

FILED

STATE OF NORTH CAROLINA  
 COUNTY OF IREDELL  
 IREDELL COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE  
 DISTRICT COURT DIVISION  
 FILE NO.: 20-CVD-2072

2020 SEP 24 AM 11:55

BETH BOGAERTS )  
 BY Adw )  
 Plaintiff, )  
 v. )  
 )  
 TREVOR FITZGIBBON )  
 Defendant. )

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**MOTION FOR RELIEF  
 AND NOTICE OF DEFENSE**

**-and-**

**COUNTERCLAIMS**

**(Trial By Jury Is Demanded)**

**MOTION FOR RELIEF AND NOTICE OF DEFENSE**

**-and-**

**COUNTERCLAIMS**

Defendant, Trevor Fitzgibbon (“Fitzgibbon”), by counsel, pursuant to N.C. Gen. Stat. § 1C-1705(a) and Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure (the “Rules”), respectfully moves the Court for relief from the default judgment entered against Fitzgibbon by the Superior Court of Los Angeles, California, in *Beth Bogaerts v. Thomas Schoenberger et al.*, Case No. 20STCV10636 (the “Judgment”) and to dismiss the request for filing foreign judgment filed by plaintiff, Beth Bogaerts (“Bogaerts”). The Judgment is void.

Fitzgibbon, by counsel, pursuant to Rule 13 of the Rules, also files the following counterclaims against Bogaerts for breach of fiduciary duty and breach of contract, civil conspiracy and tortious interference with prospective business.

**VERIFIED MOTION FOR RELIEF AND TO DISMISS**

This case should be dismissed because the Judgment is void for lack of personal jurisdiction. *See, e.g., Southern Athletic/Bike v. House of Sports, Inc.*, 53 N.C. App. 804, 281 S.E.2d 698, 699 (1981) (a judgment entered by a court that lacks personal jurisdiction over the defendant is void), *cert. denied*, 304 N.C. 729, 288 S.E.2d 381 (1982) (cited in *Orix Financial Services, Inc. v. Raspberry Logging, Inc.*, 190 N.C. App. 657, 660 S.E.2d 609 (2008)); *Ft. Recovery Industries, Inc. v. Perry*, 57 N.C. App. 354, 291 S.E.2d 329 (1982) (“the judgment rendered by the Ohio court is a judgment *in personam* and is void if the court did not have jurisdiction over the person and subject matter of the action.”); *see Quantum Corporate Funding, Ltd. v. B.H. Bryan Building Co.*, 175 N.C. App. 483, 623 S.E.2d 793, 799 (2006) (a counteroffer mailed to another state, without any other activity in that state, is insufficient to support a finding of constitutional minimum contacts).

In this case, the evidence demonstrates that Fitzgibbon had (and has) no contacts with California:

**Sworn Affidavit of Trevor Fitzgibbon**

Trevor Fitzgibbon states and deposes as follows, under penalty of perjury:

1. I am over 21 years of age and otherwise competent to make this Affidavit. I have personal knowledge of the statements contained herein. The statements in this Affidavit are true and accurate to the best of my knowledge, information and belief.
2. I am a citizen of North Carolina. I live in Mooresville, North Carolina.
3. I have never lived in Los Angeles or anywhere else in California.
4. I do not have (and never have had) an office in California.

5. I do not have (and have never had) any agents, employees or representatives in California.

6. I do not own (and have never owned) any real estate or personal property in California.

7. I have never done any business anywhere in California.

8. I do not have any clients or customers who are from California.

9. I have never derived any income from California, and have never paid taxes in California.

10. I was never physically present in California for any dealings of any kind with Beth Bogaerts (“Bogaerts”).

11. I did not voluntarily appear in the California proceedings instituted against me by Bogaerts.

12. I never agreed to submit to the jurisdiction of California Courts for any reason.

13. None of the “loans” that Bogaerts says she made to me was made in California. None of the money was received by me in California.

14. None of the events referred to in Bogaerts’s underlying complaint occurred in California.

15. I have never “targeted” Bogaerts or her family for any reason and never made any threats to Bogaerts or her family of any kind at any time. I never sent a single message or communication to Bogaerts while she was in California, including the email referred to in paragraph 22 of the complaint in her underlying case. I never posted a single comment about Bogaerts on any website.

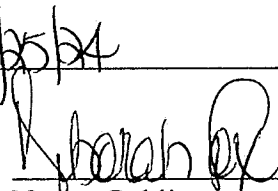
16. I never had a single conversation or interaction with Bogaerts in California. At the time Bogaerts advanced me funds in 2017, Bogaerts said she did not want to be repaid. She represented that she was doing this to help me. She knew that I had lost everything because of a malicious prosecution and false criminal charges levelled against Fitzgibbon by a lawyer in D.C. named Jesselyn Radack (“Radack”).<sup>1</sup> Bogaerts knew that I had no money. In 2018, Bogaerts changed her story and claimed that she had “loaned” the money to me. In 2019, I discovered that Bogaerts had breached fiduciary duties that she owed to me and had secretly been supplying information to Radack and others, including Raymond Johansen (“Johansen”), behind my back. I was betrayed, heartbroken by Bogaert’s deception, and financially damaged.

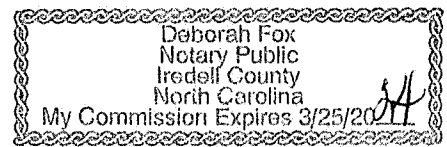
I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct.

/s/   
TREVOR FITZGIBBON

STATE OF NORTH CAROLINA  
COUNTY/CITY OF Iredell/Mearesville

On this 24 day of September, 2020, before me, the undersigned Notary Public, personally appeared Trevor Fitzgibbon, who swore to and acknowledged the above Affidavit, and on oath stated that he did sign the foregoing freely and voluntarily.

My commission expires: 03/25/24  
  
Notary Public



<sup>1</sup> The United States Attorney investigated the criminal charges for over a year, dropped the charges and dismissed the case.

## **The California Court Lacked Personal Jurisdiction**

It is axiomatic that in order for a Court to exercise personal jurisdiction over a defendant, the exercise of that jurisdiction must comport with the Due Process Clause of the Fourteenth Amendment. The federal constitutional predicate for the exercise of personal jurisdiction is the familiar requirement that a defendant must have sufficient “‘minimum contacts’ with the forum state such that ‘the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

The requirements of the Due Process clause can be met through establishing either specific or general jurisdiction. Specific jurisdiction exists where the controversy at issue arises out of sufficient contacts with the forum state to make the exercise of jurisdiction reasonable. *See, e.g., Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414-415 (1984). Alternatively, general jurisdiction can exist, even where a claim does not arise from a defendant’s interactions with the state, where the defendant has sufficient continuous and systematic contacts with the state to satisfy Due Process. *Id.* General jurisdiction exists when a defendant’s “affiliations with the State are so ‘continuous and systematic’ as to render [him] essentially at home in the forum State.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

Fitzgibbon is a citizen of North Carolina. He is not “at home” in California. General jurisdiction does not exist. Further, there is no specific jurisdiction because

Fitzgibbon has absolutely no contacts with the State of California. Bogaerts's Judgment is void. It cannot be enforced in any Court.

### **COUNTERCLAIMS**

Pursuant to Rule 13, Fitzgibbon states the following counterclaims against Bogaerts:

#### **Statement of the Facts**

1. Fitzgibbon is a citizen of North Carolina.
2. Bogaerts is a citizen of Texas. Between 2017 and 2019, Bogaerts operated multiple anonymous Twitter accounts, including an account with the handle “@welltraveledfox”.<sup>2</sup>
3. In March 2016, Jesselyn Radack (“Radack”), an attorney in the District of Columbia, falsely accused Fitzgibbon of rape and sexual assault and filed criminal charges against him. The United States Attorney investigated the matter for over a year. In April 2017, the United States Attorney dropped the false charges, but not before Fitzgibbon had suffered egregious harm as a result of Radack's malicious prosecution and defamation. After the United States Attorney cleared Fitzgibbon, Radack pursued a merciless campaign of defamation against Fitzgibbon via social media (Twitter).
4. In December 2017, Fitzgibbon and Bogaerts entered into a contract in North Carolina, whereby Bogaerts agreed to act as a research assistant and to investigate facts related to claims Fitzgibbon intended to bring against Radack for malicious

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<sup>2</sup> Bogaerts is the person behind the following Twitter accounts: @welltraveledfox; @foxfire2112; @foxfire2113; @foxfire3112; @foxfire3131; @YokoOnoOf301, @NoxFemme, @modernnomad3 and @PaxNomad. In this case, Bogaerts used Twitter's “direct message” service to engage in secret communications with her co-conspirators.

prosecution and defamation. Specifically, Bogaerts expressly agreed in writing to assist Fitzgibbon and his legal counsel as a paralegal to search for and compile evidence of Radack's defamatory tweets, retweets, replies and likes on Twitter, to be used to prepare the complaint against Radack. Bogaerts agreed to maintain all information and documents that she received and all work-product that she produced in strict confidence, and to report only to Fitzgibbon and his legal counsel. In or about March/April 2018, in reliance on Bogaerts's promise of confidentiality, Fitzgibbon shared with Bogaerts a draft of the complaint that he intended to file against Radack in the United States District Court for the Eastern District of Virginia.

