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SUPREME COURT

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OF THE

JUL 17 2012

STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA

No. 20120210

Wendell Lund

PLAINTIFF – APPELLANT,

vs.

Orville Lund and Betty Lund

DEFENDANTS – APPELLEES.

APPELLANT'S BRIEF

Appeal from the April 9, 2012 Order Granting Motion to Dismiss
For Lack of Personal Jurisdiction,
of the District Court
Bottineau
Northeast District
Honorable John C. McClintock, Jr.
Case No. 05-2011-CV-118

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the District Court erred in dismissing W.L.'s Complaint by claiming that North Dakota does not have personal jurisdiction over B.L.

STATEMENT OF THE CASE, INCLUDING NATURE OF CASE,

COURSE OF PROCEEDING AND DISPOSITION BELOW

The Appellant, Wendell Lund (hereinafter referred to as W.L.) initiated this action against the Appellees, Orville Lund and Betty Lund (hereinafter referred to O.L. and B.L.), on or about January 24, 2011 by filing a Summons and Complaint with the County of Burleigh, State of North Dakota. In said Complaint (A. at p.2), W.L. set forth in relevant part the following:

*In the year 1985, the parties entered into an implied contract wherein Plaintiff would provide certain labor and supplies, pay one half (½) of the real estate taxes, maintain the mowers and equipment used in cleaning and clearing of the land and property and any other items necessary for the general maintenance of the residences, grounds and farmland.

*In exchange for Plaintiff providing said items, the Defendants agreed to convey to Plaintiff any and all interest they have in this piece of property to Plaintiff.

*In 1991, a Quit Claim Deed was prepared and signed by the Defendants wherein all interest of Defendants were transferred to Plaintiff and Defendant Orville Lund in said real property. (Note: should be Warranty Deed).

*The Court in Lund vs. Lund found the Quit Claim Deed to be invalid. As such, the Court failed to consider Plaintiff's interest in said property. (Note: should be Warranty Deed).

*Commencing from 1985 to the present, Plaintiff expended a significant amount of costs and labor in the subject real property with the expectation that he would be fairly and reasonably compensated by the Defendants. Plaintiff's labor and expenditures improved the subject real property all to the benefit of the Defendants.

*Plaintiff became aware during the trial of Lund vs. Lund in April, 2010 that Defendant Betty Lund was not going to comply with the terms of the implied contract. Specifically, Betty Lund testified that she felt duress in signing said Quit Claim Deed. (sic Warranty Deed). The Court set aside the Quit Claim Deed. (sic Warranty Deed). As a result, Plaintiff no longer has any interest in the subject real property.

*The Court in Lund vs. Lund used the current value of the subject real property in making its respective distributions of assets and debts. The current value of the subject real property reflected all the improvements made by Plaintiff as well as including, but without limitation the following, good condition of the houses, the grounds, the farmland, outbuildings, etc. to the borders of the property. As such, the Defendants benefitted from all the efforts and financial investments made by Plaintiff into the subject real property.

*In light of the foregoing, Plaintiff has been damaged and compensatory damages are appropriate. Plaintiff's damages will be proven at time of trial but which will not be less than \$545,000.

*The Defendants left the State of North Dakota for approximately eight (8) months each year. Seven (7) months was during the winter and one (1) month during the summer. During these eight (8) months, Plaintiff maintained all property including Defendant's house. During the remaining four (4) months when Defendants were physically on the property, Plaintiff still assisted as more fully set forth herein. It was the mutual intention of the all parties to this action that Plaintiff would receive the subject real property at some point in time in exchange for the extensive expenditures, financial and physical, made by Plaintiff towards and on the subject real property. Plaintiff's expenditures include without limitation

building a new home, maintained both homes, maintained all grounds, cleaned and cleared hay meadow to allow said property to be farmed, payment of one-half (½) of the real estate taxes, purchased supplies and fuel for upkeep of equipment, payment of insurance, cleaning of roads, cleaning of house roofs, cleaning of equipment, cleaning and clearing roadways, clearing and cleaning bush, trees and rocks, cleaning snow and maintenance of the roads, cleaning and repair of the equipment, cleaning slews. Plaintiff has received nominal profits as a result of cleaning and clearing the hay meadows.

