

CAUSE NO. 201405995

ASPIRE COMMODITIES, L.P.
Plaintiff,

V.

CHARLES PATERNO
Defendant.

§ IN THE DISTRICT COURT
§
§
§ 215TH JUDICIAL DISTRICT
§
§
§ OF HARRIS COUNTY, TEXAS

**DEFENDANT'S SPECIAL APPEARANCE
CHALLENGING PERSONAL JURISDICTION**

NOW COMES Defendant, CHARLES PATERNO, named Defendant in the above-entitled and numbered cause, and files this Special Appearance Challenging Personal Jurisdiction and shows the Court:

I.

The last three numbers of CHARLES PATERNO's driver's license number are 298.

II.

On or about December 2, 2011, Defendant Charles F. Paterno ("Paterno"), the managing member of College Avenue Development, LLC ("CAD"), entered into an agreement with Aspire Commodities, LP ("Aspire") for an investment of \$2,500,000.00 in CAD, in exchange for a preferred equity interest in CAD. See Exhibit A attached to Plaintiff's Original Petition.

As part of the consideration for Aspire's investment in CAD, the members of CAD amended its operating agreement to create Aspire's tier of preferred equity ("December 2, 2011 Amendment").

Article 4 of the December 2, 2011 Amendment provided that "all net profits and gains shall be allocated first, to [Aspire] until [Aspire] has received cumulative allocations of net profits and gain ... equal to ... \$2,500,000.00" and "all non-liquidating distributions shall

be made ... first, to [Aspire] until [Aspire] has received cumulative distributions in an amount equal to ... \$2,500,000.00".

On March 10, 2013, Paterno forwarded the bank account statements for CAD to Aspire. See Exhibit B attached to Plaintiff's Original Petition.

III.

Defendant specifically denies the grounds upon which Plaintiff claims this Court may exercise personal jurisdiction, as follows:

1. that this court has jurisdiction over Defendant Charles F. Paterno, because said Defendant purposefully availed himself of the privilege of conducting activities in the state of Texas and established minimum contacts sufficient to confer jurisdiction over said Defendant, and the assumption of jurisd

2. that Defendant Charles F. Paterno had continuous and systematic contacts with the state of Texas sufficient to establish general jurisdiction over said Defendant.

3. that the cause of action arose from or relates to the contacts of Defendant Charles F. Paterno to the state of Texas, thereby conferring specific jurisdiction with respect to said Defendant.

4. that Defendant Charles F. Paterno engaged in activities constituting business in the State of Texas as provided by Section 17.042 of the Texas Civil Practice and Remedies Code, in that said Defendant contracted with a Texas resident and performance of the agreement in whole or in part thereof was to occur in Texas.

IV.

Defendant denies that Texas courts have jurisdiction over the Defendant because Defendant did not purposefully establish minimum contacts with Texas.

1. Defendant claims no specific jurisdiction exists because Plaintiff's cause of action did not arise from or relate to any contacts Defendant may have had with Texas, specifically:

a. that the cause of action did not arise from or relate to the contacts of Defendant Charles F. Paterno to the State of Texas, thereby conferring no specific jurisdiction with respect to the Defendant

2. Defendant claims no general jurisdiction exists because Defendant did not have continuous and systematic contacts with Texas, specifically:

a. A court may exercise general jurisdiction if the defendant's contacts with the forum state are continuous and systematic, even if the cause of action did not arise out of or relate to the defendant's contacts with the forum. The minimum contacts analysis involved when general jurisdiction is asserted is more demanding than when a plaintiff asserts specific jurisdiction. In a general jurisdiction analysis, a court does not view each contact in isolation, but instead investigates, compiles, sorts, and analyzes all contacts for proof of a pattern of continuing and systematic activity. To satisfy the requirements of general jurisdiction, usually, the defendant must be engaged in longstanding business in the forum state, such as marketing or shipping products, or performing services or maintaining one or more offices there; activities that are less extensive than that will not qualify for general in personam jurisdiction. *Waterman S.S. Corp. v. Ruiz*, 355 S.W.3d 387, 395 (Tex. App. Houston 1st Dist. 2011).

b. In tort action alleging claims of fraud, negligent misrepresentation and breach of fiduciary duty against nonresident real estate agent, actionable communications made to Texas resident in multiple telephone calls and emails in connection with one real estate transaction not sufficient to satisfy purposeful availment requirement. *Bryan v. Gordon*, 384 S.W.3d 908, 914-919 (Tex. App.-Houston [14th Dist.] 2012, no pet.)

V.

Defendant claims that this Honorable Court's exercise of personal jurisdiction over Defendant will offend traditional notions of fair play and substantial justice and will be inconsistent with the constitutional requirements of due process for the following reasons:

1. The real property forming the basis of Plaintiff's claims is in South Carolina.
2. The Promissory Note was executed by Paterno in South Carolina.
3. College Avenue Development, LLC ("CAD"), is a limited liability company registered, formed, organized and amended in South Carolina..
4. Paterno is, has been, and remains a citizen of a state other than Texas.
5. All transactions pertaining to the subject property as complained of by Plaintiff occurred in South Carolina.

VI.

Movant includes an affidavit attached hereto and incorporated herein by reference.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests a hearing and that this Court dismiss this cause because the Court does not have personal jurisdiction over the Defendant, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted

A handwritten signature in black ink, appearing to read "James P. Grissom". The signature is fluid and cursive, with a large initial "J" and a distinct "P" and "G".

By: _____

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CHARLES PATERNO

**DEFENDANT'S SPECIAL APPEARANCE
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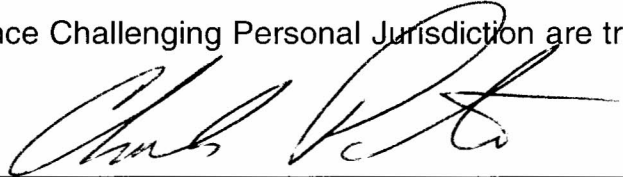
CHARLES PATERNO
Defendant.

§ IN THE DISTRICT COURT
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VERIFICATION

BEFORE ME, the undersigned authority, personally appeared CHARLES PATERNO, who being duly sworn, deposed as follows:

"My name is CHARLES PATERNO. I am at least 18 years of age and of sound mind. I am personally acquainted with the facts alleged in Defendant's Special Appearance Challenging Personal Jurisdiction. I hereby swear that the statements in support of Defendant's Special Appearance Challenging Personal Jurisdiction are true and correct."



CHARLES PATERNO

SUBSCRIBED AND SWORN TO BEFORE ME on March 17, 2014, by Charles Paterno.

Brenda P McEachin
Notary Public, State of North Carolina



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**AFFIDAVIT IN SUPPORT OF
DEFENDANT'S SPECIAL APPEARANCE
CHALLENGING PERSONAL JURISDICTION**

BEFORE ME, the undersigned authority, personally appeared CHARLES F. PATERNO, who being duly sworn, deposed as follows:

"My name is CHARLES F. PATERNO. I am at least 18 years of age and of sound mind. I am personally acquainted with the facts alleged herein.

"On or about December 2, 2011, College Avenue Development, LLC ("CAD") and Aspire Commodities, LP ("Aspire") entered into an agreement for Aspire's investment \$2,500,000.00 in CAD, in exchange for a preferred equity interest in CAD.

As part of the consideration for Aspire's investment in CAD, the members of CAD amended its operating agreement to create Aspire's tier of preferred equity ("December 2, 2011 Amendment").

"Article 4 of the December 2, 2011 Amendment provided that "all net profits and gains shall be allocated first, to [Aspire] until [Aspire] has received cumulative allocations of net profits and gain ... equal to ... \$2,500,000.00" and "all non-liquidating distributions shall be made ... first, to [Aspire] until [Aspire] has received cumulative distributions in an amount equal to ... \$2,500,000.00".

"On March 10, 2013, Paterno forwarded the bank account statements for CAD to Aspire.

"CAD has complied substantially with all of the requirements of the agreement with Aspire in spite of its heavy-handed tactics and unreasonable and untimely demands for information that was not available when requested. Aspire has received all rents from the subject as well as a substantial tax advantages resulting from its investment in CAD."

1. The real property which forms the basis of the agreement between Aspire and CAD is located in South Carolina;
2. My negotiations and conversations with Aspire pertaining to the agreement all occurred in South Carolina;
3. The Promissory Note and related documents were signed by me in South Carolina.
4. All banking transactions relevant to the agreement between Aspire and CAD occurred in South Carolina.
5. I have never conducted business transactions in Texas.
6. I have never resided in Texas.
7. I have never maintained a business address in Texas.


"Affiant sayeth further not."



CHARLES F. PATERNO, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on March 17, 2014, by Charles Paterno.





Notary Public, State of ~~Texas~~ North Carolina

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ORDER ON DEFENDANT'S SPECIAL APPEARANCE
CHALLENGING PERSONAL JURISDICTION

On _____, the Court heard the Defendant's Special Appearance Challenging Personal Jurisdiction and the Plaintiff's response thereto. After due consideration of the special plea, the response, the affidavits, discovery, other evidence adduced at the hearing, and the arguments of counsel, this Court is of the opinion that such Motion should be **SUSTAINED**.

IT IS THEREFORE ORDERED that Defendant's Special Appearance Challenging Personal Jurisdiction is **SUSTAINED** and this cause is hereby **DISMISSED**.

Signed on: _____, 2014.

JUDGE PRESIDING

APPROVED AS TO FORM:

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