

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE RICH; AND JAKE SHARP,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MARK R. DENTON, DISTRICT JUDGE,
Respondents,
and
FORUM SHOPS, LLC,
Real Party in Interest.

No. 88278

FILED

JAN 08 2025

ELIZABETH A. ROY,
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of prohibition challenging a district court order denying a motion to dismiss for lack of personal jurisdiction.

Real party in interest Forum Shops, LLC, filed a first amended complaint alleging claims of negligent misrepresentation and breach of contract against petitioners Steve Rich and Jake Sharp, the two members of Jet Commercial Construction, LLC, based in Oklahoma. The parties entered into work orders for Jet to reconfigure a reflecting pool fountain in the Forum Shops in Las Vegas. Jet agreed to maintain commercial general liability insurance and provide Forum Shops with a certificate of insurance to prove that Jet had a compliant insurance policy. Jet's chief operating officer, Charlie Brown, and his assistant, Melinda Hardin, exchanged emails about the applicable insurance requirements with Simon Property Group, which coordinates tenant construction projects for Forum Shops. The parties generally agree that in 2019, Jet sent the final version of the

certificate of insurance to Forum Shops but the record does not indicate which Jet employee sent the certificate.

In early 2020, Forum Shops discovered a leak after Jet and its subcontractors finished the fountain work. Subsequently, Rich and Brown exchanged emails with Forum Shops and Simon employees to coordinate repair work on the fountain, and Rich met with a Simon employee in Las Vegas. Rich also exchanged emails with subcontractors, who expressed frustration with Jet over payment issues.

Forum Shops filed a claim with Jet's commercial general liability insurer Mt. Hawley Insurance Company, based in Illinois. Mt. Hawley rejected the claim because, unbeknownst to Forum Shops, Jet's insurance policy contained an exclusion for work performed in Nevada. Forum Shops filed the underlying complaint against Jet and Rich and Sharp individually, alleging negligent misrepresentation of the insurance policy and breach of contract. Rich and Sharp moved to dismiss the complaint for lack of minimum contacts to establish personal jurisdiction as to the negligent misrepresentation claim. And as to the breach of contract claim, they argued that Jet's contacts with Nevada could not be imputed to them on an alter-ego theory for jurisdiction. Forum Shops opposed the motion and proffered evidence that supposedly supported personal jurisdiction in Nevada. The district court denied the motion to dismiss, finding that Forum Shops made a prima-facie showing of personal jurisdiction over Rich and Sharp. Rich and Sharp petition this court for a writ of prohibition.

Writ of prohibition

“A writ of prohibition is available to arrest or remedy district court actions taken without or in excess of jurisdiction.” *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 373, 328 P.3d 1152, 1156 (2014); NRS 34.320. “As no adequate and speedy legal remedy typically exists to correct an invalid exercise of personal jurisdiction, a writ of prohibition is an appropriate method for challenging district court orders when it is alleged that the district court has exceeded its jurisdiction.” *Viega*, 130 Nev. at 374, 328 P.3d at 1156. Under the circumstances here, which include petitioners’ claim that Forum Shops failed to make the requisite prima-facie showing of personal jurisdiction to survive a motion to dismiss, we elect to consider the petition. *Id.*

Personal jurisdiction

This court reviews de novo a district court’s determination of personal jurisdiction. *Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 91, 440 P.3d 645, 650 (2019). Petitioners bear the burden to prove the propriety of extraordinary writ relief. *Solid v. Eighth Jud. Dist. Ct.*, 133 Nev. 118, 121, 393 P.3d 666, 670 (2017). But Forum Shops needed to “introduc[e] competent evidence of essential facts” in the district court to “establish a prima facie showing that personal jurisdiction exists.” *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993). Though the district court does not serve as a fact finder for pretrial jurisdictional challenges, Forum Shops “may not simply rely on the allegations of the complaint to establish personal jurisdiction.” *Id.* at 692-93, 857 P.2d at 744. The court must, however, accept properly supported proffers of evidence as true and resolve factual disputes in favor of the plaintiff. *Id.* at 693, 857 P.2d at 744.