5. Unbeknownst to Fitzgibbon, Bogaerts turned out to be a double agent.

6. In early 2018, Bogaerts approached an associate of Radack's, a hacker from Norway affiliated with Anonymous named Raymond Johnsen ("Johnsen"), looking for a back-channel to Radack. Bogaerts communicated via private direct messages and encrypted messaging applications with one of Johnsen's "crew", a person only known as "Jo", who relayed the confidential information to Johnsen.

7. In a brazen act of disloyalty, Bogaerts divulged confidential information that she received from Fitzgibbon concerning Fitzgibbon's strategy and the substance of his claims against Radack. Significantly, Bogaerts gave Johnsen a draft of the complaint that Fitzgibbon intended to file against Radack.

8. Bogaerts knew that her actions were unlawful. She took great pains to hide her communications with Johnsen and Radack. In secret communications with Johnsen, Bogaerts repeatedly asked for assurance that her identity would be concealed.

9. Johnansen secretly reported to Radack via encrypted email service

Protonmail as follows:

Report on Trevor Fitzgibbon and the law suit against Jesselyn Radack

My source on the law suit is Beth, (I do not have last name yet), and lives in US mid west.

Two Twitter identities:

<https://twitter.com/welltraveledfox>

<https://twitter.com/welltraveledfox>

She was not in relationship with Trevor - she worked for him

She actually helped gather information for the lawsuit against you. A few days back she, out of respect for one of my crew members, "Jo", and his respect for you she decided to snitch on Trevor.

I had Jo ask her Beth if she was willing to directly help you with details about the law suit which has been prepped since last quarter of 2017. She is 100% willing to help you and has proof Trevor is lying about you, according to her.

10. Johansen emphasized the need to keep everything secret and the concerted

nature of the action:

OpSec, PerSec

At no point can you guys communicate about ANY of this outside Protonmail, Wire or Signal. Even with your lawyers. Some of the information in this document has been obtained using techniques that would result in a CFAA charge in the US. When referring to me in any documents use either researcher, source 1 or the alt/persona Razor1911.

My crew will continue to dig. Lastly and more importantly, if any of you two see me tweet or post something that contains #2992 or #1911 - do NOT interact in any way shape or form with the posts/tweets. It is how my crew communicates openly denying even Equation Group (NSA) the ability to identify my crew members. Its an old school way of communicating similar to how the CIA use(d) classified ads and numbers stations. (The latter still in use to this day)

None of this should make you stressed or feel panic. You should instead be happy that you have the strongest friends there is in our world. We have run counter intel for two decades and not one single one of my crew members has ever been identified or even charged despite us being the target of the longest running op in FBI history. Operation Buccaneer.

11. After Fitzgibbon filed suit against Radack on April 13, 2018, Bogaerts communicated directly with Radack via Twitter's direct message (DM) service and via encrypted messaging application Signal.

12. In 2019, Fitzgibbon discovered Bogaerts's treachery and breaches of fiduciary duty and contract. Johansen confirmed the conspiratorial agreement on Twitter.



[See, e.g., <https://twitter.com/RayJoha2/status/1190342239693819905> “When T.F. first attacked @JesselynRadack by suing her I was right there. A woman [Bogaerts] that had seen what he was planning reached out to me. Since then I have been in touch with our friend Jess and also T.F. because Im not one to hear just one side. I have read it all, have you?”)].

**COUNT I – BREACH OF FIDUCIARY DUTY/BREACH OF CONTRACT**

13. Fitzgibbon restates paragraphs 1 through 12 of this Complaint, and incorporates them herein by reference.

14. As a result of her position, Bogaerts obtained confidential information and documents relating to Fitzgibbon’s business and litigation against Radack. Bogaerts owed common law fiduciary duties and contractual duties to Fitzgibbon to keep the documents and information strictly confidential.

15. Bogaerts breached her fiduciary and contractual duties by disclosing the confidential information to Johansen’s “crew” member and by disclosing confidential information in 2018 and 2019 directly to Radack.

16. As a direct result of Bogaerts’s breaches of fiduciary duty and breaches of contract, Fitzgibbon suffered actual damages and special damages, including, but not limited to, increased expense, burden and other pecuniary loss, pain and mental suffering, attorney’s fees, costs, and other out-of-pocket expenses in a sum to be determined by the Jury.

**COUNT II – COMMON LAW CONSPIRACY**

17. Fitzgibbon restates paragraphs 1 through 16 of this Complaint, and incorporates them herein by reference.

18. Beginning in March 2018, Bogaerts combined, associated, agreed or acted in concert together and with Johansen and Radack for the express purpose of injuring Fitzgibbon, breaching fiduciary duties and converting Fitzgibbon's business records, and tortiously interfering with his business, including the litigation against Radack, through the disclosure of confidential information and documents. In furtherance of the conspiracy and preconceived joint plan, Bogaerts surreptitiously contacted Johansen and disclosed confidential information and documents, including a draft of the complaint that Fitzgibbon intended to file. Bogaerts supplied confidential information to Johansen about Fitzgibbon with actual knowledge and intention that it would be supplied to Radack, and that Radack would use it against Fitzgibbon.

19. Bogaerts acted intentionally, purposefully, without lawful justification, and with the express knowledge that she was breaching the duty of confidentiality that she pledged to Fitzgibbon.

20. Bogaerts's actions constitute a common law conspiracy to breach her fiduciary duties and contract.

21. As a direct result of Bogaerts's conspiracy, Fitzgibbon suffered actual damages and special damages, including, but not limited to, increased expense, burden and other pecuniary loss, pain and mental suffering, attorney's fees, costs, and other out-of-pocket expenses in a sum to be determined by the Jury.

### **COUNT III – TORTIOUS INTERFERENCE**

22. Fitzgibbon restates paragraphs 1 through 21 of this Complaint, and incorporates them herein by reference.

23. Between 2017 and 2019, Fitzgibbon attempted to pursue work in the public relations field. Based upon his long career in the industry, he had a reasonable expectation of obtaining future employment and business.

24. From conversations with Fitzgibbon, Bogaerts each knew about his client relationships, business expectations and prospects, and attempts to find work.

25. Between 2017 and 2019, Fitzgibbon had a handful of opportunities to work on projects that would have earned him substantial income.

26. Bogaerts intentionally interfered with Fitzgibbon's prospective business relationships and opportunities by colluding with Johansen and Radack to publish false and defamatory statements via Twitter, *inter alia*, accusing Fitzgibbon of being a sexual predator, rapist, etc. Throughout 2018 and 2019, using her multiple anonymous Twitter accounts, including @welltraveledfox, Bogaerts independently published false statements about Fitzgibbon, including statements that Fitzgibbon lied and "twisted" the truth, that he "scammed" Bogaerts, that he took money from her under "false pretenses", that he engineered a "whisper smear campaign" against Radack, and that Fitzgibbon defamed other "people" as well. Bogaerts also appeared in multiple videos published on the Internet in which she defame and disparaged Fitzgibbon. Bogaerts lied and claimed she had to "move out of the country to get away from [Fitzgibbon] and his attackers". Ironically, Bogaerts accused Fitzgibbon of breaching her "trust".

27. As a proximate result of Bogaerts's tortious and improper interference, Fitzgibbon lost clients, lost prospective business and has largely been unable to secure any substantial work in the industry. Prospective employers who google his name finds

the tweets published and republished by Bogaerts and by Radack and Johansen with Bogaerts's assistance.

28. Bogaerts's actions constitute tortious interference with prospective business.

29. As a direct result of Bogaert's tortious interference, Fitzgibbon suffered actual damages and special damages, including, but not limited to, increased expense, burden and other pecuniary loss, pain and mental suffering, attorney's fees, costs, and other out-of-pocket expenses in a sum to be determined by the Jury.

#### **CONCLUSION AND PRAYER FOR RELIEF**

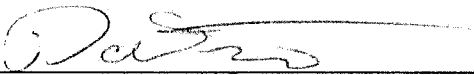
For the foregoing reasons, Fitzgibbon respectfully requests the Court to dismiss Bogaerts's request for filing foreign judgment with prejudice and to enter judgment on the counterclaims in favor of Fitzgibbon against Bogaerts.

#### **TRIAL BY JURY IS DEMANDED ON FITZGIBBON'S COUNTERCLAIM**

DATED: September 24, 2020

Signature of Counsel on Next Page

TREVOR FITZGIBBON

By: \_\_\_\_\_

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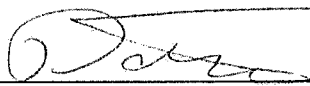
*Counsel for the Defendant*

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*Co-Counsel for the Defendant*  
*(Motion for Admission Pro Hac Vice*  
*To be Filed)*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2020, a copy of the foregoing was served by email in PDF and by mail upon counsel for the plaintiff: Dalton B. Miller, Esquire, Homesley & Wingo Law Group, PLLC, 330 South Main Street, Mooresville, North Carolina 28115.

By:   
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*Co-Counsel for the Defendant  
(Motion for Admission Pro Hac Vice  
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BETH BOGAERTS )  
PLAINTIFF ) *afw*

v. )

TREVOR FITZGIBBON, )  
DEFENDANT. )

NOTICE OF APPEARANCE

---

NOW COMES John David Matheny II gives notice of his appearance as counsel for Defendant Trevor Fitzgibbon in the above referenced action.

The undersigned hereby requests that all pleadings, motions, notices, correspondence and other papers relating to the above-captioned action be sent to the undersigned at the address listed below.

This the 24 day of September, 2020.

By: *John David Matheny II*  
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*AD*