

NEW HAMPSHIRE SUPREME COURT
RULE 7 NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court, district court, probate court or family division court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; or (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; or (8) an order denying a motion to intervene.

1. COMPLETE CASE TITLE AND DOCKET NUMBERS IN TRIAL COURT

The Mortgage Specialists, Inc. v. Implode-Explode Heavy Industries, Inc.
Docket No. 08-E-0572

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Rockingham County Superior Court (McHugh, J.)

3A. NAME AND ADDRESS OF APPEALING PARTY. IF REPRESENTING SELF, PROVIDE TELEPHONE NUMBER

Implode Explode Heavy Industries, Inc.
5348 Vegas Dr.
Las Vegas, NV 89108-2347

3B. NAME, FIRM NAME, ADDRESS AND TELEPHONE NUMBER OF APPEALING PARTY'S COUNSEL

Jeremy D. Eggleton, Esquire
William L. Chapman, Esquire
Orr & Reno, P.A.
One Eagle Square, PO Box 3550
Concord, NH 03302-3550
(603) 224-2381

4A. NAME AND ADDRESS OF OPPOSING PARTY

The Mortgage Specialists, Inc.
2 Main St.
Plaistow, N.H. 03865

4B. NAME, FIRM NAME, ADDRESS AND TELEPHONE NUMBER OF OPPOSING PARTY'S COUNSEL

Alexander J. Walker, Esquire
Donald L. Smith, Esquire
Devine, Millimet and Branch, P.A.
111 Amherst Rd.
Manchester, N.H. 03101

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

Not Applicable

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH COPY OF NOTICE AND DECISION.

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH COPY OF NOTICE AND DECISION.

February 6, 2009 Order-Motion to Dismiss Procedural Order (February 10, 2009, Notice)

March 11, 2009 Final Order (March 25, 2009 Notice)

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

Not Applicable

8. APPELLATE DEFENDER REQUESTED? Not Applicable

IF SO, CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND ATTACH FINANCIAL AFFIDAVIT (OCC FORM 4)

9. IS ANY PART OF CASE CONFIDENTIAL? IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

No.

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES. Not Applicable

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE? ____YES __X__NO

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL?

_YES __X__NO

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH. SEE SUPREME COURT RULE 16(3)(b).

Introductory Statement

Founded in 2007 on the belief that the US housing finance sector was headed for a catastrophic meltdown, Appellant Implode-Explode's mission is "transparency, education and accountability" in that sector. It hosts a website, ML-Implode.com, dedicated to seeking out the distortions and turmoil in the sector through publication and posting of news, reports, and opinion pieces.

In 2008, Appellant published a news article about Appellee, Mortgage Specialists Inc., drawing upon New Hampshire media sources and a document, a "2007 Loan Chart," that was sent to it, unsolicited, by a source. Prior to instituting this case, Appellee sent Appellant a copy of the petition it intended to file. In response, Appellant removed from its website the 2007 Loan Chart as well as comments posted by Brianbattersby to which Appellee objected. Most recently, Appellant has agreed not to repost the 2007 Loan Chart or the comments posted by Brianbattersby during the pendency of this appeal.

In superior court, Appellee sought, and the court ordered, injunctive relief prohibiting publication of the 2007 Loan Chart; compelling disclosure of the identity of the source of the 2007 Loan Chart; compelling the production of any other documents obtained from the same source; prohibiting the publication of posts by Brianbattersby; and compelling disclosure of the identity of Brianbattersby.

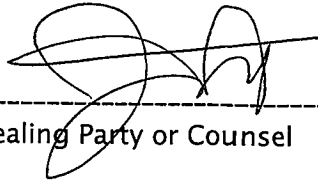
Following issuance of the superior court's final order, Appellant moved to stay enforcement of the order to protect the identity of the source of the 2007 Loan Chart while this Court considers whether the superior court erred in ordering disclosure of the source. Parenthetically, Appellant notes that Appellee has already located an individual named Brian Battersby, having served a subpoena on him, which was quashed because the superior court had not yet ruled on Appellant's motion to dismiss for lack of personal jurisdiction. Appellee has objected to the motion to stay and the issue is pending in superior court.

