

PM

CAUSE NO. 2008-24181

2008 JUN 13 PM 1:59

VIRGIE ARTHUR,

Plaintiff

v.

HOWARD K. STERN, ET AL.,

Defendants

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

BY _____
DEPUTY

HARRIS COUNTY, TEXAS

190TH DISTRICT COURT

**DEFENDANT BONNIE STERN'S SPECIAL APPEARANCE
AND OBJECTION TO PERSONAL JURISDICTION**

Bonnie Stern ("Stern"), named as a Defendant, files this Special Appearance pursuant to TEX. R. CIV. P. 120a, respectfully objecting to the jurisdiction of this Court over the person and property of the Defendant, and as grounds would show the following:

1. This Court does not have personal jurisdiction over Stern because Stern is not amenable to process issued by Texas courts. Plaintiff has failed either to plead or prove compliance with the Texas long arm statute, TEX. CIV. PRAC. & REM. CODE § 17.042.

2. Personal jurisdiction over a nonresident defendant is constitutional when two conditions are met: (1) the defendant has purposefully established minimum contacts with the forum state, and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002).

3. The minimum contacts analysis requires that Stern must have "purposefully availed" herself of the privilege of conducting business or activities within Texas, thus invoking the benefits and protections of Texas law. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). Purposeful availment is "the touchstone of jurisdictional due process." *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005).

4. Minimum contacts require the Plaintiff to prove either specific or general jurisdiction. *Guardian Royal Exch. Assur., Ltd. v. English China Clays, PLC*, 815 S.W.2d 223 (Tex. 1991). Specific jurisdiction requires proof that (1) Stern's contacts with Texas were purposeful and directed, and (2) Plaintiff's cause of action arises from or relates to those same contacts. *American Type Culture Collection v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002). General jurisdiction, on the other hand, requires proof that the nonresident defendant has continuous, systematic and substantial contacts with the State of Texas. "When general jurisdiction is asserted, the minimum contacts analysis is more demanding, and requires a showing of substantial activity in the forum state." *Guardian Royal Exch., supra* at 228.

5. This court has neither specific nor general jurisdiction as to Stern:

- A. Stern is not a resident of Texas. Stern is a resident of Beverly Hills, California, which Plaintiff admits at page 2 of her petition.
- B. Stern does not have an office, an address, or a registered agent for service in Texas.
- C. Stern does not now engage and has never engaged in ongoing business in Texas.
- D. Stern has committed no tort in Texas, in whole or in part.
- E. Other than an investment interest in two residential properties in Kern County, Texas (which are unrelated to Plaintiff's claimed causes of action), Stern owns no property in Texas.
- F. Stern has no substantial connection with Texas arising from any action or conduct which was purposefully directed toward Texas.
- G. Stern does not have continuing, systematic or substantial contacts with Texas.

6. Plaintiff's petition alleges no specific acts attributable to Stern that are alleged to have occurred in Texas. Plaintiff's petition contains only the conclusory rant that Stern is a "conspirator" and part of a "cabal" for apparently supporting her brother, Howard Stern, during

court proceedings in the Bahamas. Plaintiff complains of statements broadcast on Entertainment Tonight and a celebrity website called TMZ.com, but never attributes any specific defamatory statement to Stern. As a whole, the petition is fatally defective under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE § 17.042, since it fails to allege a single act or omission on the part of Defendant Stern which is claimed to have occurred within the State of Texas.

7. This Court thus has neither general nor specific jurisdiction over Stern. The assumption of jurisdiction over Stern would offend traditional notions of fair play and substantial justice, depriving Stern of due process as guaranteed by the Constitution of the United States. See, *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Guardian Royal*, *supra* at 231.

8. This Special Appearance is made to the entire proceeding.

9. This Special Appearance is filed before any answer, motion or other plea.

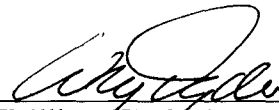
10. Defendant's verification is attached below pursuant to TEX. R. CIV. P. 120a(1).

WHEREFORE, PREMISES CONSIDERED, Defendant Bonnie Stern prays that her Special Appearance and Objection to Personal Jurisdiction be in all respects granted and sustained, that Order issue confirming that Defendant Stern is not amenable to process in Texas and not subject to personal jurisdiction in the State of Texas, and for all other relief appropriate in the premises.

DATED and SERVED this 13th day of June, 2008.

Respectfully submitted,

OGDEN, GIBSON, BROOKS & LONGORIA, L.L.P.


By: 
William W. Ogden
State Bar No. 15228500
1900 Pennzoil South Tower
711 Louisiana
Houston, Texas 77002
Telephone: 713-844-3000
Facsimile: 713- 844-3030

**ATTORNEYS FOR DEFENDANT
BONNIE STERN**

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2008, a true and correct copy of the foregoing instrument was served by U.S. First Class Mail upon the following counsel of record:

Neil C. McCabe
M. Michael Meyer
The O'Quinn Law Firm
440 Louisiana Street, Suite 2300
Houston, Texas 77002


William W. Ogden

FILED

CAUSE NO. 2008-24181

2008 JUN 13 PM 1:59

VIRGIE ARTHUR,

Plaintiff

v.

HOWARD K. STERN, ET AL.,

Defendants

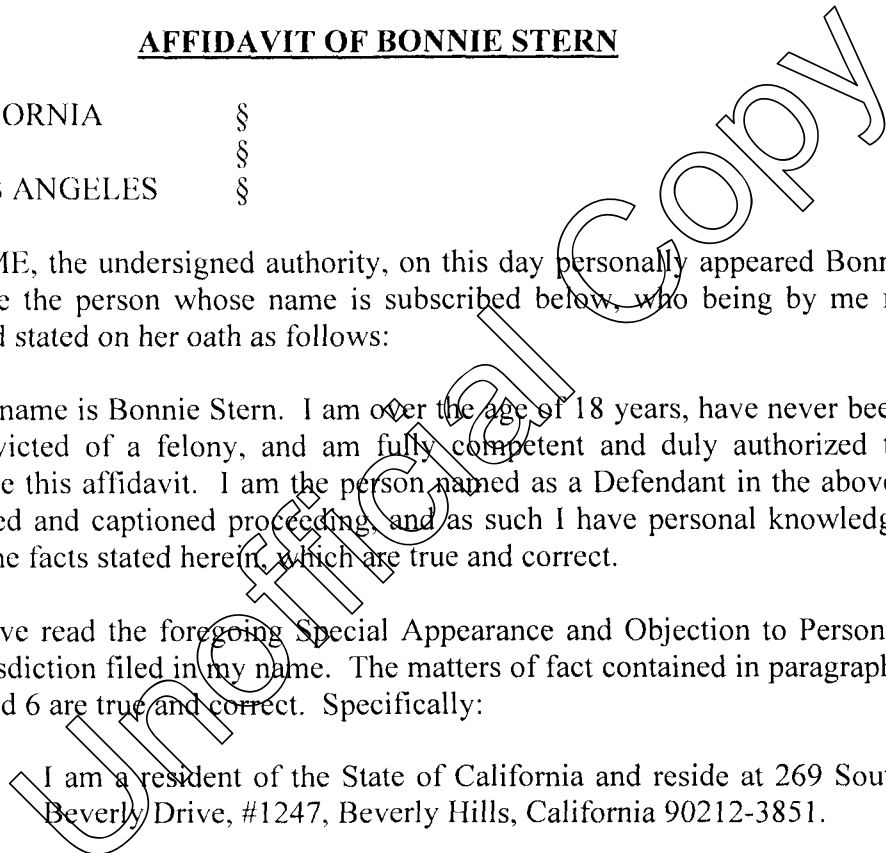
§ IN THE DISTRICT COURT OF
 §
 BY ~~§~~ DEPUTY
 §
 § HARRIS COUNTY, TEXAS
 §
 §
 §
 § 190TH DISTRICT COURT

AFFIDAVIT OF BONNIE STERN

STATE OF CALIFORNIA §
 §
 COUNTY OF LOS ANGELES §

BEFORE ME, the undersigned authority, on this day personally appeared Bonnie Stern, known to me to be the person whose name is subscribed below, who being by me first duly sworn, deposed and stated on her oath as follows:

1. My name is Bonnie Stern. I am over the age of 18 years, have never been convicted of a felony, and am fully competent and duly authorized to make this affidavit. I am the person named as a Defendant in the above-styled and captioned proceeding, and as such I have personal knowledge of the facts stated herein, which are true and correct.
2. I have read the foregoing Special Appearance and Objection to Personal Jurisdiction filed in my name. The matters of fact contained in paragraphs 5 and 6 are true and correct. Specifically:
 - A. I am a resident of the State of California and reside at 269 South Beverly Drive, #1247, Beverly Hills, California 90212-3851.
 - B. I do not have an office, an address or an agent for service of process in Texas.
 - C. I do not now and have never engaged in a systematic ongoing business in the State of Texas.
 - D. I have committed no tort in Texas, in whole or in part.



- E. Other than an investment interest in two residential properties which I purchased in Kern County, Texas in 2005, I own no property in Texas. My ownership of the Kern County property has absolutely nothing to do with the matters alleged in Plaintiff's Original Petition.
- F. I have no substantial connection with Texas, have not purposefully directed any action or conduct toward the State of Texas, and do not have any continuing or systematic contacts with the State of Texas.
3. It is a fact that my brother is Howard K. Stern, also named as a Defendant. It is a fact that Howard K. Stern was the companion of and one of the personal lawyers for Vickie Lynn Marshall, also known as Anna Nicole Smith, for several years preceding Ms. Smith's death. It is also a fact that Howard K. Stern is one of the executors of Ms. Smith's estate. Controversies have arisen between Howard K. Stern and Ms. Smith's mother, Virgie Arthur, Plaintiff in these proceedings. Some of those controversies have been widely reported in the news media. I have tried to be supportive of my brother during those controversies, but I am not part of any "conspiracy," nor have I committed any unlawful or tortious acts, whether in Texas or elsewhere.

Further, Affiant sayeth not.



BONNIE STERN

SWORN TO and SUBSCRIBED BEFORE ME, the undersigned authority on this 10th day of June, 2008.



Notary Public in and for the
State of California



OGDEN, GIBSON, BROOCKS & LONGORIA, L.L.P.

ATTORNEYS

1900 PENNZOIL SOUTH TOWER

711 LOUISIANA

HOUSTON, TEXAS 77002

2008 JUN 13 PM 1:59

WILLIAM W. OGDEN
DIRECT LINE: 713-844-3001
bogden@ogwbl.com

BY _____
DEPUTY

TEL. (713) 844-3000
FAX (713) 844-3030
WWW.OGWBL.COM

June 13, 2008

Honorable Theresa Chang
Harris County District Clerk
Harris County Civil Courthouse
201 Caroline
Houston, Texas 77002

Via Hand Delivery

Re: *Virgie Arthur v. Howard K. Stern, et al.*; in the 190th District Court of Harris County, Texas

Dear Ms. Chang:

Enclosed for filing in the captioned matter please find an original and one copy of Defendant Bonnie Stern's Special Appearance and Objection to Personal Jurisdiction.

Please file the original among the other papers in this cause in your usual fashion. Please place your file mark on the enclosed extra copy to show the date and hour of filing, and return the file-stamped copy to the waiting messenger to complete my file.

A copy of the pleading has been served upon all counsel or record.

I thank you for your continuing courtesies in this regard.

Very truly yours,



William W. Ogden

WWO:lc
Enclosure

cc: Mr. Neil C. McCabe
Mr. M. Michael Meyer
The O'Quinn Law Firm
440 Louisiana Street, Suite 2300
Houston, Texas 77002