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Kamdar & Company v. Laray Company, Inc.; Raymond Boal; and James A. Boal Jr. : Reply Brief

Utah Court of Appeals

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Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

KAMDAR & COMPANY,	:	
	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	
	:	Case No. 900539-CA
LARAY COMPANY, INC.; RAYMOND	:	
BOAL; and JAMES A. BOAL, JR.,	:	
	:	
Defendants/Appellees.	:	

APPELLANT'S REPLY BRIEF

I. FACTUAL SUMMARY

The facts necessary to resolve whether the Utah courts can assert specific personal jurisdiction over Laray Co., James A. Boal, Jr. and Raymond Boal (hereinafter collectively referred to as "Laray¹") are not in dispute. In sum, for over 18 years

¹ The contacts that Laray Co. has to Utah parallels those of James A. Boal, Jr. and Raymond Boal. While Laray & Co. required corporate tax and financial services and James A. Boal, Jr. and Raymond Boal required personal tax and accounting services, the contacts with the state of Utah are virtually the same. All the appellees contracted with Kamdar & Co. on a yearly basis. All appellees sent their tax and other financial information to Kamdar & Co. in Utah. All the appellees had many telephone calls and written correspondences with Kamdar & Co. in Utah regarding the accomplishment of these services. All the appellees paid for these services to Kamdar & Co. on a yearly contractual basis. All of the appellees terminated the services of Kamdar & Co. at the end of the

Kamdar & Co. was Laray's accounting division. Yet, rather than having its accounting division down the hall from its corporate offices, Laray chose to have its accounting division in Utah. Now, Laray has refused to pay Kamdar & Co. for services it rendered to Laray in 1987 and 1988.

Kamdar & Co. has been located in Utah since 1971. All accounting services rendered for Laray by Kamdar & Co. have been performed in Utah (See R.3,77&78). To enable Kamdar & Co. to perform these services, each year Laray has delivered to Kamdar & Co. all of its financial books and records to Kamdar & Co. in Utah. (See R.62,64,65,77&78). Each year, Laray has telephoned and sent written correspondence to Kamdar & Co. in Utah regarding these very services. (See R.62,64,65&78).

Accordingly, from 1971 until 1988, Laray hired Kamdar & Co. on a yearly basis for these services. These services were paid on a yearly basis. Even the termination of Kamdar & Co.'s services took place at the end of a year. Each year Laray chose to renew its contract to hire Kamdar & Co., a Utah company, to perform its tax needs. At the beginning of any given year, it

last yearly contractual arrangement. Accordingly, throughout the appellant's briefing on this matter, references to Laray's contacts are equally applicable to an analysis required to find specific personal jurisdiction over James A. Boal, Jr. and Raymond Boal individually.

could have chosen to do otherwise.

In specific part, Laray came to Utah in 1987 and 1988 to have its accounting services performed by Kamdar & Co. Yet now it wishes to avoid coming to Utah to explain why it refused to pay for these very services. This position fails as a matter of law.

II. ARGUMENT

A. Laray Has Failed To Make The Distinction Between Specific Personal Jurisdiction And General Personal Jurisdiction.

Laray is living in the past. The Utah cases cited in its brief arguing that the Utah courts lack personal jurisdiction over it are inapplicable. Each case cited by Laray pre-dates Abbott G.M. Diesel v. Piper Aircraft, 578 P.2d 850 (Utah 1978), where Utah Supreme Court specifically articulated the necessary distinction between specific personal jurisdiction and general personal jurisdiction. See also Roskelley & Co. v. Larco, Inc., 610 P.2d 1307 (Utah 1980). Prior to the Abbott opinion, the Utah courts had applied the "doing business test" in determining whether either specific or general personal jurisdiction should be extended over a non-resident. The Abbott opinion abandoned this approach and adopted the modern federal analysis that required a distinction be made as a threshold matter between general and specific jurisdictions.

The recognition by the Utah courts of this distinction was succinctly addressed by the United States District Court for the District of Utah in Nova Mudd Corp. v. L. H. Fletcher, 648 F.Supp 1123 (D. Utah 1986). In Nova Mudd, the court specifically itemized some of these earlier Utah cases which have little practical value in determining specific personal jurisdiction because of the failure to make a distinction between specific and general jurisdiction altogether. These itemized cases included United Ski Co. v. Union Plastic Corp., 548 P.2d 1257 (Utah 1976) and Cate Rental Co. v. Whalen & Co., 549 P.2d 707 (Utah 1976). These two cases are two of the three central cases cited by Laray in support of its position that the court should not exercise jurisdiction over it. The third case cited by Laray, White v. Arthur Murray, Inc., 549 P.2d 439 (Utah 1976), similarly fails to distinguish between specific and general personal jurisdiction. The only other case cited by Laray in support of its position is the Hill v. Zale Corp., 25 Utah 2d 357, 482 P.2d 332 (Utah 1971) in which the Utah Supreme Court specifically delineated factors relevant to the "doing business test." This entire argument and the use of these cases is inapplicable to the resolution of the present dispute.

In the present case, Kamdar & Co. does not claim that Laray is subject to the court's general jurisdictional authority.

Rather, Kamdar & Co. asserts that Laray is subject to the court's specific personal jurisdiction authority. Thus, the application of the "doing business" rule is improper. As a result, the affidavits proffered by Laray which alleges that it does not own property in Utah, has no accounts in Utah, no employees or otherwise doing business in Utah is immaterial. Rather, the issue is whether the contacts it does have with Utah is sufficient under Utah's Long-Arm Statute.

B. Under Utah's Long-Arm Statute, Specific Personal Jurisdiction Can Be Asserted Over Laray.

The facts in the present case directly parallel the declared purpose of Utah's Long-Arm Statute. This purpose is stated as follows:

It is declared, as a matter of legislative determination, that the public interest demands the state provide its citizens with an effective means of redress against non-residents, who, through certain significant minimal context with this state, incur obligations to citizens entitled to the state's protection. This legislative action is deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

Utah Code Ann., § 78-27-22 (1953, as amended). The protection intended under Utah's Long-Arm Statute is the protection sought by Kamdar & Co. in the present case. In the present case, Laray, a California company, came to Utah and contracted with Kamdar &

Co., a Utah company, for its accounting services, based on the technological advances making such a use more cost effective. Now, Laray has refused to pay for these very same services. Utah's Long-Arm Statute was intended to protect Utah citizens from this type of abuse. In these situations, the Utah courts have given themselves jurisdiction to the fullest extent allowed by the due process of law. See Brown v. Carnes Corp., 611 P.2d 378, 380 (Utah 1980). It is this protection that Kamdar & Co. seeks. It is this type of protection that the statute was meant to offer. It is this type of protection that this Court is allowed to provide.

C. All Requirements Are Met To Establish That The Utah Courts Have Specific Personal Jurisdiction Over Laray.

As previously discussed in appellant's opening brief, each element to establish specific personal jurisdiction over Laray is met. First, Laray's contracting with Kamdar & Co., a Utah company, for services to be performed within Utah during 1987 and 1988 falls squarely within the scope of § 78-27-24(1) of the Utah Code².

² Utah's Long-Arm Statute gives further assistance in determining what conduct constitutes the transaction of business within the state by defining the term "transaction of business within the state and to" in § 78-27-23(2) of the Utah Code. Pursuant to §78-27-23(2) the transaction of business within the state requires conduct by the nonresident that affects persons or businesses in the state. See Synergetics v. Marathon Ranching Co., 701 P.2d 1106,1110 (Utah 1985); Nova Mudd Corp. v. Fletcher, 648

In the present case, Laray contracted in 1987 and 1988 to have its accounting services rendered in Utah by Kamdar & Co. Laray also communicated by telephone and mail with Kamdar & Co. enabling Kamdar & Co. to perform the requested services. Laray also sent or had delivered to Utah all the materials necessary to have the work accomplished in Utah³. Such conduct satisfies this first element.

The second requirement that the cause of action must arise from the contact is indisputably met. Laray's contact in Utah is its contracts with Kamdar & Co. to do its accounting work. The instant dispute is over these very services.

The final element under a specific personal jurisdiction analysis is that hailing the non-resident party into the forum

F.Supp. 1123 (D. Utah 1986).

³ By analogy, the contacts would have been no more significant if Laray, for example, had been a manufacturer of steel and sent steel bars to Kamdar & Co. to fabricate into bumpers and then send the completed bumpers back to Laray in California to sell. Under this scenario, Laray would send all needed raw materials for Kamdar & Co. to accomplish its service of creating bumpers which Kamdar & Co. takes and preforms its contractual duties for the benefit of Laray.

The same nature of contact is found in the present case wherein Laray sends its raw financial tax and financial information to Kamdar & Co. to produce finished returns, reports, comparisons, etc. These finished documents were then sent back to Laray for the purpose of meeting its business objectives. While the fabrication of bumpers might facially appear to give more credence to the finding of sufficient contacts, the same quality of contacts are found in the present case for the contracting of accounting services.

state does not offend notions of fair play and substantial justice. This element is also satisfied. In the present case, Laray made a conscious decision each year to employ Kamdar & Co. to perform its accounting services in Utah. Laray extended itself to the privileges of the State of Utah by employing a Utah company to do their work on a yearly basis. Its failure to pay for these services contracted for in Utah would be governed by Utah law. Its failure to pay for these services will require the factual determination as to the value of these services based upon the records kept and currently located in Utah. Their failure to pay for these services will require the testimony of those who performed the services, all of which are located in Utah. In sum, the instant dispute arises from services contracted for and performed in Utah. Justice dictates that Laray having availed itself of the privileges of contracting for services to be performed in Utah should also be subjected to account in Utah for its failure to pay for these services.

III. CONCLUSION AND RELIEF SOUGHT

Accordingly, based on the foregoing, Kamdar & Co. respectfully requests the District Court's ruling should be reversed and that specific personal jurisdiction should be asserted against Laray Co., James A. Boal, Jr. and Raymond

Boal for their failure to pay for accounting services contracted and performed in Utah by Kamdar & Co. during 1987 and 1988.

RESPECTFULLY SUBMITTED this 21st day of February, 1991.

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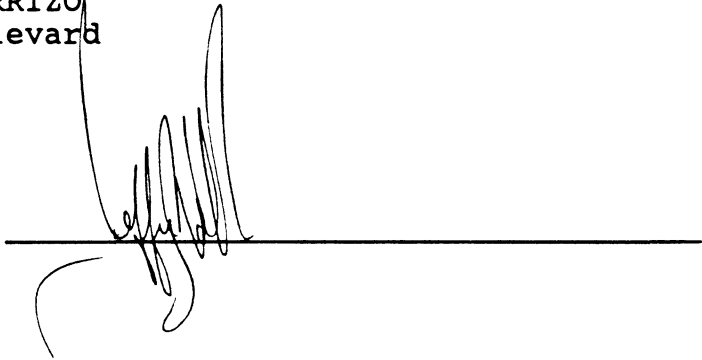
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 1991 I caused to be mailed, postage prepaid, a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to the following:

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A handwritten signature, likely of Mark J. Perrizo, is written over a horizontal line. The signature is cursive and somewhat stylized, with the name 'Perrizo' being the most legible part.