Questions Presented

1. Did the superior court err, as a matter of law, in ruling that it had specific personal jurisdiction over Appellant?
2. Did the superior court err, as a matter of law, in ordering injunctive relief against Appellant?
3. Did the superior court err, as a matter of law, in ordering Appellant to disclose the identity of the source of the 2007 Loan Chart?
4. Did the superior court err, as a matter of law, in ordering Appellant to produce "all documents that concern petitioner that [Appellant] received from the individual or entity that provided it with the 2007 Loan Chart"?
5. Did the superior court err, as a matter of law, in enjoining Appellant from "displaying, posting, publishing, distributing, linking to and/or otherwise providing any information for the access or other dissemination of copies" of the 2007 Loan Chart, in its possession?
6. Did the superior court err, as a matter of law, in prohibiting Appellant to repost or republish comments posted to Appellant's website by Brianbattersby?
7. Did the superior court err, as a matter of law, in ordering Appellant to disclose the identity of Brianbattersby?

14. CERTIFICATIONS

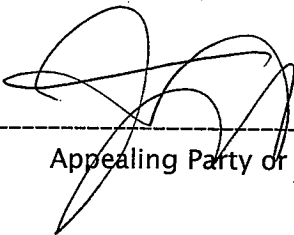
I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.



Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

April 7, 2009



Appealing Party or Counsel

547140_1.DOC

N/A

TRANSCRIPT ORDER FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Superior Court Administrative Rule 3-1), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the trial court. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.

LIST EACH PORTION OF CASE PROCEEDINGS TO BE TRANSCRIBED.						
DATE OF PROCEED- ING	TYPE OF PROCEED- -ING	LENGTH OF PROCEED- -ING	NAME OF JUDGE(S)	NAME OF COURT REPORTER (IF PROCEEDING WAS RECORDED SO INDICATE)	PORTIONS PREVIOUSLY PREPARED **	DEPOSIT (SEE SCHEDULE BELOW)
DO NOT SEND DEPOSIT AT THIS TIME.						TOTAL DEPOSIT:

SCHEDULE OF DEPOSITS

Length of Proceeding

Hearing or trial of one hour or less
 Hearing or trial up to 1/2 day
 Hearing or trial of more than 1/2 day
 Previously prepared portions

Deposit Amount

\$ 175
 \$ 450
 \$ 900/day
 Number of pages x \$.50 per page per copy
 If additional copies are needed

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you may be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

** For portions of the transcript that have been previously prepared, indicate number of copies that were prepared.

* NOTE: Upon information and belief, Lake Sunapee Properties, LLC has already ordered, obtained and paid for a copy of the trial transcript.

THE STATE OF NEW HAMPSHIRE
Rockingham Superior Court

PO Box 1258
Kingston, NH 03848 1258
603 642-5256

NOTICE OF DECISION

JEREMY D EGGLETON
ORR & RENO PA
PO BOX 3550
CONCORD NH 03302-3550

08-E-0572 The Mortgage Specialists, Inc. vs. Implode-Explode Heavy Ind

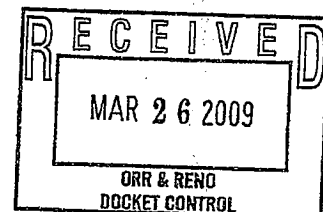
Enclosed please find a copy of the Court's Order dated 3/11/2009
relative to:

Final Order

03/25/2009

Raymond Taylor
Clerk of Court

cc: Donald L. Smith
William L Chapman



THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

The Mortgage Specialists, Inc.

v.

Implode-Explode Heavy Industries, Inc.

