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## Summary of Fulbright & Jaworski LLP v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 5

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## CIVIL PROCEDURE: PERSONAL JURISDICTION

### **Summary**

The Court determined that (1) “a general jurisdiction inquiry calls for an appraisal of a defendant’s activities in their entirety, nationwide and worldwide”; and (2) “an out-of-state law firm that is solicited by a Nevada client to represent the client on an out-of-state matter does not subject itself to [specific] personal jurisdiction in Nevada simply by virtue of agreeing to represent the client.” Additionally, the Court reaffirmed that “[p]urposeful availment requires that the cause of action arise from the consequences in the forum state of the defendant’s activities.”

### **Background**

In 2006, Nevada-based general partner Triple L Management, LLC, solicited investors’ funds and acquired property for a real-estate development project in San Antonio, Texas. Triple L put title in the name of real party in interest Verano Land Group, LP, a Texas partnership.<sup>2</sup> Verano sought legal guidance during the project and retained Texas-based Petitioners, the law firm of Fulbright & Jaworski, LLP, and one of its partner’s Jane Macon. The firm operated nationwide, but had no office or attorneys licensed in Nevada.

Between 2006 and 2010, Macon served as Verano’s primary point of contact, and Macon regularly communicated with Triple L. In 2007 and 2008, Macon and Triple L created VTLM Texas, LP, after finalizing an agreement whereby Verano received public funds from the City of San Antonio for donating part of its land to Texas A&M University. VTLM served as Verano’s agent in the agreement and was denominated as the entity receiving the funds.

In 2010, Macon twice gave presentations to Verano’s investors in Nevada. Shortly after, Verano’s investors voted to remove Triple L as its general partner. By late 2011, the attorney-client relationship between petitioners and Verano ended, and Verano’s new general partner registered Verano as a Nevada partnership.

In 2012, Verano instituted the underlying action against petitioners for breach of fiduciary duties amongst other claims. When the district court denied petitioners’ motion to dismiss for lack of personal jurisdiction, petitioners filed a writ petition.

### **Discussion**

#### *Standard of review*

Writ relief is appropriate when the legal right to appeal is inadequate. The Court exercised its equitable discretion to consider petitioners’ writ of prohibition challenging the district court’s personal jurisdiction decision.

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<sup>1</sup> By Chelsea Lancaster

<sup>2</sup> Because Verano was “managed by a Nevada-based general partner,” the Court refers to Verano as a Nevada-based client.

### *Jurisdiction over a nonresident defendant*

Jurisdiction over a nonresident defendant must comport with due process under Nevada's long-arm statute.<sup>3</sup> The Court examined in turn whether Verano "had made a prima facie showing of general and specific personal jurisdiction as to both Fulbright & Jaworski and Macon."

#### *Verano has not made a prima facie showing of general personal jurisdiction*

General personal jurisdiction is proper when the nonresident defendant's "contacts with the forum state are so continuous and systematic as to render [the defendant] essentially at home in the forum State." Following *Daimler AG v. Bauman*, the Court analyzed petitioners' Nevada contacts "in their entirety, nationwide and worldwide."<sup>4</sup> The Court rejected Verano's evidence that several Fulbright & Jaworski<sup>5</sup> attorneys attended legislative sessions and appeared pro hac vice in Nevada. Compared to the firm's "overall business," the Court held that these contacts were insufficient to render the firm at home in Nevada. Therefore, Verano failed to make a prima facie showing of general personal jurisdiction.

#### *Verano has not made a prima facie showing of specific personal jurisdiction*

Specific personal jurisdiction is proper when the defendant "purposefully avail[s] himself of the privilege of acting in the forum state." The cause of action must arise from those activities or the consequences thereof. The Court considered whether specific jurisdiction was appropriate "in light of Verano's evidence showing that petitioners agreed to represent a Nevada-based client and directed client-related correspondence into Nevada, as well as by virtue of Macon's participation in the two investor presentations in Nevada."

#### *Representing a Nevada client on an out-of-state matter does not necessarily subject an out-of-state law firm to personal jurisdiction*

Under the "majority approach" in *Newsome v. Gallacher*, an out-of-state law firm's representation of an in-state client is insufficient, by itself, to establish personal jurisdiction.<sup>6</sup> The client's residence and any "communications incidental to the attorney-client relationship that are directed to the forum state are merely fortuitous and do not constitute purposeful availment." However, the amount "of solicitation on the out-of-state law firm's part" and whether the representation concerns a "non-Nevadan matter" are highly relevant. Here, the Court concluded that the representation of and communications with a Nevada client was insufficient for specific jurisdiction purposes because Verano solicited the representation in Texas and the matter concerned a real-estate development project in Texas. Therefore, the Court held that "petitioners did not subject themselves to specific personal jurisdiction in Nevada simply by virtue of representing Verano."

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<sup>3</sup> NEV. REV. STAT. § 14.065 (2014).

<sup>4</sup> 134 S. Ct. 746, 762 n.20 (2014).

<sup>5</sup> The Court did not discuss the propriety of general jurisdiction over Macon.

<sup>6</sup> 722 F.3d 1257, 1280 (10th Cir. 2013).

*Based on the existing record, Verano's evidence of petitioners' additional Nevada contacts is insufficient to make a prima facie showing of personal jurisdiction*

Also consistent with the "majority approach," an out-of-state law firm does not purposefully avail itself of the privilege of acting in the forum state "simply by meeting with the client in that state." The claim must "arise from the consequences in the forum state of the defendant's activities." Here, the Court determined that the additional evidence of petitioners' forum contacts had "no clear connection to Verano's causes of action." Initially, the Court rejected evidence that Macon gave legal advice at two presentations in Nevada because "the record contains no indication of what the legal advice was, much less how Verano's causes of action against petitioners arose from that legal advice." Further, evidence that Macon solicited additional funds at the presentations was insufficient because the complaint contained no allegation "that any additional funds were raised as a result of Macon's solicitations, much less that those funds were somehow misspent and hereby form a basis for Verano's claims against petitioners." Finally, while Verano failed to establish how Macon's silence on the existence of VTLM Texas related to its cause of action, the Court questioned the reasonableness of exercising jurisdiction based those on nonstatements regarding a Texas entity. Therefore, the Court held that the evidence was insufficient to constitute purposeful availment, and Verano failed to make a prima facie showing of specific personal jurisdiction.

### **Conclusion**

Petitioners did not make themselves at home in Nevada by virtue of several legislative sessions and pro hac vice appearances. Petitioners did not purposefully avail themselves by virtue of representing a Nevada client, and Verano established no clear connection between the additional evidence and its causes of action. Thus, Verano failed to make a prima facie showing that petitioners are subject to general or specific personal jurisdiction.

The Court granted in part and denied in part petitioners' writ of prohibition. The Court directed the district court to vacate its order denying petitioners' motion to dismiss, but declined to issue an order directing the district court to grant petitioner's motion to dismiss. Because discovery was ongoing during the pendency of the writ petition, Verano was "entitled to make a prima facie showing of personal jurisdiction with this additional evidence at its disposal."