

**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
DEFENDANTS CYNTHIA CALVERT’S
AND HARTBURG PUBLICATIONS,
LLC’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 Defendants Cynthia Calvert’s and Hartburg Publications, LLC’s Motion to Dismiss for Lack of Personal Jurisdiction and Motion to Quash Service of Process (“Motion to Dismiss”) to dismiss the Second Amended Third-Party Complaint (“Third-Party Complaint”) filed against them 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 his intentionally tortious conduct.” Id. Thus, DAH, LLC asks this Court to deny the Motion to Dismiss and to quash service of process

and to conclude that this Court has personal jurisdiction over Third-Party Defendants Cynthia Calvert and Hartburg Publications, LLC (“HP, LLC”) under R.C. 2307.382(A)(3) and (6) and that they have been properly served with process under Civ.R. 4.3(A)(3) and (9) and to conclude that exercising personal jurisdiction over them 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. Calvert lives in Kingwood, Texas. Affidavit of Cynthia Calvert (“Calvert Aff.”), ¶ 1. Mrs. Calvert is a member and Chief Executive Officer of HP, LLC, dba The Tribune. Calvert Aff., ¶ 2. The website for The Tribune is www.ourtribune.com. Calvert Aff., ¶ 12.

Mrs. Calvert and HP, LLC have attached an article she wrote and posted on February 7, 2012 as part of Exhibit A to her Affidavit, in which she makes questionable and unsupported factual statements about possible criminal and/or unethical conduct by DAH, LLC as an economic developer. Calvert Aff. ¶ 8 and Exhibit A attached thereto. Mrs. Calvert has published articles including defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, that she later posted on ourtribune.com and has not stopped other from re-posting her defamatory, derogatory, and false statements and articles, in order that such postings exploit search engine optimization on websites such as Google so that defamatory, derogatory, and false statements about Don Allen Holbrook, LLC, go “viral” and are listed at the beginning of a search for “Don Allen Holbrook, LLC”, “Don Holbrook”, “Holbrook” or other variations on the name, on internet search engines and which postings which have been seen and downloaded

from the internet by persons residing in the State of Ohio, including but not limited to, <http://www.ourtribune.com/article.php?id=13295>; <http://www.ourtribune.com/article.php?id=13408>; and <http://www.ourtribune.com/article.php?id=13452>. Third-Party Complaint, ¶ 7.

Internet postings and articles by Mrs. Calvert on www.ourtribune.com 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. Affidavit of Don Allen Holbrook (“Holbrook Aff.”), ¶ 2 and attached hereto as Exhibit D; 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.

On Tuesday, February 7, 2012, Mrs. Calvert admits that she posted an article entitled “Court gives EarthQuest developer time to raise money, save project” on www.ourtribune.com, which included the following purportedly factual statements about Don Allen Holbrook as an economic developer:

“But the road that Holbrook has traveled, both to New Caney, Texas, and **numerous other towns across the U.S.A., is a long and winding journey, littered with disappointment and controversy.**

Furthermore, a diligent search by The Tribune of documents, newspaper articles, public filings, websites, etc., paints a vastly different portrait of this supposed ‘entrepreneur extraordinaire’. And it seems that **trouble follows Holbrook to almost every town that invites him into their community, and their coffers.** For example, . . .

. . . . Another disturbing fact is that The Tribune has not been able to get answers as to how much Holbrook or [Don] Lessem were paid by EMCID for his EarthQuest-related efforts. A brief analysis of EMCID payments in 2008 and 2009 reveal thousands of dollars spent on airfare, hotels and meals for Holbrook to travel to New Caney as well as for EMCID staff and board members to travel to Nevada to see Holbrook. Notwithstanding, **The Tribune has learned from similar contracts made available by other cities in which Holbrook and/or Contour [Entertainment] are involved, that their contracts are not simple documents for a single stated amount. In fact, quite the opposite is true.**

But Holbrook’s difficulties and inconsistencies don’t end with his work. . . . Holbrook’s employment history over the years is also troubling. **He was hired and subsequently fired in several locations, mired in controversy.** In 1996, Holbrook [was] hired by the Port Authority in Red Wing, Minnesota, and terminated in 1998 for questionable spending practices, falsifying his resume, etc. In 2001, he was hired by the Lake Havasu partnership for Economic Development but less than two years later, his employment contract [was] not renewed. In 2004, Holbrook was hired by the Richmond, Indiana Economic Development Corporation but 16 months later, left in an acrimonious departure after excessive spending, unauthorized expenditures and other questionable practices came to light in the local paper. . . .”

Calvert Aff. ¶ 8 and Exhibit A attached thereto (emphasis added). Mrs. Calvert’s purported

factual statements are not true but are false and defamatory and impugn the professional and ethical reputation of DAH, LLC and accuse Don Holbrook of criminal conduct and have caused harm to DAH, LLC in the State of Ohio and elsewhere. Holbrook Aff. ¶ 11 (a) to (c). These purportedly factual statements were published on the internet well before the March 14, 2012 meeting at which the City breached the Agreement. Holbrook Aff. ¶ 8.

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; Holbrook Aff., ¶ 3.

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; Holbrook Aff., ¶ 5.

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; Holbrook 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.

After the meeting on March 14, 2012 when Mr. Campbell demanded a full refund of all

monies paid to DAH, LLC, DAH, LLC learned that Heather Dobrott, aka “soapboxmom” on www.realscam.com and Cynthia Calvert on www.ourtribune.com, had been posting comments and articles that are untrue, defamatory, and negative. Holbrook Aff., ¶ 9. Mrs. Dobrott, Mrs. Calvert, Mr. Maurizio, and possibly others have been posting and re-posting each other’s defamatory, untrue, derogatory, and false statements about DAH, LLC on various websites on the internet, including but not limited to realscam.com, pvtimes.com, houstonpress.com, ourtribune.com, to exploit search engine optimization algorithms to intentionally cause harm to Don Allen Holbrook, LLC in Ohio and elsewhere. Holbrook Aff., ¶ 12. Mr. Holbrook has seen on various websites that Mrs. Dobrott was repeatedly posting and linking to articles by Mrs. Calvert and refers to Mrs. Calvert as “our Cynthia”. Holbrook Aff., ¶ 13. 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. Holbrook Aff., ¶ 14.

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

As a preliminary matter, this Court must reject the implicit argument running throughout Mrs. Calvert’s and HP, LLC’s 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. Calvert’s and HP, LLC’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. CALVERT AND HP, LLC.

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. 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 Mrs. Calvert and HP, LLC.

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. Calvert and HP, LLC:

(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.

Calvert's and HP, LLC'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. Calvert's and HP, LLC'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 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. CALVERT AND HP, LLC.

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. Calvert and HP, LLC and deny their Motion to Dismiss and Motion to Quash Service.

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. Calvert and HP, LLC have caused tortious injury to DAH, LLC by an act in Ohio and/or under R.C. 2307.382(A)(6) that Mrs. Calvert and HP, LLC have caused tortious injury in Ohio to DAH, LLC by an act outside of Ohio committed with the purpose of injuring DAH, LLC, when Mrs. Calvert and HP, LLC might reasonably have expected that DAH, LLC would be injured thereby in Ohio. In fact, Mrs. Calvert and HP, LLC have admitted that an article was posted on www.ourtribune.com, on February 7, 2012 making numerous unfounded factual statements about alleged criminal activity and/or alleged unethical conduct by DAH, LLC concerning other economic development projects in Pahrump, Nevada, Montgomery County, Texas, “and numerous other towns across the U.S.A.” See Calvert Aff., ¶ 8, and Exhibit A attached thereto. DAH, LLC has made a *prima facie* showing that Mrs. Calvert and HP, LLC have published statements that are defamatory per se and/or per quod and have published those statements “ostensibly for the entire world to see.” Kauffman Racing Equip. at ¶ 42. In addition to the

evidence in Mrs. Calvert's own Affidavit, DAH, LLC, has presented 3 Affidavits that Ohioans have seen and downloaded voluminous false and derogatory comments from various websites, including HP, LLC's website, which began well before February 28, 2012. Thus, under the holding in Kauffman Racing Equip., Mrs. Calvert's and HP, LLC'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. Calvert's and HP, LLC's defamatory and unfounded purportedly factual statements about DAH, LLC's involvement with development projects in Nevada, Texas, and unnamed locations elsewhere in the U.S.A. Furthermore, DAH, LLC has alleged, and Mrs. Calvert and HP, LLC have not denied, that they worked in concert with other Third-Party Defendants by posting links to each other's 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 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. Calvert and HP, LLC 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. Calvert and HP, LLC.

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

DAH, LLC has asserted that this Court has specific jurisdiction over Mrs. Calvert and HP, LLC by alleging that its causes of action arise out of or are related to their contacts with Ohio. Under the three-part test from Southern Machine Co., DAH, LLC has shown first, that Mrs. Calvert and HP, LLC purposefully availed themselves 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. Calvert's and HP, LLC's activities on the Internet which have been seen in Ohio. Third, Mrs. Calvert's and HP, LLC's acts or the consequences caused by their 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 Mrs. Calvert and HP, LLC have purposefully availed themselves of the privilege of acting in Ohio or causing consequences in Ohio by posting a series of articles with purportedly factual statements impugning DAH, LLC's professional and ethical conduct and 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. Calvert's and HP, LLC's articles 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”, “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 (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 ¶¶ 63-63.

Given the voluminous nature of these comments in concert with others on www.ourtribune.com and on other interactive websites which have been seen by others in Ohio, Mrs. Calvert’s and HP, LLC’s contacts are not “random”, “fortuitous”, or “attenuated”, but instead show that they have created a substantial connection with Ohio rising to purposeful availment, particularly by reason of her article dated February 7, 2012, by which they 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. Calvert and HP, LLC knew about the Agreement with the City at least by February 7, 2012 based on Mrs. Calvert’s express reference to Holbrook working in other “numerous other towns across the U.S.A.”, 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. Calvert’s and HP, LLC’s voluminous postings show that they intended to harm the professional reputation of DAH, LLC and which proximately resulted in harm to DAH, LLC in Ohio as seen in the statements:

“But the road that Holbrook has traveled, both to New Caney, Texas, and **numerous other towns across the U.S.A.**, is a long and winding journey, **littered with disappointment and controversy.**

Furthermore, a diligent search by The Tribune of documents, newspaper articles, public filings, websites, etc., paints a vastly different portrait of this supposed ‘entrepreneur extraordinaire’. And it seems that **trouble follows Holbrook to almost every town that invites him into their community, and their coffers.** For example, . . .

. . . . **The Tribune has learned from similar contracts made available by other cities in which Holbrook and/or Contour [Entertainment] are involved, that their contracts are not simple documents for a single stated amount. In fact, quite the opposite is true.**

But Holbrook’s difficulties and inconsistencies don’t end with his work. . . . Holbrook’s employment history over the years is also troubling. **He was hired and subsequently fired in several locations, mired in controversy.** . . .”

Calvert Aff. ¶ 8 and Exhibit A attached thereto. Mrs. Calvert’s statements purport to relate facts, not opinions, and show an intentional bias against Mr. Holbrook and DAH, LLC. Mr. Holbrook attests that Mrs. Calvert’s purported factual statement about “numerous other towns” is not true

and that Mrs. Calvert fails to give any specifics. Holbrook Aff., ¶ 11a. Mrs. Calvert’s purported factual statement that “trouble follows Holbrook to almost every town that invites him into their community, and their coffers” is not true and that Mrs. Calvert fails to give any specifics.

Holbrook Aff., ¶ 11b. Finally, Mr. Holbrook specifically rebuts Mrs. Calvert’s purported factual statements regarding his employment history in Red Wing, Minnesota, Lake Havasu, Nevada, and Richmond, Indiana as untrue. Holbrook Aff., ¶ 11c. This Court should conclude that DAH, LLC has made a *prima facie* showing that Mrs. Calvert and HP, LLC have purposefully availed themselves of Ohio law.

Second, Mrs. Calvert’s and HP, LLC’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. Calvert’s and HP, LLC’s activities in Ohio. *Id.* at ¶ 70. By maintaining a website and not stopping others from re-posting her articles and comments, Mrs. Calvert and HP, LLC are exploiting search engine optimization algorithms, so that any time the names “Don Allen Holbrook, LLC”, “Don Allen Holbrook”, “Don Holbrook” or “Holbrook” are searched on Internet search websites, negative and defamatory articles and comments are listed at the top of any search results. Mrs. Calvert and HP, LLC have 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. Calvert and HP, LLC 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. Calvert and HP, LLC will not deprive them of their 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. Calvert and HP, LLC under the long-arm statute, that the exercise of personal jurisdiction will not deprive them of their rights of due process, and deny their Motion to Dismiss and to quash service of process.

Respectfully Submitted,

s/Sue Seeberger

Sue Seeberger (0059730)

5975 Kentshire Drive, Suite D

Dayton, Ohio 45440-4264

Voice: (937) 291-8646

Fax: (937) 291-8650

sueseberger@biegeltye.com

Attorney for Defendant/Third-Party Plaintiff

Don Allen 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 17th day of August, 2012, upon the following:

L. Michael Bly (mbly@pselaw.com)
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Attorneys for Third-Party Defendants Stephens
Media, LLC dba Pahrump Valley Times; and The
Houston Press, The Houston Press dba Village
Voice Media Holdings, LLC dba Houston Press,
LP dba Backpage.com, LLC and Craig Malisow

Adam R. Webber
Falke & Dunphy, LLC
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Dayton, Ohio 45409
Attorney for Heather Dobrott and Cynthia Calvert,
The Tribune, aka, Ourtribune.com

Frank Maurizio
581 China Street
Pahrump, Nevada 89048-0782

s/Sue Seeberger

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

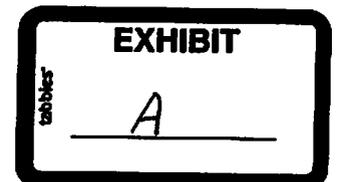
STATE OF OHIO)
) SS
COUNTY OF MONTGOMERY)

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 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/>

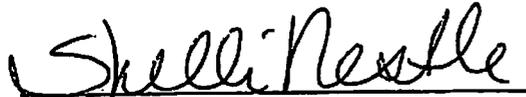
<http://pah.stparchive.com/Archive/PAH/PAH0119212p17.php>



<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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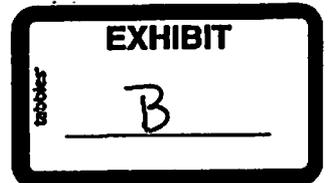
SS

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:

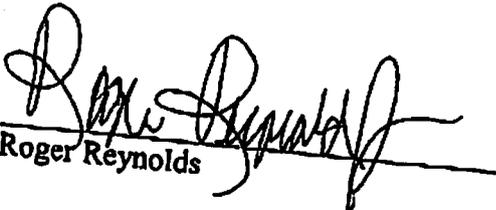
<http://www.realscam.com/fl1/don-allen-holbrook-iedc-international-economic-development-council-rogue-member-1240/>

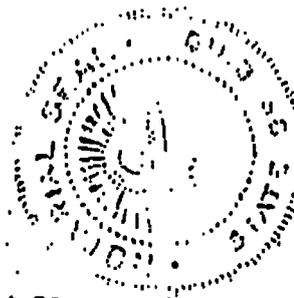
<http://pah.stparchive.com/Archive/PAH/PAH0119212p17.php>



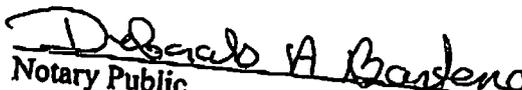
<http://ourtribune.com/article.php?id=13295>

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)

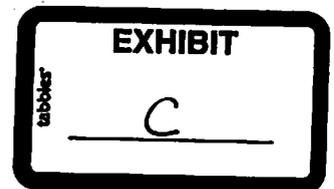
I, Steven Carne, attest and acknowledge that I have personal knowledge of the facts stated below and that I am competent to testify to these facts in a court of law:

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.

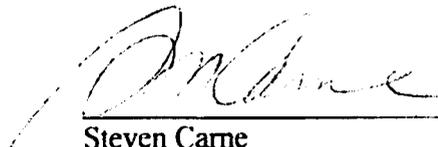
5. There was another meeting at 5:30 p.m. that same day that I did not attend, but it is my understanding that Mr. Holbrook met with Mayor Fisher, Mr. Campbell, Mr. Schaeffer, and some of the staff of the City.

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.

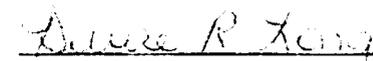
8. On April 10, 2012, I told Mr. Holbrook about my conversations with Mayor Fisher, including the statements about internet research.

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

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.

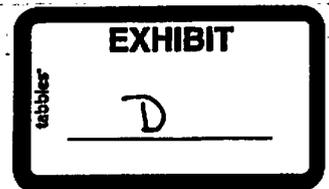
CASE NO. 2012-CV-02947
JUDGE MICHAEL TUCKER

**AFFIDAVIT OF DON ALLEN
HOLBROOK IN RESPONSE TO THE
MOTION TO DISMISS OF THIRD-
PARTY DEFENDANTS CYNTHIA
CALVERT AND HARTBURG
PUBLICATIONS, LLC**

STATE OF NEVADA)
) SS
COUNTY OF MOHAVE)

I, Don Allen Holbrook, 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 Mohave County in the State of Nevada.
2. I am a member of Don Allen Holbrook, LLC, which is an Arizona limited liability company, and entered into an Agreement with the City of Huber Height, Ohio, which is attached as Exhibit 1 to the City's Complaint and as Exhibit 1 to the Second Amended Third-Party Complaint.
3. On February 29, 2012, I received an email from Gary Adams, City Manager at the time, in which Mr. Adams told me that he had been contacted by a reporter in a city near Houston, Texas, asking if the City had a contract with Don Allen Holbrook, LLC, which Mr. Adams said he confirmed, and then Mr. Adams told me in the email that it was a "strange conversation", but that he was not concerned about it because it did not pertain to the City.



4. I 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, Steven Carne, who is a member of the Executive Board of the Montgomery County Agricultural Society and who is associated with DAH, LLC and other members of the Executive Board of the Montgomery County Agricultural Society.

5. I attended a meeting at 5:30 p.m. on March 14, 2012, with members of the City Staff, including Mayor Ron Fisher and Mark Campbell, a member of the City Council. Mr. Campbell said, without any warning, that the City no longer wanted a relationship with Don Allen Holbrook, 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.

6. At this meeting on March 14, 2012, I was unaware of the defamatory, false, and derogatory material from the internet being circulated, I immediately offered to address any specific dissatisfaction and offered to provide additional information and clarification on the findings, conclusions, and next step recommendations within the original scope of work to continue to move the project forward.

7. Mr. Campbell said again that the City wanted all of its money back without giving Don Allen Holbrook, LLC any opportunity to remedy any alleged dissatisfaction, without giving me any specific explanation, and threatened to take legal action within 48 hours.

8. It was on March 14, 2012, that the City breached the Agreement.

9. After March 14, 2012, I have seen Internet postings by Heather Dobrott, aka "soapboxmom" on www.realscam.com and articles by Cynthia Calvert on www.ourtribune.com, as well as 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 me, Don Allen Holbrook, also known as Don Holbrook, and Don Allen Holbrook, LLC, 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>

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

11. After the City breached the Agreement on March 14, 2012, I learned that Cynthia Calvert was publishing articles on www.ourtribune.com, including an article published on February 7, 2012, entitled "Court gives EarthQuest developer time to raise money, save project" (see Affidavit of Cynthia Calvert, ¶ 8 and Exhibit A attached thereto), most of what she has written, including but not limited to the following statements, are not true but are false and defamatory and impugn the professional and ethical reputation of Don Allen Holbrook, LLC and accuse me of criminal conduct, and have caused harm to me in the State of Ohio and elsewhere:

a. Mrs. Calvert failed to identify the alleged "numerous other towns across the U.S.A. . . . littered with disappointment and controversy." This statement is not true and Mrs. Calvert fails to give any specifics.

b. It is false for her to write "that trouble follows Holbrook to almost every

town that invites him into their community, and their coffers.” Again, it is not true and Mrs. Calvert fails to give any specifics.

c. It is false for her to write that “Holbrook’s employment history over the years is also troubling. He was hired and subsequently fired in several locations, mired in controversy.” This statement is not true. Mrs. Calvert identifies Red Wing, Minnesota, Lake Havasu, Nevada, and Richmond, Indiana, but her purported factual statements about the reasons I left are false. I was not terminated by the Port Authority in Red Wing, Minnesota for questionable spending practices or for falsifying my resume. My contract with the Lake Havasu Partnership for Economic Development in Lake Havasu was not renewed because I wanted to go on a month-to-month contract and the Lake Havasu Partnership wanted a multi-year commitment from me, so we decided to terminate our relationship. My departure from the Richmond, Indiana Economic Development Corporation was not “acrimonious” and there were no allegations of excessive spending, unauthorized expenditures, or any other questionable practices.

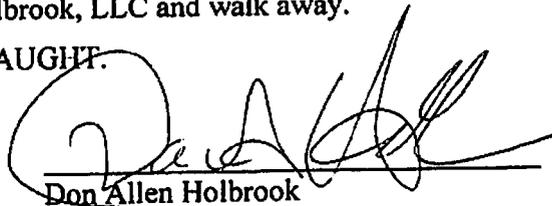
12. Sometime after March 14, 2012, the date when the City breached its Agreement with Don Allen Holbrook, LLC, I learned that Heather Dobrott, aka “soapboxmom” and administrator of the website www.realscam.com, Mrs. Calvert, Frank Maurizio, and Craig Malisow were posting, re-posting, and posting links to each others’ defamatory, untrue, derogatory, and false statements about Don Allen Holbrook, LLC on various websites on the internet, including but not limited to realscam.com, pvtimes.com, houstonpress.com, ourtribune.com, to exploit search engine optimization algorithms to intentionally cause harm to Don Allen Holbrook, LLC.

13. Sometime after March 14, 2012, the date when the City breached its Agreement with Don Allen Holbrook, LLC, I saw on various websites that Mrs. Dobrott was repeatedly posting and linking to articles by Mrs. Calvert and calling Mrs. Calvert “our Cynthia.”

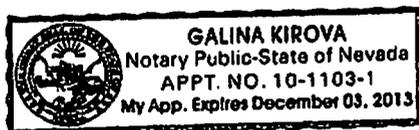
14. On April 10, 2012, Steve Carne told me about his conversations with Mayor Fisher on March 15, 2012, including the statements about internet research about me being given to Mr. Campbell and to Mayor Fisher.

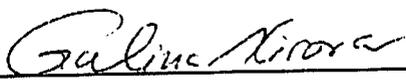
15. Mr. Carne also told me that Mayor Fisher had told him that Mayor Fisher wanted to drop the lawsuit against Don Allen Holbrook, LLC and walk away.

FURTHER THE AFFIANT SAYETH NAUGHT.


Don Allen Holbrook

This document was acknowledged before me on this 16 day of August, 2012, by Don Allen Holbrook.




Notary Public