

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

EMANUEL DUNAGAN, et al.,

Plaintiffs,

v.

ILLINOIS INSTITUTE OF ART-CHICAGO,
LLC, et al.,

Defendants.

Case No. 19-cv-809

Honorable Charles R. Norgle

**DEFENDANT SHELLY MURPHY’S MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION**

Pursuant to Fed. R. Civ. P. 12(b)(2), specially appearing Defendant Shelly Murphy (“Defendant” or “Murphy”) moves to dismiss Plaintiffs’ Third Amended Class Action Complaint against Murphy in its entirety. This Court lacks personal jurisdiction over Murphy, an individual residing in Arizona with insufficient contacts to Illinois to be subjected to suit here. In fact, despite the Court permitting jurisdictional discovery on Murphy, Plaintiffs still failed to establish sufficient facts required by the Court in its April 19, 2021 Order (“Order”) to exercise personal jurisdiction over Murphy.

I. BACKGROUND

The Court stated in its Order that Plaintiffs’ Complaint alleged a prima facie case for personal jurisdiction over Murphy. However, the Court required the Plaintiffs perform jurisdictional discovery to ascertain whether there were jurisdictional facts to support Plaintiffs’ allegations against Murphy. After Plaintiff performed jurisdictional discovery, we know there is not. Despite the Court granting Plaintiffs this opportunity to depose Murphy to ascertain jurisdictional facts, the Plaintiffs failed to establish sufficient

facts that would support this Court’s jurisdiction over Murphy. In sum, there are no facts to support that Murphy committed fraud or intentional misconduct directed at Illinois. Instead, Plaintiffs correctly allege that Murphy is a resident of Arizona. (Docket No. 106, Third Amd. Compl. at ¶ 30), which is supported by the facts uncovered in jurisdictional discovery.

At all times relevant to this action, Murphy was maintaining her residence in the state of Arizona. *See Declaration of Shelly Murphy* at ¶3. (attached hereto as Exhibit A). Murphy does not own property in Illinois, nor does she do personal business in Illinois. *Declaration* at ¶¶4, 5. Plaintiffs cannot establish that Murphy “purposefully availed” herself of the privilege of conducting activities in Illinois. Although given the opportunity in jurisdictional discovery, Plaintiffs did uncover facts to support a claim for fraud or intentional misconduct as required by the Court’s Order. Consequently, this Court lacks jurisdiction, and Plaintiffs’ claims against Murphy should be dismissed.

II. ARGUMENT

THE COURT LACKS PERSONAL JURISDICTION OVER MURPHY BECAUSE PLAINTIFFS FAILED TO MEET THEIR BURDEN

Plaintiffs bear the burden of demonstrating the existence of personal jurisdiction. *Kipp v. Ski Enter. Corp. of Wis.*, 783 F.3d 695, 697 (7th Cir. 2015). The Defendants in this case were corporate officers of the Dream Center and are generally protected by the fiduciary shield doctrine. *See Order*, p. 2. However, this protection does not extend to cover individual fraud or intentional misconduct. *Id.* The Court’s Order is clear that Plaintiffs must establish facts to support their claims for individual fraud or intentional misconduct. To satisfy that burden, the Court allowed Plaintiffs to take jurisdictional discovery,

including to depose Murphy, to discover any facts that would support personal jurisdiction such as fraud or intentional misconduct directed at Illinois. However, Murphy's depositions did not establish personal jurisdiction. Plaintiffs have not met, and cannot meet, their burden.

As confirmed to in Murphy's deposition, and at all times relevant to Plaintiffs' allegations, Murphy was a resident of the state of Arizona. *See Declaration of Shelly Murphy* at ¶3. At no time relevant to Plaintiffs' allegations did Murphy even reside temporarily in Illinois or own real property in Illinois. *Id.* Furthermore, at no time relevant to Plaintiffs' allegations did Murphy do personal business in Illinois. *Declaration* at ¶¶4, 5.

In this case, the Court permitted the Plaintiffs limited discovery to ascertain the jurisdictional facts necessary for the exercising of personal jurisdiction including fraud or intentional misconduct directed at the state of Illinois. Discovery demonstrated that Murphy does not have contacts (let alone substantial suit-related contacts) with the state of Illinois. Moreover, Plaintiffs did not uncover the necessary facts to support their prima facia case of fraud or intentional misconduct by Murphy.

III. CONCLUSION

Maintenance of this suit against Murphy in Illinois would offend traditional notions of fair play and substantial justice. Despite given the chance in jurisdictional discovery, Plaintiffs failed to establish facts sufficient—such as fraud or intentional misconduct—that supports the Court's personal jurisdiction over Murphy, and Murphy has presented evidence in the form of an affidavit that they have no contacts with Illinois.

Plaintiffs have therefore failed to meet their burden of demonstrating the existence of personal jurisdiction. *See GCIU-Employer Retirement Fund v. Goldfard Corp.*, 565 F.3d 1018, 1023 (7th Cir. 2009); *Monster Energy*, 136 F. Supp. 3d at 902.

Since this Court lacks both general and specific personal jurisdiction over Murphy and Plaintiffs failed to establish any fraud or intentional misconduct in jurisdictional discovery as required by the Order, Murphy respectfully request that they be dismissed from this action pursuant to Rule 12(b)(2).

DATED July 12, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2021, I caused the forgoing document to be electronically filed using the Court's CM/ECF system, notification of which will be sent all to counsel of record.

By: s/ Michael A. Schern

Exhibit A

DECLARATION OF SHELLY MURPHY

I, Shelly Murphy, hereby declare and state as follows:

1. I submit this declaration in support of the Motion to Dismiss Plaintiffs' Third Amended Class Action Complaint.

2. The following information is based upon my own personal knowledge or based upon information and belief. If called as a witness to testify, I could and would testify as follows:

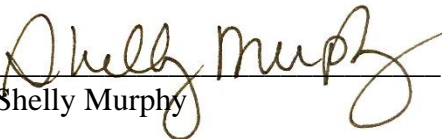
3. My personal residence is located in Gilbert, Arizona county of Maricopa, and at no time during the last two decades have I resided in any state other than Arizona.

4. I do not own property in Illinois or maintain any assets in Illinois.

5. I do not (a) advertise or solicit business in Illinois, (b) maintain business contracts in Illinois, (c) regularly and knowingly purchase products in Illinois to my knowledge, or (d) maintain any bank accounts in Illinois.

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of March, 2021, at Gilbert, Arizona.

By: 
Shelly Murphy