UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

THE GENTLE WIND PROJECT, MARY MILLER, SHELLY MILLER, CAROL MILLER, JOAN CARREIRO, PAM RANHEIM and JOHN MILLER,	)	
Plaintiffs,	)	
v.	)	Civil Action Docket No. 04-103
JUDY GARVEY, JAMES F. BERGIN, J.F.BERGIN COMPANY, STEVE GAMBLE, EQUILIBRA, IVAN FRASER, THE TRUTH CAMPAIGN, STEVEN ALLAN HASSAN, FREEDOM OF MIND RESOURCE CENTER, INC., RICK A. ROSS, RICK A.ROSS INSTITUTE FOR THE STUDY OF DESTRUCTIVE CULTS, CONTROVERSIAL GROUPS AND MOVEMENTS and IAN MANDER,	)	
Defendants.	)	

REPLY IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION BY DEFENDANTS RICK A. ROSS AND RICK A. ROSS INSTITUTE FOR THE STUDY OF DESTRUCTIVE CULTS, CONTROVERSIAL GROUPS AND MOVEMENTS (With Incorporated Memorandum of Law)

Now come Rick A. Ross and the Rick A. Ross Institute for the Study of Destructive Cults, Controversial Groups and Movements (the "Ross Defendants"), and submit this Reply in support of their motion to dismiss the plaintiffs' Amended Complaint for lack of personal jurisdiction.

Introduction

The Ross Defendants have moved to dismiss Plaintiffs Amended Complaint because they have no connection with Maine sufficient to establish general jurisdiction, they did not purposefully direct their comments to Maine such that they availed themselves of the privilege of conducting business in Maine, the Plaintiffs' claims do not arise out of any Maine activities by the Ross Defendants, and it would not be reasonable to subject the Ross Defendants to personal jurisdiction in Maine. Plaintiffs have opposed, arguing essentially that because GWP is a Maine corporation it suffered its injuries in Maine and therefore the Ross Defendants must have known that the impact of their activities would be felt in Maine.

Plaintiffs are wrong. In fact their own allegations and evidence - including dozens of unverified and occasionally anonymous letters from all over the world - demonstrate that GWP is an international organization with international operations and felt the impact of Defendants' activities worldwide. Moreover, Plaintiffs have failed to meet their burden to show that any alleged injuries they incurred in Maine arose from the minimal amount of "commercial" activities carried on at the RRI web site. It would be unreasonable - and a violation of due process - to force the Ross Defendants to defend this frivolous lawsuit in a jurisdiction to which they have no connection and in which the have never solicited business.

Finally, Plaintiffs have utterly failed to justify their belated request to conduct discovery in aid of establishing jurisdiction, especially where their own evidence demonstrates the lack of any Maine nexus to the conduct of the Ross Defendants.

Argument

I. Ross Did Not Direct His Web Site Towards Maine

Plaintiffs' primary argument is that since the RRI web site contains critical articles and links to other web sites with critical information concerning GWP, and since GWP is a Maine corporation, the Ross Defendants necessarily intended to target Maine. Pl.Opp. at 6-14. This argument is both legally and factually wrong.

A. The Gentle Wind Project Incurred Much of its Alleged Damages Outside Maine

In opposing the Ross Defendants' Motion to Dismiss for lack of personal jurisdiction, Plaintiffs have seen fit to submit a 10-page Declaration of Mary Miller (dated October 25, 2004), with nine exhibits comprising approximately 80 pages of documents, including dozens of unverified, unattested and occasionally anonymous letters allegedly sent by GWP practitioners and "voluntters" from all over the world. Incidentally, the Miller declaration asserts that Ross was dragged into this lawsuit because he "provided access to an unsubstantiated story on his web site followed by his own negative commentary about GWP." Miller Dec. ¶ 6. It is therefore crystal clear that the Ross Defendants are not being sued because GWP hopes to collect damages for defamation from them, but rather because GWP hopes to shut them up, and foreclose *any* critical comment concerning their remarkable claims about their "healing instruments." More significantly for purposes of the instant motion, the Miller Declaration does not provide any evidence supporting Plaintiffs' allegations that Ross purposefully directed his comments towards Maine.