Docket No: 08-E-0572

FINAL ORDER

The petitioner in this case, The Mortgage Specialists, Inc. (MSI) is a New Hampshire corporation licensed by the New Hampshire Banking Department to engage in mortgage brokering and mortgage banking services. It has a principal place of business at 2 Main Street in Plaistow, New Hampshire. The respondent Implode-Explode Heavy Industries, Inc. (Implode-Explode) is a Nevada corporation with a business address of 5348 Vegas Drive, Las Vegas, Nevada. It operates a website which ranks various businesses in the mortgage industry on a ranking device that it calls "The Mortgage Lender Implode-O-Meter." The respondent was founded in 2007 and has been publishing information on its website since that time which is accessible in all 50 States. It openly seeks information from any source that has a bearing on the mortgage industry.

In October of 2008 two references to the petitioner and its president appeared on the respondent's website. The first was in the nature of a reported story which suggested that the petitioner was in trouble with the New Hampshire Banking Department as a result of its alleged improper mortgage activities which were detailed in the story. Included was information obtained from a document known as the 2007 Loan Chart that the petitioner prepared and filed with the New Hampshire Banking Department pursuant to RSA 383:10-b. Said statute provides that the information contained on these Loan Charts "shall not be made public" unless an overriding reason requires it as determined exclusively by the New

Hampshire Banking Department. A few days after this story appeared on the respondent's website there appeared on the same website comments by an entity known as "Brianbattersby." Those comments purportedly contained false and defaming allegations about the petitioner's president, accusing him, among other things, of fraud for signing borrower's names on loan applications.

When this information came to the attention of the petitioner it immediately contacted the respondent through counsel and made it aware of the relevant banking statute concerning the dissemination of Loan Charts and also proving information to suggest that Brianbattersby's comments were both false and defamatory. While the respondent agreed voluntarily to not republish the information it had already published, on a temporary basis, it refused to commit to the non-publishing on a permanent basis. Nor would it agree to provide the petitioner with what the petitioner requested, specifically the identity of both the source of the story containing the unauthorized 2007 Loan Chart information and the identity of Brianbattersby. This litigation was filed so that the petitioner could obtain the information sought.

It is important at the outset to make it clear that the petitioner does not "blame" the respondent for the publishing of the unauthorized and allegedly defamatory website postings, and it asks for no sanctions or money damages as against the respondent. The petitioner does not claim that the respondent had some duty or responsibility to verify the information with respect to either the story or the Brianbattersby comments prior to posting them on its website. The petitioner does not allege that the respondent knew or should have known that the publication of the 2007 Loan Chart was prohibited under New Hampshire law.

Even now, months after the story and comments appeared on the respondent's website, the petitioner has not asked this Court to have the respondent remove its article

about MSI, with the exception of the 2007 Loan Chart, nor has it asked this Court to prohibit the respondent from publishing any additional information about MSI on its website. The petitioner has also not asked this Court to ban Brianbattersby from posting any further comments on the respondent's website or from posting the comments of any other person or entity with respect to the operation of MSI. All that the petitioner has requested is that the 2007 Loan Chart and any future loan charts prepared pursuant to New Hampshire law not be included in any other report referencing MSI, and further that the respondent be ordered to divulge the identity of the person or entity that provided the unauthorized 2007 Loan Chart information to it and also identify Brianbattersby who allegedly provided it with defamatory information.

At first blush it seemed to this Court that the petitioner's requests were reasonable. The Court has every reason to believe that the respondent is a reputable entity desirous of only publishing legitimate information about the mortgage industry to various interested parties. In fact when the respondent disseminated its "standards for reporting information," the following appeared on its website:

"All leads on companies must be supported by multiple independent sources. We prefer in the following order: (1) communication from the company itself; (2) mainstream or industry press coverage (or blog coverage with clear supporting evidence); (3) multiple independent tips from individuals."

It appears the respondent did not comply with its standards when reporting on the purported conduct of MSI. Then when the respondent was asked to disclose the identity of persons or entities that had provided it with unauthorized information and potentially defamatory information the respondent refused outright. One would have hoped that when a legitimate publisher of information was notified of the fact that certain unauthorized information was given to it which was then published, presumably in good faith; the

publisher would, in order to maintain the integrity of its publication, willingly provide the wronged party with the information requested. Instead, the respondent exhibited a knee-jerk reaction.