Jurisdiction over a nonresident defendant is proper when the plaintiff satisfies Nevada’s long-arm statute, and the exercise of jurisdiction comports with principles of due process. *Viega*, 130 Nev. at 374-75, 328 P.3d at 1156. “Nevada’s long-arm statute, NRS 14.065, reaches the constitutional limits of due process under the Fourteenth Amendment,” requiring the defendant to have minimum contacts with Nevada such “that the defendant could reasonably anticipate being haled into court here.” *Id.* Courts apply a three-part test to determine whether exercising specific jurisdiction over a defendant is proper. *Cath. Diocese of Green Bay, Inc. v. John Doe 119*, 131 Nev. 246, 249, 349 P.3d 518, 520 (2015). First, the nonresident defendant must have purposefully availed itself of the privilege of acting in the forum market or purposefully directed its conduct to the forum state. *Id.* Second, the claims must arise from or relate to that purposeful contact with the forum. *Id.* at 249-50, 349 P.3d at 520. Third, the exercise of jurisdiction must be reasonable so that it does not offend traditional notions of “fair play and substantial justice.” *Id.* at 250, 349 P.3d at 520.

Negligent misrepresentation

Petitioners argue that Forum Shops failed to proffer any evidence showing they were individually involved with providing the allegedly misleading certificate of insurance to Forum Shops or that they were even aware of the Nevada policy exclusion to support Forum Shops’ negligent misrepresentation claim against them individually. Forum Shops answers that officers and directors who directly harm a Nevada corporation subject themselves to personal jurisdiction by affirmatively directing conduct toward Nevada. As to minimum contacts, Forum Shops argues that “because this is an omission case,” it “must only establish that petitioners

were involved with the project, but failed to communicate the lack of insurance coverage to Forum Shops.”

Negligent misrepresentation requires that the defendant supply “false information” to the plaintiff. *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 810, 335 P.3d 190, 197 (2014) (internal quotation marks omitted). Forum Shops’ evidence to support personal jurisdiction over petitioners includes (1) an email exchange between Jet employees and Forum Shops requesting that Jet provide a compliant certificate of insurance, (2) the general liability insurance application to Mt. Hawley bearing Sharp’s signature and contact information, (3) petitioners’ membership in Jet, and (4) Rich’s visits to the work site in Las Vegas and communications with Forum Shops’ representatives about the fountain work.

We conclude that these contacts do not tie Rich or Sharp, individually, to Nevada. Petitioners were not involved with the emails discussing the certificate of insurance, nor were they even copied on those emails. The general liability insurance application bearing Sharp’s signature was sent to Mt. Hawley in Illinois—not Nevada. And to the extent Rich purposefully availed himself of Nevada with visits to the work site and communications with Forum Shops employees, those contacts are not jurisdictionally significant because the alleged negligent misrepresentation did not arise out of or relate to those contacts. Instead, Rich’s Nevada contacts were incidental to the fountain work and settling payment issues with subcontractors. *See Arbella Mut. Ins. Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 509, 515-16, 134 P.3d 710, 714 (2006) (explaining “that the claims must have a *specific* and *direct* relationship or be *intimately*

related to the forum contacts” (emphases added) (internal quotation marks omitted)).

Although Forum Shops also relies on a material-omission theory in arguing that it need only establish involvement in the project and failure to disclose the insurance exclusion, courts require an affirmative false representation when a plaintiff alleges negligent misrepresentation. *Small v. Fritz Cos.*, 65 P.3d 1255, 1258 (Cal. 2003) (explaining that negligent misrepresentation requires a positive assertion of fact); 37 Am. Jur. 2d *Fraud and Deceit* § 29 (2024) (“A negligent misrepresentation claim specifically requires a positive assertion; an alleged omission or a failure to disclose are insufficient.”). Forum Shops does not allege *fraudulent* misrepresentation, where we have recognized that a material omission may suffice. *Nelson v. Heer*, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007). Forum Shops failed to produce evidence that petitioners made any representation about insurance, so it failed to present prima-facie evidence that the alleged negligent misrepresentation arose from their purposeful contacts with Nevada. Therefore, we conclude that the district court erred by determining that Forum Shops presented a prima-facie showing of specific jurisdiction over petitioners on the negligent misrepresentation claim.

Breach of contract

Forum Shops contends that Jet’s minimum contacts impute to petitioners under an alter-ego theory. Personal jurisdiction may be asserted over nonresident individuals when a resident LLC is in fact the alter ego of those individuals. *Gardner v. Eighth Jud. Dist. Ct.*, 133 Nev. 730, 736, 405 P.3d 651, 656 (2017). To establish personal jurisdiction by alter ego, Forum Shops must present prima-facie evidence that (1) Jet “is influenced and governed by” petitioners, (2) there is unity of interest and ownership so that

Jet and petitioners “are inseparable from each other,” and (3) adherence to the notion of Jet being a separate entity from petitioners “would sanction fraud or promote manifest injustice.” NRS 86.376(2); *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846-47 (2000). As to the “unity of interest and ownership” prong, the following factors are considered relevant: “co-mingling of funds, undercapitalization, unauthorized diversion of funds, treatment of corporate assets as the individual’s own, and failure to observe corporate formalities.” *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 887 (1987).

Though Forum Shops presented prima-facie evidence that petitioners “influenced and governed” Jet as its sole members, *Ene v. Graham*, 140 Nev., Adv. Op. 26, 546 P.3d 1232, 1237 (2024), it failed to present prima-facie evidence supporting the second and third requirements for alter-ego jurisdiction under NRS 86.376(2). Forum Shops’ exhibits supporting its alter-ego allegations show that (1) Sharp prepared a change order and executed lien waivers related to the fountain work, (2) Sharp was listed as a contact for insurance, (3) Rich coordinated efforts to correct the fountain leak issues, (4) Rich controlled issues related to payment, (5) Jet was currently in default for failure to file annual reports with the Oklahoma Secretary of State, and (6) Jet’s Nevada entity status was canceled as of 2022.

The first four exhibits show that petitioners were involved with executing management duties for Jet related to the fountain work—they do not substantiate the alter-ego allegations of commingling, diversion of funds for personal purposes, failure to observe corporate formalities, or inadequate capitalization. As to Jet’s alleged current insolvency and cancellation of its Nevada entity status in 2022, that evidence does not show

that Jet was undercapitalized or insolvent in 2019 when Jet provided the certificate of insurance to Forum Shops or in 2020 when the dispute over the fountain work arose. *See Steel v. United States*, 813 F.2d 1545, 1549 (9th Cir. 1987) (examining minimum contacts and determining that “the fair warning that due process requires arises not at the time of the suit, but when the events that gave rise to the suit occurred”). Though the record indicates that Jet was engaged in disputes with subcontractors over payment related to the fountain work when these claims arose, those disputes similarly do not, alone, support a prima-facie showing of undercapitalization or insolvency.

As to the third requirement in NRS 86.376(2), Forum Shops did not produce prima-facie evidence that recognizing Jet’s LLC form promotes “fraud” or “manifest injustice,” beyond the fact that Jet’s alleged insolvency could make it difficult for Forum Shops to collect a prospective judgment. To be sure, Forum Shops failed to show the requisite “causal connection” between petitioners allegedly abusing the LLC form and Jet’s inability to pay a judgment should Forum Shops prevail on its breach of contract claim. *Ene*, 140 Nev., Adv. Op. 26, 546 P.3d at 1237; *Polaris*, 103 Nev. at 602, 747 P.2d at 887 (explaining that evidence supporting alter ego “must also be the cause of [the] injury and must have sentenced a fraud or promoted an injustice before the corporate veil can be pierced”). Therefore, we conclude that Forum Shops failed to go beyond the pleadings and produce “competent evidence of essential facts” supporting alter-ego-based personal jurisdiction over Rich and Sharp. *Trump*, 109 Nev. at 692, 857 P.2d at 743.

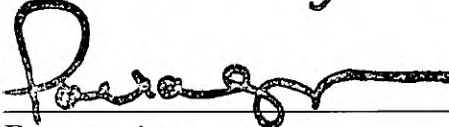
In light of the foregoing, we

ORDER the petition GRANTED and direct the clerk of this court to issue a writ of prohibition instructing the district court to vacate its

order denying petitioners' motion to dismiss and enter an order dismissing the negligent misrepresentation and breach of contract claims against petitioners individually.¹


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Mark R. Denton, District Judge
Resnick & Louis, P.C./Las Vegas
Armstrong Teasdale, LLP/Las Vegas
Eighth District Court Clerk

¹We reject Forum Shops' alternative request to renew its jurisdictional discovery request in district court. Discovery has continued during this writ petition's pendency, and Forum Shops has not indicated what information it would seek beyond the information it has already obtained. Therefore, jurisdictional discovery is not warranted. *See LNS Enters. LLC v. Cont'l Motors, Inc.*, 22 F.4th 852, 864-65 (9th Cir. 2022) (explaining that "a mere hunch that [discovery] might yield jurisdictionally relevant facts" and "bare allegations in the face of specific denials" do not warrant jurisdictional discovery (alteration in original) (internal quotation marks omitted)).