

67404-8

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No. 67404-8-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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RICHARD EROG,

Appellant,

v.

L.D.M. WORDWIDE CORP.,

Respondent,

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ON APPEAL FROM KING COUNTY SUPERIOR COURT  
The Honorable Suzanne Barnett , Judge

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BRIEF OF RESPONDENT

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Larry Setchell, WSBA #4659  
Benjamin T. G. Nivison, WSBA #39797  
HELSELL FETTERMAN LLP  
1001 Fourth Avenue, Suite 4200  
Seattle, Washington 98154  
(206) 292-1144  
Attorneys for Respondents

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2013 MAR 29 PM 4:40

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## I. INTRODUCTION

In December 2010, Respondent LDM Worldwide Corp. (“LDM”) obtained a default judgment against Appellant Richard Erog and his unincorporated business entity Broadcast Facility for damages for breach of contract. Erog failed to fully pay LDM for media services that LDM provided under two Washington contracts. LDM initiated suit for breach due to non-payment, and timely completed personal service of process on all defendants. Erog failed to timely appear in or otherwise defend LDM’s lawsuit, however, so LDM obtained an order of default and a default judgment against him.

Approximately six months after entry of judgment—shortly after LDM began collection efforts—Erog entered an appearance in the lawsuit and sought to set aside the default judgment. He raised two principal arguments to support his request: (1) Erog claimed that he was never served with the Summons and Complaint, and so asserted that the licensed, disinterested Nevada process server affirmatively lied in his multiple sworn affidavits and declarations establishing service; and (2) Washington courts lacked personal jurisdiction over Erog under the long-arm statute. Both arguments were rightly rejected by the trial court below, as was Erog’s recycled argument for the same relief on reconsideration.

On the first point, the trial court correctly found that Erog had failed

to establish “clear and convincing” evidence that the affidavits and declaration testimony of the process server establishing service was inaccurate. The self-serving denials of the fact of service by Erog were considered at the hearing, weighed under the correct legal standard, and duly rejected as insufficient. Second, the trial court ruled that the nature of the negotiations, performance, and partial payment of the contracts at issue gave rise to specific personal jurisdiction over Erog in King County Superior Court. The trial court found that Nevada resident Erog had sufficiently availed himself of the protections of Washington law in the context of his contracts with LDM to warrant exercise of long-arm jurisdiction over him. Erog now appeals these rulings.

The trial court’s disposition of this case should be affirmed in its entirety. The court below correctly found that the uncontroverted evidence supplied revealed sufficient minimum contacts by Erog with Washington to warrant the court’s exercise of personal jurisdiction over him. The trial court also weighed competing admissible evidence regarding the fact of service of process, and rightly ruled that Erog had been served. The trial court did not abuse its discretion in declining to conduct a second evidentiary hearing where there was no additional evidence brought to light by Erog on reconsideration.

## **II. RESPONSE TO ASSIGNMENTS OF ERROR**

Respondents respond to the assignments of error claimed by Appellant Erog as follows:

1. The trial court correctly denied Erog's motion to vacate the order of default and default judgment, finding and ruling that service of process had been duly effected and that the factual circumstances established sufficient minimum contacts to permit the court's exercise of personal jurisdiction over Erog under Washington's long-arm statute.

2. The trial court correctly exercised its sound discretion in denying Erog's motion for reconsideration, where no new evidence was offered in support of a request for further fact-finding regarding service or the nature of Erog's contacts with Washington.

## **III. RESPONSE TO STATEMENT OF ISSUES**

The issues and Respondents' contentions are:

1. The trial court weighed all of the evidence that was properly before it regarding whether Erog had been subject to proper service of process, and correctly ruled that service did in fact occur. Washington law is clear that a *prima facie* showing of proper service shifts the burden to the party challenging service to show by "clear and convincing" evidence that service did not occur. Erog failed to provide evidence sufficient to meet this threshold. The trial court's ruling that

proper service of process was effected should be affirmed.

2. Abundant evidence exists in the record establishing that Eroq had significant, continuing contacts with LDM in the State of Washington, sufficient to permit the trial court's exercise of personal jurisdiction over him. Washington law is intended to give the long-arm jurisdictional statutes as broad a reach as is constitutionally permissible. The trial court's correct exercise of specific personal jurisdiction over Eroq and his unincorporated business entity should be affirmed.

