



KeyCite Yellow Flag - Negative Treatment

Disagreed With by [Lakin v. Prudential Securities, Inc.](#), 8th Cir.(Mo.), November 4, 2003

293 F.3d 506

United States Court of Appeals,
District of Columbia Circuit.David J. GORMAN, d/b/
a Cashbackreality.com, Appellant,

v.

AMERITRADE HOLDING CORPORATION
and Freetrade.com, Inc., Appellees.

No. 01-7085.

|
Argued Feb. 14, 2002.|
Decided June 14, 2002.**Synopsis**

Real estate broker based in Virginia sued securities broker based in Nebraska, alleging that securities broker failed to honor contract to provide real estate broker with front-page link to Internet website. The United States District Court for the District of Columbia, James Robertson, J., dismissed for lack of personal jurisdiction and insufficiency of service of process. Real estate broker appealed. The Court of Appeals, [Garland](#), Circuit Judge, held that: (1) if securities broker's contacts with District of Columbia, consisting entirely of electronic transactions through Internet website, were continuous and systematic, they provided basis for personal jurisdiction, but (2) real estate broker failed to perfect service of process.

Affirmed.

West Headnotes (18)

[1] Courts **Internet use**

Courts of the District of Columbia may assert general jurisdiction over a defendant that is doing business in the District through the medium of the Internet.

28 Cases that cite this headnote

[2] Federal Courts **Personal jurisdiction**

District court's grant of motion to dismiss for lack of personal jurisdiction would be reviewed de novo. [Fed.Rules Civ.Proc.Rule 12\(b\)\(1\)](#), 28 U.S.C.A.

3 Cases that cite this headnote

[3] Constitutional Law **Non-residents in general****Federal Courts** **Personal jurisdiction**

In a diversity case, a district court's personal jurisdiction over nonresident defendants depends upon state law, the application of which is subject to the constraints of constitutional due process. [U.S.C.A. Const.Amend. 5](#); 28 U.S.C.A. § 1332(a).

7 Cases that cite this headnote

[4] Constitutional Law **Business, business organizations, and corporations in general**

The requirements of due process are satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. [U.S.C.A. Const.Amend. 5](#).

23 Cases that cite this headnote

[5] Courts **Business contacts and activities; transacting or doing business**

Under the District of Columbia's long-arm statute, local courts may exercise so-called "specific jurisdiction" over a person for claims that arise from the person's transacting any business in the District. [D.C. Official Code, 2001 Ed. § 13-423\(a\)\(1\)](#).

10 Cases that cite this headnote

[6] Courts

🔑 Corporations and business organizations

District of Columbia law permits courts to exercise general jurisdiction over a foreign corporation as to claims not arising from the corporation's conduct in the District, if the corporation is doing business in the District. [D.C. Official Code, 2001 Ed. § 13–334\(a\)](#).

31 Cases that cite this headnote

[7] Constitutional Law

🔑 Business, business organizations, and corporations in general

Under the Due Process Clause, general jurisdiction over a foreign corporation is only permissible if the defendant's business contacts with the forum district are continuous and systematic. [U.S.C.A. Const.Amend. 5](#).

39 Cases that cite this headnote

[8] Federal Courts

🔑 Internet use

Federal Courts

🔑 Investment, finance, and credit

Fact that securities broker's business in District of Columbia was conducted in “cyberspace” through electronic transactions at Internet website, as opposed to being conducted through physical presence, would not preclude District of Columbia court from having personal jurisdiction over broker. [D.C. Official Code, 2001 Ed. § 13–334\(a\)](#).

5 Cases that cite this headnote

[9] Federal Courts

🔑 Internet use

“Cyberspace” is not some mystical incantation capable of warding off the jurisdiction of courts built from bricks and mortar.

5 Cases that cite this headnote

[10] Courts

🔑 Investment, finance, and credit

Test for determining whether District of Columbia court would have personal jurisdiction over securities broker, based on broker's conduct of electronic transactions within District through use of Internet website, would be the traditional test of asking whether broker's contacts with District were continuous and systematic. [D.C. Official Code, 2001 Ed. § 13–334\(a\)](#).

16 Cases that cite this headnote

[11] Federal Courts

🔑 Investment, finance, and credit

If securities broker's contacts with District of Columbia, consisting entirely of electronic transactions through Internet website, were continuous and systematic, they provided basis for personal jurisdiction of District courts over real estate broker's action alleging that securities broker failed to honor contract to provide front-page link to real estate broker's website. [D.C. Official Code, 2001 Ed. § 13–334\(a\)](#).

10 Cases that cite this headnote

[12] Federal Civil Procedure

🔑 Jurisdictional discovery

Real estate broker demonstrated that it could, through discovery, supplement its allegations that District of Columbia courts had jurisdiction over its action alleging that securities broker failed to honor contract to provide front-page link to real estate broker's Internet website, and real estate broker thus would have been entitled to discovery, absent insufficient service of process, where securities broker's customers entered into binding contracts over Internet, securities broker offered customers alternative of conducting transactions by mail or telephone, and securities broker permitted transactions 24

hours a day. [D.C. Official Code, 2001 Ed. § 13–334\(a\)](#).

[2 Cases that cite this headnote](#)

[13] Process

[🔑 Nature and necessity in general](#)

Even if there are sufficient contacts for a court to assert personal jurisdiction over a defendant, it lacks power to do so unless the procedural requirements of effective service of process are satisfied.

[54 Cases that cite this headnote](#)

[14] Corporations and Business Organizations

[🔑 Service by mail](#)

Virginia real estate broker's mailing of copy of summons and complaint to securities broker's corporate headquarters in Nebraska did not establish jurisdiction of District of Columbia courts under District statute authorizing general jurisdiction based on corporation doing business in District, notwithstanding District of Columbia Superior Court rule that appeared to permit service upon corporations by mail. [D.C. Official Code, 2001 Ed. § 13–334\(a\)](#); [D.C.Civil Rule 4\(c\)\(4\)](#).

[4 Cases that cite this headnote](#)

[15] Corporations and Business Organizations

[🔑 Service by mail](#)

Courts

[🔑 Corporations and business organizations](#)

Where the basis for obtaining jurisdiction over a foreign corporation is the District of Columbia statute authorizing general jurisdiction based on a corporation doing business in the District, a plaintiff who serves a foreign corporation by mail outside the District is foreclosed from benefitting from the jurisdictional protection of the statute. [D.C. Official Code, 2001 Ed. § 13–334\(a\)](#).

[28 Cases that cite this headnote](#)

[16] Corporations and Business Organizations

[🔑 Service on secretary of state or other public official](#)

Securities Director of the Public Service Commission of the District of Columbia was not “agent authorized by appointment or by law to receive service of process” within meaning of federal jurisdictional rule, with respect to real estate broker's contract action against securities broker, and, thus, service upon Director did not establish jurisdiction over action of United States District Court for the District of Columbia, where alleged breach of contract was unrelated to any securities transaction and thus was not subject to District securities statute requiring securities license applicants to consent to appointment of Director to receive service in suits “which shall arise under this chapter.” [D.C. Official Code, 2001 Ed. §§ 2–2601 to 2–2619, 2–2615\(f\)](#); [Fed.Rules Civ.Proc.Rule 4\(h\)\(1\)](#), 28 U.S.C.A.

[3 Cases that cite this headnote](#)

[17] Corporations and Business Organizations

[🔑 Service on secretary of state or other public official](#)

Under District of Columbia law, real estate broker's service of process upon Securities Director of the Public Service Commission of the District of Columbia did not perfect service against securities dealer, inasmuch as Director was not person conducting business of securities broker, but was government official whose authority to receive service of process on behalf of securities broker was created by and expressly limited by District statute. [D.C. Official Code, 2001 Ed. § 2–2615\(f\)](#).

[1 Cases that cite this headnote](#)

[18] Federal Courts

[🔑 Internet use](#)

“Cyberspace” is not a kingdom floating in the mysterious ether, immune from the jurisdiction of earthly courts.

[Cases that cite this headnote](#)

***508 **231** Appeal from the United States District Court for the District of Columbia (No. 00cv01259).

Attorneys and Law Firms

[John M. Shoreman](#) argued the cause and filed the briefs for appellant.

Brian D. Craig argued the cause for appellees. With him on the brief was [Robert S. Brennen](#).

Before: [HENDERSON](#) and [GARLAND](#), Circuit Judges, and [WILLIAMS](#), Senior Circuit Judge.

Opinion

[GARLAND](#), Circuit Judge:

[1] In this case, we consider whether the courts of the District of Columbia may assert general jurisdiction over a defendant that is “doing business” in the District through the medium of the Internet. We hold that they may, although we ultimately affirm dismissal of the complaint because service of process on the defendant was insufficient.

