

**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 HEATHER DOBROTT'S  
MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION AND  
MOTION TO QUASH SERVICE OF  
PROCESS**

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**I. INTRODUCTION**

Defendant/Third-Party Plaintiff Don Allen Holbrook, LLC (“Defendant” or “DAH, LLC”) opposes Third-Party Defendant Heather Dobrott’s Motion to Dismiss for Lack of Personal Jurisdiction and Motion to Quash Service of Process (“Dobrott Motion to Dismiss”) to dismiss the Second Amended Third-Party Complaint (“Third-Party Complaint”) filed against her under the holding in Kauffman 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 [her] intentionally tortious conduct.” Id. Thus, DAH, LLC asks this Court to deny the Dobrott Motion to Dismiss and to quash service of process and to conclude

that this Court has personal jurisdiction over Heather Dobrott (“Mrs. Dobrott”) under R.C. 2307.382(A)(3) and (6) and that she has been properly served with process under Civ.R. 4.3(A)(3) and (9) and to conclude that exercising personal jurisdiction over Mrs. Dobrott will not violate the Due Process clause of the United States Constitution.

## **II. STATEMENT OF FACTS**

DAH, LLC is an Arizona limited liability company registered to conduct business in the State of Ohio and also conducts business around the United States of America and elsewhere as an economic developer in the public and private sectors. Third-Party Complaint, ¶ 1. Mrs. Dobrott resides in Garland, Texas. Affidavit of Heather Dobrott (“Dobrott Aff.”), ¶ 1. Mrs. Dobrott concedes that she published statements on the Internet under the user name “soapboxmom” regarding DAH, LLC to a Nevada based website at [www.realscam.com](http://www.realscam.com). Dobrott Aff., ¶ 6. Contrary to Mrs. Dobrott’s attestation in paragraph 6 of her Affidavit, there is no Exhibit A attached to her Affidavit. Thus, there is no submitted to this Court that Mrs. Dobrott has not made statements about Don Holbrook, Holbrook, or Don Allen Holbrook, LLC before the City breached the Agreement. Should Exhibit A to Mrs. Dobrott’s Affidavit be attached to her reply memorandum, DAH, LLC will respond in a timely manner to any evidence therein.

Mrs. Dobrott regularly and frequently blogs, posts, re-posts, and posts links to defamatory, derogatory, and false statements on a variety of websites and blogs, including but not limited to defamatory, derogatory, and false statements about DAH, LLC, at least since February 7, 2012, if not earlier, constituting cyber-stalking and cyber-harassment, including but not limited to, <http://pvtimes.com/news/theme-park-contractor-holbrook-sued-by-ohio-town/>; <http://www.topix.com/wire/city/huber-heights-oh>; <http://www.topix.com/wire/city/pahrump->

nv?q=u:pvtimes.com; [http://blogs.houstonpress.com/hairballs/2012/05/Earthquests\\_don\\_holbrook\\_sued\\_huber\\_heights.php](http://blogs.houstonpress.com/hairballs/2012/05/Earthquests_don_holbrook_sued_huber_heights.php); <http://www.houstondinopark.com/discuss.php>; and <http://kingwoodunderground.com/topic.jsp?topicId=11722526>, regularly and frequently posts links on “www.realscam.com” and other websites to postings and blogs written by Third-Party Defendant Frank Maurizio, 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 and other search engine websites so that defamatory, derogatory, and false statements about DAH, LLC, go “viral” and are listed at the beginning of any search 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, ¶ 2. Mrs. Dobrott concedes that she published statements on her website concerning “Holbrook’s involvement with development projects in Pahrump, Nevada and Montgomery County, Texas.” Dobrott Aff., ¶ 9.

Internet postings by “soapboxmom” on [www.realscam.com](http://www.realscam.com) and other websites have been seen and downloaded by persons in Ohio, including but not limited to Shelli Nestle, Steven Carne, and Roger Reynolds. See Affidavit of Shelli Nestle (“Nestle Aff.”), ¶¶ 1-2 attached hereto as Exhibit A; Affidavit of Roger Reynolds (“Reynolds Aff.”), ¶¶ 1-2 attached hereto as Exhibit B; Affidavit of Steven Carne (“Carne Aff.”), ¶¶ 1-2 and attached hereto as Exhibit C. All of these negative threads and postings began well before February 28, 2012. Nestle Aff., ¶ 3; Reynolds Aff., ¶ 3; and Carne Aff., ¶ 3.

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.

In an email dated February 29, 2012 to DAH, LLC, Mr. Adams said that he had been contacted by a reporter in a city near Houston, Texas, asking if the City had a contract with DAH, LLC, which Mr. Adams confirmed, and then Mr. Adams told DAH, LLC in an email that it was a “strange conversation”, but that he was not concerned about it because it did not pertain to the City. Third-Party Complaint, ¶¶ 12, 26-28.

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.

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 March 30, 2012, before the City of Huber Heights filed its lawsuit against DAH, LLC, the following comment was posted on www.realscam.com:

“Pardon me, but Mr. Holbrook brags of that [sic] 100 projects worth billions that created 50,000 jobs, but has yet to name even one of these. I want a complete list so I can verify that he was responsible for these lofty accomplishments he brags of. **His recent projects have been falling through.** Earthquest is in bankruptcy and the charitable institute part of that project is defunct after Don Holbrook walked away with 33% of the almost 1 million raised. **Other projects may well not go forward as his credentials and accomplishments are being investigated.**”

Third-Party Complaint, ¶ 12 (emphasis added). 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.

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

As a preliminary matter, this Court must reject Mrs. Dobrott’s implicit argument running throughout her 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. Mrs. Dobrott’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 MRS. DOBROTT.**

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 (2<sup>nd</sup> Dist.), citing Jurko v. Jobs Europe Agency, 43 Ohio App.3d 79, 85 (8<sup>th</sup> 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 (9<sup>th</sup> Dist. 1995), citing Rhoden v. Akron, 61 Ohio App.3d 725, 727 (9<sup>th</sup> 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. 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 (10<sup>th</sup> Dist.). Thus, DAH, LLC has the burden to make a *prima facie* showing to this Court that it has personal jurisdiction over Mrs. Dobrott.

**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 Mrs. Dobrott:

(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. 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 Mrs. Dobrott’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 Mrs. Dobrott’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 (6<sup>th</sup> Cir. 1968). First, a defendant must purposefully avail herself 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 action 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 MRS. DOBROTT.**

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 DAH, LLC and must resolve all competing inferences in its favor. Kauffman Racing Equip. at ¶ 27. This Court should conclude that DAH, LLC has made a *prima facie* showing in its Third-Party Complaint that this Court should exercise personal jurisdiction over Mrs. Dobrott and deny the Dobrott 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 Mrs. Dobrott has caused tortious injury to it by an act in Ohio and/or under R.C. 2307.382(A)(6) that Mrs. Dobrott caused tortious injury in Ohio to DAH, LLC by an act outside of Ohio committed with the purpose of injuring DAH, LLC, when Mrs. Dobrott might reasonably have expected that DAH, LLC would be injured thereby in Ohio. By alleging that Mrs. Dobrott posted comments and links to others' comments on other websites on her own website, www.realscam.com, about alleged public drunkenness, 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 Mrs. Dobrott has published statements that are defamatory per se and/or per quod and has published those statements "ostensibly for the entire world to see." Kauffman Racing Equip. at ¶ 42. DAH, LLC, has presented 3 Affidavits that Ohioans have seen and downloaded voluminous false and derogatory comments from various websites, including Mrs. Dobrott's website, which began well before

February 28, 2012. Thus, under the holding in Kauffman Racing Equip., Mrs. Dobrott's comments and links posted on the Internet were published in Ohio. Id.

Moreover, this Court should resolve any reasonable competing inferences in its favor 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 Mrs. Dobrott's defamatory statements about DAH, LLC's involvement with development projects in Nevada and Texas. Furthermore, DAH, LLC has alleged, and Mrs. Dobrott has not denied, that Mrs. Dobrott 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, tortiously interfered 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. 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 Mrs. Dobrott 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 Mrs. Dobrott.

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

DAH, LLC has asserted that this Court has specific jurisdiction over Mrs. Dobrott by

alleging that its causes of action arise out of or are related to her contacts with Ohio. Under the three-part test from Southern Machine Co., DAH, LLC has shown first, that Mrs. Dobrott purposefully availed herself of the privilege of acting in Ohio or causing a consequence in Ohio by regularly and frequently posting defamatory comments on her website and posting links to others' websites with defamatory comments about the professional reputation and conduct of DAH, LLC. Second, DAH, LLC has shown that the causes of action arise from Mrs. Dobrott's activities on the Internet which have been seen in Ohio. Third, Mrs. Dobrott's acts or the consequences caused by her 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 (6<sup>th</sup> 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 Mrs. Dobrott has purposefully availed herself of the privilege of acting in Ohio or causing consequences in Ohio by maintaining an interactive website and by posting comments on the Internet intended to harm the business reputation of and to adversely affect DAH, LLC in its trade, its business, or profession. Mrs. Dobrott's actions, by posting and re-posting her own and others' defamatory comments about DAH, LLC, specifically exploit search engine optimization logarithms on search engine websites so that the negative comments appear at the beginning of search results for "Don Allen Holbrook, LLC", "Don Allen Holbrook", "Don Holbrook", or "Holbrook", constituting cyber-bullying, cyber-stalking, and cyber-harassment, for the whole world to see on the Internet.

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 (6<sup>th</sup> 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 (6<sup>th</sup> 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 ¶¶ 63-63.

Given the voluminous nature of these comments by Mrs. Dobrott in concert with others on her interactive website and on other interactive websites which have been seen by others in Ohio, her contacts are not “random”, “fortuitous”, or “attenuated”, but instead show that she has created a substantial connection with Ohio rising to purposeful availment, by which she 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 Mrs. Dobrott 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 Mrs. Dobrott’s

voluminous postings and re-postings of others' links shows that she intended to harm the professional reputation of DAH, LLC and which proximately resulted in harm to DAH, LLC in Ohio as seen in her statements: "His recent projects have been falling through. . . . Other projects may well not go forward as his credentials and accomplishments are being investigated." This Court should conclude that DAH, LLC has made a *prima facie* showing that Mrs. Dobrott purposefully availed herself of Ohio law.

Second, Mrs. Dobrott'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 Mrs. Dobrott's activities in Ohio. *Id.* at ¶ 70. By maintaining an interactive website and by re-posting others' comments to exploit search engine optimization logarithms, so that any time the names "Don Allen Holbrook, LLC", "Don Allen Holbrook", "Don Holbrook" or "Holbrook" were searched on Internet search websites, Mrs. Dobrott 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 Mrs. Dobrott 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. For these reasons, 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 Mrs. Dobrott will not deprive her of her 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 Mrs. Dobrott under the long-arm statute, that the exercise of personal jurisdiction will not deprive her of her rights of due process, and deny Mrs. Dobrott's Motion to Dismiss and to quash service of process.

Respectfully Submitted,

s/Sue Seeberger

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#### **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 7<sup>th</sup> 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.

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Defendant/Third-Party Plaintiff

v.

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

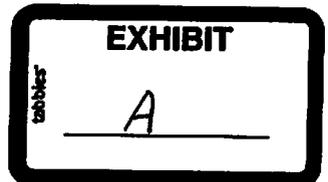
STATE OF OHIO                    )  
  )     SS  
COUNTY OF MONTGOMERY    )

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](http://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/>

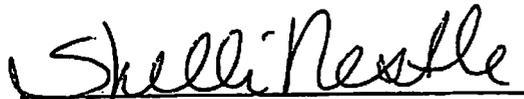
<http://pah.stparchive.com/Archive/PAH/PAH0119212p17.php>



<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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)

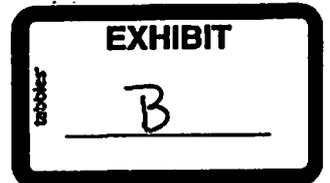
SS

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:

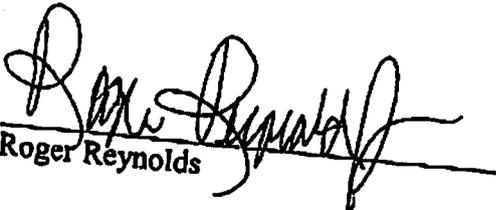
<http://www.realscam.com/fl1/don-allen-holbrook-iedc-international-economic-development-council-rogue-member-1240/>

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



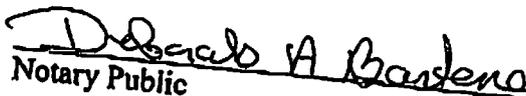
<http://ourtribune.com/article.php?id=13295>

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        )

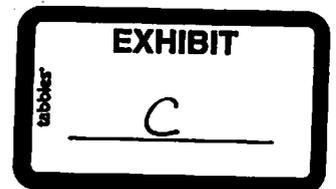
I, Steven Carne, attest and acknowledge that I have personal knowledge of the facts stated below and that I am competent to testify to these facts in a court of law:

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:

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<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.

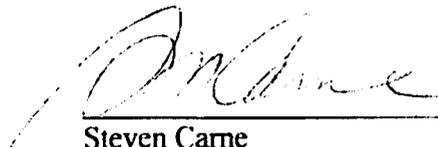
5. There was another meeting at 5:30 p.m. that same day that I did not attend, but it is my understanding that Mr. Holbrook met with Mayor Fisher, Mr. Campbell, Mr. Schaeffer, and some of the staff of the City.

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.

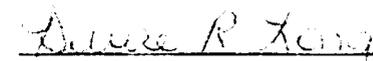
7. On April 8, 2012, Mayor Fisher told me that he wanted to drop the lawsuit against Don Allen Holbrook, LLC and walk away.

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