

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

)	
CHRISTOPHER A. ROLLER,)	
)	CIVIL NO. 07-1296
Plaintiff,)	
)	DEFENDANT LAKEWOOD
)	CHURCH’S MEMORANDUM
)	IN SUPPORT OF MOTION
)	TO DISMISS FOR LACK OF
)	PERSONAL JURISDICTION AND
LAKEWOOD CHURCH,)	FALURE TO STATE A CLAIM
)	UPON WHICH RELIEF CAN BE
Defendant.)	GRANTED
)	

INTRODUCTION

Defendant Lakewood Church, a Texas non-profit corporation (“Lakewood”) submits this memorandum in support of its motion to dismiss the Plaintiff’s claims because Lakewood lacks the sufficient minimum contacts necessary for this court to assert jurisdiction. Alternatively, and without waiving Defendant’s position that Plaintiff lacks personal jurisdiction over Defendant herein, Lakewood submits that Plaintiff’s Complaint herein should be dismissed because Plaintiff fails to state a claim upon which relief can be granted.

I. Facts

The Plaintiff, Christopher Roller is a resident of the state of Minnesota. Lakewood is a non-profit resident of the state of Texas, organized and incorporated under the laws of the state of Texas. Joel Osteen, who, despite mention in the complaint does not appear as a named party in the suit, is Lakewood’s pastor and proprietor.

Lakewood received a copy of the Plaintiff's complaint in this matter by mail in Texas. Lakewood owns no real or personal property within the state of Minnesota and maintains no bank accounts within Minnesota. Lakewood is not licensed to do business within the state of Minnesota, does not advertise here, and does not maintain an office within Minnesota.

A. The Complaint

On May 18, 2007, Mr. Roller filed a complaint against Lakewood in the United States District Court, District of Minnesota. On that same date, Mr. Roller filed an amended complaint against "Godly Powers Patent Infringers," which, though it is far from clear, may also intend to incorporate Lakewood as a defendant. Both of these complaints appear to state claims for infringement of a patent claimed by Mr. Roller. In his allegations, Mr. Roller alleges that "Employees at Lakewood Church conduct some of their business by exercising godly powers." Complaint Supplemental ¶ 3. This allegation appears to be the basis for the patent infringement claim. In addition, Mr. Roller appears to seek damages in the form of "tithing" based upon his allegation that "Joel Osteen believes Chris Roller is God." Complaint Supplemental ¶ 2.

As discussed in greater detail below, Mr. Roller's claims against Lakewood should be dismissed because (1) Lakewood does not have sufficient minimum contacts with the state of Minnesota to allow the courts of this state to exercise personal jurisdiction over it; and alternatively and without waiving (1); (2) Plaintiff has failed to state any claim upon which relief can be granted by this court.

ARGUMENT

II. Plaintiff's Claims Should Be Dismissed For Lack of Personal Jurisdiction Over the Defendant.

A. Lakewood Does Not Have Sufficient Contacts With Minnesota.

A plaintiff bears the burden of establishing a prima facie showing of jurisdiction, Burlington Industries, Inc. v. Maples Industries, Inc., 97 F.3d 1100, 1102 (8th Cir. 1996); Tol-O-Matic, Inc. v. Proma Product-UND Marketing, 690 F.Supp. 798, 800 (D. Minn. 1987), and must allege facts sufficient to result in an inference that defendants are subject to personal jurisdiction within the state. Institutional Food Mrktg. Assoc., Ltd. v. Golden State Strawberries, Inc., 747 F.2d 448, 543 (8th Cir. 1984). Mr. Roller has failed to make a prima facie showing of personal jurisdiction over Lakewood, a non-resident defendant, and his claims should thus be dismissed.

In order for a Minnesota Court to exercise personal jurisdiction over a non-resident defendant, the exercise of jurisdiction must meet the requirements imposed by Minn. Stat. § 543.19, Minnesota's long-arm statute, and must not offend constitutional due process. Because Minnesota's long-arm statute affords courts jurisdiction over defendants to the extent allowed by the federal due process requirements, courts need only address whether the assertion of jurisdiction comports with due process. Zumbro, Inc. v. California Natural Products, 861 F.Supp. 773, 777 (D. Minn. 1994); Domtar, Inc. v. Niagra Fire Ins. Co., 533 N.W.2d 25, 29 (Minn. 1994); see Northwest Airlines, Inc. v. Astraea Aviation Services, Inc., 111 F.3d 1386, 1390 (8th Cir. 1997).

To satisfy the requirements of due process, a defendant must be shown to have “sufficient minimum contacts with the forum so that traditional notions of fair play and substantial justice are not offended,” International Shoe Co. v. State of Washington, 326 U.S. 310, 316 (1945); see Zumbro, 861 F.Supp. at 778, and the defendant’s contacts with the forum state must be such that the defendant would “reasonably anticipate being haled into court” in the forum, World-Wide Volkswagen Corp v. Woodson, 444 U.S. 286, 297 (1980), and “must not be random, fortuitous, attenuated, or the result of unilateral activity of a third person or another party.” Guinness Import Co. v. Mark VII Distributors, Inc., 163 F.3d 607 (8th Cir. 1998). That is, “there must be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985). Personal jurisdiction may be found through an exercise of either general jurisdiction, where the defendant has “systematic and continuous” contacts with the forum state, or by specific jurisdiction.

