# IN THE SUPREME COURT OF GUAM

**PCI COMMUNICATIONS, INC.,**
Plaintiff-Appellant

**vs.**

**GST PACWEST TELECOM HAWAII, INC.,**
Defendant-Appellee

## OPINION

Supreme Court Case No. **CVA97-059**
Superior Court Case No. **CV0594-97**

**Filed: May 19, 1999**

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Appeal from the Superior Court of Guam
Argued and Submitted on October 8, 1998
Hagåtña, Guam


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BEFORE: PETER C. SIGUENZA, Chief Justice[1]; JANET HEALY WEEKS[2] and BENJAMIN J. F. CRUZ, Associate Justices.

**CRUZ, J.:**

**[1]** This is an appeal of the Superior Court's decision to grant GST Pacwest Telecom Hawaii, Inc.'s Motion to Strike PCI Communications, Inc.'s complaint for: 1) Lack of signature by the attorney of record; 2) Lack of personal jurisdiction; and 3) Forum non conveniens. For the reasons set forth below, we reverse the trial court's decision to strike the complaint due to the omission of the attorney signature. We also reverse the decision to dismiss for both lack of personal jurisdiction and forum non conveniens and remand the case for further proceedings.

## BACKGROUND

**[2]** PCI Communications, Inc., (hereinafter, "PCI") is a Guam-based corporation in the business of reselling long distance telecommunication services. GST Pacwest Telecom Hawaii, Inc., (hereinafter, "GST") is incorporated under the laws of Hawaii. Its principal place of business is also in that state. GST provides switched access termination services for telecommunications traffic originated by its customers.

**[3]** PCI initiated the proceedings at the lower court, seeking damages from GST for breach of a contract entitled, "Special Services Agreement." In response, GST claimed that it discontinued service due to nonpayment by PCI. GST then moved to dismiss the case for 1) Lack of personal

[1] The signatures in this opinion reflect the titles of the justices at the time this matter was considered and determined.

[2] Justice Janet Healy Weeks resigned from the court after hearing oral arguments on this matter.

jurisdiction, 2) Forum non conveniens, and 3) Failure to state a claim upon which relief can be granted. GST also moved to strike the complaint for lack of signature by an attorney.

**[4]** The trial court granted GST's motion to strike the complaint for lack of an attorney signature. The court also granted the motion to dismiss the complaint for both lack of personal jurisdiction and forum non conveniens.

## ANALYSIS

### I. Decision to Strike Complaint

**[5]** This court has jurisdiction over this appeal pursuant to 7 GCA § 3108 (1993). We begin our analysis of the merits of the instant appeal with the trial court's decision to strike PCI's complaint. The granting of the motion to strike the complaint for lack of an attorney's signature is reviewed for an abuse of discretion. *See Vaccaro v. Kaiman*, 63 Cal. App. 4th 761, 786, 73 Cal Rptr. 2d 829, 833 (1998).

**[6]** Rule 11 of the Guam Rules of Civil Procedure directly addresses the requirement of a signature on documents submitted on behalf of a represented party.[3] In relevant part, Rule 11 provides:

> **Rule 11. Signing of Pleadings, Motions, And Other Papers; Sanctions.**
>
> Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record . . . . If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

Guam R. Civ. P. 11.

[3] Although PCI briefs the issue of the signature omission largely within the ambit of Rule 15, we believe the matter is more appropriately analyzed under Rule 11.

**[7]** In *Vaccaro v. Kaiman* defendants moved to strike the complaint because plaintiff's counsel failed to sign the document in violation of section 128.7 of the California Code of Civil Procedure. In relevant part, this statute provides,

> § 128.7. Signature requirement for court papers; certification that specified conditions met; violations; sanctions; punitive damages.
>
> (a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name . . . . An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

West's Ann.Cal.C.C.P. § 128.7.

