IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-IA-01686-SCT

ADARA NETWORKS INC. AND ERIC K. JOHNSON

v.

SHANE F. LANGSTON

DATE OF JUDGMENT:	11/16/2018
TRIAL JUDGE:	HON. PATRICIA D. WISE
TRIAL COURT ATTORNEYS:	JASON LEE NABORS GRETA LYNETTE KEMP SHANE F. LANGSTON CHRISTOPHER JUSTIN BROOME ROBERT RICHARD CIRILLI, JR. STEPHEN L. THOMAS SIMON TURNER BAILEY
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT, FIRST JUDICIAL DISTRICT
ATTORNEYS FOR APPELLANTS:	STEPHEN L. THOMAS SHELDON G. ALSTON ROBERT RICHARD CIRILLI, JR. SIMON TURNER BAILEY
ATTORNEYS FOR APPELLEE:	SHANE F. LANGSTON REBECCA M. LANGSTON KEVIN JERRELL WHITE CHRISTOPHER JUSTIN BROOME
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	AFFIRMED AND REMANDED - 09/03/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

RANDOLPH, CHIEF JUSTICE, FOR THE COURT:

¶1. Adara Networks Inc. (Networks Inc.) appeals the denial of a Rule of Civil Procedure 12(b)(2) motion to dismiss for lack of personal jurisdiction. The Hinds County Chancery Court properly denied Networks Inc.'s motion. The chancery court can assert personal jurisdiction over Networks Inc. under either the doing-business prong of our long-arm statute or the tort prong. Langston pled sufficient facts to establish Networks Inc. did or does business in Mississippi and to plead the tort of breach of fiduciary duty. Therefore, we affirm the judgment of the chancery court.

FACTS AND PROCEDURAL HISTORY

¶2. At the time the complaint was filed, Networks Inc. was incorporated in Florida[1] with its principal place of business in San Jose, California.

¶3. Shane Langston has been a member of the Mississippi Bar since 1984 and until 2016 was a resident of Mississippi. At the time of filing, he was a resident of Texas.

¶4. Years before Langston moved to Texas, Langston purchased one million shares of preferred stock in Networks Inc. for $500,000. This purchase was made at the urging of his then-Madison County, Mississippi, neighbor, John Doe.[2] John Doe was paid by Networks Inc. to entice Langston and other Mississippians to invest in Networks Inc. In an affidavit filed in this proceeding, John Doe swore that since at least 2002 he has been paid monthly

[1] Networks Inc. has since dissolved its Florida incorporation and is currently incorporated in Nevada.

[2]The chancery court sealed this case, so a fictitious name is used for this individual. *See* M.R.A.P. 48A.

by Networks Inc. to solicit and otherwise influence investors for Networks Inc. including residents of Mississippi. John Doe annually received IRS forms 1099 from Networks Inc. for his efforts.

¶5. Several years later, Langston was contacted again by John Doe on behalf of Networks Inc. in Mississippi and was persuaded to invest additional funds in the form of a convertible loan to Networks Inc. In 2013, Langston exercised his right to convert the $250,000 debt instrument into several hundred thousand shares of common stock.

¶6. Throughout the years, John Doe regularly communicated with Langston and other investor residents of Mississippi for Networks Inc. In the same affidavit, John Doe swore that he provided information to Langston and other Mississippi residents at the direct instruction and behest of the chief executive officer of Networks Inc. Eric Johnson.[3]

¶7. Networks Inc. has held one shareholder meeting over the twenty-year period that Langston has been a shareholder. That shareholder meeting was held in Jackson, Mississippi, with roughly one hundred Mississippi shareholders in attendance. Langston also had several meetings with Johnson and Networks Inc.'s chief financial officer, Lillian Arbuckle, in Jackson, Mississippi. In 2003, Langston received a letter from Networks Inc. CEO Johnson touting sales and developments, listing the University of Mississippi as a customer and stating that products developed by Networks Inc. would be utilized by the Mississippi

[3] In oral arguments presented to the trial court, Langston stated that Johnson's broker's license had been revoked due to civil fraud.

Division of Medicaid and the Mississippi Bar Association.

¶8. Langston has sought multiple times to examine various corporate documents. Each time, John Doe was dispatched by Networks Inc. to discourage Langston. John Doe told Langston to withdraw his requests because a merger or buyout was imminent and disclosures would adversely impact Networks Inc. Eventually, Langston joined other Mississippi investors[4] seeking financial disclosures, in a demand letter to Networks Inc. dated January 24, 2018. These shareholders offered to send an accountant to Networks Inc.'s offices in San Jose, California, to examine the documents.

¶9. Networks Inc. countered the shareholders request by producing only selected documents on April 9, 2018 in Jackson, Mississippi. However, before allowing the investors to review any documents, Networks Inc. required execution of a confidentiality agreement. That agreement contained a clause requiring that any dispute arising under that agreement would be governed and interpreted by the laws of Mississippi and, further, that any disputes that arose were subject to the jurisdiction of Mississippi courts. Langston alleged that the selective production failed to encompass the documents requested and required by either Florida or Mississippi law.

¶10. Among the documents produced were financial statements showing that in 2012 more than 90 percent of Networks Inc.'s cash assets were on deposit with Trustmark National

[4] Those investors were Lance L. Stevens, Vic Welsh, Joe Roberts, Roderick D. Ward, and James Holland. Christopher Jones and Ed Welch were allegedly also involved in the request for documents.

