

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

OOO BRUNSWICK RAIL
MANAGEMENT, et al.,

Plaintiffs,

v.

RICHARD SULTANOV, et al.,

Defendants.

Case No. [5:17-cv-00017-EJD](#)

**ORDER DENYING PLAINTIFFS’
APPLICATION FOR PRELIMINARY
INJUNCTION AND MOTION FOR
EXPEDITED DISCOVERY**

Re: Dkt. Nos. 3, 23

Plaintiffs OOO Brunswick Rail Management and Brunswick Rail Group Limited (together, “Brunswick”) allege that defendants Paul Ostling and Richard Sultanov misappropriated Brunswick’s confidential information. Complaint ¶¶ 31–48, Dkt. No. 1. This Court previously granted Brunswick’s ex parte application to preserve evidence and for a temporary restraining order (“TRO”) to prevent Sultanov and Ostling from disseminating the confidential information at issue. Dkt. No. 15 (“TRO Order”). The order directed Sultanov and Ostling to show cause why a preliminary injunction should not issue. *Id.* Brunswick has also moved for expedited discovery.

The Court held a hearing on January 20, 2017, on Brunswick’s application for a preliminary injunction and its motion for expedited discovery. The Court will DENY both requests for lack of personal jurisdiction over Ostling and Sultanov.

I. BACKGROUND

Defendants Sultanov and Ostling are former employees of Brunswick. Br. in Supp. of Pls.’ Ex Parte Appl. at 2–3, Dkt. No. 4. Brunswick alleges that Sultanov improperly sent confidential information to his personal email account; that Ostling improperly received confidential information at his personal email account from his former assistant; and that both Defendants improperly forwarded that information to Brunswick’s creditors. Id. at 5–8. Brunswick also alleges that Sultanov has not returned a company-issued laptop and mobile phone containing sensitive information. Id. at 1.

To preserve evidence of the alleged misappropriation and to prevent further dissemination of confidential materials, Brunswick filed an ex parte application for an order to seize and preserve evidence, for expedited discovery, for a TRO, and to show cause why a preliminary injunction should not issue. Dkt. No 3; TRO Order at 1–2. The Court ordered third parties Google and Rackspace (the companies that provided personal email accounts to Sultanov and Ostling) to preserve data associated with Defendants’ email accounts. TRO Order at 6. The Court further ordered Sultanov not to access or modify his company-issued laptop and phone, and to deliver those devices to the Court at the hearing. Id. at 6–7. Finally, the Court temporarily enjoined Sultanov and Ostling from destroying evidence and from further disseminating Brunswick’s confidential information. Id. at 7–8. The Court rejected the request for expedited discovery because Brunswick did not show good cause, but the Court allowed Brunswick to explain its request in a separate motion. The Court set a hearing for January 20, 2017, to show cause why a preliminary injunction should not issue. Id. at 6.

After the Court issued its order on Brunswick’s ex parte application, Brunswick filed a supplemental brief in support of injunctive relief (Dkt. No. 17) and a motion for expedited discovery (Dkt. No. 23). Ostling and Sultanov have filed a response to the Court’s order to show cause (Dkt. No. 32) and an opposition to Brunswick’s motion for expedited discovery (Dkt. No. 23).

1 **II. DISCUSSION**

2 Ostling and Sultanov argue that this Court lacks general and specific personal jurisdiction
3 over them. Defs.’ Resp. to the Ct.’s Order to Show Cause (“Resp.”) at 15, Dkt. No. 50-3.

4 General personal jurisdiction exists in the forum where a defendant is domiciled. Goodyear
5 Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011); Gaudin v. Remis, 379 F.3d
6 631, 636 (9th Cir. 2004) (“A person’s domicile is her permanent home, where she resides with the
7 intention to remain or to which she intends to return.”). Defendants argue that this Court lacks
8 general personal jurisdiction because neither Defendant lives in California. Resp. at 15–16.
9 Ostling lives in Connecticut and last visited California in 2014; Sultanov used to live in California,
10 but since 2007 he has lived in Russia and has visited California only twice for brief periods. Id.
11 Brunswick’s complaint alleges that Sultanov “maintains a residence” in Monterey, California, but
12 Defendants explain that the Monterey address is “a family friend’s property that Mr. Sultanov
13 sometimes uses as a mailing address.” Compl. ¶ 4; Resp. at 16. The Court finds that no general
14 personal jurisdiction exists because Defendants are not domiciled in California.

15 Specific personal jurisdiction exists if three conditions are met: (1) the defendant
16 purposefully directed activities toward the forum or purposefully availed itself of the benefits and
17 protections of the forum’s laws; (2) the claim arises out of the defendant’s forum-related activities;
18 and (3) exercise of jurisdiction would be reasonable. Schwarzenegger v. Fred Martin Motor Co.,
19 374 F.3d 797, 802 (9th Cir. 2004). Ostling and Sultanov argue that this Court lacks specific
20 personal jurisdiction for several reasons. First, they live elsewhere and have no current ties to the
21 state. Resp. at 16–17. Second, their employment agreements are governed by the laws of Russia,
22 Bermuda, the United Kingdom, and Wales. Id. at 17. Third, Brunswick’s claims do not arise from
23 any activity that happened in California. Id. Sultanov was not in California when he sent
24 information to his personal email account; Ostling was not in California when he received
25 materials at his personal email account from his former assistant; neither of them was in California
26 when they forwarded the information; the recipients of those emails were also not in California;

1 and the dissemination of the information at issue had no effect in California. Id. If Brunswick
2 suffered harm because of Ostling’s and Sultanov’s actions, it was only in Russia (as to OOO
3 Brunswick Rail Management) or Bermuda (as to Brunswick Rail Group Limited). Id. Since
4 Ostling and Sultanov have no ties to California and no reason to anticipate being sued in
5 California, it would be unreasonable for this Court to exercise personal jurisdiction over them. Id.

6 In response, Brunswick argues that specific personal jurisdiction exists because Ostling
7 and Sultanov both emailed confidential information to Gmail addresses. Pls.’ Suppl. Br. in Supp.
8 of Ex Parte Appl. (“Suppl. Br.”) at 2–3, Dkt. No. 17. Sultanov sent information to his personal
9 Gmail account, and Ostling sent information to the personal Gmail account of Brunswick’s Chief
10 Financial Officer. Id. According to Brunswick, Ostling and Sultanov’s use of Gmail creates
11 personal jurisdiction in California because Gmail is a service of Google, Inc., which is
12 headquartered in California, and the Gmail servers may be located in California. Id.

13 Brunswick offers two justifications for this theory. First, Google’s terms of use contain a
14 forum selection clause indicating that claims will be litigated exclusively in the federal and state
15 courts of Santa Clara County. Id. at 3. This argument fails, however, because Google’s terms of
16 use apply only to disputes with Google. Resp. at 20 (“These terms control the relationship between
17 Google and you. They do not create any third party beneficiary rights.”).

18 Second, Brunswick argues that Ostling and Sultanov “have purposefully availed
19 themselves of California and meet the ‘effects’ test establishing specific jurisdiction.” Suppl. Br.
20 at 3. Under Brunswick’s theory, every one of Gmail’s one billion users (Resp. at 18) would be
21 subject to personal jurisdiction in California based solely on their email activity. Jurisdiction
22 would also extend to non-Gmail users who send messages to Gmail recipients. The cases
23 Brunswick cites do not support such an expansive theory. See U.S. Chess Fed’n, Inc. v. Polgar,
24 No. C 08-05126 MHP, 2009 WL 3334882 (N.D. Cal. Oct. 14, 2009) (holding that personal
25 jurisdiction existed when a Washington defendant gained unauthorized access to the email account
26 of a California plaintiff); Bancroft & Masters, Inc. v. Augusta Nat’l. Inc., 223 F.3d 1082, 1088

1 (9th Cir. 2000) (holding that personal jurisdiction existed when an Illinois defendant registered a
2 domain name in an attempt to “extort compensation” from a California plaintiff); Yahoo! Inc. v.
3 La Ligue Contre Le Racisme Et L’Antisemitisme, 433 F.3d 1199 (9th Cir. 2006) (holding that
4 personal jurisdiction existed when a French defendant sent a cease-and-desist letter, effected two
5 services of process, and obtained two orders in French courts directing a California plaintiff to
6 take action in California); Leibman v. Prupes, No. 2:14-cv-09003-CAS(VBKx), 2015 WL 898454,
7 at *10 (C.D. Cal. Mar. 2, 2015) (holding that personal jurisdiction existed where a New Jersey
8 defendant sent extortionate emails to a California plaintiff, and noting that “isolated emails may
9 rarely, if ever, give rise to personal jurisdiction, because they are by their nature not tied to
10 specific physical locations. . . . Here, it is defendant’s alleged actions of sending extortionate
11 emails to a targeted California resident that create minimum contacts with California”); Facebook,
12 Inc. v. ConnectU LLC, No. C 07-01389 RS, 2007 WL 2326090, at *2 (N.D. Cal. Aug. 13, 2007)
13 (holding that personal jurisdiction existed where Washington defendants gained unauthorized
14 access to Facebook accounts “by logging into Facebook using borrowed or falsified login
15 information” and, once logged in, scraped data from users’ profiles); Dole Food Co., Inc. v. Watts,
16 303 F.3d 1104 (9th Cir. 2002) (holding that personal jurisdiction existed where European
17 defendants fraudulently induced a California company to lease warehouse space in the
18 Netherlands); Dinar Corp. Inc. v. Sterling Currency Group, LLC, No. 2:13-cv-02106-APG-PAL,
19 2014 WL 4072023 (D. Nev. Aug. 15, 2014) (finding a lack of personal jurisdiction in Nevada
20 where a Nevada company sued a Georgia competitor for spreading disparaging information
21 online); NetApp, Inc. v. Nimble Storage, Inc., 41 F. Supp. 3d 816 (N.D. Cal. 2014) (finding that
22 personal jurisdiction existed where an Australian resident gained unauthorized access to computer
23 systems in California); Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1984) (holding that
24 personal jurisdiction existed in New Hampshire where a New York plaintiff sued an Ohio
25 defendant that circulated magazines in New Hampshire).