**[8]** The trial court in *Vaccaro* granted the motion to strike due to the section 128.7 violation. *Vaccaro*, 63 Cal. App. 4th at 766, 73 Cal Rptr. 2d at 832. On appeal, the court noted that although the trial court was authorized by section 128.7 to strike the unsigned complaint, the dismissal was nevertheless improper. *Id*. at 768, 73 Cal Rptr. 2d at 833-34. Addressing the import of section 128.7, a statute noticeably similar to Guam's Rule 11, the court in *Vacarro* stated, "[w]e do not believe the Legislature intended that an action must be dismissed merely because counsel did not promptly sign the complaint, where counsel is willing to do so belatedly." *Id*. at 769, 73 Cal Rptr. 2d at 834. The court further noted that the legislative intent of section 128.7 was to limit sanctions "to what was sufficient to deter repetition of this conduct . . . ." *Id*. Accordingly, because plaintiff's counsel was willing to sign the complaint, albeit belatedly, the court found the denial of leave to amend to be erroneous and reversed the order of dismissal. *Id*.

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**[9]** In the instant case, the facts relevant to this issue are undisputed. On May 7, 1997, PCI's counsel filed a complaint at the lower court without a signature. Subsequently, on June 12, 1997, GST filed a Notice of Motion to Strike Complaint for lack of signature by an attorney. That same day, a copy of this Notice was also stamped and received at the law office of PCI's counsel. Presumably, this was PCI's first notice of the signature omission. Providing further notice of the omission, GST's "Memorandum of Points and Authorities in Reply to Opposition to Motion to Dismiss" also specifically addressed this signature omission. This Reply was filed at the Superior Court on November 14, 1997.

**[10]** On November 21, 1997, the trial court conducted a hearing on the motion to strike the complaint for lack of counsel's signature. It is undisputed that the omission was not rectified prior to the hearing, approximately five months having passed since the initial notice. Shortly thereafter, on December 11, 1997, the court issued an order striking the complaint for, among other grounds, lack of an attorney signature.[4]

**[11]** There is no question that the failure of PCI's counsel to sign the complaint was a clear violation of the plain language of Rule 11. This violation notwithstanding, "the failure to sign [the complaint] will not cause [it] it to be stricken unless the adverse party has been severely prejudiced or misled by the failure to sign." *United States v. Kasuboski*, 834 F.2d 1345, 1348 (7th Cir. 1987).

[4] The trial court granted GST's motions to strike and to dismiss PCI's complaint in a Decision and Order dated December 11, 1997. In relevant part, this Decision and Order provided that:

> it is Ordered that the motion of defendant to strike the complaint for lack of signature of attorney of record be, and is granted; and it is further Ordered that the motion of defendant to dismiss this action for lack of personal jurisdiction and on grounds of forum nonconveniens [sic] be, and the same is hereby granted.

**[12]** In *Kasuboski*, the trial court granted a motion for summary judgment despite finding that the motion was not signed in accordance with Rule 11 of the Federal Rules of Civil Procedure. *Id.* at 1348-49. The appellate court affirmed the trial court's decision due to the absence of a claim of prejudice by the adverse party and upon no finding of actual prejudice in the case. *Id.* at 1348. Similarly, in the case before this court, the adverse party, GST, does not claim that prejudice directly resulted from the failure to sign the complaint. Likewise, the record before the court fails to reveal any prejudice resulting from the signature omission.

**[13]** This court is mindful that at the heart of Rule 11 lie certain policy considerations for which Rule 11 was promulgated to protect. In effect, the signature requirement serves as a certification by an attorney to the court that the attorney has made "a reasonable inquiry and that the allegations in the complaint or other pleadings are 'well grounded in fact' and 'are warranted by existing law.'" *Hadlock v. Baechler,* 136 F.R.D. 157, 159 (W.D. Ark. 1991) (citing Rule 11 of the Federal Rules of Civil Procedure). When, as in this case, it is undisputed that PCI's attorney was willing to sign the complaint, albeit belatedly, a dismissal of the case does nothing to further the purpose of Rule 11.

**[14]** That the Federal Rules of Civil Procedure, from which Rule 11 was derived, should not be read to defeat the ends of justice is a proposition of law so well settled as to be beyond reasonable dispute. "The basic purpose of the Federal Rules is to administer justice through fair trials, not through summary dismissals as necessary as they may be on occasion." *Surowitz v. Hilton Hotels Corp*., 383 U.S. 363, 373, 86 S.Ct. 845, 851 (1966). Our analysis on this issue simply reflects this understanding. Our holding endeavors to bring meaning to it. In conclusion, having reviewed the decision to strike the complaint on principles of fairness and equity, this court considered several

factors, to wit, the failure to sign the complaint, the possibility that the complaint would be saved by the addition of the signature, the policy underlying Rule 11, and lastly the prejudice to the adverse party or the lack thereof. Consequently, we hold that the signature omission was technical rather than substantive violation. *See Hadlock,* 136 F.R.D at 158 (holding that a pleading filed without a signature may be viewed as a technical defect and not a substantial violation of Rule 11). Based upon the foregoing, we reverse the order of dismissal.

## II. Analysis of Personal Jurisdiction

**[15]** We next address the decision of the trial court to dismiss the case for lack of personal jurisdiction over GST. We review the decision to dismiss for lack of personal jurisdiction *de novo*. *People v. Quichocho*, 1997 Guam 13, ¶ 3. "The power of a . . . court entertaining a case based on diversity of citizenship to exercise personal jurisdiction over a nonresident defendant turns on two independent considerations: whether an applicable . . . rule or statute potentially confers personal jurisdiction over the defendant, and whether assertion of such jurisdiction accords with constitutional principles of due process." *Data Disc Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1286 (9th. Cir. 1977).

**[16]** The first consideration is readily addressed by Title 7 section 14109 of the Guam Code Annotated. This section potentially confers upon the trial court the statutory authority to exercise jurisdiction. In its entirety, section 14109 provides: "A court of this Territory may exercise jurisdiction on any basis not inconsistent with the Organic Act or the Constitution of the United States." 7 GCA § 14109 (1994).

**[17]** Disposing of the second consideration, however, will prove to be substantially more

involved. The text of section 14109 clearly permits the exercise of jurisdiction up to and including all that is constitutionally permissible.[5] In terms of the constitution, the assertion of jurisdiction is governed by Due Process. *See Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113, 107 S.Ct. 1026, 1033 (1987) (holding that "[t]he strictures of the Due Process Clause forbid a state court to exercise personal jurisdiction . . . under circumstances that would offend 'traditional notions of fair play and substantial justice.'"). Indeed, the Due Process Clause requires that a defendant have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945) (citation omitted).

**[18]** Assuming the requisite contacts exist, a court may constitutionally acquire personal jurisdiction in two ways. It may exercise "general jurisdiction" where a defendant's activities in a state are either "substantial," or "continuous and systematic." *See Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 446-47, 72 S.Ct. 413, 418-19 (1952) *(*citing *International Shoe Co. v. Washington*, 326 U.S. at 318-19, 66 S.Ct. at 159-60 for the proposition that: there have been instances where the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities). Alternatively, "a court may alternatively exercise 'limited,' or 'specific' jurisdiction, where the defendant's contacts with the forum, though limited, are sufficiently related

[5] 7 GCA § 14109 was taken directly from California Code of Civil Procedure § 410.10. "'Section 410.10 . . . permits California (Guam) courts to exercise judicial jurisdiction on any basis not inconsistent with he Constitution of California (Organic Act of Guam), Federal law or the United States Constitution. This authorization continues the California law of jurisdiction over foreign corporations and reestablishes the prior law that once governed nonresident individuals.' Judicial Council Comment to California CCP § 410.10 found in West, California CCP, 410.10 at page 459." *See* comments to 7 GCA §14109.

to the cause of action." *Abuan v. General Electric Co.,* 735 F. Supp. 1479, 1481 (D. Guam 1990).

1. General Jurisdiction Analysis.

**[19]** "If the nonresident defendant's activities within a state are 'substantial' or 'continuous and systematic,' there is a sufficient relationship between the defendant and the state to support [general] jurisdiction even if the cause of action is unrelated to the defendant's forum activities." *Data Disc*, 557 F.2d at 1287. (citation omitted).