A review of all the pleadings filed by the respondent suggest that it is of the opinion that because it is a member of the loose organization known as "the press," it can publish anything, be it true or false, and not be restricted in any way. The respondent has categorized the petitioner's request as an attack on the press and on its first amendment protection. Particularly in this case such a stance rewards and encourages the proliferation of unauthorized communication. The respondent's position is akin to one who uses a sledgehammer to kill an ant. It wants this Court to believe that if the petitioner is granted the relief requested then that is procedurally the first step in eliminating the freedom of the press. The respondent's pleadings contain the following conclusion:

"News organizations every day receive anonymous, unmarked envelopes containing sensitive documents in their mailboxes. The essential role of the press in a democratic society would be utterly undermined if each news organization had to first ascertain whether the documents obtained in this matter were covered by some confidentiality agreement or privilege, and the free press would be destroyed if news organizations were prohibited from publishing these documents if their confidentiality were known."

While that language is troubling to this Court, that is not the issue that is involved in this case. Again, the petitioner does not claim that the respondent wrongfully published the information about MSI. It is willing to hold the respondent harmless with respect to the publication of that information. All it wants from the respondent is the identity of the individual or entity which provided unauthorized information to the respondent and also the identity of the entity or individual that made alleged defamatory statements about the petitioner to the respondent. One would hope that the ideals of truth and justice are not

lost in the respondent's desire to protect its right to publish anything without consequence to the provider of unauthorized and defamatory information.

The Court also takes issue with several positions espoused by the respondent in its pleadings. First, the respondent claims that while the publication of the 2007 Loan Chart may have been unauthorized, it was not illegal. Secondly, the respondent argues that to the extent that anyone has the right to attempt to enforce the statute prohibiting dissemination of loan charts, it is the New Hampshire Banking Department that is the sole entity that can do so not a mortgage company that provided the banking department with the chart in the first place. Thirdly, the information contained on the 2007 Loan Chart cannot fit into the category of "defamatory" because presumably the figures on the chart were accurate. Finally, the respondent argues that injunctive relief is not authorized under New Hampshire law when there is an adequate remedy in a civil court for money damages. Certainly that statement is true. However the petitioner has not sought any damages against the respondent. While it may seek money damages as against the two individuals or entities whose identity is sought herein, obviously no claims for damages can be made against these individuals or entities unless their identity is first known.

The parties have agreed that the Court can resolve the issues raised in this litigation without the need of an evidentiary hearing. Both parties were given an opportunity to file whatever pleadings they were desirous of filing on these issues. Upon review of those pleadings the Court enters the following Order:

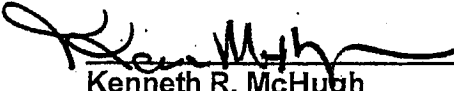
1. The respondent, and all of its agents, servants, employees, and representatives, are enjoined from displaying, posting, publishing, distributing, linking to and/or otherwise providing any information for the access or other dissemination of copies of and/or images of a 2007 Loan Chart and any information or data contained therein, including on the website operated at www.ml-implode.com and any other websites under respondent's ownership and control;

2. The respondent is ordered to immediately disclose the identity of the individual and/or entity that provided it with the 2007 Loan Chart;
3. The respondent is ordered to immediately produce all documents that concern petitioner that it received from the individual or entity that provided it with the 2007 Loan Chart;
4. The respondent is ordered not to re-post or re-publish the October 4, 2008, and October 7, 2008, false and defamatory postings by "Brianbattersby," and
5. The respondent is ordered to immediately disclose the identity of "Brianbattersby," including his full name, address, email address, phone number, and any other personal information respondent possesses.

Hopefully the parties will, upon reflection, understand that there is a good faith basis for the Court's ruling herein. This ruling should not be considered to be an attack on the press. Rather it should send the following message. If persons or entities choose to provide legitimate publishers with information they know or should have known is either unauthorized or defamatory, they may be subject to legal process even though the publisher of the information may not. The maintenance of a free press does not give a publisher the right to protect the identity of someone who has provided it with unauthorized or defamatory information. At its core this is not even a press issue; this Court has not concluded that the press has any responsibility to "police" the information it is given. Rather the issue here is notice to individuals that they may well have to accept the responsibility of their actions in a civil court if they elect to seek to disseminate through the press any unauthorized or defamatory material. They cannot attempt to invoke the power of the press to hide their improper actions.

