

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

VIRGIE ARTHUR,

Plaintiff,

vs.

HOWARD K. STERN,
CBS STUDIOS, INC.,
and KPRC HOUSTON,

Defendants.

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CIVIL ACTION NO.:
4:07-cv-03742

**DEFENDANT HOWARD K. STERN'S MEMORANDUM
OF LAW IN SUPPORT OF HIS RULE 12(b)(2)
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

ARTHARRR.COM

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COMES NOW Defendant Howard K. Stern (“Stern”) and respectfully files this memorandum of law in support of his Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction.

INTRODUCTION

Plaintiff Virgie Arthur (“Arthur”) has attempted to assert a claim against Stern for conspiracy to defame Arthur. Arthur’s estranged biological daughter, renowned model and actress Anna Nicole Smith (“Ms. Smith”), gave an interview from her home in the Bahamas on October 28, 2006, to discuss the recent birth of her daughter and the nearly simultaneous tragic death of her son. During that interview, Ms. Smith also responded to certain statements Arthur had made on CNN about Ms. Smith and Stern. The interview was aired nationally by CBS on *Entertainment Tonight*. Arthur contends that certain of Ms. Smith’s statements about Arthur made during that interview were defamatory. Arthur accuses Stern of conspiring with the late Ms. Smith and Defendant CBS Studios, Inc. to defame Arthur based on her allegations that Stern helped arrange the interview in the Bahamas, sat with and supported Ms. Smith during the interview in the Bahamas, and played a videotape of the interview in a courtroom in Florida after Ms. Smith’s death in February 2007.

Arthur has not alleged a single fact in her Petition that supports personal jurisdiction over Stern in the State of Texas. Arthur has not alleged that any part of the alleged conspiracy to defame her occurred in Texas, she has not alleged that the interview has any connection with Texas, and she has not alleged that Stern took any act whatsoever in Texas in connection with the interview or the broadcast of the interview.

The evidence is clear that Stern does not have sufficient contacts with the State of Texas for this Court to exercise personal jurisdiction over him. Stern is a California resident who was

living in the Bahamas with Ms. Smith at the time of the interview. Stern has never lived in Texas, never conducted business in Texas, never owned property in Texas, and never entered into contracts in Texas. Moreover, there is absolutely no connection between the interview and Texas. No conversations, communications or other acts relating to arrangements for the interview involved Texas or anyone in Texas. The interview was given in the Bahamas, and the interviewer, who was from California, was physically in the Bahamas to conduct the interview.

The only two connections that Texas has to Arthur's claims are that the nationally broadcast show *Entertainment Tonight* was aired in Texas, and Texas is Arthur's home state so that any purported damages suffered by Arthur occurred in Texas. The case law is very clear, however, that these facts are insufficient to confer personal jurisdiction over Stern in Texas. Arthur has the burden of establishing that Stern purposefully availed himself of the benefit of Texas by directing some act toward the State of Texas. Arthur has not alleged any act at all by Stern directed toward Texas, and the evidence is undisputed that Stern did not direct any act toward Texas. The interview was completely unrelated to the State of Texas.

Because Stern does not have the required minimum contacts with the State of Texas, Constitutional due process prohibits this Court from exercising personal jurisdiction over him. Arthur's Petition against Stern must be dismissed.

NATURE AND STAGE OF THE PROCEEDING

Arthur filed a Petition against Stern and Defendants CBS Studios, Inc. and KPRC Houston (collectively, the "Media Defendants") in the District Court of Harris County, Texas, on October 9, 2007, in which she alleged that Stern conspired with the late Ms. Smith and the Media Defendants to defame Arthur. On November 2, 2007, the Media Defendants answered the Petition, and on November 5, 2007, the Media Defendants filed a notice of removal of the action

to federal court. On November 5, 2007, Stern made a special appearance in the District Court of Harris County, Texas, objecting to personal jurisdiction, and Stern consented to removal of the action to federal court. Before answering the Petition, Stern brings this Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) on the grounds that this Court lacks personal jurisdiction over him.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

The sole issue before the Court on Stern's Motion to Dismiss is whether this Court has personal jurisdiction over Defendant Howard K. Stern. Stern has moved this Court to dismiss for lack of personal jurisdiction; therefore, Arthur bears the burden of making a *prima facie* showing that the court has jurisdiction over Stern by alleging facts in her Petition and any accompanying affidavits sufficient to establish personal jurisdiction over Stern. See WNS, Inc. v. Farrow, 884 F.2d 200, 203 (5th Cir. 1989); Allred v. Moore & Peterson, 117 F.3d 278, 281 (5th Cir. 1997). Dismissal for lack of personal jurisdiction is reviewed *de novo*. Moncrief Oil Int'l, Inc. v. OAO Gazprom, 481 F.3d 309, 311 (5th Cir. 2007).

