

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
Greenbelt Division

STEPHEN DRING,

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Plaintiff

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v.

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Civil Action No.: DKC 05cv2804

WILLIAM SULLIVAN,

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Defendant.

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**DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING HIS  
MOTION TO DISMISS**

Defendant William Sullivan respectfully moves to dismiss the Complaint, pursuant to Fed. R. Civ. Proc. 12(b) and all other applicable provisions of law. The grounds for this Motion are set forth below.

I. **INTRODUCTION**

Defendant files this Motion to Dismiss, because the Complaint fails to state a claim upon which relief can be granted, and because this Court lacks personal jurisdiction over Defendant. Fed. R. Civ. Proc. 12(b)(2) and (6).

Plaintiff claims defamation concerning comments allegedly made by Defendant in a singular communication on an e-mail listserve during the course of Plaintiff's bid to be elected to

the Board of Directors of USA Tae Kwon Do ("USAT"). Complaint at ¶¶ 6-8.

Prior to this election, according to Plaintiff, Plaintiff had "refereed competitions all over the world" and had been "selected as the only U.S. Tae Kwon Do referee selected to officiate at the 2004 Olympic Games in Athens, Greece."

Plaintiff, a Maryland resident, claims jurisdiction in this court through the diversity jurisdiction law. Defendant is a New Jersey resident. Plaintiff's only linkage of Defendant to Maryland is through the singular list serv e-mail purportedly sent by Defendant; that is all.

## II. ARGUMENT

### A. The Complaint Fails To State A Claim Upon Which Relief Can Be Granted.

The Complaint fails to meet all the following necessary elements of a defamation claim: "(1) that the defendant made a defamatory communication -- i.e., that he communicated a statement tending to expose the plaintiff to public scorn, hatred, contempt, or ridicule to a third person who reasonably recognized the statement as being defamatory; (2) that the statement was false; (3) that the defendant was at fault in communicating the statement; and (4) that the plaintiff suffered harm." *Carter v. Aramark Sports & Entm't Servs.*, 153 Md. App.

210, 237-38, 835 A.2d 262, cert. denied 153 Md. App. 210, 835 A.2d 262, 278 (2003).<sup>1</sup>

As further explained below, where, as here, Plaintiff is a limited public figure for purposes of Defendant's allegedly defamatory statements, Defendant cannot be liable absent actual malice, which the Complaint does not sufficiently claim. Specifically, "[w]here a plaintiff in a defamation suit is a 'public figure', plaintiff must show actual malice on the part of the publisher in order to prevail upon his claims." *National Life Ins. Co. v. Phillips Publishing*, 793 F. Supp. 627 (D.Md. 1992) (citing *New York Times v. Sullivan*, 376 U.S. 254, 288-91 (1964) and *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)). Actual malice is "a term of art denoting deliberate or reckless falsification." *Masson v. New Yorker Magazine*, 501 U.S. 496, 499 (1991).

In a defamation action, actual malice must be proven not only for a public figure, but for a limited public figure, as well, as follows:

In determining whether Plaintiff is a limited purpose public figure, the Fourth Circuit has erected a five-part test:

"1) The Plaintiff has access to channels of effective

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<sup>1</sup> For purposes of this Motion to Dismiss only, Defendant will assume for argument's sake that Maryland's choice of law provisions apply. *Crowley v. Fox Broadcasting Co.*, 851 F. Supp. 700, 702 (D.Md. 1994).

communications; 2) the Plaintiff voluntarily assumed a role of special prominence in a public controversy; 3) the Plaintiff sought to influence the resolution or outcome of the controversy; 4) the controversy existed prior to the publication of the defamatory statements; and 5) the Plaintiff retained public figure status at the time of the alleged defamation."

*National Life Ins. Co. v. Phillips Publishing*, 793 F. Supp. 627, 635 (quoting *Fitzgerald v. Penthouse Int'l*, 691 F.2d 666, 668 (4th Cir. 1982), *cert. denied*, 460 U.S. 1024 (1983)).

Plaintiff is a limited public figure under the foregoing five-part *Fitzgerald* test, as follows: *First*, Plaintiff had access to effective communications, for instance by being a participatory member of the listserve where Defendant's allegedly defamatory communication was sent. Complaint at ¶ 6. *Second*, Plaintiff voluntarily assumed a role of special prominence in a public controversy by having run for election as director of the USAT. Complaint at ¶ 8. *Third*, Plaintiff sought to influence the resolution or outcome of the controversy by having run for the Board. *Id.* *Fourth*, the controversy existed prior to the publication of the allegedly defamatory statements, in that Plaintiff's candidacy for the Board was already in progress. *Id.* *Fifth*, Plaintiff retained public figure status at the time of the alleged defamation by having continued in the race for the Board. *Id.*

In other words, because Plaintiff has alleged that he is a prominent Tae Kwon Do figure who sought a Tae Kwon Do

directorship, Complaint at ¶¶ 5-8, he "is a sports figure and, thereby, a public figure for purposes of a defamation analysis." *Gill v. Del. Park, L.L.C.*, 294 F. Supp. 2d 638, 646 (D. Del. 2003).

Here, the Complaint does not sufficiently allege malice, which is "a term of art denoting deliberate or reckless falsification." *Masson*, 501 U.S. at 499. At worst for Defendant, the Complaint alleges statements of opinion during an election season, rather than fact, about lying, cheating, bribery, corruption, and unethical practices. Complaint at ¶ 12. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990) ("a statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection").

**B. This Court Lacks Personal Jurisdiction Over Defendant**

The Complaint fails to establish personal jurisdiction over Defendant where Defendant's only alleged contacts with Maryland are through the August 30, 2005, e-mail listerv message.

Complaint at ¶¶ 6-8:

Pursuant to Fed. R. Civ. P. 4(e), federal courts are authorized to exercise personal jurisdiction over a nonresident to the extent permitted by law of the state where the action is brought. *Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n*, 819 F.2d 434, 436 (3d Cir. 1987). Federal courts follow a two-step analysis to determine if personal jurisdiction is proper: (1) if jurisdiction is proper under the forum's long-arm statute; and (2) the exercise of

personal jurisdiction over the defendant comports with due process under the U.S. Constitution.

*Barrett v. Catacombs Press*, 44 F. Supp. 2d 717, 723 (E.D. Pa. 1999).

As part of the foregoing legal provisions, we review Maryland's long arm statute. *Id.* at 723, to find that general jurisdiction is not provided by that statute:

(a) Condition. -- If jurisdiction over a person is based solely upon this section, he may be sued only on a cause of action arising from any act enumerated in this section.

(b) In general. -- A court may exercise personal jurisdiction over a person, who directly or by an agent:

(1) Transacts any business or performs any character of work or service in the State;

(2) Contracts to supply goods, food, services, or manufactured products in the State;

(3) Causes tortious injury in the State by an act or omission in the State;

(4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State;

(5) Has an interest in, uses, or possesses real property in the State; or

(6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation, or agreement located, executed, or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

(c) Applicability to computer information and computer programs. --

(1) (i) In this subsection the following terms have the meanings indicated.

(ii) "Computer information" has the meaning stated in [§ 22-102 of the Commercial Law Article](#).

(iii) "Computer program" has the meaning stated in [§ 22-102 of the Commercial Law Article](#).

(2) The provisions of this section apply to computer information and computer programs in the same manner as they apply to goods and services.

Md. Ann. Code, Cts. Jud. Proc. art., § 6-103.

The foregoing Maryland long arm statute focuses on repeated activity and/or physical presence in Maryland that does not exist here to make said statute applicable to obtain jurisdiction over Defendant. "General jurisdiction is normally invoked when a defendant has 'systematic and continuous' contacts with the forum state, which include participating in a consecutive series of activities from within the forum state." *Barrett v. Catacombs Press*, 44 F. Supp. 2d at 723. Such contacts "must be 'so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.'" *Id.* (quoting *International Shoe*, 326 U.S. 310, 318 (1945)).

The Complaint only speaks of one listserve message by Defendant. Complaint at ¶ 6. Although the Complaint alleges the

e-mail was subsequently posted to two websites, the Complaint makes no allegation that Defendant made or participated in said posting, so the subsequent two website postings do not create any basis for jurisdiction. Complaint at ¶ 7. Such activities do not meet the "high threshold" of general jurisdiction over Defendant. *Barrett v. Catacombs Press*, 44 F. Supp. 2d at 724.

Consequently, jurisdiction can only be obtained over Defendant through specific jurisdiction, which requires examining whether the "'minimum contacts' exist that are purposefully aimed at the forum state. In order to comport with due process, a nonresident defendant must have sufficient minimum contacts with the forum state so 'that the maintenance of the suit does not offend '"traditional notions of fair play and substantial justice.'" *Id.* (quoting *International Shoe*, 326 U.S. 310, 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940))).

A case with strikingly similar relevant facts to Plaintiff's case, *Barrett* concludes, after an on-point, synthesized and thoroughly relevant analysis, that specific jurisdiction is absent on the basis of two listserv e-mails alone. *Barrett v. Catacombs Press*, 44 F. Supp. 2d at 729. As here, the "extent of the e-mail communication between Plaintiff and Defendant does not amount to 'purposeful availment' of the 'privilege of acting' within Pennsylvania. As minimal

