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FILED BY FAX

ALAMEDA COUNTY
September 08, 2008

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
VG08390958

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

BRABUS VENTURES CORPORATION,

Plaintiff,

v.

VOLODYMYR ZABLOTSKY,

Defendant.

CASE NO. VG08390958

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT VOLODYMYR
ZABLOTSKY'S MOTION TO QUASH
SERVICE OF SUMMONS FOR LACK
OF PERSONAL JURISDICTION**

Date: November 3, 2008

Time: 3:15 p.m.

Dept: 24

Before: The Honorable Patrick Zika

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INTRODUCTION

Defendant Volodymyr Zablotskyy ("Zablotskyy") specifically appears to bring this motion to quash service of summons, pursuant to Code of Civil Procedure §418.10(a)(1), on the ground that this Court lacks personal jurisdiction over him and therefore, the Court should dismiss this action.

In its Complaint, plaintiff Brabus Ventures Corporation ("BVC") fails to explain why this Court has personal jurisdiction over Zablotskyy. BVC ignores the fact that neither this case nor Zablotskyy has any connection to California. Even more troubling, BVC's complaint is a frontal assault on Zablotskyy's First Amendment rights to engage in legitimate debate regarding the real estate industry on Zablotskyy's Internet blog.

Zablotskyy is not a resident of California, has no assets in California, has no offices in California, has no employees in California, conducts no business in California, and operates an informational website that does not engage in ecommerce with residents of California. Because of Zablotskyy's lack of contacts with California, BVC appears to hinge personal jurisdiction on Zablotskyy's Internet blog posting on an informational website, the effects of which were purportedly felt in California. However, what BVC fails to mention is that neither the blog posting nor the informational website specifically target or directly solicit any business from California residents; BVC further fails to mention that the blog posting and website are generally available over the Internet to anyone with Internet access, including residents of California, and that such general accessibility does not demonstrate contacts required for general or specific jurisdiction.

The so-called "effects" test under the case of *Calder v. Jones*, 465 U.S. 783 (1984), allows a court to assert personal jurisdiction over a non-resident defendant where an intentional tort has been alleged, but requires that the defendant engage in acts for

1 the very purpose of having the consequences of those acts felt in the forum state.
2 Exercising jurisdiction based on BVC's boilerplate jurisdictional allegations would stretch
3 the "effects" test to the point of evisceration. BVC's interpretation would subject to
4 jurisdiction in any forum, any person who posts material on the Internet, regardless of
5 where the posts originate from. There is no basis in law to support such an expansion of
6 the "effects" test. Accordingly, there is no basis for the exercise of personal jurisdiction
7 over Zablotskyy in California, and the Court should dismiss this action for lack of personal
8 jurisdiction under Code of Civil Procedure §418.10(a)(1).

10 BACKGROUND

11 Zablotskyy has essentially no contacts with California, and certainly none sufficient
12 to subject him to personal jurisdiction. Zablotskyy is a resident of New Jersey.
13 (Declaration of Volodymyr Zablotskyy in Support of Defendant Volodymyr Zablotskyy's
14 Motion to Quash Service of Summons for Lack of Personal Jurisdiction ("Zablotskyy
15 Decl.") ¶3.) Furthermore, Zablotskyy owns no property in California, nor does he have
16 any offices, employees, or agent for service of process in California. (Zablotskyy Decl.
17 ¶4.) Zablotskyy maintains and operates an informational website that discusses the real
18 estate industry, and the only level of interactivity is an Internet visitor's ability to submit
19 comments on the website. (Zablotskyy Decl. ¶5.) Furthermore, Zablotskyy's website
20 does not directly solicit or target California residents. (Zablotskyy Decl. ¶5.)

23 Despite Zablotskyy's lack of contacts with California, BVC filed a complaint in this
24 Court, setting forth a defamation cause of action against Zablotskyy for a single posting
25 on Zablotskyy's website about ePERKS.¹ ePERKS is an online interactive marketplace
26

27 ¹ ePERKS is a division of BVC. (Zablotskyy Decl. ¶6.) BVC is a venture firm that creates
28 and develops Internet companies. (*Id.* ¶7.) BVC employs over 200 employees and
independent contractors throughout its base of companies. (*Id.*)

1 for the purchasing of services, where "thousands of service providers nationwide" offer
2 thousands in incentives to consumers. (Zablotsky Decl. ¶6.)

3
4 **ARGUMENT**

5 **I. Legal Standard**

6 When jurisdiction is challenged by a non-resident defendant, the plaintiff bears the
7 burden of demonstrating that jurisdiction is appropriate. *Mihlon v. Superior Court*
8 (*Murkey*), 169 Cal. App. 3d 703, 710 (1985). Personal jurisdiction over a nonresident
9 defendant is proper if it is permitted by the forum state's long-arm statute. California's
10 long-arm statute is coextensive with federal due process requirements, which prohibits
11 U.S. Courts from exercising jurisdiction in the absence of the combined requirements of
12 both (1) minimum contacts and (2) fair play and substantial justice. *Sanders v. CEG*
13 *Corp.*, 95 Cal. App. 3d 779, 783 (1979); *International Shoe Co. v. Washington*, 326 U.S.
14 310 (1945).
15

16 For a court to exercise personal jurisdiction, a non-resident defendant must
17 "purposefully avail[] itself of the privilege of conducting activities within the forum state,
18 thus invoking the benefits and privileges of its laws." *Hanson v. Denckla*, 357 U.S. 235,
19 253 (1958). This "purposeful availment" requirement ensures jurisdiction will only be
20 exercised where a defendant has sufficient minimum contacts with the forum state, such
21 that summoning the defendant would not offend traditional notions of fair play and
22 substantial justice. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). Accordingly,
23 the Court must find that the defendant has deliberately created some relationship with
24 California, such that the exercise of personal jurisdiction is foreseeable. *Burger King*,
25 471 U.S. at 475-76.
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1 Personal jurisdiction may be established over a defendant through either general
2 or specific jurisdiction. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408,
3 414-16 (1984). Specific jurisdiction refers to jurisdiction over causes of action arising
4 from or related to a defendant's actions within the forum state, while general jurisdiction
5 refers to the power of a state to adjudicate any cause of action involving a particular
6 defendant, regardless of where the action arose. *Shisler v. Sanfer Sports Cars, Inc.*, 146
7 Cal. App. 4th 1254, 1259-60 (2006). BVC cannot establish either specific or general
8 jurisdiction as to Zablotskyy.
9

10 **II. This Court Does Not Have Specific Personal Jurisdiction over Zablotskyy**

11 In order to assert specific jurisdiction over a non-resident defendant, a plaintiff
12 must establish that the non-resident defendant purposefully established contacts with the
13 forum state, plaintiff's cause of action arises out of or is related to defendant's contacts
14 with the forum state, and the forum's exercise of personal jurisdiction comports with fair
15 play and substantial justice. *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal. 4th
16 434, 446 (1996); *Burger King*, 471 U.S. at 477-78. In considering whether specific
17 jurisdiction exists over a non-resident defendant, courts consider the nature and quality of
18 the contacts, and their source and connection to the cause of action. *As You Sow v.*
19 *Crawford Laboratories, Inc.*, 50 Cal. App. 4th 1859, 1870 (1996).
20
21

22 Zablotskyy has essentially no contacts with California, and certainly none sufficient
23 to support the exercise of specific jurisdiction. Zablotskyy has no property in California,
24 no offices in California, no employees in California, and is not registered to conduct
25 business in California. (Zablotskyy Decl. ¶4.) Zablotskyy's lack of contacts with
26 California negates any supposed connection between Zablotskyy and BVC's cause of
27 action.
28

1 In an effort to avoid the obvious lack of contacts between Zablotskyy and
2 California, BVC relies on the so-called "effects" test. In tort cases, the purposeful
3 availment requirement for specific jurisdiction can be satisfied by the "effects test," which
4 allows for the assertion of personal jurisdiction over a nonresident defendant who
5 committed an intentional act, which was expressly aimed at the forum state, and caused
6 harm, the brunt of which was suffered and which the defendant knew was likely to be
7 suffered, in the forum state. *Jewish Defense Organization, Inc. v. Superior Court*
8 (*Rambam*), 72 Cal. App. 4th 1045, 1057 (1999), citing *Calder v. Jones*, 465 U.S. 783
9 (1984).
10

11 While BVC appears to suggest that Zablotskyy is subject to personal jurisdiction
12 because his blog posting has been seen and read by persons in Alameda County and
13 thus caused harm and damage to BVC in Alameda County, the "effects" test can only be
14 satisfied if the plaintiff can point to contacts which demonstrate that the defendant
15 expressly aimed its tortious conduct at the forum, and thereby made the forum the focal
16 point of the tortious activity. *Jewish Defense Organization*, 72 Cal. App. 4th at 1059 fn. 3,
17 quoting *IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 265 (3rd Cir. 1998) (quotations
18 omitted). This BVC cannot do. The mere fact that the blog posting was accessible to
19 residents in the forum state is not enough to subject Zablotskyy to personal jurisdiction.
20 *Calder v. Jones*, 465 U.S. at 789.
21

