

69413-8

69413-8

No. 69413-8-1

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
King County Superior Court No. 11-2-02108-4SEA

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JACKSON J. MIKA,

Plaintiff-Appellee,

vs.

JBC ENTERTAINMENT HOLDINGS INC., a Corporation doing business in the State of Washington; JBC OF SEATTLE, WA, INC., a Washington business, a subsidiary of JBC ENTERTAINMENT HOLDINGS INC.; MARQUIS HOLMES, an individual, dba. BOSS LIFE ENTERTAINMENT, JANE DOE, Husband and wife, and their community, GREG STEVENS, an individual, Husband and wife, and their community; TONY HUMPHREYS, an individual, Husband and wife, and their community.

Defendants.

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The Honorable Michael Hayden, Superior Court Judge

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PLAINTIFF'S/APPELLEE'S RESPONSE BRIEF

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## I. INTRODUCTION

The Superior Court found that Stevens was subject to Washington jurisdiction and denied his Motion for Summary Judgment. This Court granted the Appellant's Motion for Discretionary Review on February 22, 2013. This Appellant's claim of lack of jurisdiction below and before this court is founded on deliberate and blatant material false testimony of the appellant Gregory Stevens that he was merely a Chief Executive Officer of JBC Entertainment Holding, Inc. and had no contacts with Washington State. He was in fact majority owner of JBC Entertainment Holding, Inc. and as owner, participated in the negotiation and in "post- tort" sale of Jillian's of Seattle to Gameworks Entertainment LLC.<sup>1</sup>

This matter should be remanded to the trial court because the appellant below deliberately omitted his role in the "post-tort" sale of a Washington state asset, and the additional proof of facts is necessary to fairly resolve the issue of jurisdiction. It is equitable to excuse the plaintiff's failure to present evidence of Mr. Steven's ownership and involvement in the negotiation and sale of a Washington State corporation, and, it would

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<sup>1</sup> Shortly after Stevens' December 20, 2011 deposition, on January 20, 2012, counsel for Stevens and the other JBC defendants without explanation filed a Notice of Intent to Withdraw as Defense Counsel for the JBC defendants. (CP 641)

be inequitable to decide that the trial court committed obvious error based on a material omission of the appellant.

## **II. ASSIGNMENTS OF ERROR**

### **WHETHER JURISDICTION OF THE WASHINGTON COURT PROPERLY EXTENDS TO DEFENDANT GREG STEVENS**

## **III. STATEMENT OF THE CASE**

The appellant Stevens' deposition was taken by the Plaintiff on two separate occasions and locations, September 30, 2011, in San Francisco, California [CP 813], and telephonic deposition from Reno, Las Vegas on December 20, 2011. (CP 823) At no time during either of these depositions did Stevens disclose that he was the majority owner of JBC Entertainment Holdings, Inc. (Hereinafter JBC Entertainment), and that he, along with Gemini Investors III, LP (Hereinafter Gemini), sold Jillian's of Seattle, an asset located in Washington State, to Gameworks Entertainment LLC (Hereinafter Gameworks), a California and Nevada based corporation.

During his second deposition on December 20, 2011, Stevens testified under oath that JBC Entertainment was Gemini's investment and that he was the CEO whom Gemini looked to for advice and guidance. [CP 677] Specifically he testified;

“It's -- you know, it's Gemini's investment. I'm -- you know, was the CEO. But they looked to me for guidance and advice and I am

part of the process, if you will. So I would say it's somewhat collaborative more than kind of one side versus the other..."

It is plain that Stevens falsely testified that JBC Entertainment Holding Inc. was owned by Gemini and that Gemini merely sought his advice as CEO for guidance regarding the sale of Jillian's of Seattle and five other properties. This is the testimony that was before the trial court.

On September 10, 2012, Stevens' Motion for Summary Judgment for lack of jurisdiction was denied by the trial court.

