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CLERK OF THE COURT

LAW FIRM OF TELIA U. WILLIAMS
Telia U. Williams, Esq.
Nevada Bar No. 9359
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
(702) 835-6866
teliauwilliams@telialaw.com
Attorney for Plaintiff

Electronically Filed
Jun 15 2015 09:47 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

HERBERT VOLZ, KARIN VOLZ, Plaintiffs, vs. FOODMAKER, d/b/a JACK IN THE BOX; DOE DEFENDANTS I through X, inclusive; ROE DEFENDANTS I through X, inclusive, Defendant.	Case No.: A-14-706674-C Dept. No. XXXI **NOTICE OF APPEAL**

Notice is hereby given that Herbert Volz and Karin Volz, defendants above named, hereby appeal to the Supreme Court of Nevada from the final judgment, the Order, entered in this action on the 5th day of June, 2015.

/s/ Telia U. Williams, Esq.
Law Office of Telia U. Williams
Telia U. Williams, Esq.
10161 Park Run Drive, Suite
Las Vegas, NV 89145

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, I certify that I am an employee of the Law Office of Telia U. Williams and that on this 8th day of June, 2015, I caused a true and correct copy of the above and foregoing Notice of Appeal to be served through the WIZNET e-filing system in accordance with the mandatory electronic service requirements of Administrative Order 14-2, and the Nevada Electronic Filing and Conversion Rules of the Eighth Judicial District Court, Nevada (or, if necessary, by United States Mail, first class, postage prepaid), to the following:

Michael E. Stoberski, Esq.
Joslyn D. Shapiro, Esq.
OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
jshapiro@ocgas.com
mstoberski@ocgas.com

Attorneys for defendants

/s/ David DaSilva

Employee of Law Office of Telia U. Williams

DEPARTMENT 31

CASE SUMMARY

CASE NO. A-14-706674-C

Herbert Volz, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna S.**
Foodmaker, Defendant(s)	§	Filed on:	**09/08/2014**
	§	Cross-Reference Case Number:	**A706674**

CASE INFORMATION

Statistical Closures
06/03/2015 Motion to Dismiss (By Defendant)

Case Type: **Other Contract**

Case Flags: **Appealed to Supreme Court**
Jury Demand Filed

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-14-706674-C
Court	Department 31
Date Assigned	09/08/2014
Judicial Officer	Kishner, Joanna S.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Volz, Herbert**	**Williams, Telia U.** *Retained* 702-835-6866(W)
	Volz, Karin	**Williams, Telia U.** *Retained* 702-835-6866(W)
Defendant	**Foodmaker**	**Stoberski, Michael E., ESQ** *Retained* 7023844012(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
09/08/2014	Complaint With Jury Demand Filed By: Plaintiff Volz, Herbert *Complaint*	
09/08/2014	Case Opened	
09/09/2014	Initial Appearance Fee Disclosure Filed By: Plaintiff Volz, Herbert *Initial Appearance Fee Disclosure*	
10/03/2014	Affidavit of Service Filed By: Plaintiff Volz, Herbert *Affidavit of Service - Foodmaker dba Jack in the Box*	
12/10/2014	Motion to Dismiss Filed By: Defendant Foodmaker *Motion to Dismiss Without Prejudice*	
12/10/2014	Initial Appearance Fee Disclosure Filed By: Defendant Foodmaker	

	Defendant Foodmaker D/B/A Jack in the Box's Initial Appearance Fee Disclosure
12/10/2014	Notice of Hearing Filed By: Defendant Foodmaker *Notice Of Hearing On Defendant's Motion To Dismiss Without Prejudice*
12/29/2014	Opposition to Motion to Dismiss Filed By: Plaintiff Volz, Herbert *Opposition to Motion to Dismiss*
01/06/2015	Reply to Motion Filed By: Defendant Foodmaker *Defendant's Reply To Plaintiff's Opposition To Motion To Dismiss Without Prejudice*
01/20/2015	**Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) **01/20/2015, 05/19/2015** Events: 12/10/2014 Motion to Dismiss *Defendant's Motion To Dismiss Without Prejudice*
02/06/2015	**Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) *Status Check: Order 1/20/15*
02/13/2015	Order Filed By: Defendant Foodmaker *Order*
02/13/2015	Notice of Entry of Order Filed By: Defendant Foodmaker *Notice of Entry of Order*
05/05/2015	Supplement to Opposition Filed By: Plaintiff Volz, Herbert *Supplement to Opposition to Motion to Dismiss*
05/11/2015	Supplemental Filed by: Defendant Foodmaker *Defendant's Supplemental Reply to Plaintiff's Supplemental Opposition To Motion To Dismiss Without Prejudice*
06/03/2015	Order Filed By: Defendant Foodmaker *Order of Dismissal Without Prejudice*
06/05/2015	*CANCELED* **Status Check** (3:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - per Order* *Status Check: Order 5/19/15*
06/05/2015	Notice of Entry of Order Filed By: Defendant Foodmaker *Notice of Entry of Order of Dismissal Without Prejudice*
06/08/2015	Notice of Appeal Filed By: Plaintiff Volz, Herbert *Notice Of Appeal*

DATE	FINANCIAL INFORMATION

CASE SUMMARY

CASE NO. A-14-706674-C

Defendant Foodmaker	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 6/10/2015	**0.00**
Plaintiff Volz, Herbert	
Total Charges	294.00
Total Payments and Credits	294.00
Balance Due as of 6/10/2015	**0.00**
Plaintiff Volz, Karin	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 6/10/2015	**0.00**

A-14-706674-C

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. XXXI

(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
HERBERT VOLZ, KARIN VOLZ,	FOODMAKER, d/b/a JACK IN THE BOX
c/o Telia U. Williams, Esq.	9330 Balboa Avenue San Diego, California 92123
(see below)	(619) 571-2121
Attorney (name/address/phone):	**Attorney (name/address/phone):**
Telia U. Williams, Esq.	
10161 Park Run Drive, Suite 150, Las Vegas, NV 89145	
702-835-6866	

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☐ Product Liability
☐ Other Landlord/Tenant	☐ Premises Liability	☐ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
☐ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☒ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☐ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

09/08/2014
Date

Signature of initiating party or representative

See other side for family-related case filings.

ORIGINAL

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CLERK OF THE COURT

ORDR
MICHAEL E. STOBERSKI, ESQ.
Nevada Bar No. 004762
JOSLYN D. SHAPIRO, ESQ.
Nevada Bar No. 010754
OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
9950 West Cheyenne Avenue
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Fax: 702/383-0701
mstoberski@ocgas.com
jshapiro@ocgas.com
Attorneys for Defendant
FOODMAKER d/b/a JACK IN THE BOX

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

HERBERT VOLZ, KARIN VOLZ, Individuals, Plaintiffs, v. FOODMAKER d/b/a JACK IN THE BOX; DOE DEFENDANTS I through X, inclusive; ROE DEFENDANTS I through X, inclusive, Defendants.	CASE NO. A-14-706674-C DEPT. XXXI **ORDER OF DISMISSAL WITHOUT PREJUDICE** Hearing Date: May 19, 2015 Hearing Time: 9:30 a.m.

Defendant FOODMAKER d/b/a JACK IN THE BOX INC.'s Motion to Dismiss having come before this Honorable Court for hearing on the 19th day of May, 2015, JOSLYN D. SHAPIRO, ESQ. of the law firm of OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI appearing on behalf of Defendant JACK IN THE BOX INC., and TELIA U. WILLIAMS, ESQ., of the LAW FIRM OF TELIA U. WILLIAMS, appearing on behalf of Plaintiffs HERBERT VOLZ and KARIN VOLZ, the Court having reviewed all the pleadings on file and arguments of counsel, and good cause appearing therefore,

///

///

☐ Voluntary Dismissal	☐ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☒ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

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FINDINGS OF FACT

1. That the Complaint in this case was filed on September 8, 2014 by Plaintiffs based on: 1) Breach of contract; 2) Breach of the covenant of good faith and fair dealing; 3) Promissory estoppel; 4) Preliminary injunction; and 5) Declaratory relief. The property at issue is located at 1051 Uvalde Rd., Houston, Texas per Plaintiffs' Complaint, on file herein. Also per Plaintiffs' Complaint, Plaintiffs' Texas-based real estate agent, Todd Moseley, and Plaintiffs' Texas-based property inspector, Mike Ward, attended an inspection/walk-through of the subject property in September 2012;

2. That this breach-of-contract action arises from a 1989 lease of commercial property in Houston, Texas between Toyo Real Estate Co., U.S.A., Inc. and FOODMAKER, which is now JACK IN THE BOX INC. On or about October 15, 1993 Toyo executed an Assignment of Lease to Plaintiffs, whose residence at that time was listed as 10878 Deliban Ave., Tujunga, California 91042;

3. That on December 10, 2014, Defendant filed a Motion to Dismiss without Prejudice based on personal jurisdiction, forum non conveniens, and failure to name an indispensable party. On December 29, 2014, Plaintiffs filed an Opposition to Defendant's Motion to Dismiss, presenting rebuttal arguments as to the issues of jurisdiction and venue only. On January 6, 2015, Defendant filed a Reply brief. At the time of the original hearing on January 20, 2015, this Honorable Court permitted the parties to conduct limited jurisdiction-based discovery, submit supplemental briefs, and continued the hearing to May 19, 2015. See Order dated February 13, 2015, on file herein;

4. That Plaintiffs served and Defendant timely responded to Interrogatories, Requests for Production of Documents, and Requests for Admissions limited to the issue of jurisdiction only;

5. That on May 5, 2015, Plaintiffs filed a Supplement to Opposition to Motion to Dismiss, presenting rebuttal arguments as to the issues of jurisdiction and venue only. On May 11, 2015, Defendant timely filed a Supplemental Reply to Plaintiffs' Supplemental Opposition, pursuant to the Court's briefing schedule;

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CONCLUSIONS OF LAW

1. That at the time of the continued hearing on May 19, 2015, the Court found three (3) grounds on which to grant Defendant's Motion to Dismiss, 1) Lack of personal jurisdiction pursuant to NRCP 12(b)(2); 2) Improper venue pursuant to NRCP 41(b); and 3) Failure to name an indispensable party pursuant to NRCP 19, each of which are discussed in-turn, below;

2. That Defendant's Motion to Dismiss is granted pursuant to NRCP 12(b)(2). The Court finds that no general personal jurisdiction exists relative to Defendant such that it could be haled into Nevada court for any reason. The Court did not reach an analysis of Plaintiff's arguments as the issue of specific personal jurisdiction, due to the fact that two (2) additional bases also exist on which the Court granted the instant Motion to Dismiss;

3. That Defendant's Motion to Dismiss is granted pursuant to NRCP 41(b). The Court finds that venue is not proper in Nevada. The property at issue is located in Houston, Texas. All pertinent witnesses, including Plaintiffs' Texas-based real estate agent and Plaintiffs' Texas-based property inspector reside in Texas. Texas law governs the contract at issue. Texas real property and/or taxation law governs any potential real property and/or real estate tax issues. Texas-based witnesses are likely needed to prove liability and damages. When Defendant passively acquired contract status with Plaintiffs due to an Assignment by prior landowner Toyo, Plaintiffs did not reside in Nevada. The sole nexus to Nevada relative to this litigation is the Plaintiffs' current residency, which alone is insufficient to overcome the above-listed factors negating the propriety of Nevada as the forum in which to litigate this claim;

4. That Defendant's Motion to Dismiss is granted pursuant to NRCP 19. Plaintiffs failed to name the Texas-based franchisee, from whom Defendant is contractually entitled a defense and indemnity, in the instant litigation. Defendants provided to Plaintiffs the pertinent portions of the franchise agreement describing the franchisee's indemnification duties during the course of the jurisdictional discovery permitted by this Honorable Court. Since the franchisee has no Nevada contacts, failure to include the franchisee in the instant litigation would both prejudice Defendant and violate judicial expedience as Defendant would have to defend itself in Nevada while also filing substantially duplicative litigation to enforce its rights in another state.

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ORDER

IT IS HEREBY ORDERED that dismissal is proper pursuant to NRCP 12(b)(2), as general personal jurisdiction does not exist in Nevada. The Court did not reach an analysis of specific personal jurisdiction in light of the other two (2) bases for dismissal of this case;

IT IS FURTHER HEREBY ORDERED that dismissal is proper pursuant to NRCP 41(b), as venue is not proper in Nevada;

IT IS FURTHER HEREBY ORDERED that dismissal is proper pursuant to NRCP 19, as Plaintiffs failed to name an indispensable party, the Texas-based franchisee contractually bound to provide a defense and/or indemnity to Defendant relative to the lease agreement at issue;

THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Dismiss without Prejudice is GRANTED, and this matter shall be dismissed without prejudice from this Honorable Court's docket and from the Nevada judicial system .

