

Firm No. 41441

In the Circuit Court of Cook County, Illinois

E360Insight, LLC, an Illinois Limited Liability
Company and David Linhardt, an individual,

Plaintiffs,

v.

Mark James Ferguson, *et al.*,

Defendants.

No. 07 L 4983
Judge Quinn

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TO: Bartly J. Loethen	Desmond P. Curran	Mark J. Ferguson
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Please take notice that on August 27, 2007, we filed with the Clerk of the Court of Claims, Defendant Robert Saecker's Reply to Plaintiff's Response to Saecker's Motion to Dismiss, a copy of which is enclosed herewith and served upon you.

Robert Saecker, defendant



One of his attorneys

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Certificate of Service

The undersigned certifies that she served a copy of the foregoing upon the parties indicated therein by enclosing same in sealed envelopes addressed to them, postage prepaid, and depositing same in the U.S. Mail at Three First National Plaza, Chicago, Illinois, 60602 on August 27, 2007.

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this certificate of service are true and correct.

August 27, 2007
Date

Karen Rivera

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LAW DIVISION

Defendant Robert Saecker's Reply to Plaintiffs' Response to Saecker's Motion to Dismiss

Defendant replies as follows:

Argument

I. Other States That Exercise Jurisdiction Based Upon Where the Effects of Internet Activities Are 'Felt' Are in the Extreme Minority

Plaintiffs' characterization of *Goldhaber v. Kohlenberg*, --- A.2d ---, 2007 WL 2198181 (N.J. Super. A.D.), which held that jurisdiction may be obtained over non-resident defendants based upon internet activity, as "emerging precedent" is untrue. The Superior Court of New Jersey Appellate Division in *Goldhaber* candidly admitted that courts in other most states have concluded just the opposite - that the mere posting of messages online is not sufficient to confer jurisdiction. *Goldhaber v. Kohlenberg*, --- A.2d ---, 2007 WL 2198181 (N.J. Super. A.D.) (citing *Griffis v. Luban*, 646 N.W. 2d 527 (Minn. 2002), *cert. denied*, 538 U.S. 906, 123 S. Ct. 1483, 155 L. Ed. 2d 225 (2003), *Young v. New Haven Advocate*, 315 F. 3d 256 (4th Cir. 2002), *cert. denied*, 538 U.S. 1035, 123 S. Ct. 2092, 155 L. Ed. 2d 1065 (2003); *Bible and Gospel Trust v. Wyman*, 354

F. Supp. 2d 1025 (D. Minn. 2005); *Medinah Mining, Inc. v. Amunategui*, 237 F. Supp. 2d 1132 (D. Nev. 2002); *Burleson v. Toback*, 391 F. Supp. 2d 401 (M.D.N.C. 2005); *Barrett v. Catacombs Press*, 44 F. Supp. 2d 717 (E.D. Pa. 1999); *Novak v. Benn*, 896 So. 2d 513 (Ala. Civ. App 2004). Illinois is in the majority and does not follow the ‘effects’ test plaintiffs are urging should be the basis of this court’s decision.

The *Goldhaber* court even acknowledged that its decision does not represent any type of trend. It merely followed the New Jersey Supreme Court’s implicit adoption of the *Calder v. Jones* “effects” test for exercising jurisdiction over a nonresident defendant in reaching its decision. *Goldhaber v. Kohlenberg*, --- A.2d ---, 2007 WL 2198181 (N.J. Super. A.D.). Illinois, like most other states, rejects an ‘effects’ test. The minority view followed in *Goldhaber* is not “emerging precedent,” it is, rather, a minority view. Illinois does not follow this minority view favoring mainstream jurisprudence.

II. Plaintiffs’ Recitation of Illinois Law is Incorrect or Incomplete; Under Illinois Law Saecker Cannot be Subject to Personal Jurisdiction

Plaintiffs state that Illinois courts have subjected a defendant to its jurisdiction based on internet postings. This is patently misleading. In *Bombliss v. Cornelson*, 355 Ill. App. 3d 1107, 824 N.E.2d 1175 (3d Dist. 2005), the Appellate Court of Illinois, Third District did not base its decision to exercise personal jurisdiction over the nonresident defendants solely on their use of an interactive chat room website under the *Zippo* sliding scale analysis as plaintiffs would have the court believe. The *Bombliss* court instead relied upon the totality of the defendants’ activities in Illinois, which included contract negotiations within the state, registration of the allegedly defective animal within the State of Illinois and maintaining a commercial interactive website. *Bombliss v. Cornelson*, 355 Ill. App. 3d 1107, 1115, 824 N.E.2d 1175 (3d Dist. 2005). None of these

activities, or any like them, occurred here. Sacker's connection with Illinois is nonexistent by comparison to the defendants in *Bombliss*. Plaintiff's reliance upon its holding is misplaced.

Plaintiffs' characterization of *Howard v. Mo. Bone & Joint Ctr., Inc.*, --- Ill. App. 3d ---, 2007 Ill. App. LEXIS 414 (5th Dist. 2007) is incomplete. Defendant Saecker did not rely upon the *Howard* holding regarding the extent to which a defendant's advertisements could subject it to personal jurisdiction. The importance of *Howard* is found in the standard the court applies in determining whether to exercise personal jurisdiction over a nonresident defendant based upon his online activity. The standard applied in Illinois is one that the Plaintiffs conveniently forget to address. The *Howard* court declined to apply the *Zippo* sliding scale analysis, instead applying a general personal jurisdiction analysis when examining online contacts with the State of Illinois. *Howard v. Mo. Bone and Joint Ctr, Inc.*, --- Ill. App. 3d ---, 2007 Ill. App. LEXIS 414 (5th Dist. 2007). Plaintiffs do not address how Saecker's complete lack of connection with the State of Illinois would permit the exercise of personal jurisdiction over him pursuant to *Howard*.

III. Plaintiffs Do Not Challenge Saecker's Position that Illinois Courts Lack Personal Jurisdiction Over Him Based Upon Plaintiff's Allegations of Tortious Interference

Plaintiffs only arguments are that Saecker's allegedly "defamatory comments on an internet site" created sufficient minimum contacts with Illinois, a view unsupported by any case law controlling in this state. Plaintiffs do not contest any of Saecker's contentions or points concerning the alleged tortious interference with plaintiffs' existing and potential business contracts. The court should dismiss those counts accordingly.


Conclusion

Plaintiffs rely solely upon a fringe minority opinion from a foreign jurisdiction and wrap that unusual piece of jurisprudence with incomplete and inaccurate positions of Illinois case law to bolster their argument that Illinois can assert personal jurisdiction over Saecker. Plaintiffs do not try to defend against arguments that Saecker's alleged tortious interference did not subject him to personal jurisdiction in Illinois. Their position and their lawsuit is based on jurisprudence which is meaningless in Illinois since our appellate courts have shown the two possible ways to answer this question.

Wherefore, Robert Saecker prays that the court dismiss the complaint against him with prejudice, that he go hence without day and have his costs, so wrongfully sustained, reimbursed him and for such other or further relief as the court determines is warranted.

August 27, 2007

Robert Saecker, defendant

By: 
One of his attorneys

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Tomas Petkus, #25099
Tobin Petkus & Muñoz, L.L.C.
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