

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
LAW DIVISION - CIVIL PART
DOCKET NO.: MON-L-1169-07

x- - - - - x
BARBARA BAUER, et als., :
 :
 Plaintiffs :
 : TRANSCRIPT
 -vs- :
 : OF
 JENNA GLATZER, et als., :
 : DECISION
 Defendants :
 x- - - - - x

Held at: Monmouth County Courthouse
71 Monument Park
Freehold, New Jersey 07728

Heard on: September 19, 2008

B E F O R E:

THE HONORABLE BETTE E. UHRMACHER, J.S.C.

TRANSCRIPT ORDERED BY:

GRAYSON BARBER, ESQ.

A P P E A R A N C E S:

GREGORY LUDWIG, Pro Se (Telephonically)

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Decision

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THE COURT: Barbara Bauer and Barbara Bauer Literary Agency, Inc. versus Jenna Glatzer. This is Docket Number L-1169-07. These are two decisions on motions for summary judgment which the Court heard on September 12th, 2008 and reserved until today, because the Court was ill on the 12th and did not feel it could render its decisions.

I'm going to start with the motion for summary judgment brought by Gregory Ludwig. Mr. Ludwig is available by phone, and anyone else who is interested is here in court. Defendant Gregory Ludwig applied for summary judgment -- hold on.

(Court and clerk confer)

(tape off - tape on)

THE COURT: As I indicated, defendant Gregory Ludwig applied for summary judgment against plaintiff Barbara Bauer and Barbara Bauer Literary Agency, hereafter plaintiffs. Defendant Ludwig is pro se. There is a case management conference scheduled for November 13, 2008, its discovery ends in December.

Movant Ludwig refers to the claims in the second amendment complaint, which we'll now call the SAC, and he primarily appears in Counts 37 and 38 of the SAC. Mr. Ludwig indicates that plaintiff alleges a malicious conspiracy of defamation and tortious interference with

1 prospective economic advantage. Movant does not, alleges
2 he doesn't own the website webusers.warwick.net at which
3 various comments were posted, but is responsible for
4 being the author of a word document which can be found at
5 website webusers.warwick.net and is referred to as
6 bauerdefense.doc.

7 The document is, according to the movant, a
8 type of file transfer protocol, meaning it can be
9 accessed using a universal resource locator, a URL, or is
10 located on a phone company server. In other words, the
11 document can be viewed and copied to an individual user's
12 hard drive by typing in the specific URL. But the
13 document cannot be accessed on the internet the way a
14 typical website would work. The file transfer protocol,
15 according to movant, is a free service of the phone
16 company and he doesn't have to pay a fee for it.

17 And movant argues that his website can be found
18 using search websites because it's directly linked to
19 them, and he gives a web address. Movant has, indicates
20 he has no control over the linking of any of his writing
21 to the various pages, and therefore he's alleging that
22 that which he wrote is not defamatory. The way other
23 people used it or posted it or act in regard to it is not
24 anything he's responsible for.

25 Mr. Ludwig claims that the wording alleged in

1 the second amendment complaint is not the wording in his
2 document. The wording of the phrase in the second
3 amended complaint, "Barbara Bauer, a scammer" he alleges
4 has been changed several times between August 19th, 2006
5 and March 2nd, 2007. Mr. Ludwig does claim that between
6 those dates the same headline has been present on any
7 version of the website that can be viewed.

8 Barbara Bauer a scammer? What about a writer's
9 voice? What about the issue of restraint of trade? That
10 is his original document and the document really that's
11 at issue here. Search of the alleged subheading Barbara
12 Bauer a scammer, does not always end up in the first page
13 of results, as is alleged by the plaintiff. When a
14 search did reveal the document, it was phrased with a
15 question mark at times, at other times it was not.

16 As background, movant and plaintiff contracted
17 together for a period of seven years. Mr. Ludwig is a
18 writer who is trying to publish books, and the plaintiff
19 is a literary agent who places authors for publication of
20 books. According to Mr. Ludwig, he supplied Ms. Bauer
21 with 12 book manuscripts, none of which actually were
22 published, and he paid a fee for those actions.

23 Movant began writing blog entries pertaining to
24 Ms. Bauer beginning on September 5th, 2006 which included
25 discussion about their past business interactions. That's

1 not alleged to be defamatory. It is plaintiff --

2 Mr. Ludwig provided his response which is
3 referred to by Mr. Ludwig as "Bauerdefense.doc", and that
4 was posted on his blog on August 30th. Mr. Ludwig
5 notified Ms. Bauer of that document and there was a
6 response from Ms. Bauer thanking him for his defense.
7 The problem is that movant also notified co-defendant
8 Strauss, who is the blog administrator, of the
9 Bauerdefense.doc.

10 And co-defendant Strauss indicated in her blog
11 on September 1st, 2006 that she was aware of
12 Bauerdefense.doc. And there were communications back and
13 forth between Ludwig and Strauss indicating Ms. Strauss
14 was being critical of Mr. Ludwig, which according to Mr.
15 Ludwig shows there's not a conspiracy but rather there
16 was a complete disagreement about how they viewed Ms.
17 Bauer.

18 On September 5th, 2006, as I indicated, Mr.
19 Ludwig emailed Ms. Strauss that Mr. Ludwig had changed
20 the content of Bauerdefense.doc, and Ms. Strauss
21 indicated she was aware of the document. In the summer
22 of 2006 Mr. Ludwig and Ms. Bauer were in communications
23 concerning the derogatory comments on the internet about
24 the plaintiff and Mr. Ludwig's distress at that turn of
25 events. And those emails have been provided to the

1 Court.

2 Before the blog entry and associated comments
3 were made in August of 2006, plaintiff Ms. Bauer and Mr.
4 Ludwig communicated about these negative comments. And
5 according to Mr. Ludwig, nothing in the blog in 2006
6 could be interpreted by the plaintiff as malicious. In
7 fact, her reaction was quite the contrary, as I
8 indicated.

9 In December 2007 Mr. Ludwig made blog comments
10 having to do with an author's death, someone with whom
11 the plaintiff had an association. The blog discussion
12 was with Ms. Strauss. Movant claims in comments in
13 January of '08 that nothing there had any relationship to
14 the plaintiff.

15 Now the plaintiff, after receiving all these
16 allegations and statements of fact by Mr. Ludwig,
17 indicated that in her first complaint there were 17
18 separate individuals who were alleged to be part of this
19 conspiracy of defamation and tortious interference. She
20 then filed a second amended complaint, adding three more.
21 And that's where Mr. Ludwig was included as a defendant.

22 As we've indicated, this is a motion for
23 summary judgment, and Ms. Bauer and her agency argue that
24 there are material questions of fact and that those have
25 to do with the nature of the words used by Mr. Ludwig,

1 Barbara Bauer a scammer. According to the plaintiff that
2 is clearly capable of a defamatory meaning with or
3 without the question mark, and that a search of the
4 internet reveals his article under Barbara Bauer a
5 scammer. And therefore, it clearly has a defamatory
6 meaning and, in the light most favorable to a nonmoving
7 party in a summary judgment action, that this Court
8 should deny summary judgment.

9 Mr. Ludwig argues that pursuant to the statute
10 NJSA 2A:43-2, that a defendant may give proof of
11 intention, and plaintiff, unless he shall prove either
12 malice in fact or that defendant, after having been
13 requested by plaintiff in writing to retract the libelous
14 charge in as public a manner as that in which it was
15 made, failed to do so within a reasonable time, shall
16 recover only his actual damage proved and specially
17 alleged in the complaint.

18 Mr. Ludwig alleges there's no malice shown here
19 and there was never a request for him to retract what is
20 in essence, according to Mr. Ludwig, a defense of Ms.
21 Bauer. There's no allegation of actual damages.

22 The Court doesn't feel it needs to reach those
23 issues. The real question is, in the light most
24 favorable to the nonmoving party in this case, under the
25 standards of Brill versus Guardian Life Insurance

1 Company, 142 New Jersey 520 (1995) and the requirements
2 of the rule under summary judgment, are these exchanges
3 by Mr. Ludwig defamatory or capable of a defamatory
4 meaning.

5 Now, Mr. Ludwig argues that in deciding whether
6 these alleged comments are defamatory or what they
7 actually mean, that that is to be left to the Court to
8 consider in consideration of the content, verifiability
9 and context of challenged statements, and cites Ward
10 versus Zelikovsky, 136 New Jersey 516 at 529 (1994).
11 Courts need to look at the plain meaning of the words
12 (fair and natural meaning) given by a reasonable person,
13 and all the words in the statement must be taken into
14 account. That's Ward Super at 529. Also see Wilson
15 versus Grant, 297 New Jersey Super 128 at 136 (App.
16 Division. 1996).

17 The plaintiff argues that under Romaine versus
18 Kallinger, 109 New Jersey 282 (1988), the standard in a
19 defamation case is whether it is "capable of being
20 assigned more than one meaning, one of which is
21 defamatory and another not. The question of whether the
22 content is defamatory is one that must be resolved by the
23 trier of fact." That's indicating because the plaintiff
24 believes there are material of issues of facts that this
25 issue should go to the ultimate trier of fact, that is

1 the jury.

2 Plaintiff argues that the use, whether with our
3 without the question mark as I indicated before, is
4 defamatory or could be considered defamatory, and argues
5 that we're not talking about an actual malice standard
6 but rather a negligence standard, citing Turf Lawnmower
7 Repair versus Bergen Record Corp., 139 New Jersey 392 at
8 412 (1955).

9 Mr. Ludwig, in opposition, indicates that the
10 plaintiff hasn't really presented any facts that show
11 that what he has stated is derogatory and defamatory, or
12 that he was in any way part of the Google bombing which
13 took place after the first complaint was filed, and that
14 he should be granted summary judgment.

15 This Court is aware of Turf Lawnmower Repair
16 versus Bergen Record, and should first indicate what the
17 standard is for this defamation case. I find that there
18 is not an actual malice standard. Ms. Bauer and her
19 agency are not public officials. This is not a matter of
20 public concern in the normal context. This is a private
21 matter that was made public because the internet was
22 involved. But by doing that, I find it doesn't make it a
23 matter of public concern.

24 There are always free speech issues involved in
25 a defamation case, but that doesn't take it out of the

1 general negligence area. Even though part of the
2 information was in a Wikipedia article, that's already
3 been the subject, I believe, of a prior motion.

4 So under Turf Lawnmower Repair versus Bergen
5 Record, this Court finds that there's not an actual
6 malice standard. Nonetheless, the Court is granting
7 summary judgment under the negligence standard to Mr.
8 Ludwig pursuant to Rule 4:46-2, that Mr. Ludwig placed in
9 the record a number of articles or statements that were
10 placed on the internet. And when they are read in
11 context, content and context, it appears that there is no
12 defamatory meaning which can be implied. And in fact,
13 the response by the plaintiff indicates that she did not
14 imply a defamatory meaning.

15 In fact, Mr. Ludwig is castigated by those with
16 whom he corresponds in the normal course for his defense
17 of Ms. Bauer. I find that the certification by the
18 plaintiff did not negative (sic) any of the allegations
19 put forth by Mr. Ludwig, that there was -- if one
20 considers the content and context of the statements, they
21 could not and do not indicate a defamatory meaning.

22 There was clearly no actual malice and there
23 was not a negligent defamation as the Court views the
24 documents, and therefore summary judgment is granted in
25 the defendant Ludwig's favor and an order will be issued

1 today.

