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Court of Appeals No. 67654-7-1

IN THE WASHINGTON COURT OF APPEALS  
DIVISION ONE

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SAIPRASAD KUNABOINA

Plaintiff/Respondent,

v.

RAJASHEKHAR REDDY GARLAPATI, individually and the marital community composed of Rajashekhar Reddy Garlapati and Jane Doe Garlapati; VENKAT REDDY VENUMULA, individually and the marital community composed of Venkat Reddy Venumula and Jane Doe Venumula; SUDHIR VEMURI, individually and the marital community composed of Sudhir Vemuri and Jane Doe Vemuri, VIVEK SHARMA, and the marital community composed of Vivek Sharma and Jane Doe Sharma, HEADWAY GLOBAL TECHNOLOGIES, LLC., a Texas Domestic Limited Liability Company; NICOINFO SYSTEMS, INC., an Iowa Domestic For-Profit Corporation; DIBON SOLUTIONS, INC., A Texas Foreign For-Profit Corporation,

Defendants/Appellants,

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APPELLANT'S REPLY BRIEF

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ORIGINAL

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## I. TABLE OF AUTHORITIES

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## II. ARGUMENT

### A. MR. KUNABOINA HAS MISREPRESENTED THE FACTS OMITTING A KEY PLAYER IN THE BUSINESS RELATIONSHIP BETWEEN DIBON AND MR. KUNABOINA

Mr. Kunaboina is correct in stating that he, as the party asserting jurisdiction, bears the burden of proving, *prima facie*, that jurisdiction exists. *Brief of Respondent*, page 7. The party asserting jurisdiction indeed bears the burden of proof that jurisdiction exists. *CTVC v. Shinawatra*, 82 Wn. App. 708, 708, 919 P.2d 1243 (1996). General jurisdiction is established by showing that the nonresident defendant “transact[s] substantial and continuous business within the state of such a character as to give rise to legal obligation.” *Raymond v. Robinson*, 104 Wn. App. 627, 633, 15 P.3d 697 (2001).

Mr. Kunaboina has not only misrepresented the facts, but has also failed to meet his burden of establishing, *prima facie*, that Dibon or Mr. Sharma have transacted substantial and/or continuous business within Washington of such a character as to give rise to a legal obligation within the state or that which makes Washington state a *reasonably foreseeable* forum. Mr. Kunaboina has omitted a key player, Headway Global (“Headway”), in an attempt to

leapfrog over Headway and get to Dibon with whom he does not have a contractual employment relationship.

Mr. Kunaboina's Response Brief fails to properly acknowledge Headway's role, and makes misrepresenting statements such as: "Additionally, *Dibon* continued to provide Software Services Programmers to AT&T's facilities in Washington from 2008 to 2010, and possibly longer." *Brief of Respondent*, page 9. (Emphasis added). Then Mr. Kunaboina's brief goes on to state: ". . . [Dibon] dispatched Mr. Kunaboina to Washington." *Brief of Respondent*, page 9.

The correct business scenario is as follows: Dibon solutions signed a Supplier Agreement with Headway, a supplier of service technicians. CP 45-50. Paragraph 8 of the Supplier Agreement states:

Because of the independent status of [Headway], it is solely and completely accountable for the services it provides to [AT&T]. Neither [Dibon] nor [AT&T] nor any of [AT&T's] contractors, subcontractors, Customers or Clients, shall have any liability whatsoever to any party for such services provided by [Headway] or its personnel.

CP 47.

Then, in Paragraph 10 of the Supplier Agreement, it states: "[Headway] agrees that any technical services personnel provided by [Headway]

are employees of [Headway] and are not employees of [Dibon] or [AT&T]; that [Headway] at all times retains the primary control over its personnel. . . .

CP 47.

Dibon's Supplier Agreement with Headway did not specify Washington, did not specify certain Headway employees by name, did not obligate Dibon or Sharma to directly pay any individual service technician's wages, and did not obligate Dibon, or any one of its employees, to solicit, conduct, or perform any business in Washington State. CP 50. On the contrary, the contract with Headway was signed in Texas, between two Texas companies, and specified only that Headway provide qualified technical services to Dibon's client AT&T. CP 45-50.

These complete misrepresentations of the facts, twisted to omit a contract with a third-party intermediary company, are self-serving and only demonstrate the lack of factual support Mr. Kunaboina has for his assertion of personal jurisdiction over Dibon or Sharma. As established above, Dibon or Mr. Sharma do not have, and never have had, substantial and continuous contacts with the State of Washington, and have only entered into contracts within the State of Texas amongst Texas companies. There is no contractual privity between Mr. Kunaboina and Dibon, and this

Court should not allow Mr. Kunaboina to leapfrog over Headway in an attempt to hold the wrong parties liable.

