

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARIAT PRODUCTIONS, INC., AN
IDAHO CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
KENNETH C. CORY, DISTRICT
JUDGE,

Respondents,

and

ROBERTS COMMUNICATIONS

NETWORK, INC.,

Real Party in Interest.

No. 43693

FILED

JUN 15 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION
FOR WRIT OF MANDAMUS

This is a petition for writ of mandamus challenging a district court's order denying a motion to dismiss for lack of personal jurisdiction. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Lariat Productions, Inc. (Lariat) is an Idaho corporation operating a racetrack in Boise, Idaho. Lariat purchased the racetrack from LeBois Racetrack, Inc. (LeBois). At the time of the purchase, LeBois had a contract with Roberts Communications Network (RCN), a Nevada corporation, under the terms of which RCN provided telecommunication services to LeBois. This enabled LeBois to receive real-time information about common pool wagering at horse tracks across the nation. The original term of the contract was for four years, and provided RCN with the right to match other offers on renewal, should LeBois want to use another telecommunications network. Lariat did not assume the RCN

contract as part of the purchase of the racetrack but continued to use services from RCN. However, with one year remaining on the contract, Lariat chose another telecommunications provider to provide the nationwide wagering information and discontinued the services provided by RCN.

With the exception of its dealings with RCN, the record does not show any other contacts or transactions by Lariat in Nevada.

RCN brought a claim against Lariat in district court in Nevada. Lariat sought dismissal, claiming Nevada courts lacked personal jurisdiction over Lariat. Following a hearing, the court, without any discovery or explanation, determined that it had personal jurisdiction over Lariat and denied the motion to dismiss.

Lariat petitions this court for a writ of mandamus compelling the district court to vacate its order and dismiss the case because the Nevada court lacks personal jurisdiction over Lariat. We agree with Lariat, and grant the writ petition.

This court has original jurisdiction to issue a writ of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to control arbitrary or capricious abuse of discretion.¹ Mandamus is an extraordinary remedy, which is only appropriate when there is no plain, speedy, and adequate remedy at law.² A writ of mandamus is an appropriate remedy when a

¹NRS 34.160; see also State Engineer v. Truckee-Carson Irrig., 116 Nev. 1024, 1028, 13 P.3d 395, 397-98 (2000).

²NRS 34.170, see also Widdis v. Dist. Ct., 114 Nev. 1224, 1227, 968 P.2d 1165, 1167 (1998).

district court refuses to dismiss an action based on lack of personal jurisdiction.³

Lariat contends that its petition for writ of mandamus is proper based on the lack of personal jurisdiction that the district court had over Lariat. “When a challenge to personal jurisdiction is made, the plaintiff has the burden of introducing competent evidence of essential facts which establish a prima facie showing that personal jurisdiction exists.”⁴ When reviewing whether the district court’s determination that personal jurisdiction may be properly exercised, this court conducts a de novo review in matters where the facts are not disputed.⁵

Pursuant to Nevada’s long arm statute, NRS 14.065(1), a court may exercise jurisdiction over a party on any basis consistent with the State and Federal Constitutions. Due process requires that a defendant have minimum contacts with the forum state, such that the maintenance of the suit would not offend traditional notions of fair play and substantial justice.⁶ In Nevada, there are two types of personal jurisdiction, general and specific; however, RCN concedes that general jurisdiction may not be present in this matter.

Specific personal jurisdiction over a defendant will only lie when “the defendant purposefully avails himself of the privilege of serving

³Freeman v. Dist. Ct., 116 Nev. 550, 552, 1 P.3d 963, 965 (2000); Trump v. District Court, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993).

⁴Abbott-Interfast v. District Court, 107 Nev. 871, 873, 821 P.2d 1043, 1044 (1991).

⁵Baker v. Dist. Ct., 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000).

⁶Id. at 531-32, 999 P.2d at 1023.

the market in the forum” and “the cause of action arises from [such] purposeful contact with the forum.”⁷ To be subject to personal jurisdiction in Nevada, it must be determined that the defendant “purposefully established minimum contacts’ so that jurisdiction would ‘comport with ‘fair play and substantial justice.’”⁸ Sufficient minimum contacts for specific jurisdiction exist where a nonresident “‘deliberately’ has engaged in significant activities within a State, or has created ‘continuing obligations’ between himself and residents of the forum.”⁹ The mere existence of a contractual relationship between the residents of the forum state and a non-resident business entity is not enough to establish sufficient minimum contacts.¹⁰

The contract at issue was negotiated between LeBois, Lariat’s predecessor in interest, and RCN. Lariat did not assume the contract. After the purchase of the racetrack, Lariat maintained the status quo, and continued to use the betting pool system provided by RCN. Although Lariat used the services from and made payments to RCN, the record is silent as to any other contacts between Lariat and RCN. As noted earlier, Lariat maintained no other presence and had no other contacts with Nevada.

⁷Trump, 109 Nev. at 699, 857 P.2d at 748.


⁸Freeman, 116 Nev. at 553, 1 P.3d at 965 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985) (quoting Internat. Shoe Co. v. Washington, 326 U.S. 310, 320 (1945))).


⁹Burger King, 471 U.S. at 475-76 (citations omitted).

¹⁰Id. at 478.

Under these facts, we conclude that Lariat did not purposefully avail itself of the privilege of serving the Nevada market and that its contacts with RCN and/or Nevada are not so significant as to justify personal jurisdiction over Lariat by Nevada courts. We conclude that the minimum contacts requirement has not been met. Therefore, the exercise of personal jurisdiction was improper and the requested writ of mandamus should issue. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDUMUS instructing the district court to dismiss the underlying case for lack of personal jurisdiction.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Kenneth C. Cory, District Judge
Jolley Urga Wirth Woodbury & Standish
Gordon & Rees, LLP
Clark County Clerk