So Ordered.

DATED: March 11, 2009


Kenneth R. McHugh
Presiding Justice

THE STATE OF NEW HAMPSHIRE

Rockingham Superior Court

PO Box 1258

Kingston, NH 03848 1258

603-642-5256

NOTICE OF DECISION

JEREMY D EGGLETON
ORR & RENO PA
PO BOX 3550
CONCORD NH 03302-3550

08-E-0572 The Mortgage Specialists, Inc. vs. Implode-Explode Heavy Ind

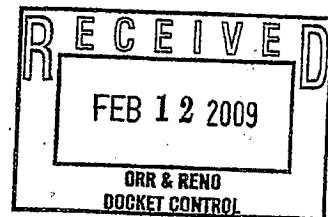
Enclosed please find a copy of the Court's Order dated 2/06/2009
relative to:

**Order-Motion to Dismiss
Procedural Order**

02/10/2009

Raymond Taylor
Clerk of Court

cc: Donald L. Smith
William L Chapman



THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

The Mortgage Specialists, Inc.

v.

Implode-Explode Heavy Industries, Inc.

Docket No.: 08-E-572

ORDER ON MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

The petitioner, Mortgage Specialists, Inc. ("MSI"), a mortgage lender based in Plaistow, New Hampshire, brought a petition for injunctive relief against the respondent, Implode-Explode Heavy Industries, Inc. ("Implode-Explode"), a Nevada corporation that runs a website evaluating mortgage lending companies across the United States. The petition seeks an injunction preventing Implode-Explode from posting MSI's confidential financial information, including a confidential loan summary document, on its website, and to disclose the source of the confidential information. The petition also seeks an injunction prohibiting Implode-Explode from reposting¹ allegedly false and defamatory statements about MSI and its president, Michael Gill, from a person posting statements under the name "brianbattersby." Implode-Explode objected to the petition on the ground that it was not subject to personal jurisdiction in New Hampshire. For the purposes of this order, the court will treat Implode-Explode's objection to MSI's petition as a motion to dismiss for lack of personal jurisdiction. For the reasons stated below, Implode-Explode's motion is **DENIED**.

MSI's claim for injunctive relief arises partially out of a document and information

¹ Both the confidential loan document and the allegedly defamatory remarks have been removed from Implode-Explode's website, but Implode-Explode has not agreed to permanently refrain from reposting the items.

contained in an article written by Implode-Explode and published on Implode-Explode's website (the "Article"). The Article corresponds to MSI's placement on a list compiled by Implode-Explode identifying companies as "Ailing/ Watch List Lenders," and describes MSI as "based in Plaistow, NH," repeatedly refers to New Hampshire, and is based on New Hampshire sources, including unionleader.com and seacoastonline.com. The Article included a link to a document nearly identical to MSI's confidential loan production document, which MSI did not provide to Implode-Explode. MSI's claims are also based on comments posted October 4 and 7, 2008 by an individual under the username "Brianbattersby," which postings collectively contained allegedly false and defamatory comments about MSI and its President, including allegations of fraud.

As of the end of 2007, Implode-Explode's website had a core daily audience of approximately 100,000 visitors and was accessible from any location with internet access. The website allowed visitors, after registering on the website and creating a username, to post comments about the various lenders identified on the website, which comments would then become publicly viewable. The website also enabled users to submit feedback and information to Implode-Explode itself; to send and receive private messages; to create and vote in online polls; to search "Non-Imploded" mortgage lenders (presumably, mortgage lenders in good standing) by state by either clicking on a map or choosing a state name from a drop-down list containing the names of all fifty states, including New Hampshire; or to sign up for a "premium" information service for a fee of ten dollars a month after completion of an online application form. In addition, the website solicits advertisements and includes an advertisement inquiry form, and allows companies to submit online applications for inclusion in the "Non-Imploded" lender

category.

