

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION**

CITY OF HUBER HEIGHTS, OHIO

Plaintiff,

v.

DON ALLEN HOLBROOK, LLC

Defendant/Third-Party Plaintiff

v.

Heather Dobrott, et al.,

Third-Party Defendants.

CASE NO. 2012-CV-02947
JUDGE MICHAEL TUCKER

**MEMORANDUM IN OPPOSITION OF
DEFENDANT/THIRD-PARTY
PLAINTIFF DON ALLEN
HOLBROOK, LLC TO THIRD-PARTY
DEFENDANT FRANK MAURIZIO'S
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION AND
MOTION TO QUASH SERVICE OF
PROCESS**

I. INTRODUCTION

Defendant/Third-Party Plaintiff Don Allen Holbrook, LLC (“Defendant” or “DAH, LLC”) opposes Third-Party Defendant Frank Maurizio’s Motion to Dismiss for Lack of Personal Jurisdiction and Motion to Quash Service of Process (“Maurizio Motion to Dismiss”) to dismiss the Second Amended Third-Party Complaint (“Third-Party Complaint”) filed against him under the holding in Kaufmann Racing Equip., LLC v. Roberts, 126 Ohio St.3d 81, 2010-Ohio-255, ¶ 74, in which the Ohio Supreme Court refused “to allow a non-resident defendant to take advantage of the conveniences that modern technology affords and simultaneously be shielded from the consequences of his intentionally tortious conduct.” Id. Thus, DAH, LLC asks this Court to deny the Maurizio Motion to Dismiss and to quash service of process and to conclude

that this Court has personal jurisdiction over Frank Maurizio (“Mr. Maurizio”) under R.C. 2307.382(A)(3) and (6) and Civ.R. 4.3(A)(3) and (9) and to conclude that exercising personal jurisdiction over Mr. Maurizio will not violate the Due Process clause of the United States Constitution.

II. STATEMENT OF FACTS

DAH, LLC is an Arizona limited liability company that is registered to conduct business in the State of Ohio and conducts business around the United States of America and elsewhere as an economic developer in the public and private sectors. Third-Party Complaint, ¶ 1. Mr. Maurizio has not attached an Affidavit attesting and acknowledging that he has personal knowledge of the facts or that he is competent to testify in court as to the facts stated in his “Statement of Facts” on pages 3-4 of his Motion to Dismiss (which Motion appears to be nearly identical to the motion to dismiss filed with this Court by counsel for Heather Dobrott and Cynthia Calvert, Cynthia Calvert, The Tribune, aka, Ourtribune.com). While DAH, LLC strongly objects to this Court relying on unattested statements, it will respond with the condition that Mr. Maurizio file a proper affidavit with the Court in the near future. If Mr. Maurizio fails to timely file a proper affidavit, this Court should entirely disregard Mr. Maurizio’s Statement of Facts.

Mr. Maurizio is a resident of the State of Nevada, regularly and frequently posts defamatory, derogatory, and false statements about DAH, LLC on websites (<http://pvtimes.com/opinion/community-viewpoint-background-on-mr-holbrook-the-music-man-part-1/>; <http://pvtimes.com/opinion/community-viewpoint-background-on-mr-holbrook-the-music-man-part-2/>; <http://pvtimes.com/opinion/community-viewpoint-background-on-mr-holbrook-the-music-man-part-3/>), posts links on www.realscam.com and other websites and blogs to postings

and blogs written by Third-Party Defendant Heather Dobrott, Third-Party Defendant Craig Malisow, Third-Party Defendant Cynthia Calvert, and others that include defamatory, derogatory, and false statements about DAH, LLC, in order that such postings exploit search engine optimization on websites such as Google, so that defamatory, derogatory, and false statements about DAH, LLC, go “viral” and are listed at the beginning of any search results for “Don Allen Holbrook, LLC”, “Don Holbrook”, “Holbrook” or other variations on the name, on internet search engines and which postings have been seen and downloaded from the internet by persons residing in the State of Ohio. Third-Party Complaint, ¶ 3. Mr. Maurizio has been posting comments on the Internet about DAH, LLC since at least January 19, 2012. See Affidavit of Shelli Nestle (“Nestle Aff.”), ¶ 2 attached hereto as Exhibit A; Affidavit of Roger Reynolds (“Reynolds Aff.”), ¶ 2 attached hereto as Exhibit B; Affidavit of Steven Carne (“Carne Aff.”), ¶ 2 and attached hereto as Exhibit C.

Internet postings by Mr. Maurizio have been seen and downloaded by persons in Ohio, including Shelli Nestle, Steven Carne, and Roger Reynolds. See Nestle Aff., ¶¶ 1-2; Reynolds Aff., ¶¶ 1-2; and Carne Aff., ¶¶ 1-2. All of these negative threads and postings began well before February 28, 2012. Nestle Aff., ¶ 3; Reynolds Aff., ¶ 3; and Carne Aff., ¶ 3. The web address <http://pah.stparchive.com/Archive/PAH/PAH0119212p17.php> cited in the Nestle, Reynolds, and Carne Affidavits in paragraph 2 is an editorial written by Mr. Maurizio dated January 19, 2012, from the Pahrump Mirror with the heading “Scammed by a snake oil salesman”, referring to Mr. Holbrook with respect to projects in Pahrump, Nevada, and Houston, Texas. Nestle Aff., ¶ 2; Reynolds Aff., ¶ 2; and Carne Aff., ¶ 2.

DAH, LLC entered an Agreement with the City of Huber Heights, Ohio (“City”) to perform an economic development business case analysis with the assistance of the City Staff

and collaboration of the current developer. Third-Party Complaint, ¶¶ 14-20 and Exhibit 1 attached thereto. The City Council adopted a Resolution on December 12, 2011, approving the Agreement and payments to DAH, LLC. Third-Party Complaint, ¶¶ 14-16 and Exhibit 2 attached thereto. Under the Agreement, the City was to be invoiced a total of \$66,000.00, of which the City has only paid \$53,800.00 leaving an outstanding balance of \$12,200.00 owed, thereby breaching the Agreement. Counterclaim, ¶ 39.

The Agreement stated that the recommended “scope of work would require the assistance of the City Staff and collaboration of the current developer to provide information and collaborate on conceptual development strategies.” See Exhibit 1 attached to the Third-Party Complaint. Donnie Jones, Assistant City Manager, was directed by former City Manager Gary Adams to work with DAH, LLC on various incentives and financing models, but failed to do so. Third-Party Complaint, ¶¶ 22, 24, 25, 30, 31, 33.

At a meeting on March 14, 2012 between DAH, LLC and members of the City Staff, including Mayor Ron Fisher and Mark Campbell, a member of the City Council, Mr. Campbell said, without any warning to DAH, LLC, that the City no longer wanted a relationship with DAH, LLC, did not believe that the City had received any value for the monies paid, and demanded a full refund of all monies paid under the Agreement. Third-Party Complaint, ¶ 34. It is at this meeting that DAH, LLC claims the City breached the Agreement, not on February 29, 2012, as averred by Mr. Maurizio. See Maurizio Statement of Facts No. 8.

Mr. Carne attended an earlier meeting on March 14, 2012, as a member of the Executive Board of the Montgomery County Agricultural Society and is also associated with DAH, LLC. Carne Aff., ¶ 4. Mr. Carne spoke to Mayor Fisher on March 15, 2012, and Mayor Fisher told Mr. Carne that Jim Borland, Acting City Manager (after Mr. Adams) gave Mr. Campbell copies

of internet research on DAH, LLC and that Mr. Campbell gave copies to Mayor Fisher. Carne Aff., ¶ 6.

On April 8, 2012, Mayor Fisher told Mr. Carne that he wanted to drop the lawsuit against DAH, LLC and walk away. Carne Aff., ¶ 7. On April 10, 2012, Mr. Carne told Mr. Holbrook about his conversations with Mayor Fisher, including the statements about internet research. Carne Aff., ¶ 8. DAH, LLC made a public records request of the City but the City did not provide any hard or electronic copies of any internet searches on DAH, LLC or Mr. Holbrook on internet sites or comments by bloggers later exchanged between the members of the City Council, the City Manager, Donnie Jones, or any staff person employed by the City. Third-Party Complaint, ¶ 38.

III. UNDER OHIO LAW, OHIO COURTS ARE OPEN TO ALL PERSONS.

As a preliminary matter, this Court must reject Mr. Maurizio's implicit argument running throughout his Motion to Dismiss that because DAH, LLC is not an Ohio limited liability company, it cannot seek redress for an injury it suffered in Ohio in an Ohio court. Mr. Maurizio's argument is contrary to Ohio law. The Ohio Supreme Court has explained that the "courts of this state are, and always will be, as open to a non-resident plaintiff as to citizens of this state, provided they meet the necessary statutory requirements imposed by the General Assembly." Howard v. Allen, 30 Ohio St.2d 130, 137 (1972).

Article I, Section 16 of the Ohio Constitution, the "Open Courts" amendment, is entitled "Redress in courts" and states in part:

"All courts shall be open, and **every person**, for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. . . ."

Emphasis added. Thus, under the Ohio Constitution, Ohio courts are open to "every person", not

just residents of the state. R.C. 1.59(C) states that “[p]erson’ includes an individual, corporation, business trust, estate, trust, partnership, and association.” As the Ohio Supreme Court explained above in Howard, a non-resident plaintiff may sue in Ohio courts provided it meets the necessary statutory requirements, which in this case is R.C. 2307.382, the Ohio long-arm statute. Notably, R.C. 2307.382 does not include the word “resident” anywhere to restrict who may bring a claim for affirmative relief against a non-resident defendant.

IV. UNDER OHIO LAW, THIS COURT HAS PERSONAL JURISDICTION OVER MR. MAURIZIO.

When a defendant asserts a lack of personal jurisdiction as a defense to a complaint, the burden is on the plaintiff to establish that the trial court has personal jurisdiction over the defendant. Enquip Technologies Group, Inc. v. Tycon Technoglass, S.r.l., Greene App. No. 2010-CA-23, 2010-Ohio-6100, at ¶ 10 (2nd Dist.), citing Jurko v. Jobs Europe Agency, 43 Ohio App.3d 79, 85 (8th Dist. 1975). A plaintiff is required to make only a *prima facie* showing of personal jurisdiction to withstand a motion to dismiss. Kauffman Racing Equip., LLC v. Roberts, 126 Ohio St.3d 81, 2010-Ohio-255, at ¶ 27, citing Fallang v. Hickey, 40 Ohio St.3d 106, 107 (1988). Allegations in pleadings are accepted because under Ohio law, “an admission in a pleading dispenses with proof and is equivalent to proof of the fact.” J. Miller Express, Inc. v. Pentz, 107 Ohio App.3d 44, 48 (9th Dist. 1995), citing Rhoden v. Akron, 61 Ohio App.3d 725, 727 (9th Dist. 1988) (“ . . . an admission made in pleadings dispenses with the need to prove the truth of the matter admitted.”). Affidavits, depositions, interrogatories, or other oral testimony may be used because matters relating to personal jurisdiction may not be apparent on the face of the summons or complaint. Jurko at 85. Unattested statements in motions or other responses are not proper evidence. In considering whether a plaintiff has made its *prima facie* showing, a court must (1) view the allegations in the pleadings and any documentary evidence in a light most

favorable to the plaintiff; and (2) resolve all reasonable competing inferences in favor of the plaintiff. Goldstein v. Christiansen, 70 Ohio St.3d 232, 236 (1994).

In order for an Ohio trial court to exercise personal jurisdiction over a non-resident defendant, it uses a two-step analysis to determine: (1) whether R.C. 2307.382(A) and Civ.R. 4.3(A) confer personal jurisdiction; and, if so, (2) whether the exercise of personal jurisdiction would deprive a non-resident defendant of the right to due process of law under the Fourteenth Amendment to the United States Constitution. Enquip Technologies Group at ¶ 10, citing Kauffman Racing Equip. at ¶ 28. Ohio courts use this analysis because R.C. 2307.382 and Civ.R. 4.3(A) do not confer personal jurisdiction to the limits of the Due Process clause. Goldstein at 238 n.1. This two-step analysis applies to cases involving the use of the internet and websites. Kauffman Racing Equip. at ¶ 25. Also, this Court may take limited judicial notice of website addresses and whether a website is interactive or for informational purposes only. See Malone v. Berry, 174 Ohio App.3d 122, 2007-Ohio-6501, at ¶ 13 (10th Dist.). Thus, DAH, LLC has the burden to make a *prima facie* showing to this Court that it has personal jurisdiction over Mr. Maurizio.

A. A plaintiff makes a *prima facie* showing of personal jurisdiction by alleging conduct to meet the requirements under R.C. 2307.382(A).

In order for an Ohio court to exercise personal jurisdiction over an out-of-state defendant, a plaintiff must allege that an out-of-state defendant, directly or by an agent, engaged in specific enumerated activities identified in R.C. 2307.382(A), including the following sections relevant to DAH, LLC's claims for civil conspiracy, tortious interference with contract and prospective business relations, and defamation against Mr. Maurizio:

(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

(3) **causing tortious injury** by an act or omission **in this state**;

(6) **causing tortious injury in this state to any person** by an act outside this state **committed with the purpose of injuring persons**, when he might reasonably have expected that some person would be injured thereby in this state;

Emphasis added. To assert a tortious injury under R.C. 2307.382(A)(3) and Civ.R. 4.3(A)(3), a plaintiff need only make a *prima facie* showing that it suffered a tortious injury in the state of Ohio by an act or an omission by the defendant. In Kauffman Racing Equip., the Ohio Supreme Court concluded that the tort of defamation had been committed in Ohio by a non-resident defendant who posted allegedly defamatory statements on the Internet when the plaintiff showed evidence that Ohioans had seen these statements on the Internet, thus meeting the material element of publication of the comments in Ohio. Id. at ¶¶ 41-42, citing Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 777 (1984); Fallang v. Hickey, 40 Ohio St.3d 106, 107 (1988).