I

Plaintiff David Gorman is the sole proprietor of Cashbackrealty.com, a real estate broker with its principal place of business in McLean, Virginia. Defendant Ameritrade Holding Corporation is a securities broker-dealer licensed in the District of Columbia with its principal place of business in Omaha, Nebraska. Ameritrade provides online brokerage services through its Internet site to individuals across the country, including District residents. In November 1999, Ameritrade acquired Freetrade.com, Inc., as well as its Internet domain name, “Freetrade.com.” Like Ameritrade, defendant Freetrade has its principal place of business in Omaha. Gorman alleges that he had an agreement with the prior owner of Freetrade, under which Cashbackrealty.com was entitled to a front-page link on the Freetrade.com website. According to Gorman, although Ameritrade assumed the obligations of this

agreement when it acquired the Freetrade.com domain name, it refused to provide a front-page link for Cashbackrealty.com.

[2] On June 2, 2000, Gorman filed a complaint in the United States District Court for the District of Columbia, alleging that Ameritrade and Freetrade (hereinafter referred to collectively as “Ameritrade”) were in breach of contract for refusing to honor the front-page-link agreement. Without permitting discovery, the district court dismissed Gorman's complaint for lack of personal jurisdiction ***509 **232** and insufficiency of service of process. With respect to personal jurisdiction, the court held that a “company that acts to encourage or maximize the use by District of Columbia residents of its website does not establish the necessary ‘minimum contacts’ with this forum through Internet accessibility,” and does not “operate so continuously and substantially within [the District] that it is fair to allow anyone to sue the enterprise in [the District] on any claim, without regard to where the claim arose.” *Gorman v. Ameritrade Holding Corp.*, No. 00–1259, Mem. Op. at 3 (D.D.C. Mar. 30, 2001) (internal quotation marks omitted). The court further held that Gorman's service of his complaint upon the Securities Director of the District of Columbia was insufficient under District of Columbia law. *Id.* at 2–3. We review the district court's grant of Ameritrade's motion to dismiss de novo, see *Second Amendment Found. v. United States Conference of Mayors*, 274 F.3d 521, 523 (D.C.Cir.2001), and we consider its two grounds for dismissal in Parts II and III below.

II

[3] [4] The district court has subject matter jurisdiction in this breach of contract action because of the diversity of citizenship of the parties.  28 U.S.C. § 1332(a). In a diversity case, the court's personal jurisdiction over nonresident defendants depends upon state law, here the law of the District of Columbia, the application of which is subject to the constraints of constitutional due process. See  *Crane v. Carr*, 814 F.2d 758, 762 (D.C.Cir.1987); 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1068.1, at 592 & n.2 (3d ed. 2002). The requirements of due process “are satisfied when *in personam* jurisdiction is asserted over a nonresident

corporate defendant that has ‘certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’ ” [Helicopteros Nacionales de Colombia, S.A. v. Hall](#), 466 U.S. 408, 414, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984) (quoting [International Shoe Co. v. Washington](#), 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945)) (additional internal quotation marks omitted).

[5] Under the District of Columbia's long-arm statute, local courts may exercise so-called “specific jurisdiction” over a person for claims that arise from the person's “transacting any business” in the District. D.C.Code § 13–423(a)(1). See generally [Burger King Corp. v. Rudzewicz](#), 471 U.S. 462, 472–73 & n. 15, 105 S.Ct. 2174, 2182–83 & n. 15, 85 L.Ed.2d 528 (1985); [Crane](#), 814 F.2d at 763. However, because Gorman's breach of contract claim against Ameritrade does not arise out of any business transacted between the parties in the District, this font of jurisdiction is unavailable.

[6] [7] District of Columbia law also permits courts to exercise “general jurisdiction” over a foreign corporation as to claims not arising from the corporation's conduct in the District, if the corporation is “doing business” in the District. See D.C.Code § 13–334(a); [AMAF Int'l Corp. v. Ralston Purina Co.](#), 428 A.2d 849, 850 (D.C.1981); see also [Helicopteros](#), 466 U.S. at 415 n. 9, 104 S.Ct. at 1872 n. 9; [Crane](#), 814 F.2d at 763.¹ Under the Due Process *510 **233 Clause, such general jurisdiction over a foreign corporation is only permissible if the defendant's business contacts with the forum district are “continuous and systematic.” [Helicopteros](#), 466 U.S. at 415, 104 S.Ct. at 1872 (quoting [Perkins v. Benguet Consol. Mining Co.](#), 342 U.S. 437, 438, 72 S.Ct. 413, 96 L.Ed. 485 (1952)); see [El-Fadl v. Central Bank of Jordan](#), 75 F.3d 668, 675 (D.C.Cir.1996); see also [Crane](#), 814 F.2d at 763 (describing the required contacts for general jurisdiction as “continuous and substantial”); [Hughes v. A.H. Robins Co.](#), 490 A.2d 1140, 1142, 1149 (D.C.1985) (same).² The District of Columbia Court of Appeals has indicated that the reach of “doing business” jurisdiction under § 13–334(a) is coextensive with the reach of constitutional due process. See [Hughes](#), 490 A.2d

