

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ECOTECHTURE, INC.,)	
)	
Plaintiff)	
)	
v.)	Civil No. 99-387-P-C
)	
PHILIP WENZ (d/b/a ECOTECHTURE)	
DESIGN AND PUBLICATIONS),)	
)	
Defendant)	

**MEMORANDUM DECISION ON PLAINTIFF’S MOTION TO STRIKE
AND RECOMMENDED DECISION ON DEFENDANT’S MOTION
TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Defendant Philip Wenz d/b/a Ecotechure Design and Publications moves to dismiss the instant trademark-infringement action pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction or, alternatively, for its dismissal or transfer based on improper venue. Defendant, Philip Wenz’s Motion To Dismiss All Counts of the Complaint for Lack of Personal Jurisdiction or, In the Alternative, To Dismiss or Transfer This Action Due to Improper Venue (“Motion To Dismiss”) (Docket No. 5). Plaintiff Ecotechure, Inc. (“Ecotechure”) responds *inter alia* with a motion to strike the Motion To Dismiss as untimely filed. Motion To Strike Defendant’s Motion To Dismiss (“Motion To Strike”) (Docket No. 10). For the reasons discussed below, I deny the Motion To Strike and recommend that the Motion To Dismiss be granted.

I. Motion To Strike

Ecotechure as a threshold matter urges the court to strike the Motion To Dismiss as untimely

filed. *Id.* at 1. Federal Rule of Civil Procedure 12(b) requires that “[a] motion making any of these [Rule 12(b)] defenses shall be made before pleading if a further pleading is permitted.” Wenz filed his answer on March 1, 2000; the Motion To Dismiss followed on March 7, 2000. Answer (Docket No. 3) at 1; Motion To Dismiss at 1.

Wenz protests that district courts in the First Circuit have permitted such late-filed motions when, as is the case here, the defenses at issue were set forth in the answer. Defendant, Philip Wenz’s Memorandum in Opposition to Plaintiff’s Motion To Strike Philip Wenz’s Motion To Dismiss (Docket No. 13) at 2; *see also* Answer at [3]-[4] (first and eleventh defenses). This line of cases is in Ecotecture’s view distinguishable inasmuch as all involved motions to dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Reply Memorandum in Support of Plaintiff’s Motion To Strike Defendant’s Motion To Dismiss (Docket No. 15) at 1-2. Ecotecture observes that the defense of failure to state a claim (unlike those of lack of personal jurisdiction or improper venue) is specifically preserved by virtue of Fed. R. Civ. P. 12(h)(2) and may be brought at any time in a motion for judgment on the pleadings. *Id.* at 2.

The cases upon which Wenz relies do indeed happen to involve Rule 12(b)(6), but they neither state nor imply that such relief is inappropriate in the context of other Rule 12(b) motions. *See Tobin v. University of Maine Sys.*, 59 F.Supp.2d 87, 89 (D. Me. 1999) (permitting late-filed motion because defense raised in answer); *Temple v. Inhabitants of Belfast*, 30 F.Supp.2d 60, 63 (D. Me. 1998) (same); *Gerakaris v. Champagne*, 913 F.Supp. 646, 650-51 (D. Mass. 1996) (same).¹ I

¹Ecotecture cites *Roy v. Runyon*, 954 F.Supp. 368, 380 n.14 (D. Me. 1997), for the proposition that a Rule 12(b) motion is untimely if filed after a defendant answers a complaint. *Roy*’s conclusion that a defendant who has already answered may move for judgment on the pleadings pursuant to Rule 12(h)(2) is not inconsistent with holdings that if the defense at issue is (continued...)

see no principled basis for differentiating among the seven enumerated Rule 12(b) motions in this regard. All seven defenses may be raised by motion at the option of the defendant, *see* Fed. R. Civ. P. 12(b); all, whether raised in a pleading or by motion, may be heard and determined before trial, *see* Fed. R. Civ. P. 12(d), and even the four waivable defenses — which include the two at issue here — are not waived if *inter alia* they are included in a responsive pleading, *see* Fed. R. Civ. P. 12(h)(1). *See also* *Royal Globe Ins. Co. v. Logicon, Inc.*, 487 F.Supp. 1245, 1247 n.6 (N.D. Ill. 1980) (entertaining motion to dismiss for lack of jurisdiction over the person when defense earlier raised in answer); *Majerus v. Walk*, 275 F. Supp. 952, 954-55 (D. Minn. 1967) (same); 5A C. Wright & A. Miller, *Federal Practice and Procedure* § 1361 at 445-46 (2d ed. 1990) (“courts have allowed untimely motions if the defense has been previously included in the answer.”).

