

1990

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

Utah Court of Appeals

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Jeffrey N. Walker; Jones, Waldo, Holbrook & McDonough; attorneys for appellant.

W. Kevin Jackson; Jensen, Duffin, Carman, Dibb & Jackson; Mark J. Perrizo; Wilson, Wilson & Perrizo; Attorneys for Appellees.

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IN THE UTAH COURT OF APPEALS

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APPELLANT'S BRIEF

ATTORNEYS FOR
PLAINTIFF/APPELLANT

FILED

DEC 17 1990

COURT OF APPEALS

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 BRIEF

Appeal from an Order of the Fourth Judicial District Court, Judge George E. Ballif, Presiding.

W. Kevin Jackson
JENSEN, DUFFIN, CARMAN, DIBB &
JACKSON
311 South State Street, #380
Salt Lake City, UT 84111

Mark J. Perrizo
WILSON, WILSON & PERRIZO
10901 Paramount Boulevard
Downey, CA 90241

ATTORNEYS FOR
DEFENDANTS/APPELLEES

Jeffrey N. Walker
JONES, WALDO, HOLBROOK &
McDONOUGH
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, UT 84101

ATTORNEYS FOR
PLAINTIFF/APPELLANT

ARGUMENT PRIORITY CLASSIFICATION: 16

COMPLETE LIST OF ALL PARTIES

Plaintiff/Appellant

Kamdar & Company

Counsel of Record

Jeffrey N. Walker
Jones, Waldo, Holbrook & McDonough
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

Defendants/Appellees

Laray Company, Inc., Raymond Boal and James A. Boal, Jr.

Counsel of Record

W. Kevin Jackson
Jensen, Duffin, Carman, Dibb & Jackson
311 South State Street, Suite 380
Salt Lake City, Utah 84111
Telephone: (801) 531-6600

Counsel of Record

Mark J. Perrizo
Wilson, Wilson & Perrizo
10901 Paramount Blvd.
Downey, CA 90241
Telephone: (213) 923-4513

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BOAL; and JAMES A. BOAL, JR.,	:	
	:	
Defendants/Appellees.	:	

APPELLANT'S BRIEF

STATEMENT OF
JURISDICTION

This matter was initially appealed to the Utah Supreme Court pursuant to the provisions of the Utah Code Ann. § 78-2-2(3)(j) (1953 as amended) in that the appeal was taken from a final order of the Fourth Judicial District Court over which the Utah Court of Appeals does not have original appellate jurisdiction. See Rules 3 and 4, Utah Rules of Appellate Procedure. On or about November 1, 1990, this matter was assigned to the Utah Court of Appeals by the Utah Supreme Court pursuant to Rule 42, Utah Rules of Appellate Procedure.

NATURE OF PROCEEDING

This is an appeal from an Order of Dismissal for Lack of Jurisdiction by the Fourth Judicial District Court.

STATEMENT OF ISSUE

The following is the sole issue presented by this appeal, expressed in terms and circumstances of the case, but without unnecessary detail:

Whether the Fourth Judicial District Court (the "District Court") has specific personal jurisdiction over the appellees to resolve a dispute over the payment of fees for accounting and financial services rendered by the appellants for the benefit of the appellees. These services were rendered by the appellant, located in Utah, pursuant to an oral contract with the appellees, located in California. The appellant performed similar services in Utah for the appellees for 18 years. No services were ever performed for the appellees by the appellants in California. Instead, for over 18 years the appellees would send or otherwise have delivered to appellant in Utah all their accounting and financial reports, records and other documentation necessary for the appellant to perform various accounting services and then send the resulting work product to the appellees in California.

STANDARD OF REVIEW

As a standard of appellate review, this issue is subject to review under the "correction of error" standard as the District

Court's decision was based solely on the pleadings filed in the case and involved no assessment of witness credibility or competency. See T.R.F. v. Felan, 760 P.2d 906, 909 (Utah Ct. App. 1988). Thus, this Court is in "as good as position as the trial court to examine the evidence de novo and determine the facts." In re Adoption of Infant Anonymous, 760 P.2d 916,918 (Utah Ct. App. 1988).

STATEMENT OF STATUTES

The interpretation of Utah's Long-Arm Statute may be necessary in the resolution of this issue:

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 nonresident persons who, through certain significant minimal contacts with the 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 several states resulting in increased interaction between persons of this state and persons of other states.

The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment of the United States Constitution.

Utah Code Ann. § 78-27-22 (1953 as amended).

STATEMENT OF THE CASE

On January 29, 1990, appellant Kamdar & Company filed a complaint against the appellees in the Fourth Judicial District Court in the State of Utah to recover \$24,336.00 for unpaid

accounting and financial services. In response, on April 13, 1990, the appellees filed a Motion to Dismiss for Lack of Personal Jurisdiction. This Motion was granted on July 12, 1990 on the basis that the District Court lacked either specific or general personal jurisdiction over the appellees. On August 24, 1990, appellant Kamdar & Company filed its Notice of Appeal.

STATEMENT OF THE FACTS¹

1. Appellant Kamdar & Company is a Utah partnership, that has operated as an accounting and financial counselling business within the State of Utah since 1971. (See R. 1 & 77; Exhibit "A" at ¶ 3; Exhibit "C" at ¶ 1).

2. Appellee Laray Company, Inc. ("Laray Company") is a California corporation. (See R. 1, 2, 46, 47, 49 & 50; Exhibit "C" at ¶ 2).

3. Appellees Raymond Boal and James A. Boal, Jr., are or have been the principle officers and shareholders of Laray

¹ For purposes of this appeal, the following pleadings or other documentation, all of which comprise the underlying record on appeal, are attached hereto as exhibits and will be utilized and referred to as follows:

1. Affidavit of Vin Kamdar, filed in the District Court on May 14, 1990, as Exhibit "A";

2. Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss, filed in the District Court on April 25, 1990, as Exhibit "B"; and

3. Complaint filed in the District Court on January 29, 1990, as Exhibit "C".

Company and are both individuals residing in the State of California. (See R. 2, 46, 47, 49 & 50; Exhibit "C" at ¶¶ 3 & 4).

4. In or about 1971, James A. Boal, Jr., as president of Laray Company, then a sole proprietorship, contacted Vin Kamdar, regarding the desire to have him perform on-going accounting and financial services for him and his company. (See R. 47, 48, 50, 51, 76 & 77; Exhibit "A" at ¶ 2). During that initial meeting, Mr. Kamdar informed Mr. Boal that he was relocating his business to Utah, but would be willing to perform the accounting services sought by Laray Company and Mr. Boal, in Utah. The parties agreed to this arrangement. (See R. 76 & 77; Exhibit "A" at ¶ 2).

5. Accordingly, in or about 1971, Kamdar & Company, after moving to Utah, commenced performing diverse accounting and financial services to Laray Company and James A. Boal, Jr., from Utah and sent it's work product, including reports, returns, statements and comparisons to Laray Company and James A. Boal, Jr., in California. (See R. 77; Exhibit "B" at ¶ 3). No accounting or financial services were ever performed by Kamdar & Company for the appellees in California. (See R. 3, 77 & 78; Exhibit "A" at ¶¶ 5 & 7; Exhibit "C" at ¶ 9).

6. Laray Company and Mr. Boal were billed for these accounting and financial services by Kamdar & Company annually. As a result, Laray Company and Mr. Boal's payments to Kamdar & Company would always be one year in arrears. (See R. 78 & 79; Exhibit "A" at ¶ 8).

7. Commencing in or about 1974, Raymond Boal (the son of James A. Boal) contacted Kamdar & Company in Utah and requested that it begin performing various additional personal accounting and financial services for him, including, but not limited to advising him on real estate transactions, tax planning and personal financing. These services were similarly performed in Utah with the resulting work product being sent to California. (See R. 77; Exhibit "A" at ¶ 4).

