ORIGINAL

IN THE SUPREME COURT OF OHIO

THOMAS B. KING

Appellant

v

EILEEN ABRAMSON

Appellee

Case No.: 09-2268

On Appeal from the Stark County Court Of Appeals, Fifth Appellate District

Court of Appeals Case No. 2009CA00039

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT THOMAS B. KING

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FILED
DEC 17 2009
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
DEC 16 2009
CLERK OF COURT
SUPREME COURT OF OHIO

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

There is a paucity of authority on the issue of whether a plaintiff who sues a nonresident defendant under Ohio's long-arm statute, R.C. 2007.382(A), and obtains service under Civ. R. 4.3(A) must be allowed discovery on whether an Ohio Court has *in personam* jurisdiction over the nonresident defendant. To Appellant's knowledge, the only two Ohio cases considering this issue are unreported: *Port Huron Baking Co. v West,* 1995 WL 10301 (Ohio App. No. 84AP-836, Franklin Co., 1985), and *Heritage Plastics Inc. v Rohm and Haas Company,* 2004 WL 1725784 (Ct. of Com. Pl., Belmont Co., No. 03 CV 0113, 2004). In *Port Huron,* the court of Appeals held that the trial court erred in deciding a motion to dismiss for want of *in personam* jurisdiction without affording the plaintiff the opportunity to discover that there are additional facts, other than those alleged in the complaint, supporting jurisdiction. In *Heritage Plastics,* the trial court held that the court must permit the plaintiff to take jurisdictional discovery to determine whether he or she has made a prima facia showing of personal jurisdiction, and that a trial court errs in deciding a motion to dismiss for lack of personal jurisdiction prior to permitting discovery. The *Heritage Plastics'* court relied on *Diamond Chemical Co., Inc. v Atofina Chemicals, Inc.* (D.D.C. 2003), 268 F. Supp.2d 1, 15 (a plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction by withholding information on its contacts with the forum). This issue is of public and great general interest to the bench and bar of Ohio and to future plaintiffs who sue out-of-state defendants.

Civ. R 26 is somewhat ambiguous on this issue. Civ. R. 26(B)(1) provides that parties may obtain discovery regarding unprivileged matters which are relevant to the subject matter of the action, whether relating to a claim or defense of any other party. This rule should be interpreted to

provide that a trial court must allow discovery to obtain additional facts over a claim of personal jurisdiction, as well as over substantive claims or defenses, assuming jurisdiction.

In this King case, Defendant Eileen Abramson's counsel, both in New York and Ohio, stonewalled King on the issue of whether he would be permitted to take Mrs. Abramson's deposition in Nassau County, New York, before the Stark County trial court had first decided whether it had personal jurisdiction over her. Eileen Abramson contended that no discovery should be allowed until the Stark County trial court had first determined that Ohio had personal jurisdiction. The trial court, who had scheduled an evidentiary hearing, did not rule on discovery before deciding the jurisdiction issue. Thus, Plaintiff was denied an opportunity to discover the true facts concerning Mrs. Abramson's knowledge of her business relationship with her deceased husband, a New York attorney and a sole practitioner, who had misappropriated Plaintiff's advance payments of unearned legal fees for services to be performed in Ohio and commingled them with his and his wife's personal funds in New York. Thus, the Abramsons converted Plaintiff's attorney fees to their own use, causing tortious injury to him in Ohio and, consequently, leaving him with no funds to hire substitute counsel to represent him before the EEOC in Ohio after Mr. Abramson's death.

To decide this important issue, this Court should accept jurisdiction to rule clearly, distinctly, and unambiguously that an Ohio plaintiff suing a nonresident under the long-arm statute should not be denied the opportunity, under Civ.R.26, to discover relevant facts as to whether Ohio has jurisdiction over the out-of-state defendant. To deny discovery on the preliminary issue of jurisdiction prejudices a plaintiff seeking to obtain jurisdiction over long-arm defendants..

STATEMENT OF THE CASE AND FACTS

Plaintiff, Thomas King was employed by the United States Postal Service as a mail handler at the main post office in Akron. He, by reason of mental and psychological disabilities, had numerous claims for disability job discrimination pending before the Cleveland office of the Equal Employment Opportunity Commission ("EEOC"). At the recommendation of a former postal worker, Dennis Petrack, who assisted postal workers processing their EEOC claims, King retained Attorney Stuart A. Abramson in Glen Cove, Nassau County, New York, to represent him before the Cleveland office of the EEOC. Mr. Abramson represented postal claimants throughout the United States and was reputed to be an expert in this field.

King and Mr. Abramson entered into a retainer agreement on February 14/16, 2005. Mr. Abramson agreed to represent King before the Cleveland EEOC office at the rate of $350.00 per hour, for a fee of $14,000.00, plus travel to Cleveland and room and board expenses. King, to comply with the agreement, paid Abramson an advance payment of $8,000.00, $500.00 on January 24, 2005, and $7,500.00 on February 16, 2005. King's checks were not deposited by Abramson into a lawyer's trust account, as required by the New York State Code of Professional Responsibility, but were deposited into his and his wife Eileen's joint and survivorship personal account in Bank of America, account #0523006286.[1] Abramson maintained no separate, identifiable business or trust account into which he would deposit fees, but utilized his and his wife's joint and survivorship personal accounts to conduct his law business. Also, he did not maintain malpractice insurance.

On April 18, 2005, Abramson, in a three- way telephone conference with the Cleveland

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[1] To open a joint account, a co-owner must sign a signature card.

EEOC office, in which King did not participate, dismissed King's discrimination charges. On December 7, 2005, King, who did not know that his charges had been dismissed, mailed Mr. Abramson an additional check for $6,000.00, the balance he believed was still owing. Mr. Abramson deposited this check into another Bank of America joint and survivorship personal joint account with his wife, Account No. 0523015345.

Mr. Abramson died on July 4, 2006. After learning of his death, King realized that he needed to retain a successor attorney to represent him before the Cleveland office of the EEOC. Eileen Abramson, although demanded by King, refused to refund the unearned fees. She also refused to open an estate in Nassau County, New York, so that King could present a claim against the estate. King, consequently, petitioned the Nassau County Surrogate's Court to appoint an administrator. Mrs. Abramson, who had been served and had retained an attorney in the surrogate's court, informed King that all of Stuart Abramson's assets had passed to her and their children as joint and survivorship property. Therefore, Stuart Abramson had no probate assets. She, therefore, refused to be appointed, and the public administrator for Nassau County was appointed as administrator in her place.

King presented his claim for unearned attorney fees and legal malpractice to the administrator on December 18, 2007. After the claim was deemed rejected, on April 28, 2008, he filed this action against the administrator and the estate in the Stark County Ohio Common Pleas Court, alleging that "no part of the fees paid by plaintiff to Stuart Abramson had been earned," and that the $14,000.00 should be returned to him.[2]

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[2] King also pled a second cause of action for legal malpractice against the estate, alleging that Mr. Abramson had "settled" his claims without his knowledge and

In his suit against the administrator, King joined Eileen Abramson as a party defendant. He alleged that Eileen, who had received the money, had refused to reimburse him for the unearned fees, that she had refused to open an estate, and that, at all relevant times, she was Stuart Abramson's "agent, business partner, trustee, and a co-owner of all Stuart Abramson's assets and bank accounts, joint and survivorship, both in his business and professional relationships." He alleged that, under R.C. 2307.382 and Civ.R. 4.3, by reason of Stuart Abramson and Eileen Abramson having transacted business in Ohio, contracting to supply services in Ohio, and for other acts (conversion), Ohio had jurisdiction over both defendants.

The administrator, although having entered an appearance in Stark County, decided not to retain Ohio counsel and defend, and a default judgment was entered against the estate. Defendant Eileen , however, moved to dismiss Plaintiff's Complaint on the grounds that Ohio had no personal jurisdiction over her, attaching a self-serving affidavit. King moved to strike Eileen's affidavit alleging that he had no opportunity to cross examine her. The trial court did not rule on his motion to strike. King filed briefs in opposition to Eileen's motion to dismiss.

On November 3 2008, King filed a motion requesting an evidentiary hearing and oral argument on the jurisdiction issue. On November 17, 2008, the court scheduled an evidentiary hearing for December 18, 2008. On November 26, 2008, King filed a motion for an order requiring Eileen Abramson to submit to a deposition in Nassau County, New York. He stated that Mrs. Abramson's New York and Ohio counsel had told him that they would not allow Mrs.

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consent, thereby depriving him of his claims against the Postal Service for employment discrimination. The trial court, after a second evidentiary hearing, granted King a judgment on his legal malpractice claim as well as on his claim for unearned fees. (Judgment, January 27, 2009.)

Abramson to be deposed in New York because Ohio had no jurisdiction over her, and that until Ohio court ordered her to be deposed, they would not permit the deposition or discovery. On that same date, November 26, 2008, King served a Request for Admissions on Eileen Abramson, to which no response was made.

On December 9, 2008, Eileen filed a motion for a protective order as to any discovery on the jurisdiction issue. Neither King's motion for an order allowing him to depose Mrs. Abramson in New York nor Eileen's motion for the protective order was ruled upon by the trial court. The trial court ignored the motions.

On December 18, 2008, after a brief evidentiary hearing at which only Mr. Petrack testified, the trial court sustained Eileen's motion to dismiss for want of personal jurisdiction. The court held that she had not transacted any business in Ohio and that retaining jurisdiction would deprive her of due process of law. (Judgment Entry, December 19, 2008.) A final appealable order was entered on January 27, 2009.

In the court of appeals, Plaintiff argued that Stuart Abramson had misappropriated his advance payments for legal services and commingled them into his and his wife's personal accounts, thereby breaching his fiduciary duty to his client. Eileen, therefore, became a co-fiduciary and agent of her husband. because she was a coparticipant in the misappropriation. Plaintiff also argued that Eileen, by her participation in her husband' law practice, become a co-conspirator with her husband, and that Ohio, therefore, had jurisdiction under the conspiracy theory of jurisdiction, R.C. 2307.382(A)(6).. Also, Ohio's assuming jurisdiction would not offend due process, citing *Burger King Corporation v Rudzewicz* (1985) 471 U.S. 462. The Stark County Court of Appeals affirmed the trial court, holding that, based on the allegations of

the complaint, Stuart Abramson's commingling of attorney fees with personal funds of Mrs. Abramson was "insufficient to establish minimum contacts of appellee with the state of Ohio." (Opinion, p .8: Apx. 21). The court presumed that "the trial court's silence on the discovery requests was a denial of said requests," and that "the trial court [had] permitted appellant to develop his theory of personal jurisdiction at the hearing." (Opinion p. 9: Apx. 22) The court of appeals found that King had not been denied a fair and meaningful hearing.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: When a motion to dismiss has been filed by an out-of-state, long-arm defendant alleging lack of personal jurisdiction, a plaintiff is denied procedural due process and a fair and meaningful evidentiary hearing when the trial court does not first allow discovery on the jurisdiction issue to determine whether the defendant has sufficient contacts with Ohio to satisfy R.C. 2007.382(A) and Civil Rule 4.3(A).

In this case, Plaintiff King was denied any fair or meaningful hearing on the issue of whether Ohio had personal jurisdiction over Eileen Abramson. Plaintiff's theory of the case was that Eileen had knowledge that her husband Stuart Abramson was depositing client's funds into her and her husband's personal accounts so that, upon his death, all of his assets, including his client's funds, would pass to her by contract, thereby leaving his estate insolvent. This information could only have been developed by King through discovery in New York. Yet, Eileen's New York and Ohio counsel stonewalled Plaintiff by not allowing their client to be deposed concerning any of the evidentiary facts showing her state of mind. The trial court simply ignored Plaintiff's request to allow him to establish critical facts that should have been presented at the evidentiary hearing. The court of appeals also failed to consider how the denial of discovery had prejudiced Plaintiff. How possibly could the court of appeals rule, arbitrarily and

without discovery, that, based solely on the complaint, commingling funds was "insufficient to establish minimum contacts of appellee with the state of Ohio"?

R.C. 2307.382(A)(6) and Civ.R.3(A)(9) provides that Ohio can exercise *in personam* jurisdiction over a nonresident who purposely commits a tortious act in Ohio by an injurious act committed outside of Ohio, when she might reasonably have expected that some person in Ohio would be injured thereby. Eileen Abramson's state of mind and knowledge of her participation in her deceased husband's law practice were essential, critical facts in deciding jurisdiction. The courts below simply were not interested in knowing anything about Stuart Abramson's law practice and Eileen Abramson's participation therein. Therefore, in the absence of discovery, they could not make an informed decision on the jurisdiction issue.

