

NO. A-08-000576

IN THE NEBRASKA COURT OF APPEALS

LISA FREEBURG AND THEODORE FREEBURG,

Plaintiffs-Appellants,

v.

INTERNATIONAL PORT SERVICES, INC.,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT
OF DOUGLAS COUNTY, NEBRASKA

Honorable Gerald E. Moran, District Court Judge

BRIEF OF APPELLEE

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I. STATEMENT OF JURISDICTION

International Port Services, Inc., Defendant-Appellee generally accepts Lisa and Theodore Freeburg, Plaintiffs-Appellants' Jurisdictional Statement.

II. STATEMENT OF THE CASE

A. Nature of the Case

Lisa and Theodore Freeburg (the "Freeburgs") filed a Complaint in the District Court of Douglas County, Nebraska (the "District Court"). In their Complaint the Freeburgs claim that International Port Services, Inc. ("IPS"), a Washington corporation, breached a contract. IPS filed a Rule 12(b)(2) Motion to Dismiss on the basis of lack of personal jurisdiction. The Honorable Gerald E. Moran, District Court of Douglas County, Nebraska, granted IPS' Motion and dismissed the Freeburgs' Complaint with prejudice. The Freeburgs appealed this matter to the Nebraska Court of Appeals.

B. Issues Tried Below

The issue tried to the District Court was whether the Court had personal jurisdiction over IPS. In analyzing this issue, the District Court reviewed the following elements:

1. Whether IPS had substantial or continuous and systematic business contact with Nebraska.

2. Whether IPS purposefully directed its activities at Nebraska.

C. How the Issues were Decided

The District Court found the following:

1. That the evidence failed to show that IPS had substantial or continuous and systematic business contact with Nebraska sufficient to warrant the exercise of general personal jurisdiction. (T13).

2. That the evidence was insufficient to prove that IPS purposefully directed its activities at Nebraska. (T16).

The District Court ruled that it lacked personal jurisdiction over IPS and sustained IPS' Motion to Dismiss. (T18). The Freeburgs' Complaint was dismissed with prejudice, costs taxed to the Freeburgs. Id.

D. Scope of Review

“When a jurisdictional question does not involve a factual dispute, determination of a jurisdictional issue is a matter of law which requires an appellate court to reach a conclusion independent from the trial court's.” Quality Pork Intern. v. Rupari Food Services, Inc., 267 Neb. 474, 476, 675 N.W.2d 642, 646 (2004), *citing*, Kugler Co. v. Growth Products Ltd., 265 Neb. 505, 658 N.W.2d 40 (2003). “However, when a determination rests on factual findings, a trial court's decision on the issue will be upheld unless the factual findings concerning jurisdiction are clearly incorrect.” Kugler Co. v. Growth Products Ltd., 265 Neb. 505, 510, 658 N.W.2d 40, 46 (2003), *citing*, Holste v. Burlington Northern RR. Co., 256 Neb. 713, 592 N.W.2d 894 (1999).

“The burden of proof rests upon the plaintiff confronted with a special appearance to demonstrate the court's personal jurisdiction over the defendant.” Crete Carrier Crop. v. Red Food Stores Inc., 254 Neb. 323, 326, 576 N.W.2d 760, 764 (1998), *citing*, Crystal Clear Optical v. Silver, 247 Neb. 981, 531 N.W.2d 535 (1995).

III. PROPOSITIONS OF LAW

A. Application of Neb. Rev. Stat. §25-536 (2007), to a non-resident defendant must not offend due process. Quality Pork Intern. v. Rupari Food Services, Inc., 267 Neb. 474, 480, 675 N.W.2d 642, 649 (2004), *citing*, Dunham v. Hunt Midwest Entertainment, 2 Neb.App. 969, 520 N.W.2d 216 (1994).

- B.** The Due Process Clause of the U.S. Constitution protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he or she has established no meaningful contacts, ties, or relations. Kugler Co. v. Growth Products Ltd., 265 Neb. 505, 511, 658 N.W.2d 40, 47 (2003), *citing*, Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).
- C.** To provide the necessary contacts for personal jurisdiction, parties must “reach out beyond one state and create continuing relationships and obligations with citizens of another state” to be “subject to regulation and sanctions in the other State for the consequences of their activities.” Kugler Co. v. Growth Products Ltd., 265 Neb. 505, 513, 658 N.W.2d 40, 48(2003), *quoting*, McGowan Grain v. Sanburg, 225 Neb. 129, 138, 403 N.W.2d 340, 347 (1987), *quoting*, Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).
- D.** The “plaintiff has the burden of proof to establish facts which demonstrate the court's personal jurisdiction over the defendant.” Higgins v. Rausch Herefords, 9 Neb. App. 212, 219, 609 N.W.2d 712, 718 (2000).
- E.** Specific personal jurisdiction requires the following analysis: “(1) The nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or residents thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which 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.” Higgins v. Rausch Herefords, 9 Neb. App. 212, 220, 609 N.W.2d 712, 719 (2000).
- F. “A defendant’s purposeful act, directed to the forum state, not merely the unilateral activity of another who claims a relationship to the defendant, connects the defendant to the forum state.” Castle Rose v. Philadelphia Grill & Bar of Ariz., Inc., 254 Neb. 299, 303-04, 576 N.W.2d 192, 196 (1998), *citing*, Hanson v. Denckla, 357 U.S. 235 (1958).
- G. Unilateral activities “cannot satisfy the requirement of contact with the forum state.” Castle Rose v. Philadelphia Grill & Bar of Ariz., Inc., 254 Neb. 299, 303-04, 576 N.W.2d 192, 196 (1998), *quoting*, 24th and Dodge Ltd. v. Commercial Nat. Bank, 243 Neb. 98, 102, 497 N.W.2d 386, 390 (1993), *quoting*, Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).
- H. The court must look beyond the agreement and consider the “parties’ prior negotiations and future contemplated consequences, along with the terms of the contract and the parties’ actual course of dealing.” Castle Rose v. Philadelphia Grill & Bar of Ariz., Inc., 254 Neb. 299, 304, 576 N.W.2d 192, 196 (1998), *citing*, Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).
- I. A dismissal “for want of personal jurisdiction over the defendant does not preclude litigation of the merits before a court of proper jurisdiction.” However, it does “preclude relitigation of the question of the court’s jurisdiction at that time.” Stewart v. Hechtman, 254 Neb. 992, 996, 581 N.W.2d 416, 419 (1998), *quoting*, Swan v. Sargent Industries, 620 P.2d 473, 477 (Okla.App. 1980).

IV. STATEMENT OF THE FACTS

IPS is a Washington corporation, located in the State of Washington, which arranges for traveler's luggage to be picked up and delivered to the destination of the traveler's choice. The Freeburgs allege that IPS entered into an agreement to deliver their luggage and failed to do so in a timely fashion. They sued IPS in Nebraska. The trial court sustained IPS' Motion to Dismiss ruling that IPS was not subject to personal jurisdiction in Nebraska. (T18).

The District Court found that IPS is a Washington corporation that does business in Washington State. (E1, 1:5)(T10). It is not qualified to do business in any other state, it has not designated an agent for service of process in Nebraska, is not licensed in Nebraska, and does not have employees who reside or operate in Nebraska. (E1, 1:5)(T10). IPS does not target sales, solicitations or business in the State of Nebraska. (E1, 2:5). IPS does not direct its advertising toward nor does it seek out Nebraska customers. (E1, 2:5).

IPS' representatives attend various trade shows for the travel industry. (E1, 2:5). The Freeburgs assert that IPS' promotion of itself at a trade show in Canada proves that IPS purposefully availed itself of Nebraska's jurisdiction. (E2, 2:9). James Wilson, the President of IPS, first met Mary Ann Strasheim, the owner of Custom Cruises, LLC, an Omaha, Nebraska travel agency, in Canada during a 2004 trade show. (E2, 2:9). Custom Cruises is a member of Ensemble Travel Group, a national consortium of travel agencies. (E2, 2:9). Ensemble has offices in New York City and three offices in Canada with headquarters in Toronto, Canada. (E2, 2:9). In her Affidavit, Ms. Strasheim avers, "Wilson solicited business for IPS from all attending member travel agencies" during the trade show. (E2, 2:9).

Lisa Freeburg is employed with Custom Cruises, LLC. (E3, 1:9). In 2007, the Freeburgs planned and scheduled a cruise on the Seabourn Legend, a cruise ship departing from

Civitavecchia, Rome, Italy, in August. (E3, 2:9). The District Court found that Ms. Strasheim, not IPS, provided Ms. Freeburg with information on IPS' services. (E3, 2:9)(T10). Ms. Freeburg "informed IPS of her interest" in its services. (E3, 2:9)(T11). She contacted IPS by telephone. (E1, 2:5)(T11). Pursuant to Ms. Freeburg's request, IPS faxed a letter enclosing documents under the terms of which IPS would provide services to the Freeburgs. (E3, 2:9).

IPS does not send its employees to pick up customers' luggage. (E1, 2:5). Instead, IPS coordinates independent contractors to provide the luggage shipping service. (E1, 1:5)(T10). Pilot Air Freight picked up the Freeburgs' luggage in Omaha on August 3, 2007. (E3, 3:9)(T11). No IPS representative set foot in Nebraska. Pilot Air Freight was to deliver the Freeburgs' luggage to the Seabourn Legend before it departed Civitavecchia, Rome, Italy. (E1, 1:5).

V. ARGUMENT

The statutory basis for asserting personal jurisdiction over residents of other states is Nebraska's long arm statute. Neb. Rev. Stat. §25-536 (2007). It allows Nebraska courts to exercise personal jurisdiction under limited circumstances. Nebraska courts are able to exercise personal jurisdiction over a person: (1) Who acts directly or by an agent, as to a cause of action arising from the person: (a) Transacting any business in this state, (b) Contracting to supply services or things in this state; ... or (2) Who has any other contact with or maintains any other relation to this state to afford a basis for the exercise of personal jurisdiction consistent with the Constitution of the United States. Neb. Rev. Stat. §25-536 (2007). The key limitation to the exercise of jurisdiction is that the "long arm statute" must be exercised "consistent with the Constitution of the United States." *Id.* Application of the statute to a non-resident defendant must not offend due process. Quality Pork Int'l, 267 Neb. 474, 480, 675 N.W.2d 642, 649, *citing*, Dunham v. Hunt Midwest Entertainment, 2 Neb. App. 969, 520 N.W.2d 216 (1994).

Contrary to the Freeburgs' assertion, the requirements of the "long arm statute" were not undeniably met. In order to meet the requirements of the "long arm statute" a court must determine whether IPS had "such minimum contacts with Nebraska that the exercise of personal jurisdiction would not offend federal principles of due process." Erickson v. U-Haul Int'l, Inc., 274 Neb. 236, 248, 738 N.W.2d 453, 463 (2007). IPS must have met a certain threshold of contact with Nebraska before the exercise of jurisdiction is proper, "so as not to offend traditional notions of fair play and substantial justice." Erickson, 274 Neb. at 248, 738 N.W.2d 453, 463.

There are two types of personal jurisdiction: general and specific. General personal jurisdiction examines whether IPS created meaningful contacts, ties, or relations with Nebraska. Kugler Co. v. Growth Products, Ltd., 265 Neb. 505, 511, 658 N.W.2d 40, 47 (2003). Specific personal jurisdiction examines whether IPS purposefully availed itself of the privilege of conducting activity within Nebraska, thereby invoking the benefits and protections of Nebraska's laws. Kugler Co., 265 Neb. at 512, 658 N.W.2d 40, 47. As the District Court held, the answer to both of these questions is no.

A. IPS DID NOT CREATE MEANINGFUL CONTACTS, TIES, OR RELATIONS WITH NEBRASKA AND THEREFORE THE DISTRICT COURT WAS NOT CLEARLY INCORRECT IN FINDING THAT IPS IS NOT SUBJECT TO NEBRASKA'S GENERAL PERSONAL JURISDICTION.

IPS is not subject to general personal jurisdiction in Nebraska because IPS did not create any meaningful contacts, ties, or relations with the state of Nebraska. "The Due Process Clause of the U.S. Constitution protects an individual's liberty interest in not being subject to the binding

judgments of a forum with which he or she has established no meaningful contacts, ties, or relations.” Kugler Co., 265 Neb. at 511, 658 N.W.2d 40, 47, *citing*, Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).

The only evidence the Freeburgs assert in support of this rule is that the owner of Custom Cruises, LLC met IPS’ president in 2004. (T11)(E2, 11:9; E4, 9). They met during a trade show in Canada. Id. At that time, IPS’ president gave Custom Cruises, LLC his business card and a laundry bag with IPS’ name and telephone number printed on the front. Id. The Freeburgs also allege that IPS did business with two other Nebraska residents at some point in the past. (E2, 3:9) (E2, 2-3:9). The District Court found these tenuous and minimal contacts were insufficient to justify hauling a Washington corporation into Nebraska courts. It held that “the evidence fails to show that IPS had substantial or continuous and systematic business contact with Nebraska sufficient to warrant the exercise of general personal jurisdiction.” (T13).

This finding is further bolstered by the decision in Kugler Co., supra. In Kugler Co. an employee contacted Growth Products, a New York corporation with its principal place of business in New York. Kugler Co., 265 Neb. at 507, 658 N.W.2d 40, 44. The employee learned of Growth Products through an advertisement in a trade publication. Id. A relationship developed between the two companies. Between 1992 and 1999 “Kugler purchased about 399 tons of nitrogen products from Growth Products at an approximate cost of \$179,472.” Id. Not only did Kugler Co. and Growth Products conduct multiple sales transactions, but a representative of Growth Products consistently corresponded with Kugler Co. Id. at 507, 658 N.W.2d 40, 44. In 1997, Kugler Co. became an “assigned distributor” for Growth Products. Id. at 508, 658 N.W.2d 40, 45.

Beginning its analysis of minimum contacts in Kugler Co. the Nebraska Supreme Court stated that “the existence of a contract with a party in a forum state or the mere use of interstate facilities, such as telephones and mail, does not, in and of itself, provide the necessary contacts for personal jurisdiction.” Kugler Co., 265 Neb. at 512, 658 N.W.2d 40, 47-48. Rather, parties must “reach out beyond one state and create continuing relationships and obligations with citizens of another state” to be “subject to regulation and sanctions in the other State for the consequences of their activities.” Id. at 513, 658 N.W.2d 40, 48, *quoting*, McGowan Grain v. Sanburg, 225 Neb. 129, 138, 403 N.W.2d 340, 347 (1987), *quoting*, Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985). That is exactly what Growth Products did.

The Kugler Co. Court held that Growth Products purposefully directed its activities at the State of Nebraska. “To the extent the court made a finding of fact that Growth Products never purposely directed activities at Nebraska, we conclude that the district court was clearly wrong.” Id. at 514, 658 N.W.2d 40, 49.

In this case the District Court held that it could not assert general personal jurisdiction over IPS. The standard by which the Appellate Court should review the District Court’s decision is to determine whether the District Court was “clearly incorrect.” Kugler Co., *supra*. The instant case before the Appellate Court stands in perfect contrast to the Kugler Co. case. Growth Products, a New York corporation, continued to correspond with, supply, and eventually retain Kugler Co. as its representative. IPS, a Washington corporation, sent information and a contract for its services to the Freeburgs upon their request. (E1, 2:5)(E3, 2:9)(T11). IPS did not target the Freeburgs and certainly did not develop any meaningful relationship with them similar to that in Kugler Co.

IPS did not reach out to Nebraska residents. IPS went to a trade show in Canada where it promoted its services to Custom Cruises, LLC and travel agencies from other states. This occurred three years prior to Ms. Freeburg's telephone call to IPS. (E1, 2:5)(E2, 2:9). Trade show promotion to a consortium of travel agencies is not meant to target Nebraska consumers in particular. Such evidence is not sufficient to show meaningful contacts, ties, or relations with Nebraska. The District Court's finding that Nebraska cannot assert general personal jurisdiction over IPS is clearly correct.