8. From 1971 and continuing uninterrupted for the next 18 years, Kamdar & Company rendered virtually all of the appellees' accounting and financial advising needs, including, but not limited to the preparation of corporate and personal tax returns, bank summary reports, industry comparisons, corporate financial statements, comparative financial statements, monthly general ledger reports and consultation on investment, management, real estate and banking matters. During this entire time all of these services were performed in Utah with resulting work product sent to the appellees in California. Kamdar & Company never performed

any accounting or other financial services for the appellees at any time in California. The appellees always paid for these services on an annual basis until the present dispute arose. (See R. 62, 64, 65 & 78; Exhibit "A" at ¶ 7; Exhibit "B" at pp. 7, 9 & 10).

9. In order for Kamdar & Company to render the services noted above, it was required that the appellees deliver to Kamdar & Company in Utah all of their financial books and records, including, but not limited to all check stubs, payroll reports, monthly sales reports, copies of all loan documents and all other tax documents. (See R. 62, 64, 65 & 77; Exhibit "A" at ¶ 5; Exhibit "B" at pp. 7, 9 & 10).

10. Additionally, throughout the 18 year employment relationship between the parties, the appellees corresponded by mail and telephone from California on countless occasions with Kamdar & Company in Utah regarding the performance of these various accounting and financial responsibilities. (See R. 62, 64, 65 & 78; Exhibit "A" at ¶ 6; Exhibit "B" at pp. 7, 9 & 10).

11. The instant dispute arose when the appellees refused, after repeated demands, to pay for services rendered by Kamdar & Company during the final year that Kamdar & Company worked for the appellees. (See R. 79 & 80; Exhibit "B" at ¶ 8). This final amount due includes fees for both corporate and personal tax and

financial advice and services rendered by Kamdar & Company. (See R. 80; Exhibit "B" at ¶ 9).

SUMMARY OF ARGUMENT

Each requirement is fully met to invoke specific personal jurisdiction under Utah's Long-Arm Statute over the appellees. First, the fact that the appellees hired appellants to perform exclusively in Utah various accounting and financial services for their benefit for over 18 years and indisputably affected business and persons within the State of Utah pursuant to Utah Code Ann. § 78-27-24(1) (1953, as amended). Second, this very activity is the conduct on which the present claims arise. Finally, the appellees chose to use the appellant, a Utah company, to do their accounting and other financial needs for 18 years on an annual basis, coupled with their refusal to pay for these services justifies a finding based on all notions of fairness and substantial justice that the appellees come to Utah to explain why they so refuse to pay the appellant, a Utah company. The District Court does have specific personal jurisdiction over the appellees.

ARGUMENT

This appeal has been filed to seek review of the District Court's ruling that it lacked specific personal jurisdiction over the appellees. The District Court's ruling is inapposite to both

the uncontroverted facts and applicable law. As will be discussed herein, the District Court does have specific personal jurisdiction over the appellees.

A. The Requirements To Establish Specific Personal Jurisdiction Are Distinctive From Those To Establish General Personal Jurisdiction.

The issue of whether the District Court has jurisdiction over the appellees rests with the preliminary distinction between "general" and "specific" personal jurisdiction. The appellant asserts that specific personal jurisdiction exists over the appellees under Utah's Long-Arm Statute. The appellant has not asserted that general jurisdiction exists based upon the appellees doing business in Utah. This distinction is critical. This point, the appellees eventually conceded. (See R. 68; But cf. R. 33-41).

The distinction between general and specific personal jurisdiction has been fully embraced by the Utah courts.² As

² Earlier Utah case law that failed to make this distinction has been effectively abandoned. This point was recently addressed by the United States District Court for the District of Utah in Nova Mud Corp. v. Fletcher, 648 F.Supp. 1123 (D. Utah 1986). In Nova Mud, the court found that under current Utah law, the courts have "rejected its [the Utah courts] prior statements that any distinction between 'doing business' and 'minimum contact' was semantic rather than substantive." Id. at 1125. The court continued:

By making that recognition, the Utah court brought into question a number of prior precedents which essentially applied the 'doing business' test even with the long-arm

discussed in Abbott G.M. Diesel, Inc. v. Piper Aircraft Corp.,
578 P.2d 850, 853 n.6 (Utah 1978):

General personal jurisdiction is the concept reflected in a doing business statute, which requires substantial and continued local activity; specific personal jurisdiction is the concept applicable to a long-arm statute, which requires only minimum local contacts. . . . Where a defendant's forum-state activity is extensive, the forum may assert personal jurisdiction on either related or unrelated claims (doing business concept). Where the defendant has only minimum contacts with the forum, personal jurisdiction may be asserted only on claims arising out of the defendant's forum-state activity (long-arm or transaction of business concept).

Appellant does not attempt (nor need it attempt do so) to establish that the appellees have had substantial and continuous activity within Utah to invoke the court's general jurisdiction. (See R. 37-41). Rather, appellant has always maintained that the

statute was asserted as the basis for invoking jurisdiction. In any event, it is clear that the Utah court now adheres to the Utah legislature's mandate that standards be no more restrictive than those under federal due process limitations.

Id.

The Nova Mud court even pointed out some of these now obsolete opinions. These included Union Ski Co. v. Union Plastics Corp., 548 P.2d 1257 (Utah 1976) and Cate Rental Co. v. Whalen & Co., 549 P.2d 707 (Utah 1976). See Nova Mud Corp. v. Fletcher, supra, 648 F.Supp. at 1125 n.1. These two cases are two of the three central cases cited by the appellees in their attempt to attack the District Court's jurisdictional authority. The third case White v. Arthur Murray, Inc., 549 P.2d 439 (Utah 1976) suffers from the same now rejected premise. (See R. 37-39).

factual realities of the present case confers on the District Court specific personal jurisdiction over the case.

This is evidenced by several unopposed operative facts, including: (1) the initial oral contract entered into between the parties in 1971 included the understanding that all the services would all be performed in Utah (See Statement of the Facts (the "Facts") at ¶ 4); (2) the appellant performed these requested accounting and financing services in Utah for 18 years for the appellees (See Facts at ¶¶ 5 & 8); (3) the oral agreement to do these services was renewed or terminable each year, thereby making the fees that are owing in the present case an oral contractual arrangement entered into between the appellees, in California, and Kamdar & Company, in Utah (See Facts at ¶ 6); and (4) the present case is based on the collection of these very fees that comprises the appellees contacts with the State of Utah (See Facts at ¶ 11). None of these facts have been controverted by the appellees. These facts undisputable establish a prima facie showing that the District Court has specific personal jurisdiction over the resolution of the payment for these very services. See Anderson v. American Society of Plastic Surgeons, 148 Utah Adv. Rep. 3 (November 15, 1990).

B. Specific Personal Jurisdiction Over The Appellees Based On Utah's Long-Arm Statute.

The governing statutory law over this issue is Utah's Long-Arm Statute. See Utah Code Ann. §§ 78-27-22 et seq. (1953, as amended). The scope and purpose of this statute has been codified in section 78-27-22 of the Utah Code, which, in pertinent part, provides:

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 nonresident persons who, through certain significant minimal contacts with the state, incur obligations to citizens entitled to the state's protection. . .

The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident Appellees to the fullest extent permitted by the due process clause of the Fourteenth Amendment of the United States Constitution.

(Emphasis added.)

The Utah courts have consistently complied with this policy declaration and have given themselves jurisdiction to the fullest extent allowed under the due process of law. See, e.g., Parry v. Ernst Home Center Corp., 779 P.2d 659, 661 (Utah 1989); Synergetics v. Marathon Ranching Co., 701 P.2d 1106, 1110 (Utah 1985); Brown v. Carnes Corp., 611 P.2d 378, 380 (Utah 1980). The appellees also conceded these facts. (See R. 68 & 69).

C. All Requirements Are Met To Confer On The District Court Specific Personal Jurisdiction Over The Appellees.

The Utah Supreme Court has recently again reaffirmed that the finding of personal jurisdiction over a nonresident is governed, in addition to Utah's Long-Arm Statute, by meeting due process requirements as determined under federal jurisdictional analysis. Anderson v. American Society of Plastic Surgeons, 148 Utah Adv. Rep. 3 (November 15, 1990). See also Nova Mud Corp. v. Fletcher, 648 F.Supp. 1123 (D. Utah 1986). Specifically, conduct which is sufficient to invoke specific personal jurisdiction must include three features: (1) the activity must fall under at least one of the specifically enumerated statutory acts within Utah's Long-Arm Statute (see McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957)); (2) the controversy must arise out of the activity (see Hanson v. Denckla, 357 U.S. 235, 251 (1958)); and (3) the assertion of jurisdiction must not violate the notions of fair play and substantial justice (see International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). See accord Bradford v. Nagle, 763 P.2d 791, 793 (Utah 1988). Each of these elements are fully satisfied in the present case.

1. The appellees have engaged in the transaction of business within Utah.

The first step in a long-arm jurisdictional analysis is to establish that the party's conduct falls within the purview of one

of the enumerated statutory provisions. In pertinent part, Utah law provides:

Any person . . . 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 from:

(1) the transaction of any business within this state . . .

Utah Code Ann. §78-27-24(1) (1953, as amended) (Emphasis added).

What "transaction of business within this state" entails is defined in Section 78-27-23(2) of the Utah Code as "activities of a nonresident person, his agents, or representatives in this state which affect persons or businesses within the state of Utah." (Emphasis added). The Utah Supreme Court has given expansive construction to this definition, finding that a person may transact business within the state without a physical presence in Utah. See Synergetics v. Marathon Ranching Co., 701 P.2d 1106, 1110 (Utah 1985). This liberal construction finds similar support in the United States Supreme Court. See, e.g., McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957).

In the present case the appellees have for the past 18 years employed on an annually renewable basis the services of the appellant, a Utah partnership. (See Facts at ¶ 8). The appellees have had actual knowledge that during all of this time, the

appellant has been located in Utah. (See Facts at ¶¶ 5 & 8). The appellees have sent its account books and records to the appellant in Utah, have delivered payment for such services to the appellant in Utah and have had countless telephone conversations regarding the services it wished the appellant to perform and received counsel regarding its conduct of business from the appellant in Utah. (See Facts ¶¶ 9 & 10). Obviously, appellees continued use of appellant's services in Utah enabled them to reap the financial savings of paying Utah rates, rather than Southern California rates for these services. These activities evidences that the appellees conduct clearly has affected persons and businesses within the State of Utah, as required by statute. See also Nova Mud Corp. v. Fletcher, 648 F.Supp. 1123, 1126 (D. Utah 1986).

2. The appellant's claims arise out of the appellees' contacts in Utah.

The second step in a jurisdictional analysis is to determine whether the claims asserted arise out of the conduct with the forum state. See Hanson v. Denckla, 357 U.S. 235, 251-52 (1958). If the nexus between the claim and the party's conduct with the forum state can be established the "general" jurisdictional test of "doing business" within the state need not be met. Id.; Nova Mud Corp. v. Fletcher, supra, 648 F.Supp. at 1126. See also McGee

v. International Life Insurance Co., supra, 355 U.S. at 223 (1957).

In the instant case, the very claims asserted by the appellant arises from the connection the appellees have with Utah. Namely, the appellees' contact in Utah is their contracts with the appellant to do accounting work and business counselor for them. The instant dispute is over these very services. (See Facts at ¶ 11). Accordingly, the Hanson requirements are fully satisfied.

3. The assertion of jurisdiction is consistent with notions of fair play and substantial justice.

The final step in this jurisdictional analysis is the determination of whether the court's assertion of jurisdiction over the appellees is consistent with federal due process "notions of fair play and substantial justice." International Shoe Co. v. Washington, supra, 326 U.S. at 316. The Utah Supreme Court has adopted this concept holding that the central concern under this third step is "the relationship of the defendant, the forum, and the litigation to each other." Mallory Engineering v. Ted R. Brown & Associates, 618 P.2d 1004, 1007 (Utah 1980); See also American Land Program, Inc. v. Bonaventura Uitgevers Maatschappij, 710 F.2d 1449, 1452 (10th Cir. 1983).

Under this analysis, once it has been established that the claims arose from the activity that the appellees conducted

within the state, the remaining factor is whether the appellees' "conduct and connection with the forum State [is] such that [they] should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). See also Hanson v. Denckla, supra, 357 U.S. at 252; Milliken v. Meyer, 311 U.S. 457, 463 (1940). See accord Synergetics v. Marathon Ranching Co., Ltd., supra, 701 P.2d at 1110; Burt Drilling, Inc. v. Portadrill, 608 P.2d 244, 246-47 (Utah 1980).

In the present case, all the work done by the appellant for the appellees was performed in Utah and requested by the appellees. (See Facts at ¶¶ 5 & 8). Documents, files, and financial material necessary for the completion of the accounting were shipped to Utah so that the work could be done within the state. (See Facts at ¶¶ 9 & 10). Due to the extended nature of these business transactions, the amount of work done at the appellees request and benefit by the appellant within the state, the movement of personal and corporate financial documentation to the state, the prior history of billing and payments via mail to and from the state, and the full knowledge of the appellees that business was being carried on within Utah at their request and benefit evidences the intrinsic fairness of requiring the

appellees to defend their refusal to pay for these services here in Utah.

Furthermore, at the end of any given year, the appellees could have chosen a new accountant, one located in California. Yet, this the appellees chose not to do. For year after year the appellees renewed their contracts with the appellant to fulfill their accounting and financial needs. Each time the appellees renewed these agreements, they openly acknowledged their awareness and acceptance that they were doing business with a Utah company in Utah. This they freely and consistently chose to do. By so doing, they subjected themselves to the specific personal jurisdiction of the District Court to resolve the present dispute over these very fees. Balancing the interests of the state with the inconvenience to the appellees, the court's extension of jurisdiction over the appellees is a reasonable and valid exercise of its jurisdictional power.

CONCLUSION AND RELIEF SOUGHT

Based on all relevant facts and applicable law the District Court erred in finding that it lacked specific personal jurisdiction over the appellees. The facts are not in dispute. The appellees chose to hire the appellant with actual knowledge at that time that the appellant would be relocating to Utah. For the next 18 years, the appellees annually hired the appellant to

perform accounting and financial services for them. All of these services were performed in Utah. This included having all necessary documentation sent or brought to Utah as well as numerous telephone conversations between the parties. All services were paid by the appellees, with the exception of the services rendered during the appellant's final year of employment.

Utah's Long Arm Statute provides the maximum allowable protection to residents against nonresidents of Utah under the Constitution. This protection extends, under the present facts, to conferring specific personal jurisdiction on the District Court over the appellees, based on appellees contacts with the state of Utah. First, the ongoing retention of the appellant's services by the appellees satisfies the statutory requirement that the appellees affected persons or businesses within the State of Utah. Second, the appellees' hiring of the appellant is the very contact underlying this instant dispute. Finally, due to the appellees' annual decision to use the appellant, a Utah company, the continuous contact with the appellants in the form of documentation being sent to Utah and telephone conversations discussions, and the appellees actual knowledge that they were doing business with a company in Utah, satisfies all due process

concerns in requiring the appellees to come to Utah to resolve the present dispute.

Accordingly, the District Court's ruling should be reversed.

RESPECTFULLY SUBMITTED this 14th day of December, 1990.