King argued that his case was analogous to this Court's decision to *Toma v Corrigan* (2001), 92 Ohio St.3d 589. *Toma* brought a prohibition action against the Cuyahoga County probate judge to prohibit him from exercising personal jurisdiction over Toma, an Oklahoma resident. Toma had obtained a power of attorney outside of Ohio over a then nonresident, who had become a resident of Cuyahoga County at the time of her death. He had, outside of Ohio, systematically converted her assets to his own use. This Court held that Cuyahoga County could proceed to exercise jurisdiction over Toma to recover the money that Toma had converted.

In this King case, it is Plaintiff's theory that Mrs. Abramson became a co-fiduciary with her husband in his misappropriation and commingling of King's legal fees, which should have been deposited in a trust account to be paid to himself only when earned. In short, this case is analogous to Toma in that Stuart Abramson and his wife together engaged in injurious actions in

New York that caused tortious injury to King in Ohio, which they both might have reasonably expected, thus conferring jurisdiction under R.C. 2307.382(A)(6) and Civ.R.4.3(A)(9).[3]

Plaintiff also claimed that Ohio had jurisdiction under the conspiracy theory of jurisdiction as recently discussed by the Delaware Chancery Court in *American International Group, Inc. v Greenberg* (February 2, 2009), 965 A.2d 763, 814-15. "Acts of one conspirator that satisfy the long-arm statute can be attributed to the other co-conspirators." *Id.,* 815. Conspirators, for jurisdictional purposes, are considered agents of each other when acting in furtherance of the conspiracy. This makes sense because the actions of one are the actions of the other. In *Instituto Bancario Italiano SpA v Hunter Eng'g Co., Inc. (Del. 1982), 449 A.2d 210, 222,* the court reasoned:

> In essence, this theory can be explained as follows. First, the acts of each co-conspirators are attributable to each of the other co-conspirators. Therefore, any act by a conspirator in furtherance of the conspiracy which takes place in the jurisdiction is attributable to the other conspirators. Consequently, if the purposeful act or acts of one conspirator are of a nature and quality that would subject the actor to the jurisdiction of the court, all of the conspirators are sjubject to the jurisdiction of the court.

Stuart Abramson misappropriated his client King's funds by deposited them into his and his wife's personal accounts. They, thus, became co-conspirators in the misappropriation of King's retainers. Stuart's misappropriation of his client's funds is attributable to Eileen. Their joint actions subject her to Ohio's jurisdiction. For jurisdictional purposes, she became his agent.

Plaintiff needed to conduct discovery in New York to develop his agency-conspiracy theory. The trial court simply ignored both his motion for an order allowing him to depose Eileen

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[3] This Court ruled that the Cuyahoga County Probate Court had jurisdiction over the tort of conversion even though the tort took place outside of Ohio because the economic consequences occurred in Ohio.

in Nassau County, New York, and Eileen's motion for a protective order.. Unfortunately, the court of appeals did not realize or appreciate that discovery was essential on the issue of whether Stuart and Eileen Abramson conspired in New York to cause tortious injury to King in Ohio. The court of appeals should have reversed the trial court and remanded the case to allow discovery.

CONCLUSION

This case involves the important issue of whether a plaintiff who alleges long-arm jurisdiction is prejudiced if the trial court bases its decision on personal jurisdiction solely on the allegations in the complaint without allowing the plaintiff the opportunity to discover facts in addition to those alleged in the complaint. If jurisdictional discovery is denied, the defendant can withhold information–as in this case-- by claiming that no discovery is allowed until the court first decides that it has jurisdiction This position is intolerable and denies substantial justice..

For these reasons, this case involves matters of public and great general interest. Appellant requests that this Court accept jurisdiction so that the important issue presented will be reviewed on the merits.

Respectfully submitted,

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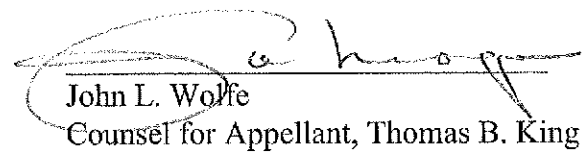
CERTIFICATION

I hereby certify that a copy of the foregoing Appellant Thomas B, King's Memorandum in Support of Jurisdiction was sent by regular U.S. mail to Vivianne Whalen, Attorney for Defendant-Appellee Eileen Abramson, Suite 206, Belden Village Tower, 4450 Belden Village Street, N.W., Canton, Ohio, 44718, on this 14th day of December, 2009.



John L. Wolfe
Counsel for Appellant, Thomas B. King

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NANCY S. PERKOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

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THOMAS B. KING

Plaintiff-Appellant

-vs-

JOHN W. SINON, ET AL.

Defendants-Appellees

JUDGES:
Hon. Sheila G. Farmer, P.J.
Hon. W. Scott Gwin, J.
Hon. Julie A. Edwards, J.

Case No. 2009CA00039

OPINION

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 2008CV02055

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY:

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Farmer, P.J.

{¶1} In February of 2005, appellant, Thomas King, entered into a retainer agreement with Stuart Abramson, Esq., an attorney in New York, to represent him in an EEOC action. Appellant paid Mr. Abramson $8,000 of a $14,000 fee upfront. Instead of this amount being deposited in a professional law office or trust account, it was deposited in accounts which were joint and survivorship accounts in the names of Mr. Abramson and his wife, appellee, Eileen Abramson.

{¶2} In April of 2005, Mr. Abramson "settled" and dismissed appellant's claims without appellant's knowledge. On December 7, 2005, appellant sent Mr. Abramson the balance of his fee, $6,000. This amount was also deposited into a joint account with appellee.

{¶3} On July 4, 2006, Mr. Abramson died. Thereafter, appellant asked appellee to open an estate so he could present a claim for a refund of unearned attorney fees. Appellee refused as all of Mr. Abramson's assets had passed to appellee and his children as joint and survivorship property. Appellant then petitioned the Nassau County Surrogate's Court in New York to appoint an administrator. A public administrator was appointed as administrator of Mr. Abramson's estate.

{¶4} On December 18, 2007, appellant presented his claims for the return of unearned attorney fees and legal malpractice to the public administrator. Appellant's claims were de facto rejected.

{¶5} On April 28, 2008, appellant filed a complaint against the public administrator and appellee in the Court of Common Pleas of Stark County, Ohio for the return of the unearned attorney fees and legal malpractice. On August 26, 2008,

appellee filed a motion to dismiss, claiming no personal jurisdiction. A hearing was held on December 18, 2008. By judgment entry filed December 19, 2008, the trial court granted the motion and dismissed appellee from the case. A final judgment awarding appellant $317,830.42 as against the public administrator for Mr. Abramson's estate and the estate of Mr. Abramson for unearned attorney fees and legal malpractice was filed on January 27, 2009.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶7} "THE TRIAL COURT BELOW ERRED IN SUSTAINING DEFENDANT-APPELLEE EILEEN ABRAMSON'S, MOTION TO DISMISS HER AS A PARTY-DEFENDANT ON THE GROUNDS THAT, UNDER OHIO'S LONG-ARM STATUTE, R.C. 2307.382, AND CIV. R. 4.3, OHIO HAD NO PERSONAL JURISDICTION OVER HER."

II

{¶8} "THE TRIAL COURT DEPRIVED PLAINTIFF OF A MEANINGFUL AND FAIR EVIDENTIARY HEARING ON THE ISSUE OF PERSONAL JURISDICTION OVER DEFENDANT-APPELLEE EILEEN ABRAMSON BY DENYING PLAINTIFF DISCOVERY ON WHETHER FURTHER FACTS COULD BE DEVELOPED THROUGH TAKING HER DEPOSITION IN NEW YORK AND REQUIRING HER TO RESPOND TO REQUESTS FOR ADMISSIONS TO SHOW THAT OHIO HAD PERSONAL JURISDICTION OVER HER."

I

{¶9} Appellant claims the trial court erred in granting appellee's motion to dismiss for lack of personal jurisdiction under Civ.R. 12(B)(2). We disagree.