at 1148 (“[W]e may find jurisdiction if [the defendant] ... has ‘been carrying on in [the District] a continuous and systematic, but limited, part of its general business.’ ” (quoting [Perkins](#), 342 U.S. at 438, 72 S.Ct. at 414)); see also [Everett v. Nissan Motor Corp.](#), 628 A.2d 106, 108 (D.C.1993).

In his pleadings below, Gorman contended that Ameritrade “sells securities and provides other online brokerage services to residents of the District of Columbia on a continuous basis,” and is therefore “continuously doing business in the District of Columbia.” Pl.'s Opp'n to Mot. to Dismiss at 1–2. He further argued that he was “[a]t the very least ... entitled to jurisdictional discovery to determine the exact nature of Ameritrade's contacts with the District.” *Id.* at 5. And although “[a]s a general matter, discovery ... should be freely permitted, and this is no less true when discovery is directed to personal jurisdiction,” [Edmond v. United States Postal Serv. Gen. Counsel](#), 949 F.2d 415, 425 (D.C.Cir.1991), the district court granted Ameritrade's motion to dismiss without permitting the plaintiff to undertake discovery.

[8] Ameritrade contends that Gorman was not entitled to discovery because there are no factual circumstances under which the district court could have asserted personal jurisdiction over Ameritrade. The defendant concedes that it engages in “electronic transactions” with District residents, and that “Ameritrade undoubtedly derives revenue from those customers.” Reply Mem. in Supp. of Defs.' Mot. to Dismiss at 6. But Ameritrade maintains that those transactions do not occur in the District of Columbia. Rather, the firm declares, Ameritrade's business is conducted “in the borderless environment of cyberspace.” Appellees' Br. at 5.

[9] [10] “Cyberspace,” however, is not some mystical incantation capable of warding off the jurisdiction of courts built from bricks and mortar. Just as our traditional notions of personal jurisdiction have proven *511 **234 adaptable to other changes in the national economy,³ so too are they adaptable to the transformations wrought by the Internet. In the last century, for example, courts held that, depending upon the circumstances, transactions by mail and telephone could be the basis for personal jurisdiction notwithstanding the defendant's lack of physical presence in the forum.⁴ There is no logical reason why the same should not be

true of transactions accomplished through the use of e-mail or interactive websites. Indeed, application of this precedent is quite natural since much communication over the Internet is still transmitted by ordinary telephone lines. See  *AT&T Corp. v. City of Portland*, 216 F.3d 871, 874 (9th Cir.2000);  *512 *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1, 4 (D.C.Cir.2000). **235 Accordingly, the test that we will apply to determine whether the District has general personal jurisdiction in this case is the traditional one: Were Ameritrade's contacts with the District "continuous and systematic"? See  *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C.Cir.2000) ("We do not believe that the advent of advanced technology, say, as with the Internet, should vitiate long-held and inviolate principles of federal court jurisdiction."); 4A WRIGHT & MILLER § 1073.1, at 327–28.

[11] For support of its claim that Internet-based transactions are outside the jurisdiction of District of Columbia courts, Ameritrade relies on our decision in *GTE*. Ameritrade misreads the case. In *GTE*, we held that defendants who operated Internet Yellow Pages websites accessible to D.C. residents had insufficient contacts with the District to permit the exercise of specific jurisdiction under the District's long-arm statute. In reaching that conclusion, we emphasized that District residents did not engage in business transactions with the defendants. Rather, "[a]ccess to an Internet Yellow Page site is akin to searching a telephone book—the consumer pays nothing to use the search tool, and any resulting business transaction is between the consumer and a business found in the Yellow Pages, not between the consumer and the provider of the Yellow Pages."  *GTE*, 199 F.3d at 1350. The "mere accessibility of the defendants' websites," we held, does not "establish[] the necessary 'minimum contacts' with this forum." *Id.*⁵

