

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

THELMA "TAMMY" FERGUSON, an individual,  
  
Plaintiff,

Case No.: CV12-00298  
Dept. No.: B7

vs.

JACK ANTHONY FERGUSON, an individual; CATHERINE FERGUSON, an individual; CHRISTOPHER KELLER, an individual; LUANA CLIFFORD, an individual; THE JACK A. FERGUSON FOUNDATION, a Nevada corporation; DOES I-X; and BLACK AND WHITE CORPORATIONS I-X, inclusive,  
  
Defendants.

\_\_\_\_\_  
THE FERGUSON FORD FOUNDATION,  
  
Real Party in Interest.  
\_\_\_\_\_

**ORDER**

Currently before this Court is Defendant JACK A. FERGUSON's ("Jacky") *Motion to Dismiss First Amended Complaint for Lack of Personal Jurisdiction* filed on May 31, 2012. Plaintiff THELMA FERGUSON ("Tammy") filed an *Opposition to Jack A. Ferguson's Motion to Dismiss* on June 18, 2012. Jack filed a *Reply in Support of Motion to Dismiss* on June 29, 2012. This Court previously has recounted the background of this case and will not do so again here unless certain facts are pertinent to the determination of this matter.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## STANDARD OF REVIEW

In reviewing motions to dismiss under NRCP 12(b)(5), the district court must liberally construe the pleadings, accept as true the facts in the pleadings, and draw all inferences in favor of the nonmoving party. See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008); Blackjack Bonding v. Las Vegas Mun. Court, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). A claim in any pleading should be dismissed under NRCP 12(b)(5) “only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.” Buzz Stew, 124 Nev. at 228. Thus, the standard to grant a motion to dismiss in Nevada is very high. See Seput v. Lacayo, 122 Nev. 499, 501, 134 P.3d 733, 734 (2006) (stating a motion to dismiss under NRCP 12(b)(5) is “subject to a rigorous standard of review on appeal.”)

## DISCUSSION

The issue before this Court is whether the claims against Jacky contained in Tammy’s *First Amended Complaint* (“FAC”) must be dismissed on the grounds that this Court has no authority to exercise personal jurisdiction over Jacky. Jacky avers this Court has no such authority because he has insufficient contacts with Nevada. Conversely, Tammy avers Jacky’s participation in the alleged conduct precipitating this lawsuit confers this Court with that authority. For the reasons explained below, this Court harbors doubts that Jacky’s alleged conduct in Nevada is so insubstantial and without impact as to prevent this Court from exercising personal jurisdiction over him, and to require dismissal of Tammy’s claims against him. This Court will deny Jacky’s *Motion to Dismiss*.

### Legal Standards

The district court may exercise personal jurisdiction over a nonresident defendant if the plaintiff shows: (1) Nevada’s long-arm statute’s requirements have been satisfied and (2) the exercise of personal jurisdiction would not offend due process. Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006) (internal quotations and citation omitted). Nevada’s long-arm statute allows the district court to exercise personal jurisdiction over “a party to a civil action on any basis not inconsistent with the Constitution of

1 this state or the Constitution of the United States.” NEV. REV. STAT. § 14.065(1); see Arbella,  
2 122 Nev. at 512, 134 P.3d at 712 (“Nevada’s long-arm statute . . . reaches the limits of due  
3 process set by the United States Constitution.”) (quoting Baker v. Eighth Judicial Dist. Court,  
4 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000)). To avoid offending the Due Process Clause of  
5 the Fourteenth Amendment, a nonresident defendant must have “certain minimum contacts [with  
6 the forum state] such that the maintenance of the suit does not offend ‘traditional notions of fair  
7 play and substantial justice.’” Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting  
8 Milliken v. Meyer, 311 U.S. 457, 463 (1940)); see Arbella, 122 Nev. at 512, 134 P.3d at 712  
9 (same).

10 The minimum contacts analysis gives rise to two kinds of personal jurisdiction: general  
11 and specific. In analyzing minimum contacts, “a court properly focuses on ‘the relationship  
12 among the defendant, the forum, and the litigation.’” Calder v. Jones, 465 U.S. 783, 788 (1984).  
13 General jurisdiction lies when the defendant maintains “substantial” or “continuous and  
14 systematic” contacts with the forum state such that he is “considered present in that forum and  
15 thus subject to suit there . . . .” Arbella, 122 Nev. at 512-13, 134 P.3d at 712 (internal quotations  
16 and citation omitted).

17 Specific jurisdiction exists only when two elements are met: (1) the defendant  
18 purposefully avails himself of the forum state’s market or legal protections, or purposefully  
19 establishes contacts with and affirmatively directs conduct toward the forum state and (2) the  
20 cause of action arises from such contact or conduct. Id. at 513, 134 P.3d at 712-13 (quoting  
21 Trump v. Eighth Judicial Dist. Court, 109 Nev. 687, 699-700, 857 P.2d 740, 748 (1993)).  
22 Additionally, the district court must consider whether the defendant’s required appearance would  
23 be reasonable. Arbella, 122 Nev. at 513, 134 P.3d at 713 (citation omitted). Finally, the district  
24 court may obtain specific jurisdiction when the “effects” of the defendant’s conduct in Nevada  
25 are such that the defendant “‘reasonably anticipate[s] being haled into court [in Nevada] . . . .’”  
26 Calder, 465 U.S. at 790 (citing World-Wide Volkswagen, Corp. v. Woodson, 444 U.S. 286, 297  
27 (1980)).

28 ///

1 **Legal Analysis**

2 As an initial matter, because Nevada's long-arm statute is co-extensive with due process  
3 under the Fourteenth Amendment, the statute is satisfied if due process also is satisfied. In  
4 analyzing whether due process permits this Court's exercise of personal jurisdiction over Jacky,  
5 this Court first turns to general jurisdiction.

6 Tammy's *FAC* states Jacky has been a California resident at all relevant times in this  
7 litigation. (See First Am. Compl. ¶ 7.) This coupled with Tammy's failure to adequately  
8 contest, if at all, Jacky's allegations that he has no substantial or continuous and systematic  
9 contacts with Nevada, leads this Court to conclude general jurisdiction over Jacky is improper.

10 The parties disagree as to whether the "effects test" employed in *Calder, supra*, is a  
11 stand-alone test for specific jurisdiction or whether it is merely one method of evaluating the  
12 "purposeful availment" prong of specific jurisdiction. Thus, before this Court conducts a  
13 specific jurisdiction analysis, this Court will resolve this dispute.

14 *Calder* involved a libel allegation by a California professional entertainer against a  
15 national magazine incorporated in Florida with its principal place of business in Florida. In  
16 finding personal jurisdiction over petitioners in California was proper, the Court reasoned the  
17 story "concerned the California activities of a California resident[,] . . . impugned the  
18 professionalism of an entertainer whose television career was centered in California[,] . . . was  
19 drawn from California sources, and the brunt of the harm . . . was suffered in California."  
20 *Calder*, 465 U.S. at 788-89. The Court also explained "petitioners are not charged with mere  
21 untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly  
22 aimed at California." *Id.* at 789. The Court ultimately held "[e]ach defendant's *contacts* with  
23 the forum state must be assessed individually. . . . In this case, petitioners are primary  
24 participants in an alleged wrongdoing intentionally directed at a California resident, and  
25 jurisdiction over them is proper on that basis." *Id.* at 790. (Emphasis added.)

26 It is clear to this Court that under *Calder* an analysis of the effects of a defendant's  
27 conduct in the forum state is relevant only to the purposeful availment prong of the minimum  
28 contacts analysis.

1 Tammy's allegations against Jacky consist of Jacky's consent to the filing of the Officer-  
2 Director list with the Nevada Secretary of State. Nowhere does Tammy specifically allege  
3 Jacky—by name—actually filed the list. Only by inference can this Court surmise Jacky  
4 actively participated in the filing of the list, or otherwise engaged in intentional, targeted conduct  
5 aimed at Nevada. (See First Am. Compl. ¶ 28) (“*the defendants* wrongfully and fraudulently  
6 filed a false list of officers and directors for the Foundation . . . .”) (Emphasis added.)

7 Inferences, however, are permitted under the standards for a motion to dismiss. In fact,  
8 this Court *must* draw all inferences in Tammy's favor. Doing so, and after liberally construing  
9 Tammy's *FAC* and accepting as true the allegations contained therein, it does *not* appear beyond  
10 a doubt that Tammy's *FAC* could prove no set of facts, which, if true, would show Jacky  
11 wrongfully and fraudulently filed the list and, therefore, subjected himself to the jurisdiction of  
12 this Court through the effects of his conduct.

13 Jacky's alleged conduct allowed him to obtain the status of officer or director under  
14 Nevada's laws. This conduct therefore constitutes Jacky's purposeful avilment of Nevada's  
15 legal protections of officers and directors of a nonprofit corporation like the Foundation.  
16 Moreover, regardless of whether Jacky was a primary participant the effects of his alleged  
17 conduct in Nevada should lead him to “reasonably anticipate being haled into court” here. After  
18 all, the list was allegedly filed with the Nevada Secretary of State.

19 Second, Tammy's lawsuit consists of, *inter alia*, claims for declaratory relief concerning  
20 the actual officers and directors of the Foundation, and a claim for fraud and conspiracy to  
21 defraud, all relating to the filing of the list. Tammy's *FAC* clearly arises from such contact or  
22 conduct. Finally, litigating parties often travel between California and Nevada due to their close  
23 geographical proximity. As such, requiring Jacky's appearance in Nevada would be reasonable.

24 In light of the above and after applying the rigorous legal standards attendant to a motion  
25 to dismiss, this Court concludes Tammy's allegations against Jacky should not be dismissed.  
26 Jacky's contacts with Nevada—through the effects of his alleged conduct—are sufficient to  
27 allow this Court to exercise specific personal jurisdiction over him without offending traditional  
28 due process principles of fair play and substantial justice.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

Accordingly, Jacky's *Motion to Dismiss First Amended Complaint for Lack of Personal Jurisdiction* is **DENIED**.

**IT IS SO ORDERED.**

**DATED** this 9 day of August, 2012.

*Patrick Flanagan*  
PATRICK FLANAGAN  
District Judge

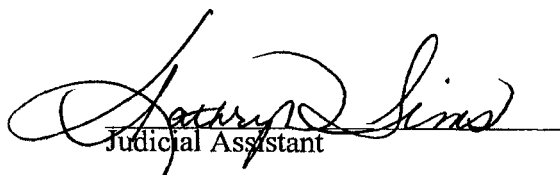
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 9 day of August, 2012, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Leslie Hart, Esq. for Jack Ferguson, Catherine Ferguson and Luana Clifford; and  
Thomas Beko, Esq. for Tammy Ferguson.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

  
Judicial Assistant