Implode-Explode argues that because it is a foreign corporation there is no basis for this court to exercise specific or general jurisdiction. Regarding specific jurisdiction, Implode-Explode asserts that it has had no related contacts and has not availed itself of New Hampshire law. It further argues that any contacts it has with New Hampshire would not be related to either of the plaintiff's causes of action, as required for specific jurisdiction, because (1) it cannot be held responsible for allegedly defamatory content posted by a third party; and (2) MSI has not adequately established a private cause of action that would allow it to sue for the breach of confidentiality. It further asserts that it would not be "fair and reasonable" to subject a Nevada corporation to a New Hampshire lawsuit absent Implode-Explode's specifically imposing itself on the New Hampshire marketplace. See Obj. at ¶9. Turning to general jurisdiction, Implode-Explode argues its contacts with the State of New Hampshire are neither continuous nor systematic.

The petitioner bears the burden of establishing personal jurisdiction. Vt. Wholesale Bldg. Prods. v. J.W. Jones Lumber Co., 154 N.H. 625, 628 (2006). It may defeat the motion to dismiss through a *prima facie* showing of jurisdiction. Id. "In determining whether the plaintiff has met its burden, we generally engage in a two-part inquiry." Chick v. C & F Enters., 156 N.H. 556, 557 (2007) (quotation omitted). "First, the State's long-arm statute must authorize such jurisdiction. Second, the requirements of the federal Due Process Clause must be satisfied." Id. (quotation omitted); see RSA 510:4, I (1997). "Because we construe the State's long-arm statute as permitting the exercise of jurisdiction to the extent permissible under the Federal Due Process Clause, our primary analysis relates to due process." Metcalf v. Lawson, 148 N.H. 35, 37 (2002)

(citations omitted).

"[A] court may exercise personal jurisdiction over a non-resident defendant if the defendant has certain minimum contacts with the forum, 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" Id. (quoting Alacron v. Swanson, 145 N.H. 625, 628 (2000)). "Jurisdiction can be 'general,' where the defendant's contacts with the forum State are 'continuous and systematic,' or 'specific,' where the cause of action arises out of or relates to the defendant's forum-based contacts." Lyme Timber Co. v. DSF Investors, LLC, 150 N.H. 557, 559 (2004) (quoting Staffing Network v. Pietropaolo, 145 N.H. 456, 458 (2000)).

The court finds that Implode-Explode's contacts with New Hampshire are not sufficiently "continuous and systematic" to subject it to general jurisdiction. See Revell v. Lidov, 317 F.3d 467, 471 (5th Cir. 2002) ("Though the maintenance of a website is, in a sense, a continuous presence everywhere in the world, the cited contacts of [the website owner] with [the forum state] are not in any way 'substantial.'"). Accordingly, the court will analyze whether Implode-Explode is subject to specific jurisdiction in New Hampshire.

"Where specific contacts with the forum are the basis for personal jurisdiction, whether those contacts are constitutionally sufficient requires an analysis of the relationship between the defendant, the forum and the litigation." Lyme Timber, 150 N.H. at 559-560 (citation omitted).

In determining if the exercise of specific personal jurisdiction comports with due process, we examine whether: (1) the contacts relate to the cause of action; (2) the defendant has purposefully availed [it]self of the protections of New Hampshire law; and (3) it would be fair and reasonable to require the defendant to defend the suit in New Hampshire.

Metcalf, 148 N.H. at 37 (citing Skillsoft Corp. v. Harcourt General, 146 N.H. 305, 308 (2001)). "All three factors must be satisfied in order for the exercise of jurisdiction to be constitutionally proper, and each factor must be evaluated on a case-by-case basis." Id. at 37-38 (citations omitted).

