

**COURT OF APPEALS OF KENTUCKY**

**NO. 1999-CA-000944**

**JUDY TAYLOR**

**APPELLANT**

**v.**

**JAMES RYAN, et al**

**APPELLEES**

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**RESPONSE OF APPELLANT, JUDY TAYLOR  
TO APPELLEE KENNY RANDOLPH'S BRIEF**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed to the Honorable John M. Bush, Suite 201, 9000 Wessex Place, Louisville, Kentucky 40222, Counsel for James and Jason Ryan; Honorable Eric G. Farris, Honorable Jack E. Ruck, Honorable Walter Sholar, P. O. Box 460, Shepherdsville, Kentucky 40165, Counsel for Eugene Jackson; Honorable Denise M. Helline, Suite A, 6008 Brownsboro Park Blvd., Louisville, Kentucky 40207, Counsel for Kenny Randolph; Honorable Armer H. Mahan, Jr., 500 Meidinger Tower, Louisville, Kentucky 40202, Counsel for Ryan Horse Company; to Judge Ken Corey, Judge Earl O'Bannon, Judge Judy McDonald, Eleventh Division, Jefferson Circuit Court, 700 W. Jefferson, Louisville, Kentucky 40202 and the Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601, on this the 28<sup>th</sup> day of December, 1999 and I hereby certify that the Record on Appeal was not withdrawn by the undersigned.



**KATIE MARIE BROPHY**  
101 N. Seventh Street  
Louisville, Kentucky 40202  
502-561-3486  
Attorney for Appellant

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**APPELLANT'S RESPONSE TO APPELLEE, KENNY  
RANDOLPH'S COUNTER-STATEMENT OF THE CASE**

**INTRODUCTION**

If Appellee Kenny Randolph's counter-statement of the case were to be believed, he should at a minimum receive a good citizenship award for his involvement in this matter. The reality however, is that Kenny Randolph's involvement directly resulted in the deaths of Appellant Judy Taylor's two pet horses, Poco and P.J., by stalling her efforts to obtain the return of her horses until such time as they were slaughtered in Ft. Worth, Texas for human consumption.

As stated in Appellant's Statement of the Case (pp. 1-5), Jeff and Lisa Burgess<sup>1</sup> engaged in an intentional course of conduct designed to defraud Appellant. Appellee, Kenny Randolph, as an agent and co-conspirator, is equally at fault and likewise, subject to Kentucky's jurisdiction.

**REPLY TO APPELLEE'S STATEMENT OF FACTS**

Pursuant to the Jefferson Circuit Court Jury, which decided Appellant's case against the Burgess Defendants in April, 1999, they (the Burgess') were found to have engaged in conduct sufficient to warrant a verdict of \$75,000 in punitive damages and \$50,000 for emotional distress damages. (See Judgment, Jefferson Circuit Court, Division 11, **Exhibit A**.) Earlier in 1994, the Burgess' enlisted the assistance of co-conspirator, Kenny Randolph in order to further their fraudulent scheme. Kenny Randolph knew Burgess' sold Judy Taylor's horses to Killer-Buyer, Eugene Jackson. Kenny Randolph and Defendants Burgess, concocted a scheme whereby Burgess' told Judy Taylor they (Burgess') gave the horses to Randolph and directed Judy to call Appellee Randolph to inquire about their condition and whereabouts. (Video Depo. Kenny Randolph 5/8/98.) And, of course, Judy called Randolph only to be told by him, he indeed had her horses in a field in Southern Indiana. He refused to provide the address, thus causing Judy Taylor to search alone throughout deserted country roads and subject herself to any

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<sup>1</sup>Jeff and Lisa Burgess are not parties to this appeal.

number of potential dangers. (Depo. Judy Taylor 8/23/96, p. 77, line 23, p. 80, line 11.) At the time of the telephone conversation between Randolph and Appellant, Randolph knew Appellee Eugene Jackson had purchased the horses and that they would be sold for slaughter. (See video Depo. of Kenny Randolph, 5/8/98.) Thus, Appellee Randolph prevented Appellant from intercepting and preventing P.J. and Poco's deaths.

If Randolph had not acted as the Burgess' agent but had told Appellant what he in fact knew to be true, i.e., that P.J. and Poco had been sold to Eugene Jackson for slaughter, Appellant could have located and reclaimed her horses from Eugene Jackson. Instead, Randolph consciously chose to recite a concocted story which he knew to be false, at the instruction and direction of the Burgess', thereby acting as an agent for the Burgess'.

