

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

QUAN-EN YANG, et al.,

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Plaintiffs,

*

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v.

Case No.: 403885-V

*

G & C GULF, INC., et al.,

*

Defendants.

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JOHN SPANOS' MOTION TO DISMISS PLAINTIFFS' SIXTH AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND TO QUASH SERVICE OF PROCESS OF THE COMPLAINT, AND SUBPOENAS SEEKING DISCOVERY FROM JOHN SPANOS

JOHN SPANOS, by counsel, Appearing Specially to contest jurisdiction and to quash service of process states as follows:

1. John Spanos is an individual who resides in Falls Church, Virginia. He is an investor and one of the Members of a Virginia limited liability company, i.e. New Hampshire Avenue Shopping Center, LLC.

2. New Hampshire Avenue Shopping Center, LLC, a Virginia limited liability company, is the owner of a shopping located at 6822 New Hampshire Avenue, Takoma Park, Maryland. 20912.

3. Plaintiffs, in their Sixth Amended Complaint, allege as the basis for their claim against John Spanos that vehicles were towed from a parking lot owned by him that is located at a shopping center also owned by him located at 6822 New Hampshire Avenue, Takoma Park, Maryland. He is not the owner of the shopping center or the parking lot. He is merely one of the Members of a Virginia limited liability company that is the owner.

4. The Sixth Amended Complaint was purported to have been served on John Spanos through C. Thomas Brown. Docket Number 909 states “Affidavit of Service on Summons: Served as to... John Spanos W/S/O Christine Lanenburg on 03/05/2020”
5. Neither C. Thomas Brown nor Christine Langenburg were authorized to accept service of process on behalf of John Spanos and the service on someone other than John Spanos is facially invalid.
6. John Spanos has never been served with the Sixth Amended Complaint.
7. Similarly, Plaintiffs’ claim to have served subpoenas seeking discovery from John Spanos and purported to have the subpoenas served on him through C. Thomas Brown.
8. C. Thomas Brown was not authorized to accept process on behalf of John Spanos.
9. John Spanos is not the owner of the shopping center or the parking lot located at 6822 New Hampshire Avenue, Takoma Park, Maryland as alleged in the Sixth Amended Complaint.
10. The real estate tax records of Montgomery County, Maryland show that the owner of the shopping center and the parking lot is New Hampshire Avenue Shopping Center, LLC, a Virginia limited liability company
11. John Spanos is not a citizen or resident of the State of Maryland and does not regularly or persistently engage in, conduct, or otherwise do business in the State of Maryland.
12. Similarly, John Spanos has never authorized C. Thomas Brown to accept service of process of any kind on his behalf.
13. This Court lacks personal jurisdiction over John Spanos, lacks subject matter jurisdiction over this matter with respect to John Spanos and service of process in this matter was defective.

14. Due to the lack of jurisdiction over John Spanos and due to the defective service of process, John Spanos should be dismissed, as a defendant in these proceedings and service of process should be quashed.

WHEREFORE it is prayed that this Court grant this motion and dismiss the Sixth Amended Complaint as to John Spanos with prejudice, quash service of process, and grant such other and further relief as may be proper.



Erik B. Lawson, Esquire (CPF 2001220058)
SILVER & BROWN, P.C.
10621 Jones Street, Suite 101
Fairfax, Virginia 22030
tom@virginia-lawyers.net
erik@virginia-lawyers.net
T (703) 591-6666
F (703) 591-5618
Attorney for John Spanos

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April 2020 the foregoing Answer mailed first class postage prepaid to:

Richard S. Gordon, Esquire
rgordon@GWCfirm.com
Kirsten Krogen, Esquire
kkrogen@gwcfirm.com
Benjamin H. Carney
Bcarney@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
100 West Pennsylvania Avenue
Suite 100
Baltimore, Maryland 21204
(410) 825-2300
(410) 825-0066 – Facsimile

James Ulwick
Jean E. Lewis
Kramon & Graham, PA
One South Street
Suite 2600
Baltimore, Maryland 21202

Matthew Patner
Patner Law
110 N. Washington Street
Suite 340
Rockville, Maryland 20850

Gardner M. Duvall
Patrick D. McKeivitt
Whiteford, Taylor & Preston, LLP
Seven Saint Paul Street
Suite 1500
Baltimore, Maryland 21202

Thomas D. Murphy
Murphy & Mood, P.C.
Adams Law Center
31 Wood Lane
Rockville, Maryland 20850

Michael G. Campbell
Anne Marie "Callie" Canemark
Miller, Miller & Canby
200 B. Monroe Street
Rockville, Maryland 20850

A handwritten signature in black ink, appearing to read "Erik B. Lawson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Erik B. Lawson

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MEMORANDUM IN SUPPORT OF JOHN SPANOS' MOTION TO DISMISS PLAINTIFFS' SIXTH AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND TO QUASH SERVICE OF PROCESS OF THE COMPLAINT, AND SUBPOENAS SEEKING DISCOVERY FROM JOHN SPANOS

JOHN SPANOS¹, by Counsel, Appearing Specially to contest jurisdiction and to quash service of process states as follows:

ARGUMENT

This is a Motion to Dismiss for lack of personal jurisdiction made pursuant to Md. Rule 2-322(a). If factual determinations are necessary in deciding the motion, the court may consider affidavits or testimony taken in connection with any hearing. Beyond v. Realtime, 388 Md. 1, 11–12, 878 A.2d 567, 573–74 (2005). The burden of alleging and proving the existence of a factual basis for the exercise of personal jurisdiction, once the issue has been raised, is upon the Plaintiff.

