

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

For Publication

**IN THE SUPERIOR COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

BANK OF SAIPAN, )  
)  
Plaintiff, )  
)  
v. )  
)  
BERT DOUGLAS MONTGOMERY; )  
)  
TOMAS B. ALDAN; JAMES NAVA; THE )  
)  
ESTATE OF BLANKENSHIP, VINCENT, )  
)  
AND POOL; DAVID SPENCER; STOEL, )  
)  
RIVES LLP; D.A. DAVISON & CO; )  
)  
MICHAEL T. WILSON; DANIEL )  
)  
MARTENS; MOSELEY MARTENS, LLP; )  
)  
KIRK REICHEL; OLAN BEARD; )  
)  
CHARLES DE LOS SANTOS a.k.a. )  
)  
CHARLIE DE LOS SANTOS; JOHN DOES )  
)  
1-20, inclusive, and RICHARD ROES 1-20 )  
)  
inclusive, )  
)  
Defendants. )  
)  
\_\_\_\_\_ )

**CIVIL ACTION NO. 04-0088**

**ORDER DENYING DANIEL MARTENS'  
AND MOSELEY MARTENS, LLP's  
MOTION TO DISMISS**

THIS MATTER was last before the Court on August 30, 2005, on defendants Daniel Martens' and Moseley Martens, LLP's joint motion to dismiss under Com. R. Civ. P. 12(b)(2). Appearing on behalf of movants, either at oral argument or on the briefs were G. Anthony Long and, appearing *pro hac vice*, Robert W. Hicks. Opposing the motion on behalf of Plaintiff Bank of Saipan ("the Bank" or "BOS") were S. Joshua Berger and, appearing *pro hac vice*, John Spencer Stewart. Counsel for a number of the other defendants were present at a previous hearing, but neither supported nor opposed this motion.

The previous hearing was held March 15, 2005, and concerned the instant motion to dismiss. Pursuant to that hearing, the Court issued an order on June 24, 2005, finding that Plaintiff had not alleged sufficient contacts between the movants and the CNMI to support personal jurisdiction of

1 the Court over the movants. However, the Court granted a request by Plaintiff for additional time  
2 for discovery. Plaintiff then deposed Mr. Martens' assistant, Susan Watkins, and deposed Mr.  
3 Martens a second time and filed an amended opposition taking into account new information from  
4 the depositions. The Court has now carefully considered these new pleadings, as well as the earlier  
5 pleadings and the arguments of counsel and is prepared to rule.

#### 6 **FACTUAL BACKGROUND**

7 This case is ultimately about the series of events, and alleged misdeeds, that nearly brought  
8 down the Bank of Saipan. One of these events was an allegedly improperly obtained \$5 million loan  
9 that Defendant Michael T. Wilson secured from the Bank of Saipan to acquire two credit card  
10 processing companies that were located in Abilene, Texas. Defendant Daniel Martens, a member  
11 of the management committee of Defendant Moseley Martens, LLP, assisted Mr. Wilson in this  
12 endeavor by helping him form two companies, Sweven Systems, LLC, a Texas limited liability  
13 company, and FFS Transaction Corp., LLC, a Delaware limited liability company. The loan was  
14 then obtained by either Mr. Wilson or an entity in his control. Collateral for the loan was alleged  
15 to be a reserve account of Mr. Wilson's that apparently did not actually exist.

16 The loan was disbursed in two installments, one of \$500,000 in November 2001 and one of  
17 \$4.5 million in January 2002. In both cases, the money was sent by wire transfer from BOS to an  
18 account managed by Moseley Martens, LLP. To facilitate the wire transfers, Plaintiff alleges that  
19 a representative of BOS, Lee Francia, spoke repeatedly by telephone with Daniel Martens' assistant  
20 and Mr. Martens has admitted, during deposition testimony, that information about Moseley  
21 Martens, LLP's client account must have been given to the Bank by someone in his office. The  
22 Bank also alleges that the movants, either directly or through their agents and employees, knew that  
23 the collateral for the loan was to be Mr. Wilson's supposed reserve account and further knew that  
24 no such account existed. However, movants allegedly failed to inform the Bank that the proposed  
25 collateral did not exist until after the loan had been disbursed. Mr. Martens and the firm of Moseley  
26 Martens, LLP, collectively received approximately \$200,000 of the \$5 million provided by BOS,  
27 allegedly to cover current and past legal fees.

28 In their initial motion, movants denied that there were contacts between themselves and the

1 Bank. In fact, Mr. Martens states in his sworn 2003 declaration that neither he, nor any other  
2 representative of Moseley Martens, LLP, ever spoke with anyone located in CNMI about this  
3 matter. Apparently that was not true. Both Ms. Watkins and Mr. Martens, in their more recent  
4 depositions, admit that they received nearly daily phone calls from Lee Francia and others during  
5 the relevant time period. Mr. Martens denies that he ever personally spoke to Ms. Francia, but  
6 admits that at least two other attorneys from his office did. In addition, he admits that it must have  
7 been someone in his firm who sent information to the Bank about the firm account that was used to  
8 receive the loan proceeds and admits that they were disbursed by him, in accordance with the  
9 instructions of Mr. Wilson. He also admits that he knew that the Bank was counting on the reserve  
10 account as collateral and admits that he knew that Ms. Francia called on multiple occasions trying  
11 to verify the existence of the account. However, he denies knowing whether the account actually  
12 existed or not.

### 13 LEGAL CONCLUSIONS

14 Personal jurisdiction is the power of a court over a person. Where the person in question  
15 resides outside the territory over which the court presides, due process requires that the person have  
16 at least “minimum contacts” with the forum state such that “maintenance of the suit does not offend  
17 traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326  
18 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 102 (1945).<sup>1</sup> There are two types of personal  
19 jurisdiction: “general jurisdiction,” which, if found, allows a defendant to be sued in the forum state  
20 “even if the cause of action is unrelated to the defendant's forum activities.” *Data Disc, Inc. v. Sys.*  
21 *Tech. Assocs.*, 557 F.2d 1280, 1287 (9th Cir. 1977). Plaintiff does not allege that there are sufficient  
22 contacts for this type of jurisdiction. The other type is “specific jurisdiction,” which allows a court  
23 to exercise jurisdiction over the person as to the specific claims of the case even where there may  
24 be insufficient contacts for general jurisdiction. *Id.*

#### 25 I. Plaintiff Has Shown Sufficient Contacts Between the Movants and the CNMI to

---

26  
27 <sup>1</sup> In addition, there must be some applicable law that confers jurisdiction over the defendant. Such a law is  
28 typically called a “long-arm statute.” Our long-arm statute in the CNMI, 7 CMC § 1102(a), is extremely broad and is  
clearly meant to extend jurisdiction as far the U.S. Constitution will allow. *Bank of Saipan v. Superior Ct. (Connell)*,  
2001 MP 1 ¶ 22, 6 N.M.I. 179, 186.

1           **Establish Specific Jurisdiction.**

2           To exercise specific jurisdiction, the Court must determine: (1) that the movants  
3 “purposefully availed [themselves] of the privilege of conducting activities” in the CNMI; (2) that  
4 the “plaintiff’s claim arises out of or results from the defendant’s forum-related activities”; and (3)  
5 that the “exercise of jurisdiction is reasonable.” *Bank of Saipan*, 2001 MP 1 ¶ 26, 6 N.M.I. at 187.

6  
7           **A. Plaintiff Has Shown Purposeful Availment.**

8           The “purposeful availment” requirement ensures that a defendant will not find itself before  
9 a particular court solely because of the “unilateral activity of another party or a third person.”  
10 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct 2174, 2183-84, 85 L. Ed. 2d 528,  
11 542 (1985). In this case, the contacts between movants and the CNMI include numerous phone  
12 calls between movants and/or their agents and agents for Plaintiff located in the CNMI. In addition,  
13 movants and/or their agents arranged for the wire transfer, received the funds in their account and  
14 disbursed the money. Movants also knew that the Bank of Saipan was located in the CNMI, that  
15 the Bank was providing critical funding for the transaction, and that the movants themselves stood  
16 to personally benefit from the completed transaction. This is more than enough to satisfy the  
17 purposeful availment requirement.

18           In addition, in cases of intentional torts, the Ninth Circuit has found purposeful availment  
19 where the defendant “commits an intentional act . . . aimed at the foreign state . . . causing harm in  
20 the foreign state that defendant knew was likely to be suffered.” *C.E. Distribution, LLC v. New*  
21 *Sensor Corp.*, 380 F. 3d 1107, 1111 (9th Cir. 2004). In this case, Plaintiff alleges that movants  
22 intentionally defrauded it, knowing that it was located in the Commonwealth, and knowing that it  
23 would cause harm the plaintiff, but would benefit the movants. If these allegations are taken as true,  
24 and they must be at this point in the proceedings, this alone would be sufficient to support a finding  
25 of purposeful availment.