While Plaintiffs' opposition is premised on their assertion that GWP suffered its damages

in Maine, Pl.Opp. at pp. 6-7, Ms. Miller emphasizes that GWP is an "international non-profit organization." Miller Dec. ¶ 1. She asserts that GWP's "technology has spread around the world," Miller Dec. ¶ 3, and that "GWP has worked diligently to establish its reputation in the world." Miller Dec. ¶ 4. Indeed, one of the documents submitted by Ms. Miller indicates that GWP has conducted seminars in the states of Massachusetts, Florida, California, North Carolina, New Hampshire, New Jersey, New York, Vermont, Hawaii and Pennsylvania, as well as in Toronto, Canada and New Zealand. Miller Dec., Exhibit D. Interestingly, according to this document, GWP did not conduct *any* seminars in Maine from December, 2002 through September, 2004.

Miller goes on to aver that "GWP has a strong support base in London," and that the posting of various negative articles on the RRI web site "damaged GWP on an international level." Miller Dec. ¶ 13. She then refers to problems experienced by GWP "volunteers" allegedly as a result of the negative information on the RRI web site, and attaches letters purportedly written by a "Gerrie S. Greene, JD" from Flourtown, Pennsylvania, and an unidentified person from California. Miller Dec. ¶ 15 and Exhibit F.[1] Miller expands on GWP's international presence - and its international losses - by asserting that "GWP volunteers around the world" have reported a decline in contacts by persons "seeking their help" as a result

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[1] Like all of the purported letters attached to the Miller Declaration, the letters attached as Exhibit F are unattested, constitute inadmissible hearsay and should therefore be stricken. What is clear from these letters, however, is that they and the Plaintiffs are not merely complaining about the allegedly "defamatory" comments they attribute to Ross. Rather, they protest the presence of any "negative information" on the Ross web site. This negative information consists primarily of copies or links to articles published in the news media or other web sites. *See* Miller Dec., Exhibit E. Thus, what Plaintiffs are really seeking in this lawsuit is a complete ban on *any* critical comment concerning their organization or their "healing technology." Plaintiffs offer no legal theory which would justify such a ban. Clearly, Plaintiffs hope that the prosecution of this lawsuit will coerce Ross and others from making any critical comment concerning GWP. Plaintiffs have evidently succeeded in this endeavor, as several of the other defendants have been dismissed from this case. Plaintiffs' lawsuit is an abuse of the legal system.

of the postings on the RRI web site, and attaches letters from individuals in London (the full address has evidently been purposefully obscured), Maine, England (no name, no address, no signature) and Pickering, Ontario (again, the address has been obscured). Miller Dec. ¶ 19 and Exhibit G. Miller also attaches a group of letters from GWP "volunteers" who have seen the RRI web site, including not only twelve individuals from Maine, but also persons residing in Massachusetts, California, Pennsylvania, New Hampshire and Hawaii. Miller Dec. ¶ 22 and Exhibit H. Finally, Miller attaches a group of letters from "health care professionals" who were somehow adversely affected by the RRI web site, including persons from California, Colorado, New York, Massachusetts, New Zealand, North Carolina and New Hampshire (none from Maine). Miller Dec. ¶ 25 and Exhibit I.

Miller asserts that GWP's damages include loss of "donation income," Miller Dec. ¶ 9, legal fees, loans, and the sale of "equipment used in the research and manufacturing of the healing technology." Miller Dec. ¶ 10. Interestingly, the aforementioned equipment included a Henke Clarinet, several guitars and a banjo, as well as various workshop tools. Miller Dec., Exhibit C. Ms. Miller does not explain how GWP is able to continue producing its "healing technology" without these items.[2]

Miller fails to disclose what percentage of income GWP receives outside Maine. Her failure to do so should give rise to a negative inference. In fact, based on the lack of GWP seminar activity in Maine, and Miller's assertion that "several million people" have used GWP's "instruments, it appears that the bulk of GWP's income comes from persons outside Maine.

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[2] Presumably the role of guitars and banjos in the manufacturing of GWP's healing instruments is a trade secret.

Accordingly, even if GWP could establish personal jurisdiction over the Ross Defendants in Maine merely by showing that it incurred the bulk of its losses in Maine (and this is most certainly not the standard), GWP has failed to do so. *See Conseco, Inc. v. Hickerson*, 698 N.E.2d 816 (Ind.App. 1998) (Indiana court did not have personal jurisdiction over Texas web site operator who allegedly defamed Indiana insurer because insurer had subsidiaries and policyholders throughout the U.S.).

B. Maintaining a Web Site with Critical Information Concerning a Maine Corporation Does Not Subject the Operator to Personal Jurisdiction in Maine

At bottom, all Plaintiffs have alleged is that the RRI web site contains critical information concerning GWP and links to other web sites with critical information concerning GWP, and that GWP is allegedly headquartered in Maine. As discussed in the Ross Defendants' opening brief, the overwhelming weight of authority is that the operation of a web site containing allegedly defamatory statements concerning a party located in the forum state does not constitute "purposeful availment" of that forum's laws, such that the operator is subject to personal jurisdiction there. *See* Motion to Dismiss, pp. 8-10.

The authorities upon which Plaintiffs rely are outdated, distinguishable or did not involve assertions of jurisdiction based on internet web sites.

For instance, Plaintiffs cite *Bochan v. La Fontaine*, 68 F.Supp.2d 692 (E.D.Va. 1999), which upheld personal jurisdiction in Virginia over web site operators in Texas and New Mexico who defamed a Virginia resident. *Bochan* (an ancient decision by internet standards) cannot be reconciled with the Fourth Circuit's subsequent decision in *Young v. New Haven Advocate*, 315 F.3d 256, 258-59 (4th Cir. 2002), *cert. den.* 538 U.S. 1035 (2003), holding that a Virginia court

had no personal jurisdiction over Connecticut newspaper which posted articles on its web site defaming a Virginia resident.[3] In *Young* the Fourth Circuit held that a defendant's act in placing information on the internet is not sufficient to subject it to jurisdiction in each state where the information may be accessed, and that the mere fact that the defendant knows that the plaintiff resides and suffered injury in the forum state does not demonstrate that the defendant was "targeting" the forum state. 315 F.3d at 263-64. In light of *Young*, the holding in *Bochan* is not good law. Plaintiffs also cite *Horsley v. Feldt*, 128 F.Supp.2d 1374 (N.D.Ga. 2000), a decision which is suspect because it relied extensively on the (reversed) decision by the district court in *Young; Horsley* has never been cited by any other court.

II. Plaintiffs' Claims Do Not Arise from the "Commercial" Activities of the RRI Web Site

Plaintiffs argue that the "interactivity" of the RRI web site renders the Ross Defendants amenable to jurisdiction in Maine. Pl.Opp. at 14-16. Plaintiffs lead off their opposition by pointing out that persons who visit the RRI web site may choose to purchase books, to hire Ross as a speaker or to assist former cult members, or to give donations to RRI. Pl.Opp. at 2-3. All of these activities were disclosed by Mr. Ross in his affidavit submitted with the Ross Defendants' Motion to Dismiss. Plaintiffs have utterly failed to meet the argument made in the Ross Defendants' opening brief that Plaintiffs' claims do not arise from any intervention conducted by Mr. Ross nor any purportedly commercial activity conducted by the Ross Defendants.

Plaintiffs' reliance on cases like *Maritz, Inc. v. Cybergold, Inc.*, 947 F.Supp. 1328 (E.D.Mo. 1996) and *Inset Systems, Inc. v. Instruction Set*, 937 F.Supp. 161 (D.Conn. 1996) is

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[3] The district court which was reversed in *Young* had relied extensively on *Bochan*, but the Fourth Circuit did not address *Bochan*.

misplaced; both decisions has been repeatedly criticized. For instance, in *Hearst Corp. v. Goldberger*, 1997 WL 97097 (S.D.N.Y.), the court declined to follow *Maritz* and *Inset*, reasoning that upholding jurisdiction in cases like this "would, in effect, create national (or even worldwide) jurisdiction, so that every plaintiff could sue in plaintiff's home court every out-of-state defendant who established an Internet web site." 1997 WL 97097 at *20. Similarly, in *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F.Supp.2d 1154 (W.D.Wis. 2004), the court referred to *Inset Systems* as an "early attempt" to address personal jurisdiction through the internet, and noted that "[a]s many courts now recognize, the problem with the approach in *Inset Systems* is that it would allow anyone with a website to be sued *anywhere* in the world." 297 F.Supp.2d at 1159.

Plaintiffs have completely failed to attribute any of their alleged losses to any "commercial" conduct by the Ross Defendants.

III. Plaintiffs Have Failed to Provide Any Evidence of a Conspiracy Between the Ross Defendants and Any Other Parties

The actual content of the RRI that refers to GWP is benign: GWP is referred to as a "rather odd group" that "hawk[s] so-called instruments," and "hyperlinks," without comment or endorsement, were provided to certain sites operated by some of the other defendants. Amended Complaint, Exhibit L. Implicitly acknowledging this fundamental flaw with their case, Plaintiffs attribute to the Ross Defendants the somewhat more dramatic statements made by defendants Bergin and Garvey on their site, through the device of an alleged conspiracy. Plaintiffs allege that the Defendants formed a RICO "enterprise," Amended Complaint, ¶ 136, and assert that the Ross Defendants collaborated with the other Defendants in a "campaign to smear and destroy

Plaintiffs. Pl.Opp. at 1 and 18. Neither the Amended Complaint nor the Miller Declaration contain any specific facts from which one could infer that the Ross Defendants participated in such a conspiracy. This Court is not obliged to "credit conclusory allegations or draw farfetched inferences."[4] *Massachusetts School of Law at Andover, Inc. v. American Bar Association*, 142 F.3d 26, 34 (1st Cir. 1998).

IV. Plaintiffs Have Failed to Justify the Belated Request for Jurisdictional Discovery

In a last ditch effort to save their case, Plaintiffs urge this Court to permit them to conduct "jurisdictional discovery." Pl.Opp. at 18. Interestingly, the sole authority on which Plaintiffs rely is the dissenting opinion by Judge Lipez in *U.S. v. Swiss American Bank, Ltd.*, 274 F.3d 610, 636-41 (1st Cir. 2001). The majority opinion in *Swiss American* denied such a request, holding that the entitlement to jurisdictional discovery is not absolute and that the district court has broad discretion in determining whether jurisdictional discovery is required. 274 F.3d at 625-26. In order to justify a request for jurisdictional discovery, a plaintiff must state a "colorable case" that it will be able to satisfy the minimum contacts requirement, which means that plaintiff must "present facts to the court which show why jurisdiction would be found if discovery were permitted." 274 F.3d at 626. Plaintiffs have utterly failed to make a case for jurisdictional discovery. Their one paragraph argument does not identify what discovery they propose to conduct or what facts they hope to discover that would support the assertion of jurisdiction. Their untimely and inadequate request should be denied.

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[4] It should be noted that Plaintiffs have settled with several of parties formerly sued in this action. While the terms of these settlements have not been disclosed, Plaintiffs could easily have required the settling defendants to provide any and all information concerning their alleged contacts or relationship with the Ross Defendants - i.e., the alleged RICO "enterprise - as a condition to the settlements. That Plaintiffs have failed to introduce any such evidence here compels an inference that no such evidence exists.

Conclusion

For the reasons set forth above and in the Ross Defendants' opening brief, the Amended Complaint against the Ross Defendants should be dismissed for lack of personal jurisdiction.

Dated: November 5, 2004

RICK A. ROSS AND RICK A. ROSS INSTITUTE FOR THE STUDY OF DESTRUCTIVE CULTS, CONTROVERSIAL GROUPS AND MOVEMENTS
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CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of November, 2004, electronically filed the Motion to Dismiss Amended Complaint for Lack of Personal Jurisdiction by Defendants Rick A. Ross and Rick A. Ross Institute for the Study of Destructive Cults, Controversial Groups and Movements(with Incorporated Memorandum of Law) with the Clerk of Court using the CM/ECF system which will send notice of such filing to Jerrol A. Crouter, Esquire, Robert S. Frank, Esquire, James G. Goggin, Esquire, William H. Leete, Jr., Esquire, and that I mailed the document by United States Postal Service to the following non-registered participants: Ian Mander, 38 Arundel Avenue, Mt. Roskill, Auckland, New Zealand.

/s/ Douglas M. Brooks
Douglas M. Brooks