8-26-2020

Brockett Company, LLC v. Crain Appellant's Brief Dckt. 47138

Electronically Filed
8/26/2020 5:28 PM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT FOR THE STATE OF IDAHO

BROCKETT COMPANY, LLC, an Idaho limited liability company, Plaintiff/Appellant, vs. SCOTT CRAIN, an individual, and TEXOMA MFG, LLC, an Oklahoma limited liability company, Defendants/Respondents.	Supreme Court No. 47138 Ada Co. Court No. CV01-17-12766

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County

The Honorable Deborah A. Bail, presiding.

James F. Jacobson
Dari M. Huskey
Residing at Boise, Idaho for Plaintiff/Appellant.

Matthew K. Taylor
Christian S. Martineau
Residing at Boise, Idaho for Defendants/Respondents.

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

STATEMENT OF THE CASE

NATURE OF THE CASE

This case stems from the business relationship and agreements between Plaintiff/Appellant Brockett Company, LLC and Defendants/Respondents Scott Crain and Texoma MFG, LLC. Specifically, this case concerns a Default Judgment which was entered against Respondents and then subsequently set aside by the District Court on the grounds that the judgment was void for lack of personal jurisdiction. It is Appellant's contention on appeal that the District Court erred in voiding the Default Judgment as it inappropriately considered the Affidavit of Scott Crain, ignored the facts in the existing record, and failed to recognize the existence of personal jurisdiction over Respondents.

STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

Please see Appellant's opening brief for a thorough description of the facts and the course of the proceedings in this matter.

ISSUE PRESENTED ON APPEAL

Whether the District Court erred in granting Respondents' Motion to Set Aside Default on the basis that the default judgment was void for lack of personal jurisdiction?

ARGUMENT

A. THE DISTRICT COURT ERRED IN GRANTING DEFENDANT'S MOTION TO SET ASIDE DEFAULT ON THE BASIS THAT THE DEFAULT JUDGMENT WAS VOID FOR LACK OF PERSONAL JURISDICTION

1. The District Court erroneously considered the Affidavit of James Scott Crane.

a. The Crain Affidavit was not submitted within the timeframe prescribed by I.R.C.P. 7(b)(3).

Respondents recognize "the underlying principal that the rules of civil procedure are intended to provide the non-movant with a reasonable and meaningful opportunity to respond to the legal theories and facts asserted by the moving party," but they nonetheless argue that Idaho Rule of Civil Procedure 7(b)(3) requires only that affidavits be filed fourteen days prior to the hearing – regardless of whether or not the non-movant has already responded. Respondents' argument is perplexing in that it undermines the policy they concede exists and is contrary to the language of the rule.

Rule 7(b)(3) confirms a moving party's right to submit affidavits in support of a written motion, but it does not contemplate reply affidavits, which is the issue here. Here, Respondents did not submit the affidavit to support the original motion, but they submitted it with their reply brief in order to support the new arguments which were made in the reply brief.

As set forth in Appellant's initial brief, the rational for Rule 7(b)(3) is unfair prejudice to the opposing party. *See Burns v. Gadsden State Community College*, 908 F.2d 1512, 1517 (11th Cir. 1990) (interpreting substantially similar F.R.C.P. 6(c)(2)); and *Tishcon Corp. v. Soundview Communications*, Inc., 2005 WL 6038743 (N.D.Ga.2005) (interpreting substantially similar

F.R.C.P. 6(c)(2)). If a movant is permitted to proffer new evidence after the respondent has filed its opposition papers, the respondent cannot sufficiently address the evidence. *Id.* The rule was intended to address that problem and prevents movants from springing new facts on the opposing party when it is too late for the party to contest them. *Id.*

While Respondents attempt to distinguish I.R.C.P. 7(b)(3) from F.R.C.P. 6(c)(2) and former I.R.C.P. 7, such attempts are unavailing. The well recognized policy of avoiding surprise for the nonmovant remains regardless of the applicable version of Rule 7. Respondents attempt to read Rule 7(b)(3) without consideration of the policy and without considering the actual language and organization of the rule.

