

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MACDERMID, INC.
Plaintiff,

v.

JACKIE DEITER
Defendant.

No. 3:11-CV-00855-WWE

MEMORANDUM OF DECISION ON DEFENDANT’S MOTION TO DISMISS

Plaintiff MacDermid, Inc. has filed an action against defendant Jackie Deiter alleging that she improperly forwarded data files containing highly confidential and proprietary information and/or trade secrets belonging to plaintiff from her MacDermid e-mail account to her personal e-mail account.

Defendant has filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(2) for lack of jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted. For the following reasons, defendant’s motion to dismiss will be granted.

BACKGROUND

Plaintiff MacDermid is a chemical company engaged in the development, manufacture and sale of a broad range of chemical and printing products and processes, with its principal place of business in Waterbury, Connecticut.

Defendant Jackie Deiter served as an account manager for MacDermid Chemicals Inc., plaintiff’s subsidiary, from 2008 to 2011. MacDermid Chemicals is based out of Mississauga, Ontario, Canada. As an account manager, defendant’s duties and responsibilities included managing existing customer accounts, obtaining new customers and providing technical service

to customers. At all relevant times, defendant was a Canadian citizen who lived and worked in Canada. Defendant has never visited Connecticut.

MacDermid Chemicals decided to terminate defendant's position on April 7, 2011. Plaintiff alleges that defendant became aware of her pending termination before her employment ended. Plaintiff further alleges that as a result of this awareness, defendant improperly forwarded data files containing highly confidential and proprietary information and/or trade secrets belonging to plaintiff from her MacDermid e-mail account to her personal e-mail account.

Defendant admits that she sent e-mails containing confidential information to her home computer. However, defendant claims that she did so only because she could not print at home from her employer-provided laptop computer. In order to print material for her presentations while she was at home, defendant needed to print from her home computer. In order to do this, she needed to send information from her MacDermid computer to her home computer and then print the required material. Defendant also maintains that her actions were not kept secret from other MacDermid employees.

Defendant has moved to dismiss plaintiff's complaint pursuant to Federal Rules of Civil Procedure 12(b)(2) for lack of personal jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted.

DISCUSSION

The function of a motion to dismiss is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distribution v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984). When deciding a motion to dismiss, the Court must accept all well-pleaded allegations as

true and draw all reasonable inferences in favor of the pleader. Hishon v. King, 467 U.S. 69, 73 (1984). The complaint must contain the grounds upon which the claim rests through factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007). A plaintiff is obliged to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim plausible. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009).

This Court must first consider whether it has personal jurisdiction over the defendant before reaching the merits of any claims. A court engages in a two-step process to determine whether it may exercise personal jurisdiction over a defendant. See Grand River Enters. Six Nations, Ltd. v. Pryor, 425 F.3d 158, 165 (2d Cir.2005). First, it must consider whether Connecticut’s long-arm statute confers jurisdiction, and then it must determine whether such exercise comports with the Due Process Clause of the United States Constitution. See Chloe v. Queen Bee of Beverly Hills, LLC, 616 F.3d 158, 163-64 (2d Cir.2010).

Before discovery, a plaintiff facing a 12(b)(2) motion may defeat the motion by pleading legally sufficient allegations of jurisdiction. Ball v. Metallurgie Hoboken-Overpelt, 902 F.2d 194, 197 (2d Cir. 1990). “Where . . . the district court relies solely on the pleadings and supporting affidavits, the plaintiff need only make a prima facie showing of jurisdiction.” Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 507 (2d Cir. 1994). These pleadings and affidavits are construed in the light most favorable to plaintiff, with all doubts resolved in plaintiff’s favor.

Connecticut's Long-Arm Statute

“Under Connecticut law, in determining whether a court has personal jurisdiction over a foreign [party], the court must first determine whether the state’s long-arm statute is satisfied; if so, the court must then decide whether that exercise of jurisdiction would offend the due process clause of the Fourteenth Amendment.” Gerber Trade Fin., Inc. v. Davis, Sita & Co., P.A., 128 F. Supp. 2d 86, 90 (D. Conn. 2001).

Connecticut’s long-arm statute regarding individuals is Connecticut General Statutes Section 52-59b. It provides in relevant part:

(a) As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident individual, . . . who in person or through an agent: . . . (2) commits a tortious act within the state, . . . (3) commits a tortious act outside the state causing injury to person or property within the state . . . if such person or agent (A) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (B) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; . . . or (5) uses a computer, as defined in subdivision (1) of subsection (a) of section 53-451, or a computer network, as defined in subdivision (3) of subsection (a) of said section, located within the state.

Plaintiff alleges that this Court has personal jurisdiction over defendant pursuant to subsections (2), (3) and (5) of the long-arm statute.

First, plaintiff alleges that defendant committed a tortious act within Connecticut. Plaintiff argues that because defendant’s “conduct was clearly aimed at plaintiff’s computer systems located in Waterbury, Connecticut, a tortious act was committed in Connecticut.” This interpretation conflicts with the plain meaning of subsection (2), especially when subsection (3)

explicitly applies to tortious acts committed outside the state. Plaintiff cited United States v. Ivanov and Diaz v. Elete for the proposition that tortious activity has been found to have occurred in-state despite a perpetrator's remote location. 175 F. Supp. 2d 367 (D. Conn. 2001); 2004 WL 1087468 (S.D.N.Y. May 14, 2004). However, the court in Ivanov was analyzing *criminal* statutes under which the defendant was charged. There, the relevant criminal laws were clearly intended by Congress to apply extraterritorially:

There is a presumption that Congress intends its acts to apply only within the United States, and not extraterritorially. However, this presumption against extraterritoriality may be overcome by showing clear evidence of congressional intent to apply a statute beyond our borders. United States v. Ivanov, 175 F. Supp. 2d at 373.

The present case is a civil action and jurisdiction must be based on Connecticut's long-arm statute.

In Diaz v. Elete, personal jurisdiction in New York was based on tortious activity outside the state causing injury to person or property within the state, the corollary to subsection (3) of Connecticut's long-arm statute, not subsection (2); hence, the court inquired into whether the defendants derived substantial revenue from interstate commerce. 2004 WL 1087468 at *4. Neither of the above cases cited by plaintiff contradict the plain meaning of subsection (2) of Connecticut's long-arm statute. Therefore, personal jurisdiction has not been obtained through section 52-59b(a)(2).

Second, plaintiff argues that defendant committed a tortious act outside the state causing injury to person or property within the state. However, using the "situs of injury test," the location of the injury is the same as the original event which caused the injury, not where resultant damages are subsequently felt. See Robb v. Robb, 620 F.Supp.2d 282, 286 (D. Conn.

2009). As defendant's employer was based in Canada, it is unclear where the first effect of the alleged tort was located. See Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 171 F.3d 779, 792 (2d Cir. 1999). More importantly, plaintiff has not alleged persistent course of conduct or substantial revenue as required by subsection (3) of Connecticut's long-arm statute. Thus, § 52-59b(a)(3) does not confer jurisdiction.

Finally, plaintiff contends that defendant is subject to Connecticut's long-arm statute because she used an in-state computer network. Specifically, plaintiff alleges that "because Deiter accomplished this criminal and tortious conduct by means of a computer and a computer system located in Connecticut, jurisdiction over Deiter is also proper under § 52-59b(a)(5)." However, as the Connecticut Superior Court pointed out in Mitchell v. Patterson: "If the legislature had meant internet instead of computer network it would have said so," as it did in dozens of other statutes. 2005 WL 1671528, *4 (Conn. Super. 2005). Here, defendant merely emailed herself information from one computer in Canada to another computer in Canada. That the information was originally obtained over the internet from a network of computers in Connecticut does not mean that the defendant "used" a computer network located within the state, as defined in subdivision (3) of subsection (a) of section 53-451:

(3) "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities.