**[20]** In *Congoleum v. DLW Aktiengesellschaft,* 729 F.2d 1240, 1242 (9th Cir. 1984), the defendant moving for dismissal had numerous activities in California. *Congoleum,* 729 F.2d at 1242. These activities included: 1) The solicitation of orders, 2) The receiving of recommendation from other sales agents, 3) The ordering of samples, 4) The promotion of products through mail and showroom displays; and 5) The company's attendance at trade shows. *Id.* The Ninth Circuit held that these activities were insufficient to "make it reasonable and just to subject the corporation to the [general] jurisdiction" of California. *Id.* at 1243, *quoting Perkins*, 342 U.S. at 445, 72 S.Ct. at 418.

**[21]** Deciding the issue of personal jurisdiction in a case involving conflicting factual allegations is generally a fairly trying endeavor. The instant case, however, may prove to be the exception. In the case at bar, each party has characterized their relationship to each other in markedly different ways. While PCI contends that GST sold services to them with the intent to benefit from the resale on Guam, GST conversely claims that it never "interjected" itself into Guam. Quite the contrary, GST claims that "PCI interjected itself into Hawaii by, in effect, dumping its traffic at GST PACWEST's doorstep in Hawaii and then refused to pay GST PACWEST for moving it onward."[6]

[6] Appellee's Brief at 32.

This factual conflict notwithstanding, because only one side of the conflict was supported by affidavit, our task is "relatively easy, for we may not assume the truth of allegations in a pleading which are contradicted by affidavit." *See Data Disc*, 557 F.2d at 1284. Ideally, we would conduct this review based upon a review of the record and oral arguments. However, because of the absence of a record designated by PCI for our review, our analysis shall focus exclusively on the briefs, the oral arguments, and the record designated by GST on appeal. Where GST's assertions supported by affidavits contradict PCI's assertions, GST's version shall be adopted.

**[22]** The record in the present case, limited as it is, demonstrates that GST has contacts with Guam only through its business transactions via PCI. Specifically, its "services" reach Guam through PCI's reselling of the services to island residents. During the course of our review, this court has found no evidence sufficient to prove that GST has solicited orders, recommended sales agents, ordered samples, promoted its services through the mail or showrooms, or attended trade shows in an endeavor to market its services. To be sure, neither the existence of these factors nor their absence per se disposes of the issue of personal jurisdiction. However, when the assertion of general jurisdiction was improper in *Congoleum* despite the presence of these factors, the assertion of general jurisdiction in this case would be inappropriate in their absence. Indeed, such exercise of general jurisdiction "would be an uncontemplated extension of this Court's constitutional reach." *Abuan*, 735 F.Supp. at 1482.

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2. Limited Jurisdiction Analysis.

**[23]** A court that may not assert general jurisdiction "may alternatively exercise 'limited,' or 'specific' jurisdiction, where the defendant's contacts with the forum, though limited, are sufficiently related to the cause of action." *Abuan*, 735 F. Supp. at 1482. The Ninth Circuit applies the following three-part test for determining when the assertion of limited jurisdiction is appropriate.

> 1. The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protection of its laws.
>
> 2. The claim must be one which arises out of or results from the defendant's forum-related activities.
>
> 3. Exercise of jurisdiction must be reasonable.

*Data Disc*, 557 F.2d at 1287.

**[24]** Under the first prong a court must determine whether a defendant has purposefully availed itself of Guam laws. *Id.* This prong "is satisfied when a defendant takes deliberate actions within the forum state or creates continuing obligations to forum residents. It is not required that a defendant be physically present within, or have physical contacts with, the forum, provided that his efforts are 'purposefully directed' toward forum residents." *Hirsch v. Blue Cross, Blue Shield of Kansas City*, 800 F. 2d 1474, 1478, (1986) (citations omitted).

