

IN THE SUPREME COURT OF THE STATE OF NEVADA

ART VAN ALLEN AND WILL
CHAFFEE,

No. 37209

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
GENE T. PORTER, DISTRICT JUDGE,

FILED

DEC 18 2001

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

Respondents,

and

WARREN S. WOOD, A NEVADA
TRUST, AND WARREN S. WOOD, AS
TRUSTEE OF THE WARREN S. WOOD
TRUST,

Real Parties in Interest.

ORDER GRANTING PETITION
FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges an order of the district court denying petitioners' motion to quash service of process of a third party complaint for lack of personal jurisdiction. We have previously stated that a writ of prohibition is an appropriate vehicle for challenging a district court's refusal to quash service of process.¹ Once a party challenges the exercise of personal jurisdiction, the plaintiff has the burden of making a prima facie showing that jurisdiction is proper.² Where the facts concerning jurisdiction are not in dispute, we conduct a de

¹See Baker v. Dist. Ct., 116 Nev. 527, 999 P.2d 1020 (2000); Judas Priest v. District Court, 104 Nev. 424, 760 P.2d 137 (1988).

²See Davis v. District Court, 97 Nev. 332, 337, 629 P.2d 1209, 1212 (1981), cert. denied, 454 U.S. 1049 (1981); see also Trump v. District Court, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993).

01-21265

novo review of the district court's determination of jurisdiction.³ We conclude that the district court erred by failing to properly apply the fiduciary shield doctrine when considering the petitioners' motion regarding lack of personal jurisdiction. Because the record reflects that petitioners, Van Allen and Chaffee, acted only as agents of their employer, Maaco, and Maaco's franchisee, they are protected under the fiduciary shield doctrine from the exercise of personal jurisdiction. Therefore we grant the writ of prohibition.

Petitioners, as employees of Maaco, appeared in Nevada as representatives of Maaco in order to assist a Maaco franchisee, Robert Berlinger, in the negotiation of a commercial lease. A lease was signed between Berlinger and the Wood Trust. A dispute arose between Berlinger and Wood Trust over the lease. As a result of the dispute, Berlinger filed a lawsuit against Wood Trust. Wood Trust in turn filed a third-party complaint against Maaco, Van Allen and Chaffee. Although the third-party complaint purports to sue Van Allen and Chaffee in their individual capacities, the allegations in the complaint involve only their activities as employees of Maaco on behalf of Berlinger as a Maaco franchisee. Neither the lease documents nor any information in the record indicate that Van Allen and Chaffee personally benefited from their activities in Nevada on behalf of Berlinger and their corporate employer, Maaco. Moreover, the record indicates that the only contacts Van Allen and Chaffee had with Nevada arose out of their actions on behalf of Maaco.

Because Van Allen and Chaffee have no general contacts with Nevada, personal jurisdiction could only be asserted against them on the basis of their specific activities relating to the Maaco/Berlinger franchise.⁴ Absent the application of the fiduciary shield doctrine, Van Allen and Chaffees' activities would be sufficient to satisfy the requirements of

³Baker, 116 Nev. at 531, 999 P.2d at 1023.

⁴See Trump, 109 Nev. at 699, 857 P.2d at 748. Noting that this court has divided the personal jurisdiction due process inquiry into two separate areas: 1) general personal jurisdiction, and 2) specific personal jurisdiction. General jurisdiction is appropriate where a defendant is held to answer in the forum for causes of action unrelated to the defendant's forum activities.

specific personal jurisdiction. Their activities were designed to accomplish a certain result in Nevada, and the cause of action arose from that purposeful contact.⁵ However, we have recognized that the assertion of personal jurisdiction over an individual is unreasonable when the individual's specific contacts with a state arise solely out of his actions as an agent of another.⁶

The fiduciary shield doctrine, an equitable doctrine, is a species of unreasonableness or, in the alternative, a defense to the application of personal jurisdiction.⁷ Specifically, personal jurisdiction has been held to be unreasonable where a corporate employee is acting only on behalf of his corporation. Only when a corporate employee is acting both in his corporate and his own personal interest or against the best interests of his corporation can his activities be the basis for the assertion of personal jurisdiction against him as an individual.⁸

Thus, the application of personal jurisdiction over Van Allen and Chaffee is 'unfair' by 'forcing [them] to defend a suit brought against [them] personally in a forum state where [they] do not reside and where [their] only relevant contacts are acts performed for [their] employer rather than for [their] own personal benefit.'⁹ The third-party complaint and documents submitted in opposition to the motion to quash establish that Van Allen and Chaffee were acting as employees of Maaco and, pursuant to that employment, as representatives of Maaco's franchisee, Berlinger. Nothing in the complaint or the record indicate that they personally benefited from any activities performed on Maaco or Berlinger's behalf. Therefore, we

⁵See Trump, 109 Nev. at 699-700, 857 P.2d at 748 (internal citations omitted).

⁶Trump, 109 Nev. at 700, 857 P.2d at 749 (internal citations omitted).

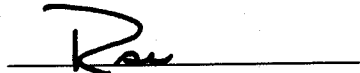
⁷See Barrett v. United States, 646 F. Supp. 1345, 1354 (S.D.N.Y. 1986) (citing Marine Midland Bank v. Miller, 664 F.2d 899, 902 (2d Cir. 1981); accord Trump, 109 Nev. at 697, 857 P.2d at 747.

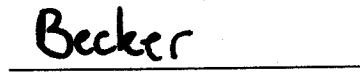
⁸See id. at 1354.

⁹Id. (internal citation omitted).

Grant the petition and direct the clerk of this court to issue a writ a prohibition instructing the district court to refrain from exercising personal jurisdiction over petitioners in the underlying action.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Gene T. Porter, District Judge
Wiggin & Dana LLP
Jones Vargas/Las Vegas
Paul V. Carelli III
Clark County Clerk