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I. INTRODUCTION

This lawsuit arises from a gunshot wound Jackson Mika alleges he sustained while at Jillian's Billiards Nightclub in Seattle ("Seattle Jillian's"). Mr. Mika claims the owners and operators of Seattle Jillian's failed to take reasonable steps to protect him from the unknown assailant and sued for negligence.

On the night of the shooting, Seattle Jillian's was wholly owned and operated by JBC of Seattle. Approximately one year and seven months after the shooting, Gameworks Acquisition ("GW Acquisition") purchased the assets of JBC of Seattle in a transaction involving the purchase of five Jillian's establishments located in Seattle, WA; Chesapeake, VA; Pasadena, CA; San Francisco, CA; and Universal City, CA.

Mr. Mika sued GameWorks Entertainment LLC ("GW Entertainment LLC"), alleging that GW Entertainment LLC is liable under the Uniform Fraudulent Transfer Act ("UFTA") as a "transferee" of a fraudulent transfer of JBC's assets. Mr. Mika further alleged GW Entertainment LLC has liability for his gunshot wound under an exception to the successor liability doctrine.

GW Entertainment LLC moved for summary judgment dismissal of Mr. Mika's claims on three grounds: (1) As a foreign corporation with

no business in Washington, there is no personal jurisdiction over GW Entertainment LLC; (2) GW Entertainment LLC has no successor liability for the alleged negligence of its predecessor; and (3) the Uniform Fraudulent Transfer Act is inapplicable to GW Acquisitions' good-faith purchase of the JBC assets.

GW Entertainment LLC asks this court to affirm the Superior Court's proper dismissal of Mr. Mika's claims against GW Entertainment LLC on summary judgment.

II. ASSIGNMENTS OF ERROR

Assignments of Error

GW Entertainment LLC assigns no error to the Superior Court's decision.

Assignments of Error

GW Entertainment LLC believes Mr. Mika has misstated the issues on appeal and that the sole issue before this court is stated more properly as:

Whether the Superior Court properly granted GW Entertainment LLC's Motion for Summary Judgment, where:

1. GW Entertainment LLC is a Nevada limited liability company with no business in Washington;

2. Mr. Mika's UFTA claim does not apply under these undisputed facts, which show that all of Jillian's assets were subject to a valid, recorded security interest held by GE Capital;
3. Even if the UFTA were applicable, the statute provides only for judgment against the first transferee, and here, GW Acquisition, not GW Entertainment LLC, was the first transferee;
4. Undisputed evidence showed the purchase of Jillian's assets was carefully negotiated at arms-length and purchased in good faith for reasonable equivalent value; and
5. Undisputed evidence showed that at the time of the transfer of assets, there were no common officers between GW Entertainment LLC and any other entity in this lawsuit.

III. STATEMENT OF THE CASE

A. GW Entertainment LLC is a foreign corporation with no business in Washington.

This is a personal-injury action in which Mr. Mika was allegedly shot by an unknown assailant on March 21, 2010, while attending a birthday party at Seattle Jillian's. CP 184-95. Mr. Mika sues for negligent hiring, negligent supervision, inadequate security, negligent retention, improper instruction and training, and negligent infliction of emotional distress. *Id.* Mr. Mika also claims that GW Entertainment LLC is jointly and severally liable for his injuries because it purchased Seattle Jillian's

assets from defendant JBC of Seattle, WA, Inc. (“JBC of Seattle”) and/or JBC Entertainment Holdings, Inc. (“JBC Entertainment”). *Id.*

On the night of the shooting, Seattle Jillian’s was wholly owned and operated by JBC of Seattle, a Washington corporation. CP 964. Also at that time, JBC Entertainment, a Delaware corporation, wholly owned JBC of Seattle. *Id.* JBC Entertainment also owned several other Jillian’s establishments located in California and Virginia. CP 957-58. Defendant Gemini Investors III, L.P. (“Gemini Investors”), also a Delaware corporation, was one of the majority owners of JBC Entertainment. CP 964.

GW Entertainment LLC is a Nevada limited liability company that is qualified to do business in California, but not Washington. CP 957. GW Entertainment LLC is currently headquartered in Reno, Nevada. *Id.* Until fall of 2012, GW Entertainment LLC was based in Glendale, California, with accounting functions in Chatsworth, California. *Id.* GW Entertainment LLC’s registered agent, CSC services of Nevada, Inc., is located in Nevada. *Id.* GW Entertainment LLC had no agent, corporate offices or employees in Washington. *Id.*

On August 16, 2011, GW Acquisition, a Nevada domestic limited liability company, was formed. CP 957-58.

