UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO: 17-cv-80172-MIDDLEBROOKS

SOVEREIGN OFFSHORE SERVICES, LLC,
and PAUL MAMPILLY,

Plaintiffs,

v.

MICHAEL SHAMES,

Defendant.
_____/

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE comes before the Court upon Defendant Michael Shames' ("Defendant") Motion to Dismiss for Lack of Personal Jurisdiction ("Motion"), filed on June 16, 2017. (DE 22). Plaintiffs Sovereign Offshore Services, LLC ("Sovereign") and Paul Mampilly ("Mampilly") ("Plaintiffs") filed a response on June 30, 2017 (DE 25), to which Defendant replied on July 7, 2017 (DE 26). For reasons stated below, Defendant's Motion is granted.

I. BACKGROUND

According to the Complaint, Sovereign is a single-member limited liability company, which operates a Florida-based business.[1] (Complaint ("Compl."), DE 1 ¶¶ 3, 8). Sovereign publishes subscription electronic newsletters concerning financial information and investment research. (Compl. ¶ 8). Mampilly, a citizen of North Carolina, authors an investment newsletter and weekly column, which Sovereign publishes. (Compl. ¶ 9; Supplement to Complaint, DE 28 ¶ 7). Defendant, a citizen of California, writes a blog for the San Diego Consumers' Action

[1] Sovereign's sole member, Monument & Cathedral Holdings, Inc., is incorporated and has its principal place of business in Maryland. (Amended Supplement to Complaint, DE 30 ¶¶ 5-8).

Network ("SDCAN"), which is accessible at www.sandiegocan.org ("SDCAN Website"). (Compl. ¶ 10; Supplement to Complaint ¶ 8).

On October 25, 2016, Defendant published a blog post on the SDCAN Website about Mampilly, stating that he is "a known investment scammer," who has previously written for the Palm Beach Newsletter, Stansberry, and Agora Financial, "all online investment scammers." (Compl. ¶¶ 13, 16). The Palm Beach Letter is a newsletter published by Common Sense Publishing, LLC, a Florida-based company. (Compl. ¶ 17). Defendant also circulated this post directly to subscribers to SDCAN's email updates. (Compl. ¶ 14).

On November 17, 2016, Defendant published, and circulated to SDCAN's subscribers, a second blog post on the SDCAN Website, which stated that Mampilly, and the publications Stansberry, the Palm Beach Newsletter, Profits Unlimited, and Laissez Faire are "highly disreputable and share a bias towards heavy internet marketing, abusive email practices and preying upon seniors looking for higher returns on their investments." (Compl. ¶ 20).

Plaintiffs allege that many of the statements in these two blog posts are defamatory, and having been viewed by Plaintiffs' customers through the publicly-accessible SDCAN Website or through SDCAN's circulated email updates, have caused Plaintiffs to lose subscribers. (Compl. ¶¶ 22-25).

On February 13, 2017, Plaintiffs filed the instant Complaint, alleging one count of defamation. (Compl., DE 1).

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(2) allows for dismissal of a claim when the court lacks personal jurisdiction over a defendant. *See* Fed. R. Civ. P. 12(b)(2). The plaintiff "has the burden of establishing a prima facie case of personal jurisdiction." *Stubbs v. Wyndham Nassau*

Resort & Crystal Palace Casino, 447 F.3d 1357, 1360 (11th Cir. 2006) (citing *Meier ex rel. Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1268-69 (11th Cir. 2002)). "A prima facie case is established if the plaintiff presents enough evidence to withstand a motion for directed verdict." *Id.* (quoting *Meier*, 288 F.3d at 1269).

"A plaintiff seeking to establish personal jurisdiction over a nonresident defendant 'bears the initial burden of alleging in the complaint sufficient facts to make out a prima facie case of jurisdiction.'" *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1350 (11th Cir. 2013) (citing *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009)). "Where . . . the defendant submits affidavits contrary to the allegations in the complaint, the burden shifts back to the plaintiff to produce evidence supporting personal jurisdiction, unless the defendant's affidavits contain only conclusory assertions that the defendant is not subject to jurisdiction." *Stubbs*, 447 F.3d at 1360 (quoting *Meier*, 288 F.3d at 1269). "Where [the plaintiff's] complaint and supporting affidavits and documents conflict with the [d]efendant['s] affidavits, we must construe all reasonable inferences in favor of the plaintiff . . . ." *Id.* (quoting *Meier*, 288 F.3d at 1269).

III. DISCUSSION

"The determination of personal jurisdiction over a nonresident defendant requires a two-part analysis." *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990) (citations omitted). "First, we consider the jurisdictional question under the state long-arm statute." *Id.* (citation omitted). "If there is a basis for the assertion of personal jurisdiction under the state statute, we next determine whether sufficient minimum contacts exist to satisfy the Due Process Clause of the Fourteenth Amendment so that 'maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Id.* (citing *International Shoe Co. v. Washington*, 326 U.S.

310, 316 (1945) (additional citations omitted). "Only if both prongs of the analysis are satisfied may a federal or state court exercise personal jurisdiction over a nonresident defendant." *Id.*

In his Motion, Defendant does not challenge the exercise of jurisdiction under Florida's long-arm statute.[2] Instead, the only issue is whether Defendant's posting of allegedly defamatory material about a business that resides in Florida, on a website that is accessible world-wide, establishes sufficient minimum contacts with Florida to satisfy due process.

A. Minimum Contacts

Plaintiffs argue that Defendant purposefully directed his activities at Florida when he published statements about a Florida resident to a world-wide audience, which caused harm in Florida.[3] In support, Plaintiffs offer the affidavit of Aaron DeHoog, a Sovereign employee, who states that he accessed the two blog posts about Sovereign while he was located in Florida. (DeHoog Affidavit ¶ 7).

"Where a forum seeks to assert specific personal jurisdiction over a nonresident defendant, due process requires the defendant have 'fair warning' that a particular activity may subject him to the jurisdiction of a foreign sovereign." *Madara*, 916 F.2d at 1516 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J. concurring in judgment)). "This fair warning requirement is satisfied if the defendant has 'purposefully directed' his activities at the forum, [] and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Id.* (citing *Keeton v. Hustler Magazine,*

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[2] In his reply, Defendant questions, for the first time, whether Plaintiffs have sufficiently alleged that defamatory material was published in Florida. However, because Defendant did not raise this issue in his Motion, it is not properly before the Court.

[3] The Complaint alleges that the two blog posts also published statements about a newsletter published by Common Sense Publishing, LLC, which is a Florida-based company. (Compl. ¶ 17). Although Plaintiffs argue that the two blog posts mention other Florida companies, this assertion is not included in the Complaint or Plaintiffs' affidavit, and therefore cannot be considered by the Court. *See Stubbs*, 447 F.3d at 1360.

Inc., 465 U.S. 770, 774 (1984); *Burger King*, 471 U.S. at 472). "Additionally, the defendant's conduct and connection with the forum must be of a character that he should reasonably anticipate being haled into court there." *Id.* (citing *Burger King*, 471 U.S. at 474; *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

"The proper focus of the 'minimum contacts' inquiry in intentional-tort cases is 'the relationship among the defendant, the forum, and the litigation.'" *Walden v. Fiore*, 134 S. Ct. 1115, 1126 (2014) (citing *Calder v. Jones*, 465 U.S. 783, 788 (1984)). "[T]he plaintiff cannot be the only link between the defendant and the forum." *Id.* For example, in *Walden*, the Supreme Court held that a police officer who seized property from plaintiffs in Georgia, knowing that they were residents of Nevada and would suffer the loss in Nevada, did not have sufficient contacts with Nevada, independent of the plaintiffs' Nevada contacts, to be subject to its jurisdiction. *Id.* at 1125.

The *Walden* Court compared the case before it to *Calder*, in which the Supreme Court upheld California's assertion of personal jurisdiction over a reporter and a publisher, who published libelous statements in the National Enquirer about a plaintiff in California, where California was "the focal point both of the story and of the harm suffered." *Id.* (citing *Calder*, 465 U.S. at 789). Specifically, the Court found sufficient minimum contacts because (1) the National Enquirer had its widest circulation in California, such that the alleged libel caused reputational loss in California when read by California residents, and (2) the story was obtained from California sources, and focused on plaintiff's activity in California. *Id.* (citing *Calder*, 465 U.S. at 788-89). The Court concluded that the defendants "'expressly aimed' 'their intentional, and allegedly tortious, actions' at California because they knew the National Enquirer 'ha[d] its

largest circulation' in California, and that the article would 'have a potentially devastating impact' there." *Id.* at 1124 n.7 (citing *Calder*, 465 U.S. at 788-89).