Bank in Jackson, Mississippi. Furthermore that percentage increased in 2013, 2014, and 2015, before subsequent withdrawals by Networks Inc. substantially decreased the balance in 2016 and 2017. After review, the shareholders again requested full compliance with the law, but the requests were ignored. Finally, Langston filed a complaint for accounting in the Chancery Court of the First Judicial District of Hinds County, Mississippi, an appropriate venue as stated in Mississippi Code Section 79-4-16.04(b) (Rev. 2013).[5]

¶11. Networks Inc. responded with a Rule of Civil Procedure 12(b)(2) motion to dismiss for lack of personal jurisdiction. Networks Inc. also claimed that it had not subjected itself to the benefits and protections of Mississippi law, despite evidence to the contrary in the confidentiality agreement.[6] Langston filed affidavits establishing a prima facie case for personal jurisdiction, while Networks Inc. stood only on its briefs and the arguments advanced by its counsel. After due consideration, the chancery court denied Networks Inc.'s

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[5] The dissent suggests unilaterally transforming Langston's action from the bold-faced type on his complaint, "**COMPLAINT FOR ACCOUNTING**," to a bill of discovery. *See* Diss. Op. ¶ 51. This action directly contradicts the long held precept that plaintiffs are the masters of their complaint. *See* ***Caterpillar, Inc. v. Williams***, 482 U.S. 386, 395, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987). The dissent cites ***Kuljis v. Winn-Dixie Montgomery, LLC***, 214 So. 3d 283 (Miss. 2017). A review of the record in that case reveals that the pleading in that case was styled as "**COMPLAINT FOR DISCOVERY**." Similarly, ***Moore v. Bell Chevrolet-Pontiac-Buick-GMC, LLC***, 864 So. 2d 939, 941 (2004), recites that the pleading was styled a "complaint for discovery."

[6] The language in the confidentiality agreement is not disputed and has been entered into the record. The agreement is not at issue, but it is direct evidence that Networks Inc. was willing to avail itself of the courts of Mississippi and to hale others into Mississippi's courts. *See* ***World-Wide Volkswagen Corp. v. Woodson***, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).

motion. Networks Inc. appeals to this Court.

STANDARD OF REVIEW

¶12. This Court reviews jurisdictional questions de novo. ***Canadian Nat'l Ry. Co. v. Waltman***, 94 So. 3d 1111, 1115 (Miss. 2012) (quoting ***Knight v. Woodfield***, 50 So. 3d 995, 998 (Miss. 2011)). When considering a motion under Rule 12(b)(2), we take all allegations made in the complaint and their reasonable inferences as true, just as a trial court would. ***Id.*** (quoting ***R.C. Constr. Co. v. Nat'l Office Sys.***, 622 So. 2d 1253, 1255 (Miss. 1993)). To determine whether a Mississippi court can exercise personal jurisdiction, courts ask two questions: first, whether our long-arm statute permits an exercise of jurisdiction and, second, whether that exercise of jurisdiction offends the due-process guarantees of the Fourteenth Amendment. ***Dunn v. Yager***, 58 So. 3d 1171, 1184 (Miss. 2011) (quoting ***Estate of Jones v. Phillips ex rel. Phillips***, 992 So. 2d 1131, 1137 (Miss. 2008)).

ANALYSIS

I. Can a Mississippi court properly exercise personal jurisdiction over Networks Inc.?

A. The Long-Arm Statute

¶13. Mississippi's long-arm statute provides, in relevant part,

> Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business

> in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state. Service of summons and process upon the defendant shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

Miss. Code Ann. § 13-3-57 (Rev. 2019). Satisfaction of any of the three prongs, be it through contract, tort, or doing business, establishes personal jurisdiction over a nonresident corporation. *Id.* The parties have presented argument on the applicability vel non of the latter two prongs. We will address the doing-business prong first because that issue is dispositive.

1. Can a Mississippi court assert personal jurisdiction over Networks Inc. under the doing-business prong?

¶14. In its motion to dismiss, Networks Inc. relied exclusively on federal cases, arguing that a present nonresident plaintiff cannot utilize the doing-business prong against a nonresident defendant. Not one of the cases argued share facts or law common with the case sub judice and therefore offer neither precedential nor persuasive value. The cases cited by Networks Inc., save one, seek damages for injuries that occurred not only *outside* of the state of Mississippi but also outside the United States of America.[7] Networks Inc. asked the

[7] Networks Inc. relies on ***Submersible Systems, Inc. v. Perforadora Central, S.A. de C.V.***, 249 F.3d 413, 418 (5th Cir. 2001), ***Murray v. Remington Arms Co.***, 795 F. Supp. 805, 808 (S.D. Miss. 1991), ***Senseney v. Manufactured Building Insurance Co.***, No. 1:12CV86-LG-JMR, 2013 WL 12121503 (S.D. Miss. Aug. 26, 2013), ***DeCarlo v. Bonus Stores, Inc.***, 413 F. Supp. 2d 770 (S.D. Miss. 2006), and ***Delgado v. Reef Resort Ltd.***, 364 F.3d 642, 644 (5th Cir. 2004). In ***Submersible Systems***, the alleged injury occurred in Mexico. 249 F.3d at 415. In ***Murray***, the alleged injury occurred in Canada. 795 F. Supp. at 806–07. In ***Senseney***, the alleged injury occurred in the United Kingdom. 2013 WL 12121503 at *3. In ***Delgado***, the alleged injury occurred in Belize. 364 F.3d at 644. Finally, in ***DeCarlo***, a Tennessee resident sued Icelandic nationals for an injury that had occurred in Mississippi. However, the court determined the Icelanders had not committed a wrong against the

chancellor to ignore both the plain text of our statute and our precedent regarding its language. None of the cases support their argument.

¶15. The dissent's opinion similarly offers cases that have no precedential value. Federal cases may have persuasive value if they share common facts or law. Those cited do not. The applicable Mississippi law is found in the long-arm statute.[8] This Court has interpreted the

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plaintiff. ***DeCarlo***, 413 F. Supp. 2d at 776–78. ***DeCarlo*** also set forth that the plaintiff must only present a prima facie case for personal jurisdiction. ***Id.***

[8] The dissent adopts Networks Inc.'s theory by relying not on our precedent but on dissimilar federal cases where injuries were sustained outside the state of Mississippi. ***Black v. Carey Canada***, 791 F. Supp. 1120, 1122 (S.D. Miss. 1990), and ***1330 Broadway Co. v. Carey Canada***, No. S89-0467(G), 1990 WL 443936 at *1 (S.D. Miss. 1990), concerned damages to buildings contaminated with asbestos situated in California, not Mississippi. In ***Smith v. DeWalt Products Corporation***, 743 F.2d 277, 278 (5th Cir. 1984), a man severed his left hand in Louisiana while using power tools manufactured by the defendant. ***Lee v. Memphis Publishing Co.***, 195 Miss. 264, 14 So. 2d 351, 351 (1943), concerned claims of libel in a newspaper printed and published in Memphis. ***Washington v. Norton Manufacturing, Inc.***, 588 F.2d 441 (5th Cir. 1979), concerned a worker suing a corporation for negative effects he sustained as a result of dust inhalation. Where did the worker inhale the dust? Louisiana. ***Washington***, 588 F.2d at 442–30. In ***Mills v. Dieco, Inc.***, 722 F. Supp. 296, 297 (N.D. Miss. 1989), the court was confronted with Pennsylvania plaintiffs injured in a car accident in Tennessee, suing a delivery company in Mississippi. ***Walker v. World Insurance Co.***, 289 F. Supp. 2d 786 (S.D. Miss. 2003), concerned a plaintiff suing a health insurance company. There, the court identified that "[t]he actual *injury* . . . is the alleged wrongful preparation by Encompass of the determination regarding Plaintiff's insurance claim(s). All activities of Encompass related to the preparation of the determination occurred in Iowa." ***Id.*** at 789. Finally, while the facts in ***Golden v. Cox Furniture Manufacturing Co.***, 683 F.2d 115, 119, (5th Cir. 1982), were not sufficiently developed to be able to ascertain where the injury occurred, what is clear is that the court rejected the defendant's arguments that it should uphold a dismissal for lack of personal jurisdiction. None of these cases offer precedential value for they fail to bear resemblance to the case sub judice, and the one that may, came to a conclusion contrary to the dissent's bent. In short, none of these cases lend support to the dissent.

plain language found in that statute. In ***C.H. Leavell & Company v. Doster***, 211 So. 2d 813, 815 (Miss. 1968) (emphasis added),[9] this Court stated,

> [t]he defendant in this case is also subject to the jurisdiction of the courts of Mississippi under category (3) of the first sentence of section 1437. *Any nonresident is subject to suit in this state who shall do any business or perform any character of work or service in this state if the action or proceeding accrues from acts done in this state*.

Further, the plain text of the statute does not restrict usage of the third prong to only Mississippi residents. The state of Mississippi, as does every state in the union, has a profound interest in regulating those who conduct business and who, while doing so, inflict harm on persons within her borders.

¶16. ***Williams v. Liberty Mutual Fire Insurance Co.***, 187 So. 3d 166 (Miss. Ct. App. 2015), is also relied upon by Networks Inc. ***Williams*** is easily distinguishable and can be added to the long line of cases referenced in footnote 6. Williams's suit was based on an accident that occurred in Shelby County, Tennessee; like the others, it concerns an injury that

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[9] The court in ***C.H. Leavell & Co.*** relied upon the following language:

> (a) Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this State as to doing business herein, who shall make a contract with a resident of this State to be performed in whole or in part by any party, in this State, or who shall commit a tort in whole or in part in this State against a resident of this State, or who shall do any business or perform any character of work or service in this State shall, by such act or acts, be deemed to be doing business in Mississippi.

211 So. 2d at 814 (quoting Miss. Code (1942) § 1437 (Supp. 1966)). This language is identical to our current statute.

occurred outside of Mississippi. ***Williams***, 187 So. 3d at 168.

¶17. ***Williams*** also states that Mississippi courts previously interpreted the "doing business" prong of the long-arm statute; but ***Williams*** cites only a decision from the United States Court of Appeals for the Fifth Circuit, not one from this Court. ***Williams***, 187 So. 3d at 171 (citing ***Herrley v. Volkswagen of Am., Inc.***, 957 F.2d 216, 219 (5th Cir. 1992)). The court in ***Herrley*** summarily affirmed a dismissal for lack of jurisdiction.[10] This dismissal was based on other federal court decisions reiterating the Fifth Circuit's interpretation of our long-arm statute in ***Breeland v. Hide-A-Way Lake, Inc.***, 585 F.2d 716, 720 (5th Cir. 1978). ***Breeland*** erroneously held this Court's decision in ***C.H. Leavell & Co.*** barred nonresident defendants from asserting the doing-business prong of our long-arm statute. Reading our decision in ***C.H. Leavell & Company*** should dispel any confusion caused by the language of the Fifth Circuit[11]; this Court held precisely the opposite.

¶18. Langston has provided ample evidence that Networks Inc. has done business in

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[10] ***Herrley*** concerned a one-car accident in Florida and suit brought against a company that, unrelated to that accident, was "merely doing business" in Mississippi. 957 F.2d at 217. Once again, the injury was sustained outside the state of Mississippi. ***Id.***

[11] The dissent rejects the notion that other courts confused our holding in ***C.H. Leavell & Co.***, *see* Diss. Op. ¶¶ 35–36, and offers one more federal case commenced by a citizen of Pennsylvania who purchased an anti-malarial drug in "British Hong Kong and ingested it in the People's Republic of China from October, 1984 to July, 1985, and in the Commonwealth of Pennsylvania in August, 1985 and September, 1985," and then sought to sue the Swiss producers of the drugs in Mississippi. ***Prince v. F. Hoffman-La Roche & Co.***, 780 F. Supp. 417, 418 (S.D. Miss. 1991). What the dissent fails to grasp is that in every case, the alleged damages arose from events transpiring wholly outside the borders of our state.

Mississippi. The uncontested affidavit of Mississippi resident John Doe establishes that he was paid by Networks Inc. to perform services for Networks Inc. in Mississippi for more than sixteen years. John Doe was paid to solicit investments by Mississippi residents. John Doe was paid by Networks Inc. to provide information to Mississippi residents. John Doe, during the time that he was receiving regular payments from Networks Inc., acted to deter Mississippi residents from obtaining an accounting and corporate information about the company. Networks Inc. has maintained bank accounts in Mississippi. It elected to conduct shareholder meetings in Mississippi to further its interest and, finally, it decided to provide corporate documents for examination in the state of Mississippi before then allegedly breaching that agreement.

¶19. Networks Inc. engaged in "various acts here for the purpose of realizing a pecuniary benefit or otherwise accomplishing an object" and so did business here. ***McDaniel v. Ritter***, 556 So. 2d 303, 309 (Miss. 1989) (citing Restatement (Second) of Conflict of Laws § 35, cmt. a (Am. Law Inst. 1971)). Because Langston's complaint arises from one or more of Networks Inc.'s actions in Mississippi, Networks Inc.'s choice to conduct business in Mississippi renders it subject to the personal jurisdiction of Mississippi's courts.