The Ohio Supreme Court in Kauffman Racing Equip. also concluded that “even if” the defendant had not published his internet postings within the state of Ohio, the defendant was “not shielded from the reach of Ohio’s long arm” statute. Kauffman Racing Equip. at ¶ 43. The Court concluded that R.C. 2307.382(A)(6) and Civ.R. 4.3(A)(9) allow an Ohio court to exercise personal jurisdiction over a non-resident defendant and provide for effective service of process “if the cause of action arises from a tortious act committed outside Ohio with the purpose of injuring persons, when the nonresident defendant might reasonably have expected that some person would be injured thereby in Ohio.” Kauffman Racing Equip. at ¶ 43, citing Clark v. Connor, 82 Ohio St.3d 309, 313 (1998).

In Kauffman Racing Equip., the Ohio Supreme Court found that although the defendant’s publication of his tortious comments did not emanate from Ohio, that the plaintiff made a *prima facie* showing that the tortious comments were published in Ohio, meaning that the tort was

committed in Ohio. Id., citing Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 777 (1984); Fallang at 107. The Ohio Supreme Court reasoned: “Roberts posted his allegedly defamatory statements on the Internet, **ostensibly for the entire world to see.**” Kauffman Racing Equip. at ¶ 42 (emphasis added). Because the plaintiff produced evidence that Ohioans saw the defendant’s postings, the Ohio Supreme Court found that the defendant’s statements were published in Ohio, the alleged tort was committed in Ohio and that R.C. 2307.382(A)(3) and Civ.R. 4.3(A)(3) were applicable. Id. Alternatively, the Ohio Supreme Court concluded in Kauffman Racing Equip. that the requirements under R.C. 2307.382(A)(6) and Civ.R. 4.3(A)(9) were met when defamatory statements made outside Ohio had the purpose of injuring persons in Ohio, then there is a reasonable expectation that the purposefully inflicted injury will occur in Ohio. Id. at ¶ 44.

B. If a Court finds personal jurisdiction under R.C. 2307.382(A), it must next determine whether its exercise of personal jurisdiction will comport with an out-of-state defendant’s Due Process rights.

Even if this Court concludes that DAH, LLC has made a *prima facie* showing under R.C. 2307.382(A) and Civ.R. 4.3(A), then Ohio law requires a court to consider whether exercising personal jurisdiction will violate an out-of-state defendant’s rights to due process of law. Goldstein at 235. The due process clause under the Fourteenth Amendment limits the power of state courts to enter judgments against a nonresident. Kulko v. California Superior Court, 436 U.S. 84, 91 (1978). The Due Process clause permits a court to obtain either general or specific jurisdiction over a non-resident defendant depending on the nature of the defendant’s contacts with the forum state. Kauffman Racing Equip. at ¶ 46. DAH, LLC has not alleged that Mr. Maurizio’s contacts with Ohio have been of a “continuous and systematic nature” for this Court to exercise general jurisdiction. DAH, LLC has alleged that its cause of action is related to or

arises out of Mr. Maurizio's contacts with Ohio for this Court to exercise specific jurisdiction. Id. at ¶ 47, citing Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414 (1984).

Specific jurisdiction is permitted if the defendant's contacts with Ohio meet the factors identified in the three-part test established in Southern Machine Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968). First, a defendant must purposefully avail himself of the privilege of acting in the state or causing a consequence in the state. Second, the causes of action must arise from the defendant's activities. Third, the defendant's actions or the consequences of defendant's actions must have a substantial enough connection with the state to make a court's exercise of jurisdiction over the defendant reasonable. Southern Machine at 381.

When the first two factors are met under the Southern Machine analysis, an inference arises that the third "reasonableness" factor is also present. Kauffman Racing Equip. at ¶ 71. Among the factors relevant to the reasonableness inquiry are that a state has a significant interest in redressing injuries that actually occur within the state and "that a high degree of unfairness is required to erect a constitutional barrier against jurisdiction." Kauffman Racing Equip. at ¶ 72 (citations omitted).

V. THIS COURT SHOULD CONCLUDE THAT DAH, LLC HAS MADE A PRIMA FACIE SHOWING THAT THIS COURT HAS PERSONAL JURISDICTION OVER MR. MAURIZIO.

Under Ohio law, nonresident defendants cannot use the Internet as a shield to protect them from the consequences of otherwise intentionally tortious conduct. Acting in concert with others to tortiously interfere with another's contracts or business relations and publishing statements intended to injure another's business reputation, exposing another to public ridicule, shame and/or disgrace for the purpose of adversely affecting another in its trade, business, or profession are intentional torts whether such acts are committed with older technology, such as

writing letters, or such acts are committed with new technology such as the Internet. This Court must view all allegations in the pleadings and the documentary evidence in a light most favorable to Kauffman Racing Equip. at ¶ 72, LLC and must resolve all competing inferences in its favor. Kauffman Racing Equip. at ¶ 27. This Court should conclude that Kauffman Racing Equip. at ¶ 72, LLC has made a *prima facie* showing in its Third-Party Complaint that this Court should exercise personal jurisdiction over Mr. Maurizio and deny the Motion to Dismiss.

A. DAH, LLC has met its burden to make a *prima facie* showing of personal jurisdiction under R.C. 2307.382(A).

DAH, LLC has made a *prima facie* showing under R.C. 2307.382(A)(3) that Mr. Maurizio has caused tortious injury to it by an act in Ohio and/or under R.C. 2307.382(A)(6) that Mr. Maurizio caused tortious injury in Ohio to DAH, LLC by an act outside of Ohio committed with the purpose of injuring DAH, LLC, when Mr. Maurizio might reasonably have expected that DAH, LLC would be injured thereby in Ohio. By alleging that Mr. Maurizio posted comments and about alleged criminal activity and/or alleged unethical conduct by DAH, LLC concerning other economic development projects in Pahrump, Nevada and Montgomery County, Texas, DAH, LLC has made a *prima facie* showing that Mr. Maurizio has published statements that are defamatory per se and/or per quod and has published those statements on the Internet “ostensibly for the entire world to see.” Kauffman Racing Equip. at ¶ 42. DAH, LLC, has presented the Affidavits of Steven Carne, Shelli Nestle, and Roger Reynolds, all citing to <http://pah.stparchive.com/Archive/PAH/PAH0119212p17.php> (in paragraph 2 of each affidavit), an archived letter to the editor published on January 19, 2012, calling Mr. Holbrook a “snake oil salesman”, which is defamatory *per se*. Thus, at least 3 Ohioans have seen and downloaded voluminous false and derogatory comments from various websites, which began well before February 28, 2012. Furthermore, Mr. Maurizio has posted and re-posted comments by other

Third-Party Defendants including but not limited to Heather Dobrott, Cynthia Calvert, on interactive websites such as www.realscam.com and www.ourtribune.com, among others, to exploit search engine optimization on search websites so that negative and defamatory postings “go viral” and are listed at the top of search results for DAH, LLC, “Don Allen Holbrook”, or “Don Holbrook”, which are seen and downloaded in Ohio. Thus, under the holding in Kauffman Racing Equip., Mr. Maurizio’s comments and links posted on the Internet were published in Ohio. Id.

Moreover, this Court should resolve any reasonable competing inferences in favor of DAH, LLC by concluding that it is reasonable that the “internet research” given to Mr. Campbell and to Mayor Fisher were printed pages from Third-Party Defendants, including Mr. Maurizio’s defamatory statements about DAH, LLC’s business reputation and conduct relating to work with development projects in Nevada and Texas. Furthermore, DAH, LLC has alleged, and Mr. Maurizio has not denied, that Mr. Maurizio worked in concert with other Third-Party Defendants by posting links to each others’ websites and comments, that the Third-Party Defendants were engaged in a civil conspiracy, and as a proximate result of the civil conspiracy to defame DAH, LLC, to tortiously interfere with the Agreement with the City by procuring its breach.

Under R.C. 2307.382(A)(3), DAH, LLC has made a *prima facie* showing that it was injured in Ohio based on the statement that Mayor Fisher made to Mr. Carne on March 15, 2012, the day after the City breached the Agreement, that “internet research” had been given to Mr. Campbell and to him. Carne Aff., ¶ 6. Notably, none of the Third-Party Defendants to date have denied posting negative statements on the Internet about DAH, LLC or have shown that others not named as parties are responsible for the postings. Alternatively, under R.C. 2307.382(A)(6), DAH, LLC has made a *prima facie* showing that it was injured by an act outside Ohio committed

with the purpose of injuring DAH, LLC, when Mr. Maurizio might reasonably have expected that DAH, LLC would be injured thereby in Ohio. This Court should conclude that DAH, LLC has met its burden to make a *prima facie* showing under R.C. 2307.382(A)(3) and (6) that this Court has personal jurisdiction over Mr. Maurizio.

B. DAH, LLC has met its burden to make a *prima facie* showing that exercising personal jurisdiction over Mr. Maurizio will not violate his due process rights.

DAH, LLC has asserted that this Court has specific jurisdiction over Mr. Maurizio by alleging that its causes of action arise out of or are related to his contacts with Ohio. Under the three-part test from Southern Machine Co., DAH, LLC has shown first, that Mr. Maurizio purposefully availed himself of the privilege of acting in Ohio or causing a consequence in Ohio by posting defamatory comments on the Internet about the professional reputation and conduct of DAH, LLC. Second, DAH, LLC has shown that the causes of action arise from Mr. Maurizio's activities on the Internet which have been seen in Ohio. Third, Mr. Maurizio's acts or the consequences caused by his acts have a substantial enough connection with Ohio to make the exercise of personal jurisdiction reasonable. Southern Machine Co. v. Mohasco Industries, Inc., 401 F.2d 374, 381 (6th Cir. 1968). If the first two factors of this test are satisfied, then a reasonable inference arises that the third factor is also present. Kauffman Racing Equip. at ¶ 71 (citations omitted).

DAH, LLC has met its burden to show that Mr. Maurizio has purposefully availed himself of the privilege of acting in Ohio or causing consequences in Ohio by posting comments on interactive websites and re-posting links to others' postings on the Internet intended to harm the business reputation of and to adversely affect DAH, LLC in its trade, its business, or profession. Mr. Maurizio's actions, by posting and re-posting his own and others' defamatory

comments about DAH, LLC, specifically exploit search engine optimization algorithms on search engine websites so that the negative comments appear at the beginning of search results for “Don Allen Holbrook, LLC”, “Don Allen Holbrook”, or “Don Holbrook” constituting cyber-bullying, cyber-stalking, and cyber-harassment, for the whole world to see on the Internet, including Ohio.

In Kauffman Racing Equip., the Ohio Supreme Court followed the analysis in Calder v. Jones, 465 U.S. 783 (1984) and rejected the analysis in Reynolds v. Internatl. Amateur Athletic Fedn., 23 F.3d 1110 (6th Cir. 1994), neither of which involved Internet communications of defamatory material. Kauffman Racing Equip. at ¶ 61. Notably, the Court in Kauffman Racing Equip. rephrased the conclusion in Calder to the following question relevant to the facts before it: “should a company injured in Ohio need to go to Virginia to seek redress from a person who, though remaining in Virginia, knowingly caused injury in Ohio?” Id. at ¶ 56. Then, examining cases involving defamatory material on the Internet, the Court looked at Cadle Co. v. Schlichtmann, 123 Fed. Appx. 675 (6th Cir. 2005) (no personal jurisdiction because alleged defamatory statements on defendant’s passive website were not related to plaintiff’s activities in Ohio) and Oasis Corp. v. Judd, 132 F. Supp. 2d 612 (S.D. Ohio 2001) (no personal jurisdiction because no evidence that defendants’ communications were received by anyone in Ohio other than plaintiff). Id. at ¶¶ 62-63.

Given the voluminous nature of these comments by Mr. Maurizio in concert with others on interactive websites which have been seen in Ohio, his contacts are not “random”, “fortuitous”, or “attenuated”, but instead show that he has created a substantial connection with Ohio rising to purposeful availment, by which he should have reasonably anticipated being haled into court in Ohio, where DAH, LLC was also acting under an Agreement with the City of Huber

Heights as an economic developer. This Court should resolve competing inferences in favor of DAH, LLC and conclude that Mr. Maurizio knew about the Agreement with the City at least by February 7, 2012 or by February 29, 2012, when Mr. Adams reported receiving a telephone call from a reporter.

The Court in Kauffman Racing Equip. concluded that the “effects analysis” in Calder requires conduct “‘calculated to cause injury’ in a ‘focal point’ where the ‘brunt’ of the injury is experienced.” Kauffman Racing Equip. at ¶ 66 (citation omitted). The content of Mr. Maurizio’s postings and his actions in re-posting others’ comments shows that he intended to harm the professional reputation of DAH, LLC and which proximately resulted in harm to DAH, LLC in Ohio. This Court should conclude that DAH, LLC has made a *prima facie* showing that Mr. Maurizio purposefully availed himself of Ohio law.

Second, Mr. Maurizio’s contacts with Ohio are related to the operative facts alleged in the Third-Party Complaint so that the causes of action have a substantial connection with Mr. Maurizio’s activities in Ohio. Id. at ¶ 70. By posting and re-posting comments on interactive websites to exploit search engine optimization logarithms, so that any time the names “Don Allen Holbrook, LLC”, “Don Allen Holbrook”, or “Don Holbrook” were searched on Internet search websites, negative comments appeared at the top of any search results to the detriment of DAH, LLC. Mr. Maurizio thus maintained contacts with Ohio.

Finally, this Court should infer because the first two factors are present, the third factor is also met. Specifically, while there are a number of factors to consider under the reasonable inquiry centering on a plaintiff’s residency in the forum, they are not the only factors to consider. Id. at ¶ 72. Singular among the reasons that the claims against Mr. Maurizio should be tried in Ohio is the fact that the City has sued DAH, LLC here. Notably, a state has a significant interest

in redressing injuries that occur within the state. *Id.* Moreover, the Court in Kauffman Racing Equip. noted that a high degree of unfairness is required to erect a constitutional barrier against jurisdiction. Thus, this Court should conclude that DAH, LLC has met the three factors under the Southern Machine analysis and that the exercise of personal jurisdiction over Mr. Maurizio will not deprive him of his due process rights.

VI. CONCLUSION

In sum, this Court should view the evidence in a light most favorable to DAH, LLC, should conclude that DAH, LLC has made a *prima facie* showing of personal jurisdiction over Mr. Maurizio under the long-arm statute, that the exercise of personal jurisdiction will not deprive him of his rights of due process, and deny Mr. Maurizio's Motion to Dismiss and to quash service of process.

Respectfully Submitted,

s/Sue Seeberger

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Holbrook, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by the Court's e-filing system or by ordinary mail on this 7th day of August, 2012, upon the following:

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s/Sue Seeberger

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
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CITY OF HUBER HEIGHTS, OHIO

Plaintiff,

v.

DON ALLEN HOLBROOK, LLC

Defendant/Third-Party Plaintiff

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JUDGE MICHAEL TUCKER

**AFFIDAVIT OF SHELLI NESTLE IN
SUPPORT OF DON ALLEN
HOLBROOK'S RESPONSE TO THE
MOTION TO DISMISS**

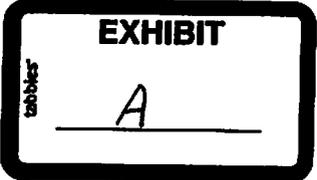
STATE OF OHIO)
)
COUNTY OF MONTGOMERY) SS

I, Shelli Nestle, attest and acknowledge that I have personal knowledge of the facts stated below and that I am competent to testify to these facts in a court of law:

1. I am a resident of the City of Vandalia, in Montgomery County, Ohio.
2. I have seen Internet postings by "soapboxmom" on www.realscam.com and other postings on other websites and have downloaded voluminous internet based web pages with what I consider to be untrue, highly defamatory and negative comments about Don Allen Holbrook, LLC and/or Don Allen Holbrook, also known as Don Holbrook, from the following websites:

<http://www.realscam.com/f11/don-allen-holbrook-iedc-international-economic-development-council-rogue-member-1240/>

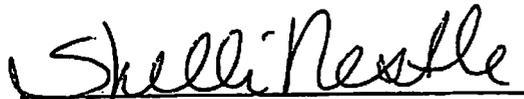
<http://pah.stparchive.com/Archive/PAH/PAH0119212p17.php>



<http://ourtribune.com/article.php?id=13295>

3. All of these negative threads and postings began well before February 28, 2012.

FURTHER THE AFFLIANT SAYETH NAUGHT.


Shelli Nestle

Subscribed and sworn to before me by Shelli Nestle this 6th day of August, 2012.


Notary Public



SUE SEEBERGER, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 O. R. C.

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

CITY OF HUBER HEIGHTS, OHIO

Plaintiff,

v.

DON ALLEN HOLBROOK, LLC

Defendant/Third-Party Plaintiff

v.

Heather Dobrott, et al.,

Third-Party Defendants.

CASE NO. 2012-CV-02947
JUDGE MICHAEL TUCKER

AFFIDAVIT OF ROGER REYNOLDS
IN SUPPORT OF DON ALLEN
HOLBROOK'S RESPONSE TO THE
MOTION TO DISMISS

STATE OF OHIO

COUNTY OF MONTGOMERY

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)

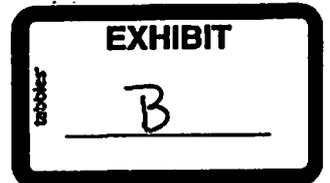
SS

I, Roger Reynolds, attest and acknowledge that I have personal knowledge of the facts stated below and that I am competent to testify to these facts in a court of law:

1. I am a resident of the City of Vandalia, in Montgomery County, Ohio.
2. I have seen Internet postings by "soapboxmom" on www.realscam.com and other postings on other websites and have downloaded voluminous internet based web pages with what I consider to be untrue, highly defamatory and negative comments about Don Allen Holbrook, LLC and/or Don Allen Holbrook, also known as Don Holbrook, from the following websites:

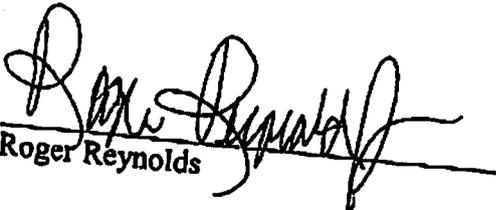
<http://www.realscam.com/fl1/don-allen-holbrook-iedc-international-economic-development-council-rogue-member-1240/>

<http://pah.stparchive.com/Archive/PAH/PAH0119212p17.php>



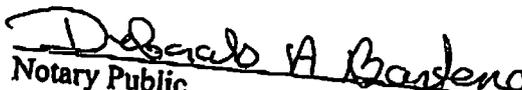
<http://ourtribune.com/article.php?id=13295>

3. All of these negative threads and postings began well before February 28, 2012.
FURTHER THE AFFIANT SAYETH NAUGHT.


Roger Reynolds



Subscribed and sworn to before me by Roger Reynolds this 7 day of August, 2012.


Notary Public

DEBORAH A. BARTONE, Notary Public
In and for the State of Ohio
My Commission expires August 15, 2016

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION**

CITY OF HUBER HEIGHTS, OHIO

Plaintiff,

v.

DON ALLEN HOLBROOK, LLC

Defendant/Third-Party Plaintiff

v.

Heather Dobrott, et al.,

Third-Party Defendants.

CASE NO. 2012-CV-02947
JUDGE MICHAEL TUCKER

**AFFIDAVIT OF STEVEN CARNE IN
SUPPORT OF DON ALLEN
HOLBROOK'S RESPONSE TO THE
MOTION TO DISMISS**

STATE OF OHIO)
) SS
COUNTY OF MONTGOMERY)

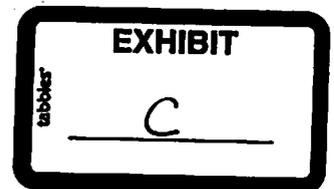
I, Steven Carne, attest and acknowledge that I have personal knowledge of the facts stated below and that I am competent to testify to these facts in a court of law:

1. I am a resident of Montgomery County in the State of Ohio.

2. I have seen Internet postings by "soapboxmom" on www.realscam.com and other postings on other websites and have downloaded voluminous internet based web pages with what I consider to be untrue, defamatory, and negative comments about Don Allen Holbrook, LLC and/or Don Allen Holbrook, also known as Don Holbrook, from the following websites:

<http://www.realscam.com/fl1/don-allen-holbrook-iedc-international-economic-development-council-rogue-member-1240/>

<http://pah.stparchive.com/Archive/PAH/PAH0119212p17.php>



<http://ourtribune.com/article.php?id=13295>

3. All of these negative threads and postings began well before February 28, 2012.

4. I am a member of the Executive Board of the Montgomery County Agricultural Society, am associated with Don Allen Holbrook, LLC, and attended a 4:30 p.m. meeting on March 14, 2012, also attended by some of the staff of the City of Huber Heights, Mayor Ron Fisher, Council Member Mark Campbell, Alan Schaeffer, other members of the Executive Board of the Montgomery County Agricultural Society, and Don Holbrook.

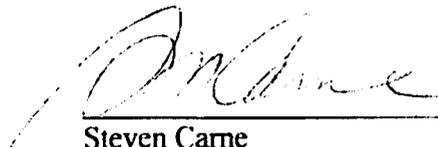
5. There was another meeting at 5:30 p.m. that same day that I did not attend, but it is my understanding that Mr. Holbrook met with Mayor Fisher, Mr. Campbell, Mr. Schaeffer, and some of the staff of the City.

6. I spoke to Mayor Fisher on March 15, 2012, and Mayor Fisher told me that Jim Borland, Acting City Manager (after Mr. Adams) gave Mr. Campbell copies of internet research on Don Allen Holbrook and that Mr. Campbell gave copies to Mayor Fisher.

7. On April 8, 2012, Mayor Fisher told me that he wanted to drop the lawsuit against Don Allen Holbrook, LLC and walk away.

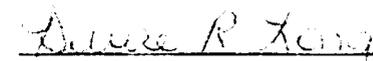
8. On April 10, 2012, I told Mr. Holbrook about my conversations with Mayor Fisher, including the statements about internet research.

FURTHER THE AFFIANT SAYETH NAUGHT.



Steven Carne

Subscribed and sworn to before me by Steven Carne this 6 day of August, 2012.



Notary Public
Comm. exp. Aug. 6, 2016