

1 as an investment trust advisor under what the FHT draftsman conceded was a
2 defective first amendment.⁶⁶
3

4 The second prong of the test is whether the cause of action arises out of the
5 defendant's forum related activities. The Ninth Circuit Court of Appeals ("Ninth
6 Circuit") has stated that "we rely on a 'but for' test to determine whether a
7 particular claim arises out of forum-related activities and thereby satisfies the
8 second requirement for specific jurisdiction."⁶⁷ Here, Caroline did not and still
9 has not provided personal service upon any party to this action including
10 Christopher D. Davis and FHT Holdings LLC. Caroline did not state any acts
11 effectuated by Christopher or his consent that would satisfy the "but for" test, and
12 therefore there is no general or specific in personam jurisdiction.
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17 Even assuming the most expansive and unlikely reading of NRS§ 163.5555,
18 which is that the acceptance of the position of an investment trust advisor is a
19 minimum contact sufficient to satisfy the first element of the test, Caroline has not
20 carried her burden to satisfy the second prong of the specific jurisdiction test. She
21 must demonstrate that the cause of action arises out of Christopher's actions taken
22 or decisions made as investment trust advisor. Here, Caroline has not alleged that
23 her cause of action arises out of any such actions by Christopher, and therefore
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28 ⁶⁶ See Footnote 20 Supra

⁶⁷ *Ballard v. Savage*, 65 F.3d 1495, 1500, (9th Cir. Cal. 1995)

1 cannot satisfy the second element of the specific jurisdiction test. In fact Caroline
2 has not alleged any cause of action/
3

4 Additionally, the exercise of jurisdiction over Christopher is not reasonable
5 under the circumstances. Here, a Washington resident is seeking information from
6 a Missouri resident regarding action taken by an Alaska trustee. The only
7 transaction alleged to have occurred in Nevada is regarding a purported loan of
8 \$25,000.00 to Dunham, which Dunham initiated and acknowledged in open court
9 was used to pay for legal fees for the trust protector.⁶⁸ The remaining information
10 Caroline seeks stems from the acts of the Alaskan trustees in the state of Alaska.
11 The FHT mandates that a trustee does not have to account for a previous trustee;⁶⁹
12 therefore, her requests are more appropriate to the Alaska trustee and are wholly
13 unrelated to the state of Nevada.
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18 Although it was her burden, Caroline has raised no decisions made or
19 actions taken by Christopher in Nevada that would subject him to the jurisdiction
20 of the DC.
21

22 **D. Caroline has failed to serve pursuant to NRCP 4(i), therefore the**
23 **Court must dismiss Christopher from this matter.**
24
25
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28 ⁶⁸ See Appendix IX:1418:3-18.

⁶⁹ See Appendix I:64: section 7

1 Without providing personal service to Christopher, Caroline is attempting to
2 obtain his personal testimony and documents by order of the DC. NRS§ 14.065

3
4 (2) mandates the following regarding personal service:

5 Personal service of summons upon a party outside this state is sufficient to
6 confer upon a court of this state jurisdiction over the party so served if the
7 service is made by delivering a copy of the summons, together with a copy
8 of the complaint, to the party served in the manner provided by statute or
rule of court for service upon a person of like kind within this state.

9 Nevada Rule of Civil Procedure (“NRCP”) 4(d) requires the delivery of personal
10 service.
11

12 NRCP 4(i) further provides that:

13
14 If a service of the summons and complaint is not made upon a defendant
15 within 120 days after the filing of the complaint, the action shall be
16 dismissed as to that defendant without prejudice upon the court’s own
17 initiative with notice to such party or upon motion, unless the party on
18 whose behalf such service was required files a motion to enlarge the time
19 for service and shows good cause why such service was not made within
20 that period. If the party on whose behalf such service was required fails to
21 file a motion to enlarge the time for service before the 120-day service
22 period expires, the court shall take that failure into consideration in
determining good cause for an extension of time. Upon a showing of good
cause, the court shall extend the time for service and set a reasonable date
by which service should be made.

23 The initial petition was filed February 10, 2015.⁷⁰ It is well beyond the 120
24 day time limit provided by NRCP 4(i) and Christopher still has not been
25

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28

⁷⁰ See Appendix I:1

1 personally served. Caroline has not filed a motion to enlarge the time for service,
2 and has not shown good cause why such service was not timely made.
3

4 The Court has indicated that only a showing of good cause would justify an
5 untimely service of process.⁷¹ This Court outlines a number of considerations that
6 may govern an analysis of good cause under NRCP 4(i) where no one
7 consideration is controlling.⁷² Caroline has not shown good cause why service
8 was not made. Furthermore, an amended Petition/complaint would not cure the
9 lack of service on parties to the Petition.⁷³
10
11

12 Even an amendment to the Petition (complaint) will not cure the procedural
13 defect of lack of service pursuant to NRCP 4(i) for all parties named in the
14 Petition.
15

16 Therefore, Caroline's action must be dismissed as to Christopher
17 personally, and in all capacities requiring *in personam* jurisdiction. Caroline must
18 refile and personally serve another petition (complaint) for any relief she seeks
19
20
21

22
23 ⁷¹ *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516, (Nev. 2000),
24 overruling in part *Lacey v. Wen-Neva, Inc.*, 109 Nev. 341, 346, (Nev. 1993).

25 ⁷² *Id.*

26 ⁷³ *Lacey v. Wen-Neva, Inc.*, 109 Nev. 341, 349, 849 P.2d 260, 264-265, 1993 Nev.
27 LEXIS 58, *14-15 (Nev. 1993), overruled in part by *Scrimmer v. Eighth Judicial*
28 *Dist. Court*, 116 Nev. 507, 516, 998 P.2d 1190, 1195-1196, 2000 Nev. LEXIS 68,
*15, 116 Nev. Adv. Rep. 60 (Nev. 2000), citing *Baden v. Craig-Hallum, Inc.*, 115
F.R.D. 582, 586 n.3 (D. Minn. 1987) (citations omitted); see also *McGuckin v.*
U.S., 918 F.2d 811, 813 (9th Cir. 1990) (where amended complaint adds a new

1 from Christopher. Notably, Christopher requested dismissal of the Petition based
2 upon lack of personal service including NRCP 12(b)(3) and (4).⁷⁴ It was denied
3 despite Caroline's failure to prove personal service. The DC then refused to
4 reconsider his request based upon the pending appeal.
5

6
7 ***E. Indispensible Parties were not named and because they were not***
8 ***joined; Demanding documents from Christopher's attorneys is***
9 ***improper; The Matter must be dismissed.***

10 In his request to dismiss the Petition, Christopher argued that Caroline had
11 failed to name indispensable parties to whom she was seeking information
12 pursuant to NRCP 19(a) and (b).
13

14 This Court has indicated that "this court has required all persons materially
15 interested in the subject matter of the suit be made parties so that there is a
16 complete decree to bind them all. If the interest of absent parties may be affected
17 or bound by decree, they must be brought before the court or it will not proceed to
18 decree."⁷⁵ It also concluded, that "[f]ailure to join an indispensable party is fatal
19 to a judgment and may be raised by an appellate court sua sponte."⁷⁶
20
21

22 The U.S. Supreme Court has also held the following:
23
24
25

26
27 party, plaintiff has 120 days from filing the amended complaint to serve the new
28 party)

⁷⁴ See Appendix II:293-298

⁷⁵ *Olsen Family Trust v. DC*, 110 Nev. 548, 553 (1994).