2. Can personal jurisdiction be asserted against Networks Inc. alternatively under the tort prong?

¶20. Networks Inc. argues next that the chancery court cannot utilize the tort prong of our long-arm statute because Langston failed to adequately plead a tort. "Mississippi is a notice

pleading state." ***Bedford Health Props., LLC v. Estate of Williams ex rel. Hawthorne***, 946 So. 2d 335, 350 (Miss. 2006) (citing ***Estate of Stevens v. Wetzel***, 762 So. 2d 293, 295 (Miss. 2000)). Alleging a tort invokes our long-arm statute and provides sufficient notice to Networks Inc. of a claim. Rule 8 of Civil Procedure abolished the need for technical pleadings, contrary to Networks Inc.'s arguments. ***Estate of Stevens***, 762 So. 2d at 295.[12]

¶21. Examination of the complaint reveals that Langston pled that Networks Inc. breached a fiduciary duty by refusing to properly disclose the financial details of the company to shareholders, including Langston.[13] Further, Langston alleges that Networks Inc. failed to abide by corporate laws regarding mandatory filings, accountings, and shareholder meetings.

¶22. These allegations of violations of the duty of care are against directors and officers of Networks Inc. "A director of a corporation owes duties to the corporation that he serves and, equitably, to its shareholders. Among these duties, a director owes a duty of care and a duty of loyalty." ***Daniels v. Crocker***, 235 So. 3d 1, 12 (Miss. 2017) (citing ***Derouen v. Murray***, 604 So. 2d 1086, 1092 (Miss. 1992); ***Omnibank of Mantee v. United S. Bank***, 607 So. 2d 76, 84, 90 (Miss. 1992)). Specifically, the duty of care is a duty to carry out the actions and functions of an officer or a director in good faith and in the best interests of the corporation. ***Derouen***, 604 So. 2d at 1092 (quoting *Principles of Corporate Governance:*

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[12] The dissent provides an exposition of the specificity required in shareholder derivative actions. *See* Diss. Op. ¶¶ 54–56; *see also* ***Burgess v. Patterson***, 188 So. 3d 537, 552 (Miss. 2016). Langston did not file a derivative action.

[13] Networks Inc. conceded in its brief before the trial court that breach of fiduciary duty is a tort.

Analysis and Recommendations § 1.27 (Am. Law Inst., Proposed Final Draft 1992)). Failing to follow basic corporate formalities and failing to abide by state laws regulating corporations, if proved, are clear violations of the duty of care imposed on Eric Johnson, and others, as officers and directors of Networks Inc. Concealing these violations by frustrating the right of a shareholder to examine the books and records of the corporation is a further violation of these duties.

¶23. As these allegations were clear on the face of the complaint, Langston's complaint provided sufficient notice to Networks Inc. and Johnson that Langston sought to bring a suit against the company for violation of fiduciary duty on the grounds of misrepresentation, financial mismanagement, and intentional violations of corporate formalities. Langston alleged in the complaint that these wrongs were committed in part in Jackson, Mississippi. Such notice satisfies the pleading requirements under Rule 8. Unquestionably, a Mississippi court can properly exercise personal jurisdiction over Networks Inc. under the tort prong of our long-arm statute, as well as the doing-business prong.

B. Does the exercise of jurisdiction by the chancery court violate the dictates of the Fourteenth Amendment?

¶24. Exercises of personal jurisdiction are ultimately bound by the Due Process Clause of the Fourteenth Amendment. ***Dunn***, 58 So. 3d at 1184. To satisfy the Due Process Clause, a defendant must have minimum contacts with the jurisdiction and the exercise of jurisdiction must not offend traditional notions of fair play and substantial justice. ***Id.*** at 1185 (quoting ***Estate of Jones***, 992 So. 2d at 1140). Minimum contacts can lead to specific jurisdiction

arising out of the suit at hand or general jurisdiction related to the defendant's long-term relations with the jurisdiction. ***Id.*** at 1140 (citing ***Helicopteros Nacionales de Colombia, S.A. v. Hall***, 466 U.S. 408, 414–15, nn.8, 9, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984); ***Burger King Corp v. Rudzewicz***, 471 U.S. 462, 473, n.15, 105 S. Ct. 2174, 85 L. Ed. 2d. 528 (1985)). These minimum contacts must evidence the defendant's intention to purposefully avail itself of the "benefits and protections of a State's laws." ***Rudzewicz***, 471 U.S. at 482. Here, Networks Inc.'s, contacts with Mississippi demonstrate such. This suit arises out of acts occurring in Mississippi, i.e. allegedly using a promoter (John Doe) in Mississippi, soliciting investments in Mississippi, maintaining bank accounts in Mississippi, holding shareholder meetings in Mississippi, and, finally, failing to fully disclose corporate documents in Mississippi. These specific contacts demonstrate purposeful availment and confirm that the qualifications of specific jurisdiction are met here.

¶25. The United States Supreme Court has identified four factors to consider in evaluating whether the traditional notions of fair play and substantial justice are met they are (1) "the burden on the defendant," (2) "the interests of the forum State," (3) "the plaintiff's interest in obtaining relief," and (4) "the interest of the several States in furthering fundamental substantive social policies." ***Estate of Jones***, 992 So. 2d at 1142 (internal quotation mark omitted) (quoting ***Asahi Metal Indus. Co. v. Superior Ct. of Cal.***, 480 U.S. 102, 113, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987)).

¶26. We have already noted Mississippi's and her sister states' interests in regulating those

who conduct business within their borders. Here, the record reflects that Networks Inc. gratuitously chose to produce the documents in this state when Langston and others were willing to travel to California to inspect the documents. Separately, as part of Networks Inc.'s document production, Networks Inc. demanded that Langston and others *submit to the jurisdiction of a Mississippi court* for any disputes arising from a confidentiality agreement Networks Inc. drafted. That provides evidence not only of Networks Inc.'s submission to but also its desire to litigate in the courts of Mississippi. This belies Networks Inc.'s arguments that it would be burdened by litigating in this state. Langston has an interest in obtaining relief and assessing the value of his investment. He has given $750,000 to Networks Inc. Should he be estopped from ascertaining if his investment has retained its value or has been squandered? An accounting in this state would not be a burden under the Fourteenth Amendment.

