

IN THE SUPREME COURT OF MISSOURI

SC96977

**CEDAR CREST APARTMENTS, LLC and PETERSON PROPERTIES, INC.,
d/b/a THE PETERSON COMPANIES
Relators**

vs.

**THE HONORABLE JACK GRATE
Respondent**

**Appeal from the Circuit Court of Jackson County
State of Missouri
The Honorable Jack Grate**

RELATORS' REPLY BRIEF

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TABLE OF CONTENTS

REPLY TO RESPONDENT’S STATEMENT OF FACTS	7
REPLY ARGUMENT	8
<u> </u> STANDARD OF REVIEW GOVERNING ALL POINTS	8
I. RELATORS ARE ENTITLED TO A PERMANENT WRIT OF PROHIBITION PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND THE HONORABLE JACK GRATE, FROM EXERCISING PERSONAL JURISDICTION OVER RELATORS BECAUSE MISSOURI COURTS LACK SPECIFIC JURISDICTION OVER RELATORS IN THAT THE ALLEGATIONS IN THE UNDERLYING PETITION DO NOT ARISE FROM OR RELATE TO RELATORS’ ACTIVITIES IN MISSOURI AND RELATORS’ CONTACTS WITH MISSOURI DO NOT SATISFY DUE PROCESS.	11
A. Plaintiff Has Failed to Make a Prima Facie Showing That the Long-Arm Statute Applies	11
1. Relators conducted no transactions in the state and did not own property in the state	12
2. The minimum contacts of a separate corporate entity do not confer specific personal jurisdiction on Relators	15
3. Federal diversity jurisdiction is not the same as personal jurisdiction	17

II. RELATORS ARE ENTITLED TO AN ORDER PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND THE HONORABLE JACK GRATE FROM EXERCISING PERSONAL JURISDICTION OVER RELATORS BECAUSE MISSOURI COURTS LACK GENERAL JURISDICTION OVER RELATORS IN THAT RELATORS ARE NOT INCORPORATED IN MISSOURI, ORGANIZED UNDER MISSOURI LAW, DO NOT HAVE A PRINCIPAL PLACE OF BUSINESS IN MISSOURI, AND CANNOT BE REGARDED AS “ESSENTIALLY AT HOME” IN MISSOURI 20

A. Respondent Did Not Have General Jurisdiction Over Relators 20

B. Plaintiff is Not Entitled to Jurisdictional Discovery 22

CONCLUSION 23

CERTIFICATE OF SERVICE 26

RULE 84.06(c) CERTIFICATION 27

TABLE OF AUTHORITIES

Cases

<i>1st Tech, LLC v. Digital Gaming Sols. S.A.</i> , No. 4:08CV586DDN, 2009 WL 879563, at *7 (E.D. Mo. Mar. 30, 2009).....	21
<i>Andra v. Left Gate Prop. Holding, Inc.</i> 453 S.W. 3d 216, 226 (Mo. banc 2015)	10
<i>AstraZeneca AB v. Mylan Pharms., Inc.</i> , 72 F. Supp. 3d 549, 554-56 (D. Del. 2014)	14
<i>Brandin v. Brandin</i> , 918 S.W. 2d 835, 839 (Mo. Ct. App. 1996)	22
<i>Carruth v. Michot</i> , 2015 WL 6506550 (W.D. Tex. Oct. 26, 2015)	17
<i>Cent. Cooling & Supply Co. v. Dir. of Revenue, State of Mo.</i> , 648 S.W. 2d 546, 548 (Mo. 1982).....	15, 20
<i>Collet v. Am. Nat. Stores, Inc.</i> , 708 S.W. 2d 273, 283 (Mo. Ct. App 1986)	15
<i>Consol. Textile Co. v. Gregory</i> , 289 U.S. 85, 88, 53 S.Ct. 529, 530, 77 L.Ed. 1047 (1933)	16
<i>Consolidated Elect. & Mechanicals, Inc. v. Schuerman</i> , 185 S.W. 3d 773, 775 (Mo. Ct. App. 2006).....	9, 22
<i>Daimler AG v. Bauman</i> , 517 U.S. 117, 119-120 (2014)	14, 16, 18, 19, 22
<i>Gibson v. Brewer</i> , 952 S.W. 2d 239, 245 (Mo. banc 1997)	22
<i>Grease Monkey Intern., Inc. v. Godat</i> , 916 S.W. 2d 257, 262 (Mo. Ct. App. 1995)	15
<i>Hollinger v. Sifers</i> , 122 S.W. 3d 112, 114 (Mo. Ct. App. 2003).....	11
<i>J.C.W. ex rel. Webb v. Wyciskalla</i> , 275 S.W. 3d 249, 252 (Mo. banc 2009).....	17
<i>Keeton v. Hustler Magazine, Inc.</i> , 465 U.S. 770, 781 at n.13 (1984)	16

Mello v. Giliberto, 73 SW. 3d 669, 675 (Mo. Ct. App. 2002) 9, 21, 22

Mid-Missouri Tel. Co. v. Alma Tel.Co., 18 S.W. 3d 578, 582 (Mo. Ct. App. 2000) 15

Mpressions, Inc. v. The Cato Corp., No. 05-0561 CV W ODS, 2006 WL 290592, at *4
(W.D. Mo. Feb. 6, 2006)..... 15

Peterson v. Chicago, R.I. & P. Railway Co., 205 U.S. 364, 391, 27 S.Ct. 513, 522, 51
L.Ed. 841 (1907) 16

Ruhrgas AG v. Marathon Oil Company, 526 U.S. 574, 583 (1999) 17

Shouse v. RFB Const. Co., 10 S.W. 3d 189 (Mo. Ct. App. 1999)..... 21, 22

State ex rel. Bayer Corp. v. Moriarty, 536 S.W. 3d 227 (2017) 22

State ex rel. Deere & Co. v. Pinnell, 454 S.W 2d 889, 893 (Mo. banc 1970) 21

State ex rel. Jackson County Prosecutor v. Moorhouse, 70 S.W. 3d 552, 555 (Mo. Ct.
App. 2002)..... 9

State ex rel. Kubatzky v. Holt, 483 S.W. 2d 799, 803 (Mo. 1972) 9

State ex rel. McNary v. Hais, 670 S.W. 2d 494, 497 (Mo. banc 1984)..... 7

State ex rel. Missouri Ozarks Economic Opportunity Corp. v. Long, 763 S.W. 2d 381,
382 (Mo. Ct. App. 1989)..... 7, 8

State ex rel. Morasch v. Kimberlin, 654 S.W. 2d 889, 891 (Mo. banc 1983)..... 7

State ex rel. Norfolk S. Ry. Co. v. Dolan, 512 S.W.3d 41, 52 (Mo. banc 2017) .. 13, 14, 19,
20, 22

State ex rel. Ranni Associates, Inc. v. Hartenbach, 742 S.W. 2d 134, 137 (Mo. banc
1983)..... 10

State ex rel. Scott v. Marsh, 601 S.W. 2d 601,603 (Mo. Ct. App 1983)..... 21

State ex rel. St. Louis Housing Authority v. Gaertner, 695 S.W. 2d 460, 461-62 (Mo. banc 1985)..... 7

State ex rel. T.J.H. v. Bills, 504 S.W. 2d 76, 79 (Mo. banc 1974) 7

State ex. rel. Clem Trans. Inc. v. Gaertner, 668 S.W. 2d 367, 370 (Mo. banc 1985)..... 7, 8

Thunderbird Motor Freight Lines, Inc. v. Consol. Pipe & Supply Co. of Missouri, 623 F. Supp. 4, 6 (E.D. Mo. 1983) 16

Statutes

§ 536.010(1) RSMo 1986 8

28 U.S.C. § 1332 (2017)..... 17

R.S.Mo. § 506.500 (1)-(2) 13

Rules

Mo. R. Ct. 55.28 13

Mo.S.Ct.R. 84.04(c)..... 6

REPLY TO RESPONDENT’S STATEMENT OF FACTS

Plaintiff asserts in his Statement of Facts that “Relators own property in Missouri, transact business in Missouri, and utilize the court system. Further, the Relators’ decisions regarding the control and management of the property where Plaintiff was injured are controlled by a Defendant J.A. Enterprises, Inc., a Missouri corporation.” Notably, Plaintiff’s brief does not contain any citation to support these facts in violation of Mo.S.Ct.R. 84.04(c). Rather, the facts sets forth in Relators’ brief, which are properly supported by citations to the record, negate Plaintiff’s alleged facts. For instance, Plaintiff claims “Relators’ own property in Missouri,” but the affidavit of James Peterson specifically attests that neither Peterson Properties nor Cedar Crest own property in Missouri. (App. A47, ¶3). Accordingly, this Court must disregard the unsupported facts set forth in Respondent’s Brief.

REPLY ARGUMENT

STANDARD OF REVIEW GOVERNING ALL POINTS

Contrary to Plaintiff's assertions, a writ of prohibition is the proper and only adequate remedy for a case, such as here, where a trial court has exceeded its jurisdiction. While this Court has endeavored to restrict the unfettered use of the writ of prohibition for the interlocutory review of trial error, *State ex rel. Morasch v. Kimberlin*, 654 S.W. 2d 889, 891 (Mo. banc 1983), it has clearly approved the writ as the appropriate remedy where the trial court lacks jurisdiction. *State ex rel. St. Louis Housing Authority v. Gaertner*, 695 S.W. 2d 460, 461-62 (Mo. banc 1985); *See State ex rel. McNary v. Hais*, 670 S.W. 2d 494, 497 (Mo. banc 1984) ("The chief purpose of the writ [of prohibition] is to prevent the lower court from acting without or in excess of its jurisdiction.") A writ of prohibition is the only remedy for Relators where, as in this case, the Respondent trial court is wholly wanting in jurisdiction to proceed in the case; an appeal is not an adequate remedy and would cause unwarranted expense and delay to all the parties involved. *See State ex rel. T.J.H. v. Bills*, 504 S.W. 2d 76, 79 (Mo. banc 1974).

Plaintiff inaccurately suggests to this Court that the question of jurisdiction turns upon facts yet to be determined by the Respondent trial court and that, therefore, a writ of prohibition would not be an appropriate remedy in this case. For this proposition Plaintiff erroneously relies upon *State ex. rel. Clem Trans. Inc. v. Gaertner*, 668 S.W. 2d 367, 370 (Mo. banc 1985) and *State ex rel. Missouri Ozarks Economic Opportunity Corp. v. Long*, 763 S.W. 2d 381, 382 (Mo. Ct. App. 1989)]. These cases cited by Plaintiff are clearly

distinguishable from the present case. In *State ex rel. Clem Trans. Inc. v. Gaertner*, the trial court took up and denied separate motions to dismiss based upon jurisdiction and venue. *State ex rel. Clem Trans Inc.*, 668 S.W. 2d at 368. In a proceeding for prohibition, the appellate court found that the petition was silent as to the residency of the relators. *Id.* The record contained no other evidence on the issue of jurisdiction. Under such circumstances, the court of appeals held that where the trial court would have to hear evidence and determine personal jurisdiction upon facts yet to be determined by the court a writ of prohibition would not lie. *Id.* Unlike *State ex rel. Clem Trans Inc.*, here the Respondent had before it the Motion to Dismiss based on facts not appearing of record, including affidavits and other supporting exhibits; the trial court had before it the Plaintiff's Amended Petition which clearly alleged that Relator Peterson Property was a foreign corporation organized through the laws of the State of Kansas (A3, ¶ 8; A62-67) and that Relator Cedar Crest was a foreign limited liability company formed under the State of Kansas. (A62-67, A85).

Equally unavailing is Plaintiff's reliance on *State ex rel. Missouri Ozarks Economic Opportunity Corp.*, where the question presented was whether the relator corporation was an agency as defined under § 536.010(1) RSMo 1986; the appellate court was asked to determine jurisdiction solely upon the pleadings presented. *State ex rel. Missouri Ozarks Economic Opportunity Corp.*, 763 S.W. 2d at 362-63. The appellate court found that the resolution of the question presented required the aid of facts yet presented to the lower court and which were not part of the record. Thus, the court of appeals declined to issue a writ of prohibition. *Id.* Unlike *State ex rel. Missouri Ozarks Economic Opportunity Corp.*,

this Court is presented with not only the pleadings in the case but also the Affidavit of James Peterson and the supporting exhibits submitted by both parties to the lower court.

In an effort to deflect from his failure to make a *prima facie* showing that the trial court had personal jurisdiction, the Plaintiff argues that (as with every writ of prohibition) there is a presumption that the trial court acted properly. *State ex rel. Kubatzky v. Holt*, 483 S.W. 2d 799, 803 (Mo. 1972). While the accepted presumption exists, it is also one that is rebuttable. *State ex rel. Jackson County Prosecutor v. Moorhouse*, 70 S.W. 3d 552, 555 (Mo. Ct. App. 2002). But more importantly, this presumption does not vitiate the standard governing personal jurisdiction: that once a defendant raises the issue of lack of personal jurisdiction in a motion to dismiss, the burden shifts to the plaintiff who must make a *prima facie* showing that the trial court has personal jurisdiction. *Mello v. Giliberto*, 73 SW. 3d 669, 675 (Mo. Ct. App. 2002). In this case, based upon the pleadings, Affidavit of James Peterson and the other supporting exhibits of the parties, Plaintiff failed to meet his burden of proving facts that support the existence of jurisdiction. *Consolidated Elect. & Mechanicals, Inc. v. Schuerman*, 185 S.W. 3d 773, 775 (Mo. Ct. App. 2006). Relators have rebutted any presumption that the trial court acted properly when it denied Relators' Motion to Dismiss. The Preliminary Writ should be made absolute.

I. RELATORS ARE ENTITLED TO A PERMANENT WRIT OF PROHIBITION PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND THE HONORABLE JACK GRATE, FROM EXERCISING PERSONAL JURISDICTION OVER RELATORS BECAUSE MISSOURI COURTS LACK SPECIFIC JURISDICTION OVER RELATORS IN THAT THE ALLEGATIONS IN THE UNDERLYING PETITION DO NOT ARISE FROM OR RELATE TO RELATORS' ACTIVITIES IN MISSOURI AND RELATORS' CONTACTS WITH MISSOURI DO NOT SATISFY DUE PROCESS.

Specific jurisdiction requires consideration of the “relationship among the defendant, the forum and the litigation.” *Andra v. Left Gate Prop. Holding, Inc.* 453 S.W. 3d 216, 226 (Mo. banc 2015). When evaluating this case under both the long-arm statute and minimum contacts analysis, the conclusion is clear. Plaintiff has completely failed to make a *prima facie* showing that personal jurisdiction exists thereby requiring this Court to make the Preliminary Writ absolute.

A. Plaintiff Has Failed to Make a Prima Facie Showing That the Long-Arm Statute Applies

To subject a non-resident defendant to the long-arm jurisdiction of this State, the plaintiff must plead and prove two elements: First, that the suit arose from any of the activities enumerated in the long-arm statute, and second that defendant had sufficient minimum contacts with Missouri to satisfy the due-process requirements. *State ex rel. Ranni Associates, Inc. v. Hartenbach*, 742 S.W. 2d 134, 137 (Mo. banc 1983). This case

involves neither the placing of a product in the stream of commerce or the rendering of a service in Missouri. Under such circumstances, Missouri courts have recognized that the contact requirements for long-arm jurisdiction become stricter. *Id.* at 138; *Hollinger v. Sifers*, 122 S.W. 3d 112, 114 (Mo. Ct. App. 2003).

1. Relators conducted no transactions in the state and did not own property in the state

This case is not about a product entering the stream of commerce of Missouri or a service being provided within the state. This case is about an accident that occurred on property allegedly owned or managed by the Relators in Kansas. The Plaintiff is a Kansas resident and the Relators are Kansas entities. Under such facts, the contact requirements of the long-arm statute must be more strictly construed for Relators. Plaintiff's arguments regarding application of the long-arm statute ignore the fact that he has the burden to make a *prima facie* case of personal jurisdiction. He complains of alleged insufficiencies of James Peterson's affidavit. This is simply a deflection because Plaintiff cannot meet his burden of proof to make a *prima facie* showing of personal jurisdiction. That is, before even looking at any alleged deficiencies in Relators' affidavit, Plaintiff has to meet the burden of making a *prima facie* showing of jurisdiction. Plaintiff has not met this burden.

Plaintiff has admitted in his Amended Petition and through his Exhibit D01 to his Suggestions in Opposition to the Motion to Dismiss that Relators are foreign corporations formed in the State of Kansas. (Petitioner's Amended Petition ¶¶ 6, 8, A 38-39; uncertified copy of Relator Peterson Properties' 1979 Application for Foreign Corporation for a Certificate of Authority to Transact Business in Missouri, A 62-67). Further, through

James Peterson's Affidavit, the Relators have offered evidence that Relators don't own real estate in Missouri and don't do any business in the State of Missouri [Affidavit of James Peterson ¶¶ 1,4,5,6, A 47-48]. These facts inure to the favor of finding that the long-arm statute does not apply.

In order to argue that Relators transacted business in Missouri or owned real property in Missouri, Plaintiffs rely on two exhibits offered to Respondent in the underlying case: an uncertified copy of Relator Peterson Properties' 1979 Application for Foreign Corporation for a Certificate of Authority to Transact Business in Missouri and a one page Case.net printout that lists Relator Cedar Crest Apartments as plaintiffs in landlord tenant actions in 1998-2000.¹ Notably, these documents were not certified, lacked foundation, contained hearsay and were not authenticated, thereby failing to meet the

¹ Plaintiff argues, both regarding specific and general jurisdiction, that the "Peterson Companies" owned at least four apartment complexes in Missouri. [Respondent's Brief at 12, 13]. Significantly Plaintiff cites to no source or exhibits for this assertion. Additionally, Plaintiff generically says "Peterson Companies," rather than identifying the particular entity that allegedly owns the property, likely because Plaintiff knows the properties are not owned by Relators. As such, the argument and unsupported facts should be disregarded.

evidentiary requirements of Mo. R. Ct. 55.28.² Moreover, these documents do not create diversity or even show that Relators transact business or own real property in Missouri. The Application for a Certificate of Authority merely shows that Peterson Properties complied with Missouri's registration statute. This Court, in *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 52 (Mo. banc 2017) rejected this argument finding that registration with the Secretary of State does not confer jurisdiction. Similarly, the one page Case.net printout does not confer jurisdiction. The Case.net printout merely shows, at best, that Cedar Crest Apartments filed 8 landlord/tenant actions from 1997-2000. The claims in the present lawsuit are in no way related to the landlord/tenant actions filed 20 years ago. Plaintiff provides no authority to support an argument that the remote utilization of a Missouri court 20 years ago confers jurisdiction over Relators in the present case.

Furthermore, even if, *arguendo*, these documents were sufficient to show that Relators transacted business or owned property in Missouri, this would not be enough to confer personal jurisdiction over the Relators as foreign corporations. Missouri's long arm statute clearly states that personal jurisdiction over a foreign corporation or person exists only where such non-resident transacts business, makes a contract or commits a tort in Missouri, ***and the cause of action arises from one of those specific acts.*** R.S.Mo. § 506.500 (1)-(2) (emphasis added). Consistent with the statute, this Court has held that

² "When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct the matter be heard wholly or partly on oral testimony or depositions." Rule 55.28.

specific jurisdiction “encompasses cases in which the suit arises out of or relates to the defendant’s contacts with the forum.” *State ex rel. Norfolk Southern Railway Company v. Dolan*, 512 S.W. 3d 41, 48 (Mo. banc 2017), *citing*, *Daimler AG v. Bauman*, 517 U.S. 117, 119-120 (2014). This Court has also recognized that, even if a defendant purposely avails itself of the opportunity to do business in Missouri, it would only subject itself to personal jurisdiction if the claims are related to those contacts. *Id.* Unrelated claims may only be brought in the forum if the forum has general jurisdiction. *Id.*

Nowhere in Plaintiff’s brief has he argued that the cause of action in the underlying case, Plaintiff’s accident on Relators’ Kansas Property, arose from any transaction that occurred in Missouri or any real property owned, used or possessed in Missouri. The fact that Relator Peterson Properties applied as a foreign corporation to transact business in Missouri, without more, or that Relator Cedar Crest Apartments used the Missouri courts in unrelated matters, does not confer personal jurisdiction over the entities in this case. *See Norfolk*, 512 S.W. 3d 41, 52 (Mo. 2017) (“The plain language of Missouri’s registration statutes does not mention consent to personal jurisdiction for unrelated claims, nor does it purport to provide an independent basis for jurisdiction over foreign corporations that register in Missouri). *See also*, *AstraZeneca AB v. Mylan Pharms., Inc.*, 72 F. Supp. 3d 549, 554-56 (D. Del. 2014) (extensive litigation history in district is insufficient to render a defendant at home as envisioned by *Daimler*). Plaintiff’s contentions that the long-arm statute applies to Relators fails under both the law and the facts in this case.

2. The minimum contacts of a separate corporate entity do not confer specific personal jurisdiction on Relators

Plaintiff attempts to bootstrap specific personal jurisdiction in this case by arguing that jurisdiction on Relators may be conferred due to the member status or ownership interest of a separate corporation, J.A. Peterson Enterprises, Inc. However, Missouri has long held that two separate corporations are regarded as wholly distinct legal entities, even if one partly or wholly owns the other. *Cent. Cooling & Supply Co. v. Dir. of Revenue, State of Mo.*, 648 S.W. 2d 546, 548 (Mo. 1982); *Mid-Missouri Tel. Co. v. Alma Tel.Co.*, 18 S.W. 3d 578, 582 (Mo. Ct. App. 2000); *Grease Monkey Intern., Inc. v. Godat*, 916 S.W. 2d 257, 262 (Mo. Ct. App. 1995) (“In the eyes of the law, two different corporations are two different persons. This is true even if one corporation is the sole shareholder of the other.”). Ordinarily, courts protect the separate legal identities of individual corporations, even if one corporation owns a part or all of the other. *Collet v. Am. Nat. Stores, Inc.*, 708 S.W. 2d 273, 283 (Mo. Ct. App 1986).³ To hold otherwise would virtually eliminate limited liability protections granted to parent and subsidiary companies. *See Mpressions, Inc. v. The Cato Corp.*, No. 05-0561 CV W ODS, 2006 WL 290592, at *4 (W.D. Mo. Feb. 6, 2006) (“jurisdiction over an employee does not automatically follow from jurisdiction over the corporation which employs him; nor does jurisdiction over a parent corporation automatically establish jurisdiction over a wholly owned subsidiary. Each defendant’s

³ The only facts produced to the lower court to support Plaintiff’s arguments were a Biennel Registration for J.A. Peterson Enterprises, Inc. for 2017, and a one page CaseNet printout that lists J.A. Peterson Enterprises, Inc. as a plaintiff in real estate actions from 1985-1995 in Missouri.

contacts with the forum State must be assessed individually”) (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 at n.13 (1984)); *see also Daimler*, 134 S. Ct. 746 (Due process did not permit exercise of general jurisdiction over German corporation in California based on services performed there by its United States subsidiary); *Thunderbird Motor Freight Lines, Inc. v. Consol. Pipe & Supply Co. of Missouri*, 623 F. Supp. 4, 6 (E.D. Mo. 1983) (Plaintiff’s “reliance on the parent-subsiary relationship of defendants” was insufficient to “sustain its burden of making a prima facie showing” of personal jurisdiction over the nonresident defendant); *Consol. Textile Co. v. Gregory*, 289 U.S. 85, 88, 53 S.Ct. 529, 530, 77 L.Ed. 1047 (1933) (subsidiary’s contacts in state are not imputed to parent for purposes of personal jurisdiction); *Peterson v. Chicago, R.I. & P. Railway Co.*, 205 U.S. 364, 391, 27 S.Ct. 513, 522, 51 L.Ed. 841 (1907) (Pacific company’s “holding of the majority interest in the stock [of Gulf Company]. . . does not make [Pacific Company a] company transacting the local business”).

Plaintiff has not made a *prima facie* showing that would support this Court disregarding the separate corporate identities of the companies or to confer personal jurisdiction on the Relators, Kansas companies, based on J.A. Peterson Enterprises, Inc., a Missouri corporation.

3. Federal diversity jurisdiction is not the same as personal jurisdiction

Plaintiff erroneously reasons to this Court that specific personal jurisdiction exists based on the diversity statutes of federal court. This claim fundamentally misinterprets the difference between subject matter jurisdiction and personal jurisdiction. “The character of the two jurisdictional bedrocks unquestionably differ.” *Ruhrgas AG v. Marathon Oil*

Company, 526 U.S. 574, 583 (1999). Subject matter jurisdiction is non-waivable and delimits court power while personal jurisdiction is waivable and protects individual rights. *Id.* Under federal law, subject matter jurisdiction is conferred under Art. III of the United States Constitution as well as statutory requirements. It functions as a restriction on federal power. *Id.* None of this is true with respect to personal jurisdiction. The requirement that a court have personal jurisdiction in federal court flows not from Art. III but rather from the Due Process Clause. *Id.* Diversity rests on statutory interpretation, not constitutional command. *Id.*; 28 U.S.C. § 1332 (2017). In Missouri, this Court has recognized that, for the most part, personal jurisdiction is a matter of federal constitutional law while subject matter jurisdiction flows from Art. V of the Missouri Constitution. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W. 3d 249, 252 (Mo. banc 2009). Plaintiff's reliance on federal diversity jurisdiction to assert that personal jurisdiction lies with the Respondent is clearly misplaced.

