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Consipio Holding, BV v. Carlberg, 128 Nev. Adv. Op. 43 (August 9, 2012)¹
CIVIL PROCEDURE – PERSONAL JURISDICTION

Summary

The Court considered whether Nevada courts can exercise personal jurisdiction over nonresident officers and directors who directly harm a Nevada corporation.

Disposition/Outcome

The Court held that Nevada courts can exercise personal jurisdiction over nonresident officers and directors of Nevada corporations when those officers and directors directly harm a Nevada corporation. NEV. REV. STAT. § 78.135(1) not only authorizes lawsuits against officers and directors, but supports a district court’s authority to exercise personal jurisdiction over officers and directors in such lawsuits.

Factual and Procedural History

Appellants (collectively “Consipio”) were shareholders of Private Media Group, Inc. (“PRVT”). PRVT is incorporated in Nevada with its principal place of business in Spain. Consipio filed a complaint in Nevada district court seeking injunctive relief, appointment of a receiver for PRVT, and asserting derivative claims on against PRVT’s former CEO/President and several other officers and directors (collectively “Respondents”). Consipio’s claims alleged that the officers and directors obtained improper loans for the CEO and entities he controlled, removed funds from PRVT, and concealed these actions, and that the respondents were therefore guilty of misfeasance, malfeasance, and breach of their fiduciary duties.

All respondents are citizens and residents of European nations, and the majority of the individual respondents had never visited Nevada, or had only visited Nevada on one occasion. Citing a lack of contacts with Nevada, respondents moved to dismiss for lack of personal jurisdiction. Without conducting an evidentiary hearing, the district court granted the motions to dismiss pursuant to NRCP 54(b). Consipio appealed.

Discussion

The Court reviewed the dismissal for lack of personal jurisdiction de novo.² When a party challenges personal jurisdiction, the plaintiff typically has the burden of producing evidence that establishes a prima facie showing of jurisdiction.³ A plaintiff “may make a prima facie showing of personal jurisdiction prior to trial and then prove jurisdiction by a preponderance of the evidence at trial.”⁴

¹ By Brandon C. Sendall.

² *Baker v. Dist. Ct.*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000); *see* *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011).

³ *See* *Trump v. Eighth Judicial Dist. Court of State of Nev.*, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993).

⁴ *Id.*

I. A district court can exercise personal jurisdiction over nonresident officers and directors who directly harm a Nevada corporation

Nevada’s long-arm statute permits personal jurisdiction over a nonresident defendant as long as the exercise of jurisdiction does not violate due process.⁵ Due process requires “minimum contacts” between the forum state and the defendant “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”⁶ To exercise specific personal jurisdiction over a nonresident defendant, the defendant must “purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state.”⁷ Factors to consider in determining whether assuming personal jurisdiction is reasonable include: (1) the burden on the defendant of defending an action in the foreign forum, (2) the forum state’s interest in adjudicating the dispute, (3) the plaintiff’s interest in obtaining effective and convenient relief, (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several States in furthering fundamental substantive social policies.⁸

Respondents, relying on *Shaffer v. Heitner*, 433 U.S. 186 (1977), contended that allowing a district court to exercise personal jurisdiction over them would offend due process. In *Shaffer*, the United States Supreme Court held that a corporation’s directors were not subject to personal jurisdiction in Delaware when their actions allegedly exposed the corporation to claims of third parties in another state and the plaintiff failed to identify any act related to the cause of action that occurred in Delaware.⁹

However, the Court noted that unlike the directors in *Shaffer* who were alleged to have merely opened up the corporation to liability in other jurisdictions, the claim here alleged direct harm to a Nevada citizen.¹⁰ When officers or directors directly harm a Nevada corporation, they are harming a Nevada citizen. Therefore, the Court held that officers and directors who purposefully direct harm towards a Nevada citizen are affirmatively directing conduct toward Nevada, and by doing so, can be subject to personal jurisdiction.¹¹

The Court further distinguished this case from *Shaffer*, noting that there is statutory support for allowing a district court to exercise personal jurisdiction over a nonresident officer or director. Nevada law specifically authorizes lawsuits “against the officers or directors of the corporation for violation of their authority.”¹² When a statute is clear and unambiguous, the

⁵ NEV. REV. STAT. § 14.065(1) (2007).

⁶ *Trump*, 109 Nev. at 698, 857 P.2d at 747 (quoting *Mizner v. Mizner*, 84 Nev. 268, 270, 439 P.2d 679, 680 (1968)).

⁷ *Jarstad v. National Farmers Union*, 92 Nev. 380, 387, 552 P.2d 49, 53 (1976).

⁸ *Emeterio v. Clint Hurt and Assocs.*, 114 Nev. 1031, 1036-37, 967 P.2d 432, 436 (1998) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 268, 292 (1980)).

⁹ 433 U.S. at 213.

¹⁰ Under Nevada law, a corporation that is incorporated in Nevada is a Nevada citizen. *Quigley v. Cent. Pac. R.R. Co.*, 11 Nev. 350, 357 (1876).

¹¹ See *DeCook v. Environmental Sec. Corp., Inc.*, 258 N.W.2d 721, 728-30 (Iowa 1977) (holding that the exercise of personal jurisdiction over a corporation’s nonresident directors did not violate due process despite the fact that Iowa did not have of a director consent statute).

¹² NEV. REV. STAT. § 78.135(1) (2007).

Court gives effect to the plain and ordinary meaning of the words and does not resort to the rules of construction.¹³ Here, the Court found that NEV. REV. STAT. § 78.135(1) provides notice to officers and directors that they are subject to derivative suits for violation of their authority. Therefore, NEV. REV. STAT. § 78.135(1) not only authorizes lawsuits against officers and directors, but supports a district court's authority to exercise personal jurisdiction over officers and directors in such lawsuits.

Conclusion

While the Court agreed with the district court that an individual's position as a Nevada corporation's director does not automatically subject that individual to jurisdiction in Nevada, the Court stated that the district court needed to conduct further factual analysis in order to determine whether the respondents' conduct subjected them to jurisdiction in Nevada. The district court ruling was vacated and the Court remanded the matter to the district court for a factual analysis to determine whether the respondents' conduct subjected them to jurisdiction in Nevada.

¹³ Firestone v. State, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004).