

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

J.A.H. ENTERPRISES, INC., Plaintiff	CIVIL ACTION NO. 16-124-SDD-RLB
VERSUS	JUDGE: Hon. Shelly D. Dick
BLH EQUIPMENT, LLC, JAMES BLAKE EVERETT, SAM EVERETT, and ELA MISSION, LLC Defendants	MAGISTRATE: Richard L. Bourgeois, Jr.

MOTION TO DISMISS PURSUANT TO FRCP 12(B)(2)

NOW COMES, defendant, SAM EVERETT (hereinafter "defendant"), who pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, move this Court to enter an Order dismissing SAM EVERETT, with prejudice from Civil Action No. 3:16-cv-00124 for lack of personal jurisdiction over defendant. The reasons supporting this motion are more fully explained in the accompanying memorandum, which is adopted by reference pursuant to Fed. R. Civ. P. 10(c).

WHEREFORE, defendant respectfully pray for an order dismissing SAM EVERETT with prejudice at Plaintiff's cost and for all attorney's fees and cost associated with the filing of this motion.

Respectfully submitted,

RICHARDSON & LEVESQUE, L.L.C.

BY: /s/ WESLEY J. LEVESQUE
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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2016 a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Jean-Paul Layrisson, by operation of the court's electronic filing system.

/s/ WESLEY J. LEVESQUE

UNITED STATES DISTRICT COURT
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VERSUS	JUDGE: Hon. Shelly D. Dick
BLH EQUIPMENT, LLC, JAMES BLAKE EVERETT, SAM EVERETT, and ELA MISSION, LLC Defendants	MAGISTRATE: Richard L. Bourgeois, Jr.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO FRCP
12(B)(2)**

MAY IT PLEASE THE COURT:

Sam Everett submits this Memorandum in Support of his Motion to Dismiss pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, for lack of personal jurisdiction over the person.

INTRODUCTION AND BACKGROUND

J.A.H. Enterprises, Inc. (“JAH”) filed a lawsuit on May 27, 2014, in the Twenty First Judicial District Court for the Parish of Livingston, State of Louisiana, against BLH Enterprises, LLC (“BLH”), Blake Everett (“Blake”), Sam Everett (“Sam”) and ELA Mission, LLC (“ELA”) (the “Petition”). (Doc.1-2) JAH attempted service through Louisiana R.S. 13:3204 by certified mail and by the appointment of a private process server on each of the defendants. Service of process was never made. No return receipts were in the record. Thereafter JAH filed a motion to appoint an attorney pursuant to La. C.C.P. art. 5091 to represent BLH, Blake, Sam and ELA. Process was served on the attorney appointed on February 10, 2016. BLH, Blake, Sam and ELA filed a Notice of removal with this Court on February 25, 2016. (Doc. 1).

Sam Everett (“Sam”) is Blake’s father. (Sam’s Aff. #4). He is a resident and domiciled in the State of Mississippi. (Sam’s Aff. #1). He has never lived in Louisiana nor has he ever owned any property in Louisiana. (Sam’s Aff. #2,3). He is a retired accountant who assists Blake in his management of BLH primarily with respect to bookkeeping in a back office support role. (Sam’s Aff. #4). He has never had any ownership interest in BLH or ELA nor has he ever been an officer or manager of either. (Sam’s Aff. #5,8).

LAW AND ARGUMENT

It is the plaintiff’s burden of proof to establish that the court has jurisdiction over the particular defendant. *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir. 1985).

In deciding upon a motion to dismiss for lack of personal jurisdiction, courts within the Fifth Circuit accept the plaintiff’s allegations as true, other than those which are controverted by the defendant or are simply conclusory statements, and conflicts between the parties’ facts are resolved in the plaintiff’s favor. *Panda Brandywine v. Potomac*, 253 F.3d 865, 868 (5th Cir. 2001).

Jay Dykes, Jr. and Dykes and Dykes, L.L.C. versus Maverick Motion Picture Group, L.L.C., Maverick Films, L.L.C., Ironstar, L.L.C., Mark Morgan, Tara Pirnia, Austen Tayler, Guy Oseary, and Madonna Louise Ciccone (a/k/a Madonna), Civil Action No. 08-536-JJB-DLD. (M.D. La. Jan 14, 2011). Further, courts should not consider “a conclusory statement of law.” *Kennard v. Indianapolis Life Ins. Co.*, 2006 WL 3438653, at 4 (N.D. Tex. November 13, 2006).

In a diversity action, such as here, a federal district court may exercise personal jurisdiction over a defendant to the same extent as permitted by Louisiana law. *Id.* Louisiana’s long-arm statute, La. R.S. 13:3201, permits a court to exercise personal jurisdiction over non-residents consistent with the Louisiana State Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *A&L Energy, Inc. v. Pegasus Group*, 791 So.2d 1266, 1270 (La. 2001).