This case, however, is substantially different from *GTE*. Ameritrade's contact with the District is not limited to an "essentially passive" website through which customers merely access information about the financial markets.  *GTE*, 199 F.3d at 1348; see *supra* note 5. To the contrary, Ameritrade concedes that District residents use its website to engage in electronic transactions with the firm. See Reply Mem. in Supp. of Defs.' Mot. to Dismiss at 6. The firm's customers can open Ameritrade

brokerage accounts online; transmit funds to their accounts electronically; and use those accounts to buy and sell securities, to borrow from Ameritrade on margin, and to pay Ameritrade brokerage commissions and interest. Using e-mail and web-posting, Ameritrade transmits electronic confirmations, monthly account statements, and both financial and product information back to its customers. As a result of their electronic interactions, Ameritrade *513 **236 and its District of Columbia customers enter into binding contracts, the customers become the owners of valuable securities, and Ameritrade obtains valuable revenue.⁶

What may serve best to take the mystery out of the process—and to demonstrate that nothing about the Ameritrade website need alter our traditional approach to personal jurisdiction—is the fact that Ameritrade also offers its customers the alternative of accomplishing virtually all of the above-described transactions by ordinary mail or telephone.⁷ Indeed, if anything, Ameritrade appears susceptible to application of the "doing business" test in a much more literal way than a traditional brokerage firm. Ameritrade's website allows it to engage in real-time transactions with District of Columbia residents while they sit at their home or office computers "in the District of Columbia." And by permitting such transactions to take place 24 hours a day,⁸ the site makes it possible for Ameritrade to have contacts with the District of Columbia that are "continuous and systematic" to a degree that traditional foreign corporations can never even approach.

[12] In short, on the record before this court, it is quite possible that, through its website, Ameritrade is doing business in the District of Columbia by continuously and systematically "enter[ing] into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet."  *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1124 (W.D.Pa.1997) (describing similar websites as ones where the defendant "clearly does business over the Internet," in the context of a case involving specific jurisdiction); see  *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 336 (5th Cir.1999) (adopting the *Zippo* test for assertions of general jurisdiction). Of course, determining whether Ameritrade is actually "doing business" in the District requires an examination of the frequency and volume of the firm's transactions with District residents. But those facts are unavailable

because Gorman was not permitted to undertake discovery. Because the plaintiff has “demonstrate[d] that it can supplement its jurisdictional allegations through discovery, ... jurisdictional discovery is justified” and should have been afforded. [GTE](#), 199 F.3d at 1351; see [El-Fadl](#), 75 F.3d at 676; [Edmond](#), 949 F.2d at 425; [Crane](#), 814 F.2d at 760, 764. Accordingly, were it not for the conclusion of the following Part—that although dismissal on personal jurisdiction grounds was unwarranted, dismissal for insufficient service of process was justified—we would remand the case for jurisdictional discovery.⁹

*514 **237 III

[13] Even if there are sufficient contacts for a court to assert personal jurisdiction over a defendant, it lacks power to do so unless the procedural requirements of effective service of process are satisfied. See [Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.](#), 484 U.S. 97, 104, 108 S.Ct. 404, 98 L.Ed.2d 415 (1987). Federal Rule of Civil Procedure 4(h)(1) provides that a foreign corporation may be served

in a judicial district of the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Subdivision (e)(1), in turn, permits individuals to be served “pursuant to the law of the state in which the district court is located ... for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State.” Gorman contends that

he perfected service of process on Ameritrade in two ways that were consistent with [Rule 4](#).

[14] [15] First, Gorman mailed a copy of the summons and complaint to Ameritrade's corporate headquarters in Omaha, Nebraska. The plaintiff argues that this manner of service was effective because it was “pursuant to the law of the state in which the district court is located.” [Fed.R.Civ.P. 4\(e\)\(1\)](#). Although [Rule 4\(c\)\(4\) of the D.C. Superior Court Rules of Civil Procedure](#) does appear to permit service upon corporations by mail, the District of Columbia Court of Appeals has held that “[Rule 4's](#) general prescription for service of process cannot replace the specific jurisdictional requirement of [D.C.Code § 13–334\(a\)](#) that service be made in the District of Columbia.” [Everett](#), 628 A.2d at 108. Where the basis for obtaining jurisdiction over a foreign corporation is [§ 13–334\(a\)](#), as it is here, a plaintiff who serves the corporation by mail outside the District is “foreclosed from benefitting from [the statute's] jurisdictional protection.” *Id.*; see [Gowens v. Dyncorp](#), 132 F.Supp.2d 38, 42 (D.D.C.2001) (following [Everett](#)).