SUMMARY OF ARGUMENT

Arthur has not—and cannot—satisfy her burden of making a *prima facie* showing that this Court has personal jurisdiction over Stern. Whether this Court has personal jurisdiction over Stern, a non-resident defendant, is a two-part inquiry. First, Texas' long-arm statute must confer personal jurisdiction over Stern. Mink v. AAAA Dev. LLC, 190 F.3d 333, 335 (5th Cir. 1999). Second, the exercise of jurisdiction over Stern must be consistent with due process under the United States Constitution. Id. Arthur can satisfy neither prong of this inquiry.

First, Arthur has failed to allege any facts that demonstrate that Texas' long-arm statute confers personal jurisdiction over Stern. Even assuming *arguendo* that every allegation in

Arthur's Petition is true, she has wholly failed to allege that any act of Stern's occurred in whole or in part in Texas. The acts of which Arthur complains occurred in the Bahamas, California, and Florida. Second, Stern does not have the requisite minimum contacts with Texas to satisfy the due process clause of the Fourteenth Amendment of the United States Constitution. Indeed, there exist only two instances in which Stern could even remotely be considered to have purposely availed himself of Texas, and neither instance is related to the allegations in Arthur's Petition. There is no allegation, and no evidence, that Stern directed any acts related to the interviews into Texas. Accordingly, this Court lacks personal jurisdiction over Stern, and Arthur's Petition against Stern should be dismissed.

STATEMENT OF FACTS

I. BACKGROUND FACTS.

Stern served as Ms. Smith's personal attorney and companion from 1997 through the time of Ms. Smith's death in February 2007. Prior to meeting Stern in 1997, Ms. Smith had already severed ties with her biological mother, Arthur. In July 2006, Stern and Ms. Smith moved to the Bahamas, where Ms. Smith established residency. At all times, Stern has been a resident of California. [Affidavit of Howard K. Stern ("Stern Aff.") attached hereto as Appendix and separately filed contemporaneously herewith, at ¶ 2.]

While residing in the Bahamas, Ms. Smith gave birth to a daughter, Dannielynn, on September 7, 2006. Ms. Smith's son, Daniel, traveled to the Bahamas to visit his mother and his new baby sister. While he was still in the Bahamas, on September 10, Daniel died suddenly, unexpectedly, and accidentally from a cardiac dysrhythmia after taking a combination of methadone, Zoloft, and Lexapro. (See Pl.'s Original Pet. at 2.) Ms. Smith was devastated by her son's death.

At the time of Daniel's death, Ms. Smith and Arthur had not spoken in many months. For years, including those prior to meeting Stern in 1997, Ms. Smith had publicly expressed why she had ended her relationship with her biological mother. After Daniel's death, Ms. Smith left a telephone message for Arthur regarding the death of Daniel. (Pl.'s Original Pet. at 3.) For a profit, Arthur publicly released Ms. Smith's private message to her about Daniel's death. Shortly thereafter in October 2006, also for a profit, Arthur began appearing on national television shows to talk about Daniel's death and the relationship between Ms. Smith and Stern. (See Pl.'s Original Pet. at 3.) During one such interview, Arthur stated "Vickie Lynn, you know I love you. I always have. And be very careful about who you hang around with because you may be next." (See id.) Arthur claims that because of this interview, Stern retaliated against her by conspiring with Ms. Smith and the Media Defendants to defame her during a nationally televised interview. (Id.)

