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WAKE COUNTY

SUPERIOR COURT JUDGES OFFICE

STATE OF NORTH CAROLINA ^{BY: S. Smallwood} IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF WAKE

22-CVS-14854

KENNETH BRYANT,
BRYANT ENTERPRISES, LLC
Plaintiffs,

v.

BRYAN DONALD FIELDS, and
CARSTEN JASON GALLINI
Defendants.

**ORDER DENYING DEFENDANT
FIELDS' MOTION TO DISMISS
PURSUANT TO RULE 12(b)2**

THIS MATTER COMING ON TO BE HEARD and being heard on August 29, 2023, on Defendant Fields' motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)2) of the North Carolina Rules of Civil Procedure, and the Plaintiffs' Motion to File Supplemental Pleading, and John M. Kirby appearing for the Plaintiffs and Michael Tadych appearing, pursuant to a Notice of Special and Limited Appearance, for Defendant Fields, and the Court having reviewed the matters of record and having heard arguments of counsel, in its discretion grants the Plaintiffs' Motion to File Supplemental Pleading.

Regarding the Defendant Fields' Motion to Dismiss pursuant to Rule 12(b)(2), the Court makes the following finding of fact and conclusions of law, acknowledging Defendant Field's request for specific findings of fact and conclusions of law pursuant to Rule 52 of the North Carolina Rules of Civil Procedure. The Defendant Fields' Motion to Dismiss is governed by the facts as shown through affidavits, and the allegations of the Plaintiff which are not controverted by the Defendant's Affidavits including a proposed supplemental pleading by plaintiffs which

this Court approved at the hearing on Defendant Fields' Motion to Dismiss. "When, as here, the defendant presents evidence in support of his motion, . . . to determine whether there is sufficient evidence to establish personal jurisdiction, the court must consider: '(1) any allegations in the complaint that are not controverted by the defendant's affidavit and (2) all facts in the affidavit (which are uncontroverted because of the plaintiff's failure to offer evidence).'" Dailey v. Popma, 191 N.C. App. 64, 69 (2008). The findings of fact herein are made solely for the purpose of addressing Defendant's Rule 12(b)(2) motion to dismiss, pursuant to the dictates of Dailey v. Popma et al. and for no other purpose.

FINDINGS OF FACT

1. Plaintiff Bryant filed this action on December 5, 2022, seeking damages from the Defendants.
2. On January 19, 2023, Defendant Fields filed a Motion to Dismiss pursuant to Rule 12(b)(2) for lack of personal jurisdiction. Mr. Fields filed an affidavit supporting his motion to dismiss.
3. On April 26, 2023, the Plaintiffs Bryant and Bryant Enterprises, LLC, filed an Amended Complaint.
4. On May 26, 2023, Defendant Fields filed a Renewed Motion to Dismiss pursuant to Rule 12(b)(2) for lack of personal jurisdiction. Mr. Fields filed a second affidavit in support of his renewed motion.
5. On June 21, 2023, Plaintiff filed a Motion for Leave to File Supplemental Pleading.
6. At oral argument the Court in its discretion granted the Plaintiff's Motion for Leave to File Supplemental Pleading.

7. Plaintiff Kenneth Bryant has been a resident of the State of North Carolina since 2004, for a total of 19 years.

8. Plaintiff Bryant owns and operates Bryant Enterprises, LLC, which has been domiciled in the State of North Carolina since December 2012, for a total of 11 years.

9. Bryant Enterprises is a Motorola Solutions Radio Solutions Channel Partner (franchise dealer) specializing in the sales and service of two-way radio equipment.

10. Bryant Enterprises, LLC is solely based in the State of North Carolina and solely operates from the State of North Carolina.

11. Bryant Enterprises maintains a headquarters and two warehouses in the State of North Carolina.

12. Bryant Enterprises' inventory is received and stored in North Carolina and all shipping to customers is based out of North Carolina.