1 The cases Brunswick cites are distinguishable from the present dispute.¹ All of them
 2 involved harm that occurred in the forum state. See, e.g., U.S. Chess Fed’n, 2009 WL 3334882
 3 (involving harm to a California plaintiff when a Washington defendant intruded into the plaintiff’s
 4 email account); Leibman, 2015 WL 898454 (involving harm to a California plaintiff who received
 5 extortionate emails from a New Jersey defendant); Keeton, 465 U.S. 770 (involving libel that
 6 occurred in the forum state, New Hampshire, that injured a New York plaintiff). In this case, by
 7 contrast, Ostling and Sultanov’s use of Gmail was incidental to the harms Brunswick alleges in its
 8 complaint. Brunswick alleges that it was harmed when Ostling and Sultanov improperly
 9 disseminated confidential information, but Brunswick has not established that it suffered harm in
 10 California.

11 The Court concludes that Brunswick has not met its burden of showing that the Court has
 12 personal jurisdiction over Ostling and Sultanov. Boschetto v. Hansing, 539 F.3d 1011, 1016 (9th
 13 Cir. 2008) (holding that the plaintiff bears the burden of showing the defendant’s connection to the
 14 forum). Brunswick contends that, at the preliminary injunction stage, a plaintiff “need only make a
 15 prima facie showing of jurisdictional facts to withstand the motion to dismiss. . . . That is, the
 16 plaintiff need only demonstrate facts that if true would support jurisdiction over the defendant.”
 17 Pls.’s Reply Br. in Supp. of Mot. for TRO at 2, Dkt. No. 47 (quoting Ballard v. Savage, 65 F.3d
 18 1495, 1498 (9th Cir. 1995)). However, even if true, Brunswick’s allegations—that Ostling and
 19 Sultanov sent confidential materials to Gmail accounts, and that Google and its servers are located
 20 in California—do not establish specific personal jurisdiction. Id. at 2–8. Brunswick has also failed
 21 to show that Sultanov’s use of a Monterey address is sufficient to establish that he is domiciled in
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23 ¹ Brunswick also cites SolarBridge Techs., Inc. v. Ozkaynak, No. C 10-cv-03769-EJD, 2012 WL
 24 2150308 (N.D. Cal. June 12, 2012), in which a defendant in Turkey used a Yahoo! Inc. email
 25 address to misappropriate trade secrets belonging to a Delaware company based in Texas. This
 26 Court held that personal jurisdiction existed because Yahoo! is based in San Jose, California. Id. at
 27 *3–4. In that case, the defendant did not file an answer or otherwise respond to the complaint. Id.
 at *1. The plaintiffs moved for default judgment and a preliminary injunction, which the defendant
 did not oppose. Id. Here, by contrast, Ostling and Sultanov have raised appropriate challenges to
 personal jurisdiction.

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1 California. Compl. ¶ 4; Resp. at 16.

2 The parties offer several other arguments for and against injunctive relief and expedited
3 discovery. Because this Court lacks personal jurisdiction over the Defendants, it may not
4 adjudicate these remaining issues. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 575 (1999)
5 (“Personal jurisdiction . . . is an essential element of district court jurisdiction, without which the
6 court is powerless to proceed to an adjudication.”).

7 **III. CONCLUSION**

8 Brunswick has not shown that this Court has personal jurisdiction over Ostling and
9 Sultanov. The Court orders as follows:

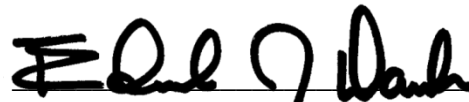
10 1. The Court DENIES Brunswick’s application for a preliminary injunction and its
11 motion for expedited discovery.

12 2. The Court’s order granting a temporary restraining order (Dkt. No. 15) is
13 DISSOLVED.

14 3. At the hearing on January 20, 2017, counsel for Defendants indicated that counsel
15 would prevent anyone from accessing or modifying the company-issued laptop and mobile phone
16 that Brunswick issued to Sultanov. The laptop and mobile phone shall remain in the custody of
17 Defendants’ counsel and shall not be accessed or modified without a court order.

18
19 **IT IS SO ORDERED.**

20 Dated: January 20, 2017

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22 EDWARD J. DAVILA
23 United States District Judge