II. Langston's suit was properly filed in the Chancery Court of Hinds County.

¶27. Networks Inc. also challenged the subject-matter jurisdiction of the chancery court. We have said that "[c]ases involving an accounting should be heard in chancery court rather than circuit court." ***Re/Max Real Estate Partners, Inc. v. Lindsley***, 840 So. 2d 709, 713 (Miss. 2003) (citing ***Delta Constr. Co. of Jackson v. City of Jackson***, 198 So. 2d 592, 601 (Miss. 1967)). Therefore we affirm the chancery court on this matter as well.

CONCLUSION

¶28. The Chancery Court of Hinds County properly exercised personal jurisdiction over

Networks Inc. in this case. Therefore, we affirm the decision of the chancery court and remand the case for proceedings consistent with this opinion.

¶29. **AFFIRMED AND REMANDED.**

KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, CHAMBERLIN AND ISHEE, JJ., CONCUR. BEAM, J., DISSENTS WITH SEPARATE WRITTEN OPINION. GRIFFIS, J., NOT PARTICIPATING.

BEAM, JUSTICE, DISSENTING:

¶30. I would reverse the chancery court's order denying the defendants' motion to dismiss for lack of personal jurisdiction under Mississippi Rule of Civil Procedure 12(b)(2), and I would render a judgment of dismissal without prejudice in favor of the defendants' Rule 12(b)(2) motion. Shane Langston's complaint fails under both the doing-business prong and the tort prong of Mississippi Code Section 13-3-57 (Rev. 2019). And contrary to the majority's view, the exercise of personal jurisdiction over Adara Networks would violate the Due Process Clause of the Fourteenth Amendment. To grant Langston the request he seeks in this instance would conflict with this Court's holding in ***Burgess v. Patterson***, 188 So. 3d 537 (Miss. 2016), in which the same request was denied to a stockholder suing a Mississippi corporation. Accordingly, I dissent from the majority's decision.

¶31. Neither Shane Langston,[14] Adara Networks, Inc.,[15] or Eric Johnson[16] is a resident of

[14] Langston is a resident of Texas.

[15] Adara was a corporate resident of Florida when this complaint was filed but now is incorporated in Nevada, with its principal place of business in California.

[16] Johnson is a resident of California.

this state for purposes of Mississippi Code Section 13-3-57 (Rev. 2019). For decades, the federal courts have consistently interpreted Mississippi Code Section 13-3-57 as barring the use of that statute's doing-business prong by nonresident plaintiffs against nonresident defendants.[17]

¶32. The United States Court of Appeals for the Fifth Circuit, construing Section 13-3-57, and quoting from a decision by a federal district court in the Northern District of Mississippi, explained as follows:

> We are thus of the view that by the enactment of the state's long-arm statute, as consistently construed by prior cases, the [Mississippi] legislature intended to afford a remedy only to residents who might have claims or grounds of action against nonresidents from activity done within the state, thus obviating the necessity for its citizens to resort to a foreign jurisdiction for enforcement of their rights. When taken in its entirety, the long-arm statute was clearly enacted for the benefit of residents only, and the legislation has not been expanded through the process of judicial interpretation to include nonresident plaintiffs not qualified to do business within the state.

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[17] *See* ***Murray v. Remington Arms Co.***, 795 F. Supp. 805, 808 (S.D. Miss. 1991) ("This Court and numerous other federal courts have repeatedly held that nonresident plaintiffs may not utilize the doing business portion of the Mississippi long-arm statute to obtain jurisdiction over a nonresident defendant." (citing ***1330 Broadway Co. v. Carey Canada***, No. S89-0467(G), 1990 WL 352740 (S.D. Miss. April 3, 1990); ***Black v. Carey Canada***, 791 F. Supp. 1120, 1123 (S.D. Miss. 1990); ***Smith v. DeWalt Prods. Corp.***, 743 F.2d 277, 279 (5th Cir. 1984); ***Golden v. Cox Furniture Mfg. Co.***, 683 F.2d 115, 117 (5th Cir. 1982); ***Washington v. Norton Mfg., Inc.***, 588 F.2d 441, 444-45 (5th Cir. 1979); ***Mills v. Dieco, Inc.***, 722 F. Supp. 296, 298 (N.D. Miss. 1989)). The federal courts have applied this precedent "to plaintiffs . . . . who were residents of Mississippi at the time their cause of action accrued but were not residents of Mississippi at the time they filed their lawsuit." ***Harold v. Manufactured Buildings Ins. Co., Ltd.***, No. 1:12CV86-LG-JMR, 2013 WL 12121503, at *2 (S.D. Miss. Aug. 26, 2013) (citing ***Walker v. World Ins. Co.***, 289 F. Supp. 2d 786, 787-88 (S.D. Miss. 2003)).

Breeland v. Hide-A-Way Lake, Inc., 585 F.2d 716, 721 (5th Cir. 1978) (quoting ***Am. Int'l Pictures, Inc. v. Morgan***, 371 F. Supp. 528 (N.D. Miss. 1974)).

¶33. ***Breeland*** also noted this Court's decision in ***C. H. Leavell & Co. v. Doster***, 211 So. 2d 813 (Miss. 1968), in which two foreign corporations qualified to do business in this state had sued a nonresident defendant to recover damages alleged to have arisen from a contract that was to be performed entirely within this state. ***Id.*** at 720 n.9. ***Breeland*** construed ***C.H. Leavell & Co.*** to hold that a foreign corporation not qualified to do business in Mississippi constitutes a nonresident and cannot invoke the long-arm statute's doing-business prong to acquire personal jurisdiction over another nonresident. ***Id.***

¶34. Our legislature's amendment of Section 13-3-57 in 1980, which expressly extended the tort prong to nonresident plaintiffs, reaffirmed for the federal courts that their prior interpretation of Section 13-3-57 was correct.