13. A substantial number of Bryant Enterprises' sales transactions are with customers based in North Carolina.

14. Bryant Enterprises, LLC, sells equipment throughout the State of North Carolina, to federal (civilian and military), state and local governments and public safety agencies as well as to large private enterprises located throughout the State of North Carolina.

15. Prior to the publications and activities that give rise to this lawsuit, Defendant Fields contacted the Plaintiffs Bryant via telephone, email and Facebook messenger, requesting quotes for equipment and attempting to obtain information on a solution that the Plaintiffs had developed. Bryant responded that he preferred to talk by telephone and asked Fields to call him, which Fields did.

16. On May 7, 2022, Defendant Fields and others published content about the Plaintiffs in a Facebook group dedicated to professional discussions regarding Motorola Solutions equipment, and specifically Motorola branded two- way radio equipment.

17. This posting contained an image with a picture of Plaintiff Bryant's face and making reference to Bryant's Motorola dealership and stating "it's just been revoked."

18. The Plaintiffs received a number of calls and inquiries from people and various customers in North Carolina asking about the postings by Defendant Fields stating that they had heard that Plaintiff Bryant's Motorola dealership was revoked.

19. The Plaintiffs were members of this Facebook Motorola Group until approximately February 2023, at which time Defendant Fields caused the Plaintiffs to be removed from this Group.

20. Over many years the Plaintiffs had received a significant amount of business coming from members of this group; the removal of the Plaintiffs from this Group had an impact on the Plaintiffs' North Carolina based business.

21. Defendant Fields then created "Wiki" webpages that specifically targeted Plaintiff Bryant.

22. These Wiki webpages state, inter alia, that Bryant was a "scummy realtor," that he "may be insane," challenged Bryant's education and professional credentials, and published information about a forty-year-old criminal matter which had been vacated and removed from the public records.

23. In these Wiki pages, Defendant Field posted the Plaintiff's private personal information, including his photograph, date of birth, signature, medical records, and other private personal information and non-public federal records related to Bryant.

24. These Wiki pages also make reference to this civil action filed in North Carolina, and the Defendant Fields has posted online several filings from this North Carolina Civil action.

25. Defendant Fields also maintains a website at <https://www.fuckhams.com>, and Defendant Fields has likewise posted on this website the Plaintiff's image and making reference to Bryant's Motorola dealership and stating "just been revoked."

26. All of these three websites (Facebook, Wiki, and www.fuckhams.com) are interactive, in that persons visiting the pages can not only read the material on the page, but can post comments; and in fact many persons posted comments to all of these postings.

27. Defendant Fields registered website domains with Bryant's amateur radio call sign (K1DMR), which are not legitimate websites created by the Plaintiffs in connection with their ham radio activities, but instead are sites that redirect visitors to the aforementioned Wiki site created by Defendant Fields which contains information harmful to the Plaintiffs.

28. Defendant Fields also created a website with a URL that is identical to the Plaintiffs' website with the exception of one letter.

29. This website likewise redirects visitors to the websites created by Defendant Fields which contain information harmful to the Plaintiffs.

30. The Plaintiff has presented substantial evidence that in May 2023, Defendant Fields began sending fake business cards, purporting to be the Plaintiffs' business cards, and stickers bearing Bryant's photograph, to numerous persons through the US Mail.

31. These items mailed likewise contain a URL similar to that of the Plaintiffs, which redirects users to the sites created by Defendant Fields.

32. These items mailed also contained a "QR" code, which directs users to the sites created by Defendant Fields.

33. The Plaintiff has produced substantial evidence that Defendants Fields, individually or through his agents, posted or caused to be posted stickers containing Bryant's photograph in the public urinals at the Dayton Hamvention 2023 held in May 2023 held in Ohio.

34. Fields has an established history of creating stickers depicting the images of people and then disseminating these stickers to persons in the ham radio industry.

35. Defendant Fields had specifically stated in the Motorola Facebook Group, "Stickers? STICKERS! Stickers are here and free for the asking. We only want action shots when you use them. Bonus to anyone going to Hamvention, the best use/placement will get a prize."

36. Thousands of persons attend the Hamvention in Ohio, and at oral argument Defendant Fields' North Carolina counsel even acknowledged at oral argument that he attended this Hamvention in Ohio.

37. The Internet postings by Defendant Fields are accessible by persons in North Carolina and in other States, including thousands of persons in North Carolina who are current and potential customers of the Plaintiffs' business.

38. The Affidavits of Defendant Fields filed in this action do not deny the Plaintiffs' allegations, other than to deny that he was contacted to try to resolve this matter, to deny that he "owns or controls" the Facebook and Fuckhams websites, to deny that he created the "meme" which suggests that the Plaintiffs' Motorola dealership was revoked, and to deny that he solicited payments through his Wiki page.

39. Defendant Fields has not denied that he made all of the postings as alleged in the Plaintiffs' Verified complaints and Affidavit, and has not denied that he created and mailed the fake business cards and stickers, has not denied that he created a website using the Plaintiffs'

ham radio call sign, and has not denied that he participated in the distribution of stickers containing Bryant's image at the Hamvention in Ohio.

40. The harm caused by the actions of Defendant Fields as alleged in the Verified Amended Complaint and Supplemental Complaint was sustained in the State of North Carolina.

41. The Plaintiffs' business, which is located in North Carolina, conducts transactions in North Carolina, has vendors and other contractors in North Carolina, and provides its goods and services to customers in North Carolina including emergency personnel, was allegedly harmed by the actions of Defendant Fields, and that harm and those effects of this conduct are felt and sustained in the State of North Carolina.

42. Defendant Fields knew or should have known that the harmful effects of his conduct would be sustained in the State of North Carolina.

43. All of the postings generated and created by Defendant Fields were published having a significant exposure to persons in North Carolina.

44. According to the allegations of the Plaintiffs' Verified Complaints and Affidavit, Defendant Fields not only defamed the Plaintiff on several websites (Facebook, Wiki pages, and www.fuckhams.com), but the Defendant Fields also took and used Bryant's likeness, created websites that are deceptively similar to the Plaintiffs' website, created a website using the Plaintiffs' ham radio call sign, created materials that were designed to appear to be endorsed by the Plaintiffs and yet direct potential customers and other persons in the ham radio industry to the websites created by Defendant Fields, and encouraged third parties to disseminate these materials within the ham radio industry including but not limited to the large annual Hamvention.

45. All of these actions of Defendant Fields were a direct attack upon the Plaintiffs, and as such these activities were targeted at North Carolina.

CONCLUSIONS OF LAW

1. The Plaintiffs' Motion for Leave to File Supplemental Pleading is hereby allowed, and the Plaintiffs' complaint is deemed to include the allegations set forth in the Plaintiff's Motion for Leave to file Supplemental Pleading, and the Defendants shall have thirty (30) days following entry of this Order to respond to said allegations, subject to the authority of the clerk to grant an extension of time for the same;

2. The courts of North Carolina have jurisdiction over Defendant Fields pursuant to G.S. § 1-75.4(3) ("A court of this State having jurisdiction of the subject matter has jurisdiction over a person served . . . under any of the following circumstances: . . . In any action claiming injury to person or property or for wrongful death within or without this State arising out of an act or omission within this State by the defendant.");

3. Defendant Fields has purposefully availed himself of the laws of the State of North Carolina;


4. Defendant Fields has sufficient minimum contacts with the State of North Carolina to confer personal jurisdiction over Defendant Fields;

5. Based on Defendant Fields' conduct, he should have reasonably anticipated being haled into court there in North Carolina.

6. Based on the quantity of the contacts, nature and quality of the contacts, the source and connection of the cause of action to the contacts, the interest of North Carolina, and convenience to the parties, the Court concludes that North Carolina has personal jurisdiction over Defendant Fields.

WHEREFORE, based on the preceding Findings of Fact and Conclusions of law, the Court hereby denies Defendant Fields' Motion to Dismiss pursuant to Rule 12(b)(2)

This the 19th day of January 2024.



Winston Rozier, Jr.
Superior Court Judge