11-4-2016

H2O Environmental, Inc. v. Proimtu MMI, LLC Appellant's Brief Dckt. 44148

IN THE SUPREME COURT OF THE STATE OF IDAHO

H2O ENVIRONMENTAL, INC., an Idaho Company, Plaintiff/Appellant, vs. PROIMTU MMI, LLC, a Nevada company, Defendant/Respondent.	Supreme Court No. 44143 District Court No. CV-OC-1505838

Supreme Court No. 44148

APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT.

HONORABLE TIMOTHY HANSEN, DISTRICT JUDGE PRESIDING.

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I. STATEMENT OF THE CASE

A. Nature of the Case

H2O Environmental, Inc. ("H2O") seeks a determination that Idaho courts have specific personal jurisdiction over out-of-state Defendant Proimtu, MMI, LLC ("Proimtu"). More specifically, Plaintiff/Appellant seeks a ruling that where Proimtu contracted with H2O for H2O to provide weekly payroll services and Proimtu was put on notice at the inception of the contractual relationship that those services were going to be provided at H2O's Boise office utilizing H2O's Boise bank for processing, Idaho's exercise of jurisdiction over Proimtu comports with the minimum contacts standards established by cases interpreting the Due Process Clause of the U.S. Constitution. Alternatively, Proimtu made a general appearance and submitted to Idaho jurisdiction by filing a pleading in this case which is not exempted by Rule 4.1(b).

B. Concise Statement of Facts and Course of Proceedings Below

Plaintiff/Appellant H2O is a Nevada company registered with the Idaho Secretary of the State to do business in Idaho, and is headquartered in Boise, Idaho. R. Vol. I, p. 36, ¶3. Defendant/Respondent Proimtu is also a Nevada company that managed construction services on behalf of its general contractor TRP International ("TRP") at a solar-panel plant outside of Tonapah, Nevada. R. Vol. I, pp. 12, 38. In November 2012, Proimtu and H2O entered into an oral contract wherein H2O agreed to manage the hiring, compensation, and Davis Bacon wage reporting of construction labor employees on behalf of Proimtu at the Tonapah solar-panel plant. R. Vol. I, p. 36, ¶4.

The oral contract (hereinafter "Payroll Contract") was consummated through an exchange of phone calls and emails between Proimtu and H2O's CFO, Ed Savre, and CEO, John Bradley,

respectively, both of whom were located in Boise, Idaho. R. Vol. 1, p. 36, ¶¶5, 6. At the onset of the contract, Proimtu sent an email request to John Bradley in Boise, Idaho requesting H2O fill out a W-9 form. R. Vol. 1, p. 36, ¶7. The executed W-9 was sent to Proimtu's Gabriel Gonzalez on October 8, 2012. R. Vol. 1, p. 47-50. Both the W-9 and Ed Savre's email signature showed H2O's address to be 6679 S. Supply Way, Boise, Idaho 83716. R. Vol. 1, p. 36, ¶7, p. 47-50. On the same date, CFO Savre also sent H2O's bank information to Proimtu, which identified the bank that would be handling the Payroll Contract as Wells Fargo located at "1205 S. Broadway Ave, Boise, ID 83706." R. Vol. I, pp. 37, ¶12 and p. 51-53. Again, Mr. Savre's email address showed a location of 6679 S. Supply Way, Boise, Idaho 83716. *Id.*

All the services H2O provided under the Payroll Contract were provided from Boise. R. Vol. I, pp. 36-37, ¶¶9-13. From Boise, H2O conducted pre-employment screening of potential employees selected by Proimtu. R. Vol. I, p. 37, ¶10. H2O also completed the hiring process of Proimtu's Tonapah employees from Boise. R. Vol. I, p. 37, ¶11. H2O completed the Proimtu laborers' weekly Davis Bacon wage reporting from Boise. R. Vol. 1, p.37, ¶13. Proimtu sent weekly emails to Mr. Savre, in Boise, from approximately December 2012 through April 2013 regarding the weekly hours of the employees for whom H2O was to process payroll. R. Vol. 1, p.37, ¶14. H2O provided the employees' weekly paychecks via direct deposit from its Boise-based bank account that it had identified for Mr. Gonzalez when the contract was entered. R. Vol. 1, p.37, ¶12.