[16] Second, Gorman served the summons and complaint on the Securities Director of the Public Service Commission of the District of Columbia. This, he contends, constituted service upon an “agent authorized by appointment or by law to receive service of process,” [Fed.R.Civ.P. 4\(h\)\(1\)](#), by virtue of [D.C.Code § 2–2615\(f\)](#). At the time Gorman filed his complaint, that D.C. Code section provided:

Any applicant for a license under this chapter shall file with the Department ... an irrevocable consent appointing the Securities Director ... to receive service of any lawful process in any noncriminal suit ... against him ... which shall arise under this chapter....¹⁰

Although Ameritrade did obtain a securities license in the District, close attention to the wording of [§ 2–2615\(f\)](#) makes clear that it only requires Ameritrade's

consent to receipt of service by the Securities Director in suits “which shall arise under this chapter.” Because the referenced “chapter” includes only the securities laws, *see* [D.C.Code §§ 2–2601 to –2619 \(1981\)](#), and because Gorman's breach of contract complaint is unrelated to any securities transaction, the Director was not an agent ****238 *515** “authorized by appointment or by law to receive service of process” in this case. Accordingly, delivering a copy of the complaint to the Director did not perfect service of process.

[17] Gorman further contends that, even if § 2–2615(f) does not authorize the Securities Director to receive service of process in a case like this, service upon the Director was nonetheless consistent with District of Columbia case law and was therefore “pursuant to the law of the state in which the district court is located” under Federal Rule 4(e)(1). In support, Gorman cites District of Columbia cases that, he claims, stand for the proposition that “service upon a foreign corporation ‘doing business’ in D.C. is valid if it gives reasonable assurance that the defendant would be notified, *even if service is made upon an agent of the corporation otherwise not authorized to accept service.*” Reply Br. at 4 (emphasis added).

Whether or not the above proposition is generally a fair statement of District of Columbia case law, none of the cases cited by Gorman suggests that it is applicable here.

The principal case upon which he relies, [Key v. S.C. Johnson & Son, Inc.](#), 189 A.2d 361 (D.C.1963), does not even support the general proposition. In *Key*, the D.C. Court of Appeals did hold that service of process in a private products liability case was perfected by delivery of a complaint to the defendant's “government liaison officer,” located in the District, who dealt solely with government officials. [189 A.2d at 362](#). But the opinion is silent as to whether the liaison officer was authorized to receive service of process for the company. Similarly inapposite is [Weinstein v. Ajax Distributing Co.](#), 116 A.2d 580 (D.C.1955), in which the court held that process was properly served on a foreign corporation's “location supervisor” when he was present in the District. The court did not hold that such service was permissible regardless of whether the supervisor was authorized to accept it; rather, the court rejected the defendant's claim that the location supervisor was unauthorized and found that the record left “no doubt” that he was present in the District “as agent or representative of defendant company and was

conducting its business.” [116 A.2d at 583](#); *see id.* at 582.

Gorman's best case is [District Grocery Stores, Inc. v. Brunswick Quick Freeze Co.](#), 106 A.2d 134 (D.C.1954), where, in the course of holding that service had been validly made, the Court of Appeals said that “we need not here be concerned with the precise character of the relationship between” the company and the person upon whom process was served. [106 A.2d at 135](#). Indeed, the court declared that “[w]hether, then, the person served with process may be regarded as the agent of the defendant corporation is, in our view, immaterial.” *Id.* (internal alterations and quotation marks omitted). But the scope of the recipient's agency was immaterial in *District Grocery Stores* because it was clear that he “was, at least, conducting the business which ... the defendant was doing in the District of Columbia.” *Id.* (internal quotation marks omitted). And as the court emphasized, the District's “doing business” statute expressly authorizes service upon a foreign corporation's “agent ... or person conducting its business.” *Id.* (quoting D.C.Code § 13–103, the predecessor of the current § 13–334); *see supra* note 1.

In this case, however, it is clear that the recipient of service, the Securities Director of the District of Columbia, is not a person “conducting [the] business” of Ameritrade in the District. Nor is he otherwise a company employee or agent whose authority the company may or may not have circumscribed. Rather, the Securities Director is a government official whose authority ***516 **239** to receive service of process on behalf of Ameritrade is created by, and expressly limited by, the D.C. Code. *See* D.C.Code § 2–2615(f). This court is without power to extend that authority beyond the scope granted by the statute, and no District of Columbia court has ever found service upon such an unauthorized official to be valid against a foreign corporation. Accordingly, we conclude that service upon the Director was ineffective to bring Ameritrade within the jurisdiction of the district court.