Inasmuch as Wenz incorporated both his Rule 12(b)(2) and 12(b)(3) defenses in his answer, I deny the Motion To Strike and proceed to the merits of the Motion To Dismiss.

II. Motion To Dismiss

A. Applicable Legal Standards

A motion to dismiss for lack of personal jurisdiction raises the question whether a defendant has “purposefully established minimum contacts in the forum State.” *Hancock v. Delta Air Lines, Inc.*, 793 F. Supp. 366, 367 (D. Me. 1992) (citation and internal quotation marks omitted). The plaintiff bears the burden of establishing jurisdiction; however, where (as here) the court rules on a Rule 12(b)(2) motion without holding an evidentiary hearing, a *prima facie* showing suffices. *Archibald v. Archibald*, 826 F. Supp. 26, 28 (D. Me. 1993). Such a showing requires more than

¹(...continued)
included in the answer, a post-answer Rule 12(b) motion may be entertained.

mere reference to unsupported allegations in the plaintiff's pleadings. *Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 675 (1st Cir. 1992). However, for purposes of considering a Rule 12(b)(2) motion the court will accept properly supported proffers of evidence as true. *Id.*²

B. Factual Background

The following facts, with conflicts resolved in favor of the plaintiff's properly supported proffers of evidence, are material to consideration of the pending motion.

Wenz, a resident of the state of California, owns and operates the businesses Ecotecture Designs & Construction and Ecotecture Design and Publications in El Cerrito, California. Declaration of Philip Wenz ("Wenz Decl.") (Docket No. 6) ¶¶ 1, 4. He has on only one occasion, on a weekend in 1967, physically visited the State of Maine. *Id.* ¶ 2. This single visit, which occurred approximately twenty-five years before either party began using the mark "ecotecture," was

²Ecotecture, explaining that it has not had the opportunity to conduct relevant discovery, relies in part on the drawing of two negative inferences from Wenz's initial submissions — that Wenz had Maine subscribers and that he sent e-mails to Maine. *See* Plaintiff's Opposition to Defendant's Motion To Dismiss or Transfer ("Dismiss Opposition") (Docket No. 11) at 4. Wenz denies both assertions. *See* Second Declaration of Philip Wenz ("Second Wenz Decl."), attached to Defendant, Philip Wenz's Reply to Plaintiff's Opposition to Mr. Wenz's Motion To Dismiss (Docket No. 14), ¶¶ 11, 15. A negative inference, even if unrebutted, plainly does not suffice to meet a plaintiff's burden of making a *prima facie* showing of personal jurisdiction. *See, e.g., Boit*, 967 F.2d at 675 ("It has long been the rule of this circuit . . . that plaintiffs may not rely on unsupported allegations in their pleadings to make a *prima facie* showing of personal jurisdiction."). Ecotecture tacitly acknowledges as much, requesting that, should the court find the record insufficient to support the exercise of personal jurisdiction, it allow limited discovery followed by an evidentiary hearing. *Dismiss Opposition* at 14. The question of whether to defer consideration of a motion to permit the taking of jurisdictional discovery is consigned to the court's discretion. *Noonan v. Winston Co.*, 135 F.3d 85, 95 (1st Cir. 1998). I discern no basis for such a deferral in these circumstances. Wenz's second declaration appears to cover the relevant issues, Wenz presumably would maintain a consistent factual posture were discovery initiatives aimed toward him, and there is no basis for indulging what amounts to speculation on the part of Ecotecture that unspecified additional discovery might turn up other relevant contacts in Maine. Therefore, the motion is appropriately decided on the record as it now stands.

for purposes of a vacation. *Id.* Wenz has continuously and consistently used the term “ecotecture” as a trademark since at least as early as 1992 in conjunction with his businesses’ construction and design work, teaching and course development, and publishing. *Id.* ¶ 3.

Wenz maintains an internet web site at <http://www.ecotecture.com> (the “Web Site”) from California. *Id.* ¶ 5. He registered the worldwide web domain name “www.ecotecture.com” with Internic on July 25, 1996. *Id.* From 1996 until October 1998 nothing was published on the Web Site. *Id.* From October 1998 to October 1999 only his business card was published there. *Id.*

Commencing in October 1999, Wenz began publishing information on the Web Site on the art and science of designing human systems that are integrated with natural ecosystems. *Id.* ¶¶ 5-6. He also began publishing a quarterly web magazine, The Online Journal of Ecological Design (the “Journal”), accessible through the Web Site. *Id.* ¶ 7. He does not sell the Journal, which is distributed freely to users who register as subscribers by submitting their names and e-mail addresses. *Id.* ¶ 8. In registering, a subscriber may also fill in additional optional fields seeking such information as address, telephone number, profession, gender and age. *See* Free Subscription Order Form (“Order Form”), attached as Exh. 3 to Unsworn Declaration of Sherrie Kaminsky³ (“Kaminsky Decl.”) (Docket No. 12). Registered subscribers periodically receive electronic messages announcing the release of a new issue. Wenz Decl. ¶ 8. Wenz has no way of determining the geographic origin of subscribers who submit only a name and e-mail address. Second Wenz Decl. ¶ 11. Based on information provided by subscribers to the Journal as of the date of filing of the Complaint, no information indicated that any subscriber was a resident of Maine. *Id.*

³Inasmuch as Kaminsky declares under penalty of perjury that the facts asserted in her declaration are true and correct, Kaminsky Decl. at 4, it is the equivalent of a sworn declaration. 28 U.S.C. § 1746.

Those subscribing to the Journal are directed to read a subscriber agreement and privacy policy. *See* Order Form. The subscriber agreement provides in relevant part:

1.1 If you choose to use the ecoTECTURE.com online magazine (the “Magazine”), you will be agreeing to abide by all of the terms and conditions of this Agreement between you and Ecotecture Design & Publications (the “Magazine”).

1.3 IF ANY OF THESE RULES OR ANY FUTURE CHANGES ARE UNACCEPTABLE TO YOU, YOU MAY CANCEL YOUR SUBSCRIPTION BY SENDING A MESSAGE TO cancel@ecotecture.com. YOUR CONTINUED USE OF THE MAGAZINE NOW, OR FOLLOWING THE POSTING OF NOTICE OF ANY CHANGES IN THESE OPERATING RULES, WILL INDICATE ACCEPTANCE BY YOU OF SUCH RULES, CHANGES, OR MODIFICATIONS.

6.1 Ecotecture Design & Publications reserves the right at any time to charge fees for access to portions of the Magazine or the Magazine as a whole. However, in no event will you be charged for access to the Magazine unless we obtain your prior agreement to pay such charges. . . .

7.3 Ecotecture Design & Publications reserves the right to disclose information about your usage and demographics, provided that it will not reveal your personal identity in connection with the disclosure of such information. Advertisers and/or Licensees on our website may collect and share information about you only if you indicate your acceptance. . . .

10.1 This Agreement has been made in and shall be construed and enforced in accordance with local law.

Subscriber Agreement, attached as Exh. 4 to Kaminsky Decl.

Wenz has received no revenue in relation to sales of advertising based on selling subscriber information to advertisers. Second Wenz Decl. ¶ 16. As of December 30, 1999, the date of the

filing of the Complaint, there were no advertising banners on the Web Site. *Id.*

The Web Site also includes a “bookstore” section featuring thumbnail sketches of selected books concerning general environmental architectural designs. Wenz Decl. ¶ 10-11. Wenz does not sell these books or other products from the Web Site. *Id.* ¶ 10. Persons interested in any listed book may use an internet “hyperlink” to navigate to an online bookstore, “www.Amazon.com,” where the individual may then, and only then, purchase the book. *Id.* ¶ 11. Users are not required to access the Web Site again to purchase the book once they link to the Amazon.com web site. *Id.* Ecotecture Design and Publications does receive a small fee for books listed on the Web Site that are sold by Amazon.com. *Id.* ¶ 12. From October 1999 until December 30, 1999 only three books listed on the Web Site were sold by Amazon.com, and none were purchased by Maine residents. *Id.* Fees payable by Amazon.com for the sale of those books total \$2.71, and Wenz will not be paid until the amount payable reaches \$50.00. *Id.*

The Web Site also includes information about Wenz’s consulting services, consisting of an informational page outlining his capabilities and experience in ecological design. *Id.* ¶ 13. No pricing or specific business descriptive information is provided. *Id.* This portion of the Web Site enables an interested user to initiate an e-mail message to Wenz to inquire further about his experience in ecological design, consultation capabilities, project planning services or educational lectures. *Id.* ¶ 14. Wenz has sent no e-mails to anyone in the State of Maine promoting his experience, capabilities or services. Second Wenz Decl. ¶ 15.

Sherrie Kaminsky is the president of Ecotecture, a Maine-based business that she formed in 1994. Kaminsky Decl. ¶¶ 1-2. She personally coined the word “ecotecture” and had not until recently heard of anyone else using the word for any purpose. *Id.* ¶ 2. Ecotecture obtained a federal

registration for the trademark “Ecotecture.” *Id.* ¶ 3. Subsequently, Kaminsky learned that Wenz had registered the internet domain name “www.ecotecture.com.” *Id.* ¶ 4. She then contacted Wenz to discuss his infringement of the trademark. *Id.* ¶ 5. Wenz refused to cease his use of the name. *Id.* ¶ 8. Ecotecture filed suit in this case on December 30, 1999, alleging (i) trademark infringement in violation of the Lanham Act and state law, (ii) “passing off” in violation of the Lanham Act and (iii) violation of the Maine Deceptive Trade Practices Act. Complaint (Docket No. 1).

Kaminsky has accessed the Web Site on many occasions from her computer in Maine. Kaminsky Decl. ¶ 9. She noted that Wenz advertised a book he had written, *Adding to a House*, on the Web Site, went to a Borders bookstore in South Portland, Maine, and purchased the book. *Id.* ¶¶ 10-11.

C. Discussion

In federal-question cases, a plaintiff must prove both that the exercise of personal jurisdiction comports with Fifth Amendment due process and that the defendant is amenable to service of process. *See, e.g., United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1085 (1st Cir. 1992); *LFG, LLC v. Zapata Corp.*, 78 F.Supp.2d 731, 734 (N.D. Ill. 1999). As a matter of Fifth Amendment due process, a defendant in a federal-question action must have sufficient contacts with the United States as a whole; such is the case if (as here) the defendant resides or conducts business in America. *See, e.g., Zapata*, 78 F.Supp.2d at 735. However, the defendant must also be amenable to service of process, which is authorized pursuant to Fed. R. Civ. P. 4(k)(1) if *inter alia* (i) the defendant could be subjected to the jurisdiction of a court in the state in which the district court is located or (ii) when authorized by a federal statute. *See, e.g., id.* Ecotecture bottoms its case on the Lanham Act, *see* Complaint ¶ 5, which does not authorize

nationwide service of process. *See, e.g., Zapata*, 78 F.Supp.2d at 735. Accordingly, Maine’s long-arm statute governs. *See, e.g., id.; Casco Standards v. Verichem Labs., Inc.*, 725 F.Supp. 66, 68 (D. Me. 1989) (applying Maine long-arm statute in Lanham Act case).

Maine’s long-arm statute, 14 M.R.S.A. § 704-A, expressly directs courts to construe it in a manner that creates personal jurisdiction to the fullest extent permitted by the due-process clause of the Fourteenth Amendment. *Boit*, 967 F.2d at 679. Personal jurisdiction must in turn be premised on one of two theories: specific or general jurisdiction. *Foster-Miller, Inc. v. Babcock & Wilcox Canada*, 46 F.3d 138, 144 (1st Cir. 1995).

Ecotecture asserts that for purposes of this case the court has specific personal jurisdiction over Wenz. Dismiss Opposition at 6. Specific jurisdiction is based on a relationship between the forum and the particular acts or injuries that provide the basis for the action, that is, “where the cause of action arises directly out of, or relates to, the defendant’s forum-based contacts.” *163 Pleasant St.*, 960 F.2d at 1088-89. The appropriateness of the exercise of specific jurisdiction is judged by the following test:

First, the claim underlying the litigation must directly arise out of, or relate to, the defendant’s forum-state activities. Second, the defendant’s in-state contacts must represent a purposeful avilment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state’s laws and making the defendant’s involuntary presence before the state’s courts foreseeable. Third, the exercise of jurisdiction must, in light of the Gestalt factors, be reasonable.

163 Pleasant St., 960 F.2d at 1089. The “Gestalt factors” comprise

(1) the defendant’s burden of appearing, (2) the forum state’s interest in adjudicating the dispute, (3) the plaintiff’s interest in obtaining convenient and effective relief, (4) the judicial system’s interest in obtaining the most effective resolution of the controversy, and (5) the common interests of all sovereigns in promoting substantive social policies.

Id. at 1088. Jurisdiction must be established with reference to events up to and including the date of filing of the complaint. *See, e.g., Noonan*, 135 F.3d at 95.

The gravamen of Ecotecture’s complaint against Wenz is that “defendant has used the ‘Ecotecture’ Mark in Maine by selling magazines and books under that name in Maine, by making his Internet web site at ‘www.ecotecture.com’ available in Maine, and by other means.” Complaint ¶ 13. The record is devoid of evidence that Wenz has sold either magazines or books under the name “ecotecture” in Maine.⁴ However, the Web Site, which is accessible to computer users in Maine, contains usages of the allegedly infringing mark. Assuming *arguendo* that this comprises a sufficient nexus between Ecotecture’s claim and Wenz’s forum-state activities, Ecotecture nonetheless stumbles at the second gate: purposeful availment.

Inasmuch as appears, the First Circuit has yet to have confronted a question of the sufficiency of cyberspace contacts to confer personal jurisdiction. However, courts in other jurisdictions have conceptualized a three-stage model of levels of internet activity:

At the one end of the spectrum, there are situations where a defendant clearly does business over the Internet by entering into contracts with residents of other states which involve the knowing and repeated transmission of computer files over the Internet In this situation, personal jurisdiction is proper. . . . At the other end of the spectrum, there are situations where a defendant merely establishes a passive website that does nothing more than advertise on the Internet. With passive websites, personal jurisdiction is not appropriate. . . . In the middle of the spectrum, there are situations where a defendant has a website that allows a user to exchange information with a host computer. In this middle ground, the exercise of jurisdiction is determined by the level of interactivity and commercial nature of the exchange of information that occurs on the Website.

Mink v. AAAA Dev. LLC, 190 F.3d 333, 336 (5th Cir. 1999) (citations and internal quotation marks

⁴None of the page excerpts from Wenz’s book *Adding to a House*, which Kaminsky purchased in South Portland, Maine, includes the word “ecotecture.” *See* Exh. 1 to Kaminsky Decl.

omitted). In this case, Wenz envisions himself as residing on the “passive” end of the spectrum; Ecotecture argues for his classification at the opposite end by virtue of his agreements with subscribers to the Journal. *See* Memorandum of Law in Support of Defendant, Philip Wenz’s Motion To Dismiss all Counts of the Complaint for Lack of Personal Jurisdiction, etc. (Docket No. 5) at 12-13; Dismiss Opposition at 9-10. In my view, Wenz is more appropriately placed in the middle, albeit closer to the “passive” end.

The Web Site has two noteworthy interactive elements: the ability to e-mail Wenz and the ability to subscribe to the Journal.⁵ The ability to send or receive e-mails is not in itself evidence of the transaction of purposeful commercial activity. *See, e.g., Mink*, 190 F.3d at 337; *Blackburn v. Walker Oriental Rug Galleries, Inc.*, 999 F.Supp. 636, 639 (E.D. Pa. 1998). Nor is there any evidence that in this case e-mail has been used to transact business in the state of Maine. To the contrary, Wenz avers that he has not sent e-mails to anyone in Maine promoting his experience,

⁵The Web Site’s hyperlink to Amazon.com cannot fairly be described as an interactive link between a user and a host site inasmuch as it entails instead the potential exchange of information between the user and a third party (Amazon.com). However, the Web Site’s “bookstore” section arguably constitutes more than a mere passive advertisement inasmuch as Wenz receives a small commission for each book sold as a result of usage of the hyperlink. *See Zapata*, 78 F.Supp.2d at 736 & n.7 (noting that, although defendants’ planned “portal” service of linking subscribers to other web sites did not fall within existing internet/personal jurisdiction framework, it could not properly be considered “passive” inasmuch as defendants intended to generate revenue from advertisers by attracting subscribers). The record nonetheless reveals that none of the three books sold via the hyperlink through the date of the Complaint was purchased by a Maine resident. Ecotecture adduces evidence that its president, Kaminsky, bought a Wenz book at a Maine bookstore after seeing it advertised on the Web Site. However, such a plaintiff-initiated contact cannot serve to establish the appropriateness of personal jurisdiction over a defendant. *See, e.g., Maritz, Inc. v. CyberGold, Inc.*, 947 F.Supp. 1328, 1333 n.4 (E.D. Mo. 1996) (disregarding 180 occasions on which plaintiff had accessed defendant’s web site; noting that “[i]f such contacts were to be considered, a plaintiff could always try to create personal jurisdiction.”).

capabilities or services.

Turning next to the Journal, Ecotecture contends that Wenz regularly enters into contracts via the Web Site by virtue of the existence of the subscriber agreement governing the relationship between Wenz and those who choose to subscribe to the Journal. Dismiss Opposition at 9-10. Even assuming *arguendo* that the formation of such contracts could constitute purposeful availment of the benefits of a forum, the record is devoid of evidence that anyone in Maine has at any relevant time entered into such a contract with Wenz. Web Site users wishing to subscribe to the Journal must enter only a name and e-mail address; a response to other questions (including mailing address) is optional. Wenz avers that he has no way of determining the geographic origin of users who submit only a name and e-mail address in subscribing to the Journal and that, as of the date of the filing of the Complaint, no information indicated that any subscriber was a resident of Maine.

Inasmuch as Ecotecture fails to demonstrate that Wenz purposefully availed himself of the opportunity to conduct business in Maine, there is no need to determine whether it would be reasonable in view of the Gestalt factors for Wenz to be called upon to defend himself in this forum. *See, e.g., Sawtelle v. Farrell*, 70 F.3d 1381, 1394 (1st Cir. 1995) (“a failure to demonstrate the necessary minimum contacts eliminates the need even to reach the issue of reasonableness”). Ecotecture fails to carry its burden of making a *prima facie* case of the appropriateness of personal jurisdiction.⁶

III. Conclusion

For the foregoing reasons, I find that the Motion To Strike should be, and it hereby is,

⁶Inasmuch as I recommend the grant of the Motion To Dismiss on personal-jurisdiction grounds, I do not consider Wenz’s alternative requested relief premised on improper venue.

DENIED, and I recommend that the Motion To Dismiss be **GRANTED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 16th day of May, 2000.

*David M. Cohen
United States Magistrate Judge*

STNDRD
U.S. District Court District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 99-CV-387
ECOTECHTURE INC v. WENZ
Filed: 12/30/99
Assigned to: JUDGE GENE CARTER
Demand: \$0,000
Nature of Suit: 840
Lead Docket: None
Jurisdiction: Federal Question
Dkt# in other court: None
Cause: 15:44 Trademark Infringement
ECOTECHTURE INC
TODD S. HOLBROOK, ESQ. plaintiff [COR LD NTC]
BERNSTEIN, SHUR, SAWYER, & NELSON
100 MIDDLE STREET
P.O. BOX 9729
PORTLAND, ME 04104-5029

207-774-1200

v.

PHILIP WENZ dba ECOTECHTURE DESIGN AND PUBLICATIONS

JOHN A. CIRALDO defendant [COR LD NTC]

PERKINS, THOMPSON, HINCKLEY & KEDDY

ONE CANAL PLAZA

P. O. BOX 426 DTS

PORTLAND, ME 04112

774-2635

STEPHEN R. RISLEY, ESQ. [COR LD NTC]

NORMAN A. CRAIN, ESQ. [COR LD]

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP

100 GALLERIA PARKWAY SUITE 1750

ATLANTA, GA 30339

770/933-9500