

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-023337

05/21/2004

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
K. Ballard
Deputy

FILED: 05/25/2004

SANDY CARDER, et al.

CHRISTOPHER J RABOIN

v.

ROBERT BLAIR, et al.

RICHARD V MACK

RULING

Defendant Williams Appraisals, LLC's Motion to Dismiss has been under advisement. The Court finds and rules as follows:

Plaintiffs argue that by fraudulently appraising investment property, Williams was putting his appraisals into the national stream of commerce, and in effect doing business in every state in which his alleged fraudulent appraisals were used to fraudulently sell a property or make an excessive loan; and that putting product in the stream of commerce creates personal jurisdiction in every market in which the product is sold. Plaintiffs cite as authority *International Shoe*, 326 U.S. 310, 66 S.Ct. 154 (1945); *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 100 S. Ct. 559 (1980); *Williams v. Lakeview*, 199 Ariz. 1, 13 P.3d 280 (2000). Plaintiffs also argue that by alleging a conspiracy theory between Blair and Williams, that personal jurisdiction is secured over Williams.

Williams has raised the issue of personal jurisdiction. Thus, Plaintiffs must present sufficient facts to establish a *prima facie* showing of personal jurisdiction. *Lake v. Lake*, 817 F.2d 1416, 1420 (9th Cir. 1987). Preliminarily, the Court notes that contrary to the Plaintiffs' contention that this Court should disregard the Affidavit of Thomas Williams, when reviewing a motion to dismiss, courts may look at the pleadings and affidavits in support of and opposing the motion. *Coast to Coast Marketing Co. v. G & S Metal Prods. Co.*, 130 Ariz. 506, 637 P.2d 308 (App. 1981).

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In reviewing the pleadings and the Affidavit of Thomas Williams, the Court concludes that Plaintiffs have failed to establish a *prima facie* showing of personal jurisdiction. The pertinent facts are as follows: (1) Williams is a Georgia-based appraisal company; (2) Williams is not licensed to perform appraisals in Arizona; (3) Williams never communicated with any of the Plaintiffs before conducting any appraisal referenced in the Plaintiffs' Complaint; (4) Williams never communicated with Blair; (5) none of the appraised properties is located in the state of Arizona; (6) Williams has never performed an appraisal for any Plaintiff; (7) Williams never sold any appraisal to any Plaintiff; and (8) Williams performed the appraisals for its client, Security Mortgage Services, Inc. Put simply, at work there is no nexus between the state of Arizona and any action by Williams appraisals, LLC. At best, there is an insufficient nexus. Plaintiffs cite to *Uberti v. Leonardo*, 181 Ariz. 565, 892 P.2d 1354 (1995) and *Woods v. Superior Court of County of Maricopa*, 169 Ariz. 552, 821 P.2d 213 (1992) in support of their argument that an allegation of "conspiracy" theory is sufficient to confer personal jurisdiction over Williams in this case. *Woods* stands for the principle that a co-conspirator is vicariously liable for the criminal acts committed by other co-conspirators acting within scope and furtherance of the conspiracy. *Woods* does not address the issue of personal jurisdiction. In *Uberti*, the dangerous instrumentality (gun) actually entered the stream of commerce in Arizona (the gun discharged in Arizona and killed a child in Arizona). The cases cited by Plaintiffs regarding a "conspiracy" conferring jurisdictions do not apply here. Those cases are distinguishable.

Williams' conduct and connection with the state of Arizona are insufficient. Even assuming as true the facts in the Plaintiffs' Complaint, there are insufficient facts to indicate that Williams did anything such that the Georgia-based appraisal company should have reasonable anticipated being haled into court in Arizona.

THEREFORE, IT IS ORDERED granting Defendant Williams Appraisals, LLC's Motion to Dismiss. Counsel for Defendant Williams may submit a form of Judgment.