Such an interpretation would read the word "related" out of the statutory definition as all computers are remotely connected devices if connected to the internet.

Plaintiff has alleged that defendant "accessed [plaintiff's] proprietary, confidential and

trade secret information protected and stored on computer servers in Waterbury, Connecticut, and then e-mailed that information from her active work e-mail account to her personal e-mail account for use on her personally owned, home computer.” Importantly, the unauthorized e-mail transfer from one computer in Canada to another computer in Canada is the basis for plaintiff’s claims. Plaintiff argues that defendant was not authorized to access the protected information using her work computer with the *purpose* of subsequently transferring it to her personal computer in an effort to blur the issue of initial authority to access the information. It is clear, that defendant’s tortious conduct occurred, if at all, when defendant transferred plaintiff’s proprietary information onto her home computer from her work computer, a transaction that occurred exclusively in Canada. Therefore, this Court does not have jurisdiction pursuant to section 52-59b(a)(5) of Connecticut’s long-arm statute.

CONCLUSION

This Court does not have personal jurisdiction over defendant pursuant to Connecticut’s long-arm statute. As such, due process analysis is unnecessary and defendant’s motion to dismiss is GRANTED.

DATED this 30th day of November, 2011 at Bridgeport, Connecticut.

/s/
WARREN W. EGINTON
SENIOR UNITED STATES DISTRICT JUDGE

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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

August Term, 2012

(Argued: November 8, 2012)

Decided: December 26, 2012)

Docket No. 11-5388-cv

MACDERMID, INC.,

Plaintiff-Appellant,

v.

JACKIE DEITER,

Defendant-Appellee.

Before: NEWMAN, B.D. PARKER, and RAGGI, *Circuit Judges.*

Plaintiff-Appellant appeals from the dismissal of its complaint for lack of personal jurisdiction by the United States District Court for the District of Connecticut (Eginton, *J.*). *See* Fed. R. Civ. P. 12(b)(2). We hold that the foreign defendant's remote use of a computer in Connecticut satisfied the jurisdictional requirements of both the Connecticut long-arm statute and due process.

REVERSED and REMANDED.

GIOVANNA TIBERII WELLER, Carmody & Torrance
LLP, Waterbury, Conn.; SHERWIN M. YODER,
Carmody & Torrance LLP, New Haven, Conn., *for*
Plaintiff-Appellant MacDermid, Inc.

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2 WILLIAM C. CHARAMUT, William C. Charamut,
3 Attorney at Law, LLC, Rocky Hill, Conn., *for*
4 *Defendant-Appellee Jackie Deiter.*
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8 BARRINGTON D. PARKER, *Circuit Judge:*

9 This appeal calls on us to decide whether a court in Connecticut may properly exercise
10 long-arm jurisdiction over a defendant who, while domiciled and working in Canada, is alleged
11 to have accessed a computer server located in Connecticut to misappropriate confidential
12 information belonging to her employer. The United States District Court for the District of
13 Connecticut (Eginton, *J.*) dismissed the complaint for lack of personal jurisdiction, reasoning
14 that the defendant had not used a computer in Connecticut and consequently was not amenable to
15 long-arm jurisdiction. *See* Conn. Gen. Stat. § 52-59b(a); Fed. R. Civ. P. 12(b)(2). We hold that,
16 consistent with due process, the Connecticut statute authorizes jurisdiction, and we reverse.

17 **BACKGROUND**

18 Plaintiff-Appellant MacDermid, Inc. is a specialty chemical company with its principal
19 place of business in Waterbury, Connecticut. Defendant-Appellee Jackie Deiter lives near
20 Toronto in Fort Erie, Ontario, Canada, and she was employed in Canada by MacDermid's
21 Canadian subsidiary, MacDermid Chemicals, Inc., as an account manager from May 2008 until
22 her termination in April 2011.

23 The facts that were adduced on Deiter's Rule 12(b)(2) motion and are not disputed show
24 that MacDermid stores proprietary and confidential electronic data on computer servers that it
25 maintains in Waterbury and that employees of MacDermid Chemicals can access that
26 information only by accessing the Waterbury servers. The record reflects that employees of

1 MacDermid and its subsidiaries are, as a condition of employment, made aware of the housing of
2 the companies' email system and their confidential and proprietary information in Waterbury.
3 The record further reflects that Deiter agreed in writing to safeguard and to properly use
4 MacDermid's confidential information and that she was not authorized to transfer such
5 information to a personal email account.

6 For reasons not relevant here, MacDermid Chemicals decided to terminate Deiter
7 effective April 7, 2011. Deiter became aware of her impending termination and, just prior to it,
8 forwarded from her MacDermid email account to her personal email account allegedly
9 confidential and proprietary MacDermid data files. Deiter had to access MacDermid's
10 Waterbury computer servers both to obtain and to email the files.

11 MacDermid then sued Deiter in United States District Court for the District of
12 Connecticut, alleging unauthorized access and misuse of a computer system and
13 misappropriation of trade secrets in violation of Conn. Gen. Stat. §§ 53a-251 and 35-51 *et seq.*
14 Jurisdiction was based on diversity of citizenship and the Connecticut long-arm statute. Deiter
15 moved pursuant to Rule 12(b)(2) to dismiss the complaint for lack of personal jurisdiction. The
16 district court concluded that the long-arm statute did not reach Deiter's conduct and dismissed
17 the complaint. MacDermid appealed.

18 **DISCUSSION**

19 We review *de novo* the district court's decision to dismiss under Rule 12(b)(2). *Chloe v.*
20 *Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163 (2d Cir. 2010). In such a case,

21 [t]he plaintiff bears the burden of establishing personal jurisdiction over the
22 defendant. Prior to trial, however, when a motion to dismiss for lack of jurisdiction
23 is decided on the basis of affidavits and other written materials, the plaintiff need

1 only make a prima facie showing. The allegations in the complaint must be taken
2 as true to the extent they are uncontroverted by the defendant's affidavits.

3
4 *Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v.*
5 *Navimpex Centrala Navala*, 989 F.2d 572, 580 (2d Cir. 1993) (citation and internal quotation
6 marks omitted). Because Deiter's motion to dismiss was decided without a hearing and because
7 Deiter submitted no affidavit testimony with the motion, the facts asserted in MacDermid's
8 complaint and affidavit in opposition to Deiter's motion are assumed to be true. *See Hoffritz for*
9 *Cutlery, Inc. v. Amajac, Ltd.*, 763 F.2d 55, 56-57 (2d Cir. 1985). In order for the district court to
10 have jurisdiction over Deiter, it must be proper under both the Connecticut long-arm statute and
11 the Due Process Clause of the Fourteenth Amendment. *See Chloe*, 616 F.3d at 163-65.

12 **I.**

13 Connecticut's long-arm statute provides that a

14 court may exercise personal jurisdiction over any nonresident individual . . . who in
15 person or through an agent: (1) Transacts any business within the state; (2) commits
16 a tortious act within the state . . . ; (3) commits a tortious act outside the state causing
17 injury to person or property within the state . . . if such person or agent (A) regularly
18 does or solicits business, or engages in any other persistent course of conduct, or
19 derives substantial revenue from goods used or consumed or services rendered, in the
20 state, or (B) expects or should reasonably expect the act to have consequences in the
21 state and derives substantial revenue from interstate or international commerce; . .
22 . or (5) uses a computer, as defined in subdivision (1) of subsection (a) of section
23 53-451, or a computer network, as defined in subdivision (3) of subsection (a) of said
24 section, located within the state.