DATED this 29th day of May, 2015.

JOANNA S. KISHNER
HONORABLE DISTRICT COURT JUDGE

Respectfully submitted:

OLSON, CANNON, GORMLEY,
ANGULO & STOBERSKI

By _____
MICHAEL E. STOBERSKI, ESQ.
Nevada Bar No. 004762
JOSLYN D. SHAPIRO, ESQ.
Nevada Bar No. 010754
9950 W. Cheyenne Ave.
Las Vegas, NV 89129

Approved as to form ~~and content~~:

LAW FIRM OF TELIA U. WILLIAMS

By _____
TELIA U. WILLIAMS, ESQ.
Nevada Bar No. 9359
10161 Park Run Dr., Ste. 150
Las Vegas, NV 89145

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CLERK OF THE COURT

NEO

MICHAEL E. STOBERSKI, ESQ.
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JOSLYN D. SHAPIRO, ESQ.
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Attorneys for Defendant
FOODMAKER d/b/a JACK IN THE BOX

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(702) 384-4012 Telecopier (702) 383-0701

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

HERBERT VOLZ, KARIN VOLZ, Individuals, Plaintiffs, v. FOODMAKER d/b/a JACK IN THE BOX; DOE DEFENDANTS I through X, inclusive; ROE DEFENDANTS I through X, inclusive, Defendants.	CASE NO. A-14-706674-C DEPT. XXXI **NOTICE OF ENTRY OF ORDER OF DISMISSAL WITHOUT PREJUDICE** Date of Hearing: 05/19/2015 Time of Hearing: 9:30 a.m.

PLEASE TAKE NOTICE that on the 3rd day of June, 2015, an Order of Dismissal Without Prejudice was duly entered, a copy of which is attached hereto.

DATED this 4th day of June 2015.

OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI

By _____
MICHAEL E. STOBERSKI, ESQ.
Nevada Bar No. 004762
JOSLYN D. SHAPIRO, ESQ.
Nevada Bar No. 010754
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Defendant
FOODMAKER d/b/a JACK IN THE BOX

Law Offices of
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A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Telecopier (702) 383-0701

CERTIFICATE OF SERVICE BY ELECTRONIC FILING

The undersigned, an employee of OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI, hereby certifies that on this 5th day of June, 2015, caused a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER OF DISMISSAL WITHOUT PREJUDICE to be served through the WIZNET e-filing system in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules of the Eighth Judicial District Court, Nevada (or, if necessary, by United States mail, first class, postage prepaid) upon the following person(s):

Telia U. Williams, Esq.
LAW FIRM OF TELIA . WILLIAMS
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
E-Mail: teliauwilliams@telialaw.com

Attorneys for Plaintiff

Paula Keller
An employee of OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI

ORIGINAL

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06/03/2015 09:13:21 AM

CLERK OF THE COURT

ORDR
MICHAEL E. STOBERSKI, ESQ.
Nevada Bar No. 004762
JOSLYN D. SHAPIRO, ESQ.
Nevada Bar No. 010754
OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
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Attorneys for Defendant
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DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

HERBERT VOLZ, KARIN VOLZ, Individuals, Plaintiffs, v. FOODMAKER d/b/a JACK IN THE BOX; DOE DEFENDANTS I through X, inclusive; ROE DEFENDANTS I through X, inclusive, Defendants.	CASE NO. A-14-706674-C DEPT. XXXI **ORDER OF DISMISSAL WITHOUT PREJUDICE** Hearing Date: May 19, 2015 Hearing Time: 9:30 a.m.

Defendant FOODMAKER d/b/a JACK IN THE BOX INC.'s Motion to Dismiss having come before this Honorable Court for hearing on the 19th day of May, 2015, JOSLYN D. SHAPIRO, ESQ. of the law firm of OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI appearing on behalf of Defendant JACK IN THE BOX INC., and TELIA U. WILLIAMS, ESQ., of the LAW FIRM OF TELIA U. WILLIAMS, appearing on behalf of Plaintiffs HERBERT VOLZ and KARIN VOLZ, the Court having reviewed all the pleadings on file and arguments of counsel, and good cause appearing therefore,

///

///

☐ Voluntary Dismissal	☐ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☒ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