*Defendants, given that they resided on the same piece of real property, were fully aware of the extensive expenditures, financial and physical, made by Plaintiff from 1985 to the present. The facts and circumstances of this case clearly reflect that the parties actually intended to enter into said contract.

*The Defendants received substantial benefits from the efforts and financial contributions made by Plaintiff towards and on the subject real property. The receipt of benefits therefrom by Defendant would be inequitable to retain without paying therefor.

*As a result, Plaintiff is entitled to be compensated. Given that Defendant Betty Lund no longer has an interest in the subject real property as a result of the Court's ruling in Lund vs. Lund, Plaintiff seeks monetary compensation accordingly. Given that Defendant Orville Lund has interest in the subject real property as a result of the Court's ruling in Lund vs. Lund, Plaintiff seeks a Court order that he transfer said real property to Plaintiff. For the excess amount, Plaintiff is requesting that a monetary judgment be entered against the Defendants to be each fully and severally liable.

Attempts were made by Bottineau County Sheriff to locate and serve

Defendant/Appellee B.L. but to no avail. (A. at p. 6). As a result, an Affidavit for Service by Publication and Order was filed with the Court on June 9, 2011. (A. at p. 9). B.L. by and through her attorney, Michael McIntee, filed a Notice of Special Appearance. (A. at p. 12). The Summons and Complaint were published in The Bottineau Courant, a weekly newspaper of general circulation, published in the City of Bottineau. (A. at p. 14-16). B.L. by and through her attorney filed a Notice of Motion to Dismiss for Lack of Personal Jurisdiction or Subject Matter Jurisdiction, Motion for Sanctions under Rule 11. (A. at p. 17). In support thereof, B.L. filed a supporting Brief (A. at p. 21) and Affidavit of B.L. (A. at p. 26).

W.L. by and through the undersigned Requested a Hearing accordingly. (A. at p. 44). W.L. by and through the undersigned filed on or about August 2, 2011 a Response and Objection to Defendant Betty Lund's Motion to Dismiss for Lack of Personal Jurisdiction or Subject Matter Jurisdiction and Motion for Sanctions under Rule 11. (A. at p. 46). In support thereof, W.L. submitted Affidavits of Wendell Lund (A. at p. 57) and Orville Lund (A. at p. 60). A hearing was scheduled and held on October 3, 2011 in front of the Honorable Judge Thomas Schneider. (A. at p. 45). Judge Schneider ordered that the venue for this case be changed from Burleigh County to Bottineau County (A. at p. 62). Judge McClintock was assigned as the Judge to the case. (A. a p. 66).

B.L. filed an Answer to Complaint with Special Appearance on or about January 24, 2012. (A. at p. 67). A hearing was held in front of Judge McClintock on March 2, 2012. (A. at p. 72). On or about April 9, 2012, Judge McClintock issued a Memorandum Opinion and Order Granting Motion to Dismiss for Lack of Personal Jurisdiction. (A. at p. 73). It is this opinion from which Appellant, W.L. appeals. In said Memorandum Opinion, the

Honorable Judge McClintock stated the following in relevant part:

*The Complaint seeks monetary damages from an alleged breach of an alleged implied contract for services. It is not alleging that Defendant is (A) transacting any business in the state; (B) contracting to supply service or goods in the state; © committing a tort within or outside the state causing injury to another person or property within the state; (D) committing a tort with within the state, causing injury to another person or property within or outside the state (E) having an interest in, using or possessing property in the state; (F) contracting to insure another person, property or other risk within the state; (G) acting as a director, manager, trustee, or officer of a corporation organized under the laws of, or having its principal place of business within the state; (H) enjoying any other legal status or capacity within the state; or (I) engaging in any other activity, including cohabitation or sexual intercourse, within the state. Because Plaintiff is seeking jurisdiction based on subsection 2, the Complaint must include a claim for relief arising from one of the above-mentioned bases, which it does not. Further, it is clear from Defendant's Affidavit that she has been resident of Arizona since approximately September 2010. She holds an Arizona driver's license; she is a registered Arizona voter; she has her vehicle registered in Arizona; her vehicle has been inspected and improved in Arizona...As such, this Court does not have jurisdiction over the Defendant and the Complaint must be dismissed."

STATEMENT OF FACTS RELEVANT TO ISSUES SUBMITTED

FOR REVIEW

Following are the facts as set forth in the Affidavit of W.L. (A. at pgs. 57-59) that are relevant to this case for review.

*B.L. has been a resident of the State of North Dakota her entire life up until apparently the end of the year 2010. The Complaint in this action was signed January 24, 2011. Thereafter, both the undersigned and W.L. exhaustively attempted to locate B.L. after the Complaint had been issued. At no time during these exhaustive searches did it become known that B.L. permanently moved to the State of Arizona. Only after being served with said Motion to Dismiss for Lack of Jurisdiction, did it become known that she no longer resides in the State of North Dakota.

*W.L. is seeking compensation from his mother, B.L. as a result of an agreement W.L. entered into with her and his father, Defendant/Appellee, O.L. B.L. breached the terms of the agreement by rescinding the Warranty Deed she signed in 1991 and which was done via testimony at the divorce trial. The Court allowed her to do so.

*B.L. has resided in the State of North Dakota her entire life which is approximately 72 years. She resided only in the State of North during this period of time with the following exceptions. She and O.L. went to Arizona for winter travel. She and O.L. went to Seattle, where she stayed for approximately six (6) months. B.L. never changed her place of residence during these periods of time. She never changed her driver's license nor filed income tax returns in the States of Washington nor Arizona. B.L. always considered North Dakota her place of residence for seventy two (72) years up until apparently the (end of 2010).

*O.L. and B.L. and W.L. entered in to a contract in the year 1985 wherein W.L. would provide labor, supplies, payment of part of the real estate taxes, maintaining of equipment used in cleaning and clearing the subject real property in exchange for B.L. and

O.L. transferring all their interest in the subject real property to W.L. In 1991, B.L. signed a Warranty Deed transferring her interest in the subject real property to O.L. and W.L.

*B.L. initiated a divorce action against O.L. in 2009. Said case is identified as Bottineau County Case, Lund vs. Lund, Case number: 09-C-117. A trial was held during which B.L. testified. As a result of B.L.'s testimony during the divorce action, Lund vs. Lund, the Quit Claim Deed (Warranty Deed) was deemed to be invalid. As a direct result, the Judge in said divorce action, included the entire value of the subject real property in the marital estate for distribution purposes between B.L. and O.L. O.L. was ultimately granted the subject real property. However, B.L. was awarded other property to equalize distribution.

*Obtaining the title to the subject real property from O.L. solely, effectively relinquishes B.L. from any liability to W.L. given that the entire value of the subject real property was included in the marital estate and the marital estate was then divided equally by the Court in Lund vs. Lund. O.L. should not be solely responsible for the terms of the agreement which was entered between all of them.

*B.L. permanent residence has always been North Dakota up until apparently and approximately 10 months ago (end of 2010). B.L. entered in this contract with W.L. in 1985. B.L. signed a Quit Claim Deed (Warranty Deed) in 1991 regarding this property in North Dakota. In fulfillment of the terms of the agreement, she transferred her interest in this real property to O.L. and W.L. She then "changed her mind" at the divorce hearing in Lund vs. Lund and testified that she felt force to sign the Quit Claim Deed (Warranty Deed). O.L. was not represented by legal counsel at the trial for the divorce. As a result of B.L. testimony, the Quit Claim deed (Warranty Deed) was held to be invalid. B.L. breached her

contract with W.L.

*B.L. owned an interest in this subject real property for many years. This subject real property is located in the State of North Dakota. B.L. enjoyed all benefits of being a permanent resident of North Dakota for approximately 72 years. She has family and friends in the State of North Dakota. The subject real property is located in the State of North Dakota. The contract provided for compensation to W.L. for all W.L. did for B.L. and O.L. and the property located in Bottineau County, North Dakota. B.L. signed a Quit Claim deed (Warranty Deed) in North Dakota in 1991 for property located in North Dakota. B.L. initiated a lawsuit for divorce in the State of North Dakota. B.L. testified at the trial for the divorce action in the State of North Dakota. B.L. enjoyed the jurisdiction of North Dakota for her divorce action. She was able to convince the North Dakota judge (although fraudulently as will be proven at time of trial in this case) to overturn the Quit Claim Deed (Warranty Deed). B.L. was awarded one half of the marital property by a North Dakota court.

*W.L. filed a Statutory Lien against the real property as well on April 19, 2010 to try to protect his interest in this property. The Judge in the divorce claimed that the lien did not appear legitimate.

Following are facts as set forth in the Affidavit of O.L. which are relevant to the issues of this case for review. (A. at pgs. 60-61).

*O.L. was awarded the subject real property located in Bottineau County as part of the property distribution in the divorce action of Lund vs. Lund. The Judge in the divorce action, deemed invalid a Quit Claim Deed (Warranty Deed) that B.L. signed in 1991. B.L.

testified at the trial in the divorce action that she was forced to sign the Quit Claim Deed (Warranty Deed). B.L. and O.L. entered into an agreement with W.L. in 1985 that if he helped with the subject real property and paid for one half of the taxes, that B.L. and O.L. would transfer our interest to the property to W.L. In 1991, a Quit Claim Deed (Warranty Deed) was signed, where B.L. transferred her interest to the property to W.L. and O.L. This was done to provide some protection should W.L. get married and then divorced. They did not want to take the chance of losing the property should W.L. marry and divorce or die. B.L. signed the Quit Claim (Warranty Deed) with full knowledge what she was doing. She knew it was to fulfil the terms of the agreement they had with W.L.

*B.L. has been a resident of the State of North Dakota her entire life up until, apparently 10 months ago (end of 2010). B.L. has resided in the State of North Dakota her entire life which is approximately 72 years. She resided only in the State of North during this period of time with the following exceptions. B.L. and O.L. went to Arizona for winter travel. They went to Seattle, where she stayed for approximately six (6) months and I stayed a little longer. B.L. never changed her place of residence during these periods of time. She never changed her driver's license nor filed income tax returns in the States of Washington nor Arizona. B.L. always considered North Dakota her place of residence for seventy two (72) years.

*B.L. owned an interest in this subject real property for many years. This subject real property is located in the State of North Dakota. B.L. enjoyed all benefits of being a permanent resident of North Dakota for approximately 72 years.

*B.L. has been a permanent resident of the State of North Dakota for approximately

seventy two years (72). She owned real property and other personal property in the State of North Dakota for years. She has family and friends in the State of North Dakota. The subject real property is located in the State of North Dakota.

Additionally and very importantly, O.L. the other Defendant in this case has been a long term resident of the State of North Dakota and continues to reside here in North Dakota. There would be substantial expense caused to O.L. as a co-defendant who resides in North Dakota should he be forced to defend himself in the State of Arizona.

ARGUMENT

Standard of Review: According to the Court in Hansen v. Scott, 2002 ND 101, 645 N.W.2d 223, citing Falkirk Mining Co. v. Japan Steel Works, Ltd., 906 F.2d 369, 373 (8th Cir.1990) and Adden v. Middlebrooks, 688 F.2d 1147, 1154-56, a deferential review is applied to whether a complaint states a prima facie case for purposes of a state's long-arm statute. In analyzing a personal jurisdiction issue, the court must look at the facts alleged in the complaint in the light most favorable to the nonmoving party. Moreover, in diversity cases, many federal courts have held that when a state's long arm statute confers jurisdiction to the fullest extent permitted by due process, the two part test for deciding personal jurisdiction collapses into the single question of whether due process would be violated by the exercise of personal jurisdiction over a nonresident defendant.

According to the Court in Johnson v. Johnson, 527 N.W.2d 663 (1995), interpretation of a statute is a question of law which Supreme Court reviews de novo on appeal.

De novo review refers to the appellant court's authority to review the trial court's conclusions on questions of the application, interpretation and construction of law. As such,

this court will review the lower court's reasoning and fact finding from the beginning, based on the record. Wikipedia.

Rule 52(a) of the North Dakota Rules of Civil Procedure provides pursuant to subparagraph (6) that findings of fact, including findings in juvenile matters, whether based on oral or other evidence, must not be set aside unless clearly erroneous and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

The Court in Hartleib v. Simes, 2009 ND 205, 776 N.W.2d 217, describes the abuse of discretion standard of review by stating that "a district court abuses its discretion if it acts in an arbitrary, unconscionable or unreasonable manner, if its decision is not the product of a rational mental process by which the facts of record and law relied upon are stated and considered together for the purpose of reaching a reasonable determination, or if it misinterprets or misapplies the law."

The Court in Berger v. Myhre, 2010 ND 28, 778 N.W.2d 579, describes the clearly erroneous standard of review by stating that "a finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if the reviewing court is left with a definite and firm conviction a mistake has been made."

In light of the foregoing, the Appellant asks this Court to overturn the District Court Judge's decision on the grounds that Judge McClintock's decision was induced by an erroneous view of the law, that there was insufficient evidence to support its decision and on the firm belief that once this court reviews said decision, it will be left with a definite and firm conviction that a mistake has been made.

Personal Jurisdiction Based Upon Contacts: Given that B.L. no longer resides in North Dakota, Rule 4(b)(2) of the North Dakota Rules of Civil Procedure applies in this case, which states as follows:

Personal Jurisdiction based upon contacts. A court of this state may exercise personal jurisdiction over a person who acts directly or by an agent as to any claim for relief arising from the person's having such contact with this state that the exercise of personal jurisdiction over the person does not offend against traditional notions of justice or fair play or the due process of law, under one or more of the following circumstances:

- (A) transacting any business in this state;
- (B) contracting to supply or supplying service, goods, or other things in this state;
- © committing a tort within or without this state causing injury to another person or property within this state;
- (D) committing a tort within this state, causing injury to another person or property within or without this state;
- (E) owning, having any interest in, using or possessing property in this state;
- (F) contracting to insure another person, property or other risk within this state;
- (G) acting as a director, manager, trustee, or officer of a corporation organized under the laws of, or having its principal place of business within, this state;

- (H) enjoying any other legal status or capacity within this state; or
- (I) engaging in any other activity, including cohabitation or sexual intercourse within this state.

According to Rule 4(b)(3), [I]f jurisdiction over a person is based solely on paragraph (2) of this subdivision, only a claim for relief arising from bases enumerated in paragraph (2) may be asserted against that person.”

According to the Court in Hansen v. Scott, 645 N.W.2d 223, rule governing personal jurisdiction authorizes courts to exercise personal jurisdiction over nonresident defendants **to the fullest extent permitted by due process.** (Emphasis Added). Additionally, the Court states that the rule governing personal jurisdiction over nonresident defendants requires a two prong determination for resolving the question of personal jurisdiction over nonresident defendants: first, the requirements of one of the applicable subparagraphs rule must be satisfied and second, the nonresident must have sufficient minimum contacts with North Dakota so the exercise of personal jurisdiction does not offend traditional notions of substantial justice, fair play or due process.

The Court in Hansen also indicated that to establish personal jurisdiction over a person who commits a tort within or without the state causing injury to another person or property within the state, a plaintiff need not prove a defendant committed a tort by a preponderance of evidence; rather, the plaintiff satisfies the burden as to the first prong of the personal jurisdiction test by establishing a prima facie cause of action.

Citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559 and Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, the Court in Hanson stated

the following. The United States Supreme Court said in order to exercise personal jurisdiction, it is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. In World-Wide Volkswagen, the Court explained a critical part of the due process analysis is whether a nonresident defendant's conduct and connection with the forum state is such that the defendant should reasonably anticipate being haled into court there.

Citing Lumber Mart, Inc. v. Haas Intern. Sales & Serv., Inc. 269 N.W.2d 83, 88 (N.D.1978), the Court in Hanson stated that the Court identified five factors for assessing personal jurisdiction over a nonresident defendant: (1) the nature and quality of a nonresident defendant's contacts with the forum state; (2) the quantity of the nonresident defendant's contacts with the forum state; (3) the relation of the cause of action to the contacts; (4) the forum state's interest in providing a forum for its residents; and (5) the convenience of the parties.

According to the Court in Bolinske v. Herd, 689 N.W.2d 397, the plaintiff must make a prima facie showing of jurisdiction to defeat a motion to dismiss for lack of personal jurisdiction, and if the court relies only on pleadings and affidavits, the court must look at the facts in the light most favorable to the plaintiff. Additionally, the Court stated that a court has subject matter jurisdiction over an action if the constitution and the laws authorize that court to hear the type of cases to which the particular action belongs. North Dakota's long arm provision is designed to permit state courts to exercise personal jurisdiction to the fullest extent permitted by due process. The phrase "transacting any business in this state"

in state's long arm provision should be given an expansive interpretation; transaction business is used in a broader sense than merely doing business. In the Bolinske case, the court held that when a nonresident initiates contact, by telephone or other electronic medium, with a resident seeking a product or service, that action is generally sufficient to show the nonresident transacted business for purposes of establishing personal jurisdiction.

The Bolinske court also stated that the minimal contacts of the nonresident party in the forum state must be directly related to and connected with the cause of action involved in order for those contacts to confer personal jurisdiction.

The Court in Bolinske did an excellent job of summarizing what is necessary for a court in North Dakota to have personal jurisdiction over a nonresident. The Court stated that "a court has personal jurisdiction over a person if the person has reasonable notice that an action has been brought and sufficient connection with the forum state to make it fair to require defense of the action in the state. In determining personal jurisdiction over a nonresident defendant, a court must first decide whether the forum state's long arm provision confers jurisdiction over the nonresident defendant and if it does, the court must decide whether the exercise of personal jurisdiction over the nonresident comports with due process. To satisfy due process concerns, the nonresident defendant must have sufficient minimum contacts with North Dakota so the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

The other important element of this case is that we have another Defendant, O.L. who has been a resident of the State of North Dakota for a substantial period of time and continues to reside here. There would be astronomical expenses incurred by O.L. to have to

defend himself in the State of Arizona.

North Dakota's Long Arm Statute Confers Jurisdiction

Over Defendant B.L.

It is clear that North Dakota's long arm statute (Rule 4 of Rules of Civil Procedure) confers jurisdiction over B.L. B.L. resided in the State of North Dakota for approximately 72 years. She resided only in the State of North during this period of time with the following exceptions. She and O.L. went to Arizona for winter travel. She and O.L. went to Seattle, where she stayed for approximately six (6) months.

As set forth in the Complaint, W.L. and B.L. and O.L. entered into a contract in the year 1985 wherein W.L. would provide labor, supplies, payment of part of the real estate taxes, maintaining of equipment used in cleaning and clearing the subject real property in exchange for B.L. and O.L. transferring all their interest in the subject real property to W.L.

Additionally, in 1991, B.L. signed a Warranty Deed transferring her interest in the subject real property to O.L. and W.L. consistent with the terms of the previous agreement.

B.L. initiated a divorce action against O.L. in 2009. Said case is identified as Bottineau County Case, Lund vs. Lund, Case number: 09-C-117. A trial was held during which B.L. testified. The Court deemed the Warranty Deed to be invalid. As a direct result, the Judge in said divorce action, included the entire value of the subject real property in the marital estate for distribution purposes between B.L. and O.L. O.L. was ultimately granted the subject real property. However, B.L. was awarded other property to equalize distribution.

Obtaining the title to the subject real property from O.L. solely, effectively relinquishes B.L. from any liability to W.L. given that the entire value of the subject real

property was included in the marital estate and the marital estate was then divided equally by the Court in Lund vs. Lund. O.L. should not be solely responsible to fulfill the terms of the agreement which existed between O.L., B.L. and W.L.

As a result, it is clear that Betty transacted business in North Dakota (which she did for all aspects of her life) for seventy two (72) years. B.L. entered into an implied contract with W.L., the breach of which was not discovered until the time of trial in the case of Lund vs. Lund. B.L.'s permanent residence has always been North Dakota up until apparently and approximately the end of 2010. B.L. entered in this contract with W.L. in 1985. B.L. signed a Warranty Deed in 1991 regarding this property in North Dakota. In fulfillment of the terms of the agreement with W.L., she transferred her interest in this real property to O.L. and W.L. She then "changed her mind" at the divorce hearing in Lund vs. Lund and testified that she felt force to sign the Warranty Deed. O.L. was not represented by legal counsel at the trial for the divorce. As a result of B.L.'s testimony, the Warranty Deed was held to be invalid. B.L. breached her contract with W.L. The Complaint of W.L. clearly sets forth the terms of the agreement he had with B.L.

B.L. owned an interest in this subject real property for many years. Up until the final judgment in the divorce action, Lund vs. Lund, B.L. had an interest in the subject real property as fully described in the Complaint of W.L. This subject real property is located in the State of North Dakota. B.L. enjoyed all benefits of being a permanent resident of North Dakota for approximately 72 years. She engaged in activities relating to being a permanent resident in the State of North Dakota. She initiated an action in the

State of North Dakota for divorce. She appeared in that case. She benefitted from the ability to file a lawsuit in the State of North Dakota. It is clear that the first prong of the test has been satisfied.

The other Defendant, O.L. owns interest in the subject real property which is located in North Dakota. Arizona Courts would have no jurisdiction over real property located in the State of North Dakota. Should the Court agree with the District Court's analysis in this case, the Appellant would be forced to piecemeal this litigation with one lawsuit in North Dakota and another lawsuit in Arizona.

The exercise of personal jurisdiction over B.L. comports with due process.

Due process concerns are adequately met in this case. B.L. has sufficient minimum contacts with North Dakota so the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

B.L. transacted business in this state that is the subject of the Complaint brought by W.L. B.L. entered into a contract in the State of North Dakota. B.L. breached the contract in the State of North Dakota. She had, until time judgment was entered in the divorce action, an interest in the real property which is the subject real property in W.L.'s Complaint. B.L. has enjoyed legal status or capacity as a North Dakota resident. B.L. has been a permanent resident of the State of North Dakota for approximately seventy two years (72). She owned real property and other personal property in the State of North Dakota for years. She has family and friends in the State of North Dakota. The subject real property is located in the State of North Dakota. B.L. entered into a contract with W.L. that provided for compensation to W.L. for all he did for B.L. and O.L. and the property located in Bottineau

County, North Dakota. B.L. signed a Warranty Deed in North Dakota in 1991 for property located in North Dakota. B.L. initiated a lawsuit for divorce in the State of North Dakota. This lawsuit is for expenditures that total approximately five hundred forty five thousand dollars (\$545,000.00). B.L. enjoyed the jurisdiction of North Dakota for her divorce action. She was able to convince the North Dakota judge (although fraudulently as will be proven at time of trial in this case) to overturn the Warranty Deed. She was awarded one half of the marital property by a North Dakota court. There is no question that she has enjoyed the fruits of residency of the State of North Dakota for many years.

This case is a clear case for the exercise of personal jurisdiction over defendant B.L. Given the facts and circumstances of this case, notions of fair play and substantial justice would be offended if personal jurisdiction is deemed not to exist. The exercise of personal jurisdiction over B.L. is clearly appropriate. With all due respect, Judge McClintock made a mistake in ruling as he did.

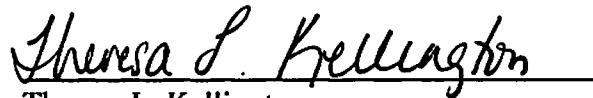
The Court should overturn the District Court's decision on the grounds that it is clearly erroneous.

As indicated above, a finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if the reviewing court is left with a definite and firm conviction a mistake has been made. We firmly believe that by applying any of the three criteria for establishing "clearly erroneous" results in the overturning of the District Court's decision.

CONCLUSION

In light of the foregoing, the appellant, W.L., and the undersigned firmly believes that this Court must overturn the District Court's decision in dismissing W.L.'s complaint. Interpretation of Rule 4 of the North Dakota Rules of Civil Procedure as well as relevant case law supports applying North Dakota's long arm statute to exercise personal jurisdiction over B.L.

Dated this 16 day of July, 2012.

A handwritten signature in cursive script, reading "Theresa L. Kellington", written over a horizontal line.

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