**[25]** In *Hirsch*, Southwest Airlines employees who were residents of California sued Southwest's insurance provider, Blue Cross. *Id.* at 1476-77. Physically absent from California, Blue Cross was a resident of Kansas City, Missouri. *Id.* at 1476. All contract negotiations relative to the insurance policy took place outside of California. *Id.* Despite this fact, the court in *Hirsch* held that, "through its own actions in agreeing to provide coverage to Southwest and its California employee, Terrance

Hirsch," Blue Cross "created a continuing obligation to them and a substantial connection with California." *Id.* at 1479-80. Accordingly, the court concluded that, "Blue Cross, by voluntarily and knowingly obligating itself to provide health care coverage to Southwest's California employees, in exchange for premiums partly derived from premiums paid by California residents, purposefully availed itself of the benefits and protections of that forum." *Id*. at 1480.

**[26]** The record in the instant case demonstrates a drastically less attenuated relationship between the two diverse parties. Unlike Blue Cross and the Southwest employee/plaintiffs, PCI and GST contracted directly with one another. GST sent a document entitled, "Special Services Agreement" ("Agreement") to PCI for the purposes of establishing a contractual relationship between the parties. Pursuant to the Agreement, GST was to provide services to PCI for a period of three to five years. PCI signed the Agreement on April 22, 1996 on Guam. By its own terms, the Agreement became effective on April 24, 1996, the date GST received and signed the Agreement.

**[27]** Because we view the Agreement as the legal and tangible manifestation of their intent to contract, to some degree, the formation of the contract took place in this forum. While the facts of the instant case differ from *Hirsch* in that the parties herein dealt directly with each other and that part of the contract formation actually took place on Guam, we note that both of these factual differences bolster the claim for finding purposeful availment. Indeed, in *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223, 78 S.Ct. 199, 201 (1957), the court found that the defendant insurance company purposefully availed itself when it sent a contract to the forum state, the premiums were mailed from the forum state, and the insured was a resident of that forum. Similarly, in this case, GST sent the Agreement to Guam, PCI mailed payments from Guam, and PCI was and remains a resident of Guam.

**[28]** The terms of the Agreement also demonstrate that the parties "contemplated future consequences" resulting from the Agreement. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479, 105 S.Ct. 2174, 2185 (1985). (holding that contemplated future consequences along with other factors must be evaluated to determine whether a defendant purposefully established minimum contacts with a forum.) The record reveals that GST, voluntarily and knowingly obligated itself to provide services to PCI for a term to last not less than three (3) years and, conceivably, up to five (5) years. In light of these terms, GST's contacts with Guam-based PCI "cannot by any stretch of the imagination be characterized as random, isolated, or fortuitous." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 104 S.Ct. 1473, 1478 (1984).

**[29]** Based on the foregoing, this court finds that GST purposefully availed itself of the benefits and privileges of Guam law.

**[30]** The second prong of the limited jurisdiction test requires the court to determine whether the claim of action arose because of GST's forum related activities. PCI's claim arises out of the alleged breach of contract to provide telecommunications services. Again, this Agreement was sent to Guam, signed by PCI on Guam, and payments pursuant to the Agreement were mailed from Guam by PCI, a Guam resident. It is evident, therefore, that this claim is based on an Agreement which has a substantial contractual connection with Guam. *See McGee*, 355 U.S. at 223, 78 S.Ct. at 201. Taking into consideration the manner in which this Agreement was created as well as the contemplated future consequences of the Agreement as set forth in its terms, we are satisfied that the Agreement constitutes significant contact with Guam and that this claim arose out of forum related activities. Accordingly, PCI satisfies this element of the test. *See Hirsch*, 800 F.2d at 1480.

**[31]** As to the last prong, "[o]nce it has been decided that a defendant purposefully established

minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" *Burger King*, 471 U.S. at 476, 105 S.Ct. at 2184 *citing International Shoe Co. v. Washington*, 326 U.S. at 320, 66 S.Ct. at 160. In simpler terms, we must now decide whether the exercise of jurisdiction is reasonable.