26           **B. Plaintiff’s Claim Arises From Movants’ CNMI-Related Activities.**

27           The second prong in the test is whether Plaintiff’s claim arises out of the movants’ “forum-  
28 related activities.” Plaintiff, a CNMI-chartered bank, was allegedly defrauded out of millions of

1 dollars by the movants and others. Part of the loss was the \$5 million loan that was transferred on  
2 instruction from movants, received by movants and disbursed by movants, partly for their own  
3 benefit. These activities, though physically occurring in Texas, are clearly forum-related, so this  
4 prong is satisfied.

5 **C. Exercise of Jurisdiction is Reasonable.**

6 The third prong for the Court to consider is whether the exercise of jurisdiction in this case  
7 is reasonable. In deciding reasonableness, this Court must weigh seven factors: (1) the extent of  
8 movants' purposeful injection into the CNMI; (2) the burden on the movants; (3) the extent of  
9 conflict the sovereignty of the movants' state; (4) the CNMI's interest in resolving the dispute; (5)  
10 judicial efficiency; (6) the importance of the forum to the Bank's interest; and (7) the existence of  
11 an alternative forum. *Bank of Saipan*, 2001 MP 1 ¶ 33, 6 N.M.I. at 188-89. The first of these  
12 factors, purposeful injection, has largely been considered in the section on purposeful availment -  
13 the movants had frequent contact with people in the CNMI and played a substantial part in a  
14 transaction that allegedly began in the CNMI and allegedly caused harm in the CNMI.

15 The second and sixth factors together create a balancing of interests and burdens between  
16 plaintiff and defendant. In this case, it is clear that forcing movants to try their case in the CNMI  
17 would be a burden. They and their attorneys would have to travel here and most of the witnesses  
18 they are likely to call and the evidence they are likely to produce in their defense is in Texas. On  
19 the other hand, most of the evidence and witnesses the Bank is likely to submit are here in the CNMI  
20 and it certainly would be burdened by having to bring these to Texas. In this sense, the potential  
21 burden faced by each is roughly equal. However, the Bank is also the party allegedly harmed and  
22 the alleged harm occurred in the CNMI. The Court concludes the Bank's interest in seeing this  
23 matter tried here outweighs the burden on the movants in trying it here.

24 The fifth and seventh factors focus on the judiciary. As to the fifth factor, neither forum has  
25 any great efficiency advantage over the other, because a large part of the relevant evidence,  
26 witnesses, etc. will be far away, whether the case is tried in Texas or in the CNMI. Therefore, it  
27 appears that neither forum has any great efficiency advantage over the other. As to the seventh  
28 factor, there does not seem to be any question that the Bank could try this case in Texas, as least as

1 to the movants, but that forum would be just as inconvenient to them as this forum is to the movants.  
2 While an alternative forum undoubtedly exists, the Court sees no reason that forum would be a  
3 superior place for trying this matter, though it would undoubtedly be preferable for movants.

4 Finally, the third and four factors weigh the competing interests of the two fora. Texas  
5 certainly has an interest in this matter, as most of the acts charged against movants occurred in Texas  
6 and the movants are residents of Texas. On the other hand, Plaintiff resides in the CNMI and the  
7 harm that was allegedly caused occurred in the CNMI. Indeed, all the depositors in the Bank were  
8 hurt by the scheme in which the movants allegedly participated. Because the principal harm  
9 occurred in the CNMI, the Court concludes that this forum has the greater interest in hearing this  
10 matter. Furthermore, the Court concludes that the most reasonable forum to hear this case is the  
11 CNMI.

12 Finally, having satisfied all three prongs of the overall test - purposeful availment, CNMI-  
13 related nexus, and reasonableness, the Court concludes it does have jurisdiction over the movants  
14 and requiring them to defend this matter in the CNMI does not violate their right to due process.  
15 Therefore, their motion to dismiss is denied.

#### 16 CONCLUSION

17 For the reasons stated above, the joint motion of defendants Daniel Martens and Moseley  
18 Martens, LLP to dismiss under Rule 12(b)(2) must be and is **DENIED**.

19  
20 SO ORDERED this 7th day of November 2005.

21  
22  
23 /s/  
24 JUAN T. LIZAMA, Associate Judge