Instead, Idaho Rule of Civil Procedure 7(b)(3)(A), (B) and (C) is consistent with the policy avoiding surprise and states as follows:

> (A) A written motion, affidavit(s) supporting the motion, memoranda or briefs supporting the motions, if any, and, if a hearing is requested, the notice of hearing for the motion, must be filed with the court and served so as to be received by the parties at least 14 days prior to the day designated for hearing.
>
> (B) Affidavit(s) opposing the motion and opposing memoranda or briefs, if any, must be filed with the court and served so as to be received by the parties at least 7 days before the hearing.
>
> (C) The moving party may file a reply brief or memorandum, which must be filed with the court and served so as to be received by the parties at least 2 days prior to the hearing.

I.R.C.P. 7(b)(3)(A), (B) and (C). Accordingly, the filing and serving of the movant's affidavits are addressed with the movant's motion in subsection (A), not with the movant's reply brief in subsection (C). The organization of the rule contemplates that the motion, affidavits supporting the motion, briefs supporting the motion and notice of hearing will be filed before the non-movant's opposing affidavits and briefs, and before the movant's reply brief. While the affidavits

supporting the motion may not necessarily be required to be filed on the same day as the motion and the initial brief, the affidavits must support the motion and are to be filed prior to the non-movant's opposing papers and prior to the movant's reply brief.

b. <u>The Crain Affidavit was not submitted in response to Appellant's brief and it was indeed prejudicial to Appellant</u>.

Respondents concede that they did not address personal jurisdiction in their original briefing. In addition, they concede that their original briefing specifically indicated that they would reserve any arguments regarding personal jurisdiction for a subsequent motion to dismiss for lack of jurisdiction. Furthermore, Respondents concede that Appellant did not legally argue in its response brief personal jurisdiction, in that they did not illustrate how the alleged facts applied to caselaw on jurisdiction. Nevertheless, Respondents contend that they were "required" to address personal jurisdiction in their reply brief in order to "rebut the erroneous allegations made by Appellant." However, because the record demonstrates that personal jurisdiction was never made an issue by Appellant, it was erroneous for the Court to consider the new argument in the reply brief, along with Mr. Crain's Affidavit.

A review of Brockett's *Memorandum in Opposition to Set Aside* Default, which was filed on October 24, 2018, reveals that personal jurisdiction was discussed only with regard to providing the District Court with a procedural history of the case. <u>Personal jurisdiction was not discussed in the argument section of the brief, but only in the facts section as it related to the hearing that occurred on November 15, 2017, wherein the Court determined that Brockett was entitled to a default judgment</u>. The facts provided in the brief relating to the hearing were cited directly from the hearing transcript. No additional facts were alleged or arguments made regarding personal jurisdiction. Appellant merely provided what happened previously in the case. Appellant then addressed only the issues raised by Respondent in its argument section. Specifically, Brockett

argued: 1) the Summons served on Scott Crain and Texoma sufficiently notified them of the pendency of the action, the court in which it was pending and afforded them an opportunity to be heard; 2) the Affidavit of Service evidenced that Texoma was properly served; and 3) whether or not Defendants pled a meritorious defense was irrelevant, given that Respondents failed to prove the default judgment was void under Rule 60(b)(4).

While Respondents argue that they were "obligated" to address the "detailed and selective facts" presented to the District Court, they fail to recognize that Appellant merely set forth the historical record of the case. If Respondent was unhappy about the facts as set forth and determined in the November 15, 2017 hearing, Respondent should have appeared at the hearing and contested the facts. Appellant merely set forth the record of the case as background for the Court before addressing the actual issues raised by Respondent.

The District Court's allowance of Respondent's new personal jurisdiction argument in its reply brief, and its allowance of the Crain Affidavit, was clearly prejudicial to Brockett, because while Respondents were afforded the opportunity to brief the issue, Brockett did not have the same opportunity and Respondent's arguments were considered uncontested by the District Court. R., p. 112. While Respondent claims that Appellant addressed the issues of personal jurisdiction at the original hearing on November 15, 2017, in its responsive pleadings, and at the hearing on the motion to set aside default judgment, such arguments were either done completely without the benefit of knowing the facts alleged in Crane's Affidavit or without the ability to brief and respond specifically to the allegations contained in the Crane Affidavit.