On October 18, 2011, GW Acquisition purchased JBC of Seattle's assets as part of an Asset Purchase and Sale Agreement ("APA"). CP 957-58; 1056-1086. The APA involved one buyer, (1) GW Acquisition, and six sellers, (1) JBC Entertainment, (2) JBC of Seattle; (3) JBC of Norfolk, VA, Inc.; (4) JBC of Pasadena, CA, Inc.; (5) JBC of San Francisco, CA, Inc.; and (6) JBC of Hollywood, CA, Inc. *Id.* JBC of Seattle; JBC of Norfolk, VA, Inc.; JBC of Pasadena, CA, Inc.; JBC of San Francisco, CA, Inc.; and JBC of Hollywood, CA, Inc. all owned and operated one Jillian's establishment. Sold to GW Acquisition were the assets of the five Jillian's establishments located in Seattle, WA; Chesapeake, VA; Pasadena, CA; San Francisco, CA; and Universal City, CA. *Id.*

B. GW Acquisition purchased JBC assets through arm's length negotiations for reasonable equivalent value.

The parties had legitimate reasons for the asset sale. JBC Entertainment needed to sell because the Jillian's locations were not profitable and JBC Entertainment was unable to satisfy its obligations to secured lenders. CP 1009-1013. As part of a \$3,000,000 deal, GW Acquisition agreed to purchase five Jillian's located in several states, and declined to purchase two others. CP 1160.

The asset purchase was negotiated over several months through an arm's length transaction. CP 958. During negotiations, the parties used investment banks to value the Jillian's assets and negotiate the sale price. *Id.* The six sellers used Gemini Investors, and GW Acquisition used Mosaic Capital, LLC as its investment bank. *Id.* Each of the five Jillian's establishments was individually valued, and parties negotiated separate purchase prices for each. *Id.* The total sale price, which took into account the assets and liabilities of each Jillian's, was approximately three million dollars. *Id.* The purchase price was paid in cash, through a third party escrow, David Gibson Escrow Co., Inc. *Id.* Payment was tendered entirely in California. *Id.* No stocks or securities were exchanged. *Id.*

C. At the time of the asset purchase, all of Jillian's assets were subject to a valid, recorded security interest.

At the time of the asset purchase, all Jillian's assets were subject of a valid, recorded security interest held by GE Capital. CP 959.

D. At the time of the purchase, GW Entertainment LLC and JBC were entirely separate corporations with no common officers.

At the time of the sale, there were no common officers between GW Entertainment LLC and any other entity in this lawsuit. CP 958 It was not until November 30, 2011, that GW Entertainment LLC CEO Steven Dooner was terminated, and Greg Stevens, former CEO of JBC Entertainment and JCB of Seattle, was hired as an interim CEO while GW

Entertainment LLC searched for a permanent replacement CEO. *Id.* GW Entertainment LLC ended its search on March 12, 2012, and made Mr. Stevens its permanent CEO. *Id.* The other GW Entertainment LLC officers, including the CFO and Secretary, did not change after the asset purchase. *Id.* No member of GW Entertainment LLC's Board of Directors ever had any relationship with the other entities in this action, nor have there been any common owners between GW Entertainment LLC the other entities. *Id.*

Since the asset purchase, the Seattle Jillian's has been operated by GWE Seattle, LLC, which is a wholly owned subsidiary of GW Entertainment LLC. CP 959. The physical building where the Seattle Jillian's operates is owned by Kenney Family Properties, LLC, a Washington corporation unrelated to GW Entertainment LLC. *Id.*

IV. SUMMARY OF ARGUMENT

GW Entertainment LLC asks this Court to affirm the Superior Court's proper dismissal of Mr. Mika's claims against GW Entertainment LLC on summary judgment. GW Entertainment LLC moved for summary judgment dismissal of Mr. Mika's claims on three independent grounds: (1) As a foreign corporation with no business in Washington, there is no personal jurisdiction over GW Entertainment LLC; (2) GW Entertainment LLC has no successor liability for the alleged negligence of its

predecessor; and (3) the UFTA does not apply to GW Acquisition's good-faith purchase of the JBC assets.

Mr. Mika's claim against GW Entertainment LLC based on UFTA fails because: (1) the assets transferred from Jillian's to GW Acquisition were subject to a valid secured lien; (2) transfers are not voidable under the UFTA against a transferee who took in good faith and for reasonable equivalent value; (3) under the UFTA, a transfer is voidable only against the first transferee. The first transferee in this case was GW Acquisition, not Respondent GW Entertainment LLC.

Mr. Mika's claim based on successor liability fails because: (1) a purchasing corporation does not become liable for the debts and liabilities of the selling corporation unless one of four narrow exceptions apply; (2) Mr. Mika's assertion that the asset sale was fraudulent is without basis and nothing more than speculation unsupported by the evidence; (3) Mr. Mika's assertion that GW Entertainment LLC is a mere continuation of JBC Entertainment is unsupported by the law and the evidence because there was no commonality of officers and directors at the time of the transaction, and there is no dispute that adequate consideration was made for the purchase of JBC Entertainment.

The Superior Court's decision granting GW Entertainment LLC's motion for summary judgment was proper, and this court should affirm it.

V. ARGUMENT

A. The court reviews an order granting summary judgment de novo.

Appellate courts review an order on summary judgment de novo and engage in the same inquiry as the trial court. *Hoffstatter v. City of Seattle*, 105 Wn. App. 596, 599, 20 P.3d 1003 (2001). In reviewing summary judgment, a court considers the facts and reasonable inferences therefrom in a light most favorable to the nonmoving party. *Id.*

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* When a plaintiff lacks evidence to support an essential element of her claim, no genuine issue of material fact exists, and the complaint is properly dismissed. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

To defeat summary judgment, a nonmoving plaintiff must come forward with specific, admissible evidence to sufficiently rebut the moving party's contentions and support all necessary elements of the asserted claims. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). “[B]are assertions that a genuine material issue exists will not defeat a summary judgment motion in the absence of actual evidence.” *Trimble v. Wash. State Univ.*, 140 Wn.2d 88, 93, 993 P.2d 259 (2000). Indeed, CR 56(e) states that the response, “by affidavits or as otherwise provided in

this rule, must set forth specific facts showing that there is a genuine issue for trial.”

B. The Superior Court properly dismissed Mr. Mika’s Uniform Fraudulent Transfer Act claim.

1. The transferred assets were subject to a valid lien.

The UFTA, RCW 19.40 *et seq.*, allows recovery for a fraudulent transfer against the property fraudulently transferred, or against the transferee as a money judgment. RCW 19.40.071, .081. Mr. Mika claims that GW Entertainment LLC, as transferee, is liable to him because of a fraudulent conveyance by the predecessor owners of JBC of Seattle. CP 188-89. This claim fails as a matter of law because the assets transferred were subject to a valid lien held by GE Capital.

The UFTA only applies to “transfers” as defined in RCW 19.40.011. A “transfer” is any disposition of an “asset.” The UFTA defines an “asset” as the property of a debtor, but the term does not include “[p]roperty to the extent it is encumbered by a valid lien.” RCW 19.40.011(12), .011(2)(i). The UFTA defines a “valid lien” as any interest in property to secure payment that is effective against the holder of a subsequent judicial lien. RCW 19.40.011(8), (13).

The Jillian’s assets purchased were subject to valid liens in favor of GE Capital. CP 959. Since these liens would be effective against the

holders of subsequent judicial liens, the assets in the case at hand are not “assets” part of a “transfer” under the UFTA. Accordingly, the UFTA does not apply in this action, and Mr. Mika cannot obtain a money judgment against GW Entertainment LLC under the Act. *Eagle Pacific Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 725-04, 934 P.2d 715 (1997).

2. Transfers are not voidable against a transferee who took in good faith for reasonable equivalent value.

In the alternative, even if the UFTA applies, the Act authorizes entry of judgment against a transferee only as follows:

Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under RCW 19.40.071(a)(1), the creditor may recover judgment for the value of the asset transferred ... or the amount necessary to satisfy the creditor's claim. ... The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made[.]

RCW 19.40.081(b).

Therefore, a transfer is not voidable under RCW 19.40.041(a)(1) against a person who took in good faith and for a reasonably equivalent value. RCW 19.40.081(a). For the reasons discussed in detail below, the Jillian’s assets were purchased in good faith and for adequate

consideration. Without any evidence to the contrary, Mr. Mika has no claim against GW Entertainment LLC under the UFTA.

