

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

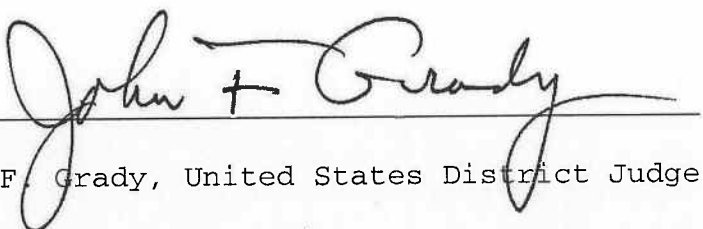
THOMAS DART, SHERIFF OF COOK COUNTY)	
)	
Plaintiff,)	
)	
v.)	No. 09 C 1385
)	
CRAIGSLIST, INC.,)	
)	
Defendant.)	

JUDGMENT ORDER

For the reasons explained in this court's memorandum opinion of this date, final judgment is hereby entered in favor of defendant CRAIGSLIST, INC. and against plaintiff THOMAS DART, SHERIFF OF COOK COUNTY.

DATE: October 20, 2009

ENTER:



John F. Grady, United States District Judge

09-1385.091-RSK

October 20, 2009

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

THOMAS DART, SHERIFF OF COOK)	
COUNTY)	
)	
Plaintiff,)	
)	
v.)	No. 09 C 1385
)	
CRAIGSLIST, INC.)	
)	
Defendant.)	

MEMORANDUM OPINION

Before the court is defendant Craigslist, Inc.'s motion for judgment on the pleadings. We grant the motion for the reasons explained below.

BACKGROUND & PROCEDURAL HISTORY

In this diversity action Plaintiff Thomas Dart, the Sheriff of Cook County, Illinois, alleges that the "erotic" (now "adult") services section of Craigslist's popular Internet classifieds service facilitates prostitution and constitutes a public nuisance. (Compl. ¶ 1; id. at ¶ 5 (alleging that the parties are diverse and that the amount in controversy exceeds \$75,000).) Craigslist's users create and post "over thirty million new classified advertisements each month" for, among other things, "jobs, housing, dating, used items, and community information." (Id. at ¶¶ 11, 14.) Craigslist's website, which displays the ads, is viewed over

- 2 -

nine billion times each month. (Id. at ¶ 15.) The webpage located at "chicago.craigslist.org," one of many region-specific webpages on Craigslist's website, displays Chicago-related listings arranged by categories (e.g., "for sale" and "services") and subcategories (e.g., "antiques" and "computer"). (Id. at ¶¶ 11, 25; see also id. at Ex. A (screenshot of the webpage at "chicago.craigslist.org").) Craigslist created the categories, but its users create the content of the ads and select which categories their ads will appear in. (Id. at ¶ 11, Exs. A & B; see also Def.'s Mem. at 2.) Users posting ads on the website agree to abide by Craigslist's "Terms of Use," which prohibit posting unlawful content. (Compl. at Ex. A (screenshot of "chicago.craigslist.org" with a link to Craigslist's Terms of Use); Answer ¶ 18.)¹ Users browsing the "erotic" subcategory – which is (or was) the website's most popular destination – receive an additional "warning & disclaimer" stating that users entering that section agree to "flag 'prohibited'" any content that violates Craigslist's Terms of Use including "offers

^{1/} "By using the Service in any way, you are agreeing to comply with the [Terms of Use]. . . . You agree not to post, email, or otherwise make available Content: a) that is unlawful, harmful, threatening, abusive, harassing, defamatory, libelous, invasive of another's privacy, or is harmful to minors in any way." (Terms of Use, attached as Ex. 1 to Def.'s Answer, at ¶¶ 1 & 7(a).) "Content" includes "all postings, messages, text, files, images, photos, video, sounds, or other materials." (Id. at ¶ 3.)

- 3 -

for or the solicitation of prostitution." (Id. at ¶ 35, Ex. C.) Below the warning is a general "erotic services" link, and links to further subcategories (e.g., "w4m" (women for men)). (Id. at Ex. C.) Craigslist also gives users the option to search through ads using a word-search function. (Id. at ¶ 26.)