Given that the Crain Affidavit was filed after Brockett filed its response papers to Respondents' motion, and the Crain Affidavit supported new arguments relative to setting aside the default judgment based on personal jurisdiction, the District Court should have stricken the

Affidavit pursuant to Rule 7(b)(3)(A). The Court should have ruled on the Motion based on the arguments appropriately raised in Respondents' initial brief. If Defendants wanted to pursue their personal jurisdiction arguments, they could have brought a subsequent motion as they indicated. Such action would have allowed Brockett a fair opportunity to address Crain's Affidavit and Respondents' personal jurisdictional arguments as contemplated by the Idaho Rules of Civil Procedure. Thus, the District Court erred in considering Crain's Affidavit and Respondent's arguments regarding personal jurisdiction.

c. <u>The District Court abused its discretion in allowing the Crain Affidavit</u>.

While Respondents argue that it is within the court's discretion to accept an untimely brief or affidavit, the District Court abused its discretion here because it failed to act within the outer boundaries of its discretion and consistently with applicable legal standards. In accepting the Crain Affidavit, the District Court ignored the Idaho Rules of Civil Procedure (as discussed above) and ignored the law relevant to determining personal jurisdiction. Idaho law provides that all reasonable inference which can be drawn from the facts must be construed in favor of the non-moving party. *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 74-75, 803 P.2d 978, 980-81 (1990). Here, in allowing the Crain Affidavit, the District Court allowed Respondents to argue personal jurisdiction uncontested and then accordingly construed all facts in favor of Respondent, the moving party. (Indeed, as further discussed below, the District Court order did not even mention the non-moving party's previous testimony in the default hearing, which should have been considered and appropriate inference made since Appellant did not have the opportunity to respond to the Crain Affidavit.) Given that Appellant, the non-moving party, would not have the opportunity to put forth facts in opposition to the new claim and new Affidavit, and be accorded the benefit of the inference, the Court abused its discretion in allowing the Crain Affidavit.

2. The District Court's Decision and Order erroneously ignores the facts and evidence put into the record during the evidentiary hearing on November 15, 2017, which specifically addressed the District Court's concerns regarding personal jurisdiction.

The District Court's *Decision and Order* failed to recognize that personal jurisdiction was addressed and determined to exist per the evidence put into the record during the November 15, 2017 hearing. Nowhere in the *Decision and Order* does the Court reference that Appellant's representative, Daniel Brockett, testified concerning his claims and Respondents' connections with Idaho. In addition, there is no discussion whatsoever about what was on the record per the hearing and why the District Court was satisfied on November 15, 2017, and why subsequently the District Court was not satisfied. Respondent's brief does not address the District Court's failure to recognize the record, but merely argues that the District Court correctly construed the facts in favor of Respondent. Per the *Decision and Order*, there is no evidence that the District Court considered Mr. Brockett's testimony. Mr. Brockett's testimony should have been recognized by the District Court and all reasonable inferences should have been made in his favor for purposes of personal jurisdiction over Respondents.

Furthermore, per the District Court's initial finding of personal jurisdiction and Idaho law, Crain's Affidavit added nothing substantial to the record. While Respondent and the District Court put great emphasis on the assertion that it was Brockett who initiated contact with Respondents concerning the five tanks, Mr. Brockett already testified at the November 15, 2017 hearing that he did not recall who reached out to whom first. TR., November 15, 2017: pp. 8:21-9:3. Mr. Brockett's testimony indicated that it could have very well been him that contacted Respondents first. *Id.* Nevertheless, after considering all the evidence on the record, the District Court determined at the hearing that personal jurisdiction existed as to Respondents. Consequently, since the District Court determined at the hearing that personal jurisdiction existed, it is evident that who

made the initial contact was insignificant to the personal jurisdiction analysis. It is unclear why this purported fact was subsequently significant to the District Court as the District Court did not provide an explanation or cite to any authority that the party who initiates contact is significant to the personal jurisdiction analysis. As set forth previously, Idaho case law provides that the relevant fact is the existence of a long-term business relationship. *See Profits Plus Capital Mgmnt, LLC v. Podesta*, 156 Idaho 873, 84, 332 P.3d 785, 796 (2014).