Additionally, Higgins v. Rausch Herefords, *infra*, provides support for the District Court's holding. In Higgins, this Court found that "there is no evidence that Rausch-Herefords has designated an agent for service of process, holds a license in Nebraska, has employees in Nebraska, or is incorporated here." Higgins v. Rausch Herefords, 9 Neb.App. 212, 219, 609 N.W.2d 712, 718 (2000). The evidence Higgins provided in support of personal jurisdiction is that Rausch Herefords:

sold cattle in Nebraska over a period of years and that Rausch Herefords advertised in Nebraska regarding its sale of cattle, including, but not limited to, sending direct mail to the Higginsons. These advertisements contain an 800 number that persons interested in purchasing cattle can call.

Id. Noting that the "plaintiff has the burden of proof to establish facts which demonstrate the court's personal jurisdiction over the defendant," Id., the Court found this evidence insufficient for personal jurisdiction.

Similarly, the Freeburgs have not shown evidence sufficient for Nebraska to assert personal jurisdiction over IPS. IPS is not incorporated in Nebraska, is not registered to do business in Nebraska, does not hold a license to do business in Nebraska, does not have a

representative in Nebraska, and does not have any employees in Nebraska. (E1, 1:5). The Freeburgs can only demonstrate that IPS provided marketing materials to Ms. Freeburg's employer during a trade show in Canada. (E2, 2:9). The Freeburgs also argue that IPS provided services to other Nebraska residents. They mention Mr. Swanson, who contacted IPS for its services after Custom Cruises, LLC provided him with IPS' information. (E2, 3:9). They point to a Ms. Batchelder who used IPS' services more than once. (E2, 2-3:9). Such sparse and intermittent "connections" are simply not enough to justify Nebraska courts exercising personal jurisdiction over IPS.

B. THE DISTRICT COURT WAS CLEARLY CORRECT IN HOLDING THAT IPS DID NOT PURPOSEFULLY AVAIL ITSELF OF NEBRASKA'S JURISDICTION.

Nebraska cannot assert specific personal jurisdiction over IPS because IPS did not purposefully direct its activities toward Nebraska or its residents. Specific personal jurisdiction requires the following finding:

- (1) The nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or residents thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which 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.

Higgins, 9 Neb. App. at 220, 609 N.W.2d 712, 719.

The lynchpin of specific personal jurisdiction is whether IPS purposefully availed itself of the privileges and benefits of Nebraska law. The District Court held that “the evidence is insufficient to establish that IPS purposefully availed itself of the benefits and protections of the forum state.” (T18).

In reaching its conclusion the District Court relied on Higgins, supra. Castle Rose v. Philadelphia Grill & Bar of Ariz., Inc., *infra*, also supports the District Court’s finding. In Castle Rose, the plaintiff, Castle Rose, a Nebraska corporation, entered into a franchise agreement with an Arizona corporation. Castle Rose v. Philadelphia Grill & Bar of Ariz., Inc., 254 Neb. 299, 301, 576 N.W.2d 192, 195 (1998). The agreement provided that Philadelphia Grill & Bar of Arizona would operate a restaurant in Arizona and Castle Rose would “assist, guide, and supervise the Arizona corporation in initializing its franchise, and provide continual advice, guidance, and supplies for the franchise’s operation.” Id. The Nebraska Supreme Court stated that “a defendant’s purposeful act, directed to the forum state, not merely the unilateral activity of another who claims a relationship to the defendant, connects the defendant to the forum state.” Id. at 303-04, 576 N.W.2d 192, 196, *citing*, Hanson v. Denckla, 357 U.S. 235 (1958).

Unilateral activities “cannot satisfy the requirement of contact with the forum state.” Id., *quoting*, 24th and Dodge Ltd. v. Commercial Nat. Bank, 243 Neb. 98, 102, 497 N.W.2d 386, 390 (1993), *quoting*, Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985). It was a substantial and continuing relationship that extended Nebraska’s long-arm jurisdiction over Philadelphia Grill & Bar of Arizona.

A simple agreement with a Nebraska resident is not enough. The court must look beyond the agreement and consider the “parties’ prior negotiations and future contemplated consequences, along with the terms of the contract and the parties’ actual course of dealing.”

Castle Rose, 254 Neb. at 304, 576 N.W.2d 192, 196, *citing*, Burger King Corp., 471 U.S. 462. Unlike Castle Rose, The Freeburgs cannot demonstrate the required connection. IPS merely coordinated independent courier services to assist the Freeburgs. (E1, 1:5)(T10). IPS did not use its own employees. Id. Negotiations of the agreement consisted merely of the Ms. Freeburg's telephone call to IPS and IPS sending documents to the Freeburgs. (E3, 3:9). The Freeburgs became aware of IPS through information Ms. Freeburg's employer provided (E3, 2:9) -- information Custom Cruises, LLC acquired years earlier, in Canada. (E2, 2:9). These acts can hardly be said to be acts of a foreign corporation purposefully availing itself of Nebraska's jurisdiction. The District Court was clearly correct in its holding that IPS did not purposefully avail itself of Nebraska's jurisdiction and accordingly its ruling should be upheld.

C. THE FREEBURGS SHOULD BE BARRED FROM RELITIGATING THE ISSUE OF PERSONAL JURISDICTION IN NEBRASKA.

The Freeburgs raise the issue that this case should not have been dismissed "with prejudice." The only Nebraska law on this point is Stewart v. Hechtman, *infra*. In Stewart the plaintiff filed a complaint regarding an accident that took place in North Carolina. Stewart v. Hechtman, 254 Neb. 992, 993, 581 N.W.2d 416, 417 (1998). Plaintiff served defendant by certified mail at his home in Sarasota, Florida. Id. The defendant filed a special appearance contesting the Court's jurisdiction. Id. The Nebraska District Court sustained the special appearance and dismissed the case for lack of personal jurisdiction. Id. Plaintiff filed another suit in the same court but served the defendant at his townhome in Omaha, Nebraska. Stewart, 254 Neb. at 993, 581 N.W.2d 416, 417. Defendant again filed a special appearance basing his claim on collateral estoppel. Id. Since there were no Nebraska cases discussing the issue of

collateral estoppel and personal jurisdiction at that time, the Nebraska Supreme Court relied on Swan v. Sargent Industries, *infra*, an Oklahoma case for guidance.

A dismissal “for want of personal jurisdiction over the defendant does not preclude litigation of the merits before a court of proper jurisdiction.” Stewart, 254 Neb. at 996, 581 N.W.2d 416, 419, *quoting*, Swan v. Sargent Industries, 620 P.2d 473, 477 (Okla.App. 1980). However, it does “preclude *relitigation* of the question of the court’s jurisdiction at that time.” (Emphasis in Original.) Id., *quoting*, Swan, 620 P.2d at 477. The District Court ruled that Nebraska courts do not have personal jurisdiction over IPS. Consequently, while the case certainly should have been dismissed for lack of personal jurisdiction, it is clear that the Freeburgs should be barred from relitigating the issue of personal jurisdiction in Nebraska. However, a court with personal jurisdiction should not be barred from reaching the merits of the underlying issue.

VI. CONCLUSION

IPS does not have minimum contacts nor does it have a substantial connection with Nebraska for the courts to constitutionally exercise the “long arm statute”. As the District Court held, the Freeburgs’ evidence of IPS doing business with random Nebraska customers is insufficient for general personal jurisdiction. The District Court also found that IPS did not purposely avail itself of Nebraska’s specific personal jurisdiction through its agreement with the Freeburgs. Most importantly, the Freeburgs have not shown this Court case law that states otherwise. Therefore, the Nebraska long-arm statute is unable to reach IPS to pull it within this state’s jurisdiction. For these reasons IPS respectfully requests that the Nebraska Court of Appeals affirm the judgment of the District Court of Douglas County, Nebraska dismissing this

Appeal on the grounds that the exercise of personal jurisdiction over IPS in this matter would violate due process under the U.S. Constitution.

DATED: September 10, 2008.

RESPECTFULLY SUBMITTED,

INTERNATIONAL PORT SERVICES,
Defendant-Appellee

By: _____/s/ Lindsay C. Doucette

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