

II. FACTUAL AND PROCEDURAL BACKGROUND

On October 24, 2001, an article entitled "FBI moves in on Atta's Caribbean Connection" authored by Cindy Adams, was published in the New York Post and on its website. The article reported that an "Arab" who owned the "Plaza Extra" stores helped Mohammed Atta, a terrorist in the World Trade Center bombing, to get his U.S. immigration papers. The article also reported that the federal government closed two of the "Arab's" stores and discovered that this "Arab" had stockpiled ammunition for Atta and that both planned to destroy the Hess Oil refinery on St. Croix. Plaintiffs' complaint alleges that the article's content was re-published in several local newspapers of general circulation, and commented on in the local media.

On April 28, 2003, the plaintiffs brought this action for defamation against defendants Cindy Adams and NYP Holdings, Inc. and other parties yet unknown. Plaintiff Fathi Yusuf is the shareholder and managing agent of United Corporation, which owns the "Plaza Extra" stores and is incorporated in the Virgin Islands. Defendant NYP Holdings, Inc. ["NYP"] owns the New York Post and is incorporated in Delaware with principal offices in New York City, New York.

Defendants moved to dismiss for lack of personal jurisdiction arguing that NYP and Cindy Adams do not have

sufficient minimum contacts to bring them within the Virgin Islands' long-arm statute, V.I. Code Ann. tit. 5, § 4903(a) or the Due Process Clause of the United States Constitution.

Defendants support their motion with affidavits explaining that the New York Post did not knowingly send or sell its paper in the Virgin Islands or even solicit a single subscription in the Virgin Islands. Defendants concede that defendant Adams' "Column," an internet publication of the New York Post that also ran the article, was accessible to Virgin Islands residents through the newspaper's internet site.¹

The article's author, Cindy Adams, has filed an affidavit saying that she did not visit the Virgin Islands or contact anyone there before writing this story. Adams, a New York resident, states that she has not been in the Virgin Islands in fifteen years, although she previously visited twice on vacation.

III. DISCUSSION

On July 29, 2003, defendants served their motion to dismiss on plaintiffs. At no time during the next eight months did plaintiffs ever move this Court for a Rule 26 conference or request any jurisdictional discovery. Plaintiffs opposed the motion and claimed that they were unable to respond to the

¹ The article has since been removed from this website.

opposing affidavits without a Rule 26 conference and further discovery of facts relevant to jurisdiction.

Generally, jurisdictional discovery should be allowed unless the plaintiff's claim is "clearly frivolous." See *Massachusetts Sch. Of Law at Andover, Inc. v. American Bar Ass'n*, 107 F.3d 1026, 1042 (3d Cir. 1997). This Court has the discretion to refuse such requests when they are untimely, unsupported, or irrelevant to the jurisdictional debate. *Renner v. Lanard Toys Ltd.*, 33 F.3d 277, 283-84 (3d Cir. 1994) (finding that opposition brief's mention of discovery was sufficient even though plaintiff made no formal motion); *United States v. Swiss American Bank, Ltd.*, 191 F.3d 30, 45-46 (1st Cir. 1999). Although I question plaintiff's diligence in requesting discovery, their claims are not "clearly frivolous," and allowing limited jurisdictional discovery for a period of sixty days will not prejudice defendants. Of course, plaintiffs must limit their requests to facts relevant to personal jurisdiction. After discovery is complete, the plaintiffs shall have an additional thirty days to supplement their opposition to the motion and/or to move to amend the complaint. Once defendants have replied, I will determine whether plaintiffs have met their burden of establishing personal jurisdiction over the defendants.

IV. CONCLUSION

I will allow jurisdictional discovery for a period of sixty days because the claims are not frivolous and because I find little prejudice to the defendants. At the conclusion of jurisdictional discovery, plaintiffs will have thirty days to supplement their opposition to the motion and/or to move to amend the complaint.

ENTERED this 29th day of March, 2004.

FOR THE COURT:

 /s/
Thomas K. Moore
District Judge