While Respondent tries to distinguish *Profits Plus* from the current case, Respondent misses the point. The factor that matters in the analysis is whether there was a long-term relationship, not which party made contact first. Respondent further misconstrues *Travelers Health Ass'n v. Virgina*, 339 U.S. 643, 647, 70 S.Ct. 927 (1950). While *Travelers* provides that personal jurisdiction extends to a party that "reaches out beyond one state and creates continuing relationships," the decision does not provide that a party reaches out only if it reaches out first, but that it reaches out beyond one state when it engages in a continuing relationship. *Id.* Accordingly, as Brockett asserts that a long-term business relationship clearly existed, and Mr. Brockett testified in detail as to the long-term business relationship at the hearing on November 15, 2017, the Court should have recognized Mr. Brockett's testimony and made all reasonable inferences in his favor.

As to Crain's assertion that the tanks were located in Texas, not Idaho, that too is insignificant. Again, this is not a new or relevant fact. Mr. Brockett testified that he functioned as a broker when he entered into the transaction to purchase the 5 tanks from Defendants and that he resold the tanks immediately to another buyer. TR., November 15, 2017: pp. 9:14-10:1. Thus, it is reasonable to assume that the Court considered that Plaintiff never took possession of the tanks in Idaho when it determined that personal jurisdiction existed. Thus, it is unclear why this fact subsequently became significant and why it relates to a broker relationship and why it is

determinative of Plaintiff's tort claims. The Court did not provide an explanation, nor did Respondent's brief.

Finally, Crain's erroneous testimony that no agreement was ever entered into regarding the transaction for the remaining 22 tanks is insignificant, because 1) Brockett asserted in its Complaint and by Mr. Brockett's testimony that there was indeed an agreement between the parties to purchase the tanks for $330,000 or $25,000 per tank, (*Id.*, pp. 13:10-14:1) and 2) whether or not an agreement existed is irrelevant to the Court's personal jurisdiction over Brockett's tort claims. The District Court's *Decision and Order* makes no reference to the Complaint or Mr. Brockett's testimony regarding the agreement. For purposes of personal jurisdiction, the facts or allegations should be construed in Appellant's favor. Thus, the District Court erred in attributing such significance to Respondents' assertions and in ignoring Mr. Brockett's testimony. While Respondent argues there was no written contract for the purchase of the 22 tanks, and that such is required pursuant to the Idaho's statute of frauds, such arguments are inappropriate at this stage and were never agued at the District Court. It is further unclear why the existence or non-existence of a contract is determinative of the Court's personal jurisdiction over Appellant's tort claims.

Accordingly, since the Crain Affidavit offers no new significant evidence, Mr. Brockett's testimony at the hearing on November 15, 2017, established the necessary evidence for the District Court to conclude the existence of personal jurisdiction.

3. Respondents are subject to personal jurisdiction as Idaho's long-arm statute is satisfied and the constitutional standards of due process are met.

a. <u>Idaho's long-arm statute provides jurisdiction as Defendants transacted business in Idaho per I.C. § 5-514(a).</u>

Respondents argue the facts are insufficient to show they transacted business in Idaho; however, Respondents misconstrue "specific jurisdiction" and I.C. § 5-514(a). Respondents

erroneously contend that only the facts relating to the purchase of the 22 tanks are relevant to the analysis. They argue that because there was no written agreement regarding the purchase and sale of the 22 tanks, as opposed to the 5 tanks, that Respondents were not transacting business in Idaho. Respondents ignore the complete facts and contacts of the business relationship.

The Idaho Supreme Court has explained specific jurisdiction as follows:

> The exercise of personal jurisdiction by the courts of this state over those who do any of the acts enumerated in I.C. § 5-514 extends only "as to any cause of action arising from the doing of any of said acts. This is "specific" as distinguished from "general jurisdiction.
>
> It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising "specific jurisdiction" over the defendant.
>
> When a state exercises personal jurisdiction over a defendant in a suit not arising out or related to the defendant's contacts with the forum, the State has been said to be exercising "general jurisdiction" over the defendant.

