

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

TSVI SMALL, M.D.,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF
MICHIGAN, as administrators; TTI
GLOBAL, INC.; JOHN AND JANE
DOES 1-10; and ABC CORPORATIONS
1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

DOCKET NO. **BER-L-4141-18**

Civil Action

OPINION

Argued: March 15, 2019
Decided: March 20, 2019

HONORABLE ROBERT C. WILSON, J.S.C.

Aaron A. Mitchell, Esq. and Nicholas F. Savio, Esq. appearing for plaintiff Tsvi Small, M.D. (from Cohen and Howard, LLP).

Michael E. Holzapfel, Esq. appearing for defendants Blue Cross Blue Shield of Michigan and TTI Global, Inc. (from Becker, LLC).

FACTUAL BACKGROUND

THIS MATTER arises from a dispute concerning payment of a medical bill by a healthcare insurance company to a healthcare provider. Plaintiff Tsvi Small, M.D. (“Plaintiff”) is an out-of-network provider that rendered preauthorized, medically-necessary surgical services to an unnamed patient (“Patient”). At all relevant times, Patient lived in Bergen County, New Jersey and received health benefits through TTI Global, Inc. (“TTI”). These healthcare benefits were administered by defendant Blue Cross Blue Shield of Michigan (“BCBS Michigan”).

Patient suffered from breast cancer, and determined that the best course of treatment was to undergo a double mastectomy. Patient sought Plaintiff to perform a breast reconstruction immediately following the mastectomy procedure.

Prior to performing Patient's breast reconstruction surgery, Plaintiff's office in New Jersey contacted BCBS Michigan to request prior authorization for the surgery, which BCBS Michigan approved via letter from Michigan on November 2, 2016. The reconstruction surgery occurred sometime thereafter. Plaintiff then submitted a bill to BCBS Michigan in the amount of \$51,400. The allowed benefit under the TTI insurance plan (the "TTI Plan") for the subject procedure was \$4,413.32. Plaintiff then filed a complaint in New Jersey Superior Court alleging causes of action for: (1) breach of implied contract; (2) estoppel; (3) account stated; and (4) fraudulent inducement (the "Complaint").

BCBS Michigan is not incorporated in New Jersey, is not headquartered in New Jersey, does not insure risk in New Jersey, and is not licensed to do business in New Jersey. Furthermore, BCBS Michigan does