Regarding the first prong of the specific jurisdiction analysis, the relation of the contacts to the cause of action, "[i]t is settled New Hampshire law that a party commits, for jurisdictional purposes, a tortious act within the state when injury occurs in New Hampshire even if the injury is the result of acts outside the state." Lyme Timber, 150 N.H. at 562 (quotations and citation omitted). Implode-Explode's contacts with New Hampshire, and MSI's claims against Implode-Explode, both stem from the article and postings on Implode-Explode's website pertaining to New Hampshire and to MSI specifically. Implode-Explode's argument as to the "relatedness" prong of the test was limited to an attack on the merits of MSI's substantive claims. Because the issue now before the court is limited to a jurisdictional inquiry alone, the court declines to address the substantive merits of MSI's petition at this time. The court accordingly assumes for the purposes of this order that MSI's substantive claims underlying its petition for an injunction against Implode-Explode, specifically, defamation and publication of confidential information, are appropriate and proper. Because the contacts with New Hampshire are the same as those leading to MSI's complaint, the court finds that the first element of the specific jurisdiction test is satisfied.

As to the second prong of the analysis, whether the defendant has purposefully availed [it]self of the protections of New Hampshire law, courts have identified "two cornerstones of purposeful availment." Gray v. St. Martin's Press, Inc., 929 F.Supp. 40,

45 (D.N.H. 1996) (quoting Ticketmaster-New York, Inc. v. Alioto, 26 F.3d 201, 207 (1st Cir. 1994)); see also Lyme Timber, 150 N.H. at 561. "One cornerstone is foreseeability: [t]he defendant's conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there." Id. (quotation and citations omitted). "The second cornerstone is voluntariness: [j]urisdiction may not rest on the unilateral activity of another party or a third person." Id. (quotations and citations omitted).

The "effects test" first set forth in Calder v. Jones, 465 U.S. 783 (1984) is one method of measuring foreseeability. See Gray, 929 F.Supp. at 46; Panavision Int'l v. Toeppen, 141 F.3d 1316, 1321-22 (9th Cir. 1998); Revell, 317 F.3d at 472-76. "Under Calder, personal jurisdiction can be based upon: "(1) intentional actions (2) expressly aimed at the forum state (3) causing harm, the brunt of which is suffered-and which the defendant knows is likely to be suffered-in the forum state." Panavision, 141 F.3d at 1321 (quotation and citation omitted). Where out of state authors' allegations cause damage in the forum state, "[t]he authors' knowledge that the major impact of their article would be felt in the forum state was held to constitute a purposeful contact whereby the authors could reasonably expect to be haled into the forum state's courts to defend their actions." Gray, 929 F.Supp. at 46 (citing Calder, 465 U.S. at 789-90).

Implode-Explode's article centered on MSI as a New Hampshire mortgage lender. The article referred to MSI as being located in Plaistow, New Hampshire. The sources cited in the article were New Hampshire sources, including unionleader.com and seacoastonline.com, the online versions of New Hampshire newspapers. The allegedly defamatory comments by "brianbattensby" emphasized "NH" in such a way

that his comment, and thus Implode-Explode's website, would appear more prominently in a search engine's result containing New Hampshire as a search term. Accordingly, it was foreseeable, given the potential harm caused by listing MSI as "ailing" and a less-than-trustworthy mortgage lender, that Implode-Explode would be called to answer in a New Hampshire forum.

New Hampshire courts measure a defendant's voluntary use of the forum state in the internet context by reference to the "sliding scale" test of Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1124 (W.D. Pa. 1997). See Metcalf, 148 N.H. at 39.

At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.

Metcalf, 148 N.H. at 39 (quoting Zippo, 952 F. Supp. at 1124).

Implode-Explode's website falls into the middle ground. It is interactive on several levels. It is not a passive display of information from unrelated or public sources; Implode-Explode's authors and staff sought out information about mortgage lenders throughout the United States, including in New Hampshire. The website also enables users to exchange information with the host computer, including emailing Implode-Explode tips about mortgage lenders, and allows users to post information that then becomes publicly visible and hosted by Implode-Explode. Implode-Explode's

website also solicits advertising from businesses across the United States, as it is a commercial website. Users can donate money to Implode-Explode on the site, or become a premium user for a fee. The website applies to users in every state through its interactive map, which lists mortgage lending businesses in good standing on a state-by-state basis.

In addition, deliberately directing activity to all of the states has been held to weigh in favor of jurisdiction in New Hampshire. Brother Records, Inc. v. Harper-Collins Publishers, 141 N.H. 322 (1996) held that, where a book was published and released "through normal retail channels in the United States," sold in New Hampshire, and "the defendants' ultimate goals regarding the book included nationwide distribution and sale[,] including in New Hampshire, then jurisdiction over the book's out-of-state authors was appropriate in New Hampshire. This is distinct from Metcalf, where a seller posted an item for sale on Ebay without any control over the state where the eventual purchaser would be located, or knowledge of the eventual destination of the item. See Metcalf, 148 N.H. at 40. Where, as here, the respondent's website courts New Hampshire business advertising and individual traffic, allows individuals to search for New Hampshire businesses, and wrote an article specific to MSI of Plaistow, New Hampshire and its lending practices in and around New Hampshire, the requirement of voluntariness has been met.

The third prong of the specific jurisdiction analysis concerns whether "it would be fair and reasonable to require the defendant to defend the suit in New Hampshire."

Metcalf, 148 N.H. at 37 (quotation and citation omitted). "Once the plaintiff has demonstrated that his claim is related to the defendant's in-forum activities and that the

defendant purposely availed [it]self of the forum state, the court must consider . . . other factors which bear upon the fairness of subjecting a nonresident to the authority of a foreign tribunal." Gray, 929 F.Supp. at 48.

The [United States] Supreme Court has identified five such factors, namely, (1) the defendant's burden of appearing, (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the judicial system's interest in obtaining the most effective resolution of the controversy, and (5) the common interests of all sovereigns in promoting substantive social policies.

Ticketmaster-New York, Inc. v. Alioto, 26 F.3d at 209 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985)). The court will address each in turn.

"Where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Panavision, 141 F.3d at 1322 (brackets, quotations and citations omitted). As to the defendant's burden of appearing in New Hampshire, "[a] defendant's burden in litigating in the forum is a factor in the assessment of reasonableness, but unless the inconvenience is so great as to constitute a deprivation of due process, it will not overcome clear justifications for the exercise of jurisdiction." Id. at 1323 (quoting Caruth v. International Psychoanalytical Ass'n, 59 F.3d 126, 128-29 (9th Cir. 1995)). Here, requiring an entity that deliberately targets all fifty states to defend itself in one of those states does not constitute a deprivation of due process, particularly, as the Ninth Circuit notes, "in this era of fax machines and discount air travel." Id.

As to New Hampshire's interest in adjudicating this dispute, "it is beyond dispute that New Hampshire has a significant interest in redressing injuries that actually occur

within the state." Gray, 929 F.Supp. at 49 (quoting Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 776 (1984)). Where, as here, a New Hampshire business is alleging harm in New Hampshire, the state itself has an interest in adjudicating the dispute.

Regarding MSI's convenience in adjudicating the suit, "the plaintiff's choice of forum is entitled to substantial deference with respect to his own convenience." Id. (citation omitted). Where MSI's place of business and customers are located in New Hampshire, this factor weighs in favor of New Hampshire's jurisdiction.


The judicial system's interest in the most effective resolution of the controversy, insofar as it affects the analysis, would suggest that the proceeding already initiated would be an efficient forum in which to conclude adjudication. As the case has already been before the court on this jurisdictional issue, it would be efficient to continue the case in a court familiar with the parties and their claims.

The above-cited factors of fairness, taken as a whole, therefore suggest that New Hampshire is a reasonable forum in which to adjudicate MSI's petition against Implode-Explode.

Because the court finds that specific jurisdiction over Implode-Explode is proper in New Hampshire, Implode-Explode's motion to dismiss for lack of personal jurisdiction is DENIED.

So Ordered.

DATE: February 6, 2009



KENNETH R. MCHUGH
PRESIDING JUSTICE