If the nature and quantity of the defendant’s contacts with the forum state are insufficient for a finding of general jurisdiction, courts will inquire whether a finding of specific jurisdiction is appropriate in a given case. With regard to specific jurisdiction, “due process is satisfied if the defendant has purposefully directed its activities at forum residents, and the litigation results from injuries arising out of, or relating to, those activities.” Burlington Indus., Inc. v. Maples Indus., 97 F.3d 1100, 1103 (8th Cir. 1996). Neither the requirements for a finding of general nor specific jurisdiction have been satisfied in this case.

B. Minnesota Courts Have Neither General or Specific Jurisdiction Over Lakewood.

General jurisdiction over a non-resident defendant only exists where that defendant's contacts with the forum state have been "systematic and continuous." Burlington Ind., Inc. v. Maples, Ind., Inc., 97 F.3d 1103 (8th Cir. 1996). The defendant Lakewood has had no contacts of any kind with the state of Minnesota, either related or unrelated to the claims asserted in this action. It has not purposefully availed itself of the laws of the state of Minnesota, and the claims asserted by the Plaintiff in this matter did not arise because of any activities that Lakewood conducted within the state of Minnesota. For the foregoing reasons, it would not be reasonable for Lakewood to have anticipated defending an action in a Minnesota court, and any finding of personal jurisdiction over Lakewood in this action would plainly be unreasonable.

III. Alternatively, Plaintiff's Claims Should Be Dismissed For Failure To State A Claim Upon Which Relief Can Be Granted.

When a defendant has made a 12(b)(6) motion to dismiss for plaintiff's failure to state a claim upon which relief may be granted, a court must "reject conclusory allegations of law and unwarranted inferences." Silver v. H&R Block, Inc., 105 F.3d 394, 397 (8th Cir. 1997)(upholding dismissal because "reasonable minds could only agree" on trial court's interpretation of the alleged facts); see Wescott v. City of Omaha, 901 F.2d 1496, 1488 (8th Cir. 1990) (when considering a 12(b)(6) motion, the court "does not . . . blindly accept the legal conclusions drawn by the pleader from the facts"). Rather, the court must consider whether the facts alleged in the plaintiff's complaint, accepted as true, are sufficient to state a claim upon which relief can be granted. See

Silver, 105 F.3d at 397; Wescott, 901 F.2d at 1488. While a pro se pleading is to be liberally construed, it still must allege facts, which, if proven true, would entitle the plaintiff to some legal relief. Martin v. Aubuchon, 623 F.2d 1282 (8th Cir. 1980); See Martin v. Sargent, 780 F.2d 1334, 1227 (8th Cir. 1985). Even under this liberal standard, plaintiff's claims fail to state a claim upon which relief can be granted and should therefore be dismissed.

A. Plaintiff's Complaint Fails to State an Actionable Claim for an Award of Tithing.

The Plaintiff has failed to state a claim for relief based upon his allegation that Mr. Osteen believes that Mr. Roller is God. The Plaintiff asserts in his complaint that he is entitled to "tithing back-dated to when the church was first opened," based upon his allegation that "Joel Osteen believes Chris Roller is God." Complaint Supplemental ¶ 2. Even if the Plaintiff were capable of proving this allegation to be true, there is nonetheless no basis in law or fact for the relief sought. Indeed, one's personal belief in the alleged divinity of another has never been recognized as creating a cause of action. We further ask that this Court take notice that an award of "tithing," as claimed by the Plaintiff, is not a form of damages recognized by the courts. The Plaintiff's claims for tithing should thus be dismissed.

B. Plaintiff's Complaint Fails to State an Actionable Patent Infringement Claim Against Lakewood Because His Invention or Discovery is Per Se Unpatentable.

The Plaintiff seems to assert a claim for patent infringement in his original "Complaint Supplemental" against Lakewood, as well as in the amended complaint filed

with the Court. These claims should be dismissed because the invention or discovery that the Plaintiff claims to have patented is per se unpatentable. Plaintiff's alleged "patent" falls outside of the subject matter patentable under 35 U.S.C. § 101 and also fails to meet the conditions for patentability set out in 35 U.S.C. § 102.

The patent claimed by the Plaintiff is so clearly unpatentable that it is impossible for the Plaintiff to produce evidence of any kind, which could prove otherwise. The Plaintiff's claims should thus be dismissed. Courts have long recognized that in an action for patent infringement, claims should be dismissed where "there is obviously no patentable invention" at stake in the litigation. Towne Steering Wheel Co. v. Lee, 199 F.777, 778 (9th Cir. 1912) (stating that sustaining a defendant's demurrer and dismissing patent infringement claims involving clearly unpatentable subject matter "is not only within the power of the court, but it is its duty . . . to save the parties from useless cost and litigation."), see also Boldt v. Nivison-Weiskopf Co., 194 F. 871 (6th Cir. 1912). In making this determination, a court may take judicial notice of facts of common and general knowledge tending to show that the alleged patent lacks novelty or the inventive qualities necessary to result in a patent. Boldt, 194 F. at 847.