On October 23, 2012, defendant Stevens filed a Motion for Discretionary Review in this court. Oral argument set for January 4, 2013 was stricken on January 2, 2013, and Stevens' motion was referred to a panel of judges for consideration without oral argument.<sup>2</sup>

On January 17, 2013, the Plaintiff took the deposition of Matthew Keis, the designated 30(b) (6) witness for Gemini. [CP 696] Matthew Keis testified that Gemini was a minority shareholder of JBC Entertainment and the appellant, Gregory Steven, (who claimed merely to be CEO/CFO of JBC Entertainment) in fact, was the majority shareholder of JBC Entertainment.

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<sup>2</sup> This Court may take judicial notice of correspondence from the court to the parties. ER 201; a copy of the letter striking the oral argument set for January 4, 2013 is attached as Appendix A for the Court's convenience

Material evidence was revealed by Matthew Kies, subsequent to Stevens' filing his Motion for Discretionary Review, that clearly shows that Stevens was not merely a corporate officer of JBC Entertainment, the corporate owner of JBC of Seattle; he was the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) and "majority owner" of JBC Entertainment who negotiated the sale of and eventually sold Jillian's of Seattle to Gameworks. [CP 688 - CP 689] In addition, the Bill of Sale of Jillian's of Seattle, dated September 16, 2011, is signed by Stevens. [CP 821)

Keis testified that Gemini and Stevens were both owners of JBC Entertainment. Gemini owned about 40%, Stevens owned 49 %, <sup>3</sup> and Alpha Capital owned the remaining 11% [CP 688 – CP 689] He testified that he and Stevens worked closely on the sale of the "JBC properties to Gameworks" (SIC) [CP 690] He took a lead role regarding the economic negotiations and legal terms. [CP 690] With respect to sale of Jillian's of Seattle and the other properties, Stevens negotiated the aspects closer related to the operations of the business. [CP 690]

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<sup>3</sup> Stevens testified in deposition when asked whether he was one of the decision makers to sell these properties, that "its--you know, it's Gemini's investment. I'm--you know was the CEO. But they looked at me for guidance and advice and I am part of the process if you will. Keis testified that Stevens was the majority shareholder .[CP 689]

Jillians of Seattle, a Washington Corporation was sold, along with other JBC assets to Gameworks, and JBC Entertainment has ceased to operate and is no longer a viable entity according to Defendant Stevens [CP 677]

#### IV. ARGUMENT

##### **THE TRIAL COURT DID NOT ERROR IN DENYING STEVENS MOTION FOR SUMMARY JUDGMENT BECAUSE THE JURISDICTION OF THE WASHINGTON COURT PROPERLY EXTENDS TO DEFENDANT STEVENS**

In response to defendant Stevens' claim that the trial court erred in denying his summary judgment motion, the Plaintiff, Jackson Mika argues that the court did not error in denying the defendant's motion for summary judgment.<sup>4</sup> The Plaintiff argues that Washington Court's may appropriately exercise personal jurisdiction over Greg Stevens because he was not merely a CEO/CFO of JBC Entertainment as he claimed during his depositions and pleadings before this court, Stevens was actually the majority owner of JBC Entertainment Holdings and he, along with Gemini,

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<sup>4</sup> The trial judge stated that that the Plaintiff, by expert opinion in the form of an affidavit by Dr Daniel Kennedy, (CP 568, 569) had committed a tortious act outside of Washington that had impact within the State of Washington, therefore, the court could properly exercise jurisdiction over Mr. Stevens. That record is not before this court, the defendant elected to not to include a Report of Proceedings in his pleadings to this court.

negotiated and eventually sold Jillian's of Seattle a Washington State Corporation to Gameworks.

Contrary to what has been presented to this court in the Appellant's Motion for Discretionary Review and Opening Brief, Stevens was not merely an employee/corporate officer of JBC Entertainment Holdings, the corporate owner of JBC of Seattle, he was the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) and the majority owner who participated in the negotiation and sale of Jillian's of Seattle, an asset located in Washington State.

