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Lawyer's Claim Over Defaced Web Site Is Dismissed

BY MARK FASS

A MANHATTAN judge has dismissed a New York attorney's lawsuit against his aunt and uncle, in which he alleged the Florida couple defaced his Web site by replacing all of his postings with a photograph of the lawyer labeled "Pig of the Year," in which he leans back in a chair and appears to say, "I'm going to eat everything in site."

While marking the apogee of a family dispute, the decision also touched upon unsettled issues of personal jurisdiction.

After plaintiff Jonathan Davidoff discovered the defacement and allegedly traced it back to the computer of his uncle and aunt, S. Robert Davidoff and Ila Davidoff-Feld, he filed suit against them in Supreme Court, asserting six causes of action, including defamation and tortious interference with a business.

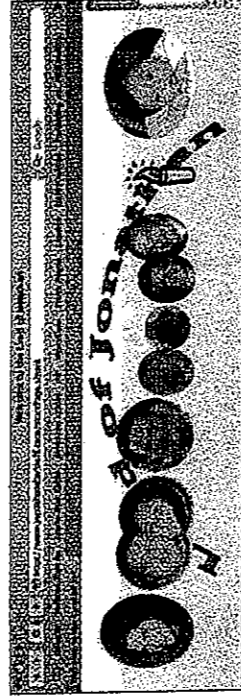
The couple moved to dismiss, claiming among other things that the court lacked personal jurisdiction.

Justice Carol Robinson Edmead agreed and granted their motion.

Justice Edmead interpreted

state precedent to dictate that personal jurisdiction does not require the alleged tortfeasor to be within New York at the time of the tort. Rather, the "tortious act" itself must have occurred here.

"This Court adopts the view that physical presence of the defendant in New York is not a prerequisite to CPLR 302(a)(2), but instead, requires that the tortious act committed by defendant be one deemed to have been com-



A restored version of Jonathan Davidoff's site

The decision will be published Thursday.

Web Tampering Suit Dismissed

ing rationales, each entailing a lack of personal jurisdiction.

The defamation action was dismissed because such actions are specifically precluded by New York's "long-arm" statute, CPLR 302, Justice Edmead ruled.

Jonathan's claims for destruction of personal property, computer trespass and computer tampering essentially constituted a claim for trespass of chattel, Justice Edmead held, which failed her "locus of the tort" rule.

"[T]hat the contents of the Website and the Website itself was maintained in a server located in Florida is of particular relevance to plaintiff's property damage case, especially since, by this Court's estimation, such 'property' is not located in New York. Thus, any 'tortious act' of damaging plaintiff's property could not have occurred within New York," Justice Edmead ruled.

"The result may have been different if the defendants tapped into and interfered with plaintiff's information located on a server or inside a computer physically situated in New York."

Conduct in Florida

The remaining two claims—intentional infliction of emotional distress and tortious interference with business opportunity—also failed, as "the alleged extreme and outrageous conduct of defendants occurred in Florida, where they were located when they accessed the Website's Hosting Company and typed in the allegedly offensive materials onto plaintiff's Website."

Jonathan Davidoff said he may appeal or file the case in Florida, where he also maintains an office.

"This clearly was an intentional tort that was aimed directly at me in New York," he said. "In this day and age of Web sites, I think it's foreseeable that the defendants would be hauled into court in New York. I think the law has failed to catch up to technology."

Larry Hatcher of Davidoff (no relation), Malito & Hatcher represented Robert and Ila Davidoff.

"We don't think there's any merit to any of the allegations," Mr. Hatcher said. "It's regrettable that it's a family dispute that because one of the principals is an attorney has become an unfortunate litigation."

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mitted in New York," she held in *Davidoff v. Davidoff*, 101728/06.

However, Justice Edmead added, "[T]his conclusion is of no avail to plaintiff under the particular facts herein."

The Davidoff family dispute began with a watch, according to plaintiff Jonathan Davidoff, the principal of the three-attorney Davidoff Law Firm.

Following the death of his grandfather (defendant Robert's father), Jonathan initiated an action in Arizona, that resulted in a Maricopa County court holding Robert in contempt and requiring him to return a Rolex to Jonathan's grandfather's estate and to pay Jonathan's travel expenses.

Computer Entered

Toward the end of that legal dispute, according to the complaint, Robert and his wife "electronically entered" Jonathan's Web site, www.jonathandavidoff.com.

The couple deleted all of Jonathan's files and posted the photo with the title "Pig of the Year" and the assertion "I'm going to eat everything in site [sic]."

Jonathan discovered the tampering four days later, and this suit, filed on his own behalf, followed.

At the outset, Jonathan denied the truth of the statements.

"At no time in 2005, or at any other time, did Plaintiff ever receive the title or honor of 'Pig of the Year,'" Jonathan averred in his complaint. "At no time in 2005, or at any other time, has Plaintiff stated that he would 'eat everything in site.'"

Nor, Jonathan added, had he ever in fact actually eaten everything in sight.

Jonathan alleged that his aunt and uncle intended to cause him both personal and financial damage.

"Plaintiff is an attorney and his resume appeared on Website," he stated in the complaint. "Plaintiff advertised Website and instructed many people, including his clients, potential clients and business contacts, to review his resume on Website. Additionally, when Plaintiff's name is entered into any online search engine, Website appears with Plaintiff's resume."

The defendants countered that the court lacked personal jurisdiction over them. They did not, among other things, commit a tortious act within the state, as required under CPLR 302(a)(2), they argued.

Justice Edmead divided the six causes of action into three categories, which she denied on differ-