

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

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IN THE UTAH SUPREME COURT

JAMES WAGNER and JIM WAGNER, INC.,)	
)	BRIEF OF APPELLANTS
)	JAMES WAGNER AND
Appellants/Plaintiffs,)	JIM WAGNER, INC.
)	
vs.)	Appeal No. 20010171-SC
)	
NUSKIN INTERNATIONAL CORP.,)	Trial Court No. 000400807
DENNIS CLIFTON, DAVID CLIFTON,)	
CLIFTON ASSOC., INC., LARS LYNGE,)	
And GORM INTERNATIONAL CORP.,)	
)	
Appellees/Defendants.)	
)	

APPEAL FROM ORDER GRANTING DEFENDANTS' MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION

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LIST OF PARTIES TO PROCEEDINGS

Following is a list of all parties:

Appellants/Plaintiffs

James Wagner
Jim Wagner, Inc.

Appellees/Defendants

Dennis Clifton
David Clifton
Clifton Assoc., Inc.
Lars Lynge
Gorm International Corp.

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this matter pursuant to Utah Code Annotated Section 78-2-2(3)(j)(1996). Appellate jurisdiction exists under Section 78-2-2(3)(j) because the trial court's Order granting Defendants' (Appellees') Dennis Clifton, David Clifton, and Clifton Associates, inc. ("Clifton Associates") joint Motion to Dismiss for Lack of Jurisdiction is a final judgment or order which adjudicates and determines all of the issues in the case. See Shurtz v. Thorley, 90 Utah 381, 384, 61 P.2d 1262, 1264 (1936). The Order of Dismissal reserved no claims or issues for subsequent determination.

ISSUE PRESENTED FOR REVIEW

This case presents the issue of whether a trial court may properly dismiss a state court action for a lack of personal jurisdiction over named defendants based on affidavits, documentary evidence, and two hearings on oral argument after the parties had stipulated that the only jurisdictional issue before the trial court was whether non-resident defendants had contractually consented to jurisdiction the in the State of Utah for purposes of the Wagner Parties' complaint. The applicable standard of appellate review for this issue is a review of legal questions for correctness. Buddensick v. Stateline Hotel, Inc., 972 P.2d 928, 930 (Utah App. 1998).

**DETERMINATIVE OR CENTRALLY IMPORTANT CONSTITUTIONAL
PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS
DETERMINATIVE RULES**

**STATUTES AND CONTRACT PROVISIONS OF
CENTRAL IMPORTANCE TO THE APPEAL**

1. Utah Code Ann. § 78-27-24 (1998):

Any person, notwithstanding Section 16-10a-1501, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising out of or related to:

- (1) the transaction of any business within this state;
- (2) contracting to supply services or goods in this state;
- (3) the causing of any injury within this state whether tortious or by breach of warranty;
- (4) the ownership, use, or possession of any real estate situated in this state;
- (5) contracting to insure any person, property, or risk located within this state at the time of contracting;
- (6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim, so long as that act is not a mere omission, failure to act, or occurrence over which the defendant had no control; or
- (7) the commission of sexual intercourse within this state which gives rise to a paternity suit under Title 78, Chapter 45a, to determine paternity for the purpose of establishing responsibility for child support.

2. Section 1 of Distributor Agreement Between Defendant Gorm International Corp. and Nu Skin International:

DEFINITIONS

* * *

Contract: The Agreement between a Distributor and Nu Skin Enterprises is composed of these Policies and Procedures, the Sales Compensation Plan, Distributor Agreement, Partnership/Corporation From and supplemental Sponsor

Agreements. The Contract is the complete and only Agreement between Nu Skin Enterprises and a Distributor.

3. Section 27 of Distributor Agreement between Defendant Gorm International Corp. and Nu Skin International:

GOVERNING LAW

The place of origin of this Contract, the place where the Company accepted the offer of a prospective Distributor to form the Contract, is the State of Utah. This Contract is to be construed with respect to its validity and performance obligations thereunder, in accordance with the laws of the State of Utah applicable to contracts made and to be wholly performed within such State. A Distributor agrees to submit to the jurisdiction of the courts of the State of Utah for resolution of any conflict or litigation arising under or purporting to interpret the Contract.

STATEMENT OF THE CASE

A. Nature of the Case

This case involves a complaint brought in Utah state court by two Texas plaintiffs/appellants, James Wagner and Jim Wagner, Inc. (the “Wagner Parties”) against Defendants/Appellees Dennis Clifton, a resident of Colorado,¹ David Clifton, a resident of Texas, Clifton Associates, Inc., a Texas corporation (Dennis Clifton, David Clifton, and Clifton Associates, Inc, are referred to jointly herein as the “Cliftons”), Lars Lynge and Gorm International Corporation, both residents of Colorado, and Nu Skin International Corporation (“Nu Skin”). The underlying dispute concerns allegations by

¹ As of June, 2001, Dennis Clifton has relocated to and is presently a resident of the State of Nevada.

the Wagner Parties that the defendants interfered with the Wagner Parties' distributorship agreement Nu Skin.

B. Course of Proceedings

On February 23, 2000, the Wagner Parties brought an action alleging, as to the Cliftons, tortious interference with economic relations, breach of contract, breach of contract-third party beneficiary, fraud, breach of covenant of good faith and fair dealing, civil conspiracy, and unjust enrichment. [R at 1-23]. The complaint, among other defendants, also alleged various claims against Nu Skin. [R. at 1-23]. On May 1, 2001, the trial court dismissed the Wagner parties' claims against Nu Skin with prejudice upon a stipulation to submit the matter to mediation/arbitration. [R at 82-83]. The Wagner parties subsequently amended their complaint against the Cliftons on July 26, 2000, to add a claim for declaratory judgment and wrongful interference with contractual relations and dismissed their claims for tortious interference with economic relations, fraud and civil conspiracy. [R at 218-231].

The Cliftons filed a motion to dismiss for lack of jurisdiction and memorandum brief with supporting sworn affidavits on May 12, 2000. [R at 84-102]. The Wagner Parties filed a brief in opposition also containing an affidavit of James Wagner. [R. At 133-159]. A hearing on the motions was held on July 18, 2000, before the Honorable Judge Harding and the court took the matter under advisement and allowed the parties to file additional pleadings. [R at 214].

On August 1, 2000, the parties filed a stipulation with the court precisely setting forth the consent-to-jurisdiction issue pending before the court. [R at 232-239]. On August 16, 2000, Nu Skin- which was not then a party to the action- filed an affidavit setting forth its opinion as to the matter before the court for the court's consideration. [R at 240-245].

On November 29, 2000, the court held a second hearing before the Honorable Judge Stott. [R at 256].

C. Disposition in the Trial Court

On November 29, 2000, after a full hearing on the matter in which the trial court made findings based on the affidavits of the parties and argument by counsel, the court granted the Cliftons' (and other defendants') motion to dismiss for lack of personal jurisdiction.

D. Statement of Facts

1. Nu Skin International Corporation ("Nu Skin") is a company doing business in Utah that offers various personal care products for sale through independent contractor distributors. Each distributor of Nu Skin products executes a contract between itself and Nu Skin that sets forth the terms and conditions by which that particular distributor may offer Nu Skin products for resale. [R. at 240-45.]

2. At the time of this action, Dennis Clifton alone was a distributor of Nu Skin products and party to an agreement with Nu Skin. [R at 90-91]. At no time had

David Clifton, personally, been a distributor or been in a contractual relationship with Nu Skin or the Wagner Parties. [R at 87-88]. The fact that David Clifton had no contractual relationship with Nu Skin and was not, personally, a distributor was acknowledged in a letter sent to and filed with the court by the Wagner parties' counsel on July 25, 2000. [R at 215-216].

3. At all times relevant herein, Clifton Associates, Inc., was a Texas corporation, with its principal place of business in Denver, Colorado, was not registered as a foreign Utah corporation, and did not transact business in Utah, nor does it hold a license to transact business in Utah. [R at 90-91].

4. David Clifton and Dennis Clifton were individuals residing in the states of Texas and Colorado, respectively, who neither jointly, nor individually, transacted business in the state of Utah. [R at 87-88, 90-91].

5. The Cliftons owned no property in Utah, sold no products in Utah, had no telephone listings or post office boxes in Utah, and did not advertise or otherwise solicit business from the state of Utah. [R at 87-88, 90-91]. The Cliftons had no agents, employees, shareholders, directors, or officers resident in Utah. [R at 87-88, 90-91].

6. At no time have any of the Cliftons consented to Utah jurisdiction for purposes of the Wagner Parties' action. [R at 87-88, 90-91].

7. As the Clifton Defendants candidly disclosed to the Court in their affidavits supporting their motion to dismiss, at the time of the action Dennis Clifton had a

personal distributorship agreement with Nu Skin, and Clifton Associates, Inc., had previously had a distributorship agreement with Nu Skin. [R at 93-102]. David Clifton personally did not have, nor had he had, any contractual agreement with Nu Skin. [R at 93-102]. As to any alleged consent by the Cliftons to Utah jurisdiction for the Wagner Parties' lawsuit, the very language in the distributorship agreements upon which Wagner Parties rely is, *on its face*, clearly not a consent to general jurisdiction in Utah, nor is it a consent to specific jurisdiction except for the precisely defined purpose of resolving conflicts between the signatories to the Agreement. [R at 93-102].

8. The "governing law" provision in the standard Nu Skin Agreement provides, *inter alia*:

"A Distributor agrees to submit to the jurisdiction of the courts of the State of Utah for resolution of any conflict or litigation *arising under or purporting to interpret the Contract.*"

[R at 93-102] (emphasis added).

The term "Contract" is defined in the "Definitions" section, subpart F, of the

9. Policies and Procedures handbook and provides the following definition as relates to an individual distributor and Nu Skin:

Contract. The Agreement between a Distributor and Nu Skin International composed of these Policies and Procedures, the Sales Compensation Plan, Distributor Agreement, Partnership/Corporation Form and supplemental Sponsor Agreements. The Contract is the complete and only Agreement between Nu Skin International *and a Distributor.*

[R at 10] (emphasis added).

10. In the motions filed before the trial court, the Wagner Parties conceded that there were no grounds for the trial court to assert personal jurisdiction over Dennis Clifton, David Clifton, or Clifton Associates, Inc., unless each of the Cliftons had consented to jurisdiction. [R at 140-145, 190]. Thereafter, all parties joined in a stipulation filed with the court limiting the jurisdictional questions to the following two issues:

- a. Whether in signing a Nu Skin distributorship agreement an individual distributor consents to jurisdiction in the State of Utah only for disputes vis-à-vis Nu Skin and the distributor, or for disputes between the distributor and any other person who signs a Nu Skin distributor agreement; and
- b. In the instance where a Nu Skin distributor is a corporation, whether the officers of that corporation may be held personally liable under the jurisdictional consent provisions of Nu Skin distributorship agreement executed between the corporation and Nu Skin.

[R. at 237].

11. It is undisputed that no contract exists between the Cliftons (jointly or individually) and the Wagner Parties and therefore no contractual consent to jurisdiction was applicable to this case. The trial court specifically made this finding on the record after it was admitted by counsel to the Wagner Parties. [R at 6-7].

SUMMARY OF ARGUMENT

After a second hearing of oral argument on this matter at which the trial court (1) indicated it had reviewed the complete file and (2) made findings of fact that the Cliftons had not consented to be sued by the Wagner Parties in Utah state court, the trial court

properly applied Utah state law under a standard of correctness when it found it did not have personal jurisdiction over the Cliftons. Further, to the extent that the Wagner Parties are challenging the factual findings of the trial court, the Wagner Parties have failed to marshal the evidence as required by U.A.P. 24(a)(9).

ARGUMENT

A. The Trial Court Correctly Applied Applicable Utah Law in Finding that the Cliftons Did Not Consent to Jurisdiction in the State of Utah for Purposes of the Wagner Parties' Action.

The Wagner Parties essentially argue that because the Wagner Parties had a contract with Nu Skin, and Dennis Clifton and Clifton Associates had (at least at some point) a similar agreement with Nu Skin, that a contractual consent to jurisdiction for litigation arising *vis-a-vis* Nu Skin and one of its distributors should be interpreted to be so broad in scope as to apply to litigation *vis-a-vis* disputes between distributors. [Aplt. Br. at 9-10]. To support this expansive interpretation, the Wagner Parties point to a separate and distinct mediation/arbitration provision in the Nu Skin distributor agreement that requires distributors to mediate disputes among themselves. [R at 40]. However, said mediation provision makes no reference to forum selection or jurisdiction. [R at 40]. Similarly, the forum selection clause governing jurisdiction for litigation where Nu Skin is a party refers only to disputes between Nu Skin and an individual distributor.

1. Utah Jurisdictional Law

Under certain circumstances, the courts of Utah may exercise both general and specific jurisdiction over non-resident defendants. However, given the stipulation between the parties that only the issue of consent was at issue, only the issue of specific jurisdiction need be addressed.

2. Specific Jurisdiction as It Relates to Forum Selection Clauses

In order for this Court to exercise specific personal jurisdiction over any of the Cliftons, Wagner Parties must demonstrate under a three-part specific jurisdiction analysis that (1) the Cliftons conducted one of the enumerated activities in Utah's "long-arm" statute Utah Code §78-27-24; (2) there is a nexus between the Wagner Parties' claim and the Cliftons' conduct; and (3) application of the Utah "long arm" statute must satisfy the requirements of federal due process. Far West Capital, 46 F.3d at 1074; Harnischfeger Eng'rs, Inc. v. Uniflo Conveyor, Inc., 883 F. Supp., 608, 612-13 (D. Utah 1995). To satisfy this burden, a plaintiff cannot rely on allegations made in its complaint if the defendant has specifically controverted alleged facts by affidavit. Anderson v. American Soc'y of Plastic and Reconstructive Surgeons, 807 P.2d 825 (Utah 1990); Roskelley & Co. Lerco, Inc., 610 P.2d 1307 (Utah 1980).

The Cliftons, either as a group or individually, have not transacted business within the state of Utah and have not conducted business with the Wagner Parties, either in

Utah, or elsewhere. Therefore, the Cliftons cannot be found to have “conducted business” in Utah under Utah’s long-arm statute.

To exercise jurisdiction consistent with the Due Process Clause of the 14th Amendment, a nonresident defendant must have “minimum contacts with the forum state such that maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoted in Arguello v. Industrial Woodworking Machine Co., 838 P.2d 1120, 1122 (Utah 1992)). The *International Shoe* standard is not met unless the defendants, through the contacts with the foreign state, could “reasonably anticipate being hauled” into the forum state’s courts for the action. See Asahi Metal Insus. v. Superior Court, 480 U.S. 102, 108-09 (1987). Due Process demands that a defendants has “fair warning that a particular activity may subject [it] to the jurisdiction of the foreign state sovereign. Shaffer v. Heitner, 433 U.S. 186, 218 (1977). “Unilateral activity of the plaintiff in reaching beyond the forum cannot create jurisdiction.” Recovery Processes Int’l v. Hoechst Corp., 857 F. Supp. 863, 865 (D. Utah 1994).

The Wagner Parties’ attempt to extend the terms of a private contract it had with Nu Skin to cover the unrelated claims against the Cliftons is constitutionally impermissible. In making their respective agreements with Nu Skin, Dennis Clifton and Clifton Associates could not possibly “reasonably anticipate being hauled” into Utah’s state courts for the Wagner Parties’s action as is required for jurisdiction under the Due

Process Clause of the 14th Amendment. See Asahi Metal Insus. v. Superior Court, 480 U.S. 102, 108-09 (1987). Due Process demands that a defendant has “fair warning that a particular activity may subject [it] to the jurisdiction of the foreign state sovereign.” Shaffer v. Heitner, 433 U.S. 186, 218 (1977).

The Cliftons never had a contract with James Wagner or Jim Wagner, Inc., and their contract with Nu Skin cannot be reasonably nor constitutionally be interpreted to consent to jurisdiction for the Wagner Parties’ lawsuit. The Wagner Parties’ claims sound in tort and contract and are based on alleged actions which are alleged to have taken place outside the State of Utah, against parties located in Texas, and by parties located in Texas and Colorado. Therefore, the trial court properly found there to be no showing of consent to specific jurisdiction under the Wagner Parties’ theory because the Wagner Parties’ failed to show the Utah “long arm” statute was invoked by the Cliftons’ actions, there was no extant nexus between the Wagner Parties’ claim and the Cliftons’ conduct, and (3) given that there was no contract in place regarding a consent to jurisdiction between the parties, the application of the Utah “long arm” statute failed to satisfy the requirements of federal due process.

In short, the trial court could not have found a contractual consent to specific jurisdiction because there was no extant contract between the parties. However, even if the court had adopted the Wagner Parties’ argument that Dennis Clifton’s and Clifton Associates’ consent to litigate against Nu Skin in Utah should be deemed to create a

consent to jurisdiction applicable to the mediation/arbitration provisions covering all distributors world-wide, the trial court would have still correctly dismissed the case for lack of jurisdiction under a forum selection clause analysis.

3. Utah Jurisdiction and Forum Selection Clauses

In regard to the specific issue of contractual consents to jurisdiction, or forum selection clauses, the Utah Court of Appeals recently stated that a forum selection/personal jurisdiction clause by itself does is not sufficient to confer personal jurisdiction over a defendants as a matter of law. Phone Directories Co., Inc. v. Henderson, 8 P.3d 256, 259-61 (Utah 2000). Instead, the *Phone Directories* court found that such clauses create a presumption in favor of jurisdiction so long as there is a reasonable nexus between the forum selected and/or consented to, and either the parties to the contract or the transactions that are the subject matter of the contract. Id. In departing from the traditional three-part test for specific jurisdiction, the *Phone Directories* court recognized that persons may waive jurisdictional requirement or they may bind themselves to a certain jurisdiction. Id.

In the instant case, even assuming *arguendo* that the trial court should have found an applicable forum selection clause (which it did not), the trial court properly dismissed the case for lack of personal jurisdiction for two reasons. First, the Nu Skin forum selection clause applies by its terms only to disputes and litigation between Nu Skin and a distributor arising under the contract. [R at 93-102]. The forum selection clause is

separate and apart from the mediation/arbitration clause that addresses disputes between distributors. Secondly, under the *Phone Directories* “reasonable nexus” test, the forum selection clause would clearly apply only to litigated disputes between the Cliftons and Nu Skin. Had the trial court adopted the Wagner Parties’ theory and found applied the *Phone Directories* test to the facts, it would have concluded that actions which are alleged to have taken place outside the State of Utah, against parties located in Texas, and by parties located in Texas and Colorado could not establish a sufficient reasonable nexus between the forum and the parties or transaction to confer personal jurisdiction for litigation. At best, under the Wagner Parties’ theory, the trial court may have found jurisdiction proper for purposes of mediation/arbitration. There is no mediation or arbitration at issue here. The Wagner Parties commenced state court litigation against the Cliftons- not mediation or arbitration discussed in the inter-distributor dispute clause of the Nu Skin distributorship agreement.

The Wagner Parties’ reliance on their sole cited authority, Gates Learjet Corp. v. Jensen, 743 F.2d 1325 (1984) is neither binding on the court nor persuasive. The *Gates* case involved challenges to a dismissal for lack of jurisdiction on only two of a plaintiff’s four counts against the defendants concerning an international aircraft distributorship agreement. *Id.* at 1330. It is true that the *Gates* court found that entering into a “distributorship agreement” satisfied what is Arizona’s equivalent to Utah’s long arm statute. *Id.* at 1331. However, the facts of the *Gates* case are starkly distinguishable

from the facts surrounding the attenuated Clifton-Nu Skin-Wagner relationship. In *Gates*, unlike the instant case, the parties to the lawsuit were also parties to the contract containing the forum selection clause. *Id.* at 1330. Further, in analyzing the facts of that case under Arizona's specific jurisdiction analysis, the *Gates* court determined jurisdiction to be reasonable after finding, *inter alia*, that the parties were already required to litigate in Arizona for counts one and four of the plaintiff's complaint and the court noted that the case involved "corporate entities apparently with sufficient resources to defend in either [the United States or the Phillippines]." *Id.* at 1333.

Clifton Associates, Inc., is not a multi-national corporation, David Clifton is a party to no contract whatsoever concerning this case, the Cliftons are not required to litigate any action (save the instant case) in the State of Utah, and none of the Cliftons are party to a contract with the Wagner Parties.

Based on the findings of fact made by the trial court, any of the above legal analysis available to the court support the correctness of the trial court's decision that it did not have personal jurisdiction over the Cliftons.

4. David Clifton Has Not Consented to Utah Jurisdiction for Any Purpose

The Wagner Parties fail to address their own admission that David Clifton was not personally bound to any contract and therefore had not consented to jurisdiction under any contract. [R at 215-216]. Nor have the Wagner parties attempted to revive or brief their argument that David Clifton's position as one of four shareholders, and as an officer

and director of Clifton Associates, Inc., subject him to personal liability for contracts entered into by the corporation. The Cliftons note that a reviewing court will not address arguments that are not adequately briefed. State of Utah v. Jacoby, 975 P.2d 939, 944 (Utah App. 1999). However, because the Wagner Parties have nonetheless appealed the dismissal of David Clifton, this issue will be addressed briefly.

As stated above, Defendant David Clifton has no contract with Nu Skin and has at no time has he consented to Utah jurisdiction. The Plaintiffs, relying on Segil v. Gloria Marshall Management Co., have argued that David Clifton is subject to the same jurisdiction as Clifton Associates by virtue of the fact that he a director, officer and shareholder of Clifton Associates. 568 F. Supp. 915 (D. Utah 1983). However, in *Segil*, one person was the sole shareholder, an officer and director in complete control of a corporation found to be doing substantial and continuing business in Utah. *Id.* at 919. That case is inapplicable here as David Clifton is not the sole shareholder, officer, and director of Clifton Associates and does not have complete control of the company.² Furthermore, this Court has not made a finding that Clifton Associates is doing substantial and continuous business in the State of Utah, and the affidavits and authorities offered in the Cliftons Defendants original motion argue that such a finding cannot be made.

² David Clifton and his wife (both residents of Texas) and Dennis Clifton and his wife (both residents of Nevada) are equal shareholders of Clifton Associates, Inc.

B. The Wagner Parties Have Failed to Marshall Evidence With Regard to The Trial Court's Weighing of The Affidavit Submitted by Nu Skin.

It is not clear as to whether the Wagner Parties have appealed or are challenging the factual findings of the trial court. However, the Wagner Parties' appellant brief relies heavily on the affidavit submitted by Nu Skin for its argument and asserts that such affidavit was ignored by the trial court. [Aplt. Br. at 5-8, 10, and 12]. To the extent that this court deems such reliance amounts to an appeal of the factual findings of the trial court, the Wagner Parties have failed to marshall the evidence as required under Rule 24(a)(9) of the Utah Rules of Appellate Procedure.

In reviewing a claim of insufficiency of evidence, a reviewing court does not, and will not, reweigh evidence and determine where in preponderates. Child v. Gonda, 972 P.2d 425, 434 (Utah 1999). It is an absolute requirement of marshaling that the party state fully and accurately all of the evidence on an issue and then show, as a matter of law, that the evidence does not support a particular finding. Id.

The Wagner Parties' failure to marshall the evidence is best illustrated by its assertion that the trial court "simply ignored the plain language of the Distributorship Agreements, Nu Skin policies and Procedures and the affidavit of [NuSkin]." [Aplt.B. at 5]. The Wagner Parties fail to cite the November 29, 2000 hearing transcript wherein the trial court queried the Wagner Parties regarding the affidavit, the language of the forum selection clause in the Nu Skin agreement, the absence of such language in the separate "Section 27" inter-distributor dispute mediation provision, and the lack of a forum

selection agreement between the Wagner Parties and any of the defendants. [R at 5-7].

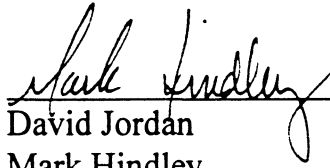
At the hearing, the Wagner Parties admitted that the Nu Skin contract forum selection clause did not address mediation/arbitration between distributors. [R at 7].

In the absence of any attempt by the Wagner parties to marshal evidence in challenging the trial court's findings, the Cliftons request that the trial court's findings of fact regarding jurisdiction not be disturbed upon review.

CONCLUSION

The trial court stated on the record that it had reviewed the case file and was fully advised as to the premises. Further, the trial court conducted two hearings which afforded the Wagner Parties ample opportunity to be heard on their opposition to the Cliftons' motion to dismiss for lack of personal jurisdiction. The record and applicable Utah state law support the correctness of the trial court's decision in dismissing the Wagner parties' action against Dennis Clifton, David Clifton, and Clifton Associates, Inc. and the Cliftons respectfully request that this Court affirm the trial court's findings of fact and conclusion of law.

DATED this 16 day of November, 2001.



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