



Florida Appellate Court Issues New Ruling on Jurisdiction Through Internet Contacts; Questions Zippo

September 20, 2011

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Frank Caiazzo reviewed a *Revolver*¹ album cover allegedly signed by all four Beatles and decided that the signatures were a forgery. This cost the American Royal Arts Corp. (“ARA”) a nearly \$15k sale. ARA sued under Florida’s Deceptive and Unfair Trade Practices Act, unfair competition statute, and also claimed defamation. Caiazzo moved to dismiss all claims for lack of personal jurisdiction, among other reasons. He lost in the lower court, which found both specific and general jurisdiction over Caiazzo, in part, because of his website. He appealed. The Fourth District Court of Appeal of the State of Florida affirmed, but only as to specific jurisdiction.² Most significantly for practitioners and businesses assessing the potential to be hailed into court in far away places because of their websites, the Florida court rejected the oft-used *Zippo* test for determining jurisdiction in connection with a website.³

Briefly, the *Zippo* test essentially determines whether a court may exercise jurisdiction over a defendant based upon a sliding scale analysis of the defendant website’s interactivity. The more active the website (e.g., permitting consumers to buy products is very active while merely providing contact information is passive), the more likely jurisdiction would be found. As the court noted, many federal courts have adopted the *Zippo* test.

¹ *Revolver* has long been recognized as one of the greatest rock albums in history, both from a historical perspective and as pure music. http://en.wikipedia.org/wiki/Revolver_%28album%29. Note that the official magazine of the Holy See (the Vatican) rated it as the number 1 album of all time. http://www.nytimes.com/2010/02/15/arts/music/15arts-VATICANSTOP1_BRF.html.

² Caiazzo actually filed a voluntary dismissal of the appeal, but the court deemed the issues so important it declined to dismiss. *Caiazzo v. American Royal Arts Corp.*, No. 4D09-5152 (Fla. 4th DCA 2011), available at <http://www.4dca.org/opinions/June%202011/06-01-11/4D09-5152.op.pdf>.

³ *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).



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This court, however, found the test flawed and rejected its adoption in Florida. First, it described the Internet as “essentially a medium for communication and interaction, much like the telephone and the mail.”⁴ It then identified the *Zippo* test as a “talismanic jurisdictional formula,”⁵ which the Supreme Court has forbidden in jurisdictional analysis. Finally, it quoted favorably a 2004 federal court decision noting that a rigid adherence to *Zippo* could lead to erroneous results because “even a passive website may support a finding of jurisdiction if the defendant used the website to intentionally harm the plaintiff” and “an interactive... website may not be sufficient to support jurisdiction if it is not aimed at residents in the forum state.”⁶ Furthermore, there must still be a nexus between even the most interactive website and the cause of action alleged. The court did, however, note that a *Zippo* analysis could form a part of the overall minimum contacts analysis.

After bashing *Zippo* sufficiently, the court analyzed the facts at bar, finding that Caiazzo could reasonably anticipate being haled into a Florida court over the specific allegations made by ARA because 4.35% of his business originated in Florida, and he allegedly made defamatory statements about ARA’s business, thereby targeting a Florida resident.⁷ Only after finding specific jurisdiction without discussing *Zippo* did the Court come to Caiazzo’s website, which the court found was not sufficiently aimed at Florida to confer general jurisdiction. The court highlighted that its discussion did not focus on whether Caiazzo’s website was passive or active, but whether the website created contacts with Florida that were substantial, continuous, and systematic.

It is laudable that the court looked beyond the mechanics of *Zippo* to the purpose of the *Zippo* test: determining whether a defendant has minimum contacts with a forum. The court’s holistic approach is the right one. Here, it resulted in jurisdictional discovery, which is common when a defendant challenges personal jurisdiction. While this discovery was limited, both parties still expended some resources in a case arguably valued at \$15,000 before even joining the issues in the case.

The court, however, ignored the factual underpinnings of the *Zippo* test. In *Zippo*, the court was asked “to determine whether [defendant’s] conducting of electronic commerce with Pennsylvania residents constitutes the purposeful avilment of doing business in Pennsylvania” through defendant’s website alone – because the defendant had no brick and mortar business, unlike Caiazzo. Here, Caiazzo’s website was not especially relevant to ARA’s claims. Even without a website, Caiazzo, under the court’s decision, would have been subject to jurisdiction in Florida. On the other hand, had Caiazzo’s alleged bad acts been performed through his website and had he offered his services only through his website, perhaps *Zippo* would have been a better fit.

While the *Zippo* test provides some clarity to jurisdictional analysis in Internet cases, *Caiazzo* potentially clouds that clarity by pushing back to a totality of the circumstances analysis, even though in this case addressing *Zippo* was unnecessary. The burden of assessing the likelihood of

⁴ Compare <http://en.wikipedia.org/wiki/Internet>.

⁵ Burger King Corp. v. Rudzewicz, 471 U.S. 462, 485 (1985)

⁶ *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F. Supp. 2d 1154, 1160 (W.D. Wis. 2004).

⁷ Caiazzo also lived and operated his business in Florida for a part of the relevant time period, but not at the time of suit and the Court did not rely on this fact to exercise jurisdiction.

being haled into court across the country under this analysis will largely fall on entrepreneurs, Internet-based businesses, and corporations with significant presences on the Internet.

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