Houghland Farms, Inc. v. Johnson, 119 Idaho 72, 803 P.2d 978, (1990), citing *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 nn. 8 & 9, 104 S.Ct. 1868 1872 (1984). Thus, specific jurisdiction exists where a suit arises from the defendant's in-state contacts. In other words, all facts of a defendant's business relations, or in-state contacts, which leads to a lawsuit, must be considered to determine specific jurisdiction.

Here, Appellant's contract claims stem from the parties' 15-month business relationship to broker/purchase the 27 steel tanks. Thus, all of Respondents' contacts with Appellant in Idaho during that relationship are relevant, including Respondents' contacts during the "first transaction", because all such contacts were related and led to Appellant's claims. It is irrelevant under I.C. § 5-514(a) whether a written agreement existed, what matters is whether business was being transacted for pecuniary benefit.

As set forth in Appellant's initial brief, the following facts are applicable and demonstrate that Respondents transacted business in Idaho:

- Plaintiff/Appellant Brockett Company, LLC is an Idaho limited liability company and its principal place of business is in Idaho. TR., November 15, 2017: pp. 6:18-21; 7:5-7.

- At all times relevant to the Complaint, Daniel Brockett – the owner of Brockett Company, resided in Idaho. *Id.*, pp. 6:7-7:9.

- Defendant/Respondent Texoma MFG, LLC is an Oklahoma limited liability company. *Id.*, p. 8:14-20.

- Defendant/Respondent Scott Crain is the owner of Texoma MFG and resides in Oklahoma. *Id.*

- In approximately 2015, Brockett and Crain began communicating about Brockett providing broker services relating to the sale of 27 "round bottom" steel tanks. *Id.*, pp. 8:21-9:13.

- The parties soon thereafter entered into an agreement wherein Brockett purchased 5 tanks. *Id.*, pp. 9:14-10:1. Brockett then resold them to another buyer. *Id.*

- Texoma invoiced Brockett in Idaho and Brockett wired Texoma the purchase money. *Id.*

- Following the initial transaction, Brocket Company continued to perform broker services for Respondents and spent over a year actively trying to sell the remaining 22 tanks for Respondents. *Id.*, pp. 10:24-11:9. During this timeframe Mr. Brockett and Mr. Crane communicated multiple times via telephone calls and text messages. *Id.*, pp. 11:10-12:6. These communications included Texoma reaching out to Brockett in Idaho on multiple occasions asking, "Are you getting those tanks sold?" *Id.*

- The parties ultimately reached an agreement regarding the sale of the 22 remaining tanks, wherein Brockett would purchase the 22 tanks for $330,000, or $15,000 per tank. *Id.*, p. 13:10-15. Brockett planned to then sell the tanks to Johnson Specialty Tools for $24,500 per tank. *Id.*, pp. 13:16-20. Defendants breached the agreement by refusing to sell the tanks to Brockett and instead selling the tanks directly to Johnson Specialty Tools. *Id.*, p. 14:9-17:4.

- The parties were in a business relationship for over a year. *Id.*, pp. 9:24-13:20.

- When the parties communicated, Brockett was always located in Idaho. The communications included Texoma initiated business communications with Mr. Brocket on behalf of Brocket Company. *Id.*, pp. 6:7-7:9; 9:7-13; 10:24-11:15.

Because these facts demonstrate that Respondents entered into a business relationship with Appellant for over a year to broker/purchase 27 steel tanks to realize a pecuniary benefit and to enhance the Respondent's business purpose, Respondents transacted business in Idaho sufficiently to satisfy I.C. § 5-514(a).

b. Defendants tortious conduct caused injury in Idaho per I.C. § 5-514(b).