Finally, Gorman urges that it would be unfair if a foreign corporation, lawfully subject to the jurisdiction of the District of Columbia because it does business here, could evade that jurisdiction by keeping its agents out of the District and hence beyond the range of effective service of process. If such a loophole does exist, the legislature can, of course, remove it by amending § 13–334 to provide an

alternative method of service. But we are not at all certain that legislative action is required. Section 29–101.99(e)(2) of the D.C.Code, cited by neither party, provides that “[w]henver any foreign corporation does not have an agent for service of process ... the Mayor shall be the agent for service of process for the corporation.”¹¹ Although on its face this section appears to close the loophole identified by Gorman, we need not determine whether service upon the Mayor would have been sufficient to bring Ameritrade within the jurisdiction of the district court because Gorman never attempted to make such service.

[18] Ameritrade is quite wrong in treating “cyberspace” as if it were a kingdom floating in the mysterious ether, immune from the jurisdiction of earthly courts. Nevertheless, in this case Ameritrade is saved from the jurisdiction of the district court by a much more mundane problem: the plaintiff simply failed to serve the corporation properly. For that reason, and for that reason alone, the judgment of the district court is

Affirmed.

All Citations

293 F.3d 506, 352 U.S.App.D.C. 229, 52 Fed.R.Serv.3d 869

IV

Footnotes

1 D.C.Code § 13–334(a) provides:

In an action against a foreign corporation doing business in the District, process may be served on the agent of the corporation or person conducting its business, or, where he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, where there is no such place of business, by leaving a copy at the place of business or residence of the agent in the District, and that service is effectual to bring the corporation before the court.

Although on its face § 13–334(a) appears only to specify proper methods of service, the District of Columbia Court of Appeals has held that compliance with the statute gives rise to personal jurisdiction over a foreign corporation doing

business in the District. *AMAF Int'l Corp.*, 428 A.2d at 850; see *El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 673 n. 7 (D.C.Cir.1996).

2 See generally *Metropolitan Life Ins. Co. v. Robertson–Ceco Corp.*, 84 F.3d 560, 568 (2d Cir.1996) (declaring that “[b]ecause general jurisdiction is not related to the events giving rise to the suit, courts impose a more stringent minimum contacts test” than for specific jurisdiction); 4 WRIGHT & MILLER § 1067.5, at 499–507 (noting that, although “[s]pecific jurisdiction ... may be asserted when the defendant’s forum contacts are isolated or sporadic, but the plaintiff’s cause of action arises out of those contacts with the state,” when “the cause of action sued on does not arise from the defendant’s contacts with the forum state, an assertion of general jurisdiction must be predicated on contacts that are sufficiently continuous and systematic to justify haling the defendant into a court in that state”).

3 Cf. *Burger King Corp.*, 471 U.S. at 476, 105 S.Ct. at 2184 (holding that specific jurisdiction “may not be avoided merely because the defendant did not *physically* enter the forum State,” since “it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted”); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292–93, 294, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) (noting that the “limits imposed on state jurisdiction by the Due Process Clause ... have been substantially relaxed over the years ... largely attributable to a fundamental transformation in the American economy,” and that “[a]s technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase” (quoting *Hanson v. Denckla*, 357 U.S. 235, 250–51, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958))); *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222–23, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957) (noting a trend “expanding the permissible scope of state jurisdiction over foreign corporations ... [i]n part ... attributable to the fundamental transformation of our national economy over the years,” including a “great increase in the amount of business conducted by mail across state lines”).