> Given the long-standing judicial construction of [Mississippi's] long-arm statute to preclude its use by non-resident plaintiffs, the legislature's decision not to amend the "doing-business" provision of the statute at the same time it specifically extended the "tort" provision to non-resident plaintiffs indicates a legislative intent that the "doing-business" provision is not available to non-resident plaintiffs.

Herrley v. Volkswagen of Am., Inc., 957 F.2d 216, 218 (5th Cir. 1992) (quoting ***Smith v. DeWalt Prods. Corp.***, 743 F.2d 277, 279 (5th Cir. 1984)).

¶35. We of course are not bound by the Fifth Circuit's interpretation of our long-arm statute. But the statute is not expressly clear when it comes to whether a nonresident plaintiff may utilize the doing-business provision—alone—to seek jurisdiction over a nonresident

defendant. And this Court has yet to illuminate the answer fully, which has often left our federal courts sitting in diversity jurisdiction with an ***Erie***[18] guess as to how this Court would determine the question. *See e.g.* ***Prince v. F. Hoffman-La Roche & Co.***, 780 F. Supp. 417, 419 (S.D. Miss. 1991) ("If the ***Shewbrooks***[19] court really intended the 'doing business' provision of the Mississippi long-arm statute to be made available to non-resident plaintiffs, this Court is confident they would have at least cited the statute somewhere in their opinion. Also, this Court is persuaded that if the Mississippi Supreme Court meant what plaintiffs contend they did, then that court would have cited the numerous federal court cases that have held otherwise, as having erred in their Erie guesses.").

¶36. The majority continues the uncertainty in this case by stating simply that the federal cases relied upon by Adara Networks do not "share[] facts or law common with this case[,]" and are dissimilar because they "involve an alleged harm sustained . . . outside of the state of Mississippi." Maj. Op. ¶14. Further, according to the majority, the federal courts have misinterpreted this Court's decision in ***C.H. Leavell & Co.***

¶37. This is incorrect. First, unlike the majority does here, the federal cases cited by Adara Networks do not conflate the doing-business provision with the contract or tort provisions of the long-arm statute. Second, these federal cases do not misconstrue this Court's holding

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[18] ***Erie R.R. v. Tompkins***, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938)

[19] ***Shewbrooks v. A.C. & S., Inc.***, 529 So. 2d 557 (Miss. 1988), *superseded by statute on other grounds as stated in* ***N. Am. Midway Entm't, LLC v. Murray***, 200 So. 3d 437, 439 n.4 (Miss. 2016).

in ***C.H. Leavell & Co.***

¶38. In ***C.H. Leavell & Co.***, as mentioned above, two foreign corporations sued a nonresident defendant to recover damages arising out of a contract between the plaintiffs and the defendant to be performed entirely within Mississippi. ***C.H. Leavell & Co.***, 211 So. 2d at 813-14. The trial court had ruled that the nonresident defendant "was not subject to a suit in Mississippi by the corporate plaintiffs within the meaning of [our long-arm statute]." ***Id.*** at 814. This Court held that the trial court erred in dismissing the suit. ***Id.*** at 815.

¶39. This Court explained that because the two plaintiffs (foreign corporations) had both qualified to do business in this state, they constituted residents of this state for purposes of our long-arm statute. ***Id.*** "[A] foreign corporation qualified to do business under the corporate laws of this state should have the same privileges and advantages of invoking the aid of the courts of this state under [the long-arm statute] as resident corporations if they are to have equal protection of the laws." ***Id.*** (citing Miss Code (1942) § 5309-222 (Supp. 1966)).

¶40. ***C.H. Leavell & Co.*** further held that the nonresident defendant was "also subject to the jurisdiction of the courts of Mississippi under category (3)" of the long-arm statute, which provides that "[a]ny nonresident is subject to suit in this state who shall do any business or perform any character of work or service in this state if the action or proceeding accrues from acts done in this state." ***Id.*** at 815.

¶41. Like the nonresident plaintiffs argued in ***Breeland***, the majority here construes ***C.H.***

Leavell & Co. to say that, because the nonresident the defendant was subject to the doing-business provision of the long-arm statute, this allowed the nonresident plaintiffs to invoke the doing-business provision. But ***C.H. Leavell & Co.*** held no such thing, as ***Breeland*** correctly noted. *See* ***Breeland***, 585 F.2d at 720 n.9 (The Court in ***C.H. Leavell & Co.*** "indicated that the nonresident defendant was also subject to suit under the 'doing business' provision of the statute. The appellants contend that this alternative holding supports their theory that a nonresident plaintiff may invoke the 'doing business' provision against a nonresident defendant. Their theory goes counter to the overwhelming weight of Mississippi jurisprudence.").[20]

¶42. Acknowledging this precedent, Langston told the chancery court that Section 13-3-57's doing-business prong "was not the issue." Rather, he had alleged a tort against Adara Networks, claiming that Adara Networks breached its fiduciary duty owed to him. At the Brunini Law Firm located in Jackson, Mississippi, Adara Networks produced incomplete documentation in violation of its obligations under applicable Florida law. This is the

[20] ***Breeland*** also rejected the claim that such a construction of our long-arm statute "denie[s] nonresident [plaintiffs] due process and equal protection of the law and infringe[s] their privileges and immunities[.]" ***Breeland***, 585 F.2d at 721. "[T]he object sought to be accomplished [by the long-arm statute] is the protection of the rights of Mississippi residents, as first proclaimed in ***Lee v. Memphis Publishing Company***, (195 Miss. 264, 14 So. 2d 351 (1943)); and this classification is in no way discriminatory. ***Sugg v. Hendrix***, (142 F.2d 740 (5th Cir. 1944))." ***Id.*** (quoting ***Am. Int'l Pictures, Inc. v. Morgan***, 371 F. Supp. 528, 532 (N.D. Miss. 1974)).

primary basis for Langston's "complaint for accounting."[21]

¶43. I know of no Mississippi case that holds or even contemplates that a corporation's failure to produce "[]complete documentation" to one of its shareholders under whatever duty it owes to the shareholder constitutes a tort for purposes of Mississippi's long-arm statute. This Court has recognized that stockholders had a common-law right to inspect his or her corporation's books and records. ***Sanders v. Neely***, 197 Miss. 66, 19 So. 2d 424, 425-26 (1944) (citing 13 Am. Jur. 480).[22] But as ***Sanders*** also instructed, such a right was "not absolute," but a "qualified one," enforceable by a writ of mandamus "as a proper remedy." ***Id.***

¶44. This common-law right to inspection has since been codified in Mississippi by the Mississippi Business Corporation Act (MBCA), which, like Florida, has codified the Model Business Corporation Act. *See generally* Miss. Code Ann. §§ 79-4-1.01 to -17.01 (Rev.

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[21] Indeed, as the majority acknowledges, the case is here on Adara Network's gratuitous choice "to produce documents in this state when Langston and others were willing to travel to California to inspect the documents." Maj. Op. ¶ 26. Had that occurred, there is no question that this case would not be before us.

[22] ***Sanders*** provided as follows:

> A stockholder in a corporation has, in the very nature of things and upon principles of equity, good faith, and fair dealing, the right to know how the affairs of the company are conducted and whether the capital of which he has contributed a share is being prudently and profitably employed. In order to obtain this information he has a common-law right, at proper and seasonable times, to inspect all the books . . . and records of the corporation.

Sanders, 19 So. 2d at 426 (quoting 13 Am. Jur. 480).

2013); Fla. Stat. § 607.0101 to .1908.[23] Both acts eliminate the stringent requirements of the extraordinary writ of mandamus under the common law, "by giving the stockholder 'a positive right' to inspect corporate books and records." *See* ***Shaw v. Agri-Mark, Inc.***, 663 A.2d 464, 468 (Del. 1995) (explaining the same for purposes Delaware corporate law) (quoting ***State ex rel. Thiele v. Cities Serv. Co.***, 115 A. 773, 774 (Del. 1922)), *superseded by statute on other grounds as stated in* ***Cent. Laborers Pension Fund v. News Corp.***, 45 A.3d 139, 144 (Del. 2012)).

¶45. And both acts provide statutory remedies to stockholders if a corporation does not properly comply with a stockholder's reasonable request to inspect corporate books and records. *See generally* Miss. Code Ann. §§ 79-4-16.01 to -16.04; Fla. Stat. §§ 607.1601 to .1604.

¶46. In its January 24, 2018 letter to Adara Networks requesting certain financial information, Langston and other investors invoked Florida law and its requirements for inspection. The letter reads, in part:

> The undersigned shareholders would respectfully request the opportunity to review the financial and corporate records of the corporation, Adara, at your earliest convenience. We have heard very encouraging things about the corporation and continue to have the highest confidence in its leadership. However, as previously mentioned expressed, the fact that we have not had an annual shareholders' meeting, nor have we been produced any financial records, for many years begs of us to review the financial records which support our investments.

[23] Referred to as the Florida Business Corporation Act (FBCA).

> Ideally, we would like to send an accountant, bound by a non-disclosure agreement drafted by either us or corporate counsel, to visit the home office in San Jose and review all financial records available, as well as records reflecting the number of outstanding share[s] and options. A list of specific documents requested for review and copying are attached.
>
> Please advise me of the dates in which such an inspection would be convenient to you and your staff. It is our intention, and our hope, that this review will satisfy the legitimate curiosities expressed by stockholders, allowing the corporation to function without the need of numerous, periodic requests imposed upon the corporation by the likes of us.
>
> Finally, because we are mostly lawyers and we do wish to minimize our intrusion on the day-to-day business of the corporation, we have included a memo addressing the Florida (state of incorporation) legal requirements for such a review drafted by both Florida and Mississippi counsel.

¶47. If Adara Networks did not fully comply with the FBCA's requirements, then the remedy for its failing lay in Florida for a Florida court to administer and supervise under the FBCA. Fla. Stat. § 607.1604.[24] Long ago, this Court cautioned that Mississippi courts will

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[24] Florida Statute Section 607.1604 provides as follows:

> (1) If a corporation does not allow a shareholder who complies with s. 607.1602(1) to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the applicable county may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder. If the court orders inspection and copying of the records demanded under s. 607.1601(1), it shall also order the corporation to pay the shareholder's expenses, including reasonable attorney fees, incurred to obtain the order and enforce its rights under this section.
>
> (2) If a corporation does not within a reasonable time allow a shareholder who complies with s. 607.1602(2) to inspect and copy the records required by that section, the shareholder who complies with s. 607.1602(3) may apply to the circuit court in the applicable county for

not "exercise any supervisory or visitorial power over the internal management of the business of a foreign corporation." ***Clark v. Equitable Life Assurance Soc'y***, 76 Miss. 22, 23 So. 453, 454 (1898).[25]

¶48. Langston knew Florida law applied when he first invested in Adara Networks in 2002

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an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded under s. 607.1602(2), it may impose reasonable restrictions on the disclosure, use, or distribution of, and reasonable obligations to maintain the confidentiality of, such records, and it shall also order the corporation to pay the shareholder's expenses incurred, including reasonable attorney fees, incurred to obtain the order and enforce its rights under this section unless the corporation establishes that the corporation refused inspection in good faith because the corporation had:

(a) A reasonable basis for doubt about the right of the shareholder to inspect or copy the records demanded; or

(b) Required reasonable restrictions on the disclosure, use, or distribution of, and reasonable obligations to maintain the confidentiality of, such records demanded to which the demanding shareholder had been unwilling to agree.

[25] *See also* ***Rogers v. Guar. Tr. Co.***, 288 U.S. 123, 130, 53 S. Ct. 295, 297, 77 L. Ed. 652 (1933) ("It has long been settled doctrine that a court—state or federal—sitting in one State will as a general rule decline to interfere with or control by injunction or otherwise the management of the internal affairs of a corporation organized under the laws of another state but will leave controversies as to such matters to the courts of the state of the domicile." (citation omitted)).

and again in 2012.[26] But despite having concerns—as he claims—beginning in 2011 about his investment, Langston never fully exercised his rights to inspect under Florida law until 2018 when he and other investors submitted their (aforementioned) letter.[27] And Langston did not pursue the remedy provided by Florida law when—as he claims—Adara produced inadequate and incomplete information at Brunini and to Langston personally at his home in Texas.

¶49. According to Langston, he is entitled to more than what Florida statutory law requires, and is asking for relief beyond what Florida statutory law provides. He is requesting that the chancery court allow him an accounting, "to do discovery and to get financial records and to take depositions."

¶50. Inexplicably, the majority affirms this request by simply stating that, "[a]n accounting in this state would not be a burden to [Adara Networks] under the Fourteenth Amendment[,]" and that, "[w]e have said that 'cases involving an accounting should be heard in chancery court rather than circuit court." Maj. Op. ¶¶ 26-27.

¶51. First, while Langston styles his complaint as a "complaint for accounting," his actual

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[26] According to Langston, he was approached by John Doe 1 and John Doe 2 in 2012 and encouraged to make another significant capital investment in Adara Networks, which Langston did—investing $250,000 in the form of a loan with the option to convert to common stock. Langston exercised the option in 2013, converting the debt instrument into shares of common stock.

[27] According to Langston, when he had considered seeking financial information from Adara Networks in the past (before to January 2018), John Doe 1, along with John Doe 2, had dissuaded him from doing so because it could jeopardize potential buyouts that Adara Networks was negotiating.

request clearly constitutes a bill of discovery. Langston does not seek to divest from Adara Networks, or recoup any funds owed to him by the corporation. He simply seeks more information than what he contends was produced to him by Adara Networks.

¶52. As this Court has held, a bill of discovery may only be pursued when there is no other remedy. ***Kuljis v. Winn-Dixie Montgomery, LLC***, 214 So. 3d 283, 285 (Miss. 2017). And "the complaint must show that the plaintiff has been diligent and has made reasonable efforts to obtain the information." ***Moore v. Bell Chevrolet-Pontiac-Buick-GMC, LLC***, 864 So. 2d 939, 947 (Miss. 2004) (quoting V.A. Griffith *Mississippi Chancery Practice* § 429 (2000 ed.)). The same holds true for an "accounting." Both are equitable remedies that first require proper demands by the petitioner to the principal. 1A C.J.S. *Accounting* § 54. Further, under our longstanding tenet in chancery, "[h]e who seeks equity must do equity[,]" for our "laws serve the vigilant, and not those who sleep over their rights." ***Grant v. State***, 686 So. 2d 1078, 1089 (Miss. 1996) (internal quotation marks omitted) (quoting ***Comans v. Tapley***, 101 Miss. 203, 57 So. 567 (1911)).

¶53. By his own admission, Langston has acquiesced to others by failing to exercise his inspection rights under Florida law. And after finally acting on those rights, he chose not to pursue the remedy provided to him by Florida law. Langston now comes to a Mississippi court seeking discovery to—as the majority accurately puts it—"ascertain[whether] his investment has retained its value or has been squandered[.]" Maj. Op. ¶ 26.

¶54. This is not permitted, as this Court's holding in ***Burgess*** illustrates. In ***Burgess***, a

common-stock shareholder filed a derivative action against the directors and officers of a Mississippi corporation. ***Burgess***, 188 So. 3d at 539-40. The shareholder sought discovery relating to a report by a special committee appointed by the corporation's board of directors to investigate the shareholder's claims that the corporation's officers had breached their fiduciary duties by their "material misrepresentations and gross mismanagement of the Company[.]" ***Id.*** The trial court denied the request, finding "that in derivative proceedings you must have a legally sufficient Complaint in order to conduct discovery." ***Id.*** at 544.

¶55. This Court agreed, holding that while the shareholder may have been "entitled to the Special Committee's report under Section 79-4-16.02(a), the [MBCA] statute governing the rights of shareholders to inspect corporate records[,]" the shareholder made "no such demand . . . . " ***Id.*** at 559. And the shareholder was not entitled to discovery in order to assist him "in meeting the particularized pleading requirements." ***Id.*** at 559-60 (quoting ***Grimes v. DSC Commc'ns Corp.***, 724 A.2d 561 (Del. Ch. 1998)). ***Burgess*** added, "[s]imply because 'something might be caught on a fishing expedition' is not a sufficient reason to allow [the shareholder] to augment his pleadings with discovery." ***Id.*** at 560 (quoting ***Auerbach v. Bennett***, 393 N.E.2d 994, 1004 (N.Y. 1979)).

¶56. The same rule applies here, because Langston's pleadings are even more lacking than those found in ***Burgess***. Langston told the chancery court that he needs an accounting "to do discovery" because he has "reason to believe" that Adara Network's "CEO, Mr. Johnson, . . . has engaged in waste and fraud." But Langston does not formally claim or plead either

to be the case.

¶57. If the shareholder in ***Burgess*** was not permitted the discovery he sought to "augment his pleadings" against a Mississippi corporation, then Langston should not be permitted the discovery he seeks against a foreign corporation just to "ascertain" whether "his investment has retained its value or has been squandered."

¶58. The majority finds ***Burgess*** irrelevant because Langston has not filed a derivative action. Maj. Op. ¶ 20 n.12. I, however, find it controlling in this instance.

¶59. Langston does not make a bona fide claim of any of the conduct that he says he is concerned about in his complaint. All that Langston has at this point are concerns, which he admits he failed to relieve by not following through with his statutory remedy under Florida law. As Langston says in his complaint, he continually "receded from the demand[] for financial disclosures required under Florida corporate law, . . . in fear of 'shooting himself in the foot[.]'" Langston may very well have a legitimate derivative action against Adara Networks. But as ***Burgess*** instructs, Langston cannot bypass the statutory remedies available to him and go straight to an equitable accounting with discovery to investigate whether or not he has such an action.

¶60. Contrary to the majority's view, allowing Langston the remedy he seeks is inconsistent with ***Burgess***. And it is inconsistent with this Court's admonition in ***Clark***.

¶61. For this Court to now hold otherwise for this particular case against a foreign corporation does in fact offend the notions of fair play and substantial justice, and it violates

the Due Process Clause of the Fourteenth Amendment—irrespective of whether Adara Networks has sufficient minimum contacts with this state so as to demonstrate purposeful availment.

¶62. So even if I were to agree that our long-arm statute allows for jurisdiction in this case, I would still hold that personal jurisdiction is not proper in this case under the Due Process Clause of the Fourteenth Amendment.

¶63. For these reasons, I dissent from the majority's decision.