3. The trial court already conducted the very type of evidentiary weighing that Eroq sought on reconsideration and requests again on appeal. The briefs of the parties on Eroq's motion to vacate the default judgment, the supporting evidentiary materials, and oral argument presented at the hearing were all considered by the trial court. These facts and arguments were weighed and relied upon in the court's ruling that proper service of process had indeed occurred and that there was no basis for setting aside default. The trial court's sound exercise of its discretion and its fact-finding in this regard given proper deference by this Court on appeal, and the ruling below affirmed.

#### **IV. RESTATEMENT OF THE CASE**

This lawsuit arises out of the defendants' failure to pay LDM for services that LDM provided under two Washington contracts. *See* CP 8-14.

After extensive negotiations with Eroğ and his business partner Metin Dalman, LDM entered into two separate agreements with them whereby LDM provided media production equipment and services for two sporting events: a motocross event in California on May 28-29, 2010, and the FIFA World Cup in South Africa on June 9–29, 2010. *See id.*; *see also* CP 73–76 (trial court relying on and adopting allegations in Amended Complaint and on documents supplied by LDM reflecting sum certain for purposes of LDM’s right to recovery).

These contracts were negotiated, consummated, and partially performed in Washington. Nearly all the negotiation that occurred between the parties took place by email, and this email was sent or received by LDM’s King County, Washington offices.<sup>1</sup> *See* CP 105–40. The parties also exchanged numerous telephone calls in furtherance of their contractual arrangement, and these calls were placed to or from LDM’s King County, Washington offices. CP 105–08. LDM performed the logistical arrangements to arrange its contract performance from its principal place of business in King County, Washington. *See id.*; *see also* CP 105–40. Eroğ and his business partner also made partial payment under the contracts to LDM’s bank in Washington. CP 105–08; *see also, e.g.* CP 114, 115, 134,

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<sup>1</sup> Although LDM is a Florida corporation, its principal place of business is in King County, Washington. CP 8.

138 (denoting Bank of America branch in Vashon, Washington as location for wire payment to LDM). The remaining balance between the parties was held out as an open account. *See id.*; *see also, e.g.*, CP 125. The parties had already engaged in multiple business transactions, and were hoping to engage in more, had their relationship not soured due to the defendants' non-payment. *See, e.g.*, CP 125–26 (reflecting multiple active deals and discussions between the parties). These facts were not disputed below, nor are they disputed on appeal.<sup>2</sup>

Because the defendants did not pay the full balance due under the contracts, however, LDM filed suit. LDM filed its First Amended Complaint on September 15, 2010. CP 8–14. Service of process was completed on Erog and Broadcast Facility that same day. CP 67–71; CP 141–51.<sup>3</sup> No appearance or answer was received within the time required, so LDM moved for and obtained *ex parte* orders of default on December 7, 2010. CP 27–39. Default judgment was entered. CP 73–74. Due to a computational error LDM made in obtaining its original default judgment,<sup>4</sup> the amount of the

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<sup>2</sup> Where facts established below are unchallenged, they are treated as verities on appeal. *See, e.g., Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992) (citation omitted).

<sup>3</sup> Erog's co-defendants Metin Dalman and Simurg Media were personally served in Lakewood, Colorado on September 24, 2010. CP 24–26.

<sup>4</sup> Inadvertently, LDM had designated the sum owing in the default judgment as the amount requested in the original Complaint, not the Amended Complaint. The demand contained in the Amended Complaint reflected a partial payment that had been made by the defendants, resulting in a lower amount owing. *See* CP 100–01.

default judgment was later adjusted downward. CP 158.<sup>5</sup>

Erog appeared for the first time in the underlying case on May 6, 2011. CP 40–41. He made a motion to set aside the default judgment, alleging that he had not been served and that Washington courts had no personal jurisdiction over him. CP 42–52. With this motion, Erog filed declarations of himself and two others, claiming that Erog was not home on the date of service. CP 54–63. LDM opposed Erog’s motion. CP 90–101. With its opposition, LDM introduced additional supporting evidence from its process server refuting the self-serving and demonstrably false assertions by Erog that he had not been served. CP 141–51 (Declaration of licensed Nevada process server Marc J. Amell, and supporting documents). .