After H2O would process Proimtu's weekly payroll, Proimtu would send a check to H2O in Boise to reimburse it for the payroll costs. R. Vol. 1, p.37, ¶15, pp. 96-97. Proimtu always made the weekly reimbursement payment to H2O in Boise for approximately 28 weeks, until June 2013. R. Vol. 1, p.37, ¶16.

In May of 2013, the U. S. Department of Labor began investigating Proimtu and determined that some of the employees hired by H2O on behalf of Proimtu for the Tonapah contract were misclassified. R. Vol. I, pp. 37-38, ¶17. As a result of the Department of Labor's findings, Proimtu's general contractor, TRP, paid the additional back wages owed to the Tonapah contract employees. R. Vol. I, p. 38, ¶18. In 2014, the U.S. Department of Labor demanded H2O pay $28,832.21 in additional employer taxes due to TRP's additional payment of back wages. R. Vol. I, p. 38, ¶19 pp. 98-106. Upon H2O's receipt of the first U.S. Department of Labor demand notice, and the subsequent bill from the IRS, H2O sent Proimtu an invoice for the additional Payroll Contract costs. R. Vol. I, p. 38, ¶23, 107-108. Throughout the summer of 2014, Proimtu refused to pay H2O's July 1, 2014 invoice for the employer taxes owed to the IRS. R. Vol. I, p. 38, ¶24.

To date, Proimtu has refused to reimburse H2O for the additional Tonapah contract costs. H2O was forced to pay the IRS $28,832.21 for the employees Proimtu utilized and, despite having made every other Payroll Contract reimbursement, Proimtu has refused to pay the $28,832.21 IRS bill.

H2O filed this action April 7, 2015, seeking reimbursement for the taxes it paid on behalf of the Proimtu laborers.[1] R. Vol. I., pp. 4-8. On August 21, 2015, Proimtu filed a Motion to Dismiss for Lack of Personal Jurisdiction.[2] R. Vol. I, pp. 9-10. In its reply brief Proimtu provided its only evidence in support of the motion, the Affidavit of Gabriel Gonzalez in Support of Defendant's Reply in Support of its Motion to Dismiss for Lack of Personal Jurisdiction. R. Vol. I, pp. 119-121. Gonzalez' affidavit included as Exhibit A the Nevada Secretary of State website printout for H2O showing that H2O is a Nevada Corporation, of which all officers have the same

[1] The amount pled in the Complaint is less than the $28,832.21 as the result of a scrivener's error.
[2] Proimtu has still not answered and has still not asserted any excuse for non-payment of the payroll expense.

Boise address that was on the emails and the W-9 statement provided to Mr. Gonzalez on October 8, 2012, (6679 S. Supply Way, Boise, ID 83716). R. Vol. I, pp. 122-128. Essentially Mr. Gonzalez admits that he sent emails and paystubs to H2O's Boise address and that he made phone calls to H2O's representatives in Idaho, but professes that, because of a *different* written contract with H2O, he believed H2O was doing business in Arizona. R. Vol. I, p. 120, ¶6. Other than disclaiming any intention to do business in Idaho (despite the overwhelming evidence to the contrary in C.F.O. Savre's Affidavit, R. Vol. I., pp. 35-108) and professing that he never "intentionally travelled to Idaho," Mr. Gonzalez provides no other evidence to support Proimtu's position. R. Vol. I, pp. 119-149.

In its Memorandum Decision and Order, the District Court concluded, "that (Proimtu) transacted business within the state of Idaho for purposes of application of Idaho's long-arm statute." R. Vol. I, p. 153. However, the District Court proceeded to find that H2O had failed to establish the requisite minimum contacts with Idaho and granted Proimtu's motion to dismiss for lack of personal jurisdiction. R. Vol. 1, p. 155, 156.

On April 13, 2016, Proimtu filed a Statement of Costs and served it on Plaintiff/Appellant's Counsel. R. Vol. I, pp. 160-169. On April 29, 2016, Plaintiff/Appellant filed a Motion to Vacate Judgment & Request for Oral Argument. R. Vol. II, pp. 183-187. In its motion to vacate the judgment, H2O asserted that Proimtu made a general appearance pursuant to Rule 4.1(a) by requesting relief in the form of costs and attorney fees because the Statement of Costs filed by Proimtu is not an exception set forth in Rule 4.1(b). R. Vol. II, pp. 183-187. A hearing on these motions was held on June 9, 2016, and on June 17, 2016, the District Court entered its Memorandum Decision and Order. R. Vol. II, pp. 245-250. While the Court recognized that Proimtu's Statement of Costs was not an exception set forth in Rule 4.1(b), it held that the

Statement of Costs did not constitute a general appearance and voluntary submission to the personal jurisdiction of the Court because it was not "a request for affirmative relief." R. Vol. II, pp. 246-248.