JONES, WALDO, HOLBROOK & McDONOUGH

By 

Jeffrey W. Walker
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah
(801) 521-3200

ATTORNEYS FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 1990
I caused to be mailed, postage prepaid, a true and correct copy
of the foregoing APPELLANT'S BRIEF, to the following:

W. Kevin Jackson
JENSEN, DUFFIN, CARMAN, DIBB & JACKSON
311 South State Street, Suite 380
Salt Lake City, UT 84111

Mark J. Perrizo
WILSON, WILSON & PERRIZO
10901 Paramount Boulevard
Downey, CA 90241

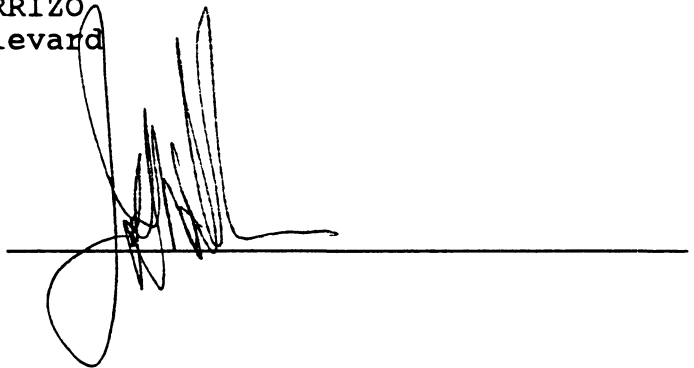
A handwritten signature in dark ink, appearing to read 'Mark J. Perrizo', is written over a solid horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Exhibit A

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

MAY 17 11 19 AM '90
Copy

Jeffrey N. Walker (USB #5556)
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Plaintiff
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY,
STATE OF UTAH

KAMDAR & COMPANY,	:	
	:	AFFIDAVIT OF VIN KAMDAR
Plaintiff,	:	
	:	
vs.	:	
	:	Civil No. 9004000079
LARAY COMPANY, INC.; RAYMOND	:	
BOAL; and JAMES A. BOAL, Jr.,	:	
	:	
Defendants.	:	

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

Vin Kamdar, being first duly sworn, deposes and says as follows:

1. I am the general partner of Kamdar & Company, a Utah partnership doing business in the State of Utah and as such I have personal knowledge of the information stated herein.

2. In or about 1971, James A. Boal, Jr., acting as president of the Laray Company, then a sole proprietorship, entered into an oral contract with me to have certain accounting

and financial services for him and his company performed on an on-going basis. At that time, I told Mr. Boal I was relocating my business to Utah and would be happy to perform these services for him in Utah. Mr. Boal agreed to this arrangement.

3. Accordingly, in or about 1971, I moved to Utah and Kamdar & Company began performing the accounting and financial services as requested by Mr. Boal, personally and in behalf of the Laray Company.

4. In or about 1974, Mr. James A. Boal, Jr. , at my advise and counsel incorporated the Laray Company. Kamdar & Company continued to render diverse accounting and financial services to Mr. James A. Boal, Jr. and the Laray Company. Additionally, beginning around this time Kamdar & Company also began rendering various financial services to Raymond Boal, including, but not limited to real estate transactions, tax planning and personal financing.

5. At all times, the defendants understood that all these accounting and financial services both personal and corporate would be and were being performed in Utah. This required having all the books and records of the individuals and the Laray Company, including, but not limited to check stubs, payroll reports, monthly sale reports, and copies of loan contracts either sent or delivered to Utah. The defendants have always complied with this necessity. As a result, all the work and review on these records and documents by Kamdar & Company occurred in Utah.

6. Throughout these 18 years, the defendants have corresponded by mail and telephone on countless occasions with the plaintiff regarding the performance of the accounting responsibilities for them by Kamdar & Company. Countless conversations were also had by mail and telephone between the defendants and the plaintiff regarding business advise, planning and opportunities. All of these correspondence took place between Utah and California.

7. No accounting or bookkeeping services were ever rendered to the defendants by Kamdar & Company while I was a resident of California. Rather, all work performed for and in behalf of the defendants by Kamdar & Company was done in Utah. This work commenced in or about 1971 and continuing for eighteen years. During this time, Kamdar & Company performed all accounting services for the Laray Company, various personal accounting and financial services for James A. Boal, Jr. and Raymond Boal, this included, but not limited to the preparation of corporate tax returns, bank summary reports, industry comparisons, comparative financials, corporate financial statements, monthly general ledger reports, consultation on investments, management, real estate and banking matters, and personal tax and financing advice and document preparation.

8. The instant dispute arose when the defendants refused, after repeated demands, to pay for services rendered by Kamdar & Company during the final year of employment with the defendants. As was the custom established throughout the time

Kamdar & Company was employed by the defendants, their bills were always paid one year in arrears. As a result, the greater portion of the amount currently owing by the defendants to Kamdar & Company is for the immediately preceding year prior to its termination. Additional amounts are owing for final accounting services rendered as requested by the defendants.

9. The amount owing to Kamdar & Company by the defendants includes both corporate and personal tax and financial advice and services.

DATED this 14th day of May, 1990.

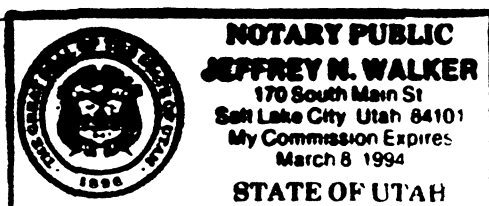
by: Vin Kamdar
Vin Kamdar

STATE OF UTAH)
COUNTY OF Salt Lake) ss.

On the 14th day of May, 1990, personally appeared before me Vin Kamdar, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

[Signature]
NOTARY PUBLIC
Residing at: [Signature]

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 1990. I caused to be mailed, a true and correct copy of the foregoing Affidavit of Vin Kamdar to the following:

W. Kevin Jackson
JENSEN, DUFFIN, DIBB & JACKSON
Attorneys for Defendants
311 South State Street
Suite 380
Salt Lake City, Utah 84111-2379

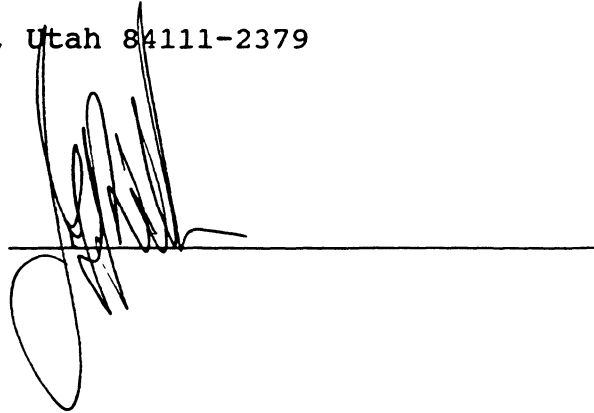


Exhibit B

Jeffrey N. Walker (USB #5556)
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Plaintiff
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

KAMDAR & COMPANY,	:	
	:	
Plaintiff,	:	MEMORANDUM OF POINTS AND
	:	AUTHORITIES IN OPPOSITION
vs.	:	TO DEFENDANTS' MOTION TO
	:	DISMISS
LARAY COMPANY, INC.; RAYMOND	:	
BOAL; and JAMES A. BOAL, JR.,	:	Civil No. 9004000079
	:	
Defendants.	:	

Plaintiff, by and through its counsel of record, Jones, Waldo, Holbrook & McDonough, submits the following Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss.

INTRODUCTION

This action arises from the failure of the defendants to pay for certain accounting and business services rendered in Utah by the plaintiff. The plaintiff is a Utah partnership operating an accounting and financial counselling business in Utah. The corporate defendant Laray Company, Inc. ("Laray") is a California corporation. The defendants Raymond and James Boal are both residents in California.

For the past 18 years, the plaintiff and the defendants have had an ongoing contractual arrangement whereby the plaintiff rendered yearly, quarterly and monthly accounting services, as well as ongoing business advice to the defendants. For all of these 18 years the plaintiff has been located in Utah. On or about March 24, 1989, the plaintiff submitted to Laray a bill for various accounting services in the amount of \$26,194.00. On or about May 12, 1989, the defendant Raymond Boal, as the new president of Laray, replied by letter refusing full payment.

The plaintiff has made repeated demands for payment for these rendered services, but the defendants have and continue to refusal to pay. The defendants refusal has required the plaintiff to file the instant action to recover such amounts owing from the defendants.

ARGUMENT

The defendants have filed the instant motion alleging that this Court is without jurisdiction over the parties. This claim is wrong. This Court does have specific personal jurisdiction over the defendants based on their contacts with the State of Utah.

I. THIS COURT HAS SPECIFIC PERSONAL JURISDICTION OVER THE DEFENDANTS.

A. There Is A Critical Distinction Between Specific And General Jurisdiction.

The issue in dispute is simple: Does this court have specific personal jurisdiction over the nonresident defendants.

The governing statutory law is Utah's Long-Arm Statute. See Utah Code Ann. §§ 78-27-22 et seq. (1953, as amended). The scope and purpose of this statute has been codified in section 78-27-22 of the Utah Code, which, in pertinent part, provides:

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 nonresident persons who, through certain significant minimal contacts with the 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 several states resulting in increased interaction between persons of this state and persons of other states. The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment of the United States Constitution.

(Emphasis added.)

The Utah courts have consistently complied with this policy declaration and have given themselves jurisdiction to the fullest extent allowed by the due process of law. See, e.g., Brown v. Carnes Corp., 611 P.2d 378, 380 (Utah 1980).

In the instant case, the issue of whether this court has jurisdiction over the defendants rests with the distinction between "general" and "specific" jurisdiction. It is this distinction which the defendants have failed to recognize. Simply, the plaintiff asserts specific personal jurisdiction over the defendants based on Utah's Long-Arm Statute, rather than general jurisdiction based upon the defendants doing business in Utah. This distinction is critical.

1. The Utah courts have recognized the distinction between specific and general jurisdiction.

This distinction has been recently and fully embraced by the Utah courts. As aptly discussed in Abbott G.M. Diesel v. Piper Aircraft, 578 P.2d 850, 853 n.6 (Utah 1978):

General personal jurisdiction is the concept reflected in a doing business statute, which requires substantial and continued local activity; specific personal jurisdiction is the concept applicable to a long-arm statute, which requires only minimum local contacts. . . . Where a defendant's forum-state activity is extensive, the forum may assert personal jurisdiction on either related or unrelated claims (doing business concept). Where the defendant has only minimum contacts with the forum, personal jurisdiction may be asserted only on claims arising out of the defendant's forum-state activity (long-arm or transaction of business concept).

The plaintiff does not attempt nor need it attempt to assert, as claimed by the defendants, that the defendants have substantial and continuous activity within Utah to invoke the court's general jurisdiction. (See Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss, pp.6-10 (hereinafter "Defendants' Memorandum")). Rather, the plaintiff asserts that the defendant's retention of the plaintiff as its accountant and business advisor for the past 18 years and now their failure to pay for these services rendered in Utah invokes this court's specific personal jurisdiction over the resolution of the payment for these very services.

2. The defendants have failed to acknowledge the distinction between specific and general jurisdiction.

The failure of the defendants to acknowledge this distinction is fatal to their position that this court lacks

jurisdiction. This failure is evidenced by the defendant's own pleading which uniformly cites Utah cases of now questionable validity. The cases cited in the Defendants' Memorandum on the issue of jurisdiction have now been abandoned by the Utah courts. This reality was directly addressed by the United States District Court for the District of Utah in Nova Mud Corp. v. L.H. Fletcher, 648 F.Supp. 1123 (D. Utah 1986). In Nova Mud, the court first found that under current Utah law, the courts have "rejected its [the Utah courts] prior statements that any distinction between 'doing business' and 'minimum contact' was semantic rather than substantive." Id. at 1125. The court continued:

By making that recognition, the Utah court brought into question a number of prior precedents which essentially applied the 'doing business' test even with the long-arm statute was asserted as the basis for invoking jurisdiction. In any event, it is clear that the Utah court now adheres to the Utah legislature's mandate that standards be no more restrictive than those under federal due process limitations.

Id.

The Nova Mudd court even pointed out some of these now obsolete opinions. These 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). See Nova Mudd Corp. v. Fletcher, supra, 648 F.Supp. at 1125 n.1. These two cases are two of the three central cases cited by the defendants in their attempt to attack this court's jurisdictional authority. The third case White v. Arthur Murray, Inc., 549 P.2d 439 (Utah 1976)

suffers from the same now rejected premise. (See Defendants' Memorandum, pp.6-8).

B. Specific Personal Jurisdiction Is Governed By Due Process Limitations.

Conduct which is sufficient to invoke long-arm jurisdiction must include three features: (1) the activity must fall under at least one of the specifically enumerated statutory acts (see McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957)); (2) the controversy must arise out of the activity (see Hanson v. Denckla, 357 U.S. 235, 251 (1958)); and (3) the assertion of jurisdiction must not violate the notions of fair play and substantial justice (see International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). Each of these elements are fully satisfied in the instant case.

1. Defendants Have Engaged In The "Transaction Of Any Business Within The State".

The first step in a long-arm jurisdictional analysis is to establish that the party's conduct falls within the purview of one of the enumerated statutory provisions under Utah's Long-Arm Statute. In pertinent part, Utah's long-Arm Statute provides:

Any person . . . 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 from:

(1) the transaction of any business within this state . . .

Utah Code Ann. §78-27-24(1) (1953, as amended)(emphasis added).

What "transaction of business within this state" entails is defined in Section 78-27-23(2) of the Utah Code as "activities of a nonresident person, his agents, or representatives in this state which affect persons or businesses within the state of Utah." (Emphasis added). The Utah Supreme Court has given an expansive construction to this definition finding that a person may transact business within the state even without a physical presence in Utah. See Brown v. Washoe Housing Authority, 625 F.Supp. 595, 599 (D.Utah 1985); and Synergetics v. Marathon Ranching Co., 701 P.2d 1106, 1110 (Utah 1985). This liberal construction finds similar support in the United States Supreme Court. See, e.g., McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957).

In the instant case the defendants have for past 18 years employed the services of the plaintiff, a Utah partnership. The defendants have had actual knowledge that during all of this time, the plaintiff has been located in Utah. The defendants have sent its account books and records to the plaintiff in Utah, have delivered payment for such services to the plaintiff in Utah and have had countless telephone conversations regarding the services it wished the plaintiff to perform and received counsel regarding its conduct of business from the plaintiff in Utah. These activities evidences that the defendants conduct meets the Utah statute in that they affects persons and businesses within the State of Utah. See Nova Mudd Corp. v. Fletcher, supra, 648 F.Supp. at 1126.

2. Plaintiff's claims must arise out of the defendant's activity within Utah.

The second step in a jurisdictional analysis is to determine whether the claims asserted arise out of the conduct with the forum state. See Hanson v. Denckla, 357 U.S. 235, 251-52 (1958). If the nexus between the claim and the party's conduct with the forum state can be established the "general" jurisdictional test of "doing business" within the state need not be met. Id.; and Nova Mudd Corp. v. Fletcher, supra, 648 F.Supp. at 1126. See also McGee v. International Life Insurance Co., supra, 355 U.S. at 223 (1957).

In the instant case, the very claims asserted by the plaintiff arise from the connection the defendants have with Utah. Namely, the defendant's principal activity within Utah is their retention of the plaintiff to do accounting and business counselor work for them. The instant dispute is over these very services. The Hanson requirements are fully satisfied.

3. The Court's assertion of jurisdiction is consistent with federal due process.

The final step in our jurisdictional analysis is the determination of whether the court's assertion of jurisdiction over the defendants is consistent with federal due process "notions of fair play and substantial justice." International Shoe Co. v. Washington, supra, 326 U.S. at 316. The Utah Supreme Court has adopted this concept holding that the central concern under this third step is "the relationship of the defendant, the forum, and the litigation, to each other." Mallory Engineering

v. Ted R. Brown & Associates, 618 P.2d 1004, 1007 (1980); and American Land Program, Inc. v. Bonaventura Uiteverss Maatschappij, 710 F.2d 1449, 1452 (10th Cir. 1983).

