

MAR 04 2003

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA LYNCHBURG DIVISION
JOHN F. CORCORAN, CLERK
BY: *Carolyn Proffitt*
DEPUTY CLERK

JERRY L. FALWELL,)
) CIVIL ACTION NO. 6:02CV00040
)
 Plaintiff,)
)
 v.) MEMORANDUM OPINION
)
 GARY COHN and GOD.INFO,)
)
 Defendants.) JUDGE NORMAN K. MOON

This matter comes before the Court on Defendants' Motion to Dismiss pursuant to Rules 12(b)(2), 12(b)(6), and 17 of the Federal Rules of Civil Procedure. For the reasons set forth below, Defendant's Motion shall be GRANTED.

I. FACTUAL BACKGROUND

The Plaintiff, Jerry Falwell, is a resident and domiciliary of Lynchburg, Virginia. Because of his assorted business activities and his religious activities as the pastor at Thomas Road Baptist Church, Reverend Falwell is a well-known public figure, both locally and nationally. For several decades, Reverend Falwell has used "Jerry Falwell," his given name, for various commercial and philanthropic purposes. Reverend Falwell operates a web site with the domain name falwell.com.

The Defendant Gary William Cohn is a resident of Illinois and Defendant God.info is a fictitious name that Mr. Cohn listed as the administrative contact when he registered the domain name jerryfallwell.com. Mr. Cohn maintains a web site bearing the domain names

jerryfalwell.com and jerryfallwell.com.¹ The web site is dedicated to assorted anti-Falwell material including cartoons, photographs, and written information. Mr. Cohn registered the domain name jerryfalwell.com in 1999. In 2001, Mr. Cohn bought the domain name jerryfalwell.com from Richard Kirkendall. Mr. Cohn used the name Gary Williams when he registered the domain names to protect his privacy. Both domain names were originally registered with VeriSign, Inc. in Herndon, Virginia. Prior to the filing of this suit by Reverend Falwell, Mr. Cohn transferred the registrations for jerryfalwell.com and jerryfallwell.com to eNom, Inc. in Redmond, Washington and bulkregister.com in Baltimore, Maryland, respectively. Mr. Cohn has never lived in Virginia, does not own any property in Virginia, and does not conduct any business in Virginia. The content of the web site at issue is stored on a server in Illinois.

Visitors to Mr. Cohn's web site may choose from a group of "buttons" on the left side of the main page² including but not limited to "The Bible Code," "False Prophets," "How to follow the Bible," and "Faith Ba\$ed" where the letter "s" in "Based" is replaced with a dollar sign. Another feature on Mr. Cohn's web site is a flashing link to a "Message Board." When a visitor clicks on the link, he is automatically routed to another page hosted by DelphiForums³ where he may read or post messages relating to Reverend Falwell or a host of other topics. Although Mr. Cohn's web site does not contain any advertisements, the DelphiForums Jerry Falwell message board includes banner advertisements near the top of the page. According to Plaintiff, the ads

¹ Either domain name leads to the same web site.

² Located at <http://www.internetparodies.org/indexoriginal2.html>.

³ Located at <http://forums.delphiforums.com/jerryfalwell>.

displayed on the DelphiForums message board are for products such as Rogaine, Yahoo DSL, X10 miniature video cameras and other webcams, and gambling.com.

At the bottom of the main page of Mr. Cohn's site, there is a blue banner which reads "JerryFalwell.com is sponsored by HateIsNotAFamilyValue.com Click Here Now." When a visitor clicks on the banner, he is linked to the web site <http://www.hateisnotafamilyvalue.com/> where he may personalize a "WebToon" with a caption and either print the "mini-poster" or e-mail it to a friend. From Mr. Cohn's site, visitors may also send an e-mail to Mr. Cohn by clicking on a link labeled "Contact Us Click Here."

The Defendants filed this Motion to Dismiss, arguing (1) that this Court lacks personal jurisdiction over Defendant Cohn, (2) Plaintiffs have failed to state a claim upon which relief may be granted, and (3) Defendant God.info should be dismissed under Rule 17 because it is a fictitious name and not a real party in interest. Having heard oral arguments on this motion from the parties and having reviewed supplemental briefs regarding the Fourth Circuit Court of Appeals' recent decision in *Young v. New Haven Advocate*, 315 F.3d 256 (2002), this motion is ripe for decision.

II. DISCUSSION

A federal court may exercise personal jurisdiction over a defendant in the manner provided by the forum state's law. See *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 622 (4th Cir. 1997). Because the Virginia long-arm statute authorizes personal jurisdiction to the extent permitted by the Due Process Clause of the Fourteenth Amendment, the constitutional inquiry merges with the statutory inquiry. See *Stover v. O'Connell Assocs., Inc.*, 84 F.3d 132, 135-36 (4th Cir. 1996). In deciding whether it may subject a party to its jurisdiction, a court

must assess whether the party has sufficient "minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). There are two types of personal jurisdiction—general and specific. See *ALS Scan, Inc. v. Consultants, Inc.*, 293 F.3d 707, 711 (4th Cir. 2002). If the defendant's contacts with the forum state are also the basis of the underlying suit, those contacts may establish specific jurisdiction. See *id.* at 712. Such is the case in the instant suit. Thus, the Court must consider whether the defendant "purposefully availed" himself of the privilege of conducting activities in Virginia, whether the suit arises out of those activities, and whether the exercise of jurisdiction would be constitutionally reasonable. See *id.* See also *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 & n. 8 (1984). The plaintiff bears the burden of establishing the existence of personal jurisdiction. See *Young v. FDIC*, 103 F.3d 1180, 1191 (4th Cir. 1997).

Although the phenomenon of the internet remains relatively young, courts in this circuit have had ample opportunity to apply the personal jurisdiction requirements in the electronic context. Most recently, the Fourth Circuit Court of Appeals addressed personal jurisdiction in the internet context in *Young v. New Haven Advocate*, 315 F.3d 256 (2002). In *New Haven Advocate*, the Fourth Circuit held that a district court in Virginia did not have personal jurisdiction over two Connecticut newspapers in a defamation suit regarding material posted on the newspapers' web sites. See *id.* at 258-59. The material on the web sites allegedly defamed the warden at a Virginia prison where Connecticut prisoners were housed. Because the defendants "did not manifest an intent to aim their web sites or the posted articles at a Virginia

audience," the Virginia court could not constitutionally exercise jurisdiction over the Connecticut newspapers. *Id.* Examining the "general thrust and content" of the web sites, the Fourth Circuit noted that neither of the sites contained material or advertisements aimed at Virginia, and the sites were not "designed to attract or serve a Virginia audience." *Id.* at 263. The Fourth Circuit also examined the allegedly defamatory articles to determine whether they were posted with the intent to target a Virginia audience and concluded that they were not. *Id.* at 263-64. Even though the articles were about a Virginia resident and prison, their focus "was the Connecticut prisoner transfer policy and its impact on the transferred prisoners and their families back home in Connecticut." *Id.* at 263.

Much of the same is true in this case. Mr. Cohn's web site is not aimed at a Virginia audience. Instead, it addresses a national audience, discussing such things as Reverend Falwell's reaction to the September 11, 2001 attacks and President Bush's Faith-Based Initiative. Mr. Cohn's site does not discuss anything that relates specifically to Virginia. Although Reverend Falwell's church and many of his followers are located in Lynchburg, Virginia, he is self-admittedly a nationally known religious figure. The Court finds that the contents of Mr. Cohn's web site do not demonstrate a manifest intent to expressly target a Virginia audience. Accordingly, Mr. Cohn could not have "reasonably anticipate[d] being haled into court" in Virginia. This Court cannot, therefore, constitutionally exercise jurisdiction over Mr. Cohn.

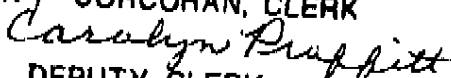
Having found that this Court lacks personal jurisdiction over Defendant Cohn, the Court does not reach any of the claims on the merits of this case.

ENTERED:


U.S. District Judge

3/2/03
Date

A TRUE COPY, TESTE:
JOHN F. CORCORAN, CLERK

BY: 
DEPUTY CLERK

MAR 04 2003

ENTERED
3/4/03

IN THE UNITED STATES DISTRICT COURT JOHN F. CORCORAN, CLERK
FOR THE WESTERN DISTRICT OF VIRGINIA BY: *Carolyn Proffitt*
LYNCHBURG DIVISION DEPUTY CLERK

JERRY L. FALWELL,)	CIVIL ACTION NO. 6:02CV00040
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Defendants.)	JUDGE NORMAN K. MOON

This matter comes before the Court on Defendants' Motion to Dismiss pursuant to Rules 12(b)(2), 12(b)(6), and 17 of the Federal Rules of Civil Procedure. For the reasons set forth in the attached Memorandum Opinion, Defendant's Motion shall be GRANTED.

It is so ORDERED.

The Clerk of the Court is instructed to strike this case from the docket of this Court and to send a copy of this Order and the attached Memorandum Opinion to all counsel of record.

ENTERED: *Norman K. Moon*
U.S. District Judge
3/4/03
Date

A TRUE COPY, TESTE:
JOHN F. CORCORAN, CLERK
BY: *Carolyn Proffitt*
DEPUTY CLERK