Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-020415 03/04/2011

HONORABLE JAY L. DAVIS

CLERK OF THE COURT
K. Wise
Deputy

LIMELIGHT NETWORKS INC JOSEPH N ROTH

v.

LIVEUNIVERSE INC JAMES M MAROVICH

GODADDY.COM INC
C/O DONALD J BAIEN
14455 N HAYDEN RD STE 219
SCOTTSDALE AZ 85260

MINUTE ENTRY

Statement of Facts

Limelight Networks, Inc. ("Limelight) is a Delaware corporation that is headquartered in Tempe, Arizona, and has various datacenters including one in Phoenix, Arizona. LiveUniverse, Inc. ("LiveUniverse") is a California corporation and has corporate offices are in West Hollywood, California. Complaint by plaintiff Limelight alleges that defendant LiveUniverse was formerly known as SociallyBlog, Inc. ("SociallyBlog"). SociallyBlog was the signer of the Master Agreement ("Contract") which was allegedly breached in the underlying cause of action. The same individuals whom Limelight had contact with at SociallyBlog were the same as those it had contact with at LiveUniverse. All invoices from Limelight were issued to LiveUniverse and all services rendered by Limelight were received by LiveUniverse. Complaint alleges that Bradley Greenspan is the president, founder, and primary shareholder of both SociallyBlog and LiveUniverse.

SociallyBlog and Limelight entered into a contract in which Limelight would provide to SociallyBlog high-performance content delivery network services for

SociallyBlog's multimedia content websites. Specifically, the contract called for hardware dedicated to SociallyBlog's use that was located in the Limelight's Phoenix, Arizona data center. The contract had a term of fifteen months at a given rate. Limelight began providing the services according to the contract in September 2006 and began invoicing LiveUniverse. From September 2006 to September 2007 Limelight issued invoices to LiveUniverse, each of the 13 invoices was paid in full. Limelight continued to provide service, but LiveUniverse stopped paying for the services. LiveUniverse accrued a balance for services rendered, excluding interest, of $1,241,492.64.

On June 22, 2009, Limelight filed a complaint against LiveUniverse and SociallyBlog for breach of contract and asked for the outstanding balance plus interest. A copy of the complaint and summons was sent via certified mail to LiveUniverse and was received and signed for by an employee of LiveUniverse, Mr. Eastman. This Court entered a default judgment against LiveUniverse on February 23, 2010. On June 22, 2010, Limelight obtained and served a Writ of Garnishment on garnishee GoDaddy.com, the registrar of domain names owned by LiveUniverse. On July 2, 2010, GoDaddy.com submitted an amended answer stating that it held various domain names on behalf of LiveUniverse. Limelight then proceeded to file an Application for Entry of Judgment against garnishee GoDaddy.com on August 5, 2010. LiveUniverse then filed an objection to the Application for Entry of Judgment on August 16, 2010. This Court signed and entered the judgment on August 24, 2010.

On September 2, 2010 LiveUniverse filed a Motion for New Trial and Motion for Amendment of Judgment. After a response by Limelight and a reply in support of its motions, LiveUniverse then filed a Motion to Dismiss for Lack of Jurisdiction on October 21, 2010. Limelight filed a response and LiveUniverse filed a reply in support of its Motion to Dismiss for Lack of Jurisdiction in November 2010. On January 14, 2011 there was a hearing at which both parties were present.

Discussion

Motion for New Trial

Timeliness

On June 22, 2010, Limelight obtained and served a Writ of Garnishment on garnishee, GoDaddy.com. GoDaddy.com was then required to answer within ten days after being served with the Writ. A.R.S. §12-1578.01. GoDaddy.com submitted an answer June 24, 2010 and then an amended answer on July 2, 2010. GoDaddy.com's

answer was within the 10 day statutory requirement regardless of whether the answer or amended answer is used.

The amended answer stated that GoDaddy.com held various internet domain names on behalf of LiveUniverse and that it was not indebted to LiveUniverse at the time the Writ was served. "Other than the domain name registrations….GoDaddy.com was not in possession of any personal property of the judgment debtor at the time the Writ was served." Garnishee's First Amended Answer, ¶ 16. The applicable statute is A.R.S. §12-1585(A) because the amended "answer shows that the garnishee was holding personal property," i.e. domain names, "for the judgment debtor at the time the writ was served." A.R.S. §12-1585(A). This is contrary to LiveUniverse's argument that A.R.S. §12-1584 applies. The amended answer states that GoDaddy.com was not indebted to LiveUniverse with regard to monies and A.R.S. §12-1584 applies to monies indebted.

Pursuant to A.R.S. §12-1580(A), LiveUniverse had ten days from the receipt of the answer filed by GoDaddy.com to file an objection and request a hearing. GoDaddy.com filed its amended answer on July 2, 2010 so LiveUniverse had ten days from that date to file an objection. LiveUniverse never filed an objection to the Writ of Garnishment or to the Answer of the Garnishee.

After receiving no objection to the Writ or the Answer by LiveUniverse, Limelight then proceeded to file an Application for Entry of Judgment and Proposed Form of Judgment on August 5, 2010. Apparently, this is when LiveUniverse became interested in the legal proceedings against it. On August 16, 2010, LiveUniverse filed an objection to the Application for Entry of Judgment and Proposed Form of Judgment. Despite the objection, this Court signed the judgment on August 19, 2010 and the Clerk of the Court entered it August 24, 2010.

Any objection LiveUniverse had to the Writ of Garnishment or Answer of the Garnishee was not timely and cannot be made at this point because it is well beyond the 10 day statutory deadline set forth in A.R.S. §12-1580(A).

Motion for New Trial or Garnishment Objection?

A default judgment against LiveUniverse was entered February 23, 2010. LiveUniverse filed a Motion for New Trial and Motion for Amendment of Judgment September 2, 2010 arguing under Arizona Rules of Civil Procedure 59(a)(5), 59(a)(6), and 59(a)(8).

LiveUniverse moved the Court for a new trial "concerning the Court's grant of Plaintiff/Judgment Creditor's proposed form of Judgment Against Garnishee and Application of Entry Of Judgment Against Garnishee." Motion for New Trial, ¶ 1. Also,

LiveUniverse, in the alternative, moved the Court to "amend the Judgment by limiting the value of the property that may be garnished, among other things." *Id.*

The Motion for New Trial filed by LiveUniverse appears to be a Garnishment Objection. LiveUniverse, although it is very unclear from its briefs, appears to be objecting to the judgment against GoDaddy.com. However, at the January hearing, LiveUniverse stated that it wanted the entire cased dismissed, including the complaint.

A default judgment, like that entered against LiveUniverse, may be set aside under Ariz. R. Civ. P. 55(c) for good cause shown or "in accordance with Rule 60(c)." Rule 60(c) gives a list of six reasons for a court to relieve a party from a judgment. Under Rule 60(c), "the motion shall be made in a reasonable time," and for the first three reasons, a party has six months after the order was entered to file the motion. Ariz. R. Civ. P. 60(c). A motion under Rule 60(c) has never been filed.

The Motion for a New Trial appears to be an objection to the garnishment of GoDaddy.com. As discussed above, this objection filed September 2, 2010 was well beyond time deadlines set forth in Arizona law.

Location of Domain Names

The question is whether a domain name is located with the registrar, in this case GoDaddy.com in Arizona, or with the registry, in this case VeriSign, Inc. in California.

Arizona law is silent with regard to the location of domain names. The only case presented by the parties here to answer the question of location is *Office Depot, Inc. v. Zuccarini*, 596 F.3d. 696 (9th Cir. 2010). The Ninth Circuit concluded "under California law that domain names are located where the registry is located for the purpose of asserting *quasi in rem* jurisdiction," but the Court went on to state that it saw "no reason why for that purpose domain names are not also located where the relevant registrar is located." *Office Depot, Inc.*, 596 F.3d at 703.

The Anticybersquatting Consumer Protection Act ("ACPA") "provides that *in rem* jurisdiction over [] domain names shall be 'in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located…'" *Id.* at 702 (quoting 15 U.S.C § 1125-(d)(2)(A)). The Ninth Circuit stated that even though the case was "not an action under the ACPA, the statute is authority for the proposition that domain names are personal property located wherever the registry or the registrar is located." *Id.*

Because we are dealing with the location of intangible property, i.e. domain names, which could either be located wherever the registry or registrar is located, the question would then appear to turn on "a common sense appraisal of the requirements of

justice and convenience in particular conditions." *U.S. Indus., Inc. v. Gregg*, 540 F.2d 142, 151 n. 5 (3rd Cir. 1976).

Ultimately, due to the procedures required by the Internet Corporation for Assigned Names and Numbers (ICANN) regarding the transfer of domain names, a registrar must be involved. A registrant like LiveUniverse cannot effectuate a transfer of a domain name without going through a registrar, like GoDaddy.com. In other words, GoDaddy.com must be involved in the transfer of any domain names that it currently holds for the registrant, LiveUniverse. GoDaddy.com's required action is furthered by statements it made in its First Amended Answer. Specifically, "GoDaddy has taken action to place a 'registrar's lock' on the domain name registrations referenced…This lock is intended to prevent the domain name registration from being transferred to another registrant." Garnishee's First Amended Answer ¶ 13. Only GoDaddy.com can remove the lock on the domain names. Only through GoDaddy.com may LiveUniverse transfer its domain names.

LiveUniverse, as the registrant of the domain names, may not go directly to the registry, VeriSign, Inc. and effectuate a transfer. It must use a registrar to do so. Accordingly, it would seem improper to designate the location of the registry as the location of the domain names because no transfer can be made at that location. The "requirements of justice and convenience" in these particular conditions would suggest finding the location of the domain names to be with the registrar GoDaddy.com in Arizona. This Court has jurisdiction over the domain names held in Arizona by GoDaddy.com that are held in behalf of LiveUniverse.

Is SociallyBlog a party to this lawsuit?

Counsel for LiveUniverse argues that SociallyBlog is not a party to this lawsuit and should not be subject to the judgment. Limelight's complaint stated that "[o]n information and belief, LiveUniverse was formerly known as Defendant SociallyBlog, Inc." The "Master Agreement" found in Exhibit 1, clearly shows that the contract was entered into by Limelight Networks, Inc. and SociallyBlog, Inc. However, all invoices were sent by Limelight to LiveUniverse starting October 2006. All of the same contacts Limelight had with SociallyBlog were the same it had contact with at LiveUniverse. Additionally, Limelight's complaint lists LiveUniverse, Inc., f/k/a SociallyBlog, Inc. as Defendant.

LiveUniverse has not provided any information that SociallyBlog, Inc. is a separate entity or corporation. Accordingly, there is no evidence that would show that SociallyBlog, Inc. is a separate entity and therefore outside the reach of the judgment.

Motion to Dismiss for Lack of Jurisdiction

Was service of process by Limelight on LiveUniverse proper?

"Proper service of process is essential for the court to have jurisdiction over the defendant." *Koven v. Saberdyne Sys., Inc.*, 128 Ariz. 318, 321, 625 P.2d 907, 910 (App. 1980). Pursuant to Rule 4.2(h), service of process on a corporation located outside of Arizona "shall be made on one of the persons specified in Rule 4.1(k)." Rule 4.1(k) lists those persons as "a partner, an officer, a managing or general agent, or [] any other agent authorized by appointment or by law to receive service of process…"

LiveUniverse argues that Mr. Eastman, the former sales manager who received and signed for the complaint and summons, was not any one of those persons listed in Rule 4.1(k). Evidence presented by Limelight shows that Mr. Eastman claimed to be a Vice President of Advertising Operations at LiveUniverse on two different online networking websites. Exhibit C, Limelight Response to Motion to Dismiss.

