Original Wordprocessor Version

(NOTE: The status of this decision is **Unpublished**.)

NOT FOR PUBLICATION WITHOUT THE

APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-0

DAVID BRAY,

Plaintiff-Appellant,

v.

MIDDLEBERG COMMUNICATIONS,

INC.,

Defendant-Respondent.

_____

January 31, 2014

Argued October 28, 2013 –

Decided

Before Judges Yannotti and St. John.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L-2707-12.

Peter R. Bray argued the cause for appellant (Bray & Bray, L.L.C., attorneys; Mr. Bray, on the briefs).

George M. Bloom argued the cause for respondent (Bloom & Dillon, P.C., attorneys; Paul J. Dillon, on the brief).

PER CURIAM

Plaintiff appeals from an order entered by the Law Division on January 25, 2013, dismissing his complaint for lack of personal jurisdiction. We affirm.

Plaintiff filed a complaint against defendant Middleberg Communications, Inc. (MCI or the company), a public relations and consulting firm with a single office in New York City. Plaintiff alleged that he was employed by MCI from June 13, 2006, until October 23, 2012. Plaintiff and MCI entered into an employment contract, which was memorialized in a four-page form agreement and one-page appendix that were appended to the complaint.

The contract provided that MCI would pay plaintiff an annual base salary of $120,000. Plaintiff would receive commissions for new business he secured and 3% of the company's "year one profits," with the "goal" of increasing that percentage by 3% each year. The contract additionally provided that, in the event plaintiff resigned or was terminated for cause, he could not solicit or render services to anyone who was a client of the company on the termination date or one year immediately preceding the termination date, regardless of whether that client's relationship with the company "was originally established in whole or in part through [plaintiff's] efforts[.]" Plaintiff claimed that, in the years he was employed by MCI, his annual salary increased to $190,000.

Plaintiff alleged that on October 23, 2012, Donald Middleberg (Middleberg), principal and Chief Executive Officer of the company, berated him and told him to leave the premises, "thereby terminating [his employment] without cause." Plaintiff claimed that he left the company, but later Middleberg, directly and through an intermediary, informed him that, although the belittling was justified, he could remain as an employee. Plaintiff said he rejected this proposal. Plaintiff claimed that he was terminated without cause, while MCI said he resigned.

Plaintiff further alleged that, after his termination, he contacted MCI's clients with whom he had developed a relationship. He stated that he intended to establish his own

public relations firm in New Jersey to earn a living for himself and his family. According to the complaint, Middleberg contacted him and said he was violating the agreement by contacting MCI's clients and if he continued doing do, he would "face serious consequences."

Plaintiff additionally alleged that Middleberg knew that his contacts with persons who were MCI's clients did not violate the agreement, and Middleberg's claim was intended to intimidate and harass him. Plaintiff said that Middleberg's apparent objective was to improperly impair and hinder his efforts to start his own company.

Plaintiff further alleged that MCI materially breached the agreement and thereby forfeited any right it may have had to enforce it. Plaintiff claimed that MCI had not paid him all of the monies he was entitled to receive for salary, a share of profits, commissions and unused vacation pay. In addition, plaintiff claimed that MCI was tortiously interfering with his prospective economic advantage, and engaging in conduct that constitutes unfair competition.

Plaintiff sought a declaratory judgment determining that MCI terminated him without cause. He also sought an accounting, compensatory and punitive damages, interest, attorney's fees, costs of suit and such other relief as the court deemed just and equitable.

On December 10, 2012, MCI filed a motion to dismiss the complaint for lack of personal jurisdiction. In support of that motion, MCI submitted a certification from Middleberg. He said that MCI was incorporated in New York and had a single office in midtown Manhattan. In June 2006, MCI hired plaintiff to be a managing director and the parties entered into the written agreement appended to plaintiff's complaint. Middleberg noted that the agreement stated that it shall be governed by, enforced under and construed in accordance with New York law.

Middleberg said that in October 2012, plaintiff resigned "apparently to start his own competing public relations business." Middleberg stated that, at all relevant times, he and his wife were the sole owners of MCI and they are residents of New York. Middleberg said that, while employed by the company, plaintiff performed his work out of the company's New York office.

Middleberg additionally stated that MCI does not have any current clients located in New Jersey, currently has no business interests of any kind in New Jersey, does not own any personal or real property in New Jersey, does not have any bank accounts in this State, never filed any New Jersey tax returns, and never entered into any contracts to deliver goods or services in New Jersey.

Middleberg also stated that, to the extent that MCI previously had clients who were located in New Jersey, the

services provided to those clients were performed in New York. He said that MCI "has not otherwise availed itself" of New Jersey "for any purpose."

Plaintiff opposed MCI's motion and submitted a certification. He said that, while MCI's offices were in New York City, the company "frequently conducted business in New Jersey." He claimed that during the course of his employment, MCI authorized him to work from his home in New Jersey, which he did frequently. Plaintiff said that, while working for MCI, he and other MCI employees met with clients and prospective clients in New Jersey, and provided services to clients based in this State.

Plaintiff additionally stated that MCI provided media and public relations services for a bicycle manufacturer located in Parsippany. Plaintiff stated that he frequently visited the manufacturer's offices to provide services and solicit new engagements. Two other MCI employees attended meetings in the manufacturer's offices, and plaintiff represented the manufacturer at an event in Riverdale, New Jersey.

Plaintiff also said that a credit union headquartered in East Windsor, New Jersey, was an MCI client. Plaintiff worked on this account and at least twice, visited the credit union's headquarters with another MCI employee. Plaintiff asserted that he solicited business from other New Jersey businesses, represented a client at the opening of its Newark office, and provided services to other New Jersey companies.

Plaintiff disputed Middleberg's assertion that MCI did not currently have any New Jersey-based clients. He said that some of the profits he was seeking were directly attributable to services that he and other MCI employees provided while in New Jersey, and payments made by New Jersey-based clients. He stated that he had charged MCI with tortious interference with prospective economic advantage and unfair competition, and these claims were "connected to" New Jersey because he "believed" that Middleberg had contacted MCI's clients, including New Jersey companies.

MCI submitted a reply certification from Middleberg. He said that during the entire six years that plaintiff worked for MCI, the company withheld New York taxes, and never withheld New Jersey taxes. He denied that MCI was currently taking any action to restrain plaintiff's ability to operate in New Jersey. He asserted that the contacts that MCI had with New Jersey over the previously six years "are a handful of meetings, a few of which resulted in no business, and a few small clients based in New Jersey, for which all of the work was performed in New York.

Middleberg additionally stated that MCI "sporadically provided services" to the New Jersey-based bicycle manufacturer. MCI had three project-based assignments for this client, which were handled by MCI's New York office. MCI ceased provided services for this company after plaintiff left the company. He also said the credit union was an MCI client for about five months, as

the result of an acquisition. The services were provided from MCI's New York office. According to Middleberg, the credit union is not currently an MCI client.

In addition, Middleberg stated that MCI had "pitch meetings" with other potential clients in New Jersey, but MCI either did not provide services to those businesses or provided the services from the New York office. He stated that MCI had provided services to a New York company for about two years, and its only contact with New Jersey was an event in Newark when the company opened an office there. Middleberg said MCI had not provided services to the company in about two-and-one-half years.

The trial court heard argument on the motion on January 23, 2013, and filed an order dated January 25, 2013, dismissing the complaint. In an accompanying statement of reasons, the court determined that, while MCI had intermittent and minimal contacts with New Jersey, they were insufficient to allow New Jersey to exercise general jurisdiction over the company. The court also determined that plaintiff had not established a basis for the exercise of specific jurisdiction in this dispute, because the controversy did not arise out of MCI's minimal contacts with New Jersey. This appeal followed.

Plaintiff argues that the trial court erred by dismissing his complaint. Plaintiff contends that general and specific jurisdiction exists, subjecting MCI to the jurisdiction of the New Jersey courts. We disagree.

New Jersey courts may exercise personal jurisdiction over non-resident defendants to the extent "consistent with due process of law." R. 4:4-4(b)(1). Due process requires only that a defendant have certain minimum contacts with the forum so that maintenance of the suit does not offend "'traditional notions of fair play and substantial justice.'" Lebel v. Everglades Marina, Inc., 115 N.J. 317, 322 (1989) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 102 (1945)).

New Jersey exercises jurisdiction over non-resident defendants "to the outermost limit of its ability to do so." Reliance Nat'l Ins. Co. in Liquidation v. Dana Transp., Inc., 376 N.J. Super. 537, 543 (App. Div. 2005) (citing Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971)). "Critical to the due-process analysis is the question whether the defendant should reasonably anticipate being haled into court in the forum state." Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 120 (1994)(citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183, 85 L. Ed.2d 528, 542 (1985)), cert. denied sub. nom., WMX Techs., Inc. v. Canadian Gen. Ins. Co., 513 U.S. 1183, 115 S. Ct. 1175, 130 L. Ed.2d 1128 (1995).

In determining whether a defendant's contacts with this State are sufficient to support the exercise of in personam jurisdiction, we consider whether "general or specific jurisdiction is asserted." Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519, 526-27 (App. Div. 1996). General jurisdiction allows the forum to exercise

jurisdiction over any claim against the defendant, if the defendant's activities in the forum are "'continuous and systematic.'" Lebel, supra, 115 N.J. at 323 (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416, 104 S. Ct. 1868, 1873, 80 L. Ed.2d 404, 412 (1984)). Specific jurisdiction may be asserted when the plaintiff's cause of action "arises directly out of a defendant's contacts with the forum state." Waste Mgmt., supra, 138 N.J. at 119 (citing Lebel, supra, 115 N.J. at 322).

Here, the trial court correctly determined that MCI activities in New Jersey are insufficient to support the exercise of general jurisdiction. As we noted previously, MCI is a New York corporation with a single office in New York City. MCI's owners are New York residents, and MCI owns no real or personal property in New Jersey.

In addition, MCI has no bank accounts in this State and has never filed a New Jersey tax return. At the time this matter was before the trial court, MCI did not have any New Jersey-based clients and had no business interests of any kind in New Jersey. Furthermore, MCI generally performs the services for its clients from its New York office.

Plaintiff insists, however, that in the six years he was employed by the company, MCI had sufficient contacts to support the exercise of general jurisdiction. MCI disputes many of the facts upon which plaintiff relies in support of his argument. However, even if we accept plaintiff's alleged jurisdictional facts as true, they

merely show that over a six-year period, plaintiff worked from time to time at his New Jersey residence, plaintiff or other MCI employees visited New Jersey-based companies to solicit business a few times, plaintiff or other MCI employees met a number of times in New Jersey with New Jersey-based clients, and MCI employees planned and attended a New Jersey-based event when a New York client opened an office in Newark.

Thus, MCI's contacts with New Jersey were not continuous, regular or substantial. The trial court correctly determined that MCI's contacts with this State were insufficient to allow New Jersey to exercise general jurisdiction over MCI.

Plaintiff also argues that MCI's contacts with New Jersey are sufficient to support the exercise of specific jurisdiction over the claims asserted in his complaint. Again, we disagree. To establish specific jurisdiction, plaintiff must show that his cause of action "arises directly out of a defendant's contacts with" New Jersey. Wilson v. Paradise Vill. Beach Resort & Spa, 395 N.J. Super. 520, 527 (App. Div. 2007). To determine whether New Jersey may exercise specific jurisdiction, the court focuses on "'the relationship among the defendant, the forum, and the litigation.'" Jacobs v. Walt Disney World, Co., 309 N.J. Super. 443, 453 (App. Div. 1998) (quoting Shaffer v. Heitner, 433 U.S. 186, 204, 97 S. Ct. 2569, 2579, 53 L. Ed.2d 683, 698 (1977)).

Here, plaintiff has asserted a breach-of-contract claim against MCI. Plaintiff alleges that MCI terminated his employment

without cause and he is not subject to the post-employment restrictions in the parties' agreement. He also claims that he has not been paid monies allegedly due to him under the contract.

However, plaintiff has not established a sufficient relationship between the employment agreement and New Jersey to support the exercise of specific jurisdiction over MCI in the breach-of-contract dispute. As we have explained, the agreement was with a New York entity, which has one office in New York. The agreement also states that it shall be governed by, interpreted and enforced in accordance with New York law. Moreover, it appears that plaintiff worked primarily out of MCI's New York offices. In addition, the employment agreement did not make any reference to the performance of services in New Jersey.

Plaintiff claims that he was permitted to work from his home in New Jersey from time to time, but this appears to have been an accommodation, rather than a purposeful effort on MCI's part to conduct business in New Jersey. Plaintiff also claims that he solicited New Jersey-based companies for MCI, and met with and at times performed services in New Jersey for New Jersey-based clients. However, these contacts were limited.

Our decision in J.I. Kislak, Inc. v. Trumbull Shopping Park, Inc., 150 N.J. Super. 96 (App. Div. 1977), supports the trial court's determination. In that case, the plaintiff, a New Jersey corporation, was retained by the defendant, a Delaware corporation with a principal place of business in Connecticut, to

act as a rental agent for the defendant's shopping center in Connecticut. Id. at 99. The contract provided that any dispute arising thereunder would be decided in accordance with the Connecticut law. Ibid.

The defendant in Kislak never entered New Jersey in connection with the execution or performance of the contract Ibid. The defendant also did not conduct any type of business in New Jersey, and did not possess or own any real estate, office, or place of business in the State. Ibid. Further, the defendant's personnel or representatives had no physical presence in New Jersey. Ibid.

In Kislak, we held that the plaintiff had not established a basis for the exercise of specific jurisdiction. Id. at 101. We stated that, while the defendant executed a contract with a New Jersey-based entity, and probably anticipated that the plaintiff would carry out some contract-related activities in New Jersey, this was insufficient to show that the defendant had "purposefully availed itself of the privilege of conducting activities within New Jersey." Ibid. The same conclusion applies here.

In his complaint, plaintiff also asserts claims against MCI for tortious interference with prospective economic advantage and unfair competition. Plaintiff alleges that MCI contacted some of its clients and told them he was violating the employment agreement by soliciting their business. Plaintiff claims that MCI is thwarting his ability to establish a competing business in this State.

Our Supreme Court has held that "'[a]n intentional act calculated to create an actionable event in a forum state will give that state jurisdiction over the actor.'" Blakey v. Cont'l Airlines, Inc., 164 N.J. 38, 67 (2000) (quoting Waste Mgmt., supra, 138 N.J. at 126). However, plaintiff has not specifically alleged that MCI contacted any of its clients in New Jersey. Thus, based on the allegations in plaintiff's complaint, there are no specific alleged actionable events in New Jersey that would support the exercise of specific jurisdiction over these claims.

Affirmed.