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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0924-16T4

MICHELE COLLINS and KEVIN  
COLLINS,

Plaintiffs-Appellants,

v.

SANDALS RESORTS INTERNATIONAL,  
LTD; SANDALS RESORTS; and  
BEACHES TURKS & CAICOS RESORT  
& SPA,

Defendants-Respondents.

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Submitted January 10, 2018 - Decided February 12, 2018

Before Judges Nugent and Geiger.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Docket No. L-0722-  
16.

Law Office of Barbosa Donovan, LLP, attorneys  
for appellants (Maurice J. Donovan and Marilyn  
K. Barbosa, of counsel and on the brief).

Fitzpatrick & Hunt, Pagano, Aubert, LLP,  
attorneys for respondent Sandals Resorts  
International, Ltd. (Ralph V. Pagano and Tara  
E. Nicola, on the brief).

PER CURIAM

This personal injury action arose during plaintiffs' Caribbean vacation when they allegedly became ill due to food poisoning. We must decide whether the Due Process Clause of the Fourteenth Amendment precludes the New Jersey Superior Court from exercising jurisdiction over defendant Sandals Resorts International, Ltd.<sup>1</sup> The trial court dismissed plaintiffs' Superior Court complaint for lack of personal jurisdiction. Plaintiffs appealed. We conclude the trial court correctly determined it did not have specific jurisdiction over defendants. We also conclude the trial court incorrectly determined plaintiffs had conceded the absence of general jurisdiction, but determine plaintiffs' proofs nonetheless fell short of establishing a prima facie case of general jurisdiction. We thus affirm the order that dismissed the complaint for lack of jurisdiction.

Plaintiffs filed a complaint in January 2016, and amended the complaint three months later. In the complaints, they alleged on February 3, 2014, while vacationing at the Beaches resort in Turks and Caicos, they dined at the "Soy at Beaches" restaurant where they consumed contaminated food and became ill. The amended

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<sup>1</sup> Sandals Resorts International, Ltd., averred in its motion pleadings that Sandals Resorts and Beaches Turks & Caicos Resort & Spa are not legal entities. The parties appear to have accepted that representation. For that reason, in this opinion we will refer to Sandals Resorts International, Ltd. as "defendant."

complaint included causes of action for negligence, strict liability, and breach of warranty. Plaintiffs sought compensatory and punitive damages.

Defendant responded by filing a motion to dismiss the amended complaint for lack of personal jurisdiction. The trial court granted the motion.

In support of the motion to dismiss, defendant submitted a certification from its Director of Corporate Services. According to the certification, defendant is a Jamaican corporation with its headquarters and principal place of business in Montego Bay, Jamaica. Defendant does not own property or have offices in New Jersey, does not operate, control, or direct any entity in New Jersey, and does not conduct business in New Jersey. The certification also states defendant does not hold a license to do business in New Jersey, has no affiliation with any entity that can legally bind it in New Jersey, has no agents or employees in New Jersey, and has no New Jersey mailing address or telephone number. Defendant does not pay New Jersey taxes, does not maintain a New Jersey bank account, and has never solicited business in New Jersey or directed any advertising specifically at New Jersey. Lastly, the certification asserts that all food served at the Soy restaurant in Turks and Caicos is prepared and served in Turks and Caicos.

The Director of Corporate Services explained in the certification defendant's parent company, a non-party, contracts with Unique Travel Corp., another non-party, as its sole worldwide marketing and reservations representative. Unique Travel Corp. subcontracts its marketing and promotions services to non-party Unique Vacations, Inc., a Delaware company. According to the certification, Unique Vacations, Inc., does not target any specific state with marketing or advertisements.

In response to defendant's motion to dismiss, plaintiffs' counsel submitted a certification with exhibits, and plaintiff Michele Collins submitted an affidavit. According to Michele Collins's affidavit, she first visited a Sandals resort in St. Lucia at an unspecified time after a travel agent from Liberty Travel in Parsippany, New Jersey, recommended the resort. After the initial visit, she saw advertisements for Sandals resorts in newspapers and magazines, on television, on the internet, and on billboards in New Jersey. She also received mailed advertisements addressed to her home soliciting her to take another vacation to a Sandals resort.

In response to those solicitations, plaintiffs booked a family vacation for February 2013 at the Beaches resort in Turks and Caicos through Sandals' website. During the February 2013 vacation, while still on the Beaches resort, Beaches personnel

approached plaintiffs and offered a substantial discount if they would book a vacation at the Turks and Caicos Beaches resort for the following year. Before leaving the Beaches resort in 2013, plaintiffs accepted the discount and booked a 2014 vacation to Turks and Caicos.

Plaintiffs vacationed at the Beaches resort in Turks and Caicos with their children from February 2, 2014, to February 9, 2014. According to the amended complaint, on February 3, 2014, plaintiffs visited the "Soy at Beaches" restaurant on the resort to eat dinner. Plaintiffs claim they ordered and consumed a meal consisting of seafood, including sushi, which caused them to become seriously ill because the food was allegedly spoiled, unwholesome, contaminated, and not fit for human consumption. Plaintiffs allege they became seriously ill within hours.

The trial court concluded it did not have specific jurisdiction. The court determined the contacts between defendant and New Jersey, as alleged by plaintiffs, were insufficient to establish personal jurisdiction over defendant.

The trial court did not address the issue of general jurisdiction. Rather, in its opinion, it stated: "Plaintiff concedes defendant's contacts with New Jersey do not reach the threshold for general jurisdiction." The court did not state when or where plaintiffs made such concession.

On appeal, plaintiffs first challenge the trial court's decision concerning specific jurisdiction. They argue they produced sufficient evidence to establish specific jurisdiction over defendant and the trial court erred by finding to the contrary. They assert the record did not support the trial court's findings. Finally, they argue the trial court incorrectly applied the law.

Plaintiffs also challenge the trial court's determination concerning general jurisdiction. They assert the trial court erroneously concluded they conceded general jurisdiction.<sup>2</sup> They argue the defendants have "continuous and substantial" contacts with New Jersey for the purposes of establishing general jurisdiction.

A challenge to a trial court's personal jurisdiction over a party presents a mixed question of law and fact. For that reason, a trial court must make findings of "jurisdictional facts . . . in order for the jurisdictional decision to be made and hence defendant's right to proceed determined." Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519, 531 (App. Div. 1996). Generally,

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<sup>2</sup> Plaintiffs also assert the trial court failed to consider other issues, such as venue and the enforceability of a forum selection clause. In view of our determination that the trial court did not have personal jurisdiction over defendant, we need not address these issues.

disputed jurisdictional facts must be resolved at an evidentiary hearing. Ibid.

"We review the [trial] court's factual findings with respect to jurisdiction to determine whether they were supported by substantial, credible evidence . . . ." Mastondrea v. Occidental Hotels Mgmt. S.A., 391 N.J. Super. 261, 268 (App. Div. 2007). Our review of a trial court's legal conclusions concerning personal jurisdiction is plenary. That is so because "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995) (citations omitted); see also Rippon v. Smigel, 449 N.J. Super. 344, 358 (App. Div. 2017).

We begin our analysis of the case before us by noting "[a] state court's assertion of jurisdiction exposes defendants to the State's coercive power, and is therefore subject to review for compatibility with the Fourteenth Amendment's Due Process Clause." Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 918-19 (2011) (citing Int'l Shoe Co. v. Wash., 326 U.S. 310, 316 (1945)). Thus "the general rule [is] that territorial presence in the forum is the basic prerequisite for subjecting a defendant to its in personam judgment." Estate of Simpson, 290 N.J. Super. at 526. Absent "actual territorial presence, in personam

jurisdiction may be predicated upon the defendant's contacts with the forum provided they meet the standard of minimum contacts . . . such that maintenance of the suit in the forum does not offend 'traditional notions of fair play and substantial justice.'" Ibid. (quoting Int'l Shoe, 326 U.S. at 316).

In determining whether a defendant's contacts satisfy the International Shoe standard and thus due process, a court must consider whether it has either specific or general jurisdiction. If a claim "is related to or arises out of the contacts in the forum," then the forum state's court has specific jurisdiction. Id. at 526-27. If a defendant "is subject to any claim that may be brought against him in the forum state whether or not related to or arising out of the contacts themselves," the forum state's court has general jurisdiction. Ibid.

The burden is upon the plaintiffs "to allege or plead sufficient facts with respect to jurisdiction." Blakey v. Cont'l Airlines, 164 N.J. 38, 71 (2000). A "plaintiff must establish defendant's contacts with the jurisdiction through the use of 'sworn affidavits, certifications, or testimony.'" Jacobs v. Walt Disney World, Co., 309 N.J. Super. 443, 454 (App. Div. 1998) (quoting Catalano v. Lease & Rental Mgmt. Corp., 252 N.J. Super. 545, 547-48 (Law Div. 1991)). "In the early stages of a proceeding 'where the factual record consists of only pleadings and



affidavits, plaintiff's burden is satisfied by establishing a prima facie case of jurisdiction.'" Ibid. (quoting Cresswell v. Walt Disney Prod., 677 F. Supp. 284, 286 (M.D. Pa. 1987)).

In the case before us, we first address – and reject – plaintiffs' argument that the trial court had specific jurisdiction over defendant. Specific jurisdiction is present when the "cause of action arises directly out of a defendant's contacts with the forum state." Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 119 (1994) (citation omitted). Whether "minimum contacts" are present for the purposes of specific jurisdiction depends upon "the relationship among the defendant, the forum, and the litigation." Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). In order for a court to exercise specific jurisdiction over a defendant, there must be "an 'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." Fairfax Fin. Holdings Ltd. v. S.A.C. Capital Mgmt., L.L.C., 450 N.J. Super. 1, 68 (App. Div. 2017) (alteration in original) (quoting Goodyear Dunlop Tires Operations, S.A., 564 U.S. at 919) (quoting Arthur T. Von Mehren & Donald T. Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev., 1121, 1136 (1996))).

Stated differently, "when the defendant is not present in the forum state, 'it is essential that there be some act by which the defendant purposefully avails [itself] of the privilege of conducting activities within the forum state, thus invoking the benefit and protection of its laws.'" Baanyan Software Servs., Inc. v. Kuncha, 433 N.J. Super. 466, 475 (App. Div. 2013) (quoting Waste Mgmt., 138 N.J. at 120 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958))). It is "essential" the foreign corporation "purposely avails" itself of the privilege of conducting activities within the forum state, such that it will not be hauled into court based upon "random, fortuitous, or attenuated contacts or as a result of the unilateral activity of some other party." Waste Mgmt., 138 N.J. at 120-121 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)).

Here, plaintiffs' cause of action did not arise "directly out of" defendant's contacts with New Jersey. The incident giving rise to the cause of action occurred at the Beaches resort on February 3, 2014, when plaintiffs consumed an allegedly tainted meal at the Soy restaurant. All activities relating to the preparation and service of food occurred at the Soy restaurant.

The facts in plaintiff Michele Collins's affidavit make clear there was no "'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes

place in the forum State and is therefore subject to the State's regulation." Fairfax Fin. Holdings Ltd., 450 N.J. Super. at 68 (alteration in original) (quoting Goodyear Dunlop Tires Operations, S.A., 564 U.S. at 919 (quoting Mehren & Trautman, 79 Harv. L. Rev. at 1136)).

Plaintiffs' arguments on appeal are premised upon a meeting with a travel agent in New Jersey prior to their trip to St. Lucia, which predated their 2013 and 2014 trips to Turks and Caicos, as well as advertisements they saw prior to their 2013 trip. Assuming these activities could somehow be imputed to defendant, they do not establish specific jurisdiction. Plaintiffs' cause of action arose out of conduct that occurred in Turks and Caicos during the 2014 trip, which was solicited and booked in 2013 in Turks and Caicos, not New Jersey. "[C]ontacts with a state's citizens that take place outside the state are not purposeful contacts with the state itself." O'Connor v. Sandy Lane Hotel Co., 496 F.3d 312, 317 (3d Cir. 2007) (citation omitted). Thus, plaintiffs' 2014 injury does not arise "directly out of" any alleged contacts that occurred between defendant and New Jersey prior to the 2013 trip to Turks and Caicos. Waste Mgmt., 138 N.J. at 119. Plaintiffs did not allege nor plead sufficient facts to establish specific jurisdiction, and the trial court did not err by so finding.

We turn to the question of general jurisdiction. Plaintiffs argue the trial court erred when it asserted they conceded the issue of general jurisdiction. They argue the defendants have "continuous and substantial" contacts with New Jersey for the purposes of establishing general jurisdiction. Plaintiffs' purported concession does not appear in the record of oral argument. The second point heading in plaintiffs' brief opposing the dismissal motion asserts the trial court has general jurisdiction over the defendants. Moreover, in support of their jurisdictional claim, plaintiffs submitted a certification from their attorney with sixteen exhibits purporting to demonstrate general affiliations between the defendant and New Jersey. Lastly, during oral argument, plaintiffs' counsel argued defendants have "general contacts which are ongoing and numerous and certainly substantial," which suggests plaintiffs believed they had established a prima facie case of general jurisdiction.

Assuming the trial court erred in its statement concerning plaintiffs' concession, we nonetheless conclude the order dismissing plaintiffs' complaint was correct. "[W]e review orders and not, strictly speaking, reasons that support them." El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 169 (App. Div. 2005). Thus, "a correct result, even if predicated on an erroneous basis in fact or in law, will not be overturned on appeal." Ibid.

(citations omitted).

"A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." Goodyear Dunlop Tires Operations, S.A., 564 U.S. at 919 (citing Int'l Shoe, 326 U.S. at 317). Thus, "the inquiry under Goodyear is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State.'" Daimler AG v. Bauman, 571 U.S. \_\_\_\_, 134 S. Ct. 746, 761 (2014) (alteration in original) (quoting Goodyear Dunlop Tires Operations, S.A., 564 U.S. at 919).

The United States Supreme Court has explained "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." Id. at 760. "With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] . . . bases for general jurisdiction.'" Ibid. (alterations in original) (quoting Brilmayer, et al., A General Look at General Jurisdiction, 66 Tex. L. Rev. 721, 735 (1988)). Although these paradigm bases for general jurisdiction over corporations are not exclusive, to be subject to a forum's

general jurisdiction a corporation must be "so heavily engaged in activity in [the forum State] 'as to render [it] essentially at home' in that State." BNSF Ry. v. Tyrrell, 581 U.S. \_\_\_, 137 S. Ct. 1549, 1559 (2017) (second alteration in original) (quoting Daimler AG, 134 S. Ct. at 751).

The Supreme Court suggested Perkins v. Benquet Consol. Mining Co., 342 U.S. 437 (1952), "exemplified such a case." BNSF Ry., 137 S. Ct. at 1558. In Perkins, the defendant was forced by war to temporarily relocate its operations from the Philippines to Ohio. 342 U.S. at 447-48. "Because Ohio then became 'the center of the corporation's wartime activities,' Daimler, 134 S. Ct. at 756, n.8, suit was proper there, Perkins, 342 U.S. at 448." BNSF Ry., 137 S. Ct. at 1558.

Here, plaintiffs argue defendant's alleged affiliation with travel agents in New Jersey satisfies the general jurisdiction standard. They also argue defendant solicits business in New Jersey through general advertising. Plaintiffs support their argument regarding travel agents with several pages printed from the Sandals website, annexed to a certification of counsel. The first webpage is an access portal for travel agents. The second page provides an option for customers to "meet a certified Sandals specialist travel agent" within the United States, including New Jersey. The search result provided is a Liberty Travel agency in

New Jersey. The website explains a certified Sandals travel agent undergoes "extensive training through our education program" and attends annual Sandals workshops. The third and fourth pages reference "Sandals Resorts Home-Based Travel Agents," including two such agents from New Jersey. The fifth page is a travel agent search result on the "Beaches Resorts for Everyone by Sandals" website, which again identifies "Beaches Specialists" in New Jersey. The sixth page is largely illegible, and its origin is not explained in the certification of counsel. The remaining pages are taken from the websites of various New Jersey travel companies that advertise themselves as Sandals or Beaches experts or specialists based in New Jersey.

Plaintiffs support their argument regarding advertising efforts through several exhibits. First, counsel for plaintiffs annexed a page that references Beaches billboards, but he did not explain where this page was obtained or how it is proof that such billboards are located in New Jersey. The next exhibit is a Sandals Barbados advertisement in the New York Times Magazine. Counsel for plaintiffs certified he received the advertisement at his home in New Jersey on July 2, 2016. The next exhibit is alleged to be a brochure that references a Sandals resort, but it is unauthenticated. Similarly, counsel attached what he described as an advertisement for a painting studio offering a free trip to

a Sandals resort, but did not authenticate the advertisement. Finally, counsel for plaintiffs annexed two hearsay articles from an internet news site. The first describes a travel agency in New Jersey and its interactions with Sandals. The second describes a New Jersey couple's interactions with a Sandals resort.

Assuming all plaintiffs' exhibits were properly submitted on the motion record, see Rule 1:6-6, defendant's alleged contacts with New Jersey do not rise to the level of establishing defendant is "at home" in New Jersey. New Jersey is not defendant's place of incorporation or principal place of business. Defendant does not employ any individuals or agents in New Jersey and has no physical location or mailing address in New Jersey.

In short, defendant's alleged advertising and affiliation with travel agents, even if true, do not establish defendant is "so heavily engaged in activity in [New Jersey] 'as to render [it] essentially at home' in [this] State." BNSF Ry., 137 S. Ct. at 1559 (second alteration in original) (quoting Daimler, 134 S. Ct. at 751). The Superior Court did not have general jurisdiction over defendant.

Plaintiffs next contend that aside from the issues of specific and general jurisdiction, the trial court erred by omitting to address their request for jurisdictional discovery. They insist they are entitled to conduct limited discovery on the



jurisdictional issues. Although the trial court did not address the issue in its opinion, a remand on that issue is unnecessary.

Generally, a "plaintiff's right to conduct jurisdictional discovery should be sustained" "if a plaintiff presents factual allegations [suggesting] with reasonable particularity the possible existence of the requisite contacts between [the party] and the forum state." Rippon, 449 N.J. Super. at 359 (alterations in original) (citation omitted). "[T]he record must support the existence of disputed or conflicting facts to warrant jurisdictional discovery." Ibid. (citing Reliance Nat'l Ins. Co. In Liquidation v. Dana Transp., 376 N.J. Super. 537, 551 (App. Div. 2005)). That is not the case here.

As we have already discussed, plaintiff Michele Collins's own affidavit makes clear the Superior Court does not have specific jurisdiction over defendant. As to general jurisdiction, accepting plaintiffs' proofs on the motion record as true, plaintiffs have neither suggested with reasonable particularity the possible existence of requisite contacts nor established a dispute as to general jurisdictional facts. Ibid. For these reasons, we reject plaintiffs' argument that they were entitled to discovery on the jurisdictional issues.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION