

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

LODSYS, LLC,

Defendant.

Civil Action No. 11-cv-4004

The Hon. Ronald A. Guzman

JURY TRIAL DEMANDED

DEFENDANT'S AMENDED MOTION TO DISMISS

On July 5, 2011, in response to the New York Times Company's declaratory judgment complaint, Defendant Lodsys moved to dismiss based on a lack of personal jurisdiction. With its motion, it also filed a memorandum of law in support of that motion. The motion itself set forth the relief requested and incorporated by reference the memorandum of law.

On July 7, 2011, Judge Norgle, to whom this case was originally assigned, *sua sponte* struck Lodsys's motion, the stated grounds for striking the motion were failing to specify a ground for relief and failing to specify a Federal Rule of Civil Procedure as the basis for relief. Judge Norgle granted Lodsys until July 22, 2011 to file an amended motion. The memorandum in support was not struck.

On July 12, 2011, in response to the New York Times Company's motion for reassignment based on relatedness, the Executive Committee of this Court reassigned this matter to Judge Guzman.

Pursuant to the Court's order of July 7, 2011 (Dkt. No. 11), Defendant Lodsys therefore files this amended motion to dismiss. This motion relies on the memorandum in support which was filed on July 5, 2011 (Doc. No. 6). The bases for this motion remain unchanged.

Defendant moves this Court for dismissal of the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(2) and (3), as Defendant has no contacts with the State of Illinois or this Judicial District that could constitute a basis for personal jurisdiction or for venue. Plaintiff New York Times Company's statements that Defendant's CEO resides in and conducts business from this Judicial District are misplaced, as Defendant's CEO lives and works in Wisconsin. Defendant itself is located in Texas, not this Judicial District.

Further, Defendant moves this Court to dismiss this action based on its own discretion to decline to hear declaratory judgment actions, in favor of the pending lawsuit in Texas, where Defendant is subject to personal jurisdiction and where venue is proper.

Therefore, Defendant Lodsys, LLC respectfully moves this Court for an order dismissing Plaintiff New York Times Company's Complaint For Declaratory Judgment [Dkt. No. 1] (the "Complaint"). In support of its motion, Defendant states that for the reasons set forth above and in detail in Defendant's accompanying memorandum of law, that Plaintiff's Complaint should be dismissed.

Wherefore, Defendant respectfully requests that the Court grant its motion and dismiss the Complaint.

Dated: July 21, 2011

Respectfully Submitted,

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Attorneys for Defendant Lodsys, LLC

CERTIFICATE OF SERVICE

The undersigned attorney of record certifies that service of the foregoing document has been made on July 21, 2011, via the Court's CM/ECF system based on its electronic filing, under Local Rules 5.5(a)(3) and General Order 09-014 Section X.E. In this manner, service has been made on all attorneys of record in this case.

/s/ Michael R. La Porte
Michael R. La Porte