#### I.

#### **APPELLANT'S RESPONSE TO APPELLEE RANDOLPH'S CLAIM THAT KRS 454.210 DOES NOT CONFER PERSONAL JURISDICTION OVER HIM BECAUSE HE "MERELY RECEIVED A TELEPHONE CALL IN INDIANA"**

Randolph makes much of the fact that he did not personally engage in any conduct relevant to the fraudulent scheme within the Commonwealth of Kentucky, but "*merely received a telephone call* [from Appellant] *in Indiana*" (p. 5). Without knowing the true factual situation, this argument would seem to have merit. See *Pierce v. Serafin*, Ky. App., 787 S.W.2d 705 (1990), (mailing documents from another state into Kentucky not sufficient to confer jurisdiction on out of state Defendant.) However, when we consider Randolph's participation in the scheme wherein his co-conspirators (who are subject to this State's jurisdiction) arranged for the telephone call to occur at a pre-determined time in order that Randolph might advance the fraudulent conspiracy, the situation becomes quite different.

Despite Randolph's continued reliance on *Pierce*, supra, the factual situations are completely distinguishable. The physician in *Pierce* was in no way involved in a scheme to defraud the plaintiff. Nor had the physician arranged in advance with his co-conspirators to mail the document a (medical

evaluation) at a precise time in order to accomplish a precise result in furtherance of the conspiracy. And, certainly unlike Randolph, there is no argument that the physician's mailing of the document into the Commonwealth allowed for a sufficient time "delay" in order to complete the conspiracy. Therefore, Randolph's conduct in conjunction with his participation in the Burgess' scheme, means Randolph has a "substantial connection to the Commonwealth." See Pierce at 707.

It must be remembered that the Burgess' planned to defraud Appellant when they initially traveled from their home in Southern Indiana to Appellant's home in Kentucky. (Depo. L. Burgess, p. 19, 16-18.) While in Kentucky, they made various false representations in order to further their plans. And, they continued to act in furtherance of the scheme once they returned to Indiana. (Depo. L. Burgess, pp. 8-9.) Randolph's offer to participate in their scheme occurred in Indiana, but well after the scheme was in operation, same having begun in Kentucky. (Depo. L. Burgess, p. 49.) Randolph's participation was one element, but a crucial element of a scheme that occurred in both Kentucky and Indiana. It is not practicable or legally justifiable to segregate Randolph's "portion" of the conspiracy and pigeon-hole same into "Indiana" jurisdiction only while the co-conspirators (Burgess') who acted in both Kentucky and Indiana to advance the very same fraudulent scheme, are subject to personal jurisdiction within Kentucky.

To the contrary, it appears only 'reasonable' for Kentucky to exercise jurisdiction. See Thermotrif Industries, Inc. v. Mono-Term Insulation Systems, 450 F. Supp. 398, 403 (W.D. Ky. 1978) (see **Exhibit B**). Unfairness inconsistent with notions of fair play occurs only when a defendant is 'compelled to defend himself in a court of a State with which he has no relevant connection.' Buckley v. New York Post Corp., 373 F.2d 175, 181 (2<sup>nd</sup> Cir., Conn., 1967) (citation omitted).

*"Indeed where the operative facts have occurred where the plaintiff sues the convenience of both parties would often be served by a trial there, and the chief benefit to the defendant of a rule requiring the plaintiff to seek him out is the impediment this creates to the bringing of any suit at all". (Citations omitted) Buckley, supra at 181.*

**II.**  
**APPELLANT'S RESPONSE TO APPELLEE RANDOLPH'S**  
**CLAIM THAT HE IS NOT SUBJECT TO IN PERSONAM**  
**JURISDICTION DESPITE THE CLEAR AGENCY ARRANGEMENT**

While it is unclear whether Randolph acted as Burgess' agent or Burgess' acted (at times) as Randolph's agent<sup>2</sup>, it is clear Randolph and the Burgess' acted as co-conspirators. Nevertheless, the circle is completed because the co-conspirator theory is bottomed on agency theory; it is said that each co-conspirator acts as agent for the others and any co-conspirator's act in the forum is attributable to other co-conspirators for purposes of venue [and presumably jurisdiction]. See *American Trade Partners v. A-1 Intern Importing*, 755 F.Supp. 1292, 1304, note 19 (E.D. Pa., 1990), (Exhibit C) citing *Ethanol Partners Accredited v. Wiener, Suckerbrot, Weiss & Brecher*, 635 F. Supp. 15, 18 (E.D. Pa., 1985) ("when co-conspirators have sufficient contacts with the forum, so that due process would not be violated, it is imputed against the 'foreign' co-conspirators who allege that there is not sufficient contacts; co-conspirators are agents for each other.", (emphasis added).

The purpose for the inclusion of the 'agency' language in KRS 454.210 is obviously to thwart those who while outside the State, conspire with others acting within to cause tortious injury. KRS 454.210(2). In *Mandelkorn v. Patrick*, 359 F.Supp. 692 (D.C. 1973), the court's interpretation of the District's long-arm statute (which statute was identical to Kentucky's) permitted the court at the pre-trial stage to exercise jurisdiction over certain defendants who had no direct contact with the forum.

*"Both the Moody's and the Florida Defendants assert that they have had no direct contacts with the District of Columbia and thus no sufficient nexus, or 'minimum contacts', with this forum such that they may properly be served outside this jurisdiction consistent with due process of law. International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). It is true that the Complaint herein does not allege any direct contacts by these Defendants with the District of Columbia. What the Complaint does allege is a conspiracy, and overt acts in furtherance of that conspiracy, at least one of which overt acts is an alleged tort in the District*

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<sup>2</sup>It is sometimes difficult to determine in pre-trial motions to dismiss, which liar 'to believe'. (See e.g., Deposition of Lisa Burgess, 12/27/95, p. 49:

Lisa Burgess: "I told him that [sic]she called and he said just tell her to call me, I'll tell her I have the horses."

of Columbia by some of the Defendants acting as co-conspirators in furtherance of the conspiracy. Under Plaintiff's theory co-conspirators are agents of all their fellow conspirators when acting in furtherance of the conspiracy. Thus, Plaintiff contends, by their "agent" both the Moody's and the Florida Defendants have caused a tortious injury in the District of Columbia. (Footnote omitted.)

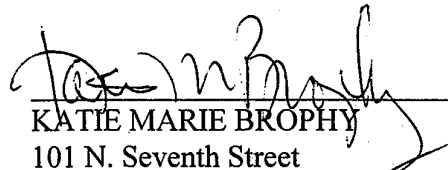
...Assuming as true the unchallenged allegations of conspiracy and an overt act in the District of Columbia in furtherance of the conspiracy, this Court sees no injustice in requiring the New York and Florida Defendants to submit to suit here. While they personally had no direct contacts here, their involvement in an allegedly wide-ranging conspiracy which is said to have caused injury in the District of Columbia is sufficient nexus to this jurisdiction to require them to answer here for their roles in the alleged course of events. It is emphasized, however, that the situation would be quite different on this point, if the allegations of the complaint were controverted or if the facts should develop otherwise than as alleged."

In the present case, the allegations in Appellant's Complaint are admitted. Randolph acknowledges he participated in the scheme to defraud the Plaintiff and likewise participated in that scheme with his co-conspirators. Randolph knew of the Burgess' activities within Kentucky when he chose to become involved in the conspiracy.

"...a fair statement of [the law on conspiracy jurisdiction] it would be that while the mere presence of a conspirator within the forum state is not sufficient to permit personal jurisdiction over co-conspirators, certain additional connections between the conspiracy and the forum state will support exercise of jurisdiction over co-conspirators. See Leasco Data Processing Equipment Co. v. Maxwell, supra; Mandelkorn v. Patrick, supra. These additional connections exist where substantial acts in furtherance of the conspiracy were performed in the forum state and the co-conspirator knew or should have known that acts would be performed in the forum state." (Citations omitted.) Gemini Enterprises, Inc. v. WFMY Television Corp., 470 F.Supp. 559, 564 (D.C. N.C., 1979).

### CONCLUSION

Wherefore, Appellant respectfully requests the initial Trial Court's ruling entered on June 24, 1998 (R.A. 513, 518) denying Randolph's Motion to Dismiss, be reinstated and the subsequent Trial Court's ruling entered on March 5, 1999 (R.A. 998-1004) and finalized April 12, 1999 (R.A. 1175-76) dismissing Randolph as a Defendant, be vacated and held for naught.

  
KATIE MARIE BROPHY  
101 N. Seventh Street  
Louisville, Kentucky 40202  
502-561-3486  
Attorney for Appellant