DISTRICT COURT

103

OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
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Las Vegas, Nevada 89129
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FINDINGS OF FACT

1. That the Complaint in this case was filed on September 8, 2014 by Plaintiffs based on: 1) Breach of contract; 2) Breach of the covenant of good faith and fair dealing; 3) Promissory estoppel; 4) Preliminary injunction; and 5) Declaratory relief. The property at issue is located at 1051 Uvalde Rd., Houston, Texas per Plaintiffs' Complaint, on file herein. Also per Plaintiffs' Complaint, Plaintiffs' Texas-based real estate agent, Todd Moseley, and Plaintiffs' Texas-based property inspector, Mike Ward, attended an inspection/walk-through of the subject property in September 2012;

2. That this breach-of-contract action arises from a 1989 lease of commercial property in Houston, Texas between Toyo Real Estate Co., U.S.A., Inc. and FOODMAKER, which is now JACK IN THE BOX INC. On or about October 15, 1993 Toyo executed an Assignment of Lease to Plaintiffs, whose residence at that time was listed as 10878 Deliban Ave., Tujunga, California 91042;

3. That on December 10, 2014, Defendant filed a Motion to Dismiss without Prejudice based on personal jurisdiction, forum non conveniens, and failure to name an indispensable party. On December 29, 2014, Plaintiffs filed an Opposition to Defendant's Motion to Dismiss, presenting rebuttal arguments as to the issues of jurisdiction and venue only. On January 6, 2015, Defendant filed a Reply brief. At the time of the original hearing on January 20, 2015, this Honorable Court permitted the parties to conduct limited jurisdiction-based discovery, submit supplemental briefs, and continued the hearing to May 19, 2015. See Order dated February 13, 2015, on file herein;

4. That Plaintiffs served and Defendant timely responded to Interrogatories, Requests for Production of Documents, and Requests for Admissions limited to the issue of jurisdiction only;

5. That on May 5, 2015, Plaintiffs filed a Supplement to Opposition to Motion to Dismiss, presenting rebuttal arguments as to the issues of jurisdiction and venue only. On May 11, 2015, Defendant timely filed a Supplemental Reply to Plaintiffs' Supplemental Opposition, pursuant to the Court's briefing schedule;

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(702) 384-4012 Telecopier (702) 383-0701

CONCLUSIONS OF LAW

1. That at the time of the continued hearing on May 19, 2015, the Court found three (3) grounds on which to grant Defendant's Motion to Dismiss, 1) Lack of personal jurisdiction pursuant to NRCP 12(b)(2); 2) Improper venue pursuant to NRCP 41(b); and 3) Failure to name an indispensable party pursuant to NRCP 19, each of which are discussed in-turn, below;

2. That Defendant's Motion to Dismiss is granted pursuant to NRCP 12(b)(2). The Court finds that no general personal jurisdiction exists relative to Defendant such that it could be haled into Nevada court for any reason. The Court did not reach an analysis of Plaintiff's arguments as the issue of specific personal jurisdiction, due to the fact that two (2) additional bases also exist on which the Court granted the instant Motion to Dismiss;

3. That Defendant's Motion to Dismiss is granted pursuant to NRCP 41(b). The Court finds that venue is not proper in Nevada. The property at issue is located in Houston, Texas. All pertinent witnesses, including Plaintiffs' Texas-based real estate agent and Plaintiffs' Texas-based property inspector reside in Texas. Texas law governs the contract at issue. Texas real property and/or taxation law governs any potential real property and/or real estate tax issues. Texas-based witnesses are likely needed to prove liability and damages. When Defendant passively acquired contract status with Plaintiffs due to an Assignment by prior landowner Toyo, Plaintiffs did not reside in Nevada. The sole nexus to Nevada relative to this litigation is the Plaintiffs' current residency, which alone is insufficient to overcome the above-listed factors negating the propriety of Nevada as the forum in which to litigate this claim;

4. That Defendant's Motion to Dismiss is granted pursuant to NRCP 19. Plaintiffs failed to name the Texas-based franchisee, from whom Defendant is contractually entitled a defense and indemnity, in the instant litigation. Defendants provided to Plaintiffs the pertinent portions of the franchise agreement describing the franchisee's indemnification duties during the course of the jurisdictional discovery permitted by this Honorable Court. Since the franchisee has no Nevada contacts, failure to include the franchisee in the instant litigation would both prejudice Defendant and violate judicial expedience as Defendant would have to defend itself in Nevada while also filing substantially duplicative litigation to enforce its rights in another state.

