SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/10/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-090965

FILED: _____

FIRST CREDIT UNION

DENNIS J SKARECKY

v.

KIRIL A PANDELISEV, et al.

DENNIS L HALL

MESA JUSTICE CT-EAST
REMAND DESK-SE

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

Appellants, Arizona residents, purchased a 1985 Jaguar XJ6, via eBay, from a seller in Virginia. A portion of the payment was made by way of a Visa Card transaction, issued by Appellee. A dispute arose once the vehicle was delivered to Appellants, and Appellants requested that Appellee effect a chargeback. However, the seller provided evidence that the vehicle was sold "as is," therefore enabling Appellee to honor the purchase and refuse the chargeback. Appellants assert that the transaction was within the guidelines of The Consumer Credit Protection Act.[1]

[1] 15 U.S.C.A § 1666(i)(a)(3).

This act provides that once a cardholder disputes a claim in a timely fashion, he has all the claims and defenses against the credit card issuer as he does against the merchant. The act also creates a criterion that the place where the initial transaction occurred must be in the same state as the cardholder *or* be within 100 miles of the cardholder's address.[2]

Appellees contend that Appellants did not meet this criterion, and consequently did not execute a chargeback to appellants' account. Appellants maintain that they do not owe Appellee the funds because Appellee should have issued a chargeback. Appellants further claim that the seller "purposefully solicit[ed] a sale in Arizona via the Internet," and that this internet transaction placed Appellants within the limitations of the Act. Consequently, Appellants discontinued payments on the Visa card and Appellee filed suit in the East Mesa Justice Court. The Honorable R. Wayne Johnson awarded Appellee $663.98, plus reasonable court costs and attorney fees.

The main issue to be addressed is whether the transaction was covered by the Consumer Credit Protection Act. Appellants suggest that Arizona courts have personal jurisdiction over the matter due to the Internet transaction qualifying as a sufficient "minimum contact," thus placing the transaction under the control of the Consumer Credit Protection Act. The "minimum contacts" formula set out in *International Shoe v. Washington*[3] has served to shape the due process standards of personal jurisdiction to assure defendants a degree of predictability as to which jurisdiction they can be summonsed into.[4] In order to be subject to the jurisdiction of a forum state, there must be some act "by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws."[5]

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[2] *Id*.
[3] 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed.95 (1945).
[4] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 100 S.Ct. 580, 62 L.Ed.2d 490 (1980).
[5] *Hanson v. Denckla*, 357 U.S. 235, 253 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

While the framework for personal jurisdiction is well accepted, cyberspace raises a number of questions regarding the relationship of personal jurisdiction, a legal concept rooted in geography and territory, to a medium that defies all territorial boundaries. These questions arise as a result of the Internet's ability to make vast amounts of information available to an international audience that does not require the actual, physical presence of the provider at the destination of that information. Hence, under the traditional notion of personal jurisdiction requiring the presence of an out-of-state defendant, the provider of an on-line service or Web site would not be subject to the personal jurisdiction of a distant forum. There is perhaps an irreconcilable gap between the notion of personal jurisdiction that is territorially based and the Internet, a medium that defies all territorial constraints.

Contrary to Appellant's statement in their reply memorandum, neither Federal nor Arizona law grants jurisdiction to courts in cases concerning Internet transactions involving active Web sites. In *Cybersell, Inc. v. Cybersell, Inc*,[6] the Ninth Circuit reinforced the notion that a Web site or other electronic contact, alone, was not purposeful availment of the benefits of the forum state. In *Cybersell*, the plaintiff, an Arizona corporation (Cybersell-Arizona), sued a Florida corporation (Cybersell-Florida) in an Arizona district court for the latter's alleged trademark infringement through a Web site. Cybersell-Florida had absolutely no contacts with Arizona--it did not attempt to market to Arizona residents, nor did it sell any products or services in Arizona.[7]

Even though there were no clear contacts with Arizona, Cybersell-Arizona argued that its assertion of jurisdiction met due process requirements and simply claimed that the defendant "should be amenable to suit in Arizona because cyberspace is without borders and a web site . . . is necessarily intended for

[6] 130 F.3d 414 (9th Cir. 1997).
[7] *Cybersell*, 130 F.3d at 419.

use on a world wide basis."[8] The court reasoned that although "anyone, anywhere could access" a Web site, it did not necessarily follow that the Web site alone bespeaks an attempt to target the audience of a specific forum.[9] The court found that Cybersell-Florida did not intentionally aim its conduct at Arizona while knowing it would cause harm there.[10] At the core of the Ninth Circuit's opinion is the proposition that posting a Web site is conduct that is passive in nature.[11]

Arizona case law provides that in order to comply with federal due process standards, the non-resident defendant must have sufficient minimum contacts with the forum state, and the assertion of jurisdiction must be reasonable.[12] When an entity intentionally uses an electronic medium to reach beyond its boundaries to conduct business, a state's exercise of jurisdiction is not necessarily appropriate.[13] A finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum state.[14]

In cases where the courts have found that the non-resident defendant purposefully availed himself of the forum state, there were specific contacts or intentional, directed solicitation in that state. For example, in ***EDIAS Software International, L.L.C. v. BASIS International Ltd***.[15] the court concluded that a non-resident software producer had purposefully availed itself of the privilege of conducting activities in Arizona based on "[t]he visits [to Arizona] and the many phone, fax and e-mail communications that [the company] made to Arizona, in addition to the invoices that [it] sent to Arizona, and the allegedly

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[8] *Id* at 415.
[9] *Id* at 419.
[10] *Id* at 420.
[11] *Id*.
[12] *A. Uberti and C. v. Leo*nardo, 181 Ariz. 565, 569, 892 P.2d 1354, 1358 (1995).
[13] *Rollin v. William V. Frankel & Co., Inc.*, 196 Ariz. 350, 996 P.2d 1254 (Ariz.App. 2000).
[14] *A.Uberi and C.*, supra at 570, 892 P.2d at 1359, quoting *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112, 107 S.Ct. 1026, 1032, 94 L.Ed.2d 92, 104 (1987). *See* also Hoskinson v. State of California , 168 Ariz. 250, 253, 812 P.2d 1068, 1071 (App.1990).
[15] 947 F.Supp. 413, 421 (D.Ariz.1996).

defamatory statements" about the plaintiff, an Arizona company, which it had posted on its web page.

After a careful review of the record, contrasting the facts to those in Arizona cases where the law is unequivocal, this court finds that a merchant's advertisement on eBay does not amount to a sufficient minimum contact for purposes of establishing jurisdiction by an Arizona court. As a result, the transaction does not meet the criterion that the place where the initial transaction occurred be in the same state as the cardholder *or* within 100 miles of the cardholder's address, as required by 15 U.S.C.A § 1666(i)(a)(3). The trial judge was correct and did not err.

IT IS THEREFORE ORDERED affirming the decision of the Mesa Justice Court – East.

IT IS FURTHER ORDERED remanding this case back for all future proceedings, if any, to the Mesa Justice Court – East.