II. FACTS RELATING TO JURISDICTION.

During her career, Ms. Smith gave a number of interviews to *Entertainment Tonight*, including the October 28, 2006 interview complained of by Arthur in her Petition. At the time of the interview, Ms. Smith and Stern were living in the Bahamas. The interview took place in the Bahamas with an *Entertainment Tonight* interviewer physically present in the Bahamas to conduct the interview. (Stern Aff. at ¶ 14.) All discussions and arrangements regarding the interview occurred between Ms. Smith and Mr. Stern, who were located in the Bahamas, and representatives of *Entertainment Tonight*, who were located in California. (See id. at ¶ 15.) No act related to the interview occurred in whole or in part in Texas. (See generally id.) Stern played no role whatsoever in any decision by the Media Defendants to broadcast the interview in Texas, and Stern never distributed copies of the interview to anyone in Texas. (Id. at ¶ 15.) Tellingly,

Arthur does not allege that any act of which she complains directly or indirectly implicated Texas other than the fact that Arthur resides in Texas. (See generally Pl.’s Original Pet.)

Arthur’s presence in Texas is the only connection Texas has to this case. Stern has had strikingly few contacts with Texas and none which relate to the conduct complained of by Arthur in her Petition. (Stern Aff. at ¶ 13.) Stern has always been a resident of California, does not own property in Texas, has never signed any contracts in Texas, does not maintain a place of business in Texas, and has no employees, servants or agents within Texas. (Id. at ¶¶ 2-4, 7.) Stern has never engaged in business in Texas and has had only two contacts that could even remotely be characterized as involving business in Texas: (1) in his capacity as Ms. Smith’s personal attorney in federal court bankruptcy proceedings in California, Stern observed court proceedings in Texas during late 2000 and early 2001 involving litigation regarding Ms. Smith’s deceased husband’s estate; and (2) in mid to late 2007, Stern, in his capacity as executor of Ms. Smith’s estate, spent one night in Texas at the request of the FBI in connection with an FBI investigation of a Texas doctor who had once performed surgery on Ms. Smith. (Id. at ¶¶ 5, 8-12.) Aside from these two instances, Stern has had no contacts with Texas.

ARGUMENT AND CITATION OF AUTHORITIES

This Court, sitting in diversity, has personal jurisdiction over Stern, a non-resident defendant, only if (1) Texas’ long-arm statute confers personal jurisdiction over Stern, and (2) the exercise of such jurisdiction by this Court comports with constitutional due process. Electrosource, Inc. v. Horizon Battery Techs., Ltd., 176 F.3d 867, 871 (5th Cir. 1999). The due process requirements of the Fourteenth Amendment of the United States Constitution are satisfied if (a) Stern has minimum contacts with Texas, and (b) maintenance of this suit against Stern in the courts of Texas would not offend traditional notions of fair play and substantial

justice. Id. This Court lacks personal jurisdiction over Stern because Arthur does not—and cannot—demonstrate that any of the complained of acts occurred in Texas or that Stern has the constitutionally required minimum contacts with Texas. Accordingly, this Court should grant Stern’s motion to dismiss Arthur’s Petition against him.

I. THE TEXAS LONG-ARM STATUTE DOES NOT CONFER PERSONAL JURISDICTION OVER STERN.

This Court should grant Stern’s motion to dismiss Arthur’s Petition against Stern because Texas’ long-arm statute does not confer jurisdiction over Stern. Latshaw v. Johnston, 167 F.3d 208, 211 (5th Cir. 1999) (first prong of personal jurisdiction inquiry is whether long-arm statute of forum state confers jurisdiction). Although Texas’ long-arm statute extends to the limits of federal due process, presumably Arthur must allege some facts in her Petition to establish a *prima facie* case that Texas’ long-arm statute confers jurisdiction over Stern. See id. (holding that Texas’ long-arm statute extends to the limits of federal due process and, thus, the two prongs of the personal jurisdiction inquiry conflate). Arthur has completely failed to satisfy this rudimentary step in attempting to hale Stern into Texas’ courts by failing to allege any facts upon which Texas’ long-arm statute would confer jurisdiction over Stern.

Texas’ long-arm statute confers jurisdiction over a non-resident defendant if that defendant is doing business in Texas. Tex. Civ. Prac. & Rem. Code § 17.042. For the purposes of long-arm jurisdiction, a non-resident does business in Texas if the non-resident:

- (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;
- (2) commits a tort in whole or in part in this state; or
- (3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

Id. The category set forth in Texas' long-arm statute upon which Arthur apparently relies is that which confers jurisdiction when a nonresident defendant "commits a tort in whole or in part in this state." See id. Arthur has alleged absolutely no facts in her Petition that allege Stern committed any part of the tort of "conspiracy to defame" in whole or in part in Texas. (See generally Pl.'s Original Pet.)

The elements of an actionable conspiracy are: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as a proximate result. Tri v. J.T.T., 162 S.W.3d 552, 556 (Tex. 2005); Massey v. Armco Steel Co., 652 S.W.2d 932, 934 (Tex. 1983). In her Petition, Arthur makes absolutely no allegations that any of these elements of a civil conspiracy occurred in Texas. (See generally Pl.'s Original Pet.) Arthur accuses Stern of the following allegedly actionable acts in alleged retaliation for an interview given by Arthur:

- "Stern arranged for Ms. [Smith] to be interviewed by Entertainment Tonight" (Pl.'s Original Pet. at 3.)
- "Stern conspired with Ms. [Smith] and Defendant CBS to make defamatory comments about Plaintiff in the course of that interview." (Id.)
- "Stern accompanied Ms. [Smith] to the interview, sat by her, put his arm around her, and urged and encouraged her to answer questions in a defamatory manner." (Id. at 3-4.)
- "Stern distributed transcripts of the interview to the news media, with the result that the most defamatory portions of the interview were published worldwide." (Id. at 4.)

- “Stern played a videotape of the interview in televised court proceedings in Florida concerning the right to dispose of the remains of Ms. [Smith].” (Id.)
- “Defendant Stern and Defendant CBS Studios conspired to defame Plaintiff through distribution and publication of the interview.” (Id.)

None of these alleged tortious acts occurred in Texas. Moreover, at the time of these alleged tortious acts, the alleged co-conspirators were located in the Bahamas, the arrangements for the allegedly defamatory interview did not occur in Texas, and the allegedly defamatory interview occurred in the Bahamas. (Stern Aff. at ¶¶ 13-18.) Arthur is unable to allege that any of these elements occurred in Texas because, as an initial matter, no tortious acts occurred. (Id. at ¶ 6.) However, even assuming *arguendo* that such acts occurred, there is no conceivable way in which they could have occurred in Texas. (See generally id.) Therefore, Arthur has failed to plead facts upon which Texas’ long-arm statute would confer jurisdiction over Stern, and Arthur’s Petition against Stern must be dismissed. See Tex. Civ. Prac. & Rem. Code § 17.042.

II. CONSTITUTIONAL DUE PROCESS PROHIBITS THIS COURT FROM EXERCISING PERSONAL JURISDICTION OVER STERN.

Even if this Court were to find that the long-arm statute supports the exercise of jurisdiction in this case, the exercise of personal jurisdiction over Stern would not comport with Constitutional due process. The due process clause permits the exercise of jurisdiction over a foreign defendant only if “(1) that defendant has purposefully availed himself of the benefits and protections of the forum state by establishing ‘minimum contacts’ with the forum state; and (2) the exercise of jurisdiction over that defendant does not offend traditional notions of fair play and substantial justice.” Revell v. Lidov, 317 F.3d 467, 470 (5th Cir. 2002) (citations omitted). Thus, this Court must determine whether Stern had minimum contacts with Texas and whether the exercise of jurisdiction over Stern in Texas would be violative of fair play and substantial

justice. A review of the allegations in the Petition and the evidence make it clear that neither requirement is satisfied in this case.

A. Stern Has No Minimum Contacts With Texas.

Stern's contacts with Texas do not rise to the level of "minimum contacts" required to satisfy Constitutional due process. Specific jurisdiction attaches only "when the defendant's contacts with the forum 'arise from, or are directly related to, the cause of action,'" and the court must "look only to the contact out of which the cause of action arises." Revell, 317 F.3d at 470, 472.¹ Thus, the two contacts with Texas identified by Stern – the observation of litigation regarding Ms. Smith's deceased husband's estate and the interview with the FBI agents – cannot be considered as part of the analysis of Constitutional due process because they have no connection with the allegations in the Petition.

Jurisdiction over Stern must be based on acts allegedly committed by Stern himself – "[a] plaintiff's or third party's unilateral activities cannot establish minimum contacts between the defendant and forum state." Moncrief Oil Int'l, Inc. v. OAO Gazprom, 481 F.3d 309, 311 (5th Cir. 2007). Moreover, "bare allegations of conspiracy without factual support do not suffice to establish minimum contacts for personal jurisdiction purposes." American Realty Trust, Inc. v. Hamilton Lane Advisors, Inc., 115 Fed. Appx. 662, 666 n.16 (5th Cir. 2004).