All patents are subject to the limitations imposed by 35 U.S.C. § 101, governing patentable discoveries or inventions. 35 U.S.C. § 101 provides that patents may be issued to "whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof. . . ." The Supreme Court has repeatedly recognized that "every discovery is not embraced within the statutory terms" of § 101. Diamond v. Diehr, 450 U.S. 175, 181 (1981). Indeed, the

Court has recognized the existence of several unpatentable categories, including “laws of nature, natural phenomena, and abstract ideas.” Id. Ideas alone are not patentable. Id. Likewise discoveries which are “manifestations of nature, free to all men and reserved exclusively to none.” Id., quoting Diamond v. Chakrabarty, 447 U.S. 303, 309 (1980) (citations omitted).

The patent claimed by the Plaintiff does not fall within the scope of discoveries or inventions patentable under § 101, and any claims for infringement should thus be dismissed. The Plaintiff alleges that he is entitled to damages for the infringement of his putative patent¹ to the extent that “Employees at Lakewood Church conduct some of their business by exercising godly powers.” Any claims made by the Plaintiff that he holds a patent on the use of such “godly powers” capable of being infringed upon is untenable, as the subject matter is per se unpatentable under § 101. Any attempt to patent “godly powers” is per se invalid regardless of whether or not such “godly powers” are seen to exist in fact. To the extent that “godly powers” can be said to exist, they are plainly natural phenomena that cannot be reserved to the use of a single patent holder. See Diehr, 450 U.S. at 181. Indeed, the law has long equated acts of god with naturally occurring phenomena. See, e.g., Brown v. Sandals Resort Int’l, 284 F.3d 949 (8th Cir. 2002) (stating that an act of god has been defined as “any accident, due directly and exclusively to natural causes without human intervention.”) To the extent that such powers do not exist, they are properly considered to be abstract ideas, which are similarly unpatentable. See Diehr, 450 U.S. at 181.

¹ Plaintiff has no patent, but merely an application, ergo, there can be no patent infringement.

Further, the Plaintiff's claimed patent does not meet the "conditions for patentability" requirements set out in 35 U.S.C. § 102, and is thus per se invalid. § 102 states, in part, that a person will not be entitled to a patent where:

(a) the invention was known or used by others in this country . . . before the invention thereof by the applicant for patent

...

(f) [the applicant] did not himself invent the subject matter sought to be patented.

35 U.S.C. § 102 (a), (f).

By the plain language of § 102 (a), a claimed patent must be novel. This novelty requirement adheres regardless of the possible utility or elegance of the discovery or invention. Boldt, 194 F. at 871 (noting that "the adaptation of old devices or forms to new purposes, however convenient, useful, or beautiful they may be in their new role, is not invention").

The use of "godly powers," to the extent that they are taken to exist, further fail to meet the novelty requirement imposed by § 102. Churches and laypersons alike have unquestionably relied upon and made use of the strength and authority of a higher power from, at very least, the dawn of organized religion. Not only have these "powers," been in open and continuous use for countless centuries, but any claims made by the Plaintiff that he invented such powers is plainly absurd.

Because the use of the "invention" claimed by the Plaintiff predates his application for patent, and because the Plaintiff himself did not invent the subject matter for which he has sought a patent, his claims are per se invalid under § 102 and must be dismissed.

C. Plaintiff Does Not Own a Patent Upon Which He Can Base This Suit.

While Plaintiff has filed a Patent Application on “GODLY POWERS,” published on February 15, 2007, Plaintiff’s Application has obviously not been granted. In Plaintiff’s Amended Complaint, he alleges he “may assert provisional rights . . .” as a result of publication, and misapplies U.S.C. § 154 to attempt to equate publication of a patent with the actual issuance of the patent itself. In truth, 35 U.S.C. § 154 only provides provisional rights to reasonable royalties during the application period if, and only if the patent was issued. Here there is no patent, and therefore there can be no “provisional rights.”

CONCLUSION

The Plaintiff has failed to allege that this Court has personal jurisdiction over Lakewood Church, a non-resident defendant. In fact, Lakewood lacks the minimum contacts necessary within the state of Minnesota to result in a finding of personal jurisdiction. Alternatively, the Plaintiff has failed to assert claims for which relief can be granted by this Court. The Plaintiff’s claims for “tithing” have no basis in either law or fact, and are merely unsubstantiated legal conclusions. Additionally, the Plaintiff has failed to state a patent infringement claim upon which relief can be granted, because the Plaintiff’s alleged “patent” is per se invalid, as it falls outside the subject matter deemed patentable under 35 U.S.C. § 101 and further fails to meet the patentability requirements of § 102. Finally, because no patent has issued, there can be no “provisional rights” improperly claimed by Plaintiff. For all of these reasons, this Court should dismiss with prejudice the Plaintiff’s claims against the defendant, Lakewood Church.

Dated: June 12, 2007

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