

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KAREN HEPP,	:	
	:	19-CV-4034
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
FACEBOOK, INC.; IMGUR, INC., REDDIT, INC., GIPHY, INC.; WGCZ S.R.O., and DOES 1-10,	:	
	:	
Defendants.	:	
	:	

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS BY DEFENDANT IMGUR, INC.**

I. INTRODUCTION

Defendant Imgur, Inc. (“Imgur”; pronounced IMAGE-ur) operates www.imgur.com, a website where users can post images and share comments to them. The claims against Imgur in the First Amended Complaint (“FAC”) arise out of an innocuous photo of the Plaintiff which, she claims, was taken at a convenience store in New York, and which an unknown person posted to Imgur’s website in 2015. The photo, as purportedly posted to Imgur, is attached as Exhibit M to the FAC.

All claims against Imgur must be dismissed because this Court lacks personal jurisdiction over Imgur. In the alternative, all claims against Imgur must be dismissed with prejudice because they are not actionable under Pennsylvania state law, and because in any event Imgur is immune from all liability by virtue of Section 230 of the Communications Decency Act, 47 U.S.C. §230(c).

II. THIS COURT LACKS JURISDICTION OVER DEFENDANT IMGUR

A. Legal Standard

A defendant has the initial burden of challenging the Court's personal jurisdiction. *Provident National Bank v. California Fed. Savings & Loan Ass'n*, 819 F.2d 434 (3d Cir. 1987). Once a defendant challenges personal jurisdiction, "the burden shifts to the plaintiff to present a prima facie case establishing jurisdiction over the non-resident defendant in the forum." *Kurz v. Holiday Hospitality Franchising, LLC*, No. CV 19-2129, 2019 WL 5068646, at *2 (E.D. Pa. Oct. 9, 2019) (citing further authority). "A plaintiff has the burden to show, 'with reasonable particularity,' enough contact between the defendant and the forum state to support the exercise of personal jurisdiction by the forum state." *Id.*

Rule 4(e) of the Federal Rules of Civil Procedure "authorizes personal jurisdiction over non-resident defendants to the extent permissible under the law of the state where the district court sits." *Mellon Bank (East) PSFS, National Association v. Farino*, 960 F.2d 1217, 1221 (3d Cir. 1992). In this case, that law is Pennsylvania's long-arm statute, 42 Pa.C.S. §5322.1, which authorizes jurisdiction over out-of-state defendants "coextensive with that permitted by the due process clause of the Fourteenth Amendment of the United States Constitution." *Batista v. O'Jays Gigs, Inc.*, No. CV 18-0636, 2019 WL 400060, at *3 (E.D. Pa. Jan. 30, 2019) (citing *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001), which refers to a prior version of the same statute). Fourteenth Amendment due process, in turn, is analyzed based on the "minimum contacts" rule established in *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). A defendant that is "not present within the territory of the forum [must] have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.*, 326 U.S. at 316, 66 S. Ct. at 158 (citing further authority). As this Court has observed, "[t]he focus

of the minimum contacts analysis is ‘the relationship among the defendant, the forum, and the litigation,’ such that the defendant has fair warning that it may be subject to suit in that forum.” *Kurz*, 2019 WL 5068646, at *3 (internal citations omitted).

Taking into account Fourteenth Amendment due process, there are two possible types of personal jurisdiction a court may exercise over a non-resident defendant under Pennsylvania’s long-arm statute and thus under Civil Rule 4(e): general jurisdiction and specific jurisdiction. “General jurisdiction exists when a defendant has maintained systematic and continuous contacts with the forum state. . . . Specific jurisdiction exists when the claim arises from or relates to conduct purposely directed at the forum state.” *Marten v. Godwin*, 499 F.3d 290, 296 (3d Cir. 2007) (citing *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984)). Neither general nor specific jurisdiction exists over Imgur here.

B. There Is No General Jurisdiction Over Imgur

A court may exercise general personal jurisdiction over a nonresident corporate defendant if the defendant's “continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924, 131 S. Ct. 2846, 2853, 180 L. Ed. 2d 796 (2011) (citing *Int'l Shoe*, 326 U.S. at 318, 66 S. Ct. at 159). “If general personal jurisdiction exists as a result of the defendant's activities in a forum, there is jurisdiction over that defendant regardless of whether the claim for relief has any relation to the forum.” *Peek v. Golden Nugget Hotel & Casino*, 806 F.Supp. 555, 557 (E.D. Pa. 1992). “Where the cause of action has no relation to a corporate defendant’s contacts with the forum, general jurisdiction may only be asserted over the corporate defendant if the corporate defendant’s ‘affiliations with the [s]tate are so “continuous and systematic” as to render them essentially at home in the forum [s]tate.’” *Kurz*, 2019

WL 5068646 at *3 (citing further authority).