2 Mr. Ludwig, that's all that we will need from
3 you. And so I was going to hang up now.

4 MR. LUDWIG: Okay, thank you.

5 THE COURT: You're welcome. Would you just
6 check and see who else wanted to be phoned in. Off the
7 record.

8 (tape off - tape on)

9 THE COURT: All right. The person who wanted
10 to call in represents some other of the defendants and we
11 weren't aware -- the Court wasn't aware, my secretary
12 apparently was aware that he wanted to, and we haven't
13 done it by conference, so he will have to order the
14 transcript, unfortunately.

15 The next motion for summary judgment is based
16 on lack of personal jurisdiction on behalf of defendant
17 Shweta Narayan. And this also was brought before the
18 Court on September 12th, 2008. The Court did not give
19 its decision at that time because the Court was ill,
20 heard argument, and the Court incorporates into both
21 these decisions, the comments of counsel and the Court on
22 September 12th, as well as the opinion read into the
23 record today, September 19th. Both these were of course
24 opposed.

25 The second motion for summary judgment arises

1 out of alleged defamatory internet postings on a website,
2 AbsoluteWrite.com, and that will be referred to as AW.
3 Although that isn't really addressed in the second
4 amended complaint.

5 The allegations in the second amended complaint
6 against Ms. Narayan have to do with, particularly in
7 paragraph 3, that in or about November of 2006 defendant
8 Narayan published a paper in abstract which contained
9 numerous, false, and defamatory statements about the
10 plaintiffs, that she had a public talk at the University
11 of California, that the false and defamatory statements
12 were made maliciously with the intent to destroy, alleges
13 contact with New Jersey, but doesn't talk about the
14 website on which these matters were posted. In fact,
15 they apparently were posted in an internet chat room
16 where Ms. Narayan is a regular contributor, this
17 AbsoluteWrite.com.

18 But as I indicated, the second amended
19 complaint speaks in Counts 33 and 34 only of the paper or
20 the presentation that was made at the University of
21 California, San Diego. And that alleges that, as I
22 indicated, on January 31st, 2008, that's the second
23 amended complaint, alleges that Ms. Narayan defamed the
24 plaintiffs and tortiously interfered with plaintiff's
25 prospective economic advantage by displaying defamatory

1 statements in an academic paper entitled the Evolving
2 Parodies of Barbara Bauer. And this was presented at the
3 Conceptual Structure Discourse and Language Conference at
4 the University of California, San Diego on November 4th,
5 2006.

6 Plaintiff's counsel included a slide from Ms.
7 Narayan's academic conference presentation, and those
8 slides contain bullet point statements such as; AW
9 spreads information about scams, which is why it was
10 attacked, Barbara Bauer known scam literary agent. These
11 slides and Ms. Narayan's presentation were accessible via
12 AW's website and the UCSD website.

13 The plaintiff sent a cease and desist letter to
14 UCSD chancellor Marianne Fox and to the secretary of the
15 regents dated February 28th, 2007 and March 1st, 2007.
16 Those are provided to the Court, and I received a notice
17 that these matters were being pulled from the UCSD
18 website.

19 Counts 41 and 42 allege that Ms. Narayan
20 conspired with her co-defendants to defame and tortiously
21 interfere with plaintiff's prospective economic
22 advantage, particularly plaintiff's claim that Narayan is
23 a moderator of AW and that the remark, Bauer is a scam
24 artist, is clearly defamatory and was on Ms. Narayan's
25 blog. As I indicated, although these matters are alleged

1 now, they are not part of the second amended complaint.

2 Ms. Narayan argues that the alleged defamatory
3 remarks were never intended or targeted to have an affect
4 in New Jersey, that those arose in the context of a
5 linguistics academic abstract which featured the alleged
6 defamatory remarks arising out of an incident involving
7 Ms. Bauer and the AW website, and used it as a
8 "linguistics model to study how each of these parodies
9 has a different point, each creating a different blended
10 linguistic structure profiling different aspects of the
11 chatter's knowledge."