**[32]** There are several factors that may be considered in making this determination. A court may assess 1) "the extent of the defendant's interjection into the forum state,"[7] 2) "the burden on the defendant," 3) "the forum State's interest in adjudicating the dispute; 4) "the plaintiff's interest in obtaining convenient and effective relief," 5) "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and 6) "the shared interest of the several States in furthering fundamental substantive social policies." *Burger King*, 471 U.S. at 476, 105 S.Ct. at 2184 *quoting World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., 286, 292, 100 S.Ct., 559, 564 (1980). Significantly, we note that these factors are not rigid parts of a mechanical test. *See Insurance Co. of North America v. Marina Salina Cruz*, 649 F.2d 1266, 1270 (9th Cir. 1981) (holding that the factors applied by that particular court, which are substantively similar though not identical to those applied here, are not parts of a rigid test but rather part of a balancing test). Rather, they should be weighed and balanced along with other relevant factors in accordance with the facts and circumstances of a particular case.

**[33]** Although we have set forth the list of factors by which reasonableness is determined, our finding of purposeful availment presumes the reasonableness of asserting jurisdiction. *Hirsch*, 800

[7] *Hirsch*, 800 F.2d at 1481.

F. 2d at 1481. Consequently, GST now bears the burden of rebutting this presumption. *See Id.* However, in light of the foregoing findings, we find that it would be unreasonable at this point for GST, essentially, to re-argue against the assertion of personal jurisdiction.

**[34]** Addressing these factors, nevertheless, the extent of GST's interjection into Guam may be considered in determining the reasonableness of asserting jurisdiction. *See Id.* The record indicates that in addition to the correspondence and negotiation that transpired before, during, and after the formation of the contractual relationship, the parties anticipated the amount of long distance "traffic' to be a minimum of four hundred thousand (400,000) minutes per month at a rate varying between $.06 and $.055 per minute of use.[8] The record also contains billing statements, one of which is in the amount of $146,834.40. Given the rate structure, this amount provides evidence of the substantial extent of interjection of GST's services on Guam.

**[35]** Secondly, the burden on GST in defending a suit on Guam does not appear to be great. A non resident defendant that derives economic benefit from activity in a forum has very little basis for complaining of inconvenience when required to defend itself in that forum. *See McGee v. International Life Ins. Co.*, 355 U.S. at 223-24, 78 S.Ct. at 201-02. Thus, to the extent that GST exercises the privilege of conducting activities within Guam, it enjoys the benefits and protection of the laws of Guam. *International Shoe,* 326 U.S. at 319, 66 S.Ct. at 158. "The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Id.*

[8] Designation of Record at 7. (Plaintiff's Exhibit 1 to Memorandum of Points and Authorities in Support of Motion to Dismiss.)

**[36]** We also consider Guam's substantial interest in adjudicating the dispute. Particularly, any ambiguity in the local law with regard to jurisdictional assertion can and should be clarified as soon as possible. In addition, local adjudication of the case would avoid the necessity of subjecting Guam residents, such as PCI and its witnesses, to travel from Guam in order to bring suit. Moreover, because the services in question were utilized on Guam, and PCI and its witnesses are located on Guam, the logical forum in terms of judicial efficiency and convenience is Guam.

**[37]** The plaintiff's interest in obtaining convenient and effective relief is also a consideration of this court. As this case has already been initiated in the courts of Guam, and matters relative to the complaint and forum non conveniens have already been addressed under Guam law, PCI's interest in obtaining convenient and effective relief is furthered by continuing the litigation in the present forum. The same may be said with regard to the fifth factor, the judicial system's interest in obtaining the most efficient resolution of controversies. Presumably, if this matter were adjudicated in another forum, the administrative and ministerial work already in place would have been for naught.

**[38]** The remaining factor pertains to "furthering fundamental substantive social policies." *Burger King,* 471 U.S. at 476, 105 S.Ct. at 2184. (citations omitted). The United States Supreme Court remarked in *Burger King,* "it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines . . . ." 471 U.S. at 476, 105 S.Ct. at 2184. Indeed, as we approach the new millennium, transactions of this nature are now arguably the norm rather than the exception. Accountability, in the instance such transactions go awry, should not be made to turn upon archaic notions of physical presence. Our decision today reflects the reality of today's modern business and telecommunications world.