The Fifth Circuit has held that "[s]pecific jurisdiction for a suit alleging the intentional tort of libel exists for (1) a publication with adequate circulation in the state, *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 773-74, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984), or (2) an

¹ Stern will address the application only of "specific jurisdiction" in this brief. There cannot possibly be any argument that "general jurisdiction" arises in this case, as that would arise only if Stern's "contacts with the forum state are unrelated to the cause of action but are 'continuous and systematic.'" Revell, 317 F.3d at 470. There can be no dispute that Stern's contacts with the State of Texas are neither continuous nor systematic given that he has never lived there, conducted any business there or owned property there. See Stern Aff. at ¶¶ 2-7.

author or publisher who ‘aims’ a story at the state knowing that the ‘effects’ of the story will be felt there. *Calder v. Jones*, 465 U.S. 783, 789-90, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984).” *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 425 (5th Cir. 2005). Because Stern is not the broadcaster who published the statement, the first prong could not apply to him, and Arthur therefore must establish that Stern’s actions as part of the alleged conspiracy to defame her were “aimed” at Texas with knowledge that the “effects” of the statements would be felt there.

1. Stern’s actions were not “aimed” at Texas.

The exercise of personal jurisdiction in this case is not proper because none of Stern’s alleged actions were “aimed” at Texas. The Fifth Circuit has “underscored the importance of the direction of defendants’ actions in the scheme of purposeful availment.” *Fielding*, 415 F.3d at 425. The “‘effects’ test is but one facet of the ordinary minimum contacts analysis, to be considered as part of the full range of the defendant’s contacts with the forum.” *Revell*, 317 F.3d at 473. Thus, it is clear that “effects alone are insufficient to establish jurisdiction,” but the plaintiff must also establish that “the defendants had directed their actions towards the forum, and knew their effects would be felt there.” *Fielding*, 415 F.3d at 425 (emphasis added). Indeed, “the plaintiff’s residence in the forum, and suffering of harm there, will not alone support jurisdiction under *Calder*.” *Revell*, 317 F.3d at 473 (emphasis added). *See also Fielding*, 415 F.3d at 427 (holding that “the plaintiff’s mere residence in the forum state is not sufficient to show that the defendant had knowledge that effects would be felt there; a more direct aim is required.”) (citations omitted) (emphasis added).

The Fifth Circuit has held clearly that the mere fact that a defamatory statement is published in a plaintiff’s home state is an insufficient basis for jurisdiction:

[Defendant] must have known that the harm of the article would hit home wherever [plaintiff] resided. But that is the case with virtually any defamation. A more direct aim is required than we have here. In short, this was not about Texas.

[W]e look to the geographic focus of the article, not the bite of the defamation, the blackness of the calumny, or who provoked the fight.

Revell, 317 F.3d at 476. See also Allred v. Moore & Peterson, 117 F.3d 278, 286 (5th Cir. 1997) (noting that “the ‘effects’ test of *Calder* . . . is not a substitute for a nonresident’s minimum contacts that demonstrate purposeful availment of the benefits of the forum state”). Accord Remick v. Manfredy, 238 F.3d 248, 259 (3rd Cir. 2001), cited with approval in Revell (holding that allegations that defendants sent defamatory letters to plaintiff’s office in Pennsylvania and also distributed those letters throughout the professional boxing community, thereby damaging plaintiff in Pennsylvania, were insufficient to establish jurisdiction because “it cannot be said that the defendants here expressly aimed their conduct at Pennsylvania so that Pennsylvania was the focal point of the tortious activity”). Thus, in a case like this one alleging conspiracy, jurisdiction is not proper where “[t]here is no allegation in the complaint that the alleged conspiracy was expressly aimed at Texas, nor an allegation that the alleged tortfeasors had knowledge that a particular Texas resident would suffer the brunt of the harm.” Hawkins v. Upjohn Co., 890 F. Supp. 601, 608 (E.D. Tex. 1994).

There is not a single allegation in the Petition that any allegedly tortious acts were directed towards Texas. The only two (2) factual references in the Petition to Texas are (1) Arthur’s contention that she resides in Texas and has done so for the last eight (8) years, and (2) the contention that the allegedly defamatory statements were broadcast in Houston. (Pl.’s Original Pet. at 5, 9). There is no allegation that Stern directed any of his conduct into Texas, that he intended for any of the statements to be broadcast into Texas, or that he knew that any harm would be suffered in Texas. There is no allegation that Stern ever spoke with anyone in Texas about the interviews or the broadcast. Nor is there even any allegation that Texas was mentioned

in the allegedly defamatory statements. Cf. Fielding, 415 F.3d at 426-27 (“Unlike *Calder* where California was the focal point of the defamatory story, [defendant]’s references to Texas were merely collateral to the focus of the articles.”).

Nor could there be any such allegations. Stern has averred in his affidavit that he “never had any contact with Texas or communications with anyone in Texas in connection with the interviews.” (Stern Aff. at ¶ 14.) The interviews themselves took place entirely in the Bahamas, and no part of them took place in Texas. (Id.) Stern “never had any contact with Texas or communications with anyone in Texas in connection with the broadcast of the interviews” and specifically “never had any contacts with anyone at KPRC regarding the broadcast of the interviews.” (Id. at ¶¶ 15, 18.) Stern had “no role whatsoever in any decision to broadcast those interviews in Texas, and [he] never distributed copies of those interviews to anyone in Texas.” (Id. at ¶ 16.) Moreover, Stern “did not profit in any way from the interviews or from the broadcast of the interviews in Texas. . . .” (Id. at ¶ 17.) It is clear that Stern had absolutely no contact with Texas in connection with these interviews and that he played no role whatsoever in directing the broadcast of the interviews into Texas.

Arthur’s only possible basis for asserting the exercise of personal jurisdiction in this case is that she lives in Texas, and therefore any alleged harm was suffered in Texas. Fifth Circuit case law is very clear that this basis alone is insufficient to support the exercise of jurisdiction – Arthur must allege specific acts by Stern demonstrating that the conspiracy was “expressly aimed at Texas.” Because Arthur has not – and cannot – allege any such facts, this Court lacks personal jurisdiction over Stern, and the Petition against Stern should be dismissed.

2. The interviews were not directed at Texas.

Not only did Stern not direct any allegedly tortious acts toward Texas, but the subject matter of the interviews and the sources for the allegedly defamatory statements were not located in Texas. The Fifth Circuit has held that in addition to actions directed at the forum state, “the sources relied upon and activities described in an allegedly defamatory publication should in some way connect with the forum. . . .” Revell, 317 F.3d at 474. Thus, the court in Revell found it significant “that there is no reference to Texas in the article or any reliance on Texas sources.” Id. See also Fielding, 415 F.3d at 426 (holding that plaintiff must demonstrate that “(1) the subject matter of and (2) the sources relied upon for the article were in the forum state”).

The source for the allegedly defamatory statements in this action was Ms. Smith, who was a resident of the Bahamas and who was in the Bahamas when she gave the interviews. (See Stern Aff. at ¶ 14.) There is no allegation in the Petition that there was any other source for the statements in the interview, because Ms. Smith was the sole source.

Similarly, if there was a geographic focus of the interviews, it was on the Bahamas, not Texas. There is no allegation in the Petition that Texas was mentioned in the interviews. The interviews were the first interviews conducted after the death of Ms. Smith’s son, Daniel, and the birth of her daughter, Dannielynn. As such, the focus of the interviews was on those two events – both of which had occurred in the Bahamas – and the effect of those events on Ms. Smith’s life.

Arthur’s allegations in the Petition make it clear that the interviews were not focused on or directed at Texas. Arthur asserts that she “reached out to her daughter through the news media” and gave “a televised interview” in which she “warned Ms. [Smith] to be cautious about the people who surrounded her.” (Pl.’s Original Pet. at 3.) Ms. Smith was living in the Bahamas

at the time “Plaintiff reached out to her.” Arthur contends that “[i]n retaliation,” Stern and Ms. Smith gave a televised interview in which Ms. Smith defamed Plaintiff. (Id. at 3.) Arthur asserts that “[q]uestions posed by the CBS interviewer were instrumental in drawing defamatory statements” from Ms. Smith. (Id. at 6.) The Petition also identifies several allegedly defamatory statements from the interviews which were about Arthur or were directly in response to Arthur’s own media appearance earlier that month in which she had discussed Ms. Smith and Stern. (Id. at 4-6.)

