

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRIPS SYSTEMS, INC., A NEVADA
CORPORATION,

Appellant,

vs.

SUN INTERNATIONAL,
INDIVIDUALLY AND D/B/A ATLANTIS
PARADISE ISLAND CASINO AND/OR
ATLANTIS RESORT CASINO;

ATLANTIS PARADISE ISLAND
CASINO; ATLANTIS RESORT CASINO;
AND PARADISE ENTERPRISES,
LIMITED,

Respondents.

No. 39746

FILED

NOV 04 2003

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

ORDER OF AFFIRMANCE

This is an appeal by Grips Systems, Inc., from a district court order dismissing its complaint for lack of personal jurisdiction. Grips, a Nevada corporation, filed suit against Sun International, a corporation doing business in the Bahamas, for breach of contract.

FACTUAL BACKGROUND

Grips leased gaming equipment to Sun for use at Sun's casino in the Bahamas. Grips sent employees to Sun's casino on a regular basis to service the equipment. The parties agreed to terminate their lease agreement and entered into a separate contract to end their business relationship. The contract provided that Sun pay for the gaming equipment to be shipped to Grips in Nevada. The United States Customs Service, however, confiscated the equipment when it entered a port in Florida. Grips paid fines, fees, and shipping costs to retrieve the

equipment and have it delivered to Nevada. Grips claims the equipment was damaged or destroyed when it arrived in Nevada.

Grips filed a complaint against Sun in Nevada for breach of contract, breach of the implied covenant of good faith and fair dealing, and negligence. Sun moved for dismissal based on lack of personal jurisdiction, and Grips filed an opposition. Grips sought, in the alternative, an opportunity to conduct discovery to determine the extent of Sun's contact with Nevada. The district court granted Sun's motion to dismiss. Grips then filed a motion to alter or amend the judgment, which the district court denied. On appeal, Grips argues that Sun's contacts with Nevada are sufficient to acquire personal jurisdiction and that it should have been allowed to conduct discovery on the jurisdictional issue.

DISCUSSION

The parties do not dispute that Sun lacks sufficient contacts with Nevada to warrant general jurisdiction. The issue is whether Sun may be made to defend itself in Nevada based on specific jurisdiction.

The district court's determination of personal jurisdiction will be reviewed de novo.¹ The plaintiff has the burden of providing "competent evidence of essential facts" to show jurisdiction.² Although factual disputes are resolved in the plaintiff's favor, "the plaintiff must

¹Baker v. Dist. Ct., 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000).

²Peccole v. District Court, 111 Nev. 968, 970-71, 899 P.2d 568, 570 (1995).

introduce some evidence and may not simply rely on the allegations of the complaint to establish personal jurisdiction."³

The exercise of personal jurisdiction is controlled by Nevada's long-arm statute.⁴ Personal jurisdiction may be exercised over a non-resident defendant when the defendant has "minimum contacts with [Nevada] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'"⁵ and the exercise of jurisdiction is reasonable.⁶ Specific personal jurisdiction will lie only when "(1) the defendant purposefully avails himself of the privilege of serving the market in the forum or . . . establishes contacts with the forum state and affirmatively directs [its] conduct toward [it], and (2) the cause of action arises from [such] purposeful contact with the forum."⁷ Further, the cause of action must be specifically and directly related to the forum

³Trump v. District Court, 109 Nev. 687, 693, 857 P.2d 740, 744 (1993).

⁴NRS 14.065(1).

⁵Internat. Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)) quoted in Mizner v. Mizner, 84 Nev. 268, 270, 439 P.2d 679, 680 (1968).

⁶Trump, 109 Nev. at 699, 857 P.2d at 748; see Abbott v. Harrah, 90 Nev. 321, 324, 526 P.2d 75, 76 (1974) (explaining that "it is the cumulative significance of all the activities conducted in the jurisdiction rather than the isolated effect of any single activity that is determinative").

⁷Id. at 699-700, 857 P.2d at 748.

contacts in such a way that the contact cannot be deemed to be ""random," "fortuitous," or "attenuated.""⁸

Sun did not purposefully avail itself of the privilege of serving the Nevada market or affirmatively direct its conduct toward Nevada. Sun did not seek to benefit from directing its business toward Nevada or attempting to sell goods to Nevada citizens. Sun was merely one of Grips' customers. Grips directed its business to the Bahamas to sell its services to Sun. Sun operated the gaming equipment in its casino in the Bahamas, and Grips employees routinely flew to the Bahamas to service the machines. Sun employees never traveled to Nevada to conduct business with Grips. Sun's contact with Nevada was limited to phone calls made to Grips employees and faxes transmitted to Grips. The parties' agreement to terminate their business relationship simply required Sun to return the gaming equipment to Grips at its own expense.

It is unreasonable to require Sun to litigate this matter in Nevada. Nevada does not have a major interest in resolving this dispute because the majority of contacts were made in the Bahamas and key witnesses are most likely located in the Bahamas. Grips may seek redress through Bahamian courts.

We conclude Grips failed to make a prima facie showing that Nevada may exercise personal jurisdiction over Sun. We also conclude the district court did not abuse its discretion by refusing Grips' discovery


⁸See Munley v. District Court, 104 Nev. 492, 495-96, 761 P.2d 414, 416 (1988) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)).

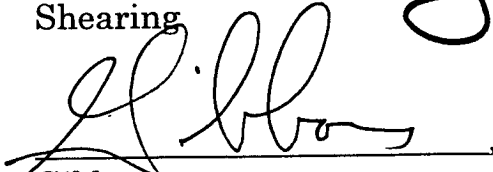
request.⁹ Grips made bare allegations that discovery might yield evidence connecting Sun with Nevada to support personal jurisdiction.¹⁰

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. James W. Hardesty, District Judge
Scarpello, Huss & Oshinski
Schreck Brignone Godfrey/Las Vegas
Washoe District Court Clerk

⁹See MGM Grand, Inc. v. District Court, 107 Nev. 65, 70, 807 P.2d 201, 204 (1991) (explaining that district courts have wide discretion to control the scope of pretrial discovery); Paradise Palms v. Paradise Homes, 93 Nev. 488, 490, 568 P.2d 577, 578-79 (1977) (holding a district court's decision regarding pretrial discovery is reviewed for an abuse of discretion); see also Jones v. Bank of Nevada, 91 Nev. 368, 370, 535 P.2d 1279, 1280 (1975) (explaining that without reasonable judicial control, the discovery process is susceptible to abuse and could be used as a delay tactic or to annoy and harass the opposing party).

¹⁰See Terracom v. Valley Nat. Bank, 49 F.3d 555, 562 (9th Cir. 1995) (providing discovery does not need to be allowed where a plaintiff's personal jurisdiction claim seems attenuated and based on bare allegations and the defendant specifically denies the claim).