12 In turn, Ms. Narayan proceeds to briefly
13 describe each of the three parodies in her presentation.
14 It quotes a specific scenario allegedly from the chat
15 room, in which a guest posing as Ms. Bauer claims to be a
16 real literary agent while agreeing to represent chatter's
17 without looking at their work. That was Exhibit A at
18 plaintiff's opposition brief.

19 Therefore, making a presentation at an academic
20 conference, according to the defendant Narayan, does not
21 satisfy the minimum sufficient contact for purposes of in
22 personam jurisdiction. So this summary judgment was
23 filed by defendant to determine whether there is in
24 personam jurisdiction in this California resident who has
25 alleged no context, property, or otherwise with the forum

1 State of New Jersey.

2 Plaintiff has filed, as I indicated, an
3 opposing brief arguing that there are genuine issues of
4 material fact which exist concerning whether the
5 defendant's comments were defamatory.

6 The standard to be applied again on a motion
7 for summary judgment is set forth in Brill versus
8 Guardian Life Insurance Company, 142 New Jersey 520
9 (1955). When deciding a motion for summary judgment
10 under Rule 4:46-2, the motion judge must consider whether
11 the competent evidential materials presented, when viewed
12 in the light most favorable to the nonmoving party, are
13 sufficient to permit a rational fact finder to resolve
14 the alleged disputed issues in favor of the nonmoving
15 party, *id* at 523.

16 Under the Brill standard the Court determines
17 whether the evidence presents sufficient disagreement to
18 require submission to a jury, or whether it is so one-
19 sided that one party must prevail as a matter of law.
20 Applying this standard the Court makes the findings of
21 facts and conclusions of law.

22 The plaintiff Barbara Bauer is a New Jersey
23 resident and lives at 179 Washington Avenue, Matawan, New
24 Jersey 07747. The defendant Shweta Narayan is a
25 California resident presently living in San Diego,

1 California. Parenthetically, when she was served she was
2 not served at the address that plaintiff believed she
3 lived at, but rather service was hand delivered to her by
4 her brother and sister-in-law. But she actually did
5 receive service and she replied. She answered. That was
6 before the appointment of a pro bono counsel via The
7 Electronic Frontier Foundation. And I find all those
8 facts.

9 Defendant has never lived or owned property in
10 New Jersey and alleges that she traveled through New
11 Jersey before the age of 15. During the relevant time
12 period defendant was a linguistics graduate student at UC
13 Berkeley.

14 Defendant presented an abstract paper for a
15 Linguistics Academic Conference, CSDL, at the University
16 of California, San Diego on November 4th, 2006. Thirty
17 to 40 people attended. In that presentation defendant
18 displayed slides that allegedly contained defamatory
19 statements. Although Ms. Narayan has written a paper
20 that was to be published, it has not been published, and
21 that was a paper based on this linguistic study. That
22 same presentation that was made at UCSD was published on
23 the defendant's blog, the AW website, and the UCSD
24 website.

25 This case arises, raises, I'm sorry, the in

1 personam jurisdiction question in the context of internet
2 defamation litigation, and it turns on whether defendant
3 Narayan's academic presentation of the alleged defamatory
4 remarks at the conference, even though not pled on her
5 blog and on the other websites, established sufficient
6 minimum contact with the forum state and were intended to
7 injure the plaintiff in the forum state.

8 State court long-arm in personam jurisdiction
9 reaches non-residents through either general or specific
10 jurisdiction. General jurisdiction lies where a state
11 exercises personal jurisdiction over a defendant in a
12 suit not arising out of or related to the defendant's
13 contact with the forum. But it requires continuous
14 contact, which we do not have here.

15 Specific jurisdiction lies where a state
16 exercises personal jurisdiction over a defendant in a
17 suit arising out of or related to the defendant's
18 activities in or contacts with the forum state. Lebel
19 versus Everglades Marina Inc., 150 New Jersey 317. And
20 New Jersey recognizes both forms of jurisdiction, but
21 here we are only dealing with specific jurisdiction.

22 The next issue the Court has to determine is
23 whether the defendant's connection with the forum state,
24 New Jersey, meets the minimum contact requirements
25 necessary to fulfill in personam jurisdiction.

1 New Jersey permits in personam jurisdiction
2 over a defendant only if the defendant has "certain
3 minimum contacts" with the forum such that the
4 maintenance of this suit does not offend traditional
5 notions of fair play and substantial justice. That was
6 first enunciated in International Shoe versus Washington,
7 326 U.S. 310 at 316 (1945).

8 The minimum contacts threshold shields
9 defendants from an arbitrary or fundamentally unfair
10 imposition of a state's jurisdiction. Allstate Insurance
11 Company versus Hague, 449 U.S. 302 at 312-13 (1981). In
12 determining whether the minimum contacts requirement has
13 been satisfied, the Court must decide if the defendant's
14 contact with the forum resulted from her purposeful
15 conduct and not the unilateral activities of the
16 plaintiff. That's World-Wide Volkswagen versus Woodson,
17 44 U.S. 286 at 297-98, a 1980 case.

18 The purposeful availment requirement protects
19 the defendant from being snatched by "a jurisdiction
20 solely as a result of random, fortuitous, or attenuated
21 contacts." Burger King Corp. versus Rudzewicz, 671 U.S.
22 462 at 475 (1985).

23 The Court adopted this, New Jersey Supreme
24 Court adopted the purposeful availment requirement as a
25 minimum contacts gauge to measure the nature and quality

1 of a defendant's contacts with the State of New Jersey,
2 the forum state. That was Blakey versus Continental
3 Airlines Inc., 164 New Jersey 38 (2000.)

4 In conjunction with purposeful availment, the
5 Court in World-Wide Volkswagen had held that "the
6 defendant's conduct and contact with the forum state must
7 be such that he should reasonably anticipate being haled
8 into court there." That's World-Wide at 297. Therefore,
9 to confer in personam jurisdiction over a defendant under
10 the minimum contacts requirement, there must be "some act
11 by which the defendant purposefully avails itself of the
12 privilege of conducting activities within the forum
13 state, thus invoking the benefits and protections of the
14 laws. Hanson versus Denckla at 357 U.S. 235 (1958).

15 The impermissible extent of a state's personal
16 jurisdiction in the internet context is illustrated by
17 the Federal case of Zippo Manufacturing Company versus
18 Zippo Dot Com, 952 Fed. Supp. 1119 (Western District of
19 Pennsylvania 1997). In that case the plaintiff lighter
20 company filed a trademark infringement for delusion of
21 its name Zippo and arguing that this internet company
22 should not be using it.

23 The defendant moved to dismiss the complaint
24 for lack of personal jurisdiction. The plaintiff was
25 based in Pennsylvania, the defendant in California, and

1 had no offices, agencies or employees in Pennsylvania.
2 The defendant's contact with Pennsylvania occurred over
3 the internet. Approximately 3,000 Pennsylvania residents
4 paid defendant Zippo Dot Com a subscriber's fee by credit
5 card over the internet. Further, the defendant entered
6 into agreements with seven internet access providers in
7 Pennsylvania to provide access to Pennsylvania
8 subscribers.

9 The Court concluded that the defendant's
10 engagement in electronic commerce with Pennsylvania
11 residents constituted purposeful conduct under the
12 sufficient minimum contacts test. Id at 1125-26. Thus,
13 the Zippo District Court proposition is that sufficient
14 minimum contact is made where the non-resident makes an
15 effort to establish business connections with the
16 resident in the forum state.

17 The second prong is whether conferring
18 jurisdictional authority violates notions of fair play
19 and substantial justice, which triggered the factors that
20 were enunciated in a Asahi Metal Industry Company Limited
21 versus Superior Court of California, 480 U.S. 102 at 107
22 (1987).

23 In that case, this was a foreign company doing
24 business in the United States and the Court said that the
25 factors which should be analyzed are, 1) the burden on

1 the defendant, 2) the interest of the forum state, 3) the
2 plaintiff's interest in obtaining relief and, 4) the
3 interstate judicial system's interest in efficient
4 resolution of disputes and the shared interest of the
5 states, and furthering fundamental substantive social
6 policies. This was also cited in Lebel Supra at 317.

7 In Lebel, the plaintiff New Jersey resident
8 purchased a luxury cigarette racing boat from a company
9 in Florida and arranged for it to be delivered. It was
10 damaged on route. Plaintiff filed suit in New Jersey for
11 compensation, and the defendant there moved to dismiss
12 for lack of personal jurisdiction. The Court determined
13 that the burden on the defendant boat company to litigate
14 in New Jersey did not outweigh the burden on the
15 plaintiff to litigate in Florida.

16 Moreover, the defendant failed to prove that it
17 was unable to present any evidence in New Jersey that
18 would have been available in Florida. And the Court
19 concluded that New Jersey had a legitimate interest in a
20 contract fraud case to protect its creditor. The Court
21 contrasted the situation in Asahi, because there the
22 Asian company would have to cross the Pacific Ocean to
23 defend itself in California, and had to contend with a
24 foreign legal system, and therefore it was not permitted.

25 However, the ubiquity of information access and

1 sharing on the internet, and the open-ended nature of
2 internet communications each posed challenges to the in
3 personam jurisdiction framework. The New Jersey Supreme
4 Court first addressed this in the Blakey versus
5 Continental Airlines case, 164 New Jersey, particularly
6 at 52 and 54. It's a 2000 case.

7 The Court found that where "an intentional act
8 calculated to create an actionable event in a forum state
9 will give that state jurisdiction over the actor." See
10 also Waste Management Inc. versus Admiral, 138 New Jersey
11 106 at 122 (1994). Put simply, a state could exercise
12 jurisdiction over a non-resident defendant if the
13 defendant "expected or intended to cause injury in New
14 Jersey." The Court noted further that the means of
15 communication was not as important as the quality or
16 nature of the contact with the forum state.

17 In a case which directly comments on an
18 internet defamation, see Goldhaber versus Kohlenberg,
19 it's an Appellate Division case, 395 New Jersey Super 380
20 (Appellate Division 2007). In that case plaintiffs and
21 defendant were members of an internet news group. The
22 plaintiffs were New Jersey residents, the defendant a
23 California resident who had no contact of any kind with
24 New Jersey.

25 In January of '03 the defendant posted a series

1 of defamatory messages about the plaintiffs, and they
2 asserted that the plaintiffs engaged in bestiality,
3 incest, and made cruel references to the plaintiff's
4 hearing infirmity, commented on where it is that the
5 plaintiffs lived, their local government, their police
6 department, their neighbors. They listed the address.

7 Thus, the defendant not only knew the
8 plaintiffs resided in New Jersey, but his comments were
9 also targeted at New Jersey. Conduct of this nature and
10 its connection to New Jersey were such that the defendant
11 reasonably should have anticipated being haled into New
12 Jersey court, according to the appellate court at 13.
13 Therefore, in personam jurisdiction would lie over that
14 defendant, not resident.

15 Here, but for its citation to the plaintiff's
16 website in a footnote, there is no indication that this
17 defendant Narayan had any connection to New Jersey. The
18 question then is whether defendant Narayan's conduct
19 resulted in sufficient minimum contacts with New Jersey
20 such that she purposely created contact with New Jersey
21 by publishing an academic presentation featuring
22 allegedly defamatory comments in California, and whether
23 she reasonably anticipated being haled into New Jersey
24 Superior Court, whether it would be fair to permit it.

25 Construing the facts in the favor of the

1 plaintiff, the nonmoving party, the record still
2 illustrates that the defendant featured allegedly
3 defamatory comments as part of a linguistics academic
4 paper delivered in California to 30 or 40 people. The
5 focus was the study of a parody of communications which
6 occurred on the internet. Certainly the plaintiff's name
7 was mentioned as a scammer in one part of the
8 presentation.

9 Even if the defendant disdained the plaintiff
10 and was angry because she believed that the AW website
11 was cut off as a result of Ms. Bauer's actions, that is
12 not what occurred during this linguistics presentation.
13 That in no way brought her action within New Jersey. Now
14 the question then is what about listing this slide show
15 on her website, on UCSDS's website, and AW's website.

16 Crucial is the fact that the defendant did not
17 simply prepare a paper but, as alleged although not pled
18 in the complaint, did list this so that it was available
19 in certain chat rooms. The posting of the academic paper
20 after presenting it at a conference illustrates only the
21 wanting to share this linguistics paper. What it is that
22 Ms. Narayan said is, hey everyone, I posted my academic
23 presentation to show my allegiance against Barbara Bauer,
24 a real scam artist.

25 So according to the plaintiff, that was

1 sufficient to show that she had a defamatory motive and
2 that it was not just a legitimate linguists conference.
3 Although plaintiff, in her counter statement alleges that
4 defendant is a ringleader of this defamation and Google
5 bombing, there really is no fact to support it other than
6 that one statement where she indicated I posted this
7 academic paper.

8 Although the plaintiff takes these defamatory
9 statements out of context, I find that that statement was
10 not out of context. Nonetheless, it was a linguistics
11 paper delivered in California for a limited audience,
12 placed on a chat room with a limited academic
13 circulation. And the Court finds that, in its analysis,
14 that there are not sufficient minimum contacts to bring
15 this matter within New Jersey.

16 The Court finds that dropping a footnote with
17 the plaintiff's website, wherein the plaintiff happened
18 to list her address, is in no way a Goldhaber kind of
19 situation where the writer on the website targets New
20 Jersey and the specific community, and makes allegations
21 about this area of New Jersey and the police, etcetera.
22 In sharp contrast, New Jersey is not mentioned anywhere
23 in any of the presentations. There is no direct linking
24 with New Jersey. There is nothing indicating that there
25 are any efforts to contact in New Jersey.

1 In analyzing whether there was an intention to
2 cause injury in New Jersey under the affects test, as the
3 New Jersey State Supreme Court noted in Blakey, the
4 communicative means of delivering the message is
5 subordinate to the nature and quality of the contact.
6 Again, unlike the defendant in Goldhaber, the defendant
7 in this case did not make any direct or specific
8 reference to any place in New Jersey. The slides are
9 destitute of any mention of the address. The dropping of
10 a website footnote doesn't mean that it would go back
11 necessarily to a person's name and address. The
12 plaintiff happens, because of her business, to have her
13 address as part of her website.

14 But this is in such sharp contrast to Goldhaber
15 that the Court finds that under the affects test in
16 personam jurisdiction does not lie over this defendant.
17 As I indicated, the Court finds there are not sufficient
18 minimum contacts in which to permit in personam
19 jurisdiction, and therefore the motion for summary
20 judgment of defendant Narayan is granted and the Court
21 will send out orders. Off the record.

22 * * *

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C E R T I F I C A T I O N

I, SUSAN WALSH, Certified Agency Transcriber, do hereby certify that the foregoing transcript of proceedings on copied Tape No. CV 0017-08 Index 0044 to 2599, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the decision as recorded in the matter of BAUER ET ALS vs. GLATZER ET ALS heard by the Monmouth County Superior Court on September 19, 2008.

Susan Walsh
SUSAN WALSH

547
AOC Number

TERRY GRIBBEN'S TRANSCRIPTION SERVICE

10/27/08
DATE