**1. Mr. Kunaboina's Cited Case Law is Not Applicable to the Facts of this Case.**

Mr. Kunaboina, at page 12 of his Respondent's Brief, cites *Griffiths & Sprague Stevedoring Co. v. Bayly, Martin & Fay, Inc.*, 71 Wn.2d 679, 684 (1967), and *Sorb Oil Corp. v. Batalla Corp.*, 32 Wn. App. 296, 299 (1982) Neither of these cases applies to the facts of this case.

In each of those cases, an out-of-state company ordered a product from a Washington company. The product was produced by another out-of-state company. The out-of-state buyer was sued by the Washington company for non-payment. Both the Washington Supreme Court and the Court of Appeals held that these purchasing activities constituted a presence in Washington State, because in each of these cases, the out-of-state buying company had a *direct contractual relationship* with the Washington Company.

These facts are not present here. Mr. Kunaboina had a direct relationship and contract for employment with Headway. Headway had a contract with Dibon. Dibon had a contract with

AT&T to provide services. Dibon contracted with Headway for these services. At no point did Mr. Kunaboina have a direct contractual relationship with Dibon or AT&T.

Holding companies liable where no contractual relationship or obligation to pay wages exists is not consistent with the laws of this state. It would be similar in nature to a law firm, where the law firm contracts to represent an out-of-state client. If an associate attorney of the law firm, who provided work to the out-of-state client was un-paid, said associate would only have a claim against their employer for un-paid wages, not as against the out-of-state client. Further, the law firm is still liable to its associate for wages, even where the out-of-state client did not pay the law firm. The law firm may then pursue a claim against the out-of-state client if it wishes, but it remains that the associate would have no claim against the out-of-state client.

**2. Mr. Kunaboina Failed to Conduct Sufficient Research before Asserting Jurisdiction in Washington**

At best, the factual assertions by Mr. Kunaboina regarding Dibon and their business activities are speculative. Mr. Kunaboina makes what he labels as “reasonable inferences” that Dibon communicated with other programmers of AT&T via telephone and

email, and that Dibon monitored the timesheets of other AT&T programmers like it apparently did with Mr. Kunaboina (for which Dibon and Sharma deny). These inferences are neither reasonable, nor supported by any factual evidence. As previously briefed in Appellant's Brief, emails to a forum state are not sufficient to establish personal jurisdiction. *Boschetto v. Hansing*, 539 F.3d 1011, 1023 (9th Cir. 2008) (holding that emails to a California purchaser of an online good were not enough to exercise personal jurisdiction in California because the email communications were nothing more than a limited and un-substantial contact with the forum.)

Mr. Kunaboina simply failed to engage in the kind of research necessary prior to asserting personal jurisdiction over both Dibon and Sharma.

Mr. Kunaboina states in his Respondent's Brief that he should be permitted to complete further discovery on the issue of jurisdiction. Yet, Mr. Kunaboina fails to make any statement demonstrating that he engaged in any kind of research with regard to Dibon or Sharma. Simple Secretary of State searches would reveal that Dibon is not incorporated nor authorized to conduct business in Washington. It is well developed case law that general

jurisdiction is inappropriate when contacts with the state are sporadic and the business has no offices, no staff, pays no taxes, and is not registered to do business in the forum state.

*CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1218, 1225 (9<sup>th</sup> Cir. 2011). In addition, a simple internet search on any search engine would have revealed Dibon's business purpose, services provided, and state of incorporation. A simple public records search would have revealed that neither Dibon nor Sharma have ever had any direct contacts with the state of Washington. Further, Mr. Kunaboina has failed to plead any factual evidence to the contrary.

### **III. CONCLUSION**

There are no grounds to assert general or specific personal jurisdiction over either Dibon or Mr. Sharma in the State of Washington. Respondent Mr. Kunaboina has improperly omitted material facts and key players necessary to fully understand the rights and responsibilities of each party with respect to Mr. Kunaboina. In attempting to leapfrog Headway, Mr. Kunaboina has not made a full and complete representation of the facts to the court. These misrepresentations and mis-statements of the facts have done nothing other than demonstrate Mr. Kunaboina's lack of

factual evidence supporting his assertion of jurisdiction over Dibon or Mr. Sharma in Washington. Further, Mr. Kunaboina has applied laws which do not apply to the facts of this case, and has failed to demonstrate that he conducted sufficient research prior to asserting jurisdiction over Dibon and Sharma in Washington. Accordingly, this court should reverse the trial court and dismiss Mr. Kunaboina's claim as there is a lack of personal jurisdiction over Dibon and Mr. Sharma.

Dated this 28th day of December, 2012.

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