Respondents attempt to distinguish *Blimka v. My Web Wholesaler, LLC*, and argue there is insufficient evidence in the record to support Appellant's claims that Respondents directed a tortious act to Appellant or that an injury occurred in Idaho; however, Respondents misunderstand the test. Appellant is not required to prove its tort claims to establish personal jurisdiction. Instead, as set forth in Appellant's initial brief, the Idaho Supreme Court has consistently held that "an allegation that an injury has occurred in Idaho in a tortious manner is sufficient to invoke the tortious act language of I.C. § 5-514(b)." *Blimka v. My Web Wholesaler*, LLC, 143 Idaho 723, 726, 152 P.3d 594 (2007), citing *St. Alphonsus Reg'l Med. Ctr. v. State of Wash.*, 123 Idaho at 743, 852 P.2d at 495. Additionally, I.C. § 5-514(b) "is remedial legislation designed to provide a forum for Idaho residents and should be liberally construed to effectuate that purpose." *Id.*

Indeed, the Idaho Supreme Court specifically addressed this issue and determined that an allegation is sufficient per *Saint Alphonsus Regional Medical Center v. State of Washington*, *supra*. In that case, Saint Alphonsus brought suit against Washington alleging intentional interference with contractual relations, infringement of interstate commerce and deprivation of property

without due process of law after Washington changed its worker's compensation rules governing payment for health care. Washington sought dismissal based on lack of jurisdiction and argued that there was no evidence of tortious conduct within the long-arm statute since the application of the new rules was part of Washington's rules and regulations promulgated pursuant to its legislative authority and police powers. The Court held the following: "Whether Washington's conduct is actually tortious … is a factual question and irrelevant to our examination of jurisdiction under the long-arm statue. Given the remedial nature of our long-arm statute, and construing the facts in the affidavits in a light most favorable to St. Alphonsus, we find that jurisdiction exists under § 5-514(b)." *Id.*, 123 Idaho at 743, 852 P.2d at 495.

Here, Brockett alleges the tort claims of intentional interference with a prospective economic advantage and fraudulent misrepresentation against Respondents Scott Crain and Texoma MFG. In addition, Brockett alleges that in 2015, the parties began communicating about the purchase and sale of 27 steel tanks though Brockett as a broker. TR., November 15, 2017: pp. 8:21-9:10. It is not clear who reached out to whom first (and per *Blimka* it is irrelevant), but the parties communicated via telephone and other electronic means. *Id.* The parties came to an agreement with regard to five of the tanks initially, (Respondent sent Brockett an invoice and Brockett wired Respondent the funds), and then subsequently came to an agreement with regard to the remaining 22 tanks. *Id.*, pp. 9:14-22; 13:10-15. When the parties first began doing business, Respondent represented to Brockett that when Brockett acted as a broker for Respondents and found buyers for Respondents' tanks, Respondent would not quote or sell directly to Plaintiff's client/buyer and leave Plaintiff out of the deal. *Id.*, pp. 12:7-13:19. However, Respondents learned the identity of the buyer obtained by Brockett and then sold the tanks directly to the buyer. *Id.*, pp. 14:9-17:4. Respondents misrepresentations and interference caused injury to Brockett's

business in Idaho. *Id.*, pp. 6:7-7:9. Thus, because the fraudulent representations and interference were directed at an Idaho limited liability company and the injury was incurred within this state, Brockett's allegations are sufficient to invoke the tortious language of I.C. § 5-514(b).

c. Respondents contacts with Idaho are sufficient under the Due Process Clause of the U.S. Constitution to permit personal jurisdiction.

i) Respondents' contractual and business relationship with Appellant established minimum contacts and purposeful availment.

Respondents argue that they did not purposefully conduct business in Idaho, because they did not initiate contact with Appellant and only engaged in one isolated transaction. They allege that nothing in the record establishes that they knew Appellant was in Idaho. They further allege it would be unreasonable to hale Respondents into an Idaho court. Respondents misconstrue the Due Process Clause and the facts of the case.

To begin with, as set forth above, the relevant fact is the existence of a business relationship, not which party made contact first. *See Profits Plus Capital Mgmnt, LLC v. Podesta*, 156 Idaho 873, 883-84, 332 P.3d 785, 795-96 (2014); *citing Shafter v. Heitner,* 433 U.S. 186, 204, 97 S.Ct. 2569, 2579-80 (1977)*; Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478, 105 S.Ct. at 2184, 2185 (1985), and *Travelers Health Ass'n v. Virginia*, 339 U.S. 643, 647, 70 S.Ct. 927, 929 (1950). And when a case involves a contract dispute, "prior negotiations, contemplated future consequences, the terms of the contract, and the parties' actual course of dealing must be evaluated in determining whether the defendant purposefully established minimum contacts with the forum." *Burger King Corp. v. Rudzewicz*, 471 U.S. at 479,105 S.Ct. at 2185-86 (emphasis added). Here, Respondent did not merely engage in one isolated transaction, but steadily worked together with Appellant for 15 months to sell the entire 27 tanks. Thus, all the facts relating to this relationship are relevant.

In 2015, the parties began communicating about 27 "round bottom" tanks and they entered into an initial transaction wherein Brockett agreed to purchase 5 of the tanks with the intent to resell them to another buyer. TR., November 15, 2017: pp. 8:21-9:23. Texoma invoiced Brockett in Idaho and in return Brockett wired Texoma the purchase money. *Id.* The parties then continued the relationship for over a year as Brockett performed broker services for Texoma regarding the additional 22 tanks. *Id.*, pp. 9:24-10:17. Texoma wanted Brockett to find a buyer for all of the tanks. *Id.* From July 2015 until October 2016, Mr. Brockett and Mr. Crane communicated on a nearly regular basis via telephone calls and text messages. *Id.*, pp. 8:21-12:6. These communications included Texoma reaching out to Brockett in Idaho on multiple occasions asking, "Are you getting those tanks sold?" *Id.*, p. 11:10-15. In addition, the parties communicated and agreed that when Brockett acted as a broker for Texoma and found a buyer for Texoma's tanks, Texoma would not sell directly to the buyer and cut Brockett out of the deal. *Id.*, p. 12:7-13:9.

Ultimately, the parties reached an agreement regarding the sale of the 22 tanks, wherein Brockett would purchase the 22 tanks for $330,000 or $15,000 per tanks. *Id.*, pp. 12:17-13:15. Brockett had obtained a buyer for the tanks and intended to sell the tanks to Johnson Specialty Tools for $24,500 per tank. *Id.*, pp. 13:16-14:1. However, before the transaction was completed, Johnson wanted to inspect the tanks. *Id.*, p. 13:16-20. Accordingly, Brockett coordinated the inspection with further communications with Texoma. *Id.*, pp. 14:9-16. Nevertheless, during and after the inspection, Texoma communicated with Johnson and asked what amount they were buying the tanks for from Brockett. *Id.*, p. 14:23-25. Johnson informed them of the price and Texoma indicated that it would sell the tanks to Johnson directly, which it did, and thereby cut Brockett out of the deal. *Id.*, pp. 14:24-15:14.

These facts, which must be construed in favor of Brockett, demonstrate that Texoma reached beyond Oklahoma and entered into a business relationship with Brockett, an Idaho company, to sell the 27 tanks. The significant communication over the period of 15 months and the transactional history between the parties demonstrate that Texoma knew it was conducting business with an Idaho company or it should have known. Thus, Respondents purposefully directed their activities at a resident of Idaho and established the requisite minimum contacts with Idaho.

The assertion of personal jurisdiction by Idaho courts also comports with "traditional notions of fair play and substantial justice." While Respondents argue for the first time before this Court that defending the case in Idaho would be a burden, any burden to Respondents is outweighed by Idaho's strong interest in adjudicating the dispute and efficiency. Idaho clearly has a strong interest in adjudicating the dispute as Respondents transacted business in Idaho, with an Idaho limited liability company for over a year, and then breached the parties' agreement which caused damages to the Idaho company. In addition, resolution of the case in Idaho would be efficient and would further the shared interest of several states as the matter was originally filed in Idaho and the District Court determined Brockett was entitled to a default judgment. Accordingly, Respondents' business contacts with Idaho are constitutionally sufficient to permit personal jurisdiction as to Brockett's contract claims.

ii. Respondents' intentional torts were purposely directed to and suffered in Idaho, thus satisfying the minimum contacts and purposeful availment requirement.