- 4 See [Metropolitan Life Ins. Co.](#), 84 F.3d at 572 (noting that a defendant's mail-order sales to forum residents may satisfy the "continuous and systematic" standard (citing [Sollinger v. Nasco Int'l, Inc.](#), 655 F.Supp. 1385 (D.Vt.1987))); [Michigan Nat'l Bank v. Quality Dinette, Inc.](#), 888 F.2d 462, 466 (6th Cir.1989) (holding that, inter alia, appellees' "mail order solicitations of Michigan businesses," and the fact that they "made at least one sale in Michigan each and every month" for two years, "indicate that appellees have conducted a 'continuous and systematic part of their general business' in Michigan ... thereby warranting general personal jurisdiction"); cf. [Quill Corp. v. North Dakota](#), 504 U.S. 298, 308, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992) (holding that "[i]n 'modern commercial life' it matters little that ... solicitation is accomplished by a deluge of catalogs rather than a phalanx of drummers," that the "requirements of due process are met irrespective of a corporation's lack of physical presence in the taxing State," and that due process therefore permits "the imposition of [a] collection duty on a mail-order house that is engaged in continuous and widespread solicitation of business within a State"); [McGee](#), 355 U.S. at 223, 78 S.Ct. at 201 (basing a finding of specific jurisdiction on the mailing of an insurance contract into the state and the mailing of premiums from the state); [Travelers Health Ass'n v. Virginia](#), 339 U.S. 643, 648, 70 S.Ct. 927, 94 L.Ed. 1154 (1950) (holding that an Omaha mail-order company, with no physical presence in Virginia, was subject to Virginia regulation because it "did not engage in mere isolated or short-lived transactions[;] [i]ts insurance certificates, systematically and widely delivered in Virginia ..., create continuing obligations between the Association and each of the many certificate holders in the state"); [Neogen Corp. v. Neo Gen Screening, Inc.](#), 282 F.3d 883, 892 (6th Cir.2002) (holding that a defendant's "contact with Michigan customers through the mail and the wires," where it "constitute[d] the doing of business there, rather than simply the exchange of information," rendered the assertion of specific jurisdiction consistent with due process); [Neal v. Janssen](#), 270 F.3d 328, 332 (6th Cir.2001) (holding that "making phone calls and sending facsimiles into the forum" may be sufficient to confer specific jurisdiction); [Oriental Trading Co. v. Firetti](#), 236 F.3d 938, 943 (8th Cir.2001) (same).
- 5 In *GTE*, we described Internet cases in which other courts of appeals had dismissed complaints for lack of specific jurisdiction as also involving "essentially passive" sites. See [GTE](#), 199 F.3d at 1348 (describing [Cybersell, Inc. v. Cybersell, Inc.](#), 130 F.3d 414, 419–20 (9th Cir.1997), as finding that an Arizona court lacked personal jurisdiction over a Florida corporation where the corporation's website "was essentially passive," where the defendant did not encourage Arizona residents to access the site, and where there was no evidence that any part of the defendant's business was sought or achieved in Arizona or that any Arizona resident other than the plaintiff had ever visited the site); *id.* (citing [Bensusan Restaurant Corp. v. King](#), 126 F.3d 25, 29 (2d Cir.1997), as holding that New York's long-arm statute did not extend to the operator of a Missouri jazz club whose website merely had a hyperlink to a New York club of the same name); *id.* (quoting [Mink v. AAAA Dev. LLC](#), 190 F.3d 333, 337 (5th Cir.1999), as declining to find jurisdiction where the defendant's website was accessible to forum residents, but where "[t]here was no evidence that [the defendant] conducted business over the Internet by engaging in business transactions with forum residents or by entering into contracts over the Internet"); see also [Soma Med. Int'l v. Standard Chartered Bank](#), 196 F.3d 1292, 1297 (10th Cir.1999) (holding that a "passive" website that merely makes information "available" is insufficient to confer general jurisdiction); [Bancroft & Masters, Inc. v. Augusta Nat'l Inc.](#), 223 F.3d 1082, 1086 (9th Cir.2000) (same).
- 6 See http://www.ameritrade.com/tell_me_more/tell_me_more.fhtml; http://www.ameritrade.com/getting_started/html/apply_online.html; http://www.ameritrade.com/getting_started/html/fund_account.html; http://www.ameritrade.com/getting_started/html/login.html; http://www.ameritrade.com/getting_started/forms/ATI_845_F.pdf; http://www.ameritrade.com/getting_started/html/tc.html (form contract at ¶¶ 26, 37, 38).
- 7 See http://www.ameritrade.com/getting_started/html/apply_online.html; http://www.ameritrade.com/getting_started/html/check.html; http://www.ameritrade.com/getting_started/html/login.html.
- 8 See http://www.ameritrade.com/services/ways_trade.fhtml.
- 9 Because we affirm dismissal on other grounds, we need not consider whether, in general jurisdiction cases, due process requires not only that the defendant have "continuous and systematic" contacts with the forum, but also that the assertion of personal jurisdiction be "reasonable." [Compare Metropolitan Life Ins. Co.](#), 84 F.3d at 567–69, with [id.](#) at 576–78 (Walker, J., dissenting).

- 10 Section 2–2615 was subsequently recodified as § 3–3615, and then repealed. See Securities Act of 2000, § 804, 47 D.C. Reg. 7837, 7886 [47 D.C. Reg. 7837, 7886](#).
- 11 The section further provides that “[i]n the event of service to the Mayor, the Mayor shall immediately cause one of the copies to be forwarded by certified or registered mail, addressed to the foreign corporation at its principal office or at its last known address.” D.C.Code § 29–101.99(e)(2); see *also id.* § 29–101.108.