

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable R. Brooke Jackson

Civil Action No. 11-CV-02022-RBJ-MEH

CORY ROTH

Plaintiff,

v.

EASYSTREETSPORTS.COM,
THERX.COM aka THE RXFORUM.COM,
MARTY JANSEN
MR. ALEX POWERS,
WILHEIM DOE (FAMILY NAME UNKNOWN)

Defendants.

ORDER

This case was filed on August 4, 2011 in the United States District Court for the District of Colorado asserting jurisdiction pursuant to 28 U.S.C. §1332, diversity of citizenship.

Plaintiff, Cory Roth, resides in Parkland, Florida. Complaint ¶1. Defendant, EasyStreetSports.com is an internet-based “sportsbook, racebook, and casino” licensed in Costa Rica. Complaint ¶2. Defendant Mr. Alex Powers is the contact and alleged controlling party of EasyStreetSports.com. Complaint ¶7. Mr. Powers’ citizenship and location are unknown. *Id.* Defendant, TheRX.com (aka, TheRXForum), an internet-based provider of sports and gaming information, is owned by the Panama foundation NetPA. Complaint ¶3. RX Advertising, Inc. LLC owns the copyright material appearing on TheRXForum, and is of unknown origin. Complaint ¶4. Defendant Marty Jansen’s citizenship is unknown, but plaintiff believes he resides in Vancouver, Canada. Complaint ¶5. Mr. Jansen is listed as the contact person for

TheRxForum. *Id.* Defendant Wilhelm Doe, whose surname is unknown, is of unknown citizenship and location. Complaint ¶6.

Facts

Mr. Roth alleges that he, using the Internet pseudonym Cory1111, entered into a contract with EasyStreetSports.com in November 2010 to “participate in on-line activities with EasyStreetSports.com.” Complaint ¶9. At the direction of EasyStreetSports.com representatives, Mr. Roth forwarded “several” cash payments of approximately \$250 each to EasyStreetSports.com. Complaint ¶10. EasyStreetSports.com verified receipt of these payments and “confirmed the contractual obligations between Mr. Roth and EasyStreetSports.com.” Complaint ¶11. The specifics of these contractual obligations are not disclosed in plaintiff’s complaint. However, Mr. Roth claims that “in or about the 1st quarter of 2011” Mr. Roth fulfilled his obligations under the contract and “fees and payment of those fees became due and payable to him.” Complaint ¶12. After several attempts and requests to receive payment, EasyStreetSports.com denied Mr. Roth’s requests. Complaint ¶14-17.

Mr. Roth alleges that EasyStreetSports.com then consulted TheRXForum to determine whether or not it should pay Mr. Roth. Complaint ¶18-19. The RXForum claimed that Mr. Roth breached the terms of the contract by using prohibited automated tools. Complaint ¶23. Mr. Roth denies that he used any automated tools. Complaint ¶ 24. Although EasyStreetSports.com’s website states that disputes will be sent to the Independent Betting Adjudication Service (IBAS) in the United Kingdom, it is not and has never been registered with this organization. Complaint ¶20. Mr. Roth further alleges that TheRXForm.com, through Wilhelm Doe, made numerous false statements about Mr. Roth through publications on TheRXForum. Complaint ¶25. EasyStreetSports.com and other defendants “spread lies and

carried on a program of character assassination against Mr. Roth as an attempt to justify their refusal to pay him the money owed” through TheRXForum Internet Bulletin Board and other Internet Bulletin Boards. Complaint ¶¶30. Throughout, EasyStreetSports.com has refused to pay the money Mr. Roth claims he is owed.

Mr. Roth’s first claim for relief is for Breach of Contract for refusing to repay him the \$46,000 he is owed. Complaint ¶¶34-45. On this first claim, Mr. Roth demands payment of \$46,000. Second, Mr. Roth brings a claim for Fraud arising out of EasyStreetSports.com’s misrepresentation that the claim would be resolved by IBAS. Complaint ¶¶46-52. As a result, Mr. Roth requests payment of \$46,000, and punitive damages in the amount of \$138,000. Mr. Roth’s third claim for relief is for tortious interference with contract. Complaint ¶¶ 53-60. Plaintiff requests compensatory damages in the amount of \$46,000, and punitive damages in the amount of \$100,000. Complaint ¶60. Mr. Roth’s fourth claim is for Defamation. Complaint ¶¶ 61-68. Plaintiff demands \$1 million in compensation, and the transfer of the Defendant’s domain names and websites to Mr. Roth. Complaint ¶68. Finally, Mr. Roth claims Conversion and demands payment of \$46,000 and the transfer of the defendant’s domain names and websites to the plaintiff. Complaint ¶75.

Procedural History

This case was filed on August 4, 2011. No defendant has entered an appearance or filed a response. On October 31, 2011 Mr. Roth filed an Affirmation of Service detailing his service of the Summons and the Complaint on the defendants (#13). Following this affidavit, Mr. Roth filed a Motion for Default Judgment on November 8, 2011 (#14). The Clerk of Court did not enter the default because “[u]pon examination of our records, we are unable to determine if the defendants were served pursuant to [Fed. R. Civ. P. 4]” (#15).

Conclusions

Service of Process

After reviewing plaintiff's Affirmation of Service, the Court is not persuaded that satisfactory service has been completed in accordance with Fed. R. Civ. P. 4. All of the known defendants are citizens of foreign countries or corporations located in foreign countries. Individuals of a foreign country must be served pursuant to Fed. R. Civ. P. 4(j). Foreign and domestic corporations must be served in accordance with Fed. R. Civ. P. 4(h). Mr. Roth has not demonstrated that he has satisfied these provisions.

In his affirmation of service, Mr. Roth reports that his counsel attempted personal service on the RX defendants at a hotel in Las Vegas. This attempt was unsuccessful. After one attempt on one defendant, the plaintiff then mailed the Summons and Complaint to the defendants via United States Postal Service, Registered Mail. Plaintiff attaches receipt of these mailing to his Affirmation, but the receipts only indicate his payment, not that the defendants actually received the mailings. Further, the mailing addresses for several of the defendants are unknown, and thus could not be sent via registered mail. Next, the plaintiff sent the Summons and Complaint via the email addresses provided on defendant's websites. Finally, the Summons and Complaint were posted on the Facebook wall of EasyStreetSports.com and TheRXForum.com. Plaintiff maintains that this is satisfactory service in accordance with Fed. R. Civ. P. 4 "due to the International and Internet based nature of the Defendants."

These disclosures do not demonstrate compliance with the requirements of Fed. R. Civ. P. 4. Plaintiff attempted personal service once on only one of the defendants. Plaintiff has not shown the Court that these methods are prescribed by the foreign country's law for service, that they have sent a letter rogatory to the foreign authority, or that the methods used here are not

prohibited by international agreement. Fed. R. Civ. P. 4(2)-(3); Fed. R. Civ. P. 4(h). Until plaintiff can demonstrate that its methods are satisfactory pursuant to the Federal Rules of Civil Procedure, this Court will not deem service satisfied.

Subject Matter Jurisdiction

In addition to questions regarding satisfactory service, it is also unclear that this Court has subject matter jurisdiction. Plaintiff's complaint invokes diversity jurisdiction pursuant to 28 U.S.C. §1332(a). In addition to diverse parties, the matter in controversy must exceed the sum of \$75,000. Plaintiff's complaint does not specifically refer to an amount in controversy. The federal courts have a duty to raise and resolve the issue of subject matter jurisdiction on its own motion "in all cases where such jurisdiction does not affirmatively appear in the record."

Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982) (citing *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)).

To determine whether this requirement has been met, the Court looks to the allegations of the complaint. See *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995). In his complaint, plaintiff alleges that he is owed \$46,000 under the terms of the contract. Although plaintiff requests \$238,000 in punitive damages, it is improper to include a prayer for punitive damages in the complaint. C.R.S. § 13-21-10 (1.5)(a). Therefore, plaintiff cannot rely on the requested punitive damages to meet the jurisdictional requirement.

This leaves plaintiff's defamation claim demanding \$1,000,000 in compensation. Although this amount would surely meet and exceed the jurisdictional requirement, the plaintiff must set forth the underlying facts supporting its assertion. See *Laughlin*, 50 F.3d at 873. Here, the plaintiff has done nothing more than state that the defendants have "caused monetary damage and damage to the Plaintiff's reputation by publishing false and misleading statements, denying

him his rightful property and causing untold harm to his personal and Internet reputation.”

Complaint ¶67. This alone, without specific facts to support these assertions, is insufficient to support a claim for \$1,000,000 in damages. The plaintiff must “affirmatively establish in the [complaint] that the amount in controversy exceeds the statutory requirement.” *McPhail v. Deere & Co.*, 529 F.3d 947, 955 (10th Cir. 2008).

Personal Jurisdiction and Venue

The Court is also concerned with issues of personal jurisdiction over the defendants. Although a district court generally cannot dismiss a case sua sponte for lack of personal jurisdiction, defects in personal jurisdiction are not waived by default. *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986). When a party seeks an entry of a default judgment “against a party who has failed to plead or otherwise defend, the district court has an affirmative duty to look into its jurisdiction both over the subject matter and the parties.” *Id.* at 1203. In the instant case, it is unclear whether Mr. Roth is asking for a Clerk’s entry of default, a default judgment, or both.¹ Although the Court declines to enter a default, it does take this opportunity to inquire into the adequacy of the Court’s jurisdiction over the defendants. The complaint contains no facts that connect the defendants or their actions to the District of Colorado. Nor is there any hint of business transacted or torts occurring in Colorado. In fact, there is no connection to Colorado anywhere in the complaint. Plaintiff is a Florida resident and all defendants are foreign. Why plaintiff chose the District of Colorado as the court to bring his case in is a mystery and brings venue into question. Although, a district court “may never dismiss a case on its own motion for improper venue,” the Court is concerned with the cases’ apparent lack of connection to Colorado. *Id.* at 1202.

¹ Docket Entry #14 is titled “First Motion for Default Judgment,” the motion itself appears to be a Motion for a Clerk’s Entry of Default, and there are proposed order attached for both Default Judgment and Entry of Default.

Order

Accordingly, the Court requests Mr. Roth to show cause, by December 5, 2011, as to why he has not failed to serve defendants properly pursuant to Fed. R. Civ. P. 4. The plaintiff is also to show cause as to why this case should not be dismissed for lack of subject matter jurisdiction and personal jurisdiction.

DATED this 22nd day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", written in a cursive style. The signature is positioned above a horizontal line.

R. Brooke Jackson
United States District Judge