ORDER

IT IS HEREBY ORDERED that dismissal is proper pursuant to NRCP 12(b)(2), as general personal jurisdiction does not exist in Nevada.. The Court did not reach an analysis of specific personal jurisdiction in light of the other two (2) bases for dismissal of this case;

IT IS FURTHER HEREBY ORDERED that dismissal is proper pursuant to NRCP 41(b), as venue is not proper in Nevada;

IT IS FURTHER HEREBY ORDERED that dismissal is proper pursuant to NRCP 19, as Plaintiffs failed to name an indispensable party, the Texas-based franchisee contractually bound to provide a defense and/or indemnity to Defendant relative to the lease agreement at issue;

THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Dismiss without Prejudice is GRANTED, and this matter shall be dismissed without prejudice from this Honorable Court's docket and from the Nevada judicial system .

DATED this 29th day of May, 2015.

JOANNA S. KISHNER
HONORABLE DISTRICT COURT JUDGE

Respectfully submitted:

OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI

By _____
MICHAEL E. STOBERSKI, ESQ.
Nevada Bar No. 004762
JOSLYN D. SHAPIRO, ESQ.
Nevada Bar No. 010754
9950 W. Cheyenne Ave.
Las Vegas, NV 89129

Approved as to form ~~and content~~:

LAW FIRM OF TELIA U. WILLIAMS

By _____
TELIA U. WILLIAMS, ESQ.
Nevada Bar No. 9359
10161 Park Run Dr., Ste. 150
Las Vegas, NV 89145

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(702) 384-4012 Telecopier (702) 383-0701

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Contract	**COURT MINUTES**	**January 20, 2015**

A-14-706674-C Herbert Volz, Plaintiff(s)
vs.
Foodmaker, Defendant(s)

January 20, 2015 **9:30 AM** **Motion to Dismiss**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Shapiro, Joslyn D., ESQ	Attorney
Volz, Karin	Plaintiff
Williams, Telia U.	Attorney

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO DISMISS WITHOUT PREJUDICE

Court's inclination is that some discovery is needed as to jurisdiction only. All counsel agreed. Court will allow 90 days for additional discovery, limited as to jurisdiction only, can be written, can be depositions, 15 requests for production, 15 interrogatories, 5 requests for admissions for each side, if needed, can also request an evidentiary hearing, if needed. Ms. Shapiro will prepare an Order, circulating to Plaintiff's counsel. COURT ORDERED, matter CONTINUED for 120 days.

2/6/15 STATUS CHECK: ORDER (CHAMBERS)

MOTION CONTINUED TO: 5/19/15 @ 9:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Contract	COURT MINUTES	May 19, 2015

A-14-706674-C Herbert Volz, Plaintiff(s)
vs.
Foodmaker, Defendant(s)

May 19, 2015 **9:30 AM** **Motion to Dismiss**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Shapiro, Joslyn D., ESQ	Attorney
Williams, Telia U.	Attorney

JOURNAL ENTRIES

- Ms. Williams present via CourtCall.
Arguments by counsel. Court stated its findings, and ORDERED, Defendant's Motion to Dismiss Without Prejudice is GRANTED. Defendant's counsel to prepare detailed order, to include general jurisdiction, indispensable party and venue, circulating to Plaintiff's counsel for approval as to form and content. Matter SET for Status Check regarding receipt of proposed order.

6/5/15 STATUS CHECK: ORDER (CHAMBERS)

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

TELIA U. WILLIAMS, ESQ.
10161 PARK RUN DR., SUITE 150
LAS VEGAS, NV 89145

DATE: June 10, 2015
CASE: A706674

RE CASE: HERBERT VOLZ; KARIN VOLZ vs. FOODMAKER dba JACK IN THE BOX

NOTICE OF APPEAL FILED: June 8, 2015

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☒ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER OF DISMISSAL WITHOUT PREJUDICE; NOTICE OF ENTRY OF ORDER OF DISMISSAL WITHOUT PREJUDICE; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

HERBERT VOLZ; KARIN VOLZ,

Plaintiff(s),

vs.

FOODMAKER dba JACK IN THE BOX,

Defendant(s),

Case No: A706674

Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 10 day of June 2015.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk