

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

LET'S TAKE BACK CONTROL LTD.
A/K/A FAIR VOTE PROJECT AND KYLE TAYLOR

PLAINTIFFS

V.

CIVIL ACTION NO. 18-612

BIG DATA DOLPHINS LTD. AND
ELDON INSURANCE SERVICES LTD.

DEFENDANTS

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION AND LACK OF PROPER VENUE**

This is a lawsuit between British citizens about alleged misuse of British citizens' personal data. It does not belong in this Court, or any other court in Mississippi. If the baseless claim is to be brought anywhere, it should be brought in the United Kingdom.

Defendants have extremely limited contacts with Mississippi, and this lawsuit does not arise out of or relate to those limited contacts. Accordingly, this Court does not have jurisdiction over Defendants under the Mississippi long-arm statute or the United States Constitution, and it should dismiss the lawsuit.

In the alternative, there is no appropriate venue in Mississippi for this case under the chancery court venue statute, and it should be dismissed on that basis.

FACTS

According to the Complaint, Plaintiffs are resident citizens of the United Kingdom.¹ Plaintiff Let's Take Back Control Ltd. is an advocacy group that seeks to overturn the popular vote of the United Kingdom's citizenry to exit the European Union. Plaintiff Kyle Taylor founded the anti-populist advocacy group. He is a named party to this lawsuit on the basis of his position with the group, coupled with his speculative, unsupported beliefs that Defendants (1) **may have** had a business relationship with Cambridge Analytica, and (2) **may have** had access to his personal data, and (3) **may have** transferred that personal data to the United States. Put simply, Plaintiffs are heaping unsupported, unverified allegations upon each other in a failed attempt to establish this Court's jurisdiction over the Defendants.

Eldon Insurance Services, Ltd. ("Eldon") is a United Kingdom insurance company that brokers insurance, and Big Data Dolphins Ltd. ("Big Data") is Eldon's corporate affiliate that assists Eldon's actuarial team with underwriting and pricing activities. Both entities keep and gather personal data solely to aid in their legitimate business, and are properly registered to do so in the United Kingdom. Exhibit "A", Affidavit of Victoria Sena. Neither entity had anything to do with Brexit, and Plaintiffs have no proof to support their contrary allegations.² In fact, Big Data was not even incorporated until December 16, 2016, some six months after the June 23, 2016 Brexit vote.

¹ Plaintiffs' counsel has emphasized that Mr. Taylor has dual citizenship between the United States and the United Kingdom. However, there is no allegation that Taylor resides in the United States, and in the document creating his co-Plaintiff, anti-populist advocacy group, he stated that he was a citizen of Canada.

<https://beta.companieshouse.gov.uk/company/11082559/officers>

² The companies' owner Arron Banks was and is a Brexit supporter. That has nothing to do with the companies.

Plaintiffs' complaint is chock-full of unsupported and false conjecture that Defendants, in conjunction with Cambridge Analytica, improperly used the personal data of British citizens to influence the Brexit vote.³ That false narrative has absolutely nothing to do with Mississippi—Defendants' first business visit to Mississippi was in the fall of 2017, well after Brexit, and they did not sign a lease with the University until February 2018. Exhibit "A", Affidavit of Victoria Sena.⁴ Moreover, as explained above, Big Data was not even formed until well after Brexit.

In addition, **Defendants have not sent any data regarding British citizens to the University of Mississippi.** *Id.* In fact, there has not even been a mechanism for the parties to exchange such data—Defendants do not have a data storage device in the United States, and the University has not given Defendants access to its server or any other data storage device. *Id.* Defendants have not even begun occupying space at the University, and the leased space must undergo a substantial build-out before it is move-in ready. *Id.*

Plaintiffs simply have not presented, and in fact cannot present, facts sufficient to establish this Court's jurisdiction (1) under the Mississippi long-arm statute, or (2) consistent with the United States Constitution.

LEGAL STANDARDS

Under Rule 12(b)(2) of the Mississippi Rules of Civil Procedure, the plaintiff bears the burden of establishing that the trial court has personal jurisdiction over a nonresident defendant. *Hogrobrooks v. Progressive Direct*, 858 So. 2d 913, 919 (Miss. 2003). If the Court conducts an evidentiary hearing, Plaintiffs must prove jurisdiction by a preponderance of the evidence; if the Court does not conduct an evidentiary hearing, the Plaintiff must make a *prima facie* showing

³ Neither Defendant ever engaged Cambridge Analytica for any purpose. While Plaintiffs argue that Mr. Banks' Brexit political action group engaged Cambridge Analytica to assist with the campaign, that too is false, as the United Kingdom Elections Commission has determined.

⁴ Eldon is not a party to the lease agreement, although it guaranteed Big Data Dolphins' performance thereunder. *Id.*

that jurisdiction lies. *Id.* Under either standard, because Defendants have presented evidence, Plaintiffs cannot rest on the mere allegations of their Complaint; they too must present **evidence**.