Id. The Court of Appeals of Maryland has held that:

¹ Referred to in the Complaint as “NHC.”

Determining whether a Maryland court may exercise jurisdiction over an out-of-state defendant entails dual considerations. First, we consider whether the requirements of Maryland's long-arm statute are satisfied. Second, we consider whether the exercise of personal jurisdiction comports with the requirements imposed by the Due Process Clause of the Fourteenth Amendment.

CSR, Ltd. v. Taylor, 411 Md. 457, 472–73, 983 A.2d 492, 501 (2009) (internal citations omitted). Although Maryland's long-arm statute authorizes jurisdiction to the extent allowed by due process, the plaintiff must identify a specific provision authorizing personal jurisdiction. Aphena Pharma Sols.-Maryland LLC v. BioZone Labs., Inc., 912 F. Supp. 2d 309, 315 (D. Md. 2012). Here, neither the statute nor the due process clause are satisfied. Furthermore, Mr. Spanos has not been served with process in this case. The service upon persons other than Mr. Spanos at Docket Number 909 is facially invalid and should be quashed.

There is no personal jurisdiction over Mr. Spanos because service of process is facially invalid

John Spanos is an individual and a citizen and resident of Virginia. He has not appointed anyone to accept service of process on his behalf. The only service of the Sixth Amended Complaint is on C. Thomas Brown or Christine Langenberg. Neither Mr. Brown nor Ms. Langenberg are authorized agents of Mr. Spanos for accepting service of process. That service of process should be quashed because it was not made on Mr. Spanos; and since service is invalid, this Court lacks personal jurisdiction over Mr. Spanos. Similarly, the service of discovery subpoenas suffers from the same infirmity as the service of process of the Sixth Amended Complaint. It is respectfully submitted that service of process against Mr. Spanos through unauthorized persons should be quashed.

This Court lacks personal jurisdiction over John Spanos because he does not own the property he is alleged to own in the Complaint and he did not do any tortious act in Maryland

John Spanos does not own property in Maryland and did not engage in any tortious activities in Maryland. Mr. Spanos is simply one of the members of New Hampshire Avenue Shopping Center, LLC, a Virginia LLC, which is the record owner of the property listed at the address in the caption of the Sixth Amended Complaint. Mr. Spanos is a Virginia resident and citizen and cannot be brought to Court in Maryland without an allegation of and proof of minimum contacts with the State. The Plaintiffs have failed to allege and cannot prove those contacts with respect to Mr. Spanos.

While New Hampshire Avenue Shopping Center, LLC owns property in Maryland, it is not a party to this suit. Furthermore, the ownership or rental of property within Maryland is insufficient to confer personal jurisdiction over either the business entity which owns or rents property within the State or its individual shareholders or members.

The State of Maryland does not exercise personal jurisdiction over persons or entities based on their ownership or rental of property within the State. See Cappel v. Riaso, LLC, 197 Md. App. 347, (2011). Therefore, even if the allegation in the Complaint that John Spanos owned a parking lot in Maryland were true, which it is not, it would be insufficient to provide this Court with Personal Jurisdiction over Mr. Spanos.

Even where a business is subject to Maryland jurisdiction, however, Maryland does not exercise personal jurisdiction against an individual owner of a company that owns or rents property within Maryland by virtue of that person's ownership of a membership interest in a company. See, e.g., Harte-Hanks Direct Mkt., 299 F.Supp.2d at 513 (“Personal jurisdiction over an individual officer, director, or employee of a corporation does not automatically flow from personal jurisdiction over the corporation.”); Birrane v. Master Collectors, Inc., 738 F.Supp. 167, 169 (D.Md.1990) (finding “no basis whatsoever for holding that merely because a corporation transacts

business in the state ... or has other substantial contacts with the state, an individual who is its principal should be deemed to have engaged in those activities personally”); Bowmar Publ'g Co., 445 F.Supp. at 785 (stating that a court cannot obtain jurisdiction over individual officers or employees based “upon jurisdiction over the corporation”). Thus Plaintiff cannot prove personal jurisdiction in this case based on Mr. Spanos’s ownership of a company that owns property in Maryland. Such contacts are insufficient.

The Sixth Amended Complaint fails to allege specific jurisdictional facts which if proven would allow this Court to exercise personal jurisdiction over Mr. Spanos

Paragraph 22 alleges that all the Defendants are subject to personal jurisdiction because of Md. Cts. &Jud. Proc. Code Ann. § 6-103(b) because each of them “transact business and performs work and services in the State of Maryland, contracts to supply services in the State of Maryland, regularly does and solicits business and engages in other persistent course of conduct in the State of Maryland, cause tortious injury in the State by acts and omissions in the State, and derive substantial revenue from services in the State.” This paragraph is merely a legal conclusion which recounts the text of the statute. Importantly, while the allegations may be true as to other defendants, the allegation is false as applied to Mr. Spanos.

The Sixth Amended Complaint attempts to gloss over its failure to plead specific facts sufficient to demonstrate personal jurisdiction over Mr. Spanos by conflating the actions and omissions of an allegedly illegal Maryland towing business, G&G, with the owners of real property where such illegal tows took place by referring to the “Defendants” collectively. See, e.g., ¶¶ 1, 5, 6, 90. None of the named Plaintiffs were allegedly impacted by anything John Spanos allegedly did or didn’t do personally. See particular instances of allegedly illegal tows at ¶¶ 36-89. None of the three specific cases of G&G making allegedly illegal tows, allegedly occurred on Mr. Spanos’s property or even the property of the entity of which Mr. Spanos is a Member. Id.

Instead, the Complaint alleges that some cars were towed by G&G from a Parking Lot owned by John Spanos. ¶¶ 163-178. No such Parking Lot exists. It is clear that by using vague conclusory allegations and by improperly conflating the actions of John Spanos with the other defendants and with G&G that the Plaintiff has nothing more than speculation or conclusory assertions about John Spanos' contacts with Maryland.

The only specific allegation of contact, the ownership of real property, is demonstrably false and insufficient to demonstrate personal jurisdiction over Mr. Spanos. The Sixth Amended Complaint falsely alleges that John Spanos owns one of the parcels of real property where some of the allegedly illegal tows allegedly took place, and then alleges that he is liable for the illegal tows performed by an independent contractor. ¶ 14. Yet, the only legal basis for holding that Mr. Spanos would be liable for the illegal tows by G&G is the false assertion that he owned the property where the tows occurred. The Sixth Amended Complaint fails to identify any specific tow which was allegedly illegal that took place on a property owned by Mr. Spanos.

By failing to meaningfully differentiate between the alleged bad actor and the mere alleged property owner, and by failing to sue the actual record owner of the real property, and instead suing a member of an entity that owns a shopping center, the Sixth Amended Complaint misleads this Court about the true state of facts in its zeal to pursue other, differently situated Defendants. Given that Mr. Spanos is simply an owner of a business that owns a shopping center, the Plaintiff has neither alleged, nor can it prove, personal jurisdiction in this case, even if it had properly served Mr. Spanos in Virginia, which it did not.

WHEREFORE it is prayed that this Court grant this motion and dismiss the Sixth Amended Complaint as to John Spanos with prejudice and grant such other and further relief as may be proper.



Erik B. Lawson, Esquire (CPF 2001220058)
SILVER & BROWN, P.C.
10621 Jones Street, Suite 101
Fairfax, Virginia 22030
tom@virginia-lawyers.net
erik@virginia-lawyers.net
T (703) 591-6666
F (703) 591-5618
Attorney for John Spanos

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April 2020 the foregoing Memorandum was mailed first class postage prepaid to:

Richard S. Gordon, Esquire
rgordon@GWCfirm.com
Kirsten Krogen, Esquire
kkrogen@gwcfirm.com
Benjamin H. Carney
Bcarney@GWCfirm.com
GORDON, WOLF & CARNEY, CHTD.
100 West Pennsylvania Avenue
Suite 100
Baltimore, Maryland 21204
(410) 825-2300
(410) 825-0066 – Facsimile

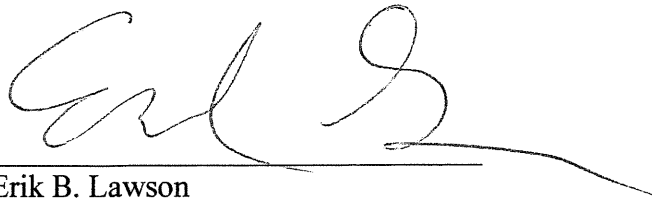
James Ulwick
Jean E. Lewis
Kramon & Graham, PA
One South Street
Suite 2600
Baltimore, Maryland 21202

Matthew Patner
Patner Law
110 N. Washington Street
Suite 340
Rockville, Maryland 20850

Gardner M. Duvall
Patrick D. McKeivitt
Whiteford, Taylor & Preston, LLP
Seven Saint Paul Street
Suite 1500
Baltimore, Maryland 21202

Thomas D. Murphy
Murphy & Mood, P.C.
Adams Law Center
31 Wood Lane
Rockville, Maryland 20850

Michael G. Campbell
Anne Marie "Callie" Canemark
Miller, Miller & Canby
200 B. Monroe Street
Rockville, Maryland 20850

A handwritten signature in black ink, appearing to read "Erik B. Lawson", written over a horizontal line.

Erik B. Lawson