Stevens testified during both his depositions that he was merely an employee of JBC Entertainment. It is now known that Stevens was the majority owner of JBC Entertainment and that it was in this capacity that he was involved in negotiations and eventual "post-tort" sale of Jillian's of Seattle.

Matthew Keis of Gemini testified that Stevens was the majority owner of JBC Entertainment and that he was a principal in negotiating and finalizing the Asset Purchase Agreement by which Jillian's of Seattle a Washington state corporation was sold, along with other JBC Entertainment properties to Gameworks.

## **Specific Jurisdiction**

The specific jurisdiction requirements are satisfied if; 1. the nonresident defendant or foreign corporation purposefully does some act or consummate some transaction in the forum state (or commits an act outside the State that contemplates a phase occurring within this State); 2. the cause of action must arise from, or be connected with, such act or transaction; and, 3. the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice. *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 709-10, 919 P.2d 1243, 1249 (1996) *modified*, 932 P.2d 664 (Wn. App. 1997)

### **1. Purposeful Availment**

To satisfy the first factor, a plaintiff must establish a mere prima facie showing of purposeful availment. Purposeful availment may be established by a nonresident defendant's act of doing business in Washington. *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 711, 919 P.2d 1243, 1250 (1996) *modified*, 932 P.2d 664 (Wn. Ct. App. 1997) In addition, the plaintiff may meet the burden of establishing purposeful availment by showing the initiation of a transaction outside the state "in contemplation that some phase of it will take place in the forum state." *CTVC*, 82 Wn. App. at 711, 919 P.2d 1243. *SeaHAVN, Ltd. v.*

*Glitnir Bank*, 154 Wn. App. 550, 565, 226 P.3d 141, 150 (2010) In this case, Stevens initiated the sale of an in state asset out of state with the intent that Jillian's of Seattle, located in Washington State, would be conveyed to Gameworks.

In *Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643 (2010) the court noted that

“The link connecting the Guarantors to Washington may consist of affirmative acts outside of Washington in contemplation that some phase of the contract will take place in Washington. Although the Guarantors executed the guarantees in California, they acted in anticipation that they might become liable for MKA's debts to Freestone. Both the loans and the guarantees are payable to Freestone's Washington offices.

*Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 654-55, 230 P.3d 625, 630-31 (2010)

In the case at bar, Stevens acted affirmatively outside this state, to enter into an Asset Purchase Agreement in anticipation that Jillians of Seattle, a Washington Corporation, would be conveyed to Gameworks.

The Plaintiff concurs that for the State of Washington to acquire jurisdiction, Stevens, not merely JBC Entertainment, must have personal contacts with the state. However, in this case, Stevens intentionally neglected to mention during either of his depositions, and in his pleadings before this court his material personal contacts, that he was the majority

owner of JBC Entertainment, and it was in that capacity, as “owner”, that he and Gemini negotiated and sold Jillian's of Seattle, a nightclub located in Washington State, to Gameworks.

The Plaintiff acknowledges that mere execution of a contract with a state resident alone is not sufficient to fulfill the “purposeful act” requirement. *Precision Laboratory*, 96 Wn .App. at 727, 96 Wn. App. 1007, 981 P.2d 454; *MBM Fisheries*, 60 Wn .App. at 423, 804 P.2d 627 *Raymond v. Robinson*, 104 Wash. App. 627, 638, 15 P.3d 697, 702 (2001) But in this case, there was more than the execution of a contract; a corporation and local business located in Washington State was negotiated for and conveyed by Stevens and Gemini to an out of state corporation.

With respect to purposeful availment, the fact that Stevens sold Jillian's of Seattle as majority owner and not as a mere CEO/CFO changes significantly the jurisdictional analysis. As a consequence, Plaintiff, due to Steven’s specious omissions, did not have the opportunity to argue, nor did the trial court have the opportunity to consider "purposeful availment" with respect to Stevens as the majority owner who "post-tort" sold an asset located in Washington State.

To make a proper analysis of a jurisdictional issue such as this, the trial court should have the opportunity to evaluate prior negotiations,

contemplated future consequences, the terms of the contract, and the parties' actual course of dealing. (See *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 711, 919 P.2d 1243, 1250 (1996)) modified, 932 P.2d 664 (Wn. Ct. App. 1997) Material evidence related to these factors are not before this appellate court.

The *Mika v JBC et. al.* case has been transferred to another Superior Court Judge. The acquiring judge heard and granted Gemini's and Gameworks' motions for Summary Judgment. However, the newly assigned court below found that jurisdiction could be extended to these defendants because of their role in the sale of an asset which was located in Washington State.<sup>5</sup>

There was only one transaction conveying Jillians of Seattle. Under the specific jurisdiction analysis, jurisdiction can be founded solely on one purposeful contact with Washington State, as long as the cause of action arose from that contact and the assertion of jurisdiction would be reasonable. *Langlois v. Deja Vu, Inc.*, 984 F. Supp. 1327, 1333 (W.D. Wash. 1997), *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984); *Doe v. Am. N'l Red Cross*,

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<sup>5</sup> Report of Proceedings is attached as Appendix B ; ER 201 , ; In re Adoption of B.T., 150 Wn.2d 409, 415, 98 P.3d 634 (2003)

112 F.3d 1048, 1052 n. 7 (9th Cir.1997) *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 415 (9th Cir.1977).

## **2. Cause of Action**

The second prong requires that the cause of action must arise from, or be connected with, such act or transaction. In this case, it is axiomatic that the asset Stevens conveyed “post-tort” to Gameworks is the situs of the negligence and consequent injury to the Plaintiff. This prong is met.

## **3. Fair Play**

Stevens as majority owner of JBC Entertainment, not merely CEO/CFO, sold Jillian's of Seattle to another corporation, "purposefully availed [him]self of the privilege of conducting activities within this State, invoking the benefits and protections of our laws." <sup>6</sup>

An objective test is used to determine jurisdiction: Should the defendant, based upon his contact with the forum state, reasonably anticipate, expect, being haled into court there. *Huebner v. Sales Promotion, Inc.*, 38 Wn.App. 66, 684 P.2d 752 (1984). The focus of long-arm statute's inquiry into whether the defendant purposefully availed itself of the privilege of conducting activities within the state is of the quality and

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<sup>6</sup> *Raymond v. Robinson*, 104 Wn App 627, 637, 15 Pac. 3rd 697 (2001)

nature of the defendant's activities in the state, rather than the number of acts within the state or some other mechanical standard, but the activity level need not reach the level required to establish general jurisdiction. *Raymond v. Robinson*, 104 Wn. App. 627, 15 P.3d 697 (2001) Surely, the nature of selling off an asset in this state that was the situs of the injuries to the plaintiff is sufficient to justify being haled into Washington courts.

Subsequent to Stevens' depositions, Motion for Summary Judgment, and his filing a Motion for Discretionary Review before this court, codefendant Gemini's 30 (b)(6) witness testified during his deposition in January 2013, that Gemini owned only 40% of JBC Entertainment, Alpha Investors owned 11%. He added that Greg Stevens, the majority owner of JBC Entertainment, owned 49% of shares and that Stevens played a role in the negotiations and eventual sale of a corporate asset located in Washington State.

Ironically, had this court not stricken the oral argument set for January 4, 2013, Stevens may have succeeded in his deception and misdirection, and this court could have rendered an opinion on whether the trial court's committed error based on Stevens' deceptive testimony, as did the trial court.

The Plaintiff's arguments and briefing at summary judgment, in opposition to Steven's Motion for Discretionary Review, and the trial court's decision with respect to jurisdiction was based on Stevens' material and intentional false testimony that he was merely a CEO/CFO employee of JBC Entertainment. Consequently, the trial court's order denying Stevens' motion to dismiss for lack of jurisdiction was issued without the significant and material fact that Stevens was the majority owner of JBC Entertainment, not merely the CEO/CFO, who after being sued by the Plaintiff, negotiated for and sold Jillian's of Seattle.

The Plaintiff should have the opportunity to litigate the issue of jurisdiction before the trial court with this newly discovered material evidence.

Gemini's Motion for Summary Judgment was granted, however, Gemini's Motion for Attorney's Fees based on a lack of jurisdiction was denied by the Superior court because of Gemini's role as seller in the asset purchase of Jillian's of Seattle. [CP 919]

Likewise, Gameworks moved the court to find a lack of jurisdiction. Gameworks motion for the court to find a lack of jurisdiction was granted but to award attorney fees was denied because of GameWorks

role in the sale of the Jillian's of Seattle, an asset located in Washington state. [CP 923]

“Purposeful availment analysis examines whether the defendant's contacts with the forum are attributable to his own actions or are solely the actions of the plaintiff.” *Sinatra v. National Enquirer*, 854 F.2d 1191, 1195 (9th Cir.1988). To show purposeful availment, a plaintiff must show that the defendant “engage[d] in some form of affirmative conduct allowing or promoting the transaction of business within the forum state.” *Gray & Co. v. Firstenberg Machinery Co.*, 913 F.2d 758, 760 (9th Cir.1990) The Plaintiff has made such a showing.

### **The Long Arm Statute**

Washington Revised Code § 4.28.185 provides;

- (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
- (a) The transaction of any business within this state;
  - (b) The commission of a tortious act within this state;
  - (c) The **ownership, use, or possession of any property whether real or personal situated in this state;** (EMPHASIS ADDED)

Analysis of jurisdiction under the Washington long-arm statute involves two issues: (1) does the statutory language purport to extend

jurisdiction, and (2) would imposing jurisdiction violate constitutional principles. *Grange Ins. Assoc. v. Idaho*, 110 Wn..2d 752, 756, 757 P.2d 933 (1988). Under the long-arm statute, Washington courts may assert jurisdiction over nonresident individuals and foreign corporations to the extent permitted by due process requirements, except where limited by the terms of the statute. *Werner v. Werner*, 84 Wn..2d 360, 364, 526 P.2d 370 (1974). In the context of this case, the statutory and constitutional standards merge into a single due process test. *Shute v. Carnival Cruise Lines*, 863 F.2d 1437 (9th Cir.1988).

To evaluate whether long-arm jurisdiction exists, courts examine three factors: (1) whether the party purposefully committed some act or consummated some transaction in the state; (2) whether the cause of action arose from, or was connected with, the act or transaction; and (3) whether the exercise of jurisdiction would offend traditional notions of fair play and substantial justice, with the focus being on the quality and nature of the act occurring within the forum state. *Bartusch v. Oregon State Bd. of Higher Educ.* 131 W. App. 298, 126 P.3d 840 (2006)

In this case, Stevens purposively negotiated and sold a Washington State corporate asset to an out-of-state corporation. The exercise of jurisdiction based on the negotiation and sale of Jillian's of Seattle, a

Washington Corporation, would not offend traditional notions of fair play and substantial justice. Rather, jurisdiction in this case extended to Mr. Stevens celebrates the traditional notions of fair play and substantial justice.

Exercise of jurisdiction, under the long-arm statute, must not offend traditional notions of fair play and substantial justice in light of the quality, nature, and extent of the defendant's activity in the state, the relative convenience of the parties, the benefits and protection of the laws afforded the respective parties, and the basic equities of the situation. *Raymond v. Robinson* (2001) 104 Wn. App. 627, 15 P.3d 697

It was intent of the legislature, in enacting this statute, to assert jurisdiction of courts of this state over nonresident defendant to extent permitted by due process clause of Federal Constitution, except as limited by terms of the statute. *Tyee Const. Co. v. Dulien Steel Products, Inc., of Wn.* (1963) 62 Wn.2d 106, 381 P.2d 245.

Importantly, and most germane to defendant Stevens, this statute is to be liberally applied to obviate mischief intended to be remedied by it. *Harrison v. Puga* 4 Wn.App. 52, 480 P.2d 247. (1971) Moreover, the Long-arm jurisdiction standards are less stringent than those necessary to

establish general jurisdiction. *Bartusch v. Oregon State Bd. of Higher Educ.* (2006) 131 Wn. App. 298, 126 P.3d 840.

The touchstone of constitutional validity of RCW 4.28.185 is whether defendant's contacts in Washington in the transaction of the business involved are sufficiently substantial to show that he has undertaken 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.' *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958)

It is recognized that the transaction of particular business, such as defendant Stevens selling JBC Entertainment's corporate asset located in this state, may involve contacts in more than one state. However, the rule requirements are met in the state in which suit is brought if there be sufficient substantial contacts in that state to meet the purposeful activity test even though there are also contacts elsewhere. Even though, Stevens sold five assets to Gameworks, the sale of Jillian's of Seattle by Stevens as owner is sufficient to constitute conducting business activities within this State.

As stated above, an objective test is used to determine jurisdiction: Should the defendant, based upon his contact with the forum state,

reasonably anticipate being haled into court there. *Huebner v. Sales Promotion, Inc.*, 38 Wn.App. 66, 684 P.2d 752 (1984), *review denied*, 103 Wash.2d 1018, *cert. denied*, 474 U.S. 818, 106 S.Ct. 64, 88 L.Ed.2d 52 (1985). A nonresident defendant must purposefully avail itself of the privilege of conducting activities within the forum state, thereby invoking the benefits and protections of its laws. *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283 (1958). *Does 1--9 v. Compcare, Inc.*, 52 Wn.App. 688, 697 (1988). The *Does* court stated another way, there must exist a substantial connection between the defendant and the forum state which comes about by an action of the defendant purposefully directed toward the forum state. *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 107 S.Ct. 1026, 1033, 94 L.Ed.2d 92 (1987) The selling of a corporate asset where the injury to the Plaintiff occurred, that is located in this state, creates a substantial connection between Stevens and Washington State.

The focus of long-arm statute's inquiry into whether the defendant purposefully availed itself of the privilege of conducting activities within the state is on the quality and nature of the defendant's activities in the state, rather than the number of acts within the state or some other mechanical standard, but the activity level need not reach the level required

to establish general jurisdiction. *Raymond v. Robinson*, 104 Wn..App. 627, 15 P.3d 697 (2001)

The ‘purposeful availment’ requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts, ... or of the ‘unilateral activity of another party or a third person ...’ ”). A defendant's contacts must be such that he should “reasonably anticipate being haled into court there.” *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

### **Specific Jurisdiction**

A defendant is subject to specific jurisdiction under Washington's long arm statute RCW 4.28.185 when the defendant transacted business within the state and committed a tortious act within the state.

In order to establish limited or specific personal jurisdiction, the plaintiff must demonstrate that the defendant (1) has purposefully availed himself of the privilege of conducting activities in the state; (2) that their injuries “arise out of or relate to” those activities; and (3) that the maintenance of the suit does not offend traditional notions of “fair play and substantial justice.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-

78, 105 S.Ct. 2174, 2181-85, 85 L.Ed.2d 528 (1985); *Shute v. Carnival Cruise Lines, supra*.

Clearly, Stevens purposefully availed himself of the privilege of conducting business in this state where he as owner participated in the negotiation and sale of the asset, Jillian's of Seattle.

**Attorney Fees**

The Plaintiff/Appellee respectfully requests this court to award costs and fees pursuant to RAP 18.1, and RAP 14.2.

//////

## V. CONCLUSION

For all the foregoing reasons, this matter should be remanded to the trial court to consider the issue of whether Gregory Stevens is, by "purposeful availment" or any other factors, subject to the jurisdiction of Washington Superior court, based on newly discovered irrefutable evidence that he was not merely a CEO/CFO of JBC Entertainment, but was in fact the majority owner who negotiated and closed the sale of Jillian's of Seattle, a Washington State Corporation, to another out-of-state corporation, Gameworks.

DATED this 12<sup>th</sup> day of June, 2013.

Respectfully Submitted,

PHILLIPS LAW LLC

By: 

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Jackson J. Mika

**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury and the laws of the State of Washington that on this date, June 11, 2013, I caused service via E-Mail, as agreed by the parties, and U.S. Mail true and correct copies of the:

**PLAINTIFF'S/APPELLEE'S RESPONSE BRIEF AND APPENDIX**

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Plaintiff-Appellee,

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Defendants.

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The Honorable Michael Hayden, Superior Court Judge

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PLAINTIFF'S/APPELLEE'S APPENDIX

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Appx. A

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals  
of the  
State of Washington*

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
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January 2, 2013

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CASE #: 69413-8-I  
Jackson Mika, Respondent v. Gregory Stevens, Petitioner

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on January 2, 2013, regarding petitioner's motion for discretionary review:

The motion for discretionary review is referred to a panel of judges for consideration without oral argument. The hearing set on January 4, 2013 is stricken.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MIKA, ) No. 11-2-02108-4 SEA  
)  
Plaintiff, )  
)  
v. )  
)  
JBC ENTERTAINMENT HOLDINGS, )  
)  
Defendant. )  
)

EXCERPTS OF COURT'S RULING  
THE HONORABLE WILLAM DOWNING, JUDGE, PRESIDING  
FEBRUARY 8, 2013  
FEBRUARY 15, 2013

ORDERED BY:  
Howard Phillips  
Phillips Law LLC  
3815 S. Othello, #100-353  
Seattle, WA 98118  
(206) 725-0912

PREPARED BY:  
Rose Landberg  
Lickety Split Transcripts  
P.O. Box 21461  
Seattle, WA 98111  
(206) 932-5025

1 I hereby certify that this is a true and correct  
2 record of selected excerpts of the court's ruling on  
3 February 8, 2013 and February 15, 2013 in the matter of  
4 Mika v. JBC Entertainment Holdings, King County Cause  
5 No. 11-2-02108-4 SEA. I further certify I am in no way  
6 related to or employed by any party or counsel and I  
7 have no interest in this matter.  
8

9 Dated this 21st day of May, 2013.

10 **Rose Landberg**

11 Rose Landberg

12 Court-Approved Transcriptionist

13 AAERT Certified, No. CET-D 664

14 Lickety Split Transcripts

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FEBRUARY 8, 2013

Start Time: 11:55:51

COURT: Well, taking it logically, the first question is the jurisdictional question. In this case I do believe that Gemini was involved in the sale of the asset located in the state of Washington, and that that constitutes sufficient purposeful availment, that it does not offend notions of due process and fair play for Gemini to be in this jurisdiction defending against the claim for fraudulent transfer that has been made.

Moving to the fraudulent transfer claim itself, however, the court would conclude that the evidence is insufficient to establish the necessary elements of that claim.

FEBRUARY 8, 2013

End Time: 11:56:32

1 FEBRUARY 15, 2013

2 Start Time: 09:56:36

3 COURT: The fact of the matter is, when we get  
4 down to the hard and cold legal analysis, the result is  
5 the same and the impact is the same, however it's  
6 packaged.

7 In this case, I would intend to reach a  
8 parallel conclusion from last week in the Gemini case.  
9 I'm going to go ahead and find that jurisdiction is  
10 appropriately extended to GameWorks under these  
11 circumstances because of the nature of the allegations.

12 I think that it is necessary to take a look at  
13 the evidence or lack of evidence in support of the  
14 allegation of the fraudulent transfer or the mere  
15 continuation argument in order for the type of cause of  
16 action to be brought to the court, and that it should  
17 not be summarily rejected on jurisdictional grounds  
18 without taking that look at that evidence to see  
19 whether or not there was something there to support it.

20 In this case, we are talking about an asset  
21 located in Seattle, Washington that was purchased by  
22 GameWorks Acquisitions for GameWorks Entertainment.  
23 But when we look at the arguments in favor of successor  
24 liability, I do think it's quite clear as a matter of  
25 law that the evidence comes up short.

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FEBRUARY 15, 2013

End Time: 09:58:08