Id.

Plaintiffs are required to establish personal jurisdiction under a two-step analysis.

First, they must prove that Mississippi's long-arm statute applies. *Id.* It does not.

Second, Plaintiffs must prove that the court's exercise of jurisdiction comports with due process. *Id.* However, exercise of jurisdiction over these Defendants would be unconstitutional, because they have extremely limited contacts with Mississippi, and those limited contacts have nothing to do with Plaintiffs' allegations.

ARGUMENT

I. Plaintiffs Cannot Establish Jurisdiction Under Mississippi's Long-Arm Statute.

The Mississippi long-arm statute provides, in relevant part, as follows—

Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state.

Miss. Code. Ann. § 13-3-57. Mississippi courts interpret this statute as defining—

"three activities" which will permit Mississippi courts to exercise personal jurisdiction over a nonresident defendant: "(1) if that person has entered into a contract to be performed in Mississippi; (2) has committed a tort in Mississippi; or, (3) is conducting business in Mississippi."

Dunn v. Yager, 58 So. 3d 1171, 1184 (Miss. 2011).

While the long-arm statute thus generally offers three options, because they are non-residents, Plaintiffs proceed under either the contracts prong or the doing business prong. *Submersible Sys., Inc. v. Perforadora Cent., S.A. de C.V.*, 249 F.3d 413, 418 (5th Cir. 2001) (holding that non-resident plaintiffs cannot rely on the contract or doing business prongs of the Mississippi long-arm statute). Accordingly, to establish jurisdiction under the long-arm statute, they must show that Defendants committed a tort in Mississippi. Plaintiffs cannot carry this burden.

Defendants did not commit a tort in Mississippi. To the contrary, the record evidence establishes that Defendants did not transfer any data about British citizens to the University of Mississippi. Exhibit "A", Affidavit of Victoria Sena. Accordingly, any alleged misuse of data (there has been no such misuse) occurred in the United Kingdom, not in Mississippi.

II. Defendants Cannot Be Subject To Jurisdiction In Mississippi Under The United States Constitution.

The Due Process Clause of the Fourteenth Amendment limits a state's ability to assert personal jurisdiction over a nonresident defendant. *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014); *Seifert*, 472 F.2d at 271. Therefore, even if this Court could exercise personal jurisdiction under the long-arm statute (it cannot), it must do so in a fashion that complies with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Id.* There is, however, no constitutional basis for this Court to exercise jurisdiction over these Defendants.

The "constitutional touchstone" of the due process inquiry is whether the nonresident defendant has purposefully established minimum contacts in the forum state, "such that [it] should reasonably anticipate being haled into court there." *Nuovo Pignone, SpA v. Storman Asia M/V*, 310 F.3d 374, 379 (5th Cir. 2002) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,

474 (1985)). There are two types of "minimum contacts": those that create general jurisdiction (allowing a defendant to be sued in the state for any reason) and those that create specific jurisdiction (allowing a defendant to be sued in the state based upon a very specific set of facts). *Johnston*, 523 F.3d at 609; *Luv N' Care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 469 (5th Cir. 2006). Defendants do not have either type of minimum contact.

The United Supreme Court, in a series of landmark decisions beginning four years ago, rearticulated the types of contacts necessary to establish both types of personal jurisdiction. Those cases and their progeny show that these Defendants are not subject to jurisdiction here. E.g., *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (general jurisdiction); *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (specific jurisdiction). It is not a close call.

A. Defendants Are Not Subject to General Jurisdiction in Mississippi.

In *Daimler*, the Court held that the proper consideration when determining general jurisdiction is whether the defendant's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Daimler*, 134 S. Ct. at 761 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011)) (alteration in original). "[O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *See Daimler*, 134 S. Ct. at 760.

These Defendants are corporate entities, and therefore are subject to general jurisdiction in "the place of incorporation and principal place of business", as those are the locations where the companies are at "at home" and thus are the "paradig[m] ... bases for jurisdiction." *Id.* The corollary to the rule is that it is "incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business." *Monkton Ins. Servs., Ltd. v.*

Ritter, 768 F.3d 429, 433 (5th Cir. 2014). Mississippi, of course, is neither Defendants' place of incorporation nor their place of incorporation—Bristol, United Kingdom is.

Plaintiffs cannot meet the "incredibly difficult" standard required to establish this Court has general jurisdiction over Defendants. The lease signed by Big Data Dolphins and guaranteed by Eldon Insurance constitutes the sum total of Defendants' contacts with Mississippi. Exhibit "A", Affidavit of Victoria Sena. Defendants have not even occupied the space yet, and they have no employees or staff in Mississippi. *Id.*

Defendants are not "at home" in Mississippi, and this Court therefore does not have general jurisdiction over them.

B. Defendants Are Not Subject to Specific Jurisdiction in Mississippi for the Conduct Alleged in This Action.

"In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" *Goodyear*, 131 S. Ct. at 2851 (quotation omitted). Specific jurisdiction "'focuses on the relationship among the defendant, the forum, and the litigation.'" *Monkton Ins. Serv. Ltd.*, 768 F.3d at 433 (citing *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014)) (quotation marks and citations omitted).

The specific jurisdiction analysis is subject to a three-step analysis:

- (1) whether the defendant has minimum contacts with the forum state, i.e., whether it purposely directed its activities toward the forum state or purposefully availed itself of the privileges of conducting activities there;
- (2) whether the plaintiff's cause of action arises out of or results from the defendant's forum-related contacts; and
- (3) whether the exercise of personal jurisdiction is fair and reasonable.

Seifert, 472 F.3d at 271 (citation omitted).⁵

Even if it is assumed for the sake of argument that Defendants' lease with the University constitutes minimum contacts with the state of Mississippi, the second element is visibly absent. Under that second element, Plaintiffs must establish that their claim "arises out of or results from" Defendants' Mississippi contacts. *Seifert*, 472 F.3d at 271; *Felch v. Transportes Lar-Mex SA DE CV*, 92 F.3d 320, 324 (5th Cir. 1996) ("Specific jurisdiction is appropriate when the nonresident defendant's contacts with the forum state arise from, or are directly related to, the cause of action."). Put another way, Plaintiffs must show that they would not have a cause of action against the Defendants but for the Defendants' relationship with the forum state.

Plaintiffs, however, allege violations of the United Kingdom's data protection law—and allege those violations began well before Defendants first visited Mississippi, and certainly well before the February 2018 lease agreement. Simply put, Plaintiffs' claims do not depend upon or even **relate to** Defendants' lease.⁶ Moreover, as explained in Section I, *supra*, Defendants have neither transferred, nor even had any way to transfer, any personal data to the University of Mississippi or its servers.

This Court lacks specific jurisdiction over Defendants consistent with due process.

III. The Case Should Be Dismissed Because There Is No Proper Venue In Mississippi.

The case should be dismissed because Mississippi courts lack personal jurisdiction over the Defendants. In the alternative, the suit should be dismissed because there is no appropriate venue in Mississippi for this lawsuit. Plaintiffs seek to fix venue in this Court under the general chancery court venue statute, Miss. Code Ann. § 11-5-1. That effort fails.

⁵ If the Plaintiff establishes the first two prongs, then the burden shifts to the Defendants to show that exercising jurisdiction would be unfair or unreasonable. *Id.*

⁶ To be clear, Defendants vigorously dispute all of Plaintiffs' allegations.

While Plaintiffs do not articulate which subsection of the statute they are relying upon, the only provision that could even **potentially** fix venue here is that which states: "suits respecting real or personal property may be brought in the chancery court of the county in which property, or some portion thereof, may be." Miss. Code Ann. 11-5-1. The personal property allegedly at issue is data of United Kingdom citizens. Plaintiffs allege that some of that data might be located here, since the University of Mississippi has leased space to the Defendants in Oxford and the seat of Mississippi government lies in Hinds County. To the contrary, the undisputed record evidence is that neither of the Defendants has transferred any such data to Mississippi. Exhibit "A", Affidavit of Victoria Sena.

Further, since no data has been transferred anywhere in Mississippi, there is no appropriate venue in Mississippi, and the case should be dismissed. *See Ramsey v. Auburn Univ.*, 191 So. 3d 102, 107–11 (Miss. 2016) (dismissing case for lack of proper venue in Mississippi). Plaintiffs, if they wish to litigate issues regarding the Defendants' storage and use of data, should do so in the United Kingdom.

CONCLUSION

Plaintiffs are British subjects who, without any foundation based in fact, have sued two fellow citizens of the United Kingdom here in Mississippi. The defendant companies have only one contact with Mississippi—a recent lease with the University of Mississippi.

For three separate reasons, Plaintiffs cannot bring these claims in Mississippi. First, Plaintiffs cannot establish jurisdiction under Mississippi's long-arm statute. Second, Defendants are not "at home" in Mississippi, and therefore are not subject to general jurisdiction here. Third, and finally, Plaintiffs' cause of action does not arise out of Defendants' contact with Mississippi.

Accordingly, this Court lacks personal jurisdiction over the Defendants, and this case should be dismissed.

In the alternative, the Court should dismiss this lawsuit because there is no appropriate venue for these claims under the Mississippi chancery court venue statute.

This the 25th day of May, 2018.

Respectfully submitted,

ELDON INSURANCE SERVICES LTD.
AND BIG DATA DOLPHINS LTD.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the MEC system, which served a copy upon registered participants.

This the 25th day of May, 2018.

s/ D. Sterling Kidd

D. STERLING KIDD