UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MNG 2005, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:18-cv-01155-JAR
	)	
PAYMENTECH, LLC, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

This matter is before the Court on two motions to dismiss: one filed by Defendants Paymentech, LLC ("Paymentech"), JPMorgan Chase Bank, N.A. ("Chase"), and Visa USA, Inc. ("Visa") (Doc. 89); and another filed by Defendant G2 Web Services, LLC. ("G2"). (Doc. 118). Both motions are fully briefed and ready for disposition. This court will address the two motions in one Memorandum and Order as they generally concern similar issues.

I. FACTUAL AND PROCEDURAL BACKGROUND

In its prior Memorandum and Order (Doc. 67), this Court summarized the alleged facts:

> Plaintiff is a Missouri corporation operating an online cooking-oil business. In April, 2018, Plaintiff entered into a contract with Chase and Paymentech—a wholly-owned subsidiary of Chase—for credit card processing services (the "Merchant Agreement"). (Doc. 57-1).
>
> Under the TERMS AND CONDITIONS of the Merchant Agreement, Plaintiff agreed to comply with "all applicable Payment Brand Rules in effect from time to time." (Doc. 59-1 at § 1.3(a)). In addition, Plaintiff promised it would not "submit[] any Transaction that [it] knows or should have known to be either fraudulent, illegal, [or] damaging to the Payment Brand(s)." (*Id*. at § 1.4(n)). Likewise, Plaintiff authorized Chase and Paymentech to **"**temporarily suspend or delay payment to [Plaintiff] of amounts due under this Agreement," until Plaintiff satisfies its obligations under the Merchant and "executes all documents reasonably requested by Chase [and] Paymentech." (*Id*. at § 4.6(q)(i)-(ii)). Finally, Plaintiff

agreed that Chase and Paymentech "may terminate [the Merchant Agreement] ***immediately*** if . . . [Plaintiff] engages in conduct that creates or could tend to create harm or loss to the goodwill of any Payment Brand." (*Id*. at § 10.3(i)(i)). Visa is a "Payment Brand." (*Id*. at § 18).

Less than one month after entering into the Merchant Agreement, Chase stopped processing Plaintiff's credit card transactions. Prior to that, Chase withheld more than $66,000 in payments related to purchases by Plaintiff's customers using Visa cards. Chase informed Plaintiff that it had stopped processing transactions and would withhold the payments pursuant to Sections 4.6 and 10.3 of the Merchant Agreement, concluding that the transactions "tend to create harm or loss to the good will of the payment brand." (*Id*. at ¶ 13). Chase represents that it took action after it was informed by Visa of potentially harmful transactions. (Doc. 57 at 3.)

Plaintiff filed suit in Missouri state court and obtained a temporary restraining order against Defendants, prohibiting them from withholding payments and from "making false and defamatory statements about Plaintiff that Plaintiff is engaged in criminal behavior." (Doc. 1-1 at 23). Defendants removed the case to this Court on the basis of diversity jurisdiction and the temporary restraining order was dissolved by consent of the parties. (Docs. 1, 22).

Thereafter, Plaintiff was granted leave to file an Amended Complaint, in which it advanced five claims for relief:

Count I – Breach of Contract by Paymentech and Chase;
Count II – Libel and Slander by Paymentech;
Count III – Conversion by Paymentech;
Count IV – Breach of Contract by Visa; and
Count VI[1] – Tortious Interference with Contract by Paymentech, Chase, and Visa. (Doc. 67 at 1-3).

Defendants moved to dismiss the complaint and the Court granted the motion in part, dismissing Counts II, IV, and VI. (*Id.* at 10). Thereafter, the Court granted Paymentech's motion for reconsideration and dismissed Count III as well, finding that there is no claim for conversion when the property allegedly converted is money. (Doc. 82). In the same order, the Court granted Plaintiff leave to amend its complaint.

Plaintiff then filed its Third Amended Complaint advancing the following claims:

Count I – Unfair Business Practices by Paymentech, Chase, and Visa;
Count II – Breach of Contract by Paymentech and Chase;

[1] Plaintiff had voluntarily dismissed Count V by this time. (Doc. 53).

Count III – Unjust Enrichment by Paymentech and Visa. (Doc. 86).

Plaintiff simultaneously moved to join Visa as a necessary party, arguing that although it has no direct contractual relationship with Plaintiff, Visa's presence in the case is necessary to fully address Plaintiff's alleged injuries. (Doc. 85). Plaintiff subsequently sought leave to add another new defendant, G2, arguing that Visa contracts with G2 to monitor and identify companies accepting Visa payments for conduct that violates the Merchant Agreement and assists in maintaining Visa's "Terminated Merchant" list. (Doc. 103). In its motion for leave to join G2, Plaintiff sought to add new claims of libel and slander against both Visa and Chase. (*Id.*). Plaintiff proposed a Fourth Amended Complaint that asserts the following claims:

> Count I – Unfair Business Practices by Paymentech, Chase, Visa, and G2;
> Count II – Breach of Contract by Paymentech and Chase;
> Count III – Unjust Enrichment by Paymentech and Visa.
> Count IV – Libel and Slander by Visa and Chase.[2] (Doc. 104).

This Court granted Plaintiff's motions to join Visa and G2 and docketed Plaintiff's Fourth Amended Complaint. (Doc. 108). The Fourth Amended Complaint (Doc. 104) is operative for purposes of the instant motions to dismiss.

Defendants Paymentech, Chase, and Visa seek dismissal of Counts I, III, and IV (Docs. 89, 112), as this Court has previously denied dismissal as to Count II. (Doc. 67). G2 seeks dismissal of Count I. (Doc. 118).

II. LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[2] Plaintiff also filed a motion to supplement this Fourth Amendment Complaint to include a claim against G2 in Count IV. This motion was denied. (Doc. 126).

A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (alteration in original) (citations omitted). "When ruling on a motion to dismiss [under Rule 12(b)(6)], the district court must accept the allegations contained in the complaint as true and all reasonable inferences from the complaint must be drawn in favor of the nonmoving party." *Young v. City of St. Charles*, 244 F.3d 623, 627 (8th Cir. 2001).

III. DISCUSSION

A. G2's Motion for Dismissal Pursuant to Fed. R. Civ. P. 12(b)(2)

G2 argues that this Court lacks personal jurisdiction over it because Missouri's long-arm statute is not satisfied and G2 does not have sufficient contacts with Missouri to satisfy due process. (Doc. 119 at 3-8). "To survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must make a prima facie showing that personal jurisdiction exists, which is accomplished by pleading sufficient facts 'to support a reasonable inference that the defendant can be subjected to jurisdiction within the state.'" *K-V Pharm. Co. v. J. Uriach & CIA, S.A.*, 648 F.3d 588, 591-92 (8th Cir. 2011) (quoting *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1072 (8th Cir. 2004)). The evidence must be viewed in the light most favorable to Plaintiff, and all factual conflicts will be resolved in Plaintiff's favor when deciding if personal jurisdiction exists. *Id.* at 592 (citing *Digi-Tel Holdings, Inc. v. Proteq Telecomm. (PTE) Ltd.*, 89 F.3d 519, 522 (8th Cir. 1996)). "To defeat a motion to dismiss for lack of personal jurisdiction, the nonmoving party need only make a prima

facie showing of jurisdiction." *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 647 (8th Cir. 2003) (citing *Falkirk Min. Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 373 (8th Cir. 1990)).[3]

Missouri's long-arm statute permits this Court to exercise jurisdiction over G2 if the present cause of action arises from (1) the transaction of any business in Missouri; (2) the making of any contract in Missouri; or (3) the commission of a tortious act in Missouri. Mo. Rev. Stat. § 506.500(1)-(3).[4] The Missouri Supreme Court has declared that the Missouri legislature's "ultimate objective [when enacting the long-arm statute] was to extend the jurisdiction of the courts of this state over non-resident defendants to the extent permissible under the Due Process Clause of the Fourteenth Amendment." *State v. Pinnell*, 454 S.W.2d 889, 892 (Mo. banc 1970). Therefore, the "critical factor in our analysis is whether the exercise of personal jurisdiction in this case comports with due process." *Clune v. Alimak AB*, 233 F.3d 538, 541 (8th Cir. 2000).

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[3] As G2 notes, there are unique considerations when assessing personal jurisdiction in the context of an antitrust claim under the Clayton As. (Doc. 119 at 11 n.4). Section 12 of the Clayton Act grants nationwide jurisdiction over corporate antitrust defendants provided there are sufficient minimum contacts with the United States as a whole. 15 U.S.C. § 22; *see In re Fed. Fountain, Inc.*, 165 F.3d 600 (8th Cir. 1999). The first clause of Section 12 outlines the venue requirements for corporate antitrust defendants; the second clause establishes nationwide service of process. The Seventh Circuit recently held that Section 12 is a "package deal," and "to avail oneself of the privilege of nationwide service of process, a plaintiff must satisfy the venue provisions of Section 12's first clause." *KM Enterprises, Inc. v. Global Traffic Techs., Inc.*, 725 F.3d 718, 730 (7th Cir. 2013). Put differently, a plaintiff cannot rely on the standard federal venue provision, 28 U.S.C. § 1391, while claiming nationwide personal jurisdiction under the Clayton Act. The Second Circuit and D.C. Circuit reached similar conclusions, while the Third Circuit and Ninth Circuit interpreted the statute more broadly.

It does not appear that the Eighth Circuit has addressed whether the venue and nationwide service provisions of Section 12 should be read together. At least one court in the Eighth Circuit, however, appears to have reached the same conclusion as the Seventh Circuit. *See Willis Elec. Co., Ltd. v. Polygroup Macau Ltd. (BVI)*, 437 F. Supp. 3d 693, 703 (D. Minn. 2020); *see also Sitzer v. Nat'l Ass'n of Realtors*, Case No. 4:19-CV-00332-SRB, 2019 WL 3892873, at *2-3 (W.D. Mo. Aug. 19, 2019) (discussing issue but finding jurisdiction was proper under either interpretation).

Plaintiff has not addressed Section 12 or in any way tethered its jurisdictional claims to the Clayton Act. Plaintiff certainly has not argued that venue is proper under Section 12. Even construing Plaintiff's complaint liberally, there is no allegation that G2 transacts business "of any substantial character" in this district, as required to establish venue under the Clayton Act. *United States v. Scophony Corp. of Am.*, 333 U.S. 795, 807 (1948). Accordingly, this Court agrees with G2 that Plaintiff must make prima facie showing of personal jurisdiction under the traditional due process requirements.

[4] The other methods for establishing jurisdiction under Missouri's long-arm statute are clearly not applicable to G2.

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