentioned by Dobrott in her publications. Finally, Holbrook cannot offer any evidence to suggest that Dobrott knew of

Holbrook's contracts with the City of Huber Heights at the time she made the publications that allegedly caused the alleged injuries. Dobrott, therefore, could not have reasonably anticipated that she would be haled into court in Ohio.

2. Holbrook's claims do not arise from Dobrott's contacts with Ohio.

The second prong of the Supreme Court's test involves an analysis of whether the plaintiff's claims arise from those contacts. "If a defendant's contacts with the forum state are related to the operative facts of the controversy, then an action will be deemed to have arisen from those contacts." *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1267 (6th Cir. 1996). This "does not require that the cause of action formally 'arise from' defendant's contacts with the forum; rather, this criterion requires only 'that the cause of action, of whatever type, *have a substantial connection with* the defendant's in-state activities.'" *Third Nat'l Bank v. Wedge Group*, 882 F.2d 1087, 1091 (6th Cir. 1989)(quoting *S. Machine Co.*, 401 F.2d at 384). As discussed above, Dobrott's publications have no relationship to the operative facts of the contract dispute between Holbrook and the City.

3. Ohio has no interest in the dispute between Holbrook and Dobrott.

Under the third and final prong, the acts of the nonresident defendant or consequences caused by the defendant must have a substantial connection with the forum state to make exercise of jurisdiction over the defendant reasonable. *Kauffman*, 2010-Ohio-2551 at ¶71-72. To make such a determination, a court first must consider Ohio's interest in the controversy and the reasonableness of resolving the matter in Ohio. *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 232 (6th Cir. 1972).

As discussed above, Dobrott's allegedly tortious acts or omissions have *no* connection to Ohio; they are solely related to Holbrook's activities in Texas and Nevada. Accordingly, even assuming—without conceding—that Dobrott's publications about Holbrook's activities in Texas

and Nevada were defamatory (which they plainly are not), such matters would be properly litigated in Texas or Nevada—not Ohio, which has no interest in such a controversy. Moreover, given that Dobrott has no connection—physical, personal, financial, or otherwise—to the state of Ohio, it would be entirely unreasonable and offensive to notions of fair play and justice to subject her to the jurisdiction of Ohio’s courts.

IV. CONCLUSION.

This Court should dismiss Holbrook’s claims against Dobrott for lack of personal jurisdiction. Ohio’s Long Arm Statute and Civil Rules do not allow for jurisdiction over Ms. Dobrott or for legal service of process upon her. Moreover, Holbrook’s attempt to assert jurisdiction over Ms. Dobrott offends the Due Process Clause of the United States Constitution. Third-Party Defendant Heather Dobrott respectfully requests that all claims against her be dismissed pursuant to Civ.R. 12(b)(2).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the forgoing was served upon the following via this Court's electronic filing system.

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A copy of the foregoing has been sent by regular U.S. mail on this 13th day of July, 2012, to the following:

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