The "minimum contacts" test is based on the facts of each case with the question being, did the defendant purposely direct his activities towards the forum state, in such a way that he could reasonably foresee being haled into court there. *Luv N' Care Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 470 (5th Cir. 2006). "Minimum contacts" can be established either through contacts sufficient to assert specific jurisdiction, or contacts sufficient to assert general jurisdiction. *Alpine View Co.*, 205 F.3d at 215 (5th Cir. 2000).

Specific jurisdiction requires the defendant to purposefully avail himself of the privileges of doing business in Louisiana and the claim must arise from that contact. *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F. 3d 266, 271 (5th Cir. 2006). General jurisdiction requires "continuous and systematic" contacts, even if the action is unrelated to the defendant's activities. *Guidry v. U.S. Tobacco Co.*, 188 F. 3d 619,624 (5th Cir. 1999).

It should be noted that Louisiana recognizes the "fiduciary shield doctrine." *Southeast Wireless Network, Inc. v. U.S. Telemetry*, 954 So.2d 120, 128 (La. 2007). Under this doctrine, jurisdiction over a foreign corporation does not necessarily confer jurisdiction over the individual officers and employees of that corporation. *Cobb Industries, Inc. v. Hight*, 469 So.2d 1060 (La.App. 2 Cir.1985). The Eastern District of Louisiana has applied the "fiduciary shield doctrine" with respect to agents of a limited liability company. *Dreher v. DGU Insurance Associates, LLC*, No. 13-6792, 2014 WL 2861938, *2-3, 2014 U.S. Dist. LEXIS 85734, *5-6 (E.D.La. June 24, 2014).

Based on JAH's allegations, without considering those controverted and all conclusions or conclusory statements of law, there is no personal jurisdiction over Sam because of the lack of "minimum contacts." From the facts alleged in the Petition, there are no grounds to find Sam purposely direct his activities towards Louisiana, in such a way that he could reasonably foresee

being haled into court there. As discussed below, there is no specific jurisdiction or contacts sufficient to assert general jurisdiction.

The facts alleged by JAH in their Petition are separated into two categories and includes an introduction. (Doc.1-2). The first category (“Category 1”) is identified as “The Acquisition of the ‘Ivey House’.” (Petition par. 9-19). The second category (“Category 2”) is identified as “The Miscellaneous Claims of Offset or for Amounts Due.” (Petition par. 20-29).

In the introduction at paragraph 8 of the Petition, JAH alleges that Sam has been “personally involved in a number of different transactions with” JAH. JAH goes further by alleging that some of the transactions “gave rise to this petition.” In his affidavit, Sam denies he has ever personally done any transactions with JAH. Further, as will be discussed below, nowhere in the Petition does JAH identify any specific transactions which gave rise to this Petition involving Sam, personally, and JAH nor are there any factual allegations as to where the alleged transactions in which Sam was involved personally but which did not give rise to this Petition occurred.

In its Petition, with respect to the part of Category 1, JAH makes two factual allegations regarding acts in Louisiana. The first allegation is made in paragraph 11 and provides that Blake and JAH agreed to “partner up” in Livingston to sell the Crown Casino (the “Boat”). The second allegation is in paragraph 12 and provides that the buyer of the Boat was a “Louisiana buyer.”

With respect to Category 1, other than conclusions, there are no allegations that Sam had any contacts with Louisiana individually or on behalf of BLH. JAH’s own allegations recognize Sam was not a partner of JAH. Paragraph 14 identifies Blake as JAH’s partner (which Sam denies in his Affidavit). Despite this, JAH in paragraph 16, concludes that Sam was a partner of JAH and stood in a fiduciary relationship to them. There are no factual allegations to support this

conclusion. It should be noted to the extent Sam had any involvement (and there is no allegation of such involvement) it was in his capacity as providing back office assistance to BLH and thus, those actions alone may not form a basis for jurisdiction in Louisiana based on the fiduciary shield doctrine.

With respect to Category 2, JAH makes one factual allegation regarding acts in Louisiana. At paragraph 25, JAH alleges "(i)n connection with several other transactions, most of which occurred in Livingston Parish," JAH goes on in paragraph 25 to state that the transactions to which it is referring, involved agreements between Blake and/or BLH and JAH. Despite this admission and without any allegations as to why Sam would be responsible for the acts of Blake and/or BLH, JAH concludes that Sam owes them an accounting and is somehow liable to JAH for damages. Regarding the other transactions, which are part of Category 2, there are no factual allegations by JAH regarding jurisdiction. (Petition par. 20-24). Further, to the extent JAH is referring to Sam when it uses the term "Defendants," Sam, in his affidavit, denies JAH owes him any money, that he has any claim against JAH, or that he ever had any agreement with JAH. Again, as with the Category 1 transactions, there have been no factual allegations to establish jurisdiction over Sam in Louisiana with respect to the Category 2 transactions. Also, as with the Category 1 transactions, to the extent Sam had any involvement, (and there is no allegation of such involvement) it was in his capacity as providing back office assistance to BLH and thus, those actions may not form a basis for jurisdiction in Louisiana based on the fiduciary shield doctrine.

Based on the allegations in the Petition, Sam, individually, was not a party to the Category 1 transaction or any of the Category 2 transactions, which allegedly occurred in Livingston Parish. At paragraph 11, Blake is identified as the "partner" of JAH in connection

with the Category 1 transaction. As pointed out above, those transactions, which allegedly “mostly” occurred in Livingston Parish as per the Petition, only involved Blake and/or BLH.

The Petition includes six counts. Count 1 is a claim by JAH for an alleged breach of a fiduciary duty owed by Sam to JAH. (Petition par. 30-33). The basis for this claim is the conclusion Sam owes JAH a fiduciary duty. JAH, at paragraph 32, alleges Sam is a “joint venture partner in connection with the Ivey House sale....” Sam denies in his affidavit he was ever a partner of JAH. (Sam Aff. #10.). It should be pointed out the Ivey House is real property situated in the State of Mississippi. (Petition par. 12). The conclusion that a relationship existed such that there was a joint venture that included Sam and JAH is a conclusion of law and should not be considered for purposes of jurisdiction. *Grand Isle Campsites v. Cheek*, 262 So. 2d at 357 (La. 1972). JAH has alleged no facts to show a joint venture existed or did not exist between Sam and JAH. Also, JAH has not alleged any facts to establish that Sam, individually, had any special relationship of trust with JAH so that he somehow owed them a fiduciary duty. In his affidavit, Sam denies he has any relationship personally with JAH, particularly one that creates a position of trust with JAH.

Count 2 relates to alleged breaches of contract and bad faith breach of contract. Again, the allegations under this count are mere conclusions. (Petition par. 34-38). There are no factual allegations of any contractual relationship between Sam and JAH other than conclusions. In fact, the allegation in paragraph 35 of agreements with the “Defendants” to share profits and losses relating to the Boat, “the Ivey House and its furniture, fixtures and equipment and several other pieces of equipment, and/or machinery,” is inconsistent with JAH’s allegations in paragraph 11 of the Petition, that the partnership was between Blake and JAH and paragraph 25, that the agreement in connection with the transactions “mostly” in Livingston Parish was between Blake

and/or BLH and JAH. In his affidavit, Sam denies he had any contractual relationship personally with JAH. (Sam Aff. #15.).

Count 3 is a claim based on detrimental reliance. JAH concludes it relied on the promises of Sam to its detriment. (Petition par. 39-42). However, there are no allegations of any representations by Sam to JAH other than this conclusion. In his affidavit, Sam denies he made any promises to JAH. (Sam Aff. #18.).

Count 4 involves JAH's claims for "Conversion/Fraud/Misrepresentation." (Petition par. 43-47). Again, JAH concludes that Sam committed tortious acts against JAH. However, there are no factual allegations supporting this conclusion other than the allegation that "Defendants" placed certain assets in a limited liability company, which Sam in his affidavit, denies as he has never had any interest in any of the assets transferred and the sole owner of the limited liability company is Blake. (Sam Aff. #16.).

Count 5 is for declaratory relief regarding Sam's "claims for commissions, rentals, and any other damages and/or offsets...." (Petition par. 48-49). There is no allegation that Sam has any "claims for commissions, rentals, and any other damages and/or offsets....," other than this conclusion. Sam, in his affidavit, denies he is owed anything. (Sam Aff. #11.).

Count 6 is a demand for an accounting. (Petition par. 50-52). Again, JAH concludes Sam owes them an accounting. However, they have made no allegation that Sam owes them an accounting other than this conclusion. In his affidavit, Sam denies he owes JAH an accounting. (Sam Aff. #17.).

There is no specific jurisdiction because JAH has not alleged any activities (other than conclusions or facts controverted by Sam) on the part of Sam in Louisiana whether personally or on behalf of anyone. Since there are no allegations of any activities in Louisiana, it follows there

can be no general jurisdiction because there must be some alleged contacts to even determine if they are “substantial, continuous, and systematic.”

JAH may not rely on conclusions or facts controverted by Sam facts to establish jurisdiction. *Panda Brandywine*, 253 F.3d 865, 868. In particular it may not rely on a conclusory statement of law. *Kennard*, 2006 WL 3438653, at 4. Here, all of the allegations of JAH that relate to Sam are conclusions or conclusory statements of law. There are no facts suggesting that Sam personally purposefully availed himself of the privilege of conducting activities in Louisiana and invoked the benefits and protections of Louisiana's laws. As a result there is no personal jurisdiction over Sam.

CONCLUSION

Based on the foregoing reasons, Sam requests that he be dismissed as a party to this action for lack of personal jurisdiction.

Respectfully submitted,

RICHARDSON & LEVESQUE, L.L.C.

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2016 a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Jean-Paul Layrisson, by operation of the court's electronic filing system.

/s/ WESLEY J. LEVESQUE

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

J.A.H. ENTERPRISES, INC., Plaintiff	CIVIL ACTION NO. 16-124-SDD-RLB
VERSUS	JUDGE: Hon. Shelly D. Dick
BLH EQUIPMENT, LLC, JAMES BLAKE EVERETT, SAM EVERETT, and ELA MISSION, LLC Defendants	MAGISTRATE: Richard L. Bourgeois, Jr.

ORDER

Considering the above and foregoing:

IT IS HEREBY ORDERED that defendant, SAM EVERETT's motion is GRANTED and defendant SAM EVERETT is dismissed from Civil Action No. 3:16-00124 with prejudice at Plaintiff's cost and for attorney's fees and costs associated with the filing of this motion.

Baton Rouge, Louisiana this ___ day of _____, 2016

JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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VERSUS	JUDGE: Hon. Shelly D. Dick
BLH EQUIPMENT, LLC, JAMES BLAKE EVERETT, SAM EVERETT, and ELA MISSION, LLC Defendants	MAGISTRATE: Richard L. Bourgeois, Jr.

AFFIDAVIT OF SAM EVERETT

STATE OF LOUISIANA
ST TAMMANY PARISH

BEFORE ME, the undersigned Notary Public, this day personally appeared SAM EVERETT who, after being by me duly sworn did declare as follows:


1. I am a resident of and domiciled in the State of Mississippi.
2. I have never lived in Louisiana.
3. I have never owned any property in Louisiana.
4. I am a retired accountant who assists my son James Blake Everett ("Blake") in his management of BLH Equipment, LLC ("BLH") primarily with respect to bookkeeping in a back office support role only.
5. I have never had any ownership in BLH nor have I ever been an officer or manager.
6. Blake formed ELA Mission, LLC, ("ELA") a Mississippi limited liability company on July 10, 2013.
7. Blake is the sole member and manager of ELA.
8. I have never had any ownership interest in ELA nor have I ever been an officer or manager.

- 9. I have never personally done any transactions with JAH Enterprises, Inc. ("JAH").
- 10. I have never been a partner of JAH.
- 11. JAH does not owe me any money.
- 12. I have never personally had a claim against JAH.
- 13. I have never personally had any agreement with JAH.
- 14. I have never had any relationship personally with JAH and in particular I have no relationship, which would create a position of trust.
- 15. I have never personally had any contractual relationship personally with JAH.
- 16. I deny the allegations of JAH in paragraph 45. of the Petition as I have never had any interest in any of the assets transferred and the sole owner of the limited liability company is Blake.
- 17. I do not personally owe JAH an accounting.
- 18. I have personal knowledge of the foregoing facts.

SWORN TO AND SUBSCRIBED, before me, this 21st day of March, 2016.



SAM EVERETT



Notary Public
Printed Name: _____
Bar/Notary No.: _____

Richard A. Richardson
Attorney at Law
Notary Public
State of Louisiana
LSBA #17217

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

J.A.H. ENTERPRISES, INC., Plaintiff	CIVIL ACTION NO. 16-124-SDD-RLB
VERSUS	JUDGE: Hon. Shelly D. Dick
BLH EQUIPMENT, LLC, JAMES BLAKE EVERETT, SAM EVERETT, and ELA MISSION, LLC Defendants	MAGISTRATE: Richard L. Bourgeois, Jr.

**MOTION FOR HEARING AND REQUEST FOR ORAL ARGUMENT ON
MOTION TO DISMISS PURSUANT TO FRCP 12(B)(2)**

Pursuant to Local Civil Rule 78, **defendant**, SAM EVERETT (hereinafter “defendant”), moves this Court to enter an Order granting defendants Motion for Hearing and Request for Oral Argument on Motion to Dismiss Pursuant to FRCP 12(b)(2). The reasons supporting this motion are more fully explained in the accompanying memorandum, which is adopted by reference pursuant to Fed. R. Civ. P. 10(c).

WHEREFORE, defendant respectfully prays for an order granting SAM EVERETT’s Motion for Hearing and Request for Oral Argument on Motion to Dismiss Pursuant to FRCP 12(b)(2).

Respectfully submitted,

RICHARDSON & LEVESQUE, L.L.C.

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