The Court's initial Judgment dismissing Proimtu for want of personal jurisdiction was entered on March 30, 2016. R. Vol. I, pp. 158-159. Pursuant to Idaho Appellate Rule 11(a)(1) H2O filed its initial Notice of Appeal on April 29, 2016. R. Vol. I, p. 170-173.

The Court's Memorandum Decision and Order, disposing of H2O's general appearance argument, was entered on June 17, 2016. On July 28, 2016, Proimtu appealed from that decision[3] and filed a Notice of Cross Appeal.[4] On August 4, 2016, H2O filed an Amended Notice of Appeal, now including a cross appeal to Proimtu's appeal of the June 17, 2016 Memorandum Decision and Order. In sum, H2O appeals from March 30, 2016 Judgment dismissing Proimtu for want of minimum contacts and both parties appeal from the June 17, 2016 Memorandum Decision and Order.

II. ISSUES PRESENTED ON APPEAL

1. Whether the District Court erred by failing to view evidence presented in the light most favorable to H2O, and by failing to give H2O all reasonable inferences which can be drawn therefrom.

2. Whether Proimtu's contacts with Idaho constitute minimum contacts as required by the 14th Amendment of the United States Constitution.

3. Whether Proimtu's filing of its Statement of Costs constitutes a general appearance and voluntary submission to personal jurisdiction in Idaho.

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[3] The Court's June 17 Memorandum Decision and Order also denied Proimtu's request for costs and attorney fees.
[4] Since it was an appeal from a court order, different than the subject of H2O's original Notice of Appeal, it was not a cross appeal of H2O's initial notice.

III. ATTORNEY FEES ON APPEAL

H2O is not seeking attorney fees on appeal, but reserves the right to subsequently request such fees in the event this case is remanded and H2O prevails at trial.

IV. STANDARD OF REVIEW

The Supreme Court freely reviews questions of law. *Goodman Oil Co. v. Scotty's Duro-Bilt Generator, Inc.*, 147 Idaho 56, 58, 205 P.3d 1192, 1194 (2009). When reviewing a motion to dismiss based on lack of personal jurisdiction, the court applies the same standard as when reviewing appeals from summary judgment orders; the court "construe[s] the evidence presented to the district court in favor of the party opposing the order and accord[s] that party the benefit of all inferences which might be reasonably drawn." *Knutsen v. Cloud*, 142 Idaho 148, 150, 124 P.3d 1024, 1026 (2005) (citing *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 74–75, 803 P.2d 978, 980–81 (1990)). An appeal from an order of summary judgment is reviewed *de novo*. *Houpt v. Wells Fargo Bank, Nat. Ass'n*, 160 Idaho 181, 389, 370 P.3d 384, 390 (2016), *reh'g denied* (Mar. 10, 2016). Additionally, conflicts between parties over statements contained in affidavits must be resolved in the plaintiff's favor. *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002). An issue of fact still remains as to whether Proimtu purposely directed activity toward Idaho. Apart from this issue of fact, the sole dispute is whether the Idaho District Court has personal jurisdiction over the out-of-state Defendant: a pure question of law.

V. ARGUMENT

A. The trial court erred by failing to view the evidence in the light most favorable to H2O and by failing to give H2O all reasonable inferences which can be drawn therefrom.

The personal jurisdiction motion was decided on two affidavits: one from H2O's CFO, Ed Savre and one from Proimtu's Chief Operating Officer, Gabriel Gonzalez. In making factual

determinations the trial court was required to construe these two affidavits in the light most favorable to H2O, but failed to do so.

i. The trial court erred in finding that Mr. Savre's email failed to warn Proimtu that the work it was requesting was being performed by people in Idaho.

The trial court determined, "that an email address such as "esavre@h2oenvironmental.net" would not give fair warning of the physical location of the person receiving an email communication at that email address. In reaching that conclusion the trial court ignored the signature line on the email Mr. Savre sent to Mr. Gonzalez when he returned the W-9 form that Proimtu requested. Mr. Savre's physical address, in Boise, is clearly printed below his name and the H2O logo. R. Vol. I, p. 47. Drawing all evidentiary inference in H2O's favor, as the trial court was required to do, would lead to the conclusion that Mr. Gonzalez knew he was dealing with someone who was physically present in Boise. The court's contrary conclusion was erroneous.

ii. The trial court erred by failing to reach the conclusion that Proimtu knew the services it had bargained for were being performed in Idaho.

The trial court focused on the fact that the work Proimtu performed on the Tonapah project was performed in Nevada. However, all the work performed under the Payroll Contract, the breach of which is the subject of this suit, was performed in Idaho and the evidence overwhelmingly demonstrates that Proimtu was well aware of that at the inception of the contract. The W-9 form requested by Proimtu to set up the Payroll Contract clearly identified H2O's Boise address. R. Vol. 1, p. 50. Likewise, the bank information that was provided to Proimtu identified H2O's Boise address and provided notice they would be using a Boise bank branch to process wire transfers. R. Vol. 1, p. 53. These documents were sent to Proimtu before the work under the Payroll Contract

began. Drawing all reasonable inferences in favor of H2O, Proimtu clearly knew that the work it requested was being performed in Idaho.

iii. The Court erred in finding that Proimtu's weekly mailing of payroll funds to Boise was the result of H2O's unilateral activity.

Not only did Proimtu have the tax form, email address and bank information to put it on notice that the services it negotiated for were being performed in Idaho, it was required, as part of the Payroll Contract, to send its checks to the same Boise location where the services were performed. Proimtu purposefully availed itself from the outset of the Payroll Contract of the privilege of conducting activities in Idaho. H2O's requirement to send the checks to Boise was known to and honored by Proimtu for the entirety of the Payroll Contract.

It is difficult to understand why the trial court considered an agreed to requirement of the contract to be a unilateral act of one of the parties. By its conclusion (the reasoning is not provided) any term of a contract could be considered a unilateral act. That conclusion, however, does not square with either of the two cases the court cited as authority.

In the case of *Southern Idaho Pipe & Steel Co. v. Cal-Cut Pipe & Supply, Inc.*, 98 Idaho 495 (1977), Cal-Cut failingly argued that its contacts with Idaho, the situs of Southern Pipe, was the result of Southern Idaho Pipe's unilateral activity.

> Unilateral activity usually will not be sufficient to establish the "minimum contacts" with the forum state envisioned by International Shoe, but when a nonresident defendant initiates contacts with residents of the forum state and those contacts proceed, we think that the constitutional standard of International Shoe is satisfied.

Southern Idaho Pipe, 98 Idaho at 500 (1977).

In the instant case Proimtu initiated a business relationship with H2O and was put on notice the work would be performed in Idaho when it was put in contact with Mr. Savre, who was physically present in Boise. Proimtu was also put on notice that its checks would be sent to Boise

and that H2O would be using a Boise bank. Those contacts then proceeded for the duration of the Payroll Contract, approximately 28 weeks. Under Southern Pipe, the minimum contacts standard has been met.

In *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L.Ed.2d 1283 (1958), the United States Supreme Court concluded that the minimum contacts requirement had not been met. In *Hanson,* a Florida court attempted to exercise jurisdiction over a non-resident trustee because the trust settlor and most of the appointees and beneficiaries were domiciled in Florida. However, in jurisdictional decisions it is the putative defendant's acts and presence which must be analyzed, not those of the other parties. The Supreme Court found that the defendant trust company transacted no business in Florida.

In the immediate case Proimtu was put on notice prior to the beginning of the Payroll Contract that the work would be performed in Idaho. Proimtu then continuously directed email to Boise with payroll information and continuously sent checks to Boise to cover the payroll services. This was not a unilateral act of the Plaintiff/Appellant, but an agreed upon element of the Payroll Contract. The trial court erred in determining that Proimtu's direction of payroll information and mailing of the checks to Boise were unilateral acts of H2O.

B. The trial court erred in finding that Proimtu's contacts were insufficient to invoke specific personal jurisdiction in Idaho.

