

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVE CAMPBELL and
DAWN CAMPBELL,

Plaintiffs,

v.

NATIONAL DEVELOPMENT COMPANY,
INC., CLYDE ENGLE, WOODLAND
LAKES TRUSTEESHIP, INC., FRANCIS
OSCAR DARIAN, JR., LAWRENCE DEIS,
CRAIG KINMANN, ARTHUR HURLBURT,
RUSSELL RICHARDS, DEBORAH
CLUTTER, PATTY EDGAR, CRYSTAL
KALLANSRUD, SIMONE HATTON,
LAWRENCE ANDERSON, LINDA
WADE, CHERYL DAVIS, AND
TOM COLYOTT,

Defendants.

C. A. No. 4:12-cv-00165

DEFENDANTS' MOTION TO DISMISS

TO THE HONORABLE JUDGE ELLISON:

Defendants Woodland Lakes Trusteeship, Inc., Deborah Clutter, Lawrence Deis, Francis Darian, Jr., Russell Richards, Craig Kinmann, Arthur Hurlburt, Thomas Colyott, Linda Wade, Crystal Kallansrud, Patty Edgar, Simone Hatton, Cheryl Davis, and Larry Anderson respectfully request that this Court issue an order dismissing this action pursuant to Federal Rule of Civil Procedure 12(b)(2) for the following reasons:

1. Nature and Stage of Proceedings.

In this case, plaintiffs Dawn and Dave Campbell sued Woodland Lakes Trusteeship, Inc., Deborah Clutter, Lawrence Deis, Francis Darian, Jr., Russell Richards, Craig Kinmann, Arthur

Hurlburt, Thomas Colyott, Linda Wade, Crystal Kallansrud, Patty Edgar, Simone Hatton, Cheryl Davis, and Larry Anderson.¹ All of these defendants are nonresidents that lack contacts with Texas and thus move that this Court dismiss plaintiffs' claims against them for lack of personal jurisdiction.

2. Statement of Issues and Summary of the Argument.

Plaintiffs concede that "Defendants are residents of Missouri, Illinois, and North Carolina." (Dkt. Entry #1 at 9.) When a nonresident defendant moves to dismiss for lack of personal jurisdiction, it is the plaintiff's burden to establish a *prima facie* case for personal jurisdiction. *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir. 1985); *see also Ham v. La Cienega Music Co.*, 4 F.3d 413, 415 (5th Cir. 1993). Here the plaintiffs' claims arise out of the plaintiffs' ownership of property in the Woodland Lakes Development in Sullivan, Missouri. There are no allegations that the defendants named in this case had the kind of "continuous and systematic contacts" with Texas that would support a finding of general jurisdiction. Accordingly, plaintiffs must establish a *prima facie* case that this Court has specific jurisdiction over each of the defendants.

To establish specific jurisdiction, plaintiffs must make a *prima facie* showing that each of the defendants (1) purposefully availed themselves of the benefits and protections of the forum through their "minimum contacts" with Texas; and (2) the exercise of jurisdiction over each of the defendants does not offend traditional notions of fair play and substantial justice. *Latshaw v. Johnston*, 167 F.3d 208, 211 (5th Cir. 1999); *see Burger King v. Rudzewicz*, 471 U.S. 462, 478 (1985); *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Specific personal jurisdiction cannot arise solely from random, fortuitous or attenuated contacts, or from the

¹ Plaintiffs also sued National Development Company, Inc. and Clyde Engel. The undersigned counsel believes that National Development Company no longer exists. Neither National Development Company nor Clyde Engel has been served.

unilateral actions of any other party, including plaintiffs. See *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 481 F.3d 309, 311 (5th Cir. 2007).

Plaintiffs cannot satisfy their burden to establish that each of the defendants purposely availed themselves of the benefits of Texas. Therefore, the defendants request that this Court dismiss this action for lack of personal jurisdiction.

3. Facts.

A. *This action.* The Campbells filed this action complaining (1) that they had been "banned from the Woodland Lakes Development with no stated reason....," and (2) that Woodland Lakes Trusteeship "did display an arbitrary and capricious abuse of authority in this case, in depriving the Campbells of their money and their property without due process of the law." (Dkt. Entry #1 at 10.) The Campbells do not allege that any of the events underlying their complaints occurred in Texas or that any of the defendants have the necessary minimum contacts with Texas. The defendants now move to dismiss the claims against them, because the Court lacks personal jurisdiction over them.

B. *National Development Company, Inc.* National Development Company has had no involvement with the Woodland Lakes Development since 1996. (Exhibit 1, Clutter Affidavit at ¶10.)

C. *Woodland Lakes Trusteeship, Inc.* Woodland Lakes Trusteeship is a Missouri Company that operates Woodland Lakes Development. (Dkt. Entry #1 at 6; Exhibit 1 at ¶ 7.) Woodland Lakes does not advertise or solicit business in Texas. (Exhibit 1 at ¶ 8.) Woodland Lakes does not maintain a website. (*Id.* at ¶ 9.)

D. *Francis Oscar Darian, Jr.* Francis Oscar Darian, Jr. is a resident of Missouri. (Exhibit 2, Darian Affidavit at ¶ 2.) Mr. Darian has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

E. *Lawrence Deis.* Lawrence Deis is a resident of Missouri. (Exhibit 3, Deis Affidavit at ¶ 2.) Mr. Deis has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

F. *Craig Kinmann.* Craig Kinmann is a resident of Missouri. (Exhibit 4, Kinmann Affidavit at ¶ 2.) Mr. Kinmann has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

G. *Arthur Hurlburt.* Arthur Hurlburt is a resident of Missouri. (Exhibit 5, Hurlburt Affidavit at ¶ 2.) Mr. Hurlburt has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

H. *Russell Richards.* Russell Richards is a resident of Missouri. (Exhibit 6, Richards Affidavit at ¶ 2.) Mr. Richards has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

I. *Deborah Clutter.* Deborah Clutter is a resident of Missouri. (Exhibit 1, Clutter Affidavit at ¶ 2.) Ms. Clutter has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

J. *Patty Edgar.* Patty Edgar is a resident of Missouri. (Exhibit 7, Edgar Affidavit at ¶ 2.) Ms. Edgar has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

J. *Crystal Kallansrud*. Crystal Kallansrud is a resident of Missouri. (Exhibit 8, Kallansrud Affidavit at ¶ 2.) Ms. Kallansrud has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

K. *Simone Hatton*. Simone Hatton is a resident of Missouri. (Exhibit 9, Hatton Affidavit at ¶ 2.) Ms. Hatton has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

L. *Lawrence Anderson*. Lawrence Anderson is a resident of Missouri. (Exhibit 10, Anderson Affidavit at ¶ 2.) Mr. Anderson has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

M. *Linda Wade*. Linda Wade is a resident of Missouri. (Exhibit 11, Wade Affidavit at ¶ 2.) Ms. Wade has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

N. *Cheryl Davis*. Cheryl Davis is a resident of Missouri. (Exhibit 12, Davis Affidavit at ¶ 2.) Ms. Davis has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

O. *Tom Colyott*. Tom Colyott is a resident of Missouri. (Exhibit 13, Colyott Affidavit at ¶ 2.) Mr. Colyott has never maintained any personal or business address, bank account, or telephone number in Texas. (*Id.* ¶¶ 3-5.)

4. Argument.

A. It is plaintiffs' burden to establish a prima facie case for personal jurisdiction.

When a nonresident defendant moves to dismiss for lack of personal jurisdiction, the plaintiff must establish a *prima facie* case for jurisdiction. *Stuart*, 772 F.2d at 1192; *see also Ham*, 4 F.3d at 415; *Wilson v. Belin*, 20 F.3d 644, 648 (5th Cir. 1994). A court cannot exercise

personal jurisdiction over a nonresident defendant unless the defendant has personally availed itself of the benefits and protections of the state's laws by establishing "minimum contacts" with the state. *International Shoe*, 326 U.S. at 316. A defendant's contacts with the forum state must be such that the defendant should "reasonably anticipate being hauled into court" there. *World-Wide Volkswagen*, 444 U.S. 286, 296 (1980). As shown by their affidavits, the defendants do not have the "minimum contacts" with the State of Texas that would lead them to anticipate being "hauled into" Texas court.

Personal jurisdiction can be established by a showing of general or specific jurisdiction. The Campbells have not alleged any "continuous and systematic" contacts to support a finding of general jurisdiction. Accordingly, the Campbells must establish that this Court has specific personal jurisdiction over each defendant.

To establish specific personal jurisdiction, the Campbells must make a *prima facie* case showing that (1) each defendant "purposefully availed [itself or himself] of the benefits and protections of the forum state by establishing 'minimum contacts' with the forum state; and (2) the exercise of jurisdiction over [the defendant] does not offend 'traditional notions of fair play and substantial justice.'" *Latshaw*, 167 F.3d at 211. Jurisdiction cannot arise solely from random, fortuitous or attenuated contacts, or from the unilateral actions of any other party. See *Moncrief Oil Int'l Inc.*, 481 F.3d at 311. The Campbells make no attempt to meet this burden, nor could they, as defendants have had no contact at all with the State of Texas.

B. Exercising personal jurisdiction over the defendants would offend traditional notions of fair play and substantial justice.

When assessing "fair play and substantial justice," the Court balances the following factors: (1) the burden on the nonresident defendant of having to defend itself in the forum; (2) the interests of the forum state in the case; (3) the plaintiff's interest in obtaining convenient and

effective relief; (4) the interstate judicial system's interest in the most efficient resolution of controversies; and (5) the shared interests of the states in furthering fundamental social policies. *Burger King*, 471 U.S. at 478. A consideration of these factors warrants dismissal. It would be unduly burdensome to force these Missouri defendants to come to Texas to defend against charges made by a Missouri resident that relate to the deprivation of real property located in Missouri.

C. Conclusion.

The Campbells cannot satisfy their burden of showing that the defendants are subject to personal jurisdiction in Texas. Therefore, this Court should dismiss the Campbells' complaint.

Respectfully submitted,

/s/ Casey T. Wallace

Casey T. Wallace
State Bar No. 00795827
Southern District Bar No. 20117
1221 McKinney Street, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2516
Facsimile: (713) 236-5695
casey.wallace@haynesboone.com

OF COUNSEL:

Mike A. Stafford
State Bar No. 18996970
Southern District Bar No. 20898
mike.stafford@haynesboone.com
Katharine D. David
State Bar No. 24045749
Southern District Bar No. 576771
kate.david@haynesboone.com
HAYNES AND BOONE, LLP
1221 McKinney Street, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Facsimile: (713) 547-2600

ATTORNEY-IN-CHARGE FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February 2012, a true and correct copy of this motion was filed with the Court's ECF system and was served on the following parties via First Class and certified mail, return receipt requested:

Plaintiffs, Pro Se:

Dave and Dawn Campbell
109 Rainbow Drive #921
Livingston, Texas 77399

/s/ Casey T. Wallace
Casey T. Wallace