Sheriff Dart alleges that, notwithstanding Craigslist's warnings, users routinely post advertisements in the erotic-services category "openly promis[ing] sex for money." (Id. at ¶ 17.) Based on the samples that he cites in his complaint most of the ads are veiled (sometimes very thinly) using code words. He alleges, for example, that "roses" mean dollars and "greek" refers to anal sex. (Id. at ¶ 30.) One advertisement states: "15 Min \$50 Roses . . . 1hour \$150 Roses" - so much for the code - and "How About A G-R-E-E-K Lesson I'm A Great Student!!" (Id. at ¶ 32.)² Other sample advertisements are more ambiguous. (Pl.'s Resp. at Ex. 2 ("HELLO GENTELMEN NOW YOU MEET JADE AND TIPHANY WE DO TWO GIRL SHOWS AND INDIVISUAL CALLS!! WE GARAUNTEE THE TIME OF YOUR LIFE!!!") (spelling errors in the original).) Many of the ads

^{2/} Spelling variations, like the hyphens in "G-R-E-E-K," are apparently used to avoid detection by automated screening programs. This subterfuge, and the use of sexual code words generally, is specifically prohibited by Craigslist's "Erotic Services Posting Guidelines." (See Answer at Ex. 5.)

- 4 -

include nude or nearly-nude pictures, ostensibly of the person posting the ad or offering his or her services. (Compl. ¶ 29; see generally id. at Ex. E.) Sheriff Dart cites the advocacy group "The Polaris Project" for the proposition that "Craigslist is now the single largest source for prostitution, including child exploitation, in the country." (Id. at ¶ 38; see also id. at ¶¶ 41-45.) Law enforcement officials (including plaintiff) regularly conduct prostitution stings using information culled from advertisements in Craigslist's erotic-services category. (See, e.g., id. at ¶ 57.)³ By his own count plaintiff has arrested over 200 people through Craigslist since January of 2007. (Id. at ¶ 58.) Some of those arrested were charged with pimping minors. (Id. at ¶¶ 59-62.) He estimates that between January and November 2008 his department devoted 3,120 man-hours and approximately \$105,081.00 to make 156 arrests. (Id. at ¶ 78.)

Count I of Sheriff Dart's complaint alleges that Craigslist's erotic-services category constitutes a public nuisance. See Restatement (Second) of Torts § 821B(1) ("A public nuisance is an unreasonable interference with a right common to the general public."). As "evidence" of the public nuisance he alleges that

³ Perhaps reflecting the problem of ambiguous posts, Sheriff Dart alleges that in a typical sting an arrest is made only after the person identified in the ad offers an undercover officer sex for money. (Compl. ¶ 64); see Chicago Lawyers' Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666, 668 (7th Cir. 2008) (Regarding discriminatory housing advertisements on Craigslist's website: "[a]utomated filters and human reviewers may be equally poor at sifting good from bad postings unless the discrimination is blatant; both false positives and false negatives are inevitable.").

- 5 -

Craigslist violates federal, state, and local prostitution laws. (Id. at ¶ 93.) He contends that Craigslist "solicits for a prostitute" within the meaning of 720 ILCS 5/11-15 by "arrang[ing]" meetings of persons for purposes of prostitution and "direct[ing]" persons to places of prostitution. He also alleges more generally that Craigslist makes it easier for prostitutes, pimps, and patrons to conduct business. (Compl. ¶ 134 (Craigslist "streamlines the prostitution process"); see Chicago Municipal Code § 8-8-020 ("[N]o person knowingly shall direct, take, transport, or offer to direct, take, or transport, any person for immoral purposes to any other person, or assist any person by any means to seek or to find any prostitute.") (emphasis added); see also 18 U.S.C. § 1952(a)(3) (making it unlawful to use any facility in interstate commerce with the intent to "promote" or "facilitate the promotion of . . . any unlawful activity," including "prostitution offenses in violation of the laws of the State in which they are committed."). He seeks to recoup the money his department has spent policing Craigslist-related prostitution, compensatory damages, and punitive damages. (Compl. at 26.) In Count II of his complaint he requests an injunction requiring Craigslist to desist "engaging in the conduct complained of herein." (Id. at 27.) After Sheriff Dart filed this lawsuit Craigslist voluntarily changed certain aspects of its service. It terminated its "erotic" category and established a new "adult" category, which is subject to a "manual review process."