In order for an Idaho Court to exercise personal jurisdiction over an out-of-state defendant, the plaintiff must meet two criteria; "the act giving rise to the cause of action must fall within the scope of [Idaho's] long-arm statute and the constitutional standards of due process must be met." *Saint Alphonsus Reg'l Med. Ctr. v. State of Wash.*, 123 Idaho 739, 742, 852 P.2d 491, 494 (1993); *see also, Schneider v. Sverdsten Logging Co.,* 104 Idaho 210, 211, 657 P.2d 1078, 1079 (1983). In its Memorandum Decision and Order, the District Court found that under the Payroll Contract,

Proimtu transacted business in Idaho for purposes of application of Idaho's long arm statute. R. Vol. I, p. 153. As such, this Court need only look to the Due Process Clause to determine whether Idaho has personal jurisdiction.

The District Court's exercise of jurisdiction over Proimtu is consistent with this country's notion of due process so long as Proimtu "has 'certain minimum contacts' with the forum such that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006) (quoting *International Shoe Co., v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 101-02 (1945). "Unless a defendant's contacts with a forum are so substantial, continuous, and systematic that the defendant can be deemed to be 'present' in that forum for all purposes, a forum may exercise only 'specific' jurisdiction—that is, jurisdiction based on the relationship between the defendant's forum contacts and the plaintiff's claim." *Id.* Here Idaho has acquired specific jurisdiction because H2O's claim, that Proimtu failed to reimburse it for payroll taxes, arises from Proimtu's contacts with Idaho, specifically its Payroll Contract with H2O and its direction of payroll information and previous reimbursements to H2O's employees in Boise.

When a plaintiff asks a court to exercise specific jurisdiction over a defendant, the plaintiff must show that "(1) the nonresident defendant purposefully direct[ed] his activities or consummat[ed] some transaction with the forum or resident thereof [(i.e., minimum contacts)]...; (2) the claim arises out of or relates to the defendant's forum related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable. *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987). H2O has the burden of satisfying the first two prongs. *Menkem v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007). Once H2O makes a prima facie showing on the first two prongs, dismissal is only appropriate if Proimtu carries its "heavy burden of rebutting

the strong presumption in favor of jurisdiction." *Ballard v. Savage*, 65 F.3d 1495, 1500 (1995) (citing *Sher v. Johnson*, 911 F.2d 1357, 1364 (9th Cir.1990) (once court finds purposeful availment, it must presume that jurisdiction would be reasonable)).

C. Because Proimtu knowingly transacted business in Idaho and had continuous and ongoing contact with H2O in Idaho, Proimtu could reasonably anticipate being haled into court in Idaho.

This court should overturn the decision of the District Court because Proimtu purposefully directed its communication and contacts towards Idaho, negotiated and entered into an oral contract with H2O's headquarters in Boise, sent weekly payroll reports to Boise to be processed in Boise, and sent money to H2O in Boise to cover the payroll, taxes and other obligations related to the Payroll Contract employees. Proimtu also directed H2O's Boise office on the hiring and prescreening of the Payroll Contract employees, all of which occurred in Boise.

A defendant has minimum contacts with the forum state if the defendant could "reasonably anticipate being haled into court" in the forum. *See World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297, 100 S.Ct. 559, 567 (1980). When determining whether specific jurisdiction is proper in a contract case, the court must look to "dealings between the parties both prior to, and following, the execution of the contract..." *Western States Equipment Co. v. American Amex, Inc.*, 125 Idaho 155, 158, 868 P.2d 483, 486 (citing *Hougland Farms*, 119 Idaho at 78, 803 P.2d at 984). Jurisdiction may not be avoided merely because the defendant did not physically enter the forum state, and "even a single act can support jurisdiction." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, f.n. 18, 105 S. Ct. 2174, 2184, f.n. 18 (1985). Entry into the forum "through an agent, goods, mail, or other some other mean—is certainly a relevant contact." *Walden v. Fiore*, 134 S. Ct. 1115, 1122, 188 L. Ed. 2d 12 (2014) (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 773-774, 104 S. Ct. 1473, 1477-1478, (1984).

In the parties' dealings at the outset of the contract Proimtu learned of, and acquiesced to, H2O's decision to process the Payroll Contract at its Boise headquarters. CFO Savre provided Proimtu with a W-9 and email signature with a Boise address. Proimtu agreed to send reimbursement checks to Boise and was put on notice that H2O would use a Boise bank branch to make payroll deposits in execution of the Payroll Contract. The Nevada public record submitted into evidence by Proimtu put Proimtu on notice that the two people it was dealing with, CEO Bradley and CFO Savre, were in Boise.

In the parties' dealings following the commencement of the contract, Proimtu continuously directed potential employees to H2O's Boise office for prescreening. Proimtu continuously directed weekly payroll data toward Boise and continuously sent reimbursement checks to Boise to be distributed through a Boise bank branch.

Courts have found that under similar circumstances the minimum contacts analysis is satisfied. See e.g., *Electro-Craft Corp. v. Maxwell Elecs. Corp.*, 417 F.2d 365 (8th Cir. 1969) (Where Minnesota communications equipment corporation conducted negotiations by mail and phone from Minnesota for purchase from Texas manufacturer, order was mailed from Minnesota, payment was to be through Minnesota bank, equipment did not conform to seller's representations, contract was to be performed in whole or in part in Minnesota and tortious injury occurred in Minnesota, personal jurisdiction did not offend due process.); *Mississippi Interstate Exp., Inc. v. Transpo, Inc.*, 681 F.2d 1003 (5th Cir. 1982) (In action by Mississippi resident plaintiff against California nonresident defendant to recover for unpaid invoices, although defendant's only contact with forum state was telephone calls to plaintiff, by contracting with plaintiff, defendant considered to have purposefully available itself to forum state.)

In this case Proimtu's contacts with Idaho were ongoing and continuous lasting approximately 28 weeks. Those contacts were more than the minimum required by the Constitution and Proimtu should have anticipated being haled into court in the situs where it requested, directed and received payroll services when it chose not to make its final payment.

D. Proimtu voluntarily submitted to person jurisdiction in Idaho by filing a pleading not exempt by Rule 4.1.

Rule 4.1 governs general and special appearances.[5] Under that Rule a party is deemed to have made a general appearance, and has voluntarily submitted to the personal jurisdiction of the court, by his "voluntary appearance" or "service of any pleading by a party except as provided [herein]." I.R.C.P. § 4.1(a). The Rule then contemplates seven exceptions to a general appearance. I.R.C.P. § 4.1(b). This list includes motions under Rule 12(b), those requesting extensions or disqualification, for joinder, and motions entitled "special appearance" which do not seek relief, but rather to contest a motion under Rule 12(b). *Id.*

A literal reading of the rule makes clear there are only seven pleadings that are exempt, none of which are a Statement of Costs. The Rules, however, must be construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding. I.R.C.P. § 1(b) Proimtu requested an Idaho Court to make a determination and an award of relief. Proimtu could have waited until the conclusion of prospective litigation in another forum to request that relief, but instead requested the relief from an Idaho Court. Having made that election with full knowledge of the text of Rule 4, it elected to have the just, speedy determination of the action resolved here. The various decisions cited by the trial court cut both ways, but none supply a

[5] A redraft of the Rule was adopted July 1, 2016, but the Rule remains substantively unchanged.

reason to ignore the plain language of the rule or require this court to find that a request for costs and fees is not a request for relief.

VI. CONCLUSION

When viewing the two affidavits in a light most favorable to H2O, it is an inescapable conclusion that Proimtu knew the services it requested were being performed in Boise. Thereafter, Proimtu continuously and purposely directed employee screening, payroll data and reimbursement checks into Idaho. Those contacts were more than minimum under any precedent and Proimtu should have anticipated being haled into court in Idaho when it failed to make the last payment under the Payroll Contract. The trial court was correct to find that Proimtu transacted business in Idaho. Its determination that Proimtu's contacts with Idaho were not constitutionally sufficient for Idaho to acquire specific personal jurisdiction was inconsistent with the two affidavits before it and was in error. Its decision that Proimtu's request for fees was an unwritten exception to Rule 4 and not a request for relief was in error. For these reasons the March 30, 2016 Judgment and June 17, 2016 Memorandum Decision and Order must be overturned.

DATED this 4 day of November, 2016.

FISHER RAINEY HUDSON

Vaughn Fisher
Attorney for Plaintiffs/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of November, 2016, I caused to be served a copy of the foregoing **APPELLANT'S BRIEF** on the following, in the manner indicated below:

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