

IN THE FIFTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

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*[Signature]*

BILLY CULLEN, CLAUDETTE )  
CULLEN, TRACY CULLEN, JERRY )  
FROELICH, DANA BARRETT, )  
KAREN SAWYER, and MIKE GREEN, )

Plaintiffs, )

VS. )

NO. 04C197

PHILLIP YBARROLAZA and )  
JOHN DOES 1-10, )

Defendants. )

MEMORANDUM AND ORDER

This is a defamation case. Before the Court is a motion by the defendant, Ybarrolaza, pursuant to T.R.C.P. 12.02(2) and (6) to dismiss for: (1) lack of jurisdiction and/or (2) because the claim is barred by 47 U.S.C. § 230. The motion was heard on January 28, 2005 and taken under advisement so that the Court could consider the legal issues and so that the parties could submit additional materials regarding the legislative history of 47 U.S.C. § 230. The additional materials were submitted February 8<sup>th</sup> and 9<sup>th</sup>, 2005. The Court expresses its appreciation for the materials on the legislative history of 47 U.S.C. § 230.

The plaintiffs are all members of Teamsters Local 480 and are residents of Tennessee. The union is located in Nashville. It is unclear whether all the plaintiffs are union management or whether their relationships are of other capacities. Defendant Ybarrolaza

is a resident of California and operates a website called Teamster.net; the equipment, etc. necessary for the operation of the website is located in California. Plaintiffs allege that a number of defamatory statements - including ones regarding potential criminal activity and unchastity - about them have been posted on the website, which is allegedly controlled completely by defendant Ybarrolaza. The John Doe defendants are the posters of these messages.

The defendant Ybarrolaza argues that he should be dismissed for two reasons: (1) lack of personal jurisdiction (insufficient minimum contacts) and (2) immunity under the federal Communications Decency Act (See U.S.C. § 230). First, defendant Ybarrolaza asserts that only specific jurisdiction (rather than general) is applicable to this case. This website is not commercial and does not specifically target Tennesseans, and it therefore does not have sufficient minimum contacts with Tennessee for Tennessee Court's to have jurisdiction. Second, defendant Ybarrolaza asserts that section 230 of 47 U.S.C. provides immunity for him as an interactive computer service provider.

Plaintiff's argue that the defamatory statements were "broadcast" here in Middle Tennessee and this is where the harm was done to the plaintiffs. Defendant should have know that harm could be done to Tennessee residents. Plaintiff's also assert that the defendant misinterprets section 230 of the Communications Decency

Act; he is not an interactive computer service provider as defined by the act.

The defendant's motion was based on the complaint. No affidavits were initially filed with the motion. The plaintiff's response contains excerpts from the website on which the defendant describes himself as "webmaster" and the affidavit of a computer expert which contends that the webmaster can have editorial control if he chooses to exercise it. In reply the defendant did file an affidavit in which he states:

1. I am a citizen of the State of California, am over eighteen (18) years of age, and reside in Petaluma, Sonoma County, California. I am qualified and competent to testify as to the matters asserted herein, if so called.
2. As of this date, I have never been to Tennessee.
3. I operate the website Teamster.net from California.
4. I do not direct Teamster.net specifically to residents of Tennessee or any specific jurisdiction. However, Teamster.net is available to anyone in the world with access to the Internet and the World Wide Web.
5. Third-party individuals posted communications on public fora on Teamster.net about the plaintiffs, including Billy Cullen, that the plaintiff's claim to be false ("Cullen Communications").
6. Until the plaintiffs (I believe through their counsel) contacted me regarding the Cullen Communications, I had no awareness of the Cullen Communications or any specific Cullen Communication.
7. Not being the author of the Cullen Communications, I did not direct the Cullen statements to any person, community, or location.

8. By signing below, I hereby attest my signature as verifying the accuracy and truth of the forgoing statements.

The amended complaint describes the Ybarrolaza website as follows:

Teamster.net offers news, links to local unions, and election information pertinent to Teamster activities across North America. In addition, Teamster.net hosts an internet bulletin board service on which defendant Ybarrolaza publishes comments from persons such as John Does 1-10, about plaintiffs and others without identifying the source of those comments.

Amended Complaint, ¶ 4. The amended complaint does not allege that any of the communication is aired particularly at Tennessee or Tennessee Teamster activity.<sup>1</sup>

Personal jurisdiction may be general or specific depending on the type of minimum contacts present in this case. The parties here agree that this is a case to be analyzed under specific jurisdiction principles. The defendant is only subject to suit in Tennessee if (1) the defendant availed himself of the privilege of acting in the forum state or causing consequences in the forum state; (2) the cause of action arises from the defendant's activities there and (3) the acts of the defendant must have a substantial enough connection with the forum state to make the

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<sup>1</sup>The record does not indicate the activity on the website, however, in answer to a question by the Court at the hearing plaintiff's counsel stated there were thousands of hits per day and over several million during the still on going life of the website.

exercise of jurisdiction over the defendant reasonable. See generally Pivnick, Tenn. Circuit Court Prac. (2005 Ed.), § 4.4 and numerous cases cited therein.

The advent of the computer and computer postings have opened a new door in jurisdiction analysis.<sup>2</sup> Most cases have indicated that a general posting on the Internet is not sufficient to establish personal jurisdiction unless the defendant has done "something more" to indicate that the defendant purposefully directed his activities to the forum state. Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 418 (9<sup>th</sup> Cir. 1997) and Barrett v. Catacombs Press, 44 F.Supp. 717, 727 (E.D. Pa. 1999).

The burden of establishing personal jurisdiction is on the party bringing the lawsuit. International Tec. v. Euroglas, 107 F.3d 386, 391 (6<sup>th</sup> Cir. 1997). Under the facts and circumstances pled in this case the Court finds no jurisdiction.

In finding that Tennessee does not have jurisdiction the Court particularly relies on the analogous cases of Best Van Lines v. Walker, 2004 U.S. Dist. LEXIS 7830 (S.D.N.Y. 2004) (no jurisdiction in defamation case against Iowa resident who ran website displaying postings alleging unfair practices of moving companies); Bailey v. Turbine Design, 86 F.Supp. 2d 790 (W.D. Tenn. 2000) (no jurisdiction in Tennessee over defendant for defamation on out of state website

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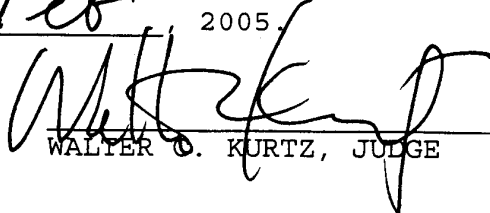
<sup>2</sup>The computer also has provided a new area of defamation law. See generally, Annotation, Liability of Internet Service Provider For Internet or E-Mail Defamation, 84 A.L.R. 5<sup>th</sup> 169 (2000).

where no contacts with Tennessee other than postings and no effort to reach out to Tennessee residents); and Barrett v. Catacombs Press, supra at 731 (defamation case - unless the forum state is deliberately targeted by the tortfeasor, the fact that harm is felt in the forum state is not sufficient to satisfy due process). These cases represent the mainstream of Court analysis of minimum contacts and internet website defamation.

The Court, having determined that Tennessee has no jurisdiction, the Court pretermits the issue of whether 47 U.S.C. § 230 bars the claim against the defendant Ybarrolaza.

For the reasons expressed above, this case is dismissed as to the defendant Ybarrolaza. Costs are taxed to the plaintiffs.

This case is only dismissed as to the named defendant. The Court notes that the use of a fictitious name is appropriate only if it appears that the plaintiff will be able to obtain the identity of the defendant through the discovery process and should that not prove to be true the action will be dismissed. See Wright & Miller, Federal Practice and Procedure: Civil 3d §1321 (2000). The plaintiffs have 150 days to identify a defendant or defendants or this case will be dismissed in its entirety by the Court. Id. n. 6.

This the 14 day of Feb, 2005.  
  
WALTER O. KURTZ, JUDGE

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