Defendant Imgur is a Delaware corporation with its principal place of business in San Francisco, California. (Alan Schaaf Declaration, attached hereto as Exhibit A, at ¶ 2). Imgur has no continuous or systematic contact with Pennsylvania. Imgur has never registered to do business in Pennsylvania, has never paid taxes in Pennsylvania, has never owned or leased any real or personal property in Pennsylvania, has never maintained any bank accounts in Pennsylvania, has never signed a contract with any company in Pennsylvania, has never directed any advertising at Pennsylvania, has not transacted or conducted business operations of any kind within Pennsylvania, and has never previously litigated any case in or involving Pennsylvania. (*See* Schaaf Dec. ¶¶ 3-10).

Because Defendant Imgur has no continuous or systematic contacts with the forum, this Court may not exercise general jurisdiction over Imgur.

C. There Is No Specific Jurisdiction Over Imgur

A court may exercise specific personal jurisdiction over a corporate defendant to the extent that the claims against it arise out of “the defendant’s contacts with the forum.” *Helicopteros*, 466 U.S. at 414 n.8, 104 S.Ct. 1868; *see also Telcordia Tech Inc. v. Telkom SA Ltd.*, 458 F.3d 172, 177 (3d Cir. 2006). Specific jurisdiction exists only “when a plaintiff’s claim is *related to, or arises out of*, a defendant’s contacts with the forum state.” *Element Financial Corp. v. ComQi, Inc.*, 52 F.Supp.3d 739, 743 (E.D. Pa. 2014) (*citing Dollar Savings Bank v. First Sec. Bank of Utah, N.A.*, 746 F.2d 208, 212 (3d Cir.1984) (emphasis added)).

For Pennsylvania, the type of contacts upon which specific jurisdiction may be based are set forth in long-arm statute. They include: transacting business within Pennsylvania, contracting to supply services or things within Pennsylvania, causing tortious injury by an act or omission in Pennsylvania, having an interest in or possessing real property in Pennsylvania, engaging in

insurance-related activities in Pennsylvania, accepting appointment as a fiduciary or personal representative within Pennsylvania, or committing a violation in Pennsylvania of a state or local law or regulation. *See* 42 Pa.C.S. §5322.

Courts in the Third Circuit use a three-part test to determine whether to exercise specific jurisdiction over a nonresident defendant. “First, the defendant must have ‘purposefully directed [its] activities’ at the forum.” *O’Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 317 (3d Cir. 2007) (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). Second, the plaintiff’s claims “must also ‘arise out of or relate to’ at least one of those contacts.” *Id.*, at 318 (citing *Helicopteros*, 466 U.S. at 414 [note 9], 104 S.Ct. 1868).¹ Third, even if both of the first two requirements are met, “a court may consider whether the exercise of jurisdiction otherwise ‘comport[s] with “fair play and substantial justice.” ’ *O’Connor*, 496 F.3d at 317 (quoting *Burger King*, 471 U.S. at 476, 105 S.Ct. 2174, embedded quote from *Int’l Shoe*, 326 U.S. at 320, 66 S.Ct. 154). The Plaintiff’s FAC fails all three parts of the test.

1. The FAC does not allege that Imgur purposefully directed its activities at the forum.

Nowhere in the FAC does the Plaintiff allege any fact indicating that Imgur purposefully directed its activities at Pennsylvania. Rather, the FAC merely recites generalized, conclusory jurisdictional allegations, lumping all fifteen defendants together: Defendants “are engaged in tortious conduct within the Commonwealth of Pennsylvania and in this District, including by using Plaintiff’s image without her authorization”; their “conduct causes injury to Plaintiff within the Commonwealth of Pennsylvania”; they “purposely avail themselves of conducting activities within the Commonwealth of Pennsylvania”; and their “websites actively engage Pennsylvania-based users

¹ Although as *O’Connor* points out, there are several different approaches for analyzing whether claims “arise out of or relate to” a defendant’s contacts with the forum, each approach requires that the defendant have at least some contacts with the forum.

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