

Jurisdiction in a global village

October 2010

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The "butterfly effect" speaks to the impact that an action taken in one part of the world can have an effect elsewhere. The Internet provides a jurisdictional lens through which the actions of an individual in one part of the country or the world can be seen to have an impact in another jurisdiction. The actions on the Internet in one state can give rise to a case in another state.

One case from the 7th U.S. Circuit Court of Appeals and another from the Ohio Supreme Court illustrate that, depending on the facts and the applicable law, an individual or corporate entity can be held accountable and required to appear in a court many miles away from where they reside.

In a case in the 7th Circuit, the actions of defendants from several jurisdictions, including Canada, Colorado, Michigan and Ohio, resulted in their having to respond for their actions in the Northern District of Illinois. In *Tamburo, et al. v. Dworkin, et al.* (USCA, 7th, 2010), the defendants allegedly conducted a concerted campaign of blast e-mails and website postings accusing the plaintiff of stealing their data (which the plaintiff contends was in the public domain) to populate the plaintiff's dog-pedigree computer program, and urging others to boycott the plaintiff's products.

In a recent case from the Ohio Supreme Court, the actions of a Virginia resident ultimately resulted in that individual having to respond for his actions in the courts of Ohio. In *Kauffman Racing Equipment, LLC v. Roberts* (Supreme Court of Ohio, 2010), a buyer (Roberts) resident in Virginia purchased a product from a seller (Kauffman Racing Equipment) based in Ohio. The product (a Pontiac engine block) was sold "AS IS." Eight months after the purchase the buyer contacted the seller claiming the product was defective. The seller offered to retrieve it from Virginia and bring it to Ohio for inspection.

The seller's inspection revealed that after the product had been delivered, substantial modifications had been made to the product. The buyer admitted it had been altered. Because the seller believed the buyer's modifications caused the defects, it declined to buy it back.

The dissatisfied buyer "...posted numerous rancorous criticisms of..." the seller on various websites. The seller received separate inquiries regarding the buyer's Internet postings from at least five Ohio residents and consequently filed a complaint in the local county court seeking money damages from the buyer for defamation and intentional interference with contracts and business relationships.

The trial court dismissed the complaint for lack of personal jurisdiction and the seller appealed. The appeals court reversed the trial court and found that Ohio's long-arm statute and Civil Rules conferred personal jurisdiction over the buyer and did

not deprive him of his 14th Amendment right to due process. The buyer appealed to the Ohio Supreme Court.

A common starting point in the analysis of these cases examines the applicable long-arm statute, civil rules of procedure, and due process. In *Tamburo* the court held that "...the Illinois long-arm statute permits the exercise of jurisdiction to the full extent permitted by the Fourteenth Amendment's Due Process Clause ... so here the state statutory and federal constitutional inquiries merge."

The Ohio court found that "Roberts posted his allegedly defamatory statements on the Internet, ostensibly for the entire world to see. How much of the world saw the comments is unknown; but we do know that at least five Ohioans saw Roberts' statements. Because Roberts' allegedly defamatory statements were published in Ohio, his alleged tort was committed in Ohio, and he falls within the grasp of R.C. 2307.382(A)(3) [Ohio's long-arm statute] and Civ.R. 4.3(A)(3)...."

In their analysis concerning the due process threshold, both the 7th Circuit and the Ohio Supreme Court reference *International Shoe v. State of Washington* (1945), *Hanson v. Denckla* (1958), and *Burger King Corp. v. Rudzewicz* (1985), in which the U.S. Supreme Court noted that due process is satisfied if the defendant has "minimum contacts" with the forum state such that the maintenance of the suit does not offend " 'traditional notions of fair play and substantial justice;' " where "the minimum contacts requirement is met when a nonresident defendant 'purposefully avails [himself] of the privilege of conducting activities within the forum State;' " and setting forth the principles that a defendant must have purposely established minimum contacts with the forum state such that he or she "should reasonably anticipate being haled into court" there, and that jurisdiction cannot be avoided "merely because the defendant did not physically enter the forum State."

More than 52 years ago, the U.S. Supreme Court acknowledged that jurisdictional jurisprudence must evolve alongside technological developments when it stated: "As technological progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase." *Hanson* (1958).

As the butterfly flaps its wings to progress, the winds of jurisdictional change can be felt across our shrinking global village as individuals and entities find they can be subject to jurisdictions other than where they reside.