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AMAZON CAPITAL SERVICES, INC., a  
Delaware Corporation

No. 01-18-0002-0327

Claimant,

v.

**MOTION TO  
DISMISS**

CHARON INTERNATIONAL  
TRADING, INC.

Respondent.  
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The Parties

**Claimant, Amazon Capital Services, Inc. (referred to herein as “Amazon Lending”):** A Delaware corporation wholly owned by Amazon.com, Inc., that lends money **to people and companies** that sell products on Amazon’s website: Amazon.com. It is undisputed that in this case Amazon solely loaned money to the Charon corporation.

**James Simpson:** An individual residing in the United Kingdom. Mr. Simpson worked for Charon International Trading Inc., a Florida corporation which was wholly owned by parent company Charon International Trading, Ltd. (referred to herein as “the Corporation”). With full candor to the tribunal, Mr. Simpson was a shareholder of the UK entity which is now in the UK’s equivalent of bankruptcy which is called an “administration.”

**Charon International Trading, Inc. (“the Corporation”):** A Florida corporation that entered into contracts with Amazon including contracts to sell products on Amazon.com and to accept financing from Amazon. Mr. Simpson was never a party to the contract to borrow money from Amazon.

“**You**”: Per the contract that Amazon drafted and that Amazon claims governs this arbitration, the term “**YOU**” is specifically defined as follows: “If Amazon Capital Service, Inc. (“we”. “us” or “our”) makes a loan to **the business identified in this Registration form (“you”) . . . .**” (emphasis added).<sup>1</sup> According to the contract Amazon drafted, “you” is the Corporation, not Mr. Simpson personally.

The dispute at issue is entirely between two corporations / parties: Charon International Trading, Inc. and Amazon Capital Services, Inc. and solely pertains to an unpaid debt and any counterclaims to the debt.

Amazon seeks to establish that Mr. Simpson waived his right to have issues resolved in a court of law with appellate review and agreed to the jurisdiction of the AAA despite Mr. Simpson never personally entering into any arbitration agreements with Amazon. Amazon also raises a single, baseless cause of action against Mr. Simpson expressly identified as “negligent misrepresentation.”

Even under Washington’s strict law pertaining to pre-discovery dispositive motions, there is no theory of law under which Mr. Simpson can be held personally in this arbitration nor can Mr. Simpson ever possibly be held liable for the corporation’s debt under Amazon’s claim of negligent misrepresentation.

## **II. STATEMENT OF UNDISPUTED FACTS AS SET FORTH IN AMAZON’S DEMAND FOR ARBITRATION**

- a. The loan at issue was made to the Corporation. As Amazon points out in its Demand for Arbitration, the Corporation acted through James Simpson. There is no claim that Mr. Simpson acted on his personal behalf.<sup>2</sup>
- b. The Corporation made payments and then the Corporation defaulted on its loan payments. There is no claim that Mr. Simpson had any obligation to repay the loan.<sup>3</sup>

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<sup>1</sup> Amazon Lending Agreement at ¶1 “ . . . the business identified in the Registration Form, “you.”

<sup>2</sup> See Claimant’s Demand for Arbitration at ¶14.

<sup>3</sup> Id. at ¶6.



- c. The Corporation is its own, distinct legal entity.<sup>4</sup>
- d. The remedies identified by Amazon in its Demand for Arbitration under the loan agreement do not include any remedies for any recovery from Mr. Simpson personally.<sup>5</sup>
- e. In Amazon's Demand for Arbitration, Amazon specifically identifies various conditions that trigger a default of the loan at issue made to the Corporation. None of the "triggers" refer to Mr. Simpson personally.<sup>6</sup>
- f. The decline of the online retail sales at issue, are all solely attributable to the Corporation.<sup>7</sup>
- g. There was never a personal guaranty issued by Mr. Simpson to Amazon.<sup>8</sup>
- h. Mr. Simpson never personally agreed to participate in any arbitration, nor did Mr. Simpson ever waive his right to have issues adjudicated in a court of law with appellate review.
- i. In Amazon's Demand for Arbitration, the breach of contract claim under the note pertains solely to the Corporation.<sup>9</sup>

### III. ARGUMENT

#### **The AAA Lacks Personal Jurisdiction Over Simpson**

##### Amazon Failed to Plead and Cannot Establish Jurisdiction within the AAA

When personal jurisdiction is contested at the pleading stage, courts may determine whether it exists based on the pleadings and affidavits.<sup>10</sup> The plaintiff bears the burden of establishing personal jurisdiction.<sup>11</sup>

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<sup>4</sup> Id. at ¶9.

<sup>5</sup> Id. at ¶17.

<sup>6</sup> Id. at ¶16.

<sup>7</sup> Id. at ¶¶ 19-21.

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<sup>9</sup> Id. at ¶¶23-26.

<sup>10</sup> *Shrader v. Biddinger*, 633 F.3d 1235, 1239 (10th Cir. 2011).

<sup>11</sup> *Id.*





A plaintiff makes this prima facie showing “by demonstrating, via affidavit or other written materials, facts that if true would support jurisdiction over the defendant.”<sup>12</sup>

Here, Amazon has neither pleaded, nor provided requisite affidavits indicating, under any theory of law that Mr. Simpson is a party to any agreement to arbitrate anything.

Amazon has failed to establish that Mr. Simpson waived his right to solely be subject to courts with competent jurisdiction and with appellate review.

Attached, the arbitrator will find a statement from Mr. Simpson that he never agreed to arbitration because Mr. Simpson never personally entered into any contracts with Claimant.

Requiring Mr. Simpson to defend himself before a private entity absent any agreement to do so would wildly offend “traditional notions of fair play and substantial notice.” A corporation's actions cannot be simply imputed to a corporate officer or employee for purposes of determining whether there are minimum contacts necessary to establish jurisdiction.<sup>13</sup>

As such, Amazon failed to plead any jurisdictional grounds for Mr. Simpson being held in this arbitration.

With specific regard to the contract between Amazon and the Corporation, Amazon’s definition of the word “you” confirms that Mr. Simpson was never a party to the contract that contained the arbitration provision.

The Agreement between the Corporation and Amazon, which was solely written by Amazon, states:

If Amazon Capital Service, Inc. (“we”. “us” or “our”) makes a loan to the business identified in this Registration form (“you”) in the principal amount of the Loan Request Amount you selected in the Registration Form, you promise to pay us that principal amount, together with accrued interest, as described in this Loan Agreement.<sup>14</sup>

By the terms of the operative agreement in this matter “you” i.e.: is the “business identified in this Registration form.”<sup>15</sup>

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<sup>12</sup> *Melea, Ltd. v. Javer SA*, 511 F.3d 1060, 1065 (10th Cir. 2007) (citation omitted).

<sup>13</sup> *Failla v. FixtureOne Corp.*, 181 Wash. 2d 642, 651, 336 P.3d 1112, 1116 (2014), as amended (Nov. 25, 2014)

<sup>14</sup> Amazon Lending Agreement at ¶1 “... the business identified in the Registration Form, “you.”

<sup>15</sup> *Id.*

The business identified in the Registration form (attached to this motion) is Charon International Trading, Inc. Mr. Simpson is merely registered as the “contact.” **The “contact,” by the terms of Amazon’s own agreement is not the entity that promised to resolve issues via arbitration or who borrowed money from Amazon.**

Mr. Simpson cannot be held in this arbitration under the contract because he was specifically not a party to the contract.

As an aside, by specifically identifying the Corporation as the sole party to the contract and the loan, Amazon avoided all of the requirements under Washington’s Consumer Protection Act, RCW 19.86, the Federal Consumer Credit Protection Act, the Equal Credit Opportunity Act, the Fair Debt Collection Act, the Fair Credit Reporting Act, the Truth in Lending Act, laws prohibiting predatory lending and other federal and state laws that would have protected Mr. Simpson personally....if there was any loan to him rather than a loan to the Corporation.

### **Charon International Trading, Inc. is a Separate and Distinct Entity from James Simpson**

Washington State courts have held that corporations are separate and distinct entities from their principals and that an individual is separate and distinct from their corporations:

The principle upon which we proceed is that a corporation exists as an organization distinct from the personality of its shareholders. This separate organization, with its distinctive privileges and liabilities, is a legal fact, and not a fiction to be disregarded when convenient. The concentration of its ownership in the hands of one or two principal shareholders does not, ipso jure, dispel those corporate characteristics of the organization.<sup>16</sup>

Even in the hypothetical fact pattern where all the stock of a corporation is held by a small group of people or one person, a “corporation’s separate legal identity is not lost merely because all of its stock is held by members of a single family or by one person.”<sup>17</sup>

<sup>16</sup> *State v. Nw. Magnesite Co.*, 28 Wash. 2d 1.41 (1947).

<sup>17</sup> *Grayson v. Nordic Const. Co.*, 92 Wash. 2d 548, 553 (1979).

As a separate and distinct entity, Mr. Simpson is not subject to the arbitration provision simply because the Corporation agreed to arbitrate.

**Mr. Simpson's Right to Due process is protected by the Fourteenth Amendment<sup>18</sup>**

When interpreting a contract, Washington courts give the utmost importance to the parties' intent. *Durand*, 151 Wn. App. at 829. Courts look to the objective manifestations in the contract and not to the "unexpressed subjective intent of the parties" in determining intent. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Here, there was never any request or notice that the person signing for the corporation was also agreeing to the arbitration clause...or for responsibility for the debt.

Due process includes the right not to be bound by decisions rendered against a party of which there is no personal jurisdiction. Absent an agreement by Mr. Simpson in his personal capacity, the AAA has no authority over Mr. Simpson.

With specific regard to Amazon Lending's anticipated argument that Mr. Simpson's acts for the Corporation may equate to him personally entering a contract with Amazon Lending, this is patently false.

In order for a principal's signature to constitute a personal guarantee there must be a manifest intent as shown by a separate clause and second signature in the principal's individual capacity.<sup>19</sup> Corporation's actions "cannot be simply imputed to a corporate officer or employee for purposes of determining whether there are minimum contacts necessary to establish jurisdiction." In the present case, Mr. Simpson signed solely on behalf of the Corporation. Furthermore, even if the law protecting Mr Simpson did not exist, the contract upon which Amazon has based its claims specifically states that the "you" involved in this matter, including the arbitration clause, is solely the Corporation.

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<sup>18</sup> U.S. Const. amend XIV § I.

<sup>19</sup> *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wash. 2d 692, 699 (1998).



### **All Ambiguous Terms Should Be Construed Against Claimant:**

There is a longstanding concept in contract law, *contra proferentem*, i.e. interpretation against the draftsman. “In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds.”<sup>20</sup> The decisions rendered and Restatement position, taken together, lead only to the conclusion that Mr. Simpson signed solely in behalf of the Corporation and never personally agreed to arbitrate anything nor accepted any responsibility for any debt.

Based on the foregoing, Mr. Simpson cannot be held subject to the AAA nor personally liable for the Corporation’s debt. Mr. Simpson never agreed to relinquish his right to a trial by jury and be bound by a private entity like the AAA.

As such, all claims against Mr. Simpson personally should be dismissed as the AAA lacks jurisdiction over Mr. Simpson.

## **II. Amazon’s Cause of Action against Mr. Simpson for Negligent Misrepresentation Should be Dismissed**

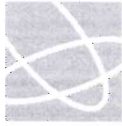
Amazon fails to state a claim for Negligent Misrepresentation upon which relief can be granted because it is IMPOSSIBLE to prove the facts alleged in Amazon’s Demand for Arbitration.

There is no dispute that the law governing pre-discovery dispositive motions in Washington maintains high burdens for movants to satisfy when seeking dispositive relief pre-discovery. Dismissal under CR 12(b)(6) (Washington’s equivalent of FRCP 12b(6)) is a drastic remedy granted only sparingly and with care, for the effect of granting the motion is to deny the plaintiff his or her day in court.<sup>21</sup> Washington courts have said “it must appear beyond doubt that

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<sup>20</sup> Restatement (Second) of Contracts § 206 (1981).

<sup>21</sup> *Collins v. Lomas & Nettleton Co.*, 29 Wn. App. 415, 628 P.2d 855 (1981).



the plaintiff can prove no set of facts consistent with the complaint which would entitle them to relief.”<sup>22</sup>

Summary judgment is appropriate if, when viewing the facts in the light most favorable to the nonmoving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Ranger Ins. Co.*, 164 Wn.2d at 552.

To withstand dismissal, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570. “Naked assertion[s],” “labels and conclusions,” or “formulaic recitation[s] of the elements of a cause of action will not do.” *Id.* at 555, 557. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While a plaintiff need not establish a probability of success on the merits, he or she must demonstrate “more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

The court should generally draw all reasonable inferences in the plaintiff’s favor, see *Sheppard v. David Evans and Assocs.*, 694 F.3d 1045, 1051 (9th Cir. 2012), but it need not accept “naked assertions devoid of further factual enhancement.” *Iqbal*, 556 U.S. at 678 (internal quotations and citation omitted).

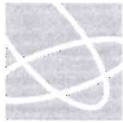
Amazon cannot possibly prove its sole cause of action against Mr. Simpson and, as such, if the Arbitrator finds jurisdiction, the claim against Mr. Simpson should still be dismissed.

Amazon’s one and only factual claim against Mr. Simpson alleges that: Mr. Simpson misrepresented “...that Simpson intended to use the loan proceeds to directly support **Charon’s (the Corporation’s) selling business on Amazon.**” Amazon’s Demand for Arbitration at paragraph 27.

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<sup>22</sup> See, e.g., *Id.* at 419; see also Karl B. Tegland & Douglas J. Ende, *Washington Handbook on Civil Procedure*, Vol. 15A, P. 292, (2011-2012) (allows a party to dismiss a claim only “when it is clear that the plaintiff will never prevail regardless of the facts proven at trial.”).





The fact that Amazon only claimed one fact to support its cause of action against Mr. Simpson personally is vital because:

- if Amazon cannot possibly prove that the one factual allegation it asserts to be true, then its claim should be dismissed;
- even if Amazon's were able to prove its one factual claim to be true, if that sole factual claim does not support its cause of action, then its claim against Mr. Simpson should be dismissed.

Amazon Cannot Demonstrate that it Can Possibly Prove Its One Factual Allegation:

Respondent respectfully submits that it is impossible for Amazon to prove Mr. Simpson's intent on the day he acted for the Corporation. If Amazon has some means of proving its ability to read Mr. Simpson's mind at a particular point in time, Amazon must provide it in opposition to this motion. If Amazon lacks that ability, the claim based upon that fact must be dismissed.

As the Arbitrator can read in the attached supporting statement, Mr. Simpson, in behalf of the Corporation, intended to use the funds as required at the time on question.<sup>23</sup> Amazon cannot possibly refute what was in Mr. Simpson's mind. If it can, it must lay bare its proof in opposition to this motion.

Second, even if Amazon is able to provide some method for proving Mr. Simpson's alleged untoward intent, that is clearly not negligent misrepresentation. Intentional acts are different from those which are negligent.

Similar to Amazon's creative attempt to avoid consumer lending laws, Amazon seems to be attempting to "back door" a claim for fraudulent conduct against Mr. Simpson. Unlike causes of action sounding in negligence, fraud includes intentional acts. However, Amazon cannot spell out a claim in fraud as it would require specificity in its pleadings. Federal Rule of Civil Procedure 9(b) governs the pleading of allegations involving fraud.

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<sup>23</sup> See Claimant's demand at ¶¶ 27, 30, 31.

Rule (9)(b) requires that a party “state with particularity the circumstances constituting fraud or mistake” in his or her complaint. “[A]llegations of fraud must be accompanied by the who, what, when, where, and how of the misconduct charged.” *Vess v. CibaGeigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quotation and citation omitted).

Similar to Amazon’s attempt to thwart consumer lending laws, it seems that Amazon is attempting to thwart laws against baseless claims of fraud.

Since Amazon cannot possibly establish Mr. Simpson’s state of mind at the particular point in time and, even if Amazon expanded into mind-reading, Amazon’s claim of intentional conduct does not support its claim sounding in negligence. As such, we respectfully ask that if the Arbitrator finds jurisdiction to exist, the claim against Mr. Simpson should still be dismissed since it cannot possibly, under any circumstances, be established.

### **III. All Claims against the Corporation, Except A Simple Claim of Non-Payment, Should Also be Dismissed.**

As set forth fully above, Amazon’s claims of nefarious conduct by the Corporation are based upon one bald allegation of a single state of mind at a particular point in time. To-wit, Amazon claims that when the loan was obtained, there was an intent to use the money for something other than Amazon-related business.

As set forth above, the claim cannot possibly be established: Amazon cannot possibly prove anyone’s state of mind.

Similarly, Amazon’s claim of intentional misconduct does not support any claims of negligence.

Amazon has chosen not to plead any claims of fraud for the above stated reasons. As such, the only cognizable claim arises solely from the allegation of non-payment of an alleged debt.

#### IV. CONCLUSION

In sum, based upon the foregoing, the only claim that should survive this motion should be Amazon's claim for non-payment of a debt solely by the Corporation that sounds solely in contract law and that is subject to the Corporations defenses and/or counter claims, to-wit:

- I. How much remains of the loan Amazon made to the Corporation?
- II. What defenses and/or counterclaims does the Corporation have that may negate the debt?

This motion should be granted and the sole issue that should remain before the arbitrator should be: what debt, if any, does the Corporation owe.

Yours, etc.,  
C.J. Rosenbaum  
(electronically signed)  
Cory J. Rosenbaum, Esq.



CHARON INTERNATIONAL  
TRADING, INC

Claimant,

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**JAMES SIMPSON**  
**AFFIRMATION**

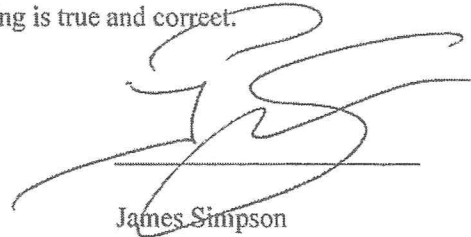
**AFFIRMATION OF JAMES SIMPSON:**

I, James Simpson, declare as follows:

1. This affirmation is based on my personal knowledge.
2. My only interaction with Amazon was within my position with Charon International Trading, Inc. I never executed anything personally.
3. Personally, I never entered into any agreements with Amazon.
4. While the corporation agreed to arbitrate disputes, I never agreed to arbitrate any claims asserted against me personally.
5. When I acted in behalf of Charon International Trading, Inc., with regard to the loan application, the sole intended use of the Amazon loan was to directly support Charon International Trading's Amazon business.
6. All the information provided in the Charon International Trading, Inc. loan application was truthful and accurate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of May, 2019.



James Simpson