"Every object of the rule is served when the agent is of such character and rank so that it is reasonably certain the defendant will receive actual notice of the service of process." *Schering Corp. v. Cotlow*, 94 Ariz. 365, 368, 385 P.2d 234, 237 (1963). The Court in *Schering Corp.* held that the sales representative who received service of process was one "of sufficient character and rank to make it reasonably certain that the defendant would receive actual notice of the service made." *Id.*, 94 Ariz. at 369, 385 P.2d at 237.

Here, we have a sales manager, possibly even a VP of Advertising, who received the complaint and summons. The question turns on whether it would be reasonably certain that the defendant, LiveUniverse, would have received actual notice of the service made from its sales manager, Michael Eastman. It would be reasonable to find that a sales manager or vice president would reasonably forward legal documents to the defendant corporation.

Service of process upon LiveUniverse was proper. Even if this Court were to find that a sales manager like Mr. Eastman was not explicitly one of those persons listed in Rule 4.1(k), construing the rule broadly makes it clear that service was proper because it was made upon one "of sufficient character or rank to make it reasonably certain that the defendant would receive actual notice of service."

Did LiveUniverse have the minimum contacts necessary with Arizona to reasonably expect being subject to jurisdiction here?

Pursuant to Ariz. R. Civ. P. 4.2(a), Arizona courts may exercise personal jurisdiction over out-of-state parties "to the maximum extent permitted by the Constitution of this state and the Constitution of the United States." The U.S. Supreme Court in *International Shoe*, set forth the due process test for a state court to exercise personal jurisdiction over an out-of-state corporation. *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945). A state court may exercise personal jurisdiction if the defendant had "certain minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 316, 66 S.Ct. at 158 (quotation omitted). The question is whether the defendant's contacts with the forum state "make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." *Id.* at 317, 66 S.Ct. at 158. The defendant's conduct and connections with the forum state must be such that he should "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Here, LiveUniverse, a California corporation, entered into a contract with Limelight, a company headquartered in Tempe, Arizona, to receive specified services. A contract alone does not automatically satisfy the "minimum contacts" requirement. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985). "[W]e have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.* at 479 (quoting *Hoopeston Canning Co. v. Cullen*, 318 U.S. 313, 316-17 (1943).

There appears to be no dispute that Limelight is headquartered in Tempe, Arizona and that it would be providing services to LiveUniverse out of its Phoenix, Arizona datacenter. In fact, LiveUniverse specifically negotiated to use dedicated equipment found in the Phoenix, Arizona datacenter. The services negotiated and provided to LiveUniverse came directly from the forum state. These services were continuous throughout the specified time period within the contract. Invoices from Limelight's Tempe, Arizona location were sent monthly to LiveUniverse. Additionally, the contract states "[t]his MSA is made under and will be governed by and construed in accordance with the laws of the State of Arizona…" LiveUniverse's conduct and connections with the State of Arizona are such that it should have reasonably anticipated being haled into court here. It would not be unreasonable for LiveUniverse to defend a suit brought here.

Conclusion

The Motion for New Trial and Motion to Dismiss for Lack of Jurisdiction submitted by LiveUniverse are untimely. Setting timeliness aside, the motions cannot survive based on the merits. This Court has jurisdiction over the domain names because the registrar, GoDaddy.com, is located in Arizona. SociallyBlog, Inc. is a party to this suit and is not beyond the reach of the judgment entered. Service of process on LiveUniverse was proper because Mr. Eastman was in a position with LiveUniverse such that it could be reasonably expected that LiveUniverse would receive notice of service from him. This Court has personal jurisdiction over LiveUniverse because of its minimum contacts with Arizona.

IT IS THEREFORE ORDERED denying the Motion for New Trial, Motion for an Amendment of Judgment and Motion to Dismiss for Lack of Jurisdiction.