If the statements were made “in retaliation,” as alleged by Arthur, then Ms. Smith and Stern did not seek out Arthur in Texas to defame her but instead responded to a nationally broadcast interview given by Arthur. Although Stern denies that the interviews were conducted “in retaliation” for any media appearances by Arthur, there were questions posed to Ms. Smith as a result of Arthur’s appearance on CNN earlier that month. Arthur had discussed the death of Ms. Smith’s son, Daniel, and Ms. Smith’s relationship with Stern during her interview, and Ms. Smith was asked to respond to certain of Arthur’s comments. It certainly cannot be said that Ms. Smith’s responses to questions arising from a nationally televised interview given by Arthur were directed at Texas or that Texas was the subject of her statements simply because Arthur resides in Texas. To the contrary, the statements by Ms. Smith identified in the Petition were focused on Ms. Smith’s own life and her relationship with her mother as well as responding to Arthur’s own national media appearance.

Neither the sources nor the subject matter of the interviews in this case were in Texas. The sole source was Ms. Smith’s interview in the Bahamas, and even Arthur contends that far from seeking out Arthur in Texas, Ms. Smith was merely responding to a nationally televised interview given by Arthur in which Arthur sought out Ms. Smith. (Pl.’s Original Pet. at 3.)

B. Exercising Jurisdiction Over Stern Would Offend Traditional Notions Of Fair Play And Substantial Justice.

Above and beyond the fact that the minimum contacts requirement has not been satisfied in this case, the exercise of personal jurisdiction over Stern is also inappropriate because Stern can present “a compelling case that the presence of some other considerations would render jurisdiction unreasonable” because it would not comport with “fair play and substantial justice.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-77 (1985). Factors that may be considered include: (1) the burden on the defendant; (2) Texas’ interest in adjudicating the dispute; (3) plaintiff’s interest in obtaining effective and convenient relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interests of the several states in furthering substantive social policies. Id. Those factors present a “compelling case” to defeat jurisdiction in this case.

The notion of fair play can also be implicated in a defamation case by the overwhelming absence of any contacts with the forum state by the defendant:

Appellants argue that as a result of the articles, their reputations were destroyed amongst the people in Texas who knew them. . . . To employ this approach would turn the jurisdictional analysis on its head, focusing attention not on where the alleged tortfeasor directed its activity, but on where the victim could identify tangential harms. Such a flexible approach to the *Calder* effects test would contravene “traditional notions of fair play.” An alleged tortfeasor must have some control over the jurisdiction of his alleged tort, either through his intentional availment of the economic benefits of the forum . . . or through his direction of his allegedly tortious activities towards the forum, such that the impact of the injury on the plaintiff and subsequent exercise of jurisdiction by the courts is reasonably anticipated.

Fielding, 415 F.3d at 427-28 (citations omitted). In this case, given the complete lack of any evidence that Stern availed himself of the benefits of Texas or directed any tortious activities into Texas, Stern certainly could not have anticipated that he would be haled into Texas, and the exercise of jurisdiction over him in Texas would “contravene ‘traditional notions of fair play.’”

Additionally, Stern would be under a great disadvantage if he had to litigate this case in Texas. As previously discussed, Stern has no contacts in Texas. His attorneys are located in Georgia. Although undersigned counsel does have an office in Dallas, that office has only one litigator – the attorney-in-charge of this case is located in Georgia, and lawyers from Georgia will have to fly to Texas to attend hearings, depositions, or trial. Because Stern has limited financial resources, these expenses would make litigation in Texas very difficult for him.

Moreover, given that there were no acts directed toward Texas, the state of Texas has limited interest in adjudicating this dispute. The allegations of the Petition involve a nationally aired interview that took place in the Bahamas of a Bahamian resident and a California resident. The interview itself was clearly focused on the Bahamian resident and her life and not on Texas. The interview given by Ms. Smith and Stern was the first interview Ms. Smith had given since the death of her son, Daniel, and the birth of her daughter, Dannielynn. Thus, the focus of the interviews was on those two events, both of which took place in the Bahamas.

Because Stern did not direct any actions toward Texas, because Texas was not the focus of the interviews, and because litigating in Texas would be unfairly burdensome for Stern, the exercise of jurisdiction by this Court over Stern would not satisfy the requirements of Constitutional due process.

CONCLUSION

Because no part of the alleged conspiracy to defame Arthur occurred in Texas and because Stern does not have the constitutionally required minimum contacts with Texas, this Court should GRANT Stern's Motion to Dismiss for Lack of Personal Jurisdiction and DISMISS Arthur's Petition against Stern.

Dated: November 19, 2007.

CERTIFICATE OF SERVICE

This is to certify that on this 19th day of November, 2007, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to attorneys of record in this case. A true and correct copy of the foregoing document was also served via overnight delivery upon:

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CBS Studios, Inc. and KPRC Houston*

/s/ L. Lin Wood

L. Lin Wood

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APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

VIRGIE ARTHUR,

Plaintiff,

vs.

HOWARD K. STERN,
CBS STUDIOS, INC.,
and KPRC HOUSTON,

Defendants.

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CIVIL ACTION NO.:
4:07-cv-03742

AFFIDAVIT OF HOWARD K. STERN

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Before me, the undersigned Notary Public, on this day personally appeared Howard K. Stern, and after being duly sworn stated under oath deposed and said the following:

1.

I am a defendant in the above-entitled and numbered cause. I am over the age of 21 years and am admitted to the State Bar of California.

2.

I am a resident of California and have been a resident of California my entire life.

3.

I do not own any property in Texas.

4.

I have never signed any contracts in the state of Texas.

5.

I am not engaged in business in Texas.

6.

I have not committed any tort within the state of Texas.

7.

I do not maintain a place of business in Texas and have no employees, servants, or agents within the state of Texas.

8.

I have had only two (2) contacts with Texas that could even remotely be characterized as involving business.

9.

First, in my capacity as Anna Nicole Smith's personal attorney in her bankruptcy proceeding in federal court in California, I spent approximately five (5) months in Texas in late 2000 and early 2001 in connection with her litigation against E. Pierce Marshall in the probate proceedings of her deceased husband, J. Howard Marshall II.

10.

Ms. Smith had Texas counsel who represented her in the Texas court.

11.

I was not counsel of record, and I was not admitted *pro hac vice* to practice before the Texas court. My sole role in connection with that litigation was to assist Ms. Smith, and in that capacity I attended meetings with her and attended court proceedings as an observer.

12.

Second, I have been to Texas one (1) time during the last three (3) months, and that was in my capacity as Executor of the Estate of Anna Nicole Smith. I was there for one (1) night at the request of certain FBI agents to meet with them in connection with their investigation of a

former doctor of Ms. Smith's who was trying to sell a video of Ms. Smith taken during a plastic surgery procedure.

13.

I have not had any contacts whatsoever with Texas in connection with the claims asserted by the plaintiff in this lawsuit.

14.

I never had any contact with Texas or communications with anyone in Texas in connection with the interviews referenced in the Complaint. Those interviews took place in their entirety in the Bahamas, and no part of those interviews was given in Texas.

15.

I never had any contact with Texas or communications with anyone in Texas in connection with the broadcast of the interviews referenced in the Complaint.

16.

I played no role whatsoever in any decision to broadcast those interviews in Texas, and I never distributed copies of those interviews to anyone in Texas.


17.

I did not profit in any way from the interviews or from the broadcast of the interviews in Texas (or anywhere else).


18.

Although I am aware that *Entertainment Tonight* is a nationally televised show, I am not familiar with the television station KPRC Houston, and I did not know that KPRC would be broadcasting the interviews in Texas. I have never had any contacts with anyone at KPRC regarding the broadcast of the interviews.

Every statement contained in this affidavit is within my personal knowledge and is true and correct.


Howard K. Stern

SUBSCRIBED AND SWORN TO BEFORE ME
this 13 day of November, 2007.


Notary Public

My commission expires: 1-22-11



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ALL-PURPOSE ACKNOWLEDGMENT

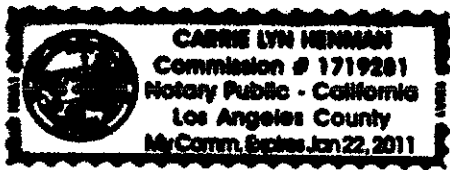
State of California

County of Los Angeles

On November 13, 2007 before me, Carrie Lyn Henman, Notary Public
DATE NAME OF NOTARY PUBLIC

personally appeared Howard K. Stern
NAME(S) OF SIGNER(S)

personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal or Stamp Here

[Handwritten Signature]
SIGNATURE OF NOTARY

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it may prove valuable to persons relying on this Acknowledgment and could prevent fraudulent reattachment of this certificate to another document.

DESCRIPTION OF ATTACHED DOCUMENT

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT

Affidavit of Howard K. Stern
TITLE OR TYPE OF DOCUMENT

4
NUMBER OF PAGES

6
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE