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Unpublished opinion. See KY ST RCP Rule 76.28(4)
before citing.

NOT TO BE PUBLISHED

Court of Appeals of Kentucky.

Jeff Ray MITCHELL, Appellant

v.

LEED HR, LLC, and Michael Schroering, Appellees

NO. 2016–CA–000090–MR

JANUARY 13, 2017; 10:00 A.M. Rehearing Denied
March 24, 2017

APPEAL FROM JEFFERSON CIRCUIT COURT,
HONORABLE JAMES M. SHAKE, JUDGE,
ACTION NO. 15–CI–004700

Attorneys and Law Firms

BRIEF FOR APPELLANT: Timothy F. Mann,
Louisville, Kentucky

BRIEF FOR APPELLEE: Joshua T. Rose, Louisville,
Kentucky

BEFORE: CLAYTON, COMBS AND MAZE,
JUDGES.

OPINION

COMBS, JUDGE:

Jeff Ray Mitchell appeals from an opinion and order of the Jefferson Circuit Court entered in favor of Leed HR, LLC, and Michael Schroering. The order vacated a foreign judgment based upon lack of *in personam* jurisdiction. After our review, we vacate the order of the circuit court and remand.

In August 2015, Mitchell won a default judgment against Leed and Schroering in the United States District Court for the State of Idaho. On September 11, 2015, and pursuant to the provisions of KRS ¹ 426.955, Mitchell filed a notice and affidavit to register the foreign judgment in the Jefferson Circuit Court. An authenticated copy of the federal court's final judgment was attached to the notice and affidavit. The judgment was duly entered by the deputy clerk—thus enabling Mitchell to enforce the judgment in Kentucky after twenty (20) days.

On September 24, 2015, Leed and Schroering filed a motion in Jefferson Circuit Court to vacate the foreign judgment. Leed and Schroering argued that the Idaho judgment was not entitled to full faith and credit since the federal district court in Idaho lacked personal jurisdiction over them. In response, Mitchell contended that the issue of personal jurisdiction had been thoroughly litigated in the federal district court. Mitchell attached to his responsive memorandum a copy of the October 20, 2014, memorandum decision and order of the federal district court that denied the motion of Leed and Schroering to dismiss for lack of personal jurisdiction. The federal district court concluded that Leed and Schroering had submitted to the personal jurisdiction of the Idaho state court by making a general appearance in the action before the

matter had been removed to federal court upon their subsequent motion.

The opinion and order of the Jefferson Circuit Court was entered on December 23, 2015. In its opinion, the circuit court analyzed whether Leed and Schroering had established minimum contacts with Idaho sufficient to justify the state court's exercise of *in personam* jurisdiction. Concluding that they had not, the Jefferson Circuit Court vacated the foreign judgment. This appeal followed.

On appeal, Mitchell contends that the circuit court erred by failing to conclude that the judgment of the federal district court should be afforded full faith and credit under the provisions of the Uniform Enforcement of Foreign Judgments Act (UEFJA). KRS 426.950–426.975. We agree.

The Full Faith and Credit Clause of the United States Constitution, Article IV, Section 1, requires each state to honor the judicial proceedings of every other state. The provisions of the UEFJA codify the Full Faith and Credit Clause.

While a foreign judgment is subject to the same proceedings for vacating as any judgment of a court of this state, the judgment of a sister state is entitled to full faith and credit if the foreign judgment is valid under the laws of the sister state. *Sunrise Turquoise, Inc., v. Chem. Design Co., Inc.*, 899 S.W.2d 856 (Ky.App. 1995); *Morrel & West, Inc. v. Yazel*, 711 S.W.2d 501 (Ky.App. 1986).

Idaho state courts hold firmly to the proposition that where “a party wishes to insist upon the objection that he is not in court, he must keep out for all purposes except to make that objection.” *Rhino Metals, Inc. v. Craft*, 146 Idaho 319, 322, 193 P.3d 866, 869 (2008) *citing* *Pingree Cattle Loan Co. v. Charles J. Webb & Co.*, 36 Idaho 442, 446, 211 P. 556, 557 (1922) (quoting from *Lowe v. Stringham*, 14 Wis. 222 (1861)). Regardless of counsel's intention, the filing of a notice of appearance constitutes a *general* appearance as a matter of law in Idaho. *Secured Inv. Corp. v. Myers Exec. Bldg., LLC*, 2016 WL 4151376, — Idaho, — P.3d — (2016). With limited exceptions, none of which is relevant here, a *general* appearance in an Idaho state court without a simultaneous challenge to its jurisdiction is a voluntary and irrevocable submission to the personal jurisdiction of the court.

In the underlying action, counsel for Leed and Schroering filed a notice of appearance in the Idaho state court on January 17, 2014. Counsel did not file a motion or make a special appearance to contest personal jurisdiction. On January 21, 2014, new counsel removed the action to federal court, and on March 20, 2014, counsel filed a motion to dismiss for lack of personal jurisdiction. The federal district court took the matter under submission. Ultimately, the federal court concluded as follows:

At the time the case was removed to federal court in January of 2014, [Leed and Schroering] had already voluntarily consented to personal jurisdiction in Idaho. Filing a motion to dismiss in federal court approximately two months after filing a general

appearance in state court cannot unwind the previously given consent to personal jurisdiction.

Upon removal, the federal court took the action in the identical procedural posture in which it had been prior to removal. Idaho's state court rules of civil procedure had already applied to establish the defendants' submission to the state court's jurisdiction. Moreover, Leed and Schroering agreed to the application of Idaho law when they executed the contracts that were at issue in the underlying action against them. Idaho has quite precise rules regarding consent to its jurisdiction. Leed and Schroering did not avail themselves of the opportunity to contest jurisdiction. On the contrary, they voluntarily consented to the court's jurisdiction.

Because consent to personal jurisdiction was properly established in the federal and state courts of Idaho, the Jefferson Circuit Court erred by failing to grant full faith and credit to the default judgment of the federal district court. No analysis of minimum contacts with the forum or the requirements of the federal Due Process Clause was necessary or even relevant because Idaho's jurisdiction had been validly established through consent of the parties—albeit an arguably constructive consent from their perspective.

We conclude that the Jefferson Circuit Court erred by failing to grant full faith and credit to the judgment of the federal district court. Therefore, we vacate its order and remand for entry of an appropriate order.

ALL CONCUR.

7a
Supreme Court of Kentucky

2017-SC-000187-D
(2016-CA-000090)

LEED HR, LLC, ET AL.

MOVANTS

JEFFERSON CIRCUIT COURT
2015-CI-004700

V.

JEFF RAY MITCHELL

RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the
Court of Appeals is denied.

ENTERED: February 7, 2018.

CHIEF JUSTICE

PLAINTIFF

DEFENDANT

This matter comes before the Court on the Defendants' Motion to Vacate Foreign Judgment for Lack of Personal Jurisdiction. The Plaintiff has responded. The Defendants have filed their reply and the Plaintiff has filed his sur-reply. Oral arguments were heard on December 3, 2015 and the issues now stand submitted for final adjudication.

On or about August 12, 2015, a Default Judgment was entered in the United States District Court for the District of Idaho based upon a consulting agreement between the Plaintiff and Defendants. The work contemplated by the agreement was to be performed in Kentucky. The Plaintiff sought to register that Judgment in the state of Kentucky. The Defendants are attempting to challenge that Judgment. It is the Defendants' position that there were insufficient minimum contacts with the state of Idaho to acquire jurisdiction over them. However, the Plaintiff asserts that, since the Defendants actually appeared in the Idaho action prior to removal and were represented by counsel in the federal court case, they

waived the issue of jurisdiction.

OPINION

Kentucky has adopted the Uniform Enforcement of Foreign Jurisdiction Act (KRS 426.950-975) which provides that a judgment thereunder “has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a court of this state and may be enforced or satisfied in like manner,” see *Sunrise Turquoise, Inc. v. Chemical Design Company, Inc.*, 899 SW 2d 856 (Ky. App. 1995). Thus, the judgment of a sister state, in this case Idaho, is entitled to full faith and credit in Kentucky if it was valid under Idaho law. Indeed, as held in *Waddell v. Commonwealth*, 893 SW 2d 376 (Ky. App. 1995) such a judgment is presumed to be valid.

The issue of personal jurisdiction was raised in the Idaho action by the Defendant’s motion to dismiss. In its Memorandum Decision and Order, the Idaho District Judge held that the Defendants were properly served pursuant to Idaho’s Long-Arm Statute, § Idaho Code 5-514. The statute states that:

Any person, firm, company, association or corporation, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, firm, company, association or corporation, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

(a) The transaction of any business within this

state which is hereby defined as the doing of any act for the purpose of realizing pecuniary benefit or accomplishing or attempting to accomplish, transact or enhance the business purpose or objective or any part thereof of such person, firm, company, association or corporation;

(b) The commission of a tortious act within this state;

(c) The ownership, use or possession of any real property situate within this state;

(d) Contracting to insure any person, property or risk located within this state at the time of contracting;

(e) The maintenance within this state of matrimonial domicile at the time of the commission of any act giving rise to a cause of action for divorce or separate maintenance;

(f) The engaging in an act of sexual intercourse within the state, giving rise to a cause of action for paternity under chapter 11, title 7, Idaho Code. The provisions of this subsection shall apply retroactively, and for the benefit of any dependent child, whether born before or after the effective date of this act, and regardless of the past or current marital status of the parents of the child.

The Idaho District Court held that, “the Court finds it does not need to decide whether Plaintiff has carried his factual burden for either general or specific jurisdiction, as Defendants waived their right to contest personal jurisdiction when their attorney filed a general notice of appearance in state court.” Clearly, the Court never properly inquired into the issue of whether the state of Idaho ever acquired personal

jurisdiction. Therefore, this Court must review the issue.

The state of Idaho actually defines “transacting business” as “as the doing of any act for the purpose of realizing pecuniary benefit or accomplishing or attempting to accomplish, transact or enhance the business purpose or objective or any part thereof of such person, firm, company, association or corporation.” The Defendants herein performed no acts in Idaho. Thus, were it not for the Idaho District Court’s finding that the Defendants submitted to its jurisdiction by entering a general appearance in the state court, it would not have had personal jurisdiction over the Defendants. This Court cannot find that the mere entering of a general appearance in the lower court operated as a waiver, particularly where the issue of jurisdiction was raised in the Defendants motion to dismiss and litigated, to the extent allowed, in federal court.

Even where jurisdiction can be supported, this Court must still review the issue of minimum contacts in order to determine whether the Defendant received due process in Idaho. Thus, as set forth in *Sunrise Turquoise, supra*, the Court must apply a three-pronged test, determining, “ that: (1) defendant has purposely availed itself of the privilege of acting within the state; (2) the cause of action must arise from defendant’s activities; and (3) enough connections to the state must exist so that jurisdiction would be reasonable. *See also Mohler v. Dorado Wings, Inc.*, Ky.App., 675 S.W.2d 404 (1984). In terms of a due process analysis, the defendant’s connection must be such that he should reasonably anticipate being haled

into court there.” *Burger King, supra*, 471 U.S. at 474, 105 S.Ct. at 2183 (citing *World Wide Volkswagen Corp. v. Woodson*, 444 U.S; 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980)).” As noted in *Morrel & West, Inc. v. Yazel*, 711 SW 2d 501 (Ky. App. 1986), “the exercise of jurisdiction over nonresidents is limited only by due process.”

In the case at bar, the duties which form the basis of the claim were consulting services in connection with the acquisition of an Illinois staffing company. Those duties were to be performed in the states of Kentucky, Illinois and Florida, not Idaho. Defendant Schroering did not visit the state. Defendant LEED did no business in Idaho, nor did the potential acquisition. The contract in question only lasted one month. The only contact with the state of Idaho is that it is the state of residence of the Plaintiff, Mr. Mitchell. Not only is this not a basis for exercising jurisdiction pursuant to the Idaho Long-Arm statute, but it is clearly not a sufficient “contact” to satisfy due process.

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that the Defendants’ Motion to Vacate Foreign Judgment for Lack of Personal Jurisdiction is GRANTED.

JAMES M. SHAKE, JUDGE
JEFFERSON CIRCUIT COURT
DIVISION TWO

DATE: _____

Cc: Joshua T. Rose
Timothy F. Mann

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

JEFF RAY MITCHELL,

Plaintiff,

v.

LEED HR, LLC and
MICHAEL SCHROERING,

Defendants.

Case No. 2:14-CV-
00026-EJL

**MEMORANDUM
DECISION AND
ORDER**

Pending before the Court in the above-entitled matter is Defendants' Motion to Dismiss for Lack of Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2) (Dkt. 16) and Motion to Strike Plaintiff's Sur-Reply (Dkt. 25). Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this matter shall be decided on the record before this Court without oral argument.

FACTUAL BACKGROUND

Plaintiff Jeff Mitchell (Mitchell) filed a Complaint in state court on November 26, 2013 (Dkt. 2-2) and a First Amended Complaint on December 10, 2013 (Dkt. 2-3). The First Amended Complaint alleges Defendant LEED HR, LLC (LEED) breached a

consulting contract and seeks recovery under the contract from LEED and the personal guarantor, Michael Schroering (Schroering), *Id.* It is undisputed that Plaintiff is an Idaho resident and both defendants do business or reside in Kentucky. As indicated in the Notice of Removal, it is undisputed the amount in controversy exceeds \$75,000 based on the claimed damages in the First Amended Complaint (Dkt. 1). Defendants maintain this Court lacks general or specific personal jurisdiction over them. Plaintiff argues Defendants consented to personal jurisdiction when the general appearance was filed in state court and there is factual support for specific jurisdiction under Idaho's long arm statute for personal jurisdiction.

Counsel for both named defendants filed a general notice of appearance in state court on January 17, 2014 (Dkt. 2-6). The matter was removed to Federal Court on January 21, 2014 (Dkt. 1). Counsel for Defendants moved to withdraw on February 6, 2014 (Dkt. 10) and that motion was granted by the Court on the same day (Dkt. 11) and new counsel appeared for Defendants on February 26, 2014 (Dkt. 13). New counsel requested and was granted an extension of time to file an answer (Dkts. 14 and 15). Defendants filed their motion to dismiss for lack of personal jurisdiction on March 20, 2014 (Dkt. 16).

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

When a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff "bears the burden of demonstrating that jurisdiction is appropriate." *Dole Food, Inc. v. Watts*, 303 F.3d 1104,

1108 (9th Cir. 2002). The plaintiff “need only make a prima facie showing of jurisdictional facts,” *Sher. Johnson*, 911 F.2d 1357, 1361 (9th Cir, 1990).

Where, as here, there is no applicable federal statute governing personal jurisdiction, the law of the state in which the district court sits applies, *Boschetto v. Hansing*, 539 F.3d 1101, 1015 (9th Cir. 2008). The Idaho Supreme Court has determined that Idaho’s long-arm statute (Idaho Code § 5-514) allows a broader application of personal jurisdiction than permitted under the Due Process Clause, *See Smalley v. Kaiser*, 950 P.2d 1248 (Idaho 1997). Thus, the Court need only decide whether asserting personal jurisdiction complies with due process, *Lake v. Lake*, 817 F.2d 1416, 1420 (9th Cir, 1987).

There are two types of personal jurisdiction—general and specific. *Lake*, 817 F.2d at 1420. General jurisdiction is exercised by a state when personal jurisdiction is asserted over a “defendant in a suit not arising out of or related to the defendant’s contacts with the forum,” *Helicoptores Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 n. 9 (1984). This occurs when the defendant has “substantial” or “continuous and systematic” contacts with the state to the extent that these contacts approximate physical presence. *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082 (9th Cir. 2000).

The parties eloquently argue the requirements for both types of jurisdiction, but the Court finds it does not need to decide whether Plaintiff has carried his factual burden for either general or specific jurisdiction, as Defendants waived their right to contest personal jurisdiction when their attorney filed a general notice of appearance in state court.

When a case is removed to federal court, the

federal court takes case in the posture the case was in state court, *Jenkins v. Commonwealth Land Title Insurance Company*, 95 f.3d 791, 795 (9th Cir, 1996) (“[t]he longstanding principle is that ‘after removal, the federal court ‘takes the case up where the State court left off.’”)(citations omitted). Therefore, the state court procedural rules applied to the case until the case was removed to federal court. Pursuant to Idaho Civil Rule of Procedure 4(i) (1) “[t]he voluntary appearance of a party or service of any pleading by the party, except as provided in subsection (2) hereof [special appearance to contest personal jurisdiction], constitutes voluntary submission to the personal jurisdiction of the court,” The appearance filed in this case was a general notice of appearance and did not reserve the right to challenge personal jurisdiction, (Dkt. 2-6.) “Defendants can waive the defect of lack of personal jurisdiction by appearing generally without first challenging the defect in a preliminary motion,” *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982), That is what happened in this case. At the time the case was removed to federal court in January of 2014, Defendants had already voluntarily consented to personal jurisdiction in Idaho, Filing a motion to dismiss in federal court approximately two months after filing a general appearance in state court cannot unwind the previously given consent to personal jurisdiction.

While it is true the civil rules in state court differ from the federal court, this Court cannot circumvent the state procedural rules that created a legal effect on the case prior to it being removed, Once removed the federal rules of civil procedure began to apply, but when the case was filed in state court, the state rules of civil procedure applied. Moreover, the Defendants consented to the application of Idaho law

when they executed the contracts at issued in this case. Accordingly, the motion to dismiss for a lack of personal jurisdiction must be denied,

MOTION TO STRIKE

The Court finds the motion to strike the sur-reply is not well-taken. New issues were arguably raised in the Defendants' reply brief that Plaintiff had not had an opportunity to respond to. The proper practice would have been for Plaintiff to move for leave to file the sur-reply *prior* to filing the sur-reply since the Local Rules do not allow a sur-reply as a matter of right, Dist, Idaho Loc. Civ. R. 7.1, Regardless, the determinative argument in this case regarding a waiver of personal jurisdiction in state court was raised in Plaintiff's response to the motion to dismiss so Defendants were not prejudiced by the filing of the sur-reply. The motion to strike is denied.

ORDER

IT IS ORDERED:

1. Defendants' Motion to Dismiss (Dkt. 16) is DENIED.
2. Defendants' Motion to Strike (Dkt. 25) is DENIED.

DATED: October 20, 2014

Honorable Edward J. Lodge
U. S. District Judge

UNITED STATES DISTRICT COURT, FOR THE
STATE OF IDAHO

JEFF RAY MITCHELL, Plaintiff, Vs. LEED HR, LLC; MICHAEL SCHROERRING, Guarantor, Defendants.	Case No.2:14-cv-00026- EJL CIVIL FINAL JUDGMENT AGAINST LEED HR, LLC AND MICHAEL SCHROERING
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JUDGMENT SUMMARY**JUDGMENT CREDITOR:**

Jeff Ray Mitchell

JUDGMENT DEBTORS:Leed HR LLC, a Kentucky
Limited liability company; and
Michael Schroering, an individual**ATTORNEY FOR CREDITOR:**Scott A. Gingras
Winston & Cashatt, Lawyers
601 W. Riverside, Suite 1900
Spokane, WA 99201**ATTORNEY FOR DEBTORS:**

none

PRINCIPAL AMOUNT OF DAMAGES:

\$212,427.95

(\$96,000 on Engagement Incentive per Court's Order, Dkt. 57); \$82,500 in monthly wages under contract and \$33,927.95 in reimbursable expenses under tire contract both awarded as default judgment.)

PREJUDGMENT INTEREST:

\$39,725.30

ATTORNEYS FEES ON MOTION TO COMPEL
(Dkt. 72)

\$607.50

TOTAL AMOUNT OF JUDGMENT:

\$252,760.75

POST-JUDGMENT INTEREST:

5.375% or \$37.22 per day — to run from the date of this Judgment until paid in full.

This matter came before the Court on Plaintiff's Motion for Entry of Default Judgment. The Court considered the Default, Plaintiff's Motion, the Memorandum in Support thereof, and the Affidavit of Scott A. Gingras in support of the same with updated prejudgment interest calculations at 12% as of the date of this Judgment and the addition of the attorney's fees awarded in Dkt. 72. The Motion was granted by the Court on August 12, 2015.

NOW, THEREFORE, it is hereby ORDERED and ADJUGED that JUDGMENT is entered this date against Leed HR, LLC, and Michael Schroering, jointly and severally, and in favor of Jeff Ray Mitchell, and that Jeff Ray Mitchell recover from Defendants Leed HR LLC, and Michael Schroering, jointly and

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severally, the total judgment of \$252,760.75. Post judgment interest to run at the rate of 5.375% or \$37.22 per day from the date of this Judgment until paid in full.

So Ordered.

DATED: August 12, 2015

Edward J. Lodge
United States District
Judge

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Attorneys for Defendants.

IN THE DISTRICT COURT OF FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF KOOTENAI

JEFF RAY MITCHELL,	CASE NO. CV-13-
Plaintiff,	8536
v.	NOTICE OF
	APPEARANCE
LEED HR, LLC;	FEE CATEGORY:
MICHAEL	L1.
SCHROERING, Guarantor,	FEE: \$66.00
Defendants.	

TO: PLAINTIFF

AND TO: PLAINTIFF'S ATTORNEY OF RECORD,
SCOTT A. GINGRAS

PLEASE TAKE NOTICE that Ramsden &
Lyons, LLP hereby appears as attorney of record for
defendants in the above-entitled action, and requests

that all papers, except process, be served upon the undersigned at the address shown above.

RAMSDEN & LYONS, LLP

By _____
Marc A. Lyons, of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of January 2014, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following.

Scott A. Gingras, Esq.
WINSTON & CASHATT
250 Northwest Blvd., Suite 206
Coeur d'Alene, ID 83814

_____ U.S. Mail
_____ Overnight mail
_____ Hand Delivered
_____ Facsimile (208) 7652121

Marc A. Lyons