Under this analysis, once it has been established that the claims arose from the activity in which the defendants conducted in the state the remaining factor is whether the defendants' "conduct and connection with the forum State [is] such that [they] should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). See also Hanson v. Denckla, supra, 357 U.S. at 252; and Milliken v. Meyer, 311 U.S. 457, 463 (1940). See accord Synergetics v. Marathon Ranching Co., Ltd., supra, 701 P.2d at 1110; Brown v. Carnes Corp., 611 P.2d 378, 380 (Utah 1980); and Burt Drilling, Inc. v. Portadrill, 608 P.2d 244, 246-47 (Utah 1980).

In the instant case, all the work done by the plaintiff for the defendant within the time covered by the outstanding bills was performed in Utah. Documents, files, and financial material necessary for the completion of the accounting were shipped to Utah to for access so that the work could be done within the state. Due to the extended nature of this business transaction, the amount of work done by the plaintiff within the state, the movement of personal and corporate financial documentation to the state, the prior history of billing and payments via mail to and from the state, and the full knowledge of the defendants that business was being carried on within Utah evidences the intrinsic

fairness of requiring the defendants to defend their refusal to pay for these services here in Utah. Balancing the interests of the state with the inconvenience to the defendants, the court's extension of jurisdiction over the defendants is a reasonable and valid exercise of jurisdictional power.

CONCLUSION

Utah's Long-Arm Statute vests this court with specific personal jurisdiction over the defendants. The defendants' arguments fail to make the critical distinction between general and specific jurisdiction thereby improperly asserting that this Court lacks any jurisdictional authority over this matter. Because of current Utah law which recognizes this distinction and the defendants meeting the requisite elements to invoke this courts long-arm jurisdiction, the plaintiff respectfully request that this Court deny the defendants' Motion to Dismiss.

DATED this 25th day of April, 1990.

JONES, WALDO, HOLBROOK & McDONOUGH

By 

Jeffrey N. Walker
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of April, 1990, I caused to be hand-delivered, a true and correct copy of the foregoing Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss to the following:

W. Kevin Jackson
JENSEN, DUFFIN, DIBB & JACKSON
Attorneys for Defendants
311 South State Street
Suite 380
Salt Lake City, Utah 84111-2379

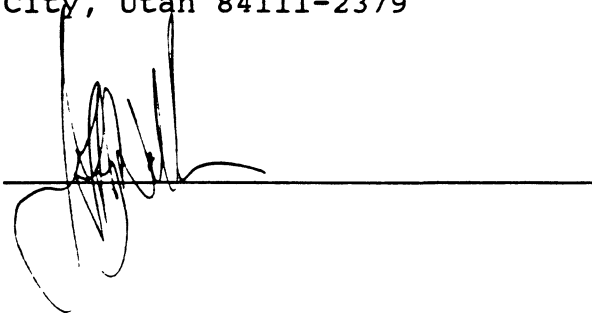


Exhibit C

Jeffrey N. Walker (USB #5556)
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Plaintiff
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

KAMDAR & COMPANY,	:	
	:	
Plaintiff,	:	
	:	COMPLAINT
vs.	:	
	:	
LARAY COMPANY, INC.; RAYMOND	:	Civil No. <u>900400079</u>
BOAL; and JAMES A. BOAL, JR.,	:	
	:	
Defendants.	:	

Plaintiff, by and through its counsel of record,
Jones, Waldo, Holbrook & McDonough, upon information and
belief, alleges and for causes of action states as follows:

PARTIES

1. Plaintiff Kamdar & Co. is a partnership organized
under the laws of the State of Utah with its principal place of
business in Utah County, State of Utah.

2. Plaintiff is informed and believes and thereon
alleges that defendant Laray, Co., Inc. ("Laray") is a business

organization with its principal place of business in Orange County, State of California.

3. Plaintiff is informed and believe and thereon alleges that the defendant Raymond Boal is an individual and current president of Laray and resides in Los Angeles County, State of California.

4. Plaintiff is informed and believes and thereon alleges that the defendant James A. Boal, Jr. is an individual and former president of Laray and resides in Orange County, State of California.

5. Plaintiff is informed and believes and thereon alleges that the defendants Raymond Boal and James A. Boal, Jr. are guarantors of the debts of Laray.

JURISDICTION AND VENUE

6. Plaintiff is informed and believes and thereon alleges that this Court has jurisdiction over the matters alleged herein pursuant to the Utah Code Anno. Section 78-27-24 (1953, as amended) in that the defendants' transaction of business and contracting for services with the plaintiff occurred within the State of Utah.

7. Venue of this action is properly vested in this court pursuant to Utah Code Anno. Section 78-13-1 (1953, as amended) in that the claims alleged herein occurred as a result

of the services preformed for the exclusive benefit of the defendants by the plaintiff within the jurisdiction of this district, in the State of Utah.

FIRST CAUSE OF ACTION

(Breach of Contract)

8. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 7 of this Complaint as though set forth in full herein.

9. In or about 1971 through 1988, the plaintiff and Laray entered into an ongoing contractual arrangement (the "Contracts") whereby the plaintiff would render on a yearly, quarterly and monthly basis various financial and tax services, including, but not limited to the preparation of corporate tax returns, bank summary reports, industry comparisons, comparative financials, corporate financial statements and monthly general ledger reports, as well as financial consultation on various investment, management, real estate and banking matters for Laray (hereinafter collectively referred to as the "Services").

10. At all times relevant herein the Services rendered by the plaintiff for the defendants was performed in Utah for the benefit of Laray's business in California.

11. In or about 1971 through 1988, the plaintiff did rendered Services for Laray, submitted billings and accounting statements on a monthly, quarterly or yearly basis to Laray for these Services and Laray paid the plaintiff pursuant to the billing and accounting statements, pursuant to the Contracts.

12. In or about early March, 1989, the defendant James A. Boal, Jr., then president of Laray, informed the plaintiff that once the last quarter of the 1988 financial and tax services which the plaintiff was in the process of completing were finished, as a result of an anticipated change in management of Laray, the plaintiff's Services would be no longer required, and requested a final bill and accounting for all outstanding unpaid Services.

13. In response to the defendant James A. Boal, Jr.'s request, on or about March 24, 1989, that the plaintiff submitted to Laray a final bill and accounting for unpaid Services rendered for the exclusive benefit of Laray, pursuant to the Contracts, in the amount of Twenty Six Thousand One Hundred Ninety Four Dollars (\$26,194.00) plus accruing interest and service charges. A copy of said final billing and accounting statement is attached hereto as Exhibit "A" and incorporated by reference herein.

14. On or about May 12, 1989, the defendant Raymond Boal, as the new president of Laray, replied by letter to the

plaintiff, acknowledging that the plaintiff had preformed substantial Services for the benefit of Laray which remained unpaid, but refused to reimburse the plaintiff for the amount, as reflected in the plaintiff's March 24, 1989 billing and accounting statement, claiming that the amount should be reduced. A copy of said letter is attached hereto as Exhibit "B" and incorporated by reference herein.

15. On or about June 8, 1989, Laray, in further acknowledgment of the debt it owed to the plaintiff sent the plaintiff a check in the amount of Two Thousand Three Hundred Eighty Two Dollars (\$2,382.00).

16. On or about July 7, 1989 and again on July 21, 1989, the plaintiff responded to the defendant Raymond Boal's claim that the amount owing to the plaintiff by Laray should be reduced expressly rejecting this claim and again requesting that the full amount be paid pursuant to the Contracts between the plaintiff and Laray. A copy of these letters are attached hereto as Exhibits "C" and "D", respectively and incorporated by reference herein.