22 Perhaps more importantly, there does not seem to be much if any connection
23 between any statement by Zablotskyy and BVC. While BVC does allege that Zablotskyy
24 made a defamatory statement in an Internet blog posting, which is attached to the
25 complaint at Exhibit A, it is unclear what statement in such blog posting even relates to
26 BVC, much less how the purportedly defamatory statement was aimed at the forum.
27
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1 Moreover, reviewing the blog posting in detail, there is no evidence that
2 Zablotsky directed any comment specifically to a resident of California. Nor is there any
3 evidence that Zablotsky specifically intended the blog postings to be read by California
4 residents.

5 In *Jewish Defense Organization*, a similar case, the court considered whether a
6 New York resident who posted several allegedly libelous statements on websites through
7 Internet providers with offices in California, was amenable to suit in California. The
8 *Jewish Defense Organization* court stated that the likelihood that an offending publication
9 will enter a forum is not a fair measure of the reasonableness of the exercise of
10 jurisdiction over a publisher. *Jewish Defense Organization*, 72 Cal. App. 4th at 1058.
11 Thus, in a defamation case, the appropriate jurisdictional analysis should be to determine
12 whether or not it was foreseeable that a risk of injury by defamation would arise in the
13 forum state. *Id.*

14 Here, it was unforeseeable that a single blog posting, purportedly about a
15 company operating an online interactive marketplace for services—accessible worldwide
16 and for thousands of service providers nationwide—would injure its parent company in
17 California. See *Jewish Defense Organization*, 72 Cal. App. 4th at 1058, quoting *Cordy v.*
18 *Daily News, L.P.*, 95 F.3d 829, 833 (9th Cir. 1996) (it is doubtful that the defamation was
19 truly targeted at California when the purported target was a corporation that did
20 worldwide business). Because BVC is an operator of a widely accessible online
21 marketplace, its assertion that it was defamed in a blog posting, originating from New
22 Jersey and making no reference to California is unavailing.

23 Zablotsky has done nothing more to avail himself to California than to post a blog
24 and manage and operate an informational website from his residence in New Jersey that
25

1 is generally available throughout the world, including California. (Zablotskyy Decl. ¶5.)
 2 Moreover, posting information on an informational Internet website accessible to forum
 3 residents is not an act directed at the forum state, and thus not enough for the exercise of
 4 personal jurisdiction. *Pavlovich v. Superior Court (DVD Copy Control Ass'n, Inc.)*, 29
 5 Cal. 4th 262, 277 (2002). Zablotskyy has no property, offices, employees, or agent for
 6 service of process in California. (Zablotskyy Decl. ¶4.) There is no evidence that any
 7 relevant activities occurred in California or that Zablotskyy targets California residents.
 8 There is simply no action alleged by BVC that constitutes consummation of some
 9 transaction with the forum or other act by which Zablotskyy purposefully availed himself
 10 of the privilege of conducting activities in California.
 11

12 **III. This Court Does Not Have General Personal Jurisdiction over Zablotskyy**

13 Where a nonresident defendant's contacts with California are "substantial" or
 14 "continuous and systematic," the defendant may be subject to general jurisdiction in
 15 California even where the cause of action is unrelated to the defendant's activities within
 16 the state. *Vons Companies, Inc.*, 14 Cal. 4th at 446; *International Shoe*, 326 U.S. at 316.
 17 BVC presents no facts to support a claim that Zablotskyy's contacts with California are
 18 "substantial" or "continuous and systematic." Nor can it. As discussed above, Zablotskyy
 19 resides in New Jersey, and has no property, offices, employees, or agent for service of
 20 process in California. (Zablotskyy Decl. ¶¶3-4.) Moreover, Zablotskyy's maintenance of
 21 its informational website viewable generally throughout the world including in California,
 22 does not come close to approximating physical presence in California. Accordingly, the
 23 Court does not have general jurisdiction over Zablotskyy.
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CONCLUSION

For all of the reasons set forth above, the Court should dismiss the action pursuant to Code of Civil Procedure §418.10(a)(1).

DATED: September 5, 2008

KRONENBERGER BURGOYNE, LLP

By: Margarita Calpotura

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Attorney for Defendant Volodymyr
Zablotsky