3. The transfer is voidable only against the first transferee.

Under the UFTA, a judgment may be entered against a transferee to the extent the transfer is voidable. RCW 19.40.081(b). A transfer is not voidable per RCW 19.40.040(a)(1) against a transferee who took in good faith and for reasonably equivalent value. RCW 19.40.081(a). If voidable, a judgment can be entered only against the first transferee. RCW 19.40.081(b)(1).

GW Acquisition, not GW Entertainment LLC, is the first transferee. CP 957. In addition, there is no evidence the “debtors” transferred the assets with actual fraudulent intent, or that the Jillian’s assets were acquired by GW Acquisition in bad faith or for inadequate consideration. All evidence is to the contrary. Finally, the transferred assets were subject to a valid recorded lien, a fact Mr. Mika does not dispute. CP 959. In light of this, there is no basis for asserting any claim against GW Entertainment LLC under the UFTA.

4. Mr. Mika provides no basis for piercing the corporate veil.

Mr. Mika discusses piercing the corporate veil, but it is unclear how this doctrine applies since he makes no claim against GW

Entertainment LLC's owners. Nor has Mr. Mika presented any evidence that the corporate form was used to violate or evade a duty, and disregard of this form is necessary to prevent unjustified loss to a third party. *Meisel v. M&N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 401, 645 P.2d 689 (1982) (quoting *Morgan v. Burks*, 93 Wn.2d 580, 578, 611 P.2d 751 (1980)). Accordingly, there is no basis for piercing GW Entertainment LLC's corporate veil.

C. There is no basis for invoking any exception to the successor-liability doctrine.

Mr. Mika's claim that GW Entertainment LLC is liable to it under a corporate successor liability theory fails. In Washington, when a corporation sells its assets to another corporation, the purchasing corporation does not become liable for the debts and liabilities of the selling corporation unless one of four narrow exceptions applies: (1) there is an express or implied agreement for the purchaser to assume liability; (2) the purchase is a de facto merger or consolidation; (3) the purchaser is a mere continuation of the seller; or (4) the transfer of assets is for the fraudulent purpose of escaping liability. *Hall v. Armstrong Cork, Inc.*, 103 Wn.2d 258, 261-62, 692 P.2d 787 (1984). The reason there are only four narrow exceptions to the general rule is so corporate purchasers are protected from "un-bargained for" debts or liabilities. *Long v. Home*

Health Servs. of Puget Sound, Inc., 43 Wn. App. 729 732, 719 P.2d 176 (1986) (citing *Hall*, 103 Wn. 2d at 261-62). Of the four exceptions to this rule, Mr. Mika argues two apply: mere continuation and fraudulent transfer. *Opposition*, p. 7:1-5. Plaintiff fails to provide a basis for either.

1. The asset sale was not fraudulent.

Courts consider two elements when deciding whether there was a fraudulent transfer, good faith and adequate consideration. *Eagle Pacific*, 135 Wn.2d at 903-04 (citations omitted); *Long*, 43 Wn. App. at 738. The evidence, and all reasonable inferences taken therefrom, shows GW Acquisition acted in good faith and paid fair value for the assets purchased. CP 956-59.

The buyer and sellers were unrelated entities. CP 958. The terms of the APA were negotiated at arm's length through investment banks. *Id.* GW Acquisition used Mosaic Capital, LLC to value the five Jillian's establishments and negotiate an adequate purchase price. *Id.* The seller's used Gemini Investments. *Id.* Each Jillian's establishment was valued separately, and the total sale price of three million dollars was tendered in cash through a third party escrow. *Id.* No stocks or securities were exchanged. *Id.* GW Entertainment LLC acquired the assets to grow its business, and there is no evidence it acted to defraud creditors or otherwise obtained the assets in bad faith or for inadequate consideration.

The parties had legitimate reasons for the asset sale. JBC Entertainment needed to sell because the Jillian's locations were not profitable and JBC Entertainment was unable to satisfy its obligations to secured lenders. CP 1009-1013. GW Entertainment LLC purchased the assets because it believed it had the expertise and knowledge to make them profitable and expand its business. CP 1014-1018. As part of a \$3,000,000 deal, GW Acquisition agreed to purchase five Jillian's located in several states, and declined to purchase two others. *Id.*

There is no evidence the assets were bought or sold in bad faith, or to frustrate Plaintiff's ability to recover damages from JBC Entertainment or any other entity. Instead, the undisputed evidence shows the purchase of Jillian's Seattle assets was carefully negotiated over months and done in good faith. CP 1021-1158. The second element to consider when deciding whether the fraudulent transfer exception applies is adequate consideration. For the reasons outlined above, GW Acquisition's payment of \$3,000,000 was adequate consideration for the Jillian's assets. CP 1014-1018. There is no evidence to the contrary.

2. GW Entertainment LLC is not a mere continuation of JBC Entertainment.

To decide whether the purchasing corporation is the "mere continuation" of the selling corporation, Courts first analyze commonality

between officers, directors, and stockholders of the two corporations, and next examine the sufficiency of the consideration paid. *Cambridge Townhomes, LLC v. Pacific Star Roofing, Inc.* 166 Wn.2d 475, 482, 209 P.3d 863 (2009). Importantly, proof of both elements is required to prevail on a “mere continuation” theory. *Gall Landau Young Const. Co., Inc. v. Hedreen*, 63 Wn. App. 91, 97, 816 P.2d 762 (1991) (citations omitted). Although Mr. Mika discusses whether JBC Entertainment transferred all or substantially all of its assets, Washington courts have declined to consider this factor in the “mere continuation” analysis. *Id.*; *Eagle Pacific*, 85 Wn. App. at 707.

Mr. Mika’s argument focuses heavily on the status of Greg Stevens and Tony Humphreys. While it is true that after the asset purchase Mr. Stevens became GW Entertainment LLC’s CEO and Mr. Humphreys became a vice president of operations, Mr. Mika’s briefing ignores the facts most relevant to the commonality analysis. Specifically, no member of GW Entertainment LLC’s Board of Directors had any relationship with JBC Entertainment; the owners and directors of GW Entertainment LLC are different from the owners and directors of JBC Entertainment; and no GW Entertainment LLC officer, other than CEO, changed after the asset purchase. CP 958; 1001. The evidence shows the buying and selling corporations were completely separate entities, under separate control,

management, and ownership. *Id.* Firing former GameWorks CEO Steven Dooner and replacing him with Mr. Stevens does not evidence GW Entertainment LLC is a “continuation” of JBC Entertainment. Neither does hiring Mr. Humphreys.

Cases where commonality exists differ sharply from the situation at hand; it occurs where the owners, directors, and officers of the two corporations are all the same people. *See, e.g., Gall Landau Young Const. Co.*, 63 Wn. App. at 92-97.

Furthermore, Mr. Brand explains GW Entertainment LLC had a legitimate business reason for hiring Mr. Stevens and Mr. Humphreys: To retain a continuity of institutional knowledge about the Jillian’s locations and their operations. CP 1017. Hiring such individuals after an asset purchase is common business practice. *Id.*

Even assuming this Court does find commonality of officers, owners, and directors, Mr. Mika has failed to show how the consideration paid for the assets was inadequate. To the contrary, the evidence shows each Jillian’s location was individually valued (the Seattle Jillian’s location was valued at \$500,000), and the total purchase price was negotiated at arms-length with the assistance of investment banks. CP 957; 1014-1018 Gemini Investor III, L.P. valued the assets at \$3,000,000,

which is the price GW Acquisition paid, in cash, through third party escrow. CP 957.

The “mere continuation” exception is not applicable since Mr. Mika has not shown either commonality or inadequate consideration.

D. Mr. Mika provides no basis for personal jurisdiction over GW Entertainment LLC.

In his Second Amended Complaint, Mr. Mika identifies GW Entertainment LLC as a “foreign corporation doing business in Seattle, King County, Washington.” CP 185, 187. Mr. Mika also alleges GW Entertainment LLC was a “resident” of Washington. CP 187. GW Entertainment LLC, a Nevada limited liability company, challenged personal jurisdiction because it is not a Washington resident and does not conduct business here. CP 196-213. When a nonresident defendant challenges jurisdiction, the plaintiff bears the burden of establishing a prima facie case of personal jurisdiction. *Im Ex Trading Co. v. Raad*, 92 Wn. App. 529, 533-34, 963 P.2d 952 (1998).

As a Nevada limited liability company, there should be no question that GW Entertainment LLC is not a Washington resident. Therefore, pursuant to the only other jurisdictional basis pleaded by Mr. Mika, personal jurisdiction hinges on whether GW Entertainment LLC did

business in Washington. Because it did not, there is no jurisdiction over GW Entertainment LLC.

1. There is no specific jurisdiction under RCW 4.28.185 since GW Entertainment LLC did not “transact business” in Washington.

In Washington, a court exercises personal jurisdiction over a nonresident defendant through either specific or general personal jurisdiction. *Hein v. Taco Bell, Inc.*, 60 Wn. App. 325, 328, 803 P.2d 329 (1991). Specific jurisdiction arises from a defendant's activities within Washington and is asserted through Washington's long-arm statute. Courts can assert specific jurisdiction when the plaintiff's cause of action arises from the defendant's activities in Washington. *Im Ex Trading Co. v. Raad*, 92 Wn. App. 529, 534, 963 P.2d 952 (1998).

Specifically, Washington'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 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:

The transaction of any business within this state ...

(3) Only causes of action **arising from** acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this section.

RCW 4.28.185 (emphasis added).

When deciding whether a foreign corporation “transacts business” in Washington, Courts apply a three-prong test:

1. The foreign corporation must purposefully do some act or consummate some transaction in Washington;
2. The cause of action must arise from, or be connected with, such act or transaction; **and**
3. Assuming jurisdiction in Washington must not offend the traditional notions of fair play and substantial justice.

Shute v. Carnival Cruise Lines, 113 Wn.2d 763, 767, 783 P.2d 78 (1989).

Under the first factor, courts look at the quality and nature of the foreign corporation’s activities in Washington, and ask whether the corporation purposefully availed itself of the privileges and benefits of doing business in Washington. *Raymond v. Robinson*, 104 Wn. App. 627, 637-40, 15 P.3d 697 (2001). GW Entertainment LLC has not availed itself since it is a foreign corporation that does not do, and is not qualified to do, business in Washington. CP 957; 1002. That GW Entertainment LLC has no registered agent evidences the fact it cannot do business here, since every corporation operating in Washington must have an agent. CP 957; RCW 23B.05.010 (Washington corporations); RCW 23B.15.070 (foreign corporations). GW Entertainment LLC operates outside

Washington, and thus has not availed itself of the privileges and benefits of doing business in Washington. CP 1022-1023.

Any argument that GW Entertainment LLC does business in Washington through a subsidiary Washington corporation such as GWE Seattle, LLC should be rejected. The case law is clear that as a general rule owning a subsidiary in the forum state does not confer jurisdiction over the nonresident parent. *Sate v. Northwest Magnesite Co.*, 28 Wn.2d 1, 41, 182 P.2d 643 (1947); *Escude Cruz v. Ortho Pharmaceutical Corp.*, 619 F.2d 902, 905 (1st Cir. 1980). Nor is there is any evidence that Mr. Mika's causes of actions have any connection to or arise from a GW Entertainment LLC subsidiary.

The second *Shute* factor requires a "but for" analysis: There must be a nexus between plaintiff's cause of action and defendant's activities in the forum. *Raymond*, 104 Wn. App. at 640-41. Because GW Entertainment LLC does not conduct activities in Washington, there can be no nexus between any activity and Plaintiff's causes of action, which stem from the shooting at Seattle Jillian's. CP 1022. There is no evidence to support this second factor since it cannot be said Mr. Mika's injuries would not have occurred "but for" GW Entertainment LLC's activities in Washington.

Finally, under the third *Shute* factor, courts asks whether it would be fair to subject the nonresident defendant to Washington jurisdiction by considering the quality, nature and extent of the defendant's activity in Washington, and the convenience to the parties of litigating here. *Raymond*, 104 Wn. App. at 641-43. Here, without a rational nexus between GW Entertainment LLC and Mr. Mika's causes of action, the requisite minimum contacts necessary for this Court to invoke specific jurisdiction are not present. GW Entertainment LLC did not purposely avail itself of the privileges and protections of Washington's laws. CP 957; 1022. It has no registered agent, offices or employees in Washington, and does not do business here. *Id.* The asset purchase took place in California, and concerned Jillian's establishments located in several states. CP 1022. GW Entertainment LLC could not reasonably foresee defending a lawsuit in Washington, and thus requiring such would be unduly inconvenient and unfair.

All three of the *Shute* factors must be present to invoke specific jurisdiction under the "transacts business" prong of the long arm statute. Here, Mr. Mika lacks any evidence to support any one of the three factors. Therefore, there can be no specific jurisdiction under RCW 4.28.185(1)(a).

2. There is no general jurisdiction over GW Entertainment LLC because it was not doing business in Washington at the time of Mr. Mika's injury.

Under RCW 4.28.080(10), a court can confer general jurisdiction over a nonresident defendant who transacts business in Washington that is substantial and continuous, and of such character as to give rise to a legal obligation. *Crose v. Volkswagenwerk Aktiengesellschaft*, 88 Wn.2d 50, 54, 558 P.2d 764 (1977). But there is no general jurisdiction over a foreign corporate defendant that is not “doing business” in Washington at the time the plaintiff’s cause of action arises. *Im Ex Trading Co. v. Raad*, 92 Wn. App. at 538.

As discussed above, there is no evidence GW Entertainment LLC was transacting substantial and continuous business in Washington at the time Mr. Mika’s causes of action arose. CP 957. It was not until 19 months after the shooting that GW Acquisition purchased the assets. There is no basis to assert general jurisdiction over GW Entertainment LLC.

VI. CONCLUSION

GW Entertainment LLC asks this Court to affirm the Superior Court’s proper dismissal of Mr. Mika’s claims against GW Entertainment LLC on summary judgment. GW Entertainment LLC moved for summary judgment of dismissal of Mr. Mika’s claims on three independent grounds:

(1) As a foreign corporation with no business in Washington, there is no personal jurisdiction over GW Entertainment LLC; (2) GW Entertainment LLC has no successor liability for the alleged negligence of its predecessor; and (3) the UFTA does not apply to GW Acquisition's good-faith purchase of the JBC assets. The undisputed evidence shows that GW Entertainment LLC is a Nevada limited liability company with no business in Washington. Mr. Mika failed to establish any basis for asserting personal jurisdiction over GW Entertainment LLC.

Mr. Mika's claim based on UFTA fails because: (1) the assets transferred from Jillian's to GW Acquisition were subject to a valid secured lien; (2) transfers are not voidable under the UFTA against a transferee who took in good faith and for reasonable equivalent value; (3) under the UFTA, a transfer is voidable only against the first transferee. The first transferee in this case was GW Acquisition, not Respondent GW Entertainment LLC.

Mr. Mika's claim based on successor liability fails because: (1) a purchasing corporation does not become liable the debts and liabilities of the selling corporation unless one of four narrow exceptions apply; (2) Mr. Mika's assertion that the asset sale was fraudulent is without basis and nothing more than speculation unsupported by the evidence; (3) Mr. Mika's assertion that GW Entertainment LLC is a mere

continuation of JBC Entertainment is unsupported by the law and the evidence because there was no commonality of officers and directors at the time of the transaction, and there is no dispute that adequate consideration was made for the purchase of JBC Entertainment.

The Superior Court's decision granting GW Entertainment LLC's motion for summary judgment was proper, and this court should affirm it.

Respectfully submitted this 19th day of November, 2015.

LEE SMART, P.S., INC.

By: 

John C. Versnel, III, WSBA No. 17755
Aaron P. Gilligan, WSBA No. 29614
Of Attorneys for Respondent
Gameworks Entertainment LLC

CERTIFICATE OF SERVICE

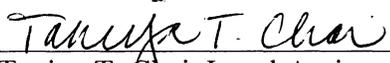
The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on November 19, 2015, I caused service of the foregoing pleading on each and every attorney of record herein:

Mr. Howard Phillips *Via E-mail and Legal Messenger*
Phillips Law LLC
3815 S. Othello St., #100-353
Seattle, WA 98118
E-mail: Hdefend@aol.com

Mr. Peter E. Sutherland *Via E-mail and Hand Delivery*
Lee Smart, P.S., Inc.
701 Pike Street, Suite 1800
Seattle, WA 98101
E-mail: pes@leesmart.com

Mr. Jesse O. Franklin *Via E-mail and Legal Messenger*
K&L Gates, LLP
925 4th Ave, Suite 2900
Seattle, WA 98104-1158
E-mail: jesse.franklin@klgates.com

DATED this 19th day of November, 2015 at Seattle, Washington.



Taniya T. Chai, Legal Assistant