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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: **GLOBIE INTERNATIONAL, LLC;** **JOSEPH PAUL OTTIS;** **Respondents.**	**OPPOSITION TO MOTION TO DISMISS** **Docket No. SD-07-0038** **Docket No. SD-07-0039**

STATEMENT OF RELEVANT FACTS

On May 31, 2007, the Division of Securities petitioned for an order to show cause against Joseph Paul Ottis (Ottis) and Globie International, LLC (Globie International). The Division alleged that Ottis had offered an investment opportunity in Globie International to investor D. L. in November 2004, and that between January and April 2005, the investor had made five investments totaling $113,721.38. *OSC ¶¶ 4-10.* Ottis accepted payments, deposited the money in Globie International's bank account, and gave the investor four promissory notes – one note for each

investment except one. *Id. at ¶¶ 14-18, 22, 40-42.* But prior to making even the first payment, Globie International expired as a Utah limited liability company. *Id. at ¶ 2.*

On July 6, 2007, Respondents moved for dismissal. Because Globie International's status as a Utah entity had expired, Respondents argue it was legally impossible for the company to have offered a security. Respondents also contend that matters outside the pleadings disprove that Ottis could have offered an investment in Globie since the two promissory notes accompanying the motion are between Globie Investment Enterprises, Inc. (Globie Investment) and the investor, rather than with Globie International. Respondents claim Globie Investment is a valid Nebraska corporation, but present no proof other than the promissory note which mentions a name of purported entity.

Finally, Respondents contend the Division lacks subject matter jurisdiction because the entity and the investor contracted away the rights of the State to enforce this matter as a security in Utah when they agreed the notes, which were executed in Utah and deposited into a bank in Utah, would be construed and governed according to the laws of the State of Nebraska. Respondents cite no authority that a forum selection clause governing their contract between them is binding on the State or deprives the State of jurisdiction over a violation of a state statute. Moreover, the facts do not support Respondents' theory for dismissal.

Globie Investment Enterprises – the name that appears in the promissory note – is not registered as a business entity in either Utah or in Nebraska. *See Exhibit A (Nebraska entity registered as Globie's Investment Enterprises, Inc., not Globie Investment Enterprises, Inc.)*

(emphasis added). But even if the correct name of the corporation had appeared on the last two notes, the existence of those notes does not contradict or disprove the allegations in the Order to Show cause. They do not disprove whether the other two investments were in Globie International. Indeed, Globie International was the maker of two of the four written notes, and was the payee on several of the investment checks. *Exhibit B*. In the sales literature, Ottis simply refers to his entity as "Globie," not differentiating between Globie International or Globie Investment. *Exhibit C*. Even the two notes attached to Respondents' motion refer to an investment in "Globie" and that the "primary purpose of this loan is to further the business of Globie" while Globie Investment is simply referred to as the "maker" of the note.

I The Division Has Subject Matter Jurisdiction

Subject matter jurisdiction goes to the power of a court to hear a case or controversy. See In re Compl. of Pelland, 658 N.W.2d 849, 854 (Mich App. 2003)(subject matter jurisdiction concerns a body's abstract power to hear a case of the kind or character of the one pending, and is not dependent on the particular facts of the case). Subject matter jurisdiction is determined, under the well-pleaded complaint rule, by examining the allegations as they appear on the face of the complaint filed in state court, Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U. S. 1, 9-10, 103 S. Ct. 2841, 77 L.Ed.2d 420 (1983); "unaided by anything alleged in anticipation or avoidance of defense." Taylor v. Anderson, 234 U.S. 74, 75-76, 34 S. Ct. 724, 58 L.Ed. 1218 (1914); Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 398-99, 107 S.Ct. 2425, 2430, 2433 96 L.Ed.2d 318 (1987)(explaining "well-pleaded" complaint rule). Parties cannot confer (or deprive) jurisdiction

by consent. Allen v. Gardner, 143 P. 228, 229 (Utah 1914). Forum selection clauses do not deprive state courts of subject matter jurisdiction because they do not go to the power of the court. Hentsch Henchoz & Cie v. Gubbay, 2004 UT 64, ¶ 20, 97 P.3d 1283, 1288.

In this case, the basis for jurisdiction can easily be determined on the face on the OSC alone. The Division alleges a violation of the Utah Uniform Securities Act. *Utah Code Ann. § 61-1-20.* Because the Division has subject matter jurisdiction to determine violations of securities laws, and the Order to Show Cause alleges a violation of securities laws, Respondents' motion to dismiss on jurisdictional grounds should be denied.

II The Motion To Dismiss Should Be Denied Because The Division Has Alleged Sufficient Specific Facts

Under Rule 12(b)(6), the allegations in a petition are accepted as true and all reasonable inferences from them are considered in a light most favorable to the plaintiff, see Russell/ Packard Development, Inc. v. Carson, 2003 UT App. 316, ¶ 10, 78 P.3d.616, 619; and dismissal is proper "only where it clearly appears that the plaintiff or plaintiffs would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claim." Franco v. Church of Jesus Christ of Latter-Day Saints, 2001 UT 25 ¶ 10, 21 P.3d 198 (citations omitted).

In this case, the Division alleged that Ottis, and by inference as well, Globie International, offered an investment to an investor in Utah. Those allegations and all reasonable inferences must accepted as true. Except for the promissory notes attached to their motion, Respondents deny that Ottis offered an investment in Utah or issued any other promissory notes. *Answer at ¶¶ 1-53.*

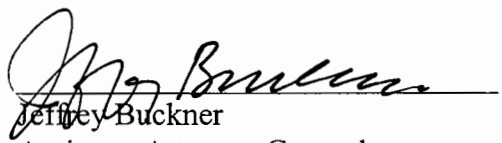
Respondents' denials create triable issues of fact rather than evidence of a failure to state claim and whether the Division will be able to prove those facts at trial remains to be seen, but that issue is separate and apart from whether the Division has alleged sufficient facts to constitute a cause of action.

CONCLUSION

For these reasons, the motion to dismiss should be denied.

Respectfully submitted this July 25, 2007.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL



Jeffrey Buckner
Assistant Attorney General

MAILING CERTIFICATE

I, Ina Jensen, hereby certify that I have this day served a copy of the foregoing **Opposition to Motion to Dismiss** on Globie International, LLC, Joseph Paul Ottis by mailing a copy, with postage prepaid, to Attorney Christian Clinger, 4925 Union Park Center, Suite 600, Salt Lake City, UT 84047.

Dated at Salt Lake City, Utah this 25th day of July 2007

Ina Jensen
SIGNATURE