

ALERT

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The Long Arm of the Law: Generalized Online Conduct Does Not Confer Personal Jurisdiction in California

The California Court of Appeals recently determined there was no personal jurisdiction over a defendant sued in California for libelous messages posted on an online message board maintained in California. *Nam Tai Electronics, Inc. v. Titzer*, 113 Cal. Rptr. 2d 769 (Cal. Ct. App. Nov. 26, 2001). In *Nam Tai*, the Court determined that since the defendant's messages on the online message board were not specifically targeted to California residents, there were not enough contacts to confer jurisdiction in that state.

Background

Nam Tai Electronics, Inc. (Nam Tai) is a publicly-traded consumer electronic products manufacturer incorporated in the British Virgin Islands and conducts business out of Hong Kong. Joe Titzer, a resident of Colorado, used various aliases to post 246 messages on the Yahoo! Internet message boards to discuss Nam Tai stock. Yahoo! is a corporation incorporated under California law and is based in California. In order to

post these messages, Titzer was required to register a Yahoo! ID and agree to Yahoo!'s terms of service. The terms of service included a promise not to post any content that was unlawful, defamatory, libelous or otherwise objectionable. The terms of service also had a provision requiring that disputes would be governed according to the laws of California and the user would agree to exclusive personal jurisdiction in California.

In July 2000, Nam Tai filed suit against the unknown author of three messages, alleging that such author had posted messages on the Yahoo! message boards that were defamatory and misleading with respect to Nam Tai. The messages stated that Nam Tai had colluded with other companies to win contracts in restraint of free trade and that Nam Tai was losing business to another China-based manufacturing company. After some investigation, Nam Tai learned that Titzer was the author of these messages and the complaint was amended to add him as the true defendant. Titzer was personally served with a complaint in Colorado. He

immediately moved to quash service of process for lack of personal jurisdiction.

At the hearing on the motion to quash, the trial court found that though specific jurisdiction *could* be found based on the fact that Titzer derived benefit from California by having an account with Yahoo!, there were not enough contacts to confer jurisdiction on Titzer. The court noted the following: Nam Tai was not a California resident, Nam Tai filed suit in California so that it could conveniently have Yahoo! disclose the name of the author of the alleged defamatory messages, the messages had no particular impact on California since they were disseminated world wide, and the Yahoo! message boards could be accessed by any Internet user. Furthermore, the court noted that Titzer resided and accessed the bulletin boards from Colorado. Thus, the trial court concluded that Titzer did not conduct sufficient commercial activities in California to warrant the exercise of personal jurisdiction. Nam Tai filed an appeal, contending that the order quashing service and dismissing the suit for lack of personal jurisdiction should be reversed for two reasons: 1) Titzer availed himself of personal jurisdiction in California by his continuing interaction with a web site maintained there, and 2) Titzer's appearance at a status conference in California subjected him to jurisdiction in California.

The Court of Appeals Decision

The Court of Appeals began its analysis by noting that “[d]ue process allows a state to exert its jurisdiction over a nonresident defendant only where it has sufficient contacts with the state such that maintenance of the suit will not offend traditional notions of fair play and substantial justice.” Id. at 773 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Specifically, the Court noted that “California may exercise specific jurisdiction over a nonresident defendant for a cause of action arising out of or relating to its acts, ties, or connection to this state.” Id. The factor to be considered is whether the quality and nature of the forum related-activity in relation to the complaint is sufficient to permit California to exercise jurisdiction over the defendant. Thus to prevail, the Court reasoned that Nam Tai must establish that the causes of action arose out of an act committed or a transaction consummated in California, or that Titzer purposefully availed himself of the privilege of conducting activities within the state, thus invoking the benefits and protections of California's laws.

In citing *Jewish Defense Organization, Inc v. Superior Court*, 72 Cal. App. 4th 1045 (1999), the Court noted that with respect to the Internet, the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. At one end of the spectrum are situations

where a defendant clearly does business over the Internet. At the opposite end are situations where a defendant has simply posted information on an Internet web site that is accessible to users in foreign jurisdictions. The middle ground is where interactive web sites allow a user to exchange information with a host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and the commercial nature of the exchange of information that occurs. The court further explained that “the determinative question is whether the [w]eb sites themselves are of particular significance to California or Californians such that the user has reason to know the posting of a message will have significant impact in this state.”

In this instance, the Court determined that there was not enough interactivity to justify the exercise of personal jurisdiction on Titzer. Nam Tai had presented no evidence that suggested that the messages posted on the bulletin boards themselves were directed at Californians or disproportionately likely to be read by California residents. Furthermore, Nam Tai presented no evidence that showed that its relationships with California residents were of particular importance to its business and were likely to be impacted negatively by the messages posted on the web sites. As for the forum selection clause of Yahoo!'s terms of service agreement, the Court held that the agreement governs the relationship between users of Yahoo!'s services and Yahoo! itself, not between registered users and third parties.

As such, the fact that Titzer agreed to the terms of service with Yahoo! did not by itself justify subjecting him to California jurisdiction.

Lastly, the Court concluded that Titzer's appearance at the status conference did not constitute a general appearance which conferred personal jurisdiction. The Court determined that a status conference does not address the merits of a case, but rather it keeps the trial court apprised of the status of cases on its calendar. In this instance, Titzer's counsel simply informed the trial court that Titzer had been served but that he was moving to quash service. The trial court set some tentative dates for trial and a final status conference. As such, the Court determined that Titzer's appearance at the initial status conference could not be deemed a general appearance sufficient to confer personal jurisdiction.

Implications

The law regarding personal jurisdiction and the Internet is still in its infant stages. It is becoming settled that the more active a web site is in a certain jurisdiction, the more likely that personal jurisdiction could be conferred there. However, *Nam Tai* suggests that generalized on-line conduct, such as posting messages on a message board, that does not have a nexus with the underlying state will not be enough to confer personal jurisdiction in that state. *Nam Tai*

coincides with prior personal jurisdiction decisions relating to the Internet, such as that of *Cybercell, Inc. v. Cybersell, Inc.*¹ in which the Ninth Circuit determined that personal jurisdiction was not sufficient in Arizona when a Florida resident infringed upon a plaintiff's trademark by placing it on his home page. The Florida resident had no contacts with Arizona other than maintaining a home page that was accessible to Arizonans. As such, the court found that the circumstances were not sufficient to show that the defendant purposefully directed his activity to the forum state. Thus, *Nam Tai* reinforces the notion that a mere "passive" web site with no purposeful availment towards the forum state will not generate sufficient contacts to confer personal jurisdiction.

¹ 130 F3d 414 (9th Cir. 1997)

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