{¶10} R.C. 2307.382 governs personal jurisdiction. Subsection (A) states in pertinent part:

{¶11} "(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

{¶12} "(1) Transacting any business in this state;

{¶13} "(3) Causing tortious injury by an act or omission in this state;

{¶14} "(6) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state;"

{¶15} Civ.R. 4.3, which governs out-of-state service, states the following in pertinent part:

{¶16} "(A) When service permitted

{¶17} "Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. 'Person' includes an individual, an individual's executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who, acting directly or by an agent, has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's:

{¶18} "(1) Transacting any business in this state;

{¶19} "(2) Contracting to supply services or goods in this state;

{¶20} "(9) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when the person to be served might reasonably have expected that some person would be injured by the act in this state;"

{¶21} It is appellant's position that appellee, as the spouse of Stuart Abramson, Esq., became a co-trustee and co-owner of the funds generated by Mr. Abramson's law practice:

{¶22} "5. Defendant Eileen Abramson is the surviving spouse of Stuart Abramson and was at all relevant times an agent, business partner, trustee, and co-owner of all assets and bank accounts, joint and survivorship, standing in the name of Stuart Abramson, both in his professional, business, and personal relationships.

{¶23} "6. Plaintiff has jurisdiction over Defendants under Ohio's long-arm statute, RC 2307.382 and Civil Rule 4.3 by reason of both Stuart Abramson and Eileen Abramson, through Stuart, having transacted business in Ohio and contracting to supply services to Plaintiff in Ohio and for other acts within the purview of Rule 4.3.

{¶24} "11. The above bank accounts were joint and survivorship accounts standing in the names of Stuart A. Abramson and his wife, Defendant Eileen Abramson. At no time did Stuart A. Abramson maintain identifiable bank accounts in New York State, either professional law office or trust accounts, as required by the Disciplinary Rules governing members of the New York bar.

{¶25} "14. After Stuart Abramson's death, Plaintiff demanded of Defendant Eileen Abramson that she and Mr. Abramson's estate reimburse him for all monies paid to Stuart Abramson, none of which had been earned.

{¶26} "15. Defendant Eileen Abramson refused to reimburse Plaintiff for any sums of money whatsoever, claiming that all Mr. Abramson's fees had been earned. Further, she refused to open any estate for Stuart Abramson, contending that there were no assets or funds belonging to him at the time of his death and that all of Mr. Abramson's funds and assets were joint and survivorship or tenancy by the entireties, which were not subject to administration by the New York Surrogate's Court." See, Appellant's Complaint filed April 28, 2008.

{¶27} On August 26, 2008, appellee filed a motion to dismiss with an accompanying affidavit. Within the affidavit, appellee avers that she is "a legal resident of the State of New York," did not transact "any business in the State of Ohio," and "was not an agent, employee, or business partner of Stuart A. Abramson in his law practice." Appellant does not dispute the first two averments.

{¶28} "In ruling on a Civ.R. 12(B)(2) motion to dismiss for lack of jurisdiction over the person, the trial court is not limited to the allegations in the complaint, but may consider other evidence contained in answers to interrogatories and counsel's affidavit filed with the motion." *Price v. Wheeling Dollar Savings & Trust Co.* (1983), 9 Ohio App.3d 315, paragraph one of the syllabus.

{¶29} In *Joffe v. Cable Tech, Inc.*, 163 Ohio App.3d 479, 2005-Ohio-4930, ¶10, our brethren from the Tenth District explained the following:

{¶30} "Once a defendant moves to dismiss for lack of personal jurisdiction, a plaintiff must establish that the trial court had personal jurisdiction over the defendant.***If the trial court determines personal jurisdiction without holding an evidentiary hearing, the trial court must 'view allegations in the pleadings and the documentary evidence in a light most favorable' to the plaintiff and resolve 'all reasonable competing inferences' in favor of the plaintiff.***Without an evidentiary hearing, a plaintiff need establish only a prima facie showing of personal jurisdiction.***A prima facie showing exists if a plaintiff produces sufficient evidence to allow reasonable minds to conclude that the trial court has personal jurisdiction.***If the plaintiff makes a prima facie showing of personal jurisdiction, the trial court shall not dismiss the complaint without holding an evidentiary hearing.***Lastly, personal jurisdiction is a question of law that we review de novo.***" (Citations omitted.)

{¶31} The trial court conducted an evidentiary hearing on December 18, 2008, and evidence was presented by Dennis Petrack as to the employment of Mr. Abramson as an attorney in EEOC hearings for himself and other postal workers. Mr. Petrack testified he personally hired Mr. Abramson to represent him, and his contact with appellee was social only, although Mr. Abramson did practice law out of his home. T. at 8, 10-11.

{¶32} The *Joffe* court further explained the following at ¶11:

{¶33} "When determining whether an Ohio court has personal jurisdiction over a nonresident defendant, the court must (1) determine whether Ohio's long-arm statute and the applicable civil rule confer personal jurisdiction and, if so, (2) whether granting jurisdiction under the statute and rule comports with the defendant's due process rights

under the Fourteenth Amendment to the United States Constitution.***Courts must engage in the two-step analysis because the long-arm statute does not give Ohio courts jurisdiction to the limits of the due process clause.***" (Citations omitted.)

{¶34} In *U.S. Sprint Communications Co., Ltd. Partnership v. Mr. K's Foods, Inc.* (1994), 68 Ohio St.3d 181, 186, the Supreme Court of Ohio noted the following:

{¶35} "The United States Supreme Court has held that in order for a state court to subject a foreign corporation to a judgment *in personam*, the corporation must 'have certain minimum contacts with [the state] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."***' (Citations omitted.) *International Shoe Co. v. Washington* (1945), 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102. In formulating this rule, the United States Supreme Court emphasized that the analysis 'cannot simply be mechanical or quantitative,' but rather whether due process is satisfied depends 'upon the quality and nature of the activity.' *Id.* at 319, 66 S.Ct. at 159-160, 90 L.Ed. at 103-104."

{¶36} We are required to accept as true the allegation that Mr. Abramson co-mingled attorney fees with personal funds in an account he shared with appellee. However, this allegation alone is insufficient to establish minimum contacts of appellee with the state of Ohio. The complaint does not establish agent or co-conspirator activity by appellee in Ohio.

{¶37} Upon review, we concur with the trial court that Ohio lacked personal jurisdiction over appellee.

{¶38} Assignment of Error I is denied.

II

{¶39} Appellant claims he was denied a fair hearing because the trial court did not permit discovery via a deposition of appellee in order to establish jurisdiction under R.C. 2307.382. We disagree.

{¶40} The trial court held an evidentiary hearing on December 18, 2008. It consisted solely of the testimony of Dennis Petrack who was instrumental in appellant's hiring of Mr. Abramson to represent appellant in Ohio. Mr. Petrack testified Mr. Abramson worked out of his home and traveled throughout the United States to represent persons in EEOC cases. T. at 10-12. Appellee was present during some of Mr. Petrack's visits, but his contact with her was social. Id.

{¶41} Prior to the evidentiary hearing, on November 26, 2008, appellant had requested an order to take appellee's deposition and had filed a request for admissions from her as well. Appellee then filed for a protective order on December 9, 2008. The trial court did not address the protective order in its judgment entry, nor did the trial court rule on the requests.

{¶42} It is appellant's position that the trial court should have permitted a deposition of appellee so appellant could have properly developed his conspiracy claim.

{¶43} Without a ruling on the issue, we cannot address the request for the furtherance of discovery. From the transcript of the evidentiary hearing which was limited to the issue of personal jurisdiction, we presume the trial court's silence on the discovery requests was a denial of said requests.

{¶44} We find the trial court permitted appellant to develop his theory of personal jurisdiction at the hearing.

{¶45} Upon review, we find appellant was not denied a fair hearing.

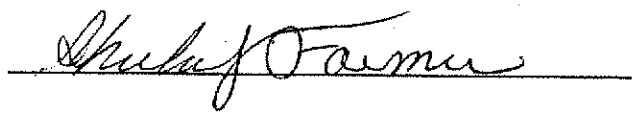
{¶46} Assignment of Error II is denied.

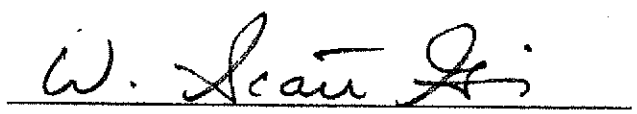
{¶47} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, P.J.

Gwin, J. and

Edwards, J. concur.





JUDGES

SGF/sg 1007

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

NANCY S. FEINGOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO
09 NOV -2 PM 2:37

THOMAS B. KING	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
JOHN W. SINON, ET AL.	:	
Defendants-Appellees	:	CASE NO. 2009CA00039

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed. Costs to appellant.

Sheila G. Farmer

W. Scott Gwin

Julie A. Edwards

JUDGES