- 6 -

(Def.'s Reply at 3.) It also reduced the number of subcategories from 21 to 5. (Pl.'s Resp. at 1 fn. 1.) Sheriff Dart contends that these changes are only cosmetic and that users continue to post unlawful content in the "new" adult-services section. (Pl.'s Resp. at 1-2.) In a footnote in its reply brief Craigslist purports to reserve the right to pursue dismissal on mootness grounds, but it does not press the argument or describe its new policy in any detail. (Def.'s Reply at 4 n.1.) Based upon the parties' submissions we are persuaded that there is still a live controversy.⁴

DISCUSSION

A. Legal Standard

We review a Rule 12(c) motion for judgment on the pleadings applying the same standard we apply to a motion to dismiss under Rule 12(b)(6). See Buchanan-Moore v. County of Milwaukee, 570 F.3d 824, 827 (7th Cir. 2009). "Thus, we view the facts in the complaint in the light most favorable to the nonmoving party and will grant the motion only if it appears beyond doubt that the plaintiff cannot prove any facts that would support his claim for relief. However, we need not ignore facts set forth in the

^{4/} One final procedural matter. On the date that Sheriff Dart filed his response to Craigslist's Rule 12(c) motion he also sought leave to file an amended complaint adding two non-profit organizations as plaintiffs. We denied his motion without prejudice. At the same time we granted a third non-profit organization, Coalition Against Trafficking in Women ("CATW"), leave to file an amicus brief. CATW's brief paints a troubling picture of the illegal sex trade, but it does not shed any light on the legal questions before us.

- 7 -

complaint that undermine the plaintiff's claim or give weight to unsupported conclusions of law." Id. (internal citation omitted); see also C. Wright & A. Miller, 5C Federal Practice and Procedure, at § 1368 ("Although a moving party, for purposes of the Rule 12(c) motion, concedes the accuracy of the factual allegations in his adversary's pleading, he does not admit other assertions in the opposing party's pleading that constitute conclusions of law, legally impossible facts, or matters that would not be admissible in evidence at trial.").

B. Subject Matter Jurisdiction

Although neither party raises the issue, we must decide whether we have subject-matter jurisdiction before addressing the parties' other contentions. Wernsing v. Thompson, 423 F.3d 732, 743 (7th Cir. 2005) ("[N]ot only may the federal courts police subject matter jurisdiction *sua sponte*, they must.") (citation and internal quotation marks omitted). Craigslist concedes that the parties are diverse, but does not admit that the amount-in-controversy requirement is satisfied. (Answer ¶ 5.) In its memorandum in support of its Rule 12(c) motion Craigslist argues that Sheriff Dart cannot recover money damages for the alleged public nuisance. (Def.'s Mem. at 20-23); see City of Chicago v. Beretta U.S.A. Corp., 821 N.E.2d 1099, 1139-47 (Ill. 2004) (holding that the city could not recover money damages in its public-nuisance lawsuit against the defendant gun manufacturer). Sheriff

- 8 -

Dart does not address this argument except to say that Beretta would not apply to the non-profit organizations he sought to join in this lawsuit. (Pl.'s Resp. at 18 n.2; see also supra n.4.) In other words, he seems to concede that he cannot recover money damages, including the \$105,081.00 he alleges his department has spent policing Craigslist-related crimes. See Schimmer v. Jaguar Cars, Inc., 384 F.3d 402, 406 (7th Cir. 2004) (A court is not required to accept at face value the amount of damages requested in the complaint if the plaintiff "is not entitled at law to recover such damages.") (emphasis in original). But he also seeks injunctive relief and we may consider the cost to Craigslist of complying with an injunction to determine whether this lawsuit satisfies the amount-in-controversy requirement. See Uhl v. Thoroughbred Technology and Telecommunications, Inc., 309 F.3d 978, 983 (7th Cir. 2002); see also In re Brand Name Prescription Drugs Antitrust Litigation, 123 F.3d 599, 609 (7th Cir. 1997) ("Looked at from the defendants' standpoint, the minimum amount in controversy would be present if the injunction sought by the plaintiffs would require some alteration in the defendant's method of doing business that would cost the defendant at least the statutory minimum amount."). Craigslist charges users a fee (between \$5 and \$10) to post advertisements in the adult-services section, and Sheriff Dart