Respondents argue, with regard to the tort claims, that Appellant cannot establish the Ninth Circuit's "but for" test. However, where intentional torts are alleged, the Idaho Supreme Court has adopted the "effects test" to determine whether contacts satisfy the minimum contacts

requirement. *See Blimka v. My Web Wholesaler*, LLC, 143 Idaho 723, 727-28, 152 P.3d 594, 598-99 (2007). Under the "effects test," minimum contacts are satisfied where the defendant committed the intentional tort outside the forum state, but the effects of the tort were directed to, and suffered in, the forum state. *Id.*

Here, like in *Blimka*, Respondents committed intentional torts outside of Idaho, but the effects were directed to, and suffered by Appellant in Idaho. Specifically, Texoma intentionally misrepresented to Brockett that when Brockett acted as a broker for Respondents and located buyers for Respondents' tanks, Respondents would not quote or sell directly to Brockett's client/buyer and thereby cut Brockett out of the deal. TR., November 15, 2017: pp. 12:7-13:9. Texoma made this misrepresentation, and re-enforced this misrepresentation on multiple occasions, via telephone and electronic communications to Appellant in Idaho. *Id.* Texoma was well aware that Brockett was an Idaho company due to the significant communication that occurred between the parties along with the transactional history. Brockett sent Texoma a purchase order, Texoma invoiced Brockett, Brockett wired Texoma purchase money, and Texoma interacted with Brockett for over 15 months in locating a purchaser for all of the tanks. *Id.*, pp. 8:21-10:17. Then when Texoma cut Brockett out of the deal Brockett had brokered, the effects of Texoma's actions were directed to Brockett, an Idaho company and suffered by an Idaho company in Idaho. *Id.*, pp. 14:9-18:4. Thus, because the effects of Texoma's intentional torts were purposely directed to and suffered in Idaho, the minimum contacts requirement is satisfied.

Furthermore, because Texoma purposely directed its false representations into Idaho, the exercise of personal jurisdiction is presumed not to offend traditional notions of fair play and substantial justice. *Blimka*, 143 Idaho at 728, 152 P.3d at 599. "Idaho has an ever-increasing interest in protecting its residents from fraud committed on them from afar by electronic means."

Id. Thus, like in *Blimka*, Respondents should have reasonably anticipated being hailed into Idaho court. Accordingly, Respondents' contact with Idaho are constitutionally sufficient to permit personal jurisdiction as to Brockett's tort claims.

B. RESPONDENTS ARE NOT ENTITLED TO ATTORNEY FEES ON APPEAL

Respondents argue they are entitled to attorney fees and costs on appeal pursuant to Idaho Appellate Rule 41 and I.C. § 12-120(3). Respondents did not make a claim for attorney fees and costs below with the District Court, nor have they cross-appealed regarding attorney fees. Thus, they cannot seek such with this Court. Respondents further cannot seek attorney fees and costs because they are not the prevailing party, and this appeal has not been brought frivolously, unreasonably, or without foundation.

CONCLUSION

Based upon the foregoing, Appellant Brocket Company, LLC, respectfully requests that the Court: (1) Reverse the District Court's decision Granting Defendants' Motion to Set Aside Default; (2) Reverse the District Court's issuance of Judgment and the Default Judgment previously entered by the District Court as void for lack of personal jurisdiction, and (3) Deny Respondents request for attorney fees and costs on appeal.

RESPECTFULLY SUBMITTED this 26th day of August, 2020.

SASSER & JACOBSON, PLLC

By: /s/ James F. Jacobson
James F. Jacobson
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of August, 2020, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Matthew K. Taylor
Christian S. Martineau
TAYLOR LAW OFFICES, PLLC
1112 W. Main St. #101
Boise, ID 83702
matthew@taylorlawoffices.com
Attorneys for Defendant

[X]U.S. Mail, postage prepaid
[ ]Hand-Delivered
[ ]Overnight Mail
[ ]Facsimile
[X]Email/iCourt

DATED this 26th day of August, 2020.

SASSER & JACOBSON, PLLC

By: /s/ James F. Jacobson
James F. Jacobson, Of the Firm
Attorney for Plaintiff/Appellant