17. On or about July 25, 1989, the defendant Raymond Boal, by letter, informed the plaintiff that it would not pay the plaintiff pursuant to the Contracts, claiming that the plaintiff's bills for the Services rendered were considered too

high and that Laray had located other "accounting services" which would work for less. A copy of said letter is attached hereto as Exhibit "E" and incorporated by reference herein.

18. On or about August 16, 1989, the plaintiff, by letter, again attempted to encourage Laray to fulfill its commitments under the Contracts and pay the plaintiff for the Services it had rendered for the exclusive benefit of Laray. This letter further informed Laray that the defendant Raymond Boal's earlier acknowledgments that the plaintiff had performed substantial financial, tax and consulting services and the corresponding amount Laray was willing to pay failed to account for all the Services so rendered, as noted in the March 24, 1989 billing and accounting statement. A copy of said letter is attached hereto as Exhibit "F" and incorporated by reference herein.

19. The defendants have failed to make any further payment in accordance to the Contracts between the plaintiff and Laray for the Services rendered by the plaintiff for the exclusive benefit of Laray.

20. The plaintiff has performed all of its obligations under the terms of the Contracts.

21. The plaintiff has demanded that the defendants pay pursuant to the Contracts, but the defendants have and continued to refuse to pay such amounts or any portion thereof.

22. As a result of the defendants' failure to pay the amounts owed to the plaintiff, the plaintiff is entitled to recover from the defendants the amount of Twenty Four Thousand Three Hundred Thirty Six Dollars (\$24,336.00), together with interest thereon at the highest, legal rate as allowed by law from the date of the defendant's breach of the Contracts, and judgment should be entered against the defendants and in favor of the plaintiff in that amount.

WHEREFORE, plaintiff demands judgment against the defendants as set forth hereinafter in Plaintiff's Prayer for Relief.

SECOND CLAIM FOR RELIEF

(Unjust Enrichment)

23. The plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 22 of this complaint as though set forth in full herein.

24. The defendants have been unjustly enriched in the amount of Twenty Four Thousand Three Hundred Thirty Six Dollars (\$24,336.00) as a result of the defendants' failure to pay for the Services rendered by the plaintiff as alleged herein, and in equity and good conscience, the defendants should not be permitted to enjoy the benefits of said Services, and the

plaintiff is entitled to recover from the defendants the amount by which the defendants have been unjustly enriched.

25. For the reasons set forth herein, the defendants are liable to the plaintiff in the amount of Twenty Four Thousand Three Hundred Thirty Six Dollars (\$24,336.00), together with interest thereon at the highest, legal rate as allowed by law from the date of the defendant's wrongful conduct, and judgment should be entered against the defendants and in favor of the plaintiff in that amount.

WHEREFORE, the plaintiff demands judgment against the defendant as set forth in Plaintiff's Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff pray:

1. For judgment against the defendants on each of the Claims for Relief as noted herein in the amount of Twenty Four Thousand Three Hundred Thirty Six Dollars (\$24,336.00), together with interest thereon at the highest legal rate from the date of the defendants' breach and/or wrongful conduct;

2. For an award of a reasonable attorney's fees,
court costs and expenses incurred in this action; and

3. For such other and further relief as this Court
may deem equitable and just under the circumstances.

DATED this 19th day of January, 1990.

JONES, WALDO, HOLBROOK & McDONOUGH

By 

Jeffrey N. Walker
Attorneys for Plaintiff

jnw 218/pb

KAMDAR & CO.
10 SOUTH STATE STREET
LINDON, UT 84042

March 24, 1989

James A. Boal, Jr., President
Laray Co., Inc.
P. O. Box 462
La Habra, CA 90631

Accounting services rendered:

Preparation of Corp. Tax Returns Fy 86-87. . . .	\$ 5,580.
Preparation of Corp. Tax Returns Fy 87-88. . . .	4,983.
Bank Reporting to Mitsubishi 86-87	4,052.
Bank Reporting to Mitsubishi 87-88	4,152.
Comparative Fianacials 86-87 & 87-88	3,052.
General Ledger Work 7-1-87 to 12-31-88	2,700.
Financials of the Principals 1-1-88.	928.
Out of Pocket costs.	747.

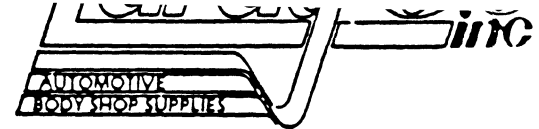
Total services rendered

\$ 26,194.

=====

If the total payment is not received in 30 days, a late charge of 12.00 per cent will be added to the unpaid balance.

The billing is payable upon receipt.



P.O. BOX 462 • LA HABRA, CA 90631

MAY 12, 1989

KAMDAR & CO.
10 SOUTH STATE STREET
LINDON, UTAH 84042

RE: ACCOUNTING SERVICES RENDERED:

PREPARATION OF CORP. TAX RETURNS FY 87-88	4,983.
BANK REPORTING TO MITSUBISHI 87-88	4,152.
COMPARATIVE FINANCIALS 87-88	1,526.
GENERAL LEDGER WORK 7-1-87 TO 12-31-88	2,700.
FINANCIALS OF THE PRINCIPALS 1-1-88	928.
TOTAL	<hr/> 14,289.00

LISTED ABOVE IS THE TOTAL AMOUNT OWED TO KAMDAR & CO. BY
LARAY CO., FOR ACCOUNTING SERVICES. PAYMENT WILL BE MADE
IN SIX INSTALLMENTS AT 2,381.50 .

SINCERELY,

RAY BOAL
PRESIDENT

RB/r1

TAYLOR, MOODY & THORNE, P.C.

ATTORNEYS AND COUNSELORS AT LAW

FORMERLY

CHRISTENSEN, TAYLOR & MOODY

2525 NORTH CANYON ROAD

COUNTRY CLUB COURT

P.O. BOX 1466

PROVO, UTAH 84603

THOMAS S. TAYLOR

ROBERT L. MOODY

D. EUGENE THORNE

of Counsel

KAY ALDRICH LINDSAY

TELEPHONE

(801) 373-2721

FAX (801) 375-6293

July 7, 1989

Ray Boal, Jr., President
LaRay Company, Inc.
P.O. Box 462
La Habra, CA 90631

re: Kamdar v. LaRay Company, Inc.

Dear Mr. Boal:

Your memo dated May 12, 1989, regarding accounting services rendered by Kamdar & Company has been brought to my office. I return a copy of that letter together with a copy of Kamdar & Company's billing, dated March 24, 1989. The amount shown on the March 24, 1989, billing is the amount owed to Kamdar & Company and not as characterized by yourself.

Should you opt to make monthly installments as you have suggested in your memo dated May 12, 1989, a 12% interest charge will be added.

Mr. Kamdar is sorry that you have chosen not to continue using his services but that is not a reason to excuse you from payment of the services previously rendered.

Should this account not be paid in a reasonable period of time, I have been instructed to turn it over for collection to correspondent counsel in California.

Should you have any questions concerning this matter please address them to this office.

Yours very truly,



Robert L. Moody

RLM:cjc

Enclosure

TAYLOR, MOODY & THORNE, P.C.
ATTORNEYS AND COUNSELORS AT LAW

FORMERLY

CHRISTENSEN, TAYLOR & MOODY

2525 NORTH CANYON ROAD

COUNTRY CLUB COURT

P O BOX 1466

PROVO, UTAH 84603

THOMAS S TAYLOR
ROBERT L MOODY
D EUGENE THORNE
.
.
.
of Counsel
KAY ALDRICH LINDSAY

TELEPHONE
(801) 373-2721
FAX (801) 375-6293

July 21, 1989

LARAY COMPANY, INC.
P.O. Box 462
LaHabra, CA 90631


RE: Kamdar & Company vs. Laray Company, Inc.

Gentlemen:

Enclosed is Kamdar & Company's billing showing a credit of your recent payment and the current unpaid balance. Demand is hereby made upon you to take care of this matter within thirty (30) days to avoid the necessity of this being referred to correspondent counsel for legal proceedings.

Should you have questions concerning this matter please address them to this office.

Yours very truly,


Robert L. Moody
Attorney at Law

RLM:jsp
Enclosure

AUG 4 1989



P.O. BOX 462 • LA HABRA, CA 90631

July 25, 1989

Robert L. Moody
Taylor, Moody & Thorne, PC
2525 North Canyon Rd.
Provo, Utah 84603

Reference: Kamdar Company vs Laray Company, Inc.
Your letter dated July 21, 1989

*Kim
Please advise?
Be*

Mr. Moody:

With respect to the matter at contest, it is our position that a compromise agreement be once again considered. It is our contention that there was a vast disparity between the nature of services rendered and the corresponding fees charged by Mr. Kamdar. We offer as evidence the dearth of documentation and product provided to us for Mr. Kamdar's effort during the billing period. As a point of reference, under the exact parallel circumstances, our present accounting services, which are provided by a Certified Public Accountant, are nowhere near the level of cost imposed by Mr. Kamdar.

Enclosed is our original letter of compromise for which a corresponding payment and negotiation of such payment has been accomplished.

If the above terms are not acceptable to your client we suggest that whatever legal remedies may incur under the circumstances be pursued.

Additionally, for your files, there is an interplay between the subject billing for professional services and a promissory demand note due to the principal owner of our Company. To avoid a compromise of our position with respect to this note, (face value \$15,000), we ask an offset to our obligation to that of your clients.

Very truly yours,

Ray Boal
President

rl/RB

TAYLOR, MOODY & THORNE, P.C.

ATTORNEYS AND COUNSELORS AT LAW

FORMERLY

CHRISTENSEN, TAYLOR & MOODY

2525 NORTH CANYON ROAD

COUNTRY CLUB COURT

P O BOX 1466

PROVO, UTAH 84603

THOMAS S TAYLOR
ROBERT L MOODY
D EUGENE THORNE

of Counsel
KAY ALDRICH LINDSAY

TELEPHONE
(801) 373-2721
FAX (801) 375-6293

August 16, 1989

Ray Boal, Jr., President
LaRay Company, Inc.
P.O. Box 462
La Habra, CA 90631

re: Kamdar v. LaRay Company, Inc.

Dear Mr. Boal:

Thank you for your letter of July 25, 1989, together with a copy of your letter addressed to Kamdar & Company, dated May 12, 1989.

As you can appreciate it is difficult for either myself or Mr. Kamdar to compare what you're presently paying a CPA to what you previously paid Kamdar & Company. We have no way of knowing what the CPA is doing at the present time but we do know what Mr. Kamdar did in the past and we do know that for many years he provided services and was paid the fees and it is only after the fact that you want to adjust the payments to him. We do not think that that is appropriate.

Referring to your recap of the accounting services rendered in your letter dated May 12, 1989, you have failed to include the 1986-1987 preparation of corporate tax returns in the sum of \$5,580.00 and you have failed to include the 1986-1987 bank reporting services which totalled \$4,052.00. If you would have included those figures your total would have been \$23,921.00. It is my opinion that contractually you're obligated in this amount.

We appreciate the spirit of your willingness to try and resolve this matter as set forth in your letter of July 25, 1989, and in that same spirit it is our suggestion that the matter be compromised as follows:

(a) That you offset the \$15,000.00 note Mr. Kamdar owes your Company.

Exhibit "F"

Ray Boal, Jr., President
LaRay Company, Inc.
August 16, 1989
Page 2

(b) That you pay Mr. Kamdar \$6,600.00 in monthly payments of \$2,200.00 per month over the next three months.

Your considering this matter and prompt reply will be appreciated.

Yours very truly,


Robert L. Moody

RLM:cjc
cc: Kamdar & Company

Exhibit D

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

KAMDAR &COMPANY,
Plaintiff,

Case No. 900400079

DECISION

vs.

LARAY COMPANY INC., et al,
Defendant.

This matter is before the Court on plaintiff's Request for a Ruling on defendants' Motion to Dismiss. The Court assumes that Mr. Walker is intending the Request as a Notice to Submit for a Decision under Rule 4-501(1)(d) rather than the cited 4-501(e). The Court, having considered the the Motion, accompanying memoranda, and affidavits enters the following:

DECISION

Defendants contend that this Court has no personal jurisdiction over the defendants. The record establishes that the defendants have an 18 year relationship with the plaintiff and that for almost all of that time the plaintiff has resided in Utah and has performed accounting and other financial services for the defendants in Utah.

However, the record also clearly indicates that the agreement to have plaintiff render accounting and financial services for the Laray Company, Inc. was entered into in California. Furthermore, the defendants do no business in Utah. The only contact that any of the defendants have with this State is the fact that their accountant works here. There is no evidence that the defendants sought out a Utah accountant to do their financing. Rather, the accountant moved to Utah after the contract was made.

This Court finds that the nature and quality of the defendants' activities relative to the State of Utah are not of the kind that would subject them to personal jurisdiction (specific or general). Plaintiff's reference to Utah Code 78-27-23(2) is inapposite as is its reliance on Synergetics v. Marathon Ranching Co., 701 P.2d 1106 (Utah 1985). Defendants have never purposefully availed themselves of the privilege of conducting activities within the State of Utah.

Based on the foregoing, the Court hereby grants defendants' Motion to Dismiss.

Mr. Jackson is to prepare an Order consistent with this decision.

DATED, in Provo, this 12th day of July, 1990.

BY THE COURT


GEORGE E. BALLIF, JUDGE

cc: Jeffery Walker
Kevin Jackson

Exhibit E

W KEVIN JACKSON (1640)
JENSEN, DUFFIN, DIBB & JACKSON
Attorney for Defendant
311 South State Street, Suite 380
Salt Lake City, UT 84111-2379
(8100 531-6600

FILED
Fourth Judicial District Court of
Utah County, State of Utah
Aug 14 1990
CARMA E. SMITH, Clerk
Deputy

MARK J. PERRIZO
WILSON, WILSON & PERRIZO
Attorney for Defendant
10901 Paramount Blvd.
Downey, CA 90241

IN THE FOURTH JUCICIAL DISTRICT COURT
FOR UTAH COUNTY, STATE OF UTAH

KAMDAR & COMPANY	ooOoo	
	:	
Plaintiff,	:	
	:	
v.	:	ORDER OF DISMISSAL
	:	FOR LACK OF JURISDICTION
LARAY COMPANY, INC.; RAYMOND	:	
BOAL: AND JAMES A. BOAL, JR.,	:	
	:	Civil NMo. 90-040-0079
Defendant.	:	Judge Ballif
	:	
	ooOoo	


The Defendant's Motion to Dismiss the Plaintiff's
Complaint for lack of jurisdiction over the Defendants having
been duly called on for hearing before the Court pursuant to
Rule 4-501(1)(d), and the Court having considered the
affidavits and memorandums of points and authorities submitted
by each of the parties and for reasons more fully set forth in
the decision of this Court dated the 12th day of July, 1990,

and upon motion of the Defendants it is hereby ORDERED,
ADJUDGED, and DECREED as follows:

1. The Plaintiff's Complaint against each of the
Defendants is hereby dismissed due to the lack of personal
jurisdiction over the named Defendants.

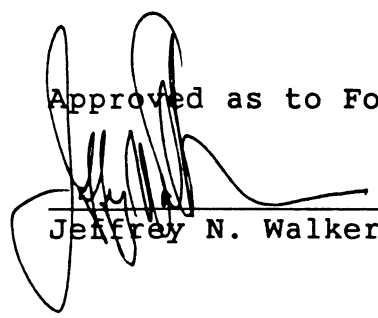
2. Th Defendants' Motion to Dismiss the Complaint is
hereby granted, without prejudice.

DATED this 14th day of July, 1990.



Judge George E. Ballif

Approved as to Form



Jeffrey N. Walker

jnw 337/pb