In contrast, in *Madara*, the Eleventh Circuit held that a defendant lacked minimum contacts with Florida, where the defendant made allegedly libelous statements in an interview, which was published in a magazine that the defendant knew distributed a small number of copies in Florida. *Madara*, 916 F.2d at 1518. The Eleventh Circuit emphasized that the defendant did not deliberately exploit the Florida market, and that "mere awareness that [a] product[] [will] eventually enter the forum state [i]s not enough to support the exercise of personal jurisdiction." *Id.*

Here, Plaintiffs have not established that Defendant directed the two blog posts at Florida consumers in order to exploit a Florida market. According to Defendant's affidavit, SDCAN is a non-profit association directed to San Diego consumers, whose members are all full or part-time residents of California.[4] (Shames Affidavit, DE 22-1 ¶¶ 4, 5, 6). SDCAN does not sell any products or services, including on its Website, and does not charge dues or seek any type of payments from its members. (Compl. ¶ 5). Neither Defendant, nor any officer or agent of SDCAN, has traveled to or done any business in Florida for at least two decades. (Compl. ¶ 15).

Furthermore, the Complaint and DeHoog's affidavit do not establish that Florida was the "focal point" of the reputational harm suffered. *See Calder*, 465 U.S. at 789. The Complaint

[4] In their Response, Plaintiffs assert that SDCAN serves a nation-wide audience, as evidenced by its mission statement, available at www.sandiegocan.org/about, which states that its purpose is to provide "information about all of the necessary service companies that provide service in San Diego County, the U.S. and many other countries . . . Keep your eyes glued to these pages and join in the conversation as we explore the many aspects of living and thriving in San Diego County as well as this remarkable country we (and others) call America." (DE 25 at 14 n.3). However, this statement does not contradict Defendant's assertion that SDCAN is directed toward San Diego consumers. Even if it did, Defendant's awareness that consumers across the nation may access his blog posts is not enough to support the exercise of personal jurisdiction. *See Madara*, 916 F.2d at 1518.

alleges that Plaintiffs' customers have accessed the posts through the publicly-accessible SDCAN Website and through SDCAN's circulated email updates, but it does not allege that any of these customers are located in Florida. The only Florida resident identified as having accessed the blog posts is DeHoog, an employee of Sovereign.

Finally, Florida is not the "focal point" of the posts. *See Calder*, 465 U.S. at 789. SDCAN's inquiry into Sovereign and Mampilly began when an SDCAN member asked SDCAN about the legitimacy of investment claims made by Sovereign and Mampilly, who target their newsletter services to San Diego residents. (Shames Affidavit ¶¶ 9, 14). The posts do not identify Plaintiffs as being based in Florida, nor do they identify the office locations of any other Florida company mentioned. (Shames Affidavit ¶ 13). The SDCAN Website does not provide the capability to search for Florida-specific companies, and "virtually all of the companies discussed on the SDCAN website are internet-based companies that do business nationally and internationally." (Shames Affidavit ¶ 8).

In sum, Defendant's awareness that his blog posts would be accessible in Florida, by virtue of the nature of the world-wide web, and Sovereign's physical location in Florida are insufficient to establish that Defendant has minimum contacts with Florida.[5]

B. Jurisdictional Discovery

If the Court finds that it lacks personal jurisdiction, Plaintiffs request that the Court permit limited jurisdictional discovery in order for them to ascertain the residency of those who

[5] Because I find that Defendant does not have minimum contacts with Florida, I need not reach whether Florida's assertion of personal jurisdiction comports with fair play and substantial justice. *See Madara*, 916 F.2d at 1517 (citing *Burger King*, 471 U.S. at 476) ("Once it has been determined that the nonresident defendant has purposefully established minimum contacts with the forum such that he should reasonably anticipate being haled into court there, these contacts are considered in light of other factors to decide whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'").

read Defendant's blog posts and of SDCAN's subscribers, as well as whether the SDCAN Website is commercial. "Resolution of a pretrial motion that turns on findings of fact—for example, a motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2)—may require some limited discovery before a meaningful ruling can be made." *See Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997). In this case, I find that jurisdictional discovery is not necessary to resolve disputed facts before ruling on Defendant's Motion. Accordingly, Plaintiffs' request for jurisdictional discovery is denied. It is hereby

ORDERED AND ADJUDGED that:

(1) Defendant's Motion to Dismiss (DE 22) is **GRANTED.**

(2) The Complaint (DE 1) is **DISMISSED WITHOUT PREJUDICE.**

(3) The Clerk of Court shall **CLOSE THIS CASE** and **DENY ALL PENDING MOTIONS AS MOOT.**

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 3 day of July, 2017.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record