

2-18

IN THE UNITED STATES DISTRICT COURT
OR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL J. QUILLING, Receiver for
ROBERT CORD, *et al.*

Plaintiff,

v.

RICHARD A. PARKER dba MORGAN,
WEINSTEIN & CO., aka MORGAN,
WEINSTEIN & CO., INC., a Delaware
Corporation, and aka MORGAN,
WEINSTEIN & CO., LTD.,

Defendant.

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CASE NO. 3-99CV1929-T

MOTION TO DISMISS FOR WANT OF PERSONAL JURISDICTION
AND BRIEF IN SUPPORT THEREOF

NOW COMES the defendant Richard A. Parker, an individual, who moves the court to dismiss this case for want of personal jurisdiction. In support of this motion the defendant would show as follows:

1. This action is brought by Michael J. Quilling, in his capacity as receiver for Robert Cord.
2. The Defendant denominated by the Plaintiff is Richard A. Parker, apparently in his individual capacity, doing business under assumed names of "Morgan, Weinstein & Co. a/k/a Morgan, Weinstein, & Co. Inc., a/k/a Morgan, Weinstein & Co. Ltd." Morgan, Weinstein & Co. Inc. is a Delaware Corporation that was incorporated on December 10, 1992 and was in good standing as of the date of the transaction alleged as the basis of this lawsuit. Morgan, Weinstein, & Co., Ltd. is a

Gibraltar Private Company that was incorporated on October 26, 1993, and was in good standing as of the date of the transaction alleged as the basis of this lawsuit. If corporate entities were intended to be sued, they have not been served with process.

3. This action arises out of a transaction evidenced by a letter dated October 25, 1996 signed by Robert Cord and by Richard A. Parker, as Chairman of the Board of Morgan Weinstein & Co. An addendum to this same letter dated October 25, 1996 was also signed by Richard Parker on behalf of "M, W & Co., Inc." and by Robert A. Cord on behalf of Saber Industries. The letter and addendum are attached to the Complaint as Exhibit A. Plaintiff does not allege any other contact with the forum state of Texas by Richard A. Parker.

4. An agent is not a party to, nor individually liable on, a contract he enters into on behalf of his principal. *Ross. F. Meriwether & Assoc. Inc. v. Aulbach*, 686 S.W.2d 730, 732 (Tex. App. – San Antonio, 1985, no writ); *Medical Personnel Pool of Dallas, Inc. v. Seale*, 554 S.W.2d. 211, 213 (Tex. Civ. App. – Dallas 1977, writ ref'd n.r.e.). When an agent arrives in Texas to negotiate a contract for his principal, only the principal does business in the state. The agent, having entered into no contract, has done no business in Texas, and, therefore, has done no act nor has he consummated a transaction Texas. *Aulbach*, 686 S.W.2d 730 at 732. Texas law is clear that a businesses contacts may not be imputed to its personnel to establish personal jurisdiction over them. *Nikolai v. Strate*, 922 S.W.2d 229, 241 (Tex. App. – Fort Worth 1996, writ denied). The courts will not hold individual officers, directors, or stockholders liable on the obligations of a corporation except where it appears the individuals are using the corporate entity as a sham to perpetrate a fraud. Jurisdiction over an individual generally cannot be based on jurisdiction over a corporation with which the individual is associated unless the corporation is the alter ego of the individual. *J & J Marine, Inc.*

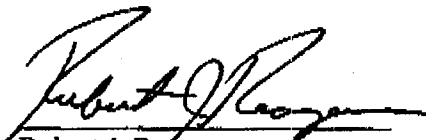
v. *Le*, 982 S.W.2d 918, 927 (Tex. App. – Corpus Christi 1998, no writ).

5. In the present case, in the transaction made the basis of this lawsuit, the Defendant Parker clearly represented to Robert Cord that he was acting on behalf of the corporate entity. This is true not only based upon his signing the letter and addendum in his representative capacity, but also in statements made in the body of the letter that it was the corporate entity that would provide project funding and other services. The Plaintiff does not allege any other contact or transaction in which Richard A. Parker did business in Texas to give it minimum contacts with this state.

PRAYER

WHEREFORE, premises considered, the Defendant Robert A. Parker respectfully prays that this court, upon due consideration, dismiss this action against him for want of personal jurisdiction.

Respectfully submitted,



Robert J. Reagan
State Bar No. 16630980

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Attorneys for Defendant

Certificate of Service

The undersigned certifies that the foregoing instrument was served on all parties by mailing certified mail, return receipt requested, and FAX to the following person at the following address on February 18, 2000.

Clark B. Will, P.C.
QUILLING, SELANDER, CUMMISKEY,
CLUTT & LOWNDS, P.C.
2800 One Dallas Centre
350 North Saint Paul Street
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214-871-2100

A handwritten signature in black ink, appearing to read "Robert A. Reagan", is written over a horizontal line.