The record thus reflects abundant evidence that service of process did in fact occur, that the trial court heard and considered all Erog’s evidence to the contrary, and that such evidence was rightly rejected. On the same day that LDM filed its Amended Complaint, LDM retained Junes Legal Service, Inc. and licensed process server Mr. Marc J. Amell of Las Vegas, Nevada to complete service of process on Erog and Broadcast Facility. CP 141–142. Mr. Amell was provided with the Summons, First Amended Complaint,

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<sup>5</sup> “[P]ursuant to the Court’s authority under CR 60(a) and by motion of the parties, the Final Judgment Against Defendants previously entered in this matter and dated December 7, 2010 is amended to correct a clerical mistake in the judgment amount. The proper principal judgment amount is reduced from \$128,509.94 to the correct amount of \$87,728.01. [...] The Amended Final Judgment shall then continue in full force and effect as final judgment in this matter.”

Case Information Cover Sheet, and Order Setting Civil Case Schedule for service. *Id.* Mr. Amell was provided with a current and accurate address for Defendant Erog, as well as with pictures of him. CP 142. As detailed in his concurrently-filed declaration, Mr. Amell served a man at that address who self-identified as Richard Erog; the man served also matched the photograph that was provided to Mr. Amell. *Id.* Additionally, Mr. Amell verified that he had personally served Erog with unrelated legal process just two weeks earlier, and at that time the same man also identified himself as Erog. *Id.*

Mr. Amell provided and completed Affidavits of Service for each of the four service packets he served on Erog on September 15, 2010. CP 144–48. As Mr. Amell explained in his declaration, an affiant completes one of three paragraphs on these standard forms, which then reflects the manner in which service was completed. CP 142. Contrary to Erog’s arguments, the pre-printed listing of additional alternative methods of service not actually employed does not suggest that the affiant utilized those methods; instead, the document is aptly compared to a “fill-in-the-blank” form commonly used in the industry. *See id.* It is the paragraph containing completed information (i.e., “filled blanks”) that reflects the actual method of service utilized. *See id.* The affidavits here reflect that Mr. Amell effected service on Erog by personally serving him in his various defendant capacities. CP 141–43.

In further support of his Affidavit of Service, Mr. Amell also submitted with his handwritten contemporaneous field notes for both instances in which he served Erog. CP 142, 149–51. As these notes demonstrate, Mr. Amell verified that the person served was Erog, including by making recorded observations of facts such as Erog’s appearance, the license plate of a particular vehicle operated by Erog, and the addressee of a package on the front porch of the residence at which he served Erog. *See id.*

Taking Mr. Amell’s information together, there can be no doubt that Erog was properly served with process in this matter. The trial court correctly ruled as much, having considered all competing evidence in this regard, including a live hearing and oral argument by the parties. CP 156–58 (finding and ruling that “[s]ervice of process was proper and effective upon Defendants” upon consideration of all competing evidence, including the declarations proffered by Erog). Also significant is the fact that Erog introduced no evidence in his reply brief that purported to refute any of the additional supporting evidence introduced by Mr. Amell accompanying LDM’s responsive briefing. *See* CP 152–55. Erog’s silence in this regard is rightly read as an acknowledgement of the merit and weight of Mr. Amell’s additional testimony.<sup>6</sup> The trial court rightly gave no credence to Erog’s

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<sup>6</sup> Unable to substantively respond, Erog instead moved to strike Mr. Amell’s declaration on technical grounds that were refuted at hearing. *See* CP 152. This motion was denied, and Mr. Amell’s declaration properly considered by the trial court. *See* CP 157.

assertion that Mr. Amell affirmatively and repeatedly perjured himself and violated the terms of his license in the context of a case in which he is wholly disinterested; it rejected that argument. *See* CP 156–58.

In its opposition to Eroq’s motion to vacate the default judgment, LDM also introduced additional evidence regarding the scope and nature of the contractual relationship between the parties, which supported the trial court’s exercise of personal jurisdiction. CP 105–40 (Declaration of LDM principal Larry Meyer, and supporting documents). The trial court considered all of these documents and found that it “properly exercised specific jurisdiction over the persons of the defendants, and continues to do so. Defendants maintained sufficient minimum contacts with Washington State to warrant the exercise of personal jurisdiction in this matter.” CP 156–58. Once again, Eroq failed to introduce with his original motion or his reply brief any competing contract-related documentation or testimony characterizing the nature of his contacts with Washington and LDM any other way. *See* CP 42–52, 152–155.

## V. ARGUMENT

This Court should affirm the dismissal of this case and the related actions of the trial court below in their entirety.

### A. **Standard of Review.**

Washington appellate courts review a trial court’s decision on a

motion for default judgment for abuse of discretion. *E.g.*, *White v. Holm*, 73 Wn.2d 348, 351, 438 P.2d 581 (1968); *Yeck v. Dep't of Labor & Indus.*, 27 Wn.2d 92, 95, 176 P.2d 359 (1947). A court's discretion is only abused if it is exercised on untenable grounds or for untenable reasons. *Braam v. State*, 150 Wn.2d 689, 706, 81 P.3d 851 (2003).

The discretion which the trial court is called upon to exercise in passing upon an appropriate application to set aside a default judgment concerns itself with and revolves about two primary and two secondary factors which must be shown by the moving party. These factors are: (1) That there is substantial evidence extant to support, at least prima facie, a defense to the claim asserted by the opposing party; (2) that the moving party's failure to timely appear in the action, and answer the opponent's claim, was occasioned by mistake, inadvertence, surprise or excusable neglect; (3) that the moving party acted with due diligence after notice of entry of the default judgment; and (4) that no substantial hardship will result to the opposing party.

*White*, 73 Wn.2d at 352.

One of Erog's main claims here hinges on questions of validity of service of process. This Court has held that whether service of process was sufficient is a question of law that is ordinarily reviewed *de novo*. See *Streeter-Dybdahl v. Nguyet Huynh*, 157 Wn. App. 408, 412, 236 P.3d 986 (2010). However, "[w]hen a default judgment has been entered based upon an affidavit of service, the judgment should be set aside only upon convincing evidence that the return of service was incorrect." *Leen v.*

*Demopolis*, 62 Wn. App. 473, 478, 815 P.2d 269 (1991) (citing *Allen v. Starr*, 104 Wash. 246, 247, 176 P. 2 (1918)). “An affidavit of service that is regular in form and substance is presumptively correct.” *Id.* (citing *Lee v. Western Processing Co.*, 35 Wn. App. 466, 469, 667 P.2d 638 (1983)). There is no evidentiary basis in the record on which this Court could base a holding that the trial court abused its discretion by erroneously deciding that Eroq had not met his high evidentiary burden to refute a presumptively-valid return of service.

Whether adequate minimum contacts exist sufficient to warrant the exercise of personal jurisdiction under Washington’s long-arm statute is a question of law reviewed *de novo*. *E.g.*, *Byron Nelson Co. v. Orchard Mgmt. Corp.*, 95 Wn. App. 462, 464-65, 975 P.2d 555 (1999).

A trial court’s decision to deny a motion for reconsideration is reviewed for abuse of discretion. *Rivers v. Wash. State Conf. of Mason Contractors*, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002) (citations omitted).

**B. The Trial Court Correctly Ruled That Service of Process Was Effective on Eroq and Broadcast Facility.**

1. *The record clearly reflects that in-person service of process was had here.*

Where, as here, a defendant challenges a court’s personal jurisdiction due to insufficiency of service of process, the plaintiff has the initial burden

to make a *prima facie* showing of proper service. *E.g.*, *Woodruff v. Spence*, 88 Wn. App. 565, 571, 945 P.2d 745 (1997). The plaintiff may meet this burden by, among other things, producing an affidavit of service showing that service of process was properly carried out. *See id.* (explaining that “[a] facially correct return of service is presumed valid and, after judgment is entered, the burden is on the person attacking the service to show by clear and convincing evidence that the service was irregular”) (citation omitted). Clearly, the affidavits of service supplied by Mr. Amell met this initial threshold.

Once the plaintiff makes this *prima facie* showing, the burden shifts to the defendant to prove, **by clear and convincing evidence**, that the affidavit is inaccurate and that service was not proper. *Leen*, 62 Wn. App. at 478. This high hurdle for post-default challenges to service of process has been in place in Washington for well over 100 years. *E.g.*, *Rogers v. Miller*, 13 Wash. 82, 87, 42 P. 525 (1895); *Allen*, 104 Wash. at 247 (holding that when a default judgment has been entered based upon an affidavit of service, the judgment should be set aside only upon convincing evidence that the return of service was incorrect). At the root of this rule is the sound policy of preserving finality in legal disputes, and avoiding self-serving, post-judgment collateral attack on third-party affiants. *See Allen*, 104 Wash. at 247.

Here, LDM previously submitted signed Affidavits of Service from process server Marc Amell in support of its underlying motion for default and default judgment. CP 141–151. Mr. Amell indicated that he personally served Erog in his various defendant capacities. *Id.* Mr. Amell was sure of Mr. Erog’s identity because Mr. Erog self-identified, because he matched a photograph that Mr. Amell had of Mr. Erog, and because Mr. Amell had served unrelated legal process on Mr. Erog just two weeks before. *Id.* Mr. Amell is a licensed, independent, third-party process server in Las Vegas, Nevada. *Id.* He supplied the trial court with sworn affidavits testifying to the fact that he properly served Mr. Erog. Those affidavits and their supporting declaration were rightly entitled to deference, and were properly given a presumption of validity. *Leen*, 62 Wn. App. at 478 (holding that an affidavit of service that is regular in form and substance is “presumptively correct”) (citing *Lee v. Western Processing Co.*, 35 Wn. App. 466, 469, 667 P.2d 638 (1983)). Significant, credible, and detailed evidence from a disinterested third-party supported the trial court’s ruling that service was effective on Erog and his alter ego Broadcast Facility.

2. *Erog’s self-serving statements disputing the fact of service were considered and rightly rejected by the trial court, as they do not reflect “clear and convincing” evidence that the process server’s affidavit was inaccurate.*

In contrast, to meet his “clear and convincing” standard of proof to refute this evidence, Erog offered three vague, unspecific, and self-serving documents. Erog claims that he was not home on the evening of September 15, 2010, the date of service. A purported babysitter for Mr. Erog claims that she was the only person present that evening, and that no deliveries were made. Finally, a third person states that he was out in Las Vegas with Mr. Erog the night of September 15, 2010. These three self-serving statements do not rise to the level of “clear and convincing” evidence that a licensed Nevada process server repeatedly lied under oath and penalty of perjury about personally serving Erog. Erog offered no details about where he was, nor did he introduce any third-party proof regarding his presence elsewhere (photographs, purchase receipts, etc.). When faced with additional details supporting service in Mr. Amell’s declaration testimony, he did not dispute any portion of that evidence.

Put simply, Erog did not meet his burden of proof here. The presumption of validity associated with a proper affidavit of service—especially in light of the additional (and unrefuted) corroborating details provided by Mr. Amell in support of his affidavits—was rightly given force and effect below. The trial court did not err in rejecting the offer of proof made by Erog as inadequate, and in ruling that service of process was effective here. Given the failure of Erog to introduce any new affirmative

evidence in the context of his request for a further evidentiary hearing on reconsideration, the trial court did not abuse its discretion in denying that motion; the court below had already been presented with and considered competing admissible evidence on the question of service, and had ruled correctly. Erog's argument that somehow a "question of fact" is present ignores that questions regarding validity of service are for the court to decide. *Gross v. Sunding*, 139 Wn. App. 54, 66-67, 161 P.3d 380 (2007) (explaining that "sufficiency of service of process is a question of law. As a result, the determination of valid service is reserved to the judge.") (citations omitted). This Court should affirm in all respects.

**C. The Trial Court Rightly Exercised Personal Jurisdiction over Erog and His Unincorporated Business Entity Due to the Nature and Scope of Erog's Contacts with Washington.**

It is the intent of Washington's long-arm statute, RCW 4.28.185, to exercise personal jurisdiction over out-of-state defendants to the full extent permitted by the Due Process Clause. *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 771, 783 P.2d 78 (1989). To determine whether specific jurisdiction exists under the "transaction of business" portion of Washington's long-arm statute at issue here, RCW 4.28.185(1)(a), a plaintiff must establish three factors: "(1) [the defendant] must have purposefully done some act or consummated some transaction in this state; (2) the cause of action must arise from, or be connected with, such act or transaction; and

(3) the exercise of jurisdiction must not offend traditional notions of fair play and substantial justice.” *Tyee Constr. Co. v. Dulien Steel Prod’s, Inc.*, 62 Wn.2d 106, 115-16, 381 P.2d 245 (1963); *Shute*, 113 Wn.2d at 767. Each of these three factors supports the exercise of specific personal jurisdiction in this case.

The negotiations and consummation of the parties’ contracts in Washington satisfy the test’s first prong. While the mere existence of a contract with a Washington entity is, without more, insufficient to establish specific personal jurisdiction under the “consummation” or “purposeful availment” prong, courts will evaluate the overall nature of the contractual relationship. Courts are to consider factors such as “prior negotiations and contemplated future consequences, along with the terms of the contract, and the parties’ actual course of dealing...” in evaluating whether the exercise of personal jurisdiction is proper. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479, 105 S. Ct. 2174, 2185 (1985).

Subsequent Washington cases suggest that the scope of “consummated” transaction sufficient to trigger specific personal jurisdiction need not be especially significant. For instance, in *Shute*, the Supreme Court held that the simple fact that a cruise line advertised in Washington constituted sufficient minimum contacts to warrant the exercise of personal jurisdiction against it (a Florida company) under Washington’s long-arm

statute. 113 Wn.2d at 768. Similarly, in *Precision Laboratory Plastics, Inc. v. Micro Test, Inc.*, the Court of Appeals held that it was immaterial for purposes of specific jurisdiction that the defendant had no office in Washington, that it never had an agent enter the state, and that the underlying contract was remotely negotiated by telephone and fax machine from each party's home state. 96 Wn. App. 721, 981 P.2d 454, 458 (1999). Instead, it was the fact that the defendant created a business relationship encompassing continuing obligations with a Washington resident that was sufficient to trigger personal jurisdiction. *See id.* And in *Byron Nelson*, the Court of Appeals rightly held that mere telephone conversations regarding a proposed contract were enough to submit a foreign corporation to personal jurisdiction in Washington. 95 Wn. App. at 465–66.

In contract disputes like this one, the “purposeful availment” factor can also include an analysis of which party solicited the agreement, and where. *Washington Equip. Mfg. Co. v. Concrete Placing Co.*, 85 Wn. App. 240, 246–47, 931 P.2d 170 (1997). In this case, Eroq provided LDM by email a list of equipment needs and a request for a quote on May 13, 2010. CP 113. Apart from an initial statement of capability by LDM, this was the first request by Eroq that LDM provide a quote for its services. *See* CP 112–13. This reflects the fact that Eroq took the first steps toward soliciting the actual contracts in this case. But questions of who first

contacted whom are less important than the resulting commercial connection. *Kysar v. Lambert*, 76 Wn. App. 470, 488-89, 887 P.2d 431 (compiling cases), *review denied*, 126 Wn.2d 1019, 894 P.2d 564 (1995). The record here reflects that LDM was continually solicited for additional information and work by Eroq and the other defendants, including a second engagement in South Africa for the FIFA World Cup in June 2010 after LDM had completed its services in connection with the California motocross event in May 2010. *See* CP 107–08, 118, 125–27. Eroq engaged sufficiently with LDM in Washington to warrant Washington courts’ exercise of personal jurisdiction over him.

Although Eroq appears to raise for the first time on appeal a challenge with respect to the second *Tyee* factor, this is easily resolved. To the extent that the contracts at issue is a Washington contract, it cannot seriously be maintained that the dispute at issue here is based on anything other than those contracts. Eroq cites neither facts nor law to the contrary.

The third and final *Tyee* factor is whether a Washington court’s assertion of personal jurisdiction over Defendants would “offend traditional notions of fair play and substantial justice.” Under this prong, courts look to the nature, quality, and extent of a defendant’s activity in Washington, the convenience of the parties, the benefits and protections of Washington law, “and the basic equities of the situation.” *Tyee*, 62 Wn.2d at 115–16.

Viewing the operative jurisdictional facts here through the lens of the *Tyee* factors supports the exercise of specific personal jurisdiction. As noted above, Eroq does not dispute what the pertinent jurisdictional facts *are*, he simply dispute what those facts *mean*. All parties agree that the pertinent contracts were negotiated, consummated, partially performed and partially paid in Washington. But in bringing his motion to vacate and this appeal, Eroq fails to appreciate the significance of these facts. The negotiation of a contract in Washington (even electronically), the agreement to the terms of a contract in Washington (even electronically), the fact that some contract performance occurred in Washington, and the fact that payment under the contract was to be made in Washington (and was partially made in Washington—even electronically), are each factors suggesting that Washington is a principal nexus of the underlying transactions.

Additionally, there were multiple contracts between the parties, which shortly followed one another in time. This course of dealing suggests that the parties contemplated and were pursuing a continuing business relationship. Similarly, the fact that LDM allowed Defendants to proceed on an open account basis suggests that there were future obligations contemplated. The pertinent facts clearly weigh in favor of this Court affirming the trial court's determination that it had personal jurisdiction over Eroq in this case.

## VI. CONCLUSION

This appeal is easily resolved. It presents no novel issues of law, or even any debatable application of well-established authority. The underlying material facts are agreed, apart from the question of whether service of process occurred. And on that score, the trial court rightly applied Washington law giving deference to the valid affidavits of service and significant and credible supporting evidence before it. There is no basis in the record sufficient for this Court to find that Eroq supplied “clear and convincing evidence” to establish that a disinterested licensed process server repeatedly perjured himself regarding service. The underlying facts establish repeated instances of contracting with LDM in Washington by out-of-state actors, including negotiations, performance, and payment, which together reflect adequate minimum contacts to warrant exercise of personal jurisdiction over Eroq by Washington courts.

This Court should affirm the trial court’s disposition of this case in its entirety.

Respectfully submitted this 29th day of March, 2013.

HELSELL FETTERMAN LLP

By   
Larry Setchell, WSBA #4659  
Benjamin T. G. Nivison, WSBA #39797  
Attorneys for Respondents

**PROOF OF SERVICE**

The undersigned, declares as follows:

I am now, and at all times herein mentioned was, a citizen of the United States, a resident of the State of Washington, and over the age of eighteen years.

I hereby certify that on March 29, 2013, I caused to be served a copy of the foregoing Respondent's Brief and this Proof of Service on counsel of record as follows:

Noah C. Davis  
IN PACTA PLLC  
801 2<sup>ND</sup> AVE., SUITE 307  
SEATTLE, WA 98104  
(206) 709-8281  
**ATTORNEY FOR APPELLANT**

- Via first class U. S. Mail
- Via Legal Messenger
- Via Email

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED at Seattle, Washington this 29th day of March, 2013.

Helsell Fetterman LLP

\_\_\_\_\_  
Kyna Gonzalez, Legal Secretary

**PROOF OF SERVICE**

The undersigned, declares as follows:

I am now, and at all times herein mentioned was, a citizen of the United States, a resident of the State of Washington, and over the age of eighteen years.

I hereby certify that on March 29, 2013, I caused to be served a copy of the foregoing Brief of Respondent and this Proof of Service on counsel of record as follows:

Noah C. Davis  
IN PACTA PLLC  
801 2<sup>ND</sup> AVE., SUITE 307  
SEATTLE, WA 98104  
(206) 709-8281  
**ATTORNEY FOR APPELLANT**

- Via first class U. S. Mail
- Via Legal Messenger
- Via Facsimile (Attempted)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED at Seattle, Washington this 29 day of March, 2013.

Helsell Fetterman LLP

  
\_\_\_\_\_  
Kyna Gonzalez, Legal Assistant