**[39]** In light of the foregoing, the assertion of limited jurisdiction is justified.

## III. Forum Non Conveniens Analysis

**[40]** Appellant's third issue on appeal, the forum non conveniens determination, is committed to the sound discretion of the trial court. *Creative Tech. Ltd. v. Aztec Sys. Pte, Ltd.*, 61 F.3d 696, 699 (9th Cir. 1995). "[W]here the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, the decision may only be reversed when there has been a clear abuse of discretion. *Id*. Accordingly, the trial court's decision deserves substantial deference." *Id.*

**[41]** "The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507, 67 S.Ct. 839, 842 (1947). Furthermore, "the decision [regarding the grant or denial of the motion to dismiss on the grounds of forum non conveniens] involves the weighing of a mix of private and public interests, keeping in mind that the plaintiff's choice of forum is usually to be respected." *Walter Fuller Aircraft Sales, Inc., v. Republic of the Philippines*, 965 F.2d 1375, 1389 *(*5th Cir. 1992).

**[42]** In *Gulf Oil Corp. v. Gilbert*, the United States Supreme Court listed several factors to be considered when deciding the appropriateness of a particular forum. 330 U.S. at 508, 67 S.Ct. at 843. In relevant part, the Court held:

> An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make

trial of a case easy, expeditious and inexpensive.

*Id.* at 508, 67 S.Ct. at 843.

**[43]** The court in *Gilbert* also weighed "the relative advantages and obstacles to fair trial." Significantly, the court also held that "[t]he plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting . . . expense or trouble not necessary to his own right to pursue his remedy." *Id.* at 508, 67 S.Ct. at 843. The court also noted that "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Id.*

**[44]** Public interest factors should also be considered when determining whether a forum is convenient. *Id.* This is so because, "[a]dministrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin." *Id.* Moreover, "jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation." *Id.*, 67 S.Ct. at 842-3.

**[45]** Other concerns such as: 1) "holding the trial in the view and reach of its prospective litigants rather than in remote parts of the country where they can learn of it by report only," 2) The "local interest in having localized controversies decided at home," and 3) The appropriateness "in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself, should likewise be considered." *Id.* at 509, 67 S.Ct. at 843.

**[46]** Applying the *Gilbert* factors to the facts at bar, we note that the trial court's order merely grants the motion and dismisses the case. Nothing in the record reveals that the court below

"considered all relevant public and private interest factors."[9] Because this court cannot determine whether the lower court balanced the relevant factors at all, much less whether any such balancing was reasonable, the decision must be reversed as a clear abuse of discretion.

**[47]** Lastly, to be applicable here, the doctrine of forum non conveniens presumes the valid assertion of personal jurisdiction. *Gilbert*, 330 U.S. at 504, 67 S.Ct. at 841 (holding that "the doctrine of forum non conveniens can never apply if there is absence of jurisdiction or mistake of venue."). Thus, a motion for dismissal due to forum non conveniens may only be granted by a court already vested with valid personal jurisdiction. *See Id.* While a party pleading in the alternative may move for dismissal on both grounds, it was procedurally impossible for the trial court to order dismissal for lack of personal jurisdiction while simultaneously dismissing pursuant to the doctrine of forum non conveniens.

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## CONCLUSION

**[48]** Based upon the foregoing, this court hereby REVERSES the trial court's decision to strike the complaint due to the omission of the attorney signature, and to dismiss the case due to the lack of personal jurisdiction and forum non conveniens. Accordingly, this matter is REMANDED to the lower court for further proceedings consistent with this opinion.

[9] Neither the trial court's order nor the designation of record filed by GST contained any evidence that the decision to grant the motion was based on a proper consideration of all relevant factors.

BENJAMIN J.F. CRUZ
Associate Justice

PETER C. SIGUENZA
Chief Justice