An argument similar to Plaintiff's argument was made in *Carruth v. Michot*, 2015 WL 6506550 (W.D. Tex. Oct. 26, 2015). In *Carruth*, the Plaintiff sought personal jurisdiction over two LLC's of which he was a member. Plaintiff argued first that because the LLC's are citizens of every state in which they have a member, and he was a citizen of Texas and a member of the LLC's, the LLC's were subject to the jurisdiction of the Texas Court. *Id.* at *6. The Court rejected that argument, stating that it "blurs principles of diversity jurisdiction and minimum contacts...A determination of citizenship for diversity jurisdiction and a determination of minimum contacts for personal jurisdiction 'present []

distinct due process issues”” *Id.* at *7 (citations omitted). Directly to the point, the Court held:

Indeed, the personal jurisdiction analysis is founded on an evaluation of whether each defendant purposefully availed him or herself of the benefits and protections of the forum state. Disregarding a defendant's corporate form and looking directly to the citizenship of an limited liability company's members ignores this directive. Consequently, the Court may not exercise general personal jurisdiction over [the Defendant] based solely on the citizenship of one of its members. Rather, the Court must decide whether [the Defendants] have sufficient contacts with the state of Texas to support the exercise of personal jurisdiction.

Id. (citations omitted). The Court ultimately concluded that the LLC defendants did not have sufficient contact with Texas to satisfy general jurisdiction. *Id.* (citing *Daimler*, 134 S.Ct. 746).

Plaintiff’s mere allegations of business transactions or ownership of real property do not satisfy his burden of making a prima facie showing of specific personal jurisdiction. The Missouri long-arm statute does not apply to Relators and there is no basis for a finding of minimum contacts sufficient to satisfy due process requirements. This Court should make the Preliminary Writ absolute and find that the Respondent does not have personal jurisdiction over Relators.

II. RELATORS ARE ENTITLED TO AN ORDER PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND THE HONORABLE JACK GRATE FROM EXERCISING PERSONAL JURISDICTION OVER RELATORS BECAUSE MISSOURI COURTS LACK GENERAL JURISDICTION OVER RELATORS IN THAT RELATORS ARE NOT INCORPORATED IN MISSOURI, ORGANIZED UNDER MISSOURI LAW, DO NOT HAVE A PRINCIPAL PLACE OF BUSINESS IN MISSOURI, AND CANNOT BE REGARDED AS “ESSENTIALLY AT HOME” IN MISSOURI

In *Daimler*, the United States Supreme Court clarified the test for when the exercise of jurisdiction over a corporation comports with due process. *Daimler*, 571 U.S. at 126; *Norfolk*, 512 S.W. 3d at 46. A court normally can exercise general jurisdiction over a corporation when the corporation’s place of incorporation or its principal place of business is in the forum state. *Id.* The court may only exercise general jurisdiction in “exception cases” where the corporation’s activities in the state are so substantial and of such a nature as to render the corporation at home in that state. *Daimler*, 571 U.S. at 138, fn 19; *Norfolk*, 512 S.W. 3d at 46. Here, the Relator’s place of incorporation and principal place of business are in Kansas; they did not engage in activities in the State of Missouri. General jurisdiction therefore does not exist.

A. Respondent Did Not Have General Jurisdiction Over Relators

Plaintiff’s arguments regarding general jurisdiction are simply retreads of his argument as to specific jurisdiction. Plaintiff argues that the transactions of J.A. Peterson

Enterprises, Inc., a Missouri corporation, invokes general jurisdiction over Relators, separate Kansas corporations. As argued, *supra*, the Relators and J.A. Peterson Enterprises, Inc. are wholly distinct legal entities. There is no basis to confer general jurisdiction on Relators based upon the activities of J.A. Peterson Enterprises, Inc. *See, Cent. Cooling & Supply Co.*, 648 S.W. 2d at 548.

Plaintiff contends that the use of Missouri courts by Relator Cedar Crest invokes general jurisdiction in this case. This Court in *Norfolk* considered and rejected similar arguments. *Norfolk*, 512 at 47.

Lastly, Plaintiff argues that Peterson Properties has maintained a “systematic and continuous” presence in Missouri since August, 1979, relying on the 1979 Application for Foreign Corporation for a Certificate of Authority to Transact Business in Missouri. As previously noted, this Court has found in *Norfolk* that the foreign registration statutes neither infer consent to personal jurisdiction nor confer personal jurisdiction on a foreign corporation. *Id.* at 51. Plaintiff offers no other facts to make a *prima facie* showing that Peterson Properties is “at home” in Missouri.

This Court has held that “when a corporation is neither incorporated nor maintains its principal place of business in a state, mere contacts, no matter how “systematic and continuous” are extraordinary unlikely to add up to an ‘exceptional case.’” *Id.* at 48. There simply are no facts that show that Relators had systematic and continuous contacts with Missouri, and certainly no facts that add up to this being an exceptional case. Plaintiff has failed to making a *prima facie* showing of general jurisdiction.

