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Express Mail

July 12, 2008

Honorable Jamie Perri
New Jersey Superior Court
Monmouth County Courthouse
71 Monument Park
P.O. Box 1266
Freehold, NJ 07728-1266

Re: Bauer v. Glatzer, et al.
Docket No. L-1169-07

Dear Judge Perri:

Please accept this letter in lieu of a more formal brief in further support of defendant Shweta Narayan's motion for summary judgment in the captioned case. The return date for the motion is **July 18, 2008**.

Plaintiffs Barbara Bauer and Barbara Bauer Literary Agency ("Bauer") sued Ms. Narayan for "a paper and abstract" which allegedly defamed Bauer at "a public talk at the University of California San Diego." Second Amended Complaint ("SAC") at 27 (count 33 paragraph 3). Additional counts of conspiracy and tortious interference are predicated on the allegedly defamatory nature of the "paper and abstract." SAC at 27, 32 and 34 (counts 34, 41 and 42).

Reaching outside and beyond the allegations of the SAC, Bauer's opposition papers recite a different set of facts and refer to evidence that is not properly before the Court. Point III of her brief, for example, refers to a "slide show" and a "blog" which are not mentioned in the SAC, and Bauer's certification refers to a "googlebomb" campaign, which is never explained in the brief or mentioned in the SAC.

Bauer's proffered exhibits similarly refer to allegations that are outside the proper notice of the Court. The certification fails to authenticate Exhibits B, C, D, and F (though it states that Bauer provided them to her attorney). Exhibits H, J, K, and L are not connected to the allegations of the SAC.

The SAC does not identify Ms. Narayan's "own blog," the UCSD website, or a "slide show." Bauer elected not to sue UCSD. Nor did she sue Ms. Narayan for any connection with the AbsoluteWrite website. To the contrary, this lawsuit targets Ms. Narayan for writing an academic paper, which remains unpublished, and for posting online the abstract of her paper.

Bauer says this Court should extend its jurisdiction to a graduate student in San Diego because the grad student a) quoted AbsoluteWrite in an academic abstract, and b) cited Bauer's website in a footnote. At page 5 of the opposition brief, Bauer says Ms. Narayan "must have know where plaintiffs were located, as she cited plaintiff's website at footnote 2 of her abstract."

To accept jurisdiction based on the allegations of the SAC would transform New Jersey's long-arm jurisdiction with respect to internet defamation cases. Bauer's theory would reach the most attenuated and marginal defendants if they a) quoted a website that offended a New Jersey resident, and b) cited a website that connected to a webpage that featured the address of the New Jersey resident. Citing "www.bbla.com" in a footnote is not an activity "purposefully directed" at New Jersey.

Applying the jurisdiction analysis set forth in Burger King v. Rudzewicz, 471 U.S. 462 (1985), this Court must conclude that the considerations present here "render jurisdiction unreasonable." Id. at 477. Not least of these is "the forum State's interest in

adjudicating the dispute,” which, on the allegations against Narayan in the SAC, asymptotically approaches zero.

It cannot avail Bauer to rely on Burger King for the proposition that the “paper and abstract” identified in the SAC created specific jurisdiction in New Jersey. As the New Jersey Supreme Court explained in Lebel v. Everglades Marina, Inc., 115 N.J. 317 (1989), “the mere transmittal of messages by mail or telephone within the state is not the critical factor, it is the nature of the contact.” Id. at 325. By extension, mere mention of a website is not sufficient either, to create jurisdiction.

In Lebel, the Florida defendant sold to a New Jersey purchaser a boat that never arrived. The purchaser claimed that the defendant’s representations via mail and telephone to New Jersey were fraudulent. Extending specific jurisdiction to the Florida marina, the New Jersey Supreme Court said, “Of course, we realize that this result pushes at the ‘outermost limit’ of personal jurisdiction.” Id. at 329. Indeed, the Court said that a Florida bicycle retailer who sold a bike to a New Jersey resident would not necessarily be subject to suit in New Jersey. “The occasional seller of a low-price item for the convenience of an out-of-state buyer should not ‘reasonably anticipate being haled into court’ in any state where the plaintiff happens to reside.” Id. at 330. It is preposterous to suggest that the facts recited in the SAC would be enough to pull Ms. Narayan into court in New Jersey.

Bauer’s citation to Waste Management, Inc. v. Admiral Ins. Co., 138 N.J. 106 (1994), is totally irrelevant. Waste Management concerned environmental damage claims against insurance companies that issued policies with “territory of coverage clauses.”

Bauer's citation to Charles Gendler & Co. v. Telecom Equipment Corp., 102 N.J. 460 (1986), which concerned stream-of-commerce theory, is similarly unenlightening.

Bauer has not sued Ms. Narayan for a "slide show," or for a posting on the UCSD website, or for communications on the AbsoluteWrite website, or for "her own blog." The SAC failed to identify defamatory statements that would constitute a cause of action for defamation against Ms. Narayan. "In the case of a complaint charging defamation, plaintiff must plead facts sufficient to identify the defamatory words, their utterer and the fact of their publication." Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 101 (App. Div.), certif. denied, 107 N.J. 32 (1986). There simply is not enough in the Second Amended Complaint to maintain the claims against Ms. Narayan.

An appalling burden would fall on defendants if pleadings like the SAC failed to identify the relevant facts, but forced people to defend against new claims. Although Ms. Narayan was able to retain volunteer counsel, more often defendants would be forced to incur significant expense, not only to make an appearance in New Jersey, but to withstand novel allegations. See Burger King, 471 U.S. at 477 (even if minimal contacts are established, the court should consider the burden on the defendant). See also DeAngelis v. Hill, 180 N.J. 1, 12 (2003) ("[t]he summary judgment standard is encouraged in libel and defamation actions because the threat of prolonged and expensive litigation has a real potential for chilling criticism and comment upon public figures and public affairs").

The Court should reject Bauer's argument that any essential facts she omitted from the SAC can be dredged up in discovery. "A plaintiff can bolster a defamation cause of action through discovery, but not file a conclusory complaint to find out if one exists."

Printing Mart v. Sharp Electronics Corp., 116 N.J. 739, 768 1989). The Court must also reject Bauer's effort to create novel claims based on her opposition brief but omitted from the SAC.

Under Rule 4:6-2(e), this Court must consider the legal sufficiency of the facts recited in the SAC. For the reasons set forth above and in her opening brief, the claims against defendant Shweta Narayan must be dismissed with prejudice.

Respectfully submitted,

Grayson Barber

cc: All Counsel
Pro se Parties
Shweta Narayan