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No. 1037597
Court of Appeals No. 86016-0-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ALTERNA AIRCRAFT V.B. LTD.,

Respondent,

v

SPICEJET LIMITED,

Petitioner.

REPLY TO ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

As Petitioner SpiceJet Limited (“SpiceJet”) explained in its Petition, the Court of Appeal’s decision affirming the denial of SpiceJet’s motion to dismiss for lack of personal or *in rem* jurisdiction violates the Due Process clause of the United States Constitution by allowing this action to proceed without a showing of minimum contacts with, or property present in, the State of Washington.

This case raises a significant constitutional issue as the Court of Appeal’s decision, as written, would greatly expand the jurisdiction of Washington courts at the expense of out-of-state judgment debtors. Such an expansion would allow the exercise of power over judgment debtors who have no absolute nexus to the State.

However, rather than focus on these important constitutional issues, Respondent Alterna Aircraft V B Limited (“Alterna”) raises a conditional issue for review: whether the lower courts properly denied SpiceJet’s motion where (1)

Alterna pleaded that SpiceJet owns cognizable interests in personal property located in Washington and (2) the record evidence purportedly demonstrates the existence of SpiceJet property interests in Washington.

These arguments ignore the serious constitutional issues posed by the Trial Court's decision and, in any event, misstate the record on appeal. Alterna's arguments should be rejected in their entirety.

II. ARGUMENT FOR REVIEW

A. The Record is Devoid of Any Evidence of SpiceJet Having Assets in the State.

In its opposition to SpiceJet's Petition, Alterna argues that it satisfied its burden of identifying assets in the State of Washington and that this is a separate ground on which the Court of Appeals could have affirmed the Trial Court's decision. This assertion is incorrect and does not accurately reflect the record below.

In the Trial Court, SpiceJet challenged personal jurisdiction based on Alterna's failure to plead facts supporting

jurisdiction. (CP 32-39). In its opposition to SpiceJet's motion to dismiss, Alterna provided no evidence or even allegations of fact establishing the presence of assets owned by SpiceJet in Washington. (CP 60-77). In its reply, SpiceJet included an affidavit stating that SpiceJet owned no assets in Washington. In response, Alterna moved for leave to serve a surreply, which included a declaration from Alterna's counsel attaching exhibits purporting to show some SpiceJet assets present in Washington. (CP 477-81, 484-86).

At the hearing on the motion to dismiss, the Trial Court (1) struck the SpiceJet affidavit and (2) denied Alterna leave to file the surreply (CP 686-87; VRP 42). Accordingly, the record contains no evidence of any assets owned by SpiceJet in Washington.

Indeed, the Trial Court below went even further, it held that there was no need for Alterna to show that there was personal jurisdiction over SpiceJet – *i.e.* that it had property present in the State of Washington. (VRP 42). The Trial Court expressly

determined that it did not matter whether SpiceJet had assets in the State. Instead, the Trial Court stated “it doesn’t make sense to quibble about whether there are assets currently here, especially in the case of personal property, which is obviously not tied to any one particular geography and is moveable, that such judgment should not necessarily be tied to a current existence of personal property.” (VRP 42).

Because of the Trial Court’s decision, which became the law of the case, SpiceJet chose not to assert any other defenses it may have to the merits of the case, and instead preserved its objection to jurisdiction and appealed the Trial Court’s decision.

Despite SpiceJet’s continued objections based on lack of jurisdiction, the Trial Court later granted summary judgment without any finding or evidence of property located in Washington, for the full amount of the judgment at issue (CP 690-93, 755-59), rather than the value of any alleged property in Washington, which under the law is the limit of any potential liability by SpiceJet in Washington. (*see* Petition at p.10).

Given the current circumstances of the case, it is not appropriate for the Court to uphold the decision of the Court of Appeals because Alterna purportedly “alleged” in the Complaint a property interest in Washington. First, as explained in Section II.B below, Alterna did not meet its burden of alleging facts, rather than mere conclusions, concerning property in Washington.

But, more critically, even if Alterna properly alleged “property” in its Complaint, (and it did not) it provided no evidence of any property when it sought and received its judgment from the Trial Court. Under the Trial Court’s erroneous decision, there was no need to demonstrate property in the State, and Alterna did not do so. The Trial Court’s decision made the property argument moot. This Court should not ignore the effects of the Trial Court’s decision.

In sum, whether or not SpiceJet currently has assets in Washington is irrelevant for the purposes of SpiceJet’s Petition to this Court. Rather, the relevant question here is whether

enforcement of a foreign judgment requires either general or specific jurisdiction over the debtor, or the existence of property or assets in the State. The Trial Court and Court of Appeals both erred as a matter of law by answering in the negative and it is on that issue that SpiceJet seeks review by this Court.

B. Alterna Had the Burden of Establishing Jurisdiction Over SpiceJet.

Independent of the arguments made in Section II.A above, Alterna's argument that it properly plead jurisdiction is wrong. The Ninth Circuit in *Schwartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007) made clear the showing required of a plaintiff to establish personal jurisdiction:

"At the motion to dismiss stage, a plaintiff is generally required only to make out a prima facie showing of personal jurisdiction to overcome a 12(b)(2) motion. *See Glencore Grain Rotterdam B. V v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1119 (9th Cir. 2002). Even so, mere 'bare bones' assertions of minimum contacts with the forum or legal conclusions unsupported by specific factual allegations will not satisfy a plaintiff's pleading burden. *See Alperin v. Vatican Bank*, 410 F.3d 532, 539 n.1 (9th Cir. 2005); *Butcher's Union Local No. 498, United Food and Commercial Workers v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986)."

Where, as here, jurisdiction is purportedly based on the presence of assets, the plaintiff has the burden of identifying specific assets present in the forum. *See Glencore Grain Rotterdam B. V. v. Shiyath Rai Harnarain Co.*, 284 F.3d 1114, 1127-28 (9th Cir. 2002) (“[T]he *sine qua non* of basing jurisdiction on a defendant’s assets in the forum is the identification of some asset”).

III. CONCLUSION

For all these reasons, SpiceJet respectfully asks this Court to grant review and revise the Court of Appeals as to these issues of substantial public importance.

Respectfully submitted on February 13, 2025.

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CERTIFICATE OF COMPLIANCE

Counsel for SpiceJet Limited certify that the body and footnotes of this Petition contain 1,107 words in compliance with RAP 18.17.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury of the laws of the State of Washington that on February 13, 2025, I caused to be served a copy of the attached brief to the following person(s) in the manner indicated:

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DATED: February 13, 2025

s/ Peter Elton
Peter Elton, Legal Assistant

BALLARD SPAHR LLP

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