25
26 Conn. Gen. Stat. § 52-59b(a). The statute incorporates the following definitions:

27 (1) "Computer" means an electronic, magnetic or optical device or group of devices
28 that, pursuant to a computer program, human instruction or permanent instructions
29 contained in the device or group of devices, can automatically perform computer
30 operations with or on computer data and can communicate the results to another
31 computer or to a person. "Computer" includes any connected or directly related
32 device, equipment or facility that enables the computer to store, retrieve or

1 communicate computer programs, computer data or the results of computer
2 operations to or from a person, another computer or another device. . . .

3 (3) "Computer network" means a set of related, remotely connected devices and any
4 communications facilities including more than one computer with the capability to
5 transmit data among them through the communications facilities.
6

7 Conn. Gen. Stat. § 53-451(a).

8 In concluding that Connecticut's long-arm statute did not apply, the court reasoned that
9 Deiter had not used a Connecticut computer or computer network but had simply sent email
10 "from one computer in Canada to another computer in Canada"; that is, from her MacDermid
11 computer at her home to her personal computer at her home.

12 While it is true that Deiter physically interacted only with computers in Canada, we do
13 not believe that this fact defeats long-arm jurisdiction. The record before the district court
14 indicated that, "[i]n order to use [her] MacDermid e-mail account and to obtain said confidential
15 data files, Ms. Deiter accessed computer servers located in MacDermid's offices in Waterbury,
16 Connecticut." A computer server meets the Connecticut long-arm statute's definition of
17 computer because it is

18 an electronic . . . device . . . that, pursuant to . . . human instruction . . . can
19 automatically perform computer operations with . . . computer data and can
20 communicate the results to another computer or to a person [or is a] connected or
21 directly related device . . . that enables the computer to store, retrieve or
22 communicate . . . computer data . . . to or from a person, another computer or another
23 device.
24

25 Conn. Gen. Stat. § 53-451(a)(1).¹

¹ Since MacDermid's affidavit testimony refers to "servers," plural, MacDermid may be asserting that Deiter used a "set" of devices that would satisfy the long-arm statute's definition of "computer network." Conn. Gen. Stat. § 53-451(a)(3). But since the servers utilized were at least "computers," *see* Conn. Gen. Stat. § 53-451(a)(1), it is inconsequential whether they were also so connected that they constituted a network.

1 Because we are constrained to accept as true MacDermid's uncontroverted assertions that
2 Deiter used the Connecticut servers and because the servers are computers under the long-arm
3 statute, we conclude that Deiter used a computer in Connecticut and that the Connecticut district
4 court had long-arm jurisdiction under § 52-59b(a)(5).

5 It is not material that Deiter was outside of Connecticut when she accessed the Waterbury
6 servers. The statute requires only that the computer or network, not the user, be located in
7 Connecticut. *See* § 52-59b(a)(5). The statute reaches persons outside the state who remotely
8 access computers within the state, and we read § 52-59b(a)(5) to apply to torts committed by
9 persons not in Connecticut based on conduct not covered by §§ 52-59b(a)(1), (2), or (3). This
10 conclusion is reinforced by the fact that § 52-59b(a)(5) was enacted as part of a statutory scheme
11 intended to prohibit unauthorized persons from using computers or networks with intent to,
12 among other things, cause a computer to malfunction, alter or erase data, or copy computer data
13 or programs. *See* Conn. Pub. Act No. 99-160 § 1(b) (1999). Extending the statute to reach a
14 nonresident who committed any of the above activities while present in Connecticut would not
15 have been necessary because that person would already have been subject to jurisdiction under §
16 52-59b(a)(2). Further, it cannot be said that Deiter's conduct is covered by § 52-59b(a)(3)
17 because she is not alleged to have regularly conducted business in Connecticut, or to have
18 derived revenue from her conduct. *See* § 52-59b(a)(3).

19 Deiter also contends that she did not "use a computer" as that term is defined with regard
20 to computer crimes in § 53-451(a)(13), another provision in the same statutory scheme. *See*
21 Conn. Pub. Act No. 99-160 § 1(a) (1999). First, that definitional provision is not incorporated
22 into the long-arm statute. *See* § 52-59b(a). And second, even if that provision did apply, she did