



Legal Alert

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The Risks of Contesting or Not Contesting Personal Jurisdiction

Imagine this scenario: You and Litigious Larry enter into a contract for the sale of customized motorcycles. Litigious Larry lives in Maine; your business is in Arizona. Litigious Larry contacts you in Arizona, picks up the bikes in Arizona, and delivers payment in Arizona. You never step foot in beautiful Maine.

Several months later, Litigious Larry claims fraud and files a lawsuit in Maine. A summons arrives on your doorstep in Arizona. What do you do? (Other than stop doing business with people named Litigious Larry.)

Two legal principles intersect. The first is personal jurisdiction, which refers to the authority that a court can exercise over a person or business. Most states have laws—known as “long arm” statutes—allowing courts to exercise personal jurisdiction over non-residents to the extent allowed under the Constitution.ⁱ The Due Process Clause requires that personal jurisdiction over non-residents be limited to those who have “minimum contacts” with the forum state such that asserting jurisdiction would be consistent with “traditional notions of fair play and substantial justice.”ⁱⁱ Most likely, your business would not be subject to personal jurisdiction in Maine. But there are few hard-and-fast rules limiting personal jurisdiction, and the opposite outcome is possible, particularly if you advertised the motorcycle outside of Arizona.ⁱⁱⁱ

The second principle is another constitutional requirement: Full Faith and Credit. Under the Constitution, states must respect the judgments of other states.^{iv} If Litigious Larry obtains a judgment in Maine, there is a process for “domesticating” the judgment in Arizona—without having to retry the case on the merits—making the judgment enforceable here.^v

Full Faith and Credit has exceptions. Of relevance here, the second court can question whether the original court had jurisdiction. If the second court concludes that the original court lacked personal jurisdiction, it should refuse to enforce the judgment.^{vi} This brings Litigious Larry back to square one, having to file a new lawsuit against you in Arizona, where you can defend on the merits. Without this exception, parties could use Full Faith and Credit to circumvent the Due Process Clause’s limit on personal jurisdiction.

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But this exception has its own sub-exception, which is often overlooked. If the issue of personal jurisdiction was “fully and fairly litigated and finally decided” in the original court, then the second court is bound to uphold the original court’s determination.^{vii} To preserve the finality of litigation, a party gets only one opportunity to dispute an issue—and this policy applies to disputing both the merits and jurisdiction.

So, when Litigious Larry sues you in a court of questionable jurisdiction, you have two options. One option is to ignore the lawsuit and wait for the inevitable judgment domestication in Arizona to challenge whether the original court had jurisdiction. But this is risky: If the Arizona court disagrees with you and finds that the Maine court did have jurisdiction, then the default judgment in Maine is likely binding. The lawsuit in Maine, if that court had jurisdiction, was your opportunity to challenge Litigious Larry’s claims.

The other option is to appear in Maine and challenge jurisdiction. But if you lose on the jurisdictional issue, be prepared to litigate the merits as well. No matter what, do not send a letter to the judge in Maine explaining that the transaction was consummated in Arizona, and then hope for the best. If the Maine court senses any dispute and rules that personal jurisdiction is proper, that ruling is likely binding when Litigious Larry domesticates the judgment in Arizona, and you will have lost forever the opportunity to challenge the merits.

Each option has its own risks. If you or your business is sued in a foreign state, please contact an attorney to help assess whether contesting jurisdiction makes sense for your particular situation.

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ⁱ In Arizona, the long-arm rule states that “a court of this state may exercise personal jurisdiction over parties, whether found within or outside the state, to the maximum extent permitted by the Constitution of this state and the Constitution of the United States.” Rule 4.2(a), Ariz.R.Civ.P.

ⁱⁱ The Due Process Clause is found in the Fourteenth Amendment to the U.S. Constitution. This interpretation originated in *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

ⁱⁱⁱ Finding it a “close question,” the Arizona Court of Appeals has held that merely placing a vehicle for sale on eBay does not subject the seller to personal jurisdiction in the buyer’s state. *Holland v. Hurley*, No. 2 CA-CV 2008-0126 (Ariz.App., May 19, 2009). The opinion was ordered depublished, though, and this remains an evolving area of law. 212 P.3d 890.

^{iv} The Full Faith and Credit Clause is found in Article IV of the U.S. Constitution.

^v Arizona has adopted the Revised Uniform Enforcement of Foreign Judgments Act, which is codified at A.R.S. §§ 12-1701 *et seq.*

^{vi} The case most-cited for the exception to Full Faith and Credit that allows courts to check for personal jurisdiction is *Durfee v. Duke*, 375 U.S. 106 (1963).

^{vii} *Id.* at 111.