

1 STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY

2 BRANCH 11

3
4 GEOFFREY K. DAVIDIAN,

5 Plaintiff,

6 -vs-

CASE NO. 02CV009453

7 JIM SHIPLEY, et al.,

8 Defendants.

COPY

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11 MOTION TO DISMISS

12
13 January 13, 2003

HON. DOMINIC S. AMATO
Circuit Judge Presiding

14
15 TIERNEY L. MACKIN, RPR, CM
16 Official Court Reporter

17 A P P E A R A N C E S

18 LAW OFFICES OF LAWRENCE P. ZIEGER, 735 North
19 Water Street, Suite 836, Milwaukee, Wisconsin 53202-4104, by
20 MR. LAWRENCE P. ZIEGER, appeared on behalf of the Plaintiff.

21 CRIVELLO, CARLSON & MENTKOWSKI, S.C., 710 North
22 Plankinton Avenue, Milwaukee, Wisconsin 53203, by MR. RAYMOND
23 J. POLLEN, appeared on behalf of the Defendants.

24 GEOFFREY K. DAVIDIAN, appeared pro se.
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1 TRANSCRIPT OF PROCEEDINGS

2 THE COURT: Please remain seated. Good
3 morning. We're in session.

4 THE CLERK: 02CV009453, Geoffrey K.
5 Davidian versus Jim Shipley, et al. Appearances.

6 MR. ZIEGER: Good morning, your Honor. The
7 plaintiff, Jeffrey K. Davidian, appears pro se in person,
8 and Attorney Lawrence Zieger of counsel for the limited
9 purpose of appearing for this motion and arguing the legal
10 points on this motion.

11 MR. POLLEN: Judge, my name is Ray Pollen
12 and I am representing the defendants in this action and in
13 this motion.

14 MR. ZIEGER: Before we start, your Honor,
15 could I bring kind of a procedural issue before the Court?
16 Mr. Davidian has done all of the work, all of his own work
17 on this matter, and he has been involved in litigation
18 before, he's not unfamiliar with court proceedings and
19 procedures as I'm sure you can tell by the submissions,
20 and there is a portion of this that I think in fairness he
21 should be able to argue personally because it's his -- his
22 own personal argument, but I feel it would be most proper
23 to argue the legal side of things on his behalf, and with
24 the Court's indulgence could we abstain from the rule of
25 one attorney?

1 THE COURT: I don't have that problem but
2 I'm cutting through the chase. Defense counsel --

3 MR. POLLEN: Judge --

4 THE COURT: -- you build a site on the
5 Internet, you can see that it's your property. Your law
6 firm builds a site on the Internet, is it your law firm's
7 property or free domain?

8 MR. POLLEN: Judge, the site that we build
9 on the Internet would be our property depending on where
10 it's located.

11 THE COURT: And I get in there and I hack
12 it and mess it all up. Can you sue me?

13 MR. POLLEN: There is no dispute that in
14 this case someone who does that may be sued; no doubt
15 about that.

16 THE COURT: Isn't that what happened here?

17 MR. POLLEN: Sure. There is no doubt and
18 there is no disagreement between us that he has a suit.
19 The question is where he can bring it.

20 THE COURT: But every time you get on a
21 telephone, a cell phone, an Internet site, it's bounced
22 off some satellite in the sky revolving around the earth
23 probably at 250, 300 miles up. So are we going to hold
24 all lawsuits out in outer space?

25 I mean, the affidavit in opposition by --

1 how do you pronounce your last name?

2 THE WITNESS: Davidian, your Honor.

3 THE COURT: -- The affidavit in opposition
4 to your motion by Davidian outlines in detail all the
5 contact, all the communications. And if I -- I had
6 someone call me from New York on my cell phone that was
7 beamed off a satellite to confirm an order for some stereo
8 system, and before they sent it they wanted to confirm
9 what my credit card number was. And it was a scam. But
10 if they would have gotten my credit card number, like a
11 lot of people do get other people's credit card numbers,
12 or get access to information, and I'm at a loss and my
13 card is used, do I have to go to New York and sue this
14 guy? No. The damage -- If it's a property right, the
15 damage is done when your client makes a knowing decision
16 to communicate. Period. And all the contact and all the
17 involvement show that this is not a moment of -- a frozen
18 moment in time, continuous, often. He's got a battle
19 going down with your -- going on with your people down
20 there and your people down there have a battle going on
21 with him. And when they hack -- when they allegedly
22 hacked into his Website up here, it's his property.
23 That's sufficient under the statutes, under all the law
24 he's cited. He didn't have to get -- not that you are not
25 good -- but he didn't even have to get a lawyer in here to

1 argue it. He was playing it safe, though. He needed a
2 heavy hitter like you, and I don't mean in weight.

3 MR. ZIEGER: Does he have to pay?

4 THE COURT: Yes, he does.

5 So for all the reasons expressed in the
6 plaintiff's brief -- in the long, somewhat prolix
7 affidavit, but very detailed affidavit -- I have to deny
8 the motion of the defendants to dismiss, because I have to
9 look at the complaint as pleading any type of cause of
10 action under any set of circumstances deliberately to be
11 construed. And the individual contacts that he had in
12 each and every one of these people sufficiently satisfies
13 this Court that it has subject matter jurisdiction and
14 personal jurisdiction for all the reasons expressed in
15 addition to what this Court has discussed in its oral
16 bench decision. Motion denied.

17 MR. ZIEGER: Thank you, your Honor.

18 THE WITNESS: Thank you, your Honor.

19 MR. POLLEN: Thank you, your Honor.

20 THE COURT: Where are we on this case? Do
21 we have a scheduling order?

22 MR. POLLEN: No, Judge. It was just filed.
23 All -- Our responsive pleading was the motion to dismiss
24 so we don't have a scheduling conference yet.

25 THE COURT: Why don't we give you a

1 scheduling conference about 60 days out.

2 MR. POLLEN: Thank you, Judge.

3 THE COURT: We'll do it right now. We'll
4 just give you a scheduling conference date right now.

5 Do you want to prepare an order under the
6 five-day rule based upon the Court's oral bench decision?

7 MR. ZIEGER: Sure. Then I'll earn my fee.

8 MR. POLLEN: Judge, I didn't know we were
9 doing scheduling, I didn't bring my calendar, but I'll do
10 my best.

11 THE COURT: Well, set up a telephone
12 conference with plaintiff's counsel and the Court and
13 we'll give you a date over the phone.

14 MR. POLLEN: I appreciate that, Judge.
15 Thanks.

16 THE COURT: No problem.

17 (The proceedings concluded.)
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STATE OF WISCONSIN)
MILWAUKEE COUNTY)

I, TIERNEY MACKIN, Registered Merit Reporter and Notary Public in and for the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript, consisting of 7 pages, has been carefully compared by me with my stenographic notes as taken by me in machine shorthand and by me thereafter transcribed and it is a true and correct transcript of proceedings had in said matter to the best of my knowledge.

Dated this 16th day of January, 2003.



TIERNEY L. MACKIN