B. Plaintiff is Not Entitled to Jurisdictional Discovery

“Jurisdictional discovery is appropriate where the existing record is inadequate to support personal jurisdiction, but the Plaintiff demonstrates that it can supplement its jurisdictional allegations through discovery.” *1st Tech, LLC v. Digital Gaming Sols. S.A.*, No. 4:08CV586DDN, 2009 WL 879563, at *7 (E.D. Mo. Mar. 30, 2009). Jurisdictional discovery is inappropriate when the Plaintiff pushes for jurisdiction based only on bare assertions.” *Id.* In order to be entitled to discovery, plaintiff is required to have alleged facts in the petition, which, if true, establish jurisdiction. *Mello*, 73 S.W. d at 673, citing, *State ex rel. Deere & Co. v. Pinnell*, 454 S.W 2d 889, 893 (Mo. banc 1970); *State ex rel. Scott v. Marsh*, 601 S.W. 2d 601,603 (Mo. Ct. App 1983). In the absence of alleged facts, plaintiff is not entitled to discovery. *Id.* In *Mello*, the appellate court found that plaintiff was not entitled to further discovery on her motion to dismiss because she plead conclusions, not facts in her petition. Here, just as in *Mello*, Plaintiff has plead conclusions, not facts, as to personal jurisdiction. Therefore, Plaintiff is not entitled to discovery.

Plaintiff cites to *Shouse v. RFB Const. Co.*, 10 S.W. 3d 189 (Mo. Ct. App. 1999) for the proposition that his pleading is sufficient to infer substantial business contacts and therefore further discovery should occur. *Shouse* is distinguishable from this case. In *Shouse*, the circuit court treated the motion to dismiss as one for summary judgment. The appellate court found that the parties were not provided a reasonable opportunity to present all materials pertinent to a motion. As a result, the appellate court treated the court’s judgment as a judgment on the pleadings. *Id.* at 193-94. The standard in this case is not one of a judgment on the pleadings. Rather the Plaintiff had the burden to make a prima

facie showing, not by pleadings but by affidavits and exhibits presented with the motion in opposition. *Mello*, 73 S.W. 3d at 676; *Consolidated Elect. & Mechanicals, Inc.*, 185 S.W. 3d at 775.

Missouri is a fact pleading state. Therefore, it is not sufficient to plead conclusions, rather than facts, to show that a petitioner is entitled to relief. *Gibson v. Brewer*, 952 S.W. 2d 239, 245 (Mo. banc 1997). While *Shouse* may have found that further discovery would be permitted in light of the procedural posture of the case, generally, “[d]iscovery is not a tool to be used by a plaintiff to find information to fill in the holes left in his or her pleading, but rather, a plaintiff’s adequately pled petition allows the plaintiff to further find and develop support for his or her case.” *Brandin v. Brandin*, 918 S.W. 2d 835, 839 (Mo. Ct. App. 1996). In light of the fact that Plaintiff has failed to sufficiently plead facts to confer jurisdiction, this Court should not grant jurisdictional discovery.

Lastly, the *Shouse* decision was rendered in 1999, long before the Supreme Court’s decision in *Daimler* or this Court’s decisions in *Norfolk* and *State ex rel. Bayer Corp. v. Moriarty*, 536 S.W. 3d 227 (2017). To the extent *Shouse* conflicts with these holdings, it should be disregarded.

CONCLUSION

Relators are Kansas entities, organized under the laws of Kansas with their principal business in Kansas. There are no “exceptional circumstances” warranting the imposition of general jurisdiction. Relators do not transact business in Missouri, do not make contracts in Missouri, do not own real estate in Missouri and did not commit a tort in Missouri. The

Missouri long-arm statute does not apply. The Relators do not have sufficient minimum contact with Missouri to invoke specific personal jurisdiction. Respondent erred in exercising personal jurisdiction over Relators, and this error has and continues to result in irreparable harm and significant expenses. For the reasons set forth in Relator's initial brief and herein, the Preliminary Writ of Prohibition should be made permanent, the Respondent should be prohibited from exercising jurisdiction over this case, and Respondent should be required to enter an order dismissing Relators from the underlying lawsuit for lack of personal jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of this Relators' Brief were served this 2nd day of July, 2018, through the electronic filing system pursuant to Supreme Court Rule 103.08 on:

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RULE 84.06(c) CERTIFICATION

Undersigned counsel for Appellant hereby certifies that this Brief contains the information required by Rule 55.03. Additionally, this Brief complies with the limitations contained in Rule 84.06(b), in that it contains 4,534 words counted using Microsoft Word.

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