1 Joinder as a party, rather than knowledge of a lawsuit and an opportunity to
2 intervene, is the method by which potential parties are subjected to the
3 jurisdiction of the court and bound by a judgment or decree. The parties to a
4 lawsuit presumably know better than anyone else the nature and scope of
5 relief sought in the action, and at whose expense such relief might be
6 granted. It makes sense, therefore, to place on them a burden of bringing in
7 additional parties where such a step is indicated, rather than placing on
potential additional parties a duty to intervene when they acquire
knowledge of the lawsuit.⁷⁷

8 Initially, the FHT had the Alaska Trust Company (“ATC”) serve as trustee,
9 until its removal in 2011, at which time Alaska USA Trust Company (“AUTC”)
10 became successor trustee of the FHT (hereinafter collectively as “Alaskan
11 Trustees”). The Alaskan Trustees are indispensable parties to this matter because
12 the time period in which the documents and information are being requested from
13 Caroline were during the period in which they acted as trustees of the FHT,
14 borrowed funds and made loans. More specifically, Caroline has requested
15 information regarding approximately two (2) million dollars in alleged loans, **all**
16 of which, except for a disbursement of \$25,000.00 explained previously, occurred
17 during the tenure of the Alaskan Trustees and were made by the Alaskan Trustees.
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26 ⁷⁶ *Schwob v. Hemsath*, 98 Nev. 293, 294 (1982), citing *Provident Bank v.*
27 *Patterson*, 390 U.S. 102 (1968) and *Johnson v. Johnson*, 93 Nev. 655, 572 P.2d
28 925 (1977).

⁷⁷ *Martin v. Wilks*, 490 U.S. 755, 765 (1988).

1 It is important to note that according to the terms of the FHT, no other trustee was
2 required to account for their actions.⁷⁸
3

4 Even under the DC's June 24, 2015 order, relief cannot be afforded among
5 the remaining parties because the Alaskan Trustees were the custodial trustees
6 who possessed the information requested by Caroline, and under whose tenure the
7 transactions occurred. Notwithstanding this fact, Caroline has subpoenaed
8 Christopher's attorney, Harriet Roland, Esq. as custodian of records of her law
9 firm in an attempt to obtain copies of documents that were in Christopher's before
10 he allegedly became a trust advisor and was merely a beneficiary. Caroline filed a
11 motion to compel production of documents that Harriet Roland alleged are
12 confidential and/or subject to attorney client privilege. The DC granted Caroline's
13 request,⁷⁹ and such production is to extend to periods almost ten years before
14 Christopher purportedly became investment trust advisor, and before Dunham
15 Trust Company allegedly took office.⁸⁰ Making such a ruling for production of
16 documents alleged to have been confidential and/or privileged will result in
17 immediately and irreparable harm to Christopher Davis.
18
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24 Making a ruling concerning this beneficiary information without including
25 the Alaskan Trustees as custodial party would expose other named parties to a
26

27
28 ⁷⁸ See Footnote 69 Supra

⁷⁹ See Appendix IX:1540-1541

1 substantial risk of incurring double, multiple, or otherwise inconsistent obligations
2 by reason of the claimed interest to those documents,⁸¹ particularly in light of the
3
4 Caroline's indemnifications of the Alaska Trustees. In other words, the named
5 parties (over which Caroline requested this Court take jurisdiction) could be
6
7 exposed unnecessarily to other court actions in other jurisdictions with double or
8 multiple obligations by reason of Petitioner's requested relief and documents from
9
10 them for documents that are not in this jurisdiction or in their possession and/or
11 control. This has already been evidenced by Caroline's request for sanctions
12 against Christopher's counsel; Harriet Roland, Esq.⁸² Despite Christopher having
13
14 provided his confidential records to Harriet Roland in anticipation of litigation,
15 Caroline sought sanctions against Harriet Roland to obtain beneficiary information
16
17 belonging to Christopher.

18 Caroline's Petition must be dismissed, because she has failed to even
19
20 request jurisdiction over the Alaskan Trustees, the very indispensable parties she
21 admits in her Petition borrowed the funds and under whose authority and tenure
22 all of the loans to Christopher and other persons were made, and who was or is in
23
24 possession of the information and documents requested.⁸³

25
26
27 ⁸⁰ NRCP 19(a)(1).

⁸¹ NRCP 19(a)(2)(ii)

28 ⁸² See Appendix VI:897-976

⁸³ See Appendix I:6:3-5.

1 **IV. Conclusion**

2 For the foregoing reasons Christopher respectfully requests that the Court:

- 3
- 4 1. Find that the DC lacks in rem jurisdiction over Christopher D. Davis as trust
- 5 investment advisor under the theory of constructive trust;
- 6
- 7 2. Find that the DC lacks in personam jurisdiction over Christopher D. Davis
- 8 as investment trust advisor under the theory of constructive trust;
- 9
- 10 3. Find that Christopher D. Davis was not personally served;
- 11
- 12 4. Find that the DC lacks *in personam* jurisdiction over Christopher D. Davis
- 13 in any role or capacity;
- 14
- 15 5. Order the DC to grant Christopher's motion to dismiss for lack of
- 16 jurisdiction;
- 17
- 18 6. Order the DC to dismiss Caroline's Petition for failure to join indispensable
- 19 parties;
- 20
- 21 7. Order the DC to dismiss Caroline's petition based on her failure to serve
- 22 Christopher D. Davis within 120 days as required by NRCP rule 4(i)
- 23
- 24 8. Order the DC to dismiss all other pending motions which rely on the Order
- 25 entered June 24, 2015, including all motions for contempt and motions to
- 26 compel as to Christopher Davis and his attorneys;
- 27
- 28 9. Stay all proceedings of the DC until such requested relief can be granted;
- and

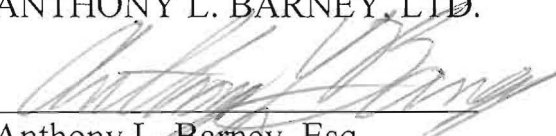
1 10. Any further and proper relief that may be warranted in this matter.

2 DATED this 7th day of October, 2015.

3
4 Respectfully Submitted,
5 ROLAND LAW FIRM

6 
7 Harriet H. Roland, Esq.
8 Nevada Bar No. 5471
9 2470 E. St. Rose Pkwy, Ste. 105
10 Henderson, NV 89074
11 Telephone: (702) 452-1500
12 Facsimile: (702) 920-8903
13 hroland@rolandlawfirm.com
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Telephone: (702) 438-7878
Facsimile: (702) 259-1116
office@anthonybarney.com
Attorney for Christopher D. Davis

1
2
3 VERIFICATION
4

5 I, Christopher D. Davis, the Petitioner herein, being first duly sworn, depose
6 and say that I make this verification for the reason that I have read the above and
7 foregoing Writ and know the contents thereof. I am informed and believe the
8 contents stated in the Writ to be true and any matter alleged upon information and
9 belief, I also believe to be true. Pursuant to NRS § 53.045, I declare under penalty
10 of perjury under the law of the State of Nevada that the foregoing is true and
11 correct.
12
13

14 DATED this 7th day of October, 2015.
15
16

17 
18 Christopher D. Davis
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to this action. I further certify that on the 8th day of October, 2015, I served the foregoing **EMERGENCY MOTION UNDER NRAP 27(e) FOR PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS** by first class US mail, postage prepaid, upon the following persons or entities:

Cheryl Davis 5403 West 134 Terrace, Unit 1525 Overland Park, KS 66209	Tarja Davis 3005 North Beverly Glen Circle Los Angeles, California 90077 And 514 West 26 th Street, #3E Kansas City, Missouri 64108
Winfield B. Davis Skyline Terrace Apts. 930 Figueroa Terr. Apt. 529 Los Angeles, California 90012-3072	Ace Davis c/o Winfield B. Davis Skyline Terrace Apts. 930 Figueroa Terr. Apt. 529 Los Angeles, California 90012-3072
Christopher D. Davis 3005 North Beverly Glen Circle Los Angeles, California 90077 And 514 West 26 th Street, #3E Kansas City, Missouri 64108	Registered Agent Solutions, Inc. Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability Company 4625 West Nevso Drive, Suite 2 Las Vegas, Nevada 89103
JONATHAN W. BARLOW, ESQ. CLEAR COUNSEL LAW GROUP 50 Stephanie Street, Suite 101 Henderson, Nevada 89012 Jonathan@clearcounsel.com Attorneys for Stephen K. Lehnardt Via Hand Delivery	Mark Solomon, Esq. Joshua Hood, Esq. SOLOMON DWIGGINS & FREER, LTD. 9060 W. Cheyenne Ave. Las Vegas, NV 89129 <i>Attorney for Petitioner Caroline Davis</i> Via Hand Delivery

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DUNHAM TRUST COMPANY
SHANNA CORESSAL, CTFA
c/o Charlene Renwick, Esq.
Lee, Hernandez, Landrum & Garofalo
7575 Vegas Drive, #150
Las Vegas, Nevada 89128
Via Hand Delivery

Eighth Judicial District Court
Department 26, Judge Gloria Sturman
200 Lewis Ave
Las Vegas, Nevada 89155
Via Hand Delivery



Employee of Anthony L. Barney, Ltd.

1 This Court should be aware that the only trust with any arguable ties to
2 Nevada (and which is clearly in dispute as a result of the invalidity of the
3 purported First Amendment and improper attempt to change in situs to Nevada) is
4 the FHT. The only other entity located in Nevada is FHT Holdings, LLC, which
5 is owned by the FHT, and according to the DC is not a party to this matter.³²
6
7 Despite the narrow language of the June 24, 2015 order, Caroline re-issued
8 subpoenas to Christopher's attorney's improperly requesting the same and
9 additional information she originally sought from Christopher,³³ and is asking for
10 sanctions against Christopher for his failure to comply.
11
12

13
14 In July 2015, Christopher filed a petition for reconsideration of the June 24,
15 2015 order.³⁴ Caroline also filed a motion to amend the June 24, 2015 order,
16 providing evidence to suggest that even Caroline was aware of the defective basis
17 upon which the DC asserted jurisdiction. At the same time, Caroline admitted that
18 they did not seek *in personam* jurisdiction over Christopher.³⁵ Christopher
19 opposed Caroline's Motion to Amend because she had based her request to amend
20 the order on alleged fraud by Christopher's attorney.³⁶ Caroline's statements in
21
22
23

24
25 ³² See Footnote 32 supra.

26 ³³ See Subpoena Duces Tecum dated June 25, 2015 on Wiznet.

27 ³⁴ See Appendix IV:446-477.

28 ³⁵ See Appendix V:718:15-19

³⁶ See Appendix VIII:1332-1357, Ironically, Caroline's own statements in the Motion to Amend were misrepresentations to the Court, and, after Christopher

1 the Motion to Amend were misrepresentations to the Court, and, after Christopher
2 made a NCRP 11 request to Caroline's counsel, they were withdrawn from the
3 record.³⁷

4
5 Due to the absence of *in personam* jurisdiction over Christopher, he also
6 filed a motion for a protective order or to modify/quash the subpoena which
7 sought to require his submission to a deposition in Nevada or face contempt.³⁸ As
8 a non-party witness, travel accommodations had not been made for him to appear
9 in Nevada, which is several hundred miles from his residence.
10
11

12 At the September 2, 2015 hearing on the three petitions/motions: 1) Petition
13 for Reconsideration, 2) Motion to Amend and 3) Motion for Protective Order or to
14 Quash or Modify the Subpoena, the Court indicated that it could not rule on the
15 motions/petitions, but it was allowing discovery under this Court's holdings in
16 *Viega GmbH v. Eighth Judicial DC*, 328 P.3d 1152 (Nev. 2014) (hereinafter
17 "Viega") and *Fulbright & Jaworski v. Eighth Judicial DC*, 342 P.3d 997 (Nev.
18 2015) (hereinafter "Fulbright") and stated that the "purpose and intent of taking
19 jurisdiction initially was to figure out jurisdiction."³⁹ This is an error of law in
20 that neither of these cases authorized discovery without jurisdiction. Herein, the
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26
27 made a Rule 11 Request to Caroline's counsel, they later withdrew their false
28 statements from the record.

³⁷ See Appendix VII:1119-1138

³⁸ See Appendix VIII:1185-1221.

1 DC took jurisdiction upon an admittedly incorrect legal basis and then began
2 enforcing discovery, not to obtain jurisdiction, but to “sue” Christopher without
3 raising any claims for relief.⁴⁰

5 Notably, the DC is aware of its jurisdictional error. It stated, “**I was wrong**
6 **in accepting Mr. Solomon’s description of that as a constructive trust.**
7 **Technically, you’re right** [speaking to Christopher’s counsel]. **It’s not a**
8 **constructive trust...**”⁴¹ The DC also further acknowledged that FHT Holdings,
9 LLC was not a party to this matter.⁴²

12 Despite the realization of its jurisdictional error and the overbreadth of the
13 subpoena, the DC declined to rule on Christopher’s motion for a protective order
14 or to quash or modify Caroline’s subpoena. Instead, the DC wanted the discovery
15 commissioner to rule on any objections at the deposition⁴³ in its attempt to have
16 Christopher submit to its jurisdiction by appearance. In light of the DC’s
17 admissions and its lack of *in personam* jurisdiction, Christopher chose not to
18 appear at the deposition. The DC has various motions pending before it including
19 a motion for sanctions, a motion for contempt, and a motion to compel which all
20 stem from Christopher’s alleged lack of compliance with discovery. At the
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27 ³⁹ See Appendix IX:1449: 17-19

⁴⁰ See Footnote 23 Supra

28 ⁴¹ See Appendix IX:1450: 23-25 and 1451:1

⁴² See Appendix IX: 1470: 9-14, 21-23; 1472:12-25.

1 September 30, 2015 hearing, the DC postponed the motion for sanctions to
2 October 28, 2015 and indicated that the DC would proceed with discovery based
3 upon its June 24, 2015 order. The DC also declined to hear the motion for
4 contempt because Christopher objected to DC Judge Gloria Sturman hearing it
5 pursuant to NRS§ 22.010 (3). However, the DC sua sponte decided that it would
6 view the contempt motion as a NRCP 37 motion and alluded to the fact that it will
7 request or impose sanctions upon Christopher pursuant to NRCP 37, despite the
8 fact that Caroline never pled such a request.⁴⁴ This had the appearance of
9 sidestepping the mandates of NRS §22.010 in order to continue to exacerbate the
10 onerous discovery demands being leveled upon Christopher. NRCP 37 sanctions
11 typically are initiated only on party motion, which did not occur in this case.
12
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15
16

17 As noted, the DC has improperly attempted to justify jurisdiction under its
18 alleged interpretation of *Viega* and *Fulbright*⁴⁵ and has improperly allowed
19 discovery to proceed upon Christopher without obtaining proper *in personam*
20 jurisdiction. Dismissal of the Original Petition is proper, because there is no basis
21 for in personam jurisdiction over Christopher D. Davis and because personal
22 service of the petition was not effectuated within the one hundred and twenty
23 (120) days as required by NRCP 4(i).
24
25
26
27

28 ⁴³ See Appendix IX:1437.

⁴⁴ See Appendix IX:1543 and XI:1544-1548

1 **III. LEGAL ARGUMENT**

2 ***A. The DC does not have proper jurisdiction over any of the parties***
3 ***under a theory of constructive trust.***

4 NRS § 164.010 provides that the court may take *in rem* jurisdiction over a
5 trust. After assuming *in rem* jurisdiction, a court then has only the power to
6 adjudicate title to or ownership of trust property without personal liability to the
7 trustee or any other person involved with the trust.
8

9 A constructive trust is entirely different from a trust proceeding *in rem*. The
10 Court explained that, “[a] constructive trust is a remedial device by which the
11 holder of legal title to property is held to be a trustee of that property for the
12 benefit of another who in good conscience is entitled to it.”⁴⁶ This Court and the
13 Ninth Circuit have both indicated that a constructive trust is an equitable remedy
14 to prevent or redress unjust enrichment.”⁴⁷
15

16 This Court indicated that three specific findings are necessary to impose a
17 constructive trust, because “[a] constructive trust will arise and affect property
18
19

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21
22
23 ⁴⁵ See Appendix IX:1521-1632.

24 ⁴⁶ *DeLee v. Roggen*, 111 Nev. 1453, 1457, (Nev. 1995) quoting *Locken v. Locken*,
25 98 Nev. 369, 650 P.2d 803 (1982)

26 ⁴⁷ *Taylor Assocs. v. Diamant* (In re Advent Mgmt. Corp.), 178 B.R. 480, 486,
27 1995 Bankr. LEXIS 346, *17, 95 Daily Journal DAR 10590 (B.A.P. 9th Cir. Cal.
28 1995); *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1027, 967 P.2d 437, 441, 1998
Nev. LEXIS 132, *10 (Nev. 1998), citing Dan B. Dobbs, *Law of Remedies* §
4.3(2) (2d ed. 1993) (“The constructive trust is no longer limited to [fraud and]
misconduct cases; it redresses unjust enrichment, not wrongdoing.”)

1 acquisitions under circumstances where (1) a confidential relationship exists
2 between the parties; (2) retention of legal title by the holder thereof against
3 another would be inequitable; and (3) the existence of such a trust is essential to
4 the effectuation of justice."⁴⁸ This Court also recognized that "a constructive
5 trustee have title (not mere possession) to the property" because this "is critical to
6 the imposition of a constructive trust."⁴⁹

7
8
9 The Federal Sixth Circuit clarified that:

10
11 A constructive trust is not really a trust. A constructive trust is a legal
12 fiction, a common-law remedy in equity that may only exist by the grace of
13 judicial action...a constructive trust, unlike an express trust, is a remedy, **it**
14 **does not exist until a plaintiff obtains a judicial decision finding him to**
15 **be entitled to a judgment** "impressing" defendant's property or assets with
a constructive trust.⁵⁰

16 A constructive trust is very different from an express trust over which *in*
17 *rem* jurisdiction might be imposed under NRS 164.010. A constructive trust is a
18 remedy, which can be ordered only after 1) jurisdiction has been obtained over the
19 persons or entities over which the court seeks to impose the constructive trust or
20
21
22

23
24 ⁴⁸ *DeLee v. Roggen*, 111 Nev. 1453, 1457, 907 P.2d 168, 170, 1995 Nev. LEXIS
170, *6-7 (Nev. 1995), citing *Locken v. Locken*, 650 P.2d 803, 805 (Nev. 1982).

25 ⁴⁹ See *Danning v. Lum's, Inc.*, 86 Nev. 868, 871, 478 P.2d 166, 167, 1970 Nev.
26 LEXIS 639, *4 (Nev. 1970), citing *Cherno v. Dutch Am. Mercantile Corp.*, 353
27 F.2d 147 (2d Cir. 1965); *Thompson v. Mobile Producing Co.*, 163 F.Supp. 402 (D.
Mont. 1958); G. Bogert, *Law of Trusts* 208 (4th ed. 1963)

28 ⁵⁰ *XL/Datacomp v. Wilson (In re Omegas Group)*, 16 F.3d 1443, 1449, 1451, 1994
U.S. App. LEXIS 2682, *22, 1994 FED App. 0051P (6th Cir.), 15, Bankr. L. Rep.

1 against whom the court is entitled to enter judgment and 2) the elements for
2 obtaining a constructive trust are satisfied.

3
4 Herein, the DC has not obtained *in personam* jurisdiction over Christopher
5 as detailed below, nor has it found him to have title to any trust property. As such,
6 the DC is without the authority to make the findings of fact to satisfy the elements
7 of imposing a constructive trust upon the parties. Due process was not provided to
8 the parties before a constructive trust was imposed. A constructive trust is a
9 remedy the court can pronounce after establishing jurisdiction, not a vehicle to
10 gain jurisdiction.

11
12
13
14 ***B. NRS §163.5555 does not permit the court to assume general or***
15 ***specific in personam jurisdiction absent proof of personal service***
16 ***and satisfaction of due process requirements.***

17 Caroline's most recent attempt to justify jurisdiction over Christopher
18 appears to be her claim that NRS§ 163.5555 grants *in personam* jurisdiction over
19 an investment trust advisor without personal service and without further findings
20 regarding compliance with the due process clause of the Fourteenth Amendment.⁵¹

21 As this Court previously held, "jurisdiction over a nonresident defendant is proper
22 only if the plaintiff shows that the exercise of jurisdiction satisfies the
23
24
25
26

27 (CCH) P75,722, 30 Collier Bankr. Cas. 2d (MB) 1019, 25 Bankr. Ct. Dec. 413
28 (6th Cir. Ky. 1994) (Emphasis added).

⁵¹ See Appendix IX:1481:9-17

1 requirements of Nevada's long-arm statute and does not offend principles of due
2 process.”⁵² NRS§ 163.5555 states that

3
4 If a person accepts an appointment to serve as a trust protector or a trust
5 adviser of a trust subject to the laws of this State, the person submits to the
6 jurisdiction of the courts of this State, regardless of any term to the contrary
7 in an agreement or instrument. A trust protector or a trust adviser may be
8 made a party to an action or proceeding arising out of a decision or action of
the trust protector or trust adviser.

9 The second sentence of the statute substantively requires the same contacts as the
10 test for specific jurisdiction discussed in *Fulbright*.⁵³

11
12 NRS§ 164.005 makes NRS chapters 132, 153, and 155 applicable and
13 supplemental to NRS chapters 162 through 167. NRS § 155.010 states

14
15 Except as otherwise provided in a specific statute relating to the kind of
16 notice required or otherwise ordered by the court in a particular instance, a
17 petitioner shall cause notice of the time and place of the hearing of a
18 petition to be given to each interested person and to every other person
entitled to notice pursuant to this title or his or her attorney if the person has
appeared by attorney or requested that notice be sent to his or her attorney.

19
20 ⁵² *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152, 1156,
21 (Nev. 2014)

22 ⁵³ *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 342 P.3d 997, 1002,
23 (Nev. 2015) (Stating the test for specific jurisdiction: “Unlike general jurisdiction,
24 **specific jurisdiction is proper only where 'the cause of action arises from the**
25 **defendant's contacts with the forum.**” In other words, in order to exercise
26 specific personal jurisdiction over a nonresident defendant, “[t]he defendant must
27 purposefully avail himself of the privilege of acting in the forum state or of
28 causing important consequences in that state. The cause of action must arise from
the consequences in the forum state of the defendant's activities, and those
activities, or the consequences thereof, must have a substantial enough connection
with the forum state to make the exercise of jurisdiction over the defendant
reasonable.” Emphasis added, Citations omitted.)

1
2 NRS §155.010 further authorizes notice to be mailed to interested parties
3 ten (10) days prior to a hearing. NRS §§155.040 and 155.050 provide, however,
4 that if personal notice is required it may be done by citation served in the same
5 manner as the personal service of a summons. NRS §153.041 requires that an
6 action to force an accounting from a trustee be initiated by the issuance of a
7 citation. Finally, Nevada's long arm statute NRS §14.065 requires personal
8 service on a nonresident defendant and adherence to the limitations of due process
9 in order for the court to exercise jurisdiction.
10
11
12

13 NRS§164.005 makes NRS §155 applicable to and supplementary to NRS §
14 163. NRS §155 allows an exception to traditional methods of notice and service
15 based on the limited *in rem* nature of probate and trust proceedings. However,
16 NRS §155 also requires adherence to specific statutes relating to the kind of notice
17 required for purposes of *in personam* jurisdiction. This includes Nevada's long-
18 arm statute which requires personal service pursuant to NRCP 4 in order to obtain
19 *in personam* jurisdiction over a non-resident person or entity.
20
21
22

23 Caroline's proposed reading of NRS§ 163.5555 ignores due process in
24 order to justify her belated requests of *in personam* jurisdiction over Christopher
25 without proper service, which were not introduced until after the DC's June 24,
26 2015 order. Caroline is now suggesting that mailed notice ten (10) days before a
27 hearing as provided in NRS§ 155.010 is sufficient to satisfy the requirements of
28

1 obtaining *in personam* jurisdiction over a non-resident. However, due process
2 cannot be ignored; and therefore, the only two possible justified readings of
3 NRS§ 163.5555 are that 1) it grants only *in rem* jurisdiction over the role of an
4 investment trust advisor and any trust property held by the investment trust
5 advisor in that capacity based upon mailed notice under NRS§ 155.010, or 2) it
6 requires personal service and satisfaction of the due process requirements for
7 establishing jurisdiction over the investment trust advisor if *in personam*
8 jurisdiction is sought. If the latter is true, an exercise of *in personam* jurisdiction
9 over an investment trust advisor is only appropriate after due process requirements
10 are met requiring: 1) proof of personal service; 2) a finding that the defendant has
11 purposefully availed himself of the forum state; 3) proof that the cause of action
12 arises out of the defendant's contacts with the state, or as the statute reads, the
13 action or proceeding is one arising out of a decision or action of the trust advisor;
14 and finally 4) proof that the exercise of jurisdiction would not offend traditional
15 notion of fair play and substantial justice.

22 This position is also supported by the fact that NRS§ 155 requires the
23 issuance of a citation in the same manner as personal service of a summons for
24 certain actions that require *in personam* jurisdiction. The Nevada legislature
25 understood that the relaxed standards of notice under NRS§ 155.010 do not satisfy
26 due process for the purpose of obtaining *in personam* jurisdiction. For example, a
27
28

1 citation is required for an action regarding conversion of estate assets,⁵⁴ and an
2 action to compel an accounting from a trustee.⁵⁵ Caroline's recent position that
3 NRS § 163.5555 grants general *in personam* jurisdiction without the need for
4 personal service and additional findings is simply unconstitutional. Additionally,
5 Caroline's reading of the statute is contrary to public policy and would make
6 Nevada an extremely unfavorable jurisdiction for investment trust advisors.⁵⁶

7
8
9
10 ***C. Absent Caroline's unfounded proposal of the automatic grant of***
11 ***jurisdiction, the DC has no in personam jurisdiction over***
12 ***Christopher D. Davis.***

13 This Court stated "[a]s a question of law, the district court's determination
14 of personal jurisdiction is reviewed de novo, even in the context of a writ
15 petition."⁵⁷ Furthermore, "[i]t is the plaintiff's burden to establish the court's
16 personal jurisdiction over a defendant."⁵⁸ In order to overcome a motion to
17

18
19
20 ⁵⁴ See NRS§ 143.110

21 ⁵⁵ See NRS§ 153.041

22 ⁵⁶ Automatic general in personam jurisdiction would discourage potential trust
23 advisors from accepting such a position. No reasonable person, let alone a skilled
24 investment advisor would willingly subject themselves to Caroline's proposed
25 jurisdiction and risk suit in Nevada for any cause of action regardless of how
26 related it is to the advisor's contact with the state. In short Caroline's proposed
27 reading of NRS§ 163.5555 would undermine the Nevada's position as a leader in
28 trust law, and discourage the use of trust advisors and trust protectors in the state
of Nevada.

⁵⁷ *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152, 1156,
(Nev. 2014)

⁵⁸ *Doe v. Unocal Corp.*, 248 F.3d 915, 922, 2001 (9th Cir. Cal. 2001). See also,
Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court, 342 P.3d 997, 1001

1 dismiss based on lack of jurisdiction the plaintiff needs “to make a prima facie
2 showing of either general or specific personal jurisdiction by "produc[ing] some
3 evidence in support of all facts necessary for a finding of personal jurisdiction.”⁵⁹
4

5 “Jurisdiction over a nonresident defendant is proper only if the plaintiff
6 shows that the exercise of jurisdiction satisfies the requirements of Nevada's long-
7 arm statute and does not offend principles of due process.”⁶⁰ Nevada’s long-arm
8 statute reaches the outer limits of the due process clause of the Fourteenth
9 Amendment and requires personal service and minimum contacts with the forum
10 state. Caroline failed to establish a basis for jurisdiction over Christopher.
11
12

13 *In personam* jurisdiction is either specific or general. General jurisdiction
14 requires the defendant to have substantial, systematic and continuous contacts
15 with the forum state so that the defendant is essentially at home in the forum
16 state.⁶¹ The US Supreme Court has stated:
17
18

19 Only a limited set of affiliations with a forum will render a defendant
20 amenable to all-purpose jurisdiction there. ‘For an individual, the paradigm
21 forum for the exercise of general jurisdiction is the individual’s **domicile**;
22
23

24 (Nev. 2015) (stating, “When a nonresident defendant challenges personal
25 jurisdiction, the plaintiff bears the burden of showing that jurisdiction exists.”
26 Citation omitted)

27 ⁵⁹ *Id.* Citation omitted.

28 ⁶⁰ *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152, 1156,
(Nev. 2014)

⁶¹ *Daimler AG v. Bauman*, 134 S. Ct. 746, 760, (U.S. 2014)

1 for a corporation, it is an equivalent place, one in which the corporation is
2 fairly regarded as at home.’⁶²

3 General jurisdiction as a practical matter typically only applies to corporations.
4 Even so, Christopher is not domiciled in Nevada, and therefore is not subject to
5 general jurisdiction.⁶³ There was no evidence presented that suggests substantial,
6 systematic, or continuous contacts within the state of Nevada by Christopher.
7
8

9 To determine specific jurisdiction the Ninth Circuit applies a three part test:

10 (1) The nonresident defendant must do some act or consummate some
11 transaction with the forum or perform some act by which he purposefully
12 avails himself of the privilege of conducting activities in the forum, thereby
13 invoking the benefits and protections[;] (2) the claim must be one which
14 arises out of or results from the defendant's forum-related activities[; and]
(3) exercise of jurisdiction must be reasonable.’⁶⁴

15 This court applied a similar test in both the *Viega* and *Fulbright* cases.⁶⁵
16

17 The DC did not find any specific acts that Christopher performed as an
18 alleged investment trust advisor in Nevada through which he purposefully availed
19 himself or conducted activities in Nevada. In fact, the Court only assumed that
20 such activities had occurred by virtue of the fact that he was allegedly appointed
21
22
23
24

25 ⁶² *Id.* Citation omitted, emphasis added.

26 ⁶³ See Appendix VI:977-979

27 ⁶⁴ *Ballard v. Savage*, 65 F.3d 1495, 1498, (9th Cir. Cal. 1995)

28 ⁶⁵ *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152 (Nev.
2014), *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 342 P.3d 997
(Nev.2015)

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 CHRISTOPHER D. DAVIS

4 Petitioner

5
6 vs.

7 THE EIGHTH JUDICIAL DISTRICT
8 COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF CLARK,
10 AND THE HONORABLE JUDGE
11 GLORIA J. STURMAN, Respondent

12 and

13 CAROLINE DAVIS, Real Party in Interest

Case No. **Electronically Filed**
Oct 08 2015 08:54 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Eighth Judicial District Court
Case No.: P-15-083867-T (In re
the Beatrice B. Davis Family
Heritage Trust, dated July 28,
2000)

14
15 **EMERGENCY WRIT UNDER NRAP 27(e)**

16 **PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS**

17 **ACTION NECESSARY ON OR BEFORE OCTOBER 23, 2015**

18
19 **I. NRAP 27(E) CERTIFICATE**

20 Petitioners respectfully certify that this writ is filed on an emergency basis
21
22 requiring relief in less than fourteen days to avoid irreparable harm. Immediate
23 relief is necessary because the Eighth Judicial District Court (“DC”) continues to
24 improperly assert jurisdiction over parties that are not under the jurisdiction of the
25 DC. The DC continues to hear discovery matters and has allowed motions to
26 compel and for sanctions against Christopher for his alleged non-compliance with
27 discovery when he has not submitted to the jurisdiction of this Court. This Court
28

has made no findings regarding acts, which would enable the assertion of either *in rem* or *in personam* jurisdiction. At the September 30, 2015 hearing, the DC scheduled deadlines for initial disclosures on October 23, 2015 and motions to compel and for sanctions against Christopher on October 28, 2015. Therefore, this writ is necessary and warranted on an expedited basis.

A. NRAP 27(e)(3)(a) Telephone Numbers and Office Addresses of The Attorneys for the Parties.

Harriet H. Roland, Esq. Nevada Bar No. 5471 ROLAND LAW FIRM, INC. 2470 E. St. Rose Pkwy, Ste. 105 Henderson, NV 89074 Telephone: (702) 452-1500 Facsimile: (702) 920-8903 hroland@rolandlawfirm.com <i>Attorney for Christopher D. Davis</i>	Anthony L. Barney, Esq. Nevada Bar No. 8366 ANTHONY L. BARNEY, LTD. 3317 W. Charleston Blvd., Suite B Las Vegas, NV 89102 Telephone: (702) 438-7878 Facsimile: (702) 259-1116 office@anthonybarney.com <i>Attorney for Christopher D. Davis</i>
Mark Solomon, Esq. Joshua Hood, Esq. SOLOMON DWIGGINS & FREER, LTD. 9060 W. Cheyenne Ave. Las Vegas, NV 89129 <i>Attorneys for Caroline Davis</i>	DUNHAM TRUST COMPANY SHANNA CORESSAL, CTFA c/o Charlene Renwick, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, #150 Las Vegas, Nevada 89128

B. Facts Showing the Existence and Nature of the Claimed Emergency (NRAP 27(e)(3)(b))

The DC's June 24, 2015 order purported to assume jurisdiction over the FHT under the remedial theory of constructive trust. An appeal was filed based upon a lack of jurisdiction, including the fact that there is no *in personam* jurisdiction over Christopher either as an investment trust advisor or as an officer

1 of FHT Holdings, LLC, which the DC admitted was not a party to the action.¹
2 The DC later acknowledged that its assumption of jurisdiction was “wrong.”²
3
4 Despite this admission, the DC has allowed discovery to proceed. Therefore,
5 emergency relief is warranted and respectfully requested herein.
6
7 CHRISTOPHER D. DAVIS (“Christopher”), by and through his attorneys
8 HARRIET H. ROLAND, Esq., of the ROLAND LAW FIRM and ANTHONY L.
9 BARNEY, Esq., of the law office of ANTHONY L. BARNEY, LTD., hereby
10 submits his Petition for Writ of Prohibition and/or Mandamus pursuant to NRS
11 34.330 and NRAP 21 to prohibit the Eighth Judicial District Court, Department
12 26, the Honorable Judge Gloria J. Sturman (hereinafter, “DC”) from exercising
13 jurisdiction over Christopher D. Davis. This pleading is based on the
14 Memorandum of Points and Authorities herein, exhibits attached hereto, and any
15 oral argument that will be heard in this matter.
16
17
18

19 **II. Notification of Parties pursuant to NRAP 27(e)(3)(c)**

20
21 Christopher has notified the parties of the filing of this Writ of Prohibition
22 and/or Mandamus. This notification was made by electronic mail.³ Service of the
23 Writ will take place by hand delivery upon the attorneys and by mail to the other
24 interested parties.
25
26
27

28 ¹ See Petitioner’s Appendix (“Appendix”) IX:79:21

² See Appendix IX:1450:23-25.

1 Dated this 7th day of October 2015

2
3 Respectfully Submitted,
4 ROLAND LAW FIRM

5 
6 Harriet H. Roland, Esq.

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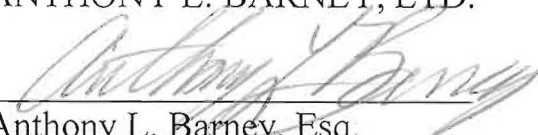
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13 *Attorney for Christopher D. Davis*

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CERTIFICATE OF COMPLIANCE

14 1. I hereby certify that this brief complies with the formatting requirements of
15 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
16 requirements of NRAP 32(a)(6) because:

17 [X] This brief has been prepared in a proportionally spaced typeface using
18 Times New Roman in Microsoft Word in 14 point font.

19 2. I further certify that this brief complies with the page- or type-volume
20 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted
21 by NRAP 32(a)(7)(C), it:

22 [X] Does not exceed 30 pages.

23
24
25
26
27
28 ³ See Appendix IX:1550

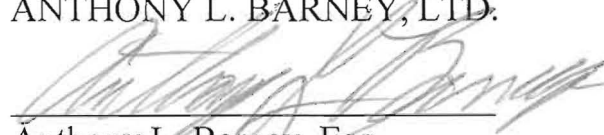
1 3. Finally, I hereby certify that I have read this Writ, and to the best of my
2 knowledge, information, and belief, it is not frivolous or interposed for any
3 improper purpose. I further certify that this Writ complies with all applicable
4 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which
5 requires every assertion in the Writ regarding matters in the record to be supported
6 by a reference to the page and volume number, if any, of the transcript or
7 appendix where the matter relied on is to be found. I understand that I may be
8 subject to sanctions in the event that the accompanying Writ is not in conformity
9 with the requirements of the Nevada Rules of Appellate Procedure.
10
11
12

13
14 Dated this 7th day of October, 2015.

15
16 Respectfully Submitted,
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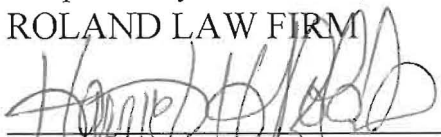
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ATTORNEY'S CERTIFICATE PURSUANT TO NRAP 28.2

1. The undersigned attorneys hereby certify that they have read the Writ.
2. To the best of the attorneys' knowledge, information and belief, the Writ is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
3. The Writ complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion in the briefs regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found.
4. The Writ complies with the formatting requirements of Rule 32(a)(4)-(6), and either the page- or type-volume limitations stated in Rule 32(a)(7).

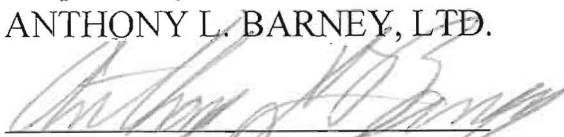
DATED this 7th day of October, 2015.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On June 24, 2015, the DC filed an order (hereinafter, “June 24, 2015 order”) later entered confirming Dunham Trust Company (hereinafter, “Dunham”) as the trustee of the Beatrice B. Davis Family Heritage Trust dated July 28, 2000 as amended on February 24, 2014 (“FHT”). Despite Christopher’s motion to dismiss based upon the failure of a condition precedent pursuant to the terms of the Trust, failure to join indispensable parties, lack of jurisdiction over the person, and insufficiency of service and insufficiency of service of process, the court purportedly assumed jurisdiction over the Trust under a theory of constructive trust pled orally by Caroline Davis (“Caroline”).¹

Christopher filed an appeal based on NRS 155.190 (h) which makes an order instructing or appointing a trustee an appealable order.² The appeal is still pending; however, neither NRS 132.355 nor NRS 163.5545 identifies an investment trust advisor as a trustee. Additionally, case law seems to indicate that a trust advisor is something less than a trustee or a quasi-trustee.³ Therefore, to the extent that a trust advisor does not satisfy the meaning of NRS §155.190(h) so

¹ See Appendix III:406:6 and Appendix III: 437:18-19.

² See Case #68542

³ *Wilmington Trust Co. v. Stuart*, 1983 Del. Ch. LEXIS 524, *25 (Del. Ch. July 19, 1983), describing a trust advisor as a “quasi-trustee”.

1 that the purported assumption of jurisdiction over Christopher does not qualify as
2 an appealable order under NRS § 155.190(h), Christopher submits this writ of
3 prohibition and/or mandamus.
4

5 **II. FACTS PERTAINING TO WRIT**

6
7 Caroline's initial petition filed in the DC did not allege any claims
8 (hereinafter "Petition").⁴ Caroline requested the DC to take jurisdiction over the
9 following alleged parties: Dunham Trust Company (as trustee), Stephen K.
10 Lehnardt (as trust protector), and Christopher D. Davis (as investment trust
11 advisor), and all other parties seemingly related to the FHT to obtain documents
12 from various parties related to the FHT.⁵
13
14

15 Notably, the only acts alleged against Christopher were those purportedly in
16 his individual capacity, as the beneficiary or trustee of another trust, or as the sole
17 manager of a Missouri Limited Liability Company.⁶ The DC was made aware of
18 a pending lawsuit in Missouri, and noted that these alleged acts were in Missouri
19 where Christopher had contact with those states.⁷
20
21
22

23
24 ⁴ See Appendix I

25 ⁵ See Appendix I:10: 3-20.

26 ⁶ See Appendix I: 8-9; Paragraphs 23, 24.

27 ⁷ See Appendix IX:1408: lines 3-20.

28 Mr. Barney: "Well, here's the thing. When we didn't have jurisdiction and
this case is a perfect example. They've actually filed suit out in Missouri
and do you know why they filed suit in Missouri, Your Honor? Because

1 All other references to Christopher in the Petition were to argue to the DC
2 his purported roles in relation to the FHT.⁸ The Petition did not allege claims or
3 acts performed by any party in Nevada. The Petition was mailed to various
4 parties, however personal service was not effectuated on any party.⁹ Christopher
5 is not a resident and does not reside in Nevada.¹⁰

6
7
8 The FHT was an express trust Settled by a Missouri resident under Alaska
9 law with an Alaskan Trustee.¹¹ The FHT requires the consent of all beneficiaries
10 thereunder and the opinion or advice from legal counsel before the trustee is
11 enabled to change the situs from Alaska.¹² The Alaska Trustee resigned on
12 December 5, 2013, and thereafter the FHT situs was allegedly changed on
13
14
15

16
17 when they raise the issue that they're trying to get jurisdiction over
18 Christopher as – in his capacity belonging to the revocable trust and other
19 capacities, they realize: You know what? We can't get that here so we're—
20 “

21 Court: Oh no. They're – that's clear. That's –“

22 ---

23 Court: “That's clear. I mean, I don't think anybody's disputing –“

24 ---

25 Court: **“That's Missouri. That's Missouri. But, you know, he's at least
26 got contacts with those states...”**

27 ⁸ See Appendix I:3:12 and I:8:26.

28 ⁹ The Court can take judicial notice under NRS 47.130 that neither a summons nor
a citation was ever issued or served upon any party.

¹⁰ See Appendix VI:978:27.

¹¹ See Appendix I:13.

1 February 24, 2014.¹³ The Alaska trustee had not obtained an opinion from their
2 own counsel as required by the FHT¹⁴ regarding the purported change in situs that
3 allegedly occurred without the consent of all beneficiaries, including Tarja
4 Davis.¹⁵

5
6 Upon receiving the mailed Petition, Christopher filed a motion to dismiss
7 based upon the lack of jurisdiction over FHT and over him in any capacity,
8 because 1) the Alaskan trustees of who were in possession of the documents being
9 requested were indispensable custodial parties¹⁶; 2) the change in situs was
10 ineffective due to a lack of consent by all beneficiaries and the lack of opinion
11 from the Alaskan Trustee's legal counsel.¹⁷ Additionally, Christopher requested
12 dismissal because there was no personal service upon him in any capacity.¹⁸
13
14 Caroline opposed the motion to dismiss.¹⁹

15
16 At the hearing on the motion to dismiss, Stephen K. Lehnardt (trust
17 protector and drafter of the FHT) admitted through his counsel that the disputed
18 first amendment and purported change in situs was not done pursuant the terms of
19
20
21
22
23

24 ¹² See Appendix I:110.

25 ¹³ See Appendix I:133-144

26 ¹⁴ See Appendix VI:977-979

27 ¹⁵ See Appendix V:478-483

28 ¹⁶ See Appendix II:288.

¹⁷ See Appendix I:110.

¹⁸ See Appendix II:298:9-12 and Appendix III:350-375

¹⁹ See Appendix II:309-321

1 the FHT.²⁰ The DC did note there were insufficient facts to assume jurisdiction
2 over Stephen K. Lehnardt as the trust protector until a more definite statement had
3 been made.²¹ After asserting jurisdiction under the theory of constructive trust, the
4 DC later admittedly “assumed” that Christopher had been acting in Nevada
5 although no facts were presented or findings made for such an assumption.²²
6
7

8 On September 2, 2015, the DC suddenly announced that Christopher could
9 be sued in Nevada, and when clarification was sought concerning this statement,
10 the DC clarified that to the extent that Christopher performed acts as an
11 investment trust advisor, the District court had jurisdiction.²³ However, the DC
12 never identified any acts that were performed by Christopher.
13
14

15 Caroline’s counsel then sent an *ex parte* letter to the DC requesting certain
16 additions be added to the pending June 24, 2015 order – mainly to include the
17 release of documents from Christopher in other roles in which Christopher was
18 alleged to have served. However, the DC did not have jurisdiction over him in
19 any of these alleged capacities.²⁴ After becoming aware of this *ex parte* letter,
20
21
22

23
24 ²⁰ See Appendix III:391: 3-25, 392:1-4, see also Appendix III:407:17-31

25 ²¹ See Appendix III:425:4-11.

26 ²² See Appendix IX:1440: 23-25, 1441:1 where the DC indicates, “... he’s been
27 acting here, I have to assume because stuff has been going on, apparently giving
instruction to Dunham and I just think that means he’s consented to the
jurisdiction of this Court.”

28 ²³ See Appendix III:425:18-24, 426:5-25, and 427:1-3.

²⁴ See Appendix VII:1063-1069.

1 Christopher's counsel requested the opportunity to address the new issues raised
2 in Caroline's counsel's *ex parte* letter.²⁵
3

4 Despite this request, the DC adopted Caroline's requested changes and
5 purportedly expanded its order for production from Christopher as manager of
6 FHT Holdings, LLC via hand-written interlineations on the June 24, 2015 order²⁶
7 thereby expanding its original jurisdictional assertions during the prior oral
8 hearing.²⁷ The DC's interlineated order was particularly egregious in light of its
9 later admission that FHT Holdings, LLC was not a party.²⁸
10
11
12
13

14
15 ²⁵ See Appendix VII:1073-1074

16 ²⁶ See Appendix III:435-439

17 ²⁷ See Appendix III:430:23-25 and 431:1-4

18 ²⁸ Appendix IX:

19 -Page 1470, lines 9-14, 21-23

20 Mr. Barney: "...He [Chris] didn't get served with a summons. So, the
21 question then becomes, because he didn't get served under Rule – service of
22 process, how could there be in personam jurisdiction over Christopher
23 Davis and then subject him tomorrow to inquiry into that role?"

24 ---

25 Court: "Well **FHIT [sic] is not a party.** FHT is a Nevada Corporation...

26 -Page 1472, lines 12-25

27 Mr. Barney: "If they want to get hat [sic] information, then they need to
28 serve him personally under Rule 4 if they want to get it as an officer of
manager of the company. This –"

Court: "**Because it's not a party.**"

Mr. Barney: "Yeah, This Court is assuming that it has jurisdiction over the
FHT Holdings and even if the Court goes in that direction, my question still

1 No findings of personal service or any other findings pursuant to NRS
2 14.065 have been made regarding Christopher in any of his alleged roles.²⁹
3

4 The DC continues to issue *in personam* orders and will likely shortly issue
5 orders on October 28, 2015 compelling discovery and discovery sanctions where
6 proper jurisdiction is absent. Accordingly, Christopher filed an appeal on August
7 4, 2015 pursuant to NRS 155.190(h). However, such an appeal does not stay the
8 proceedings if he is deemed a trustee for purposes of NRS 164.010.
9
10

11 Prior to the issuance of the DC's June 24, 2015 order, Caroline issued
12 defective electronic subpoenas dated June 8, 2015.³⁰ These subpoenas requested
13 documents from Christopher's attorneys who have a duty of confidentiality to
14 their client.³¹ Additionally, Caroline sent notice of Christopher's deposition
15 without any restrictions.
16
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19
20 goes to the fact that this is improper in that they're seeking to get
21 documents –“

22 Court: “I’m late for a meeting. So, that would be my ruling is that if – my
23 jurisdiction over Christopher Davis, I indicated, was only in his capacity as
24 the investment advisor...”

25 ²⁹ Christopher respectfully requests that the Appellate Court take judicial notice
26 pursuant to NRS 47.130 that a summons and/or citation has been issued or served.

27 ³⁰ See Subpoena Duces Tecum issued June 8, 2015 on Wiznet. The subpoenas
28 were defective because they sought production on May 18, 2015, (prior to the
issuance of the subpoenas) and were electronically served in contravention of
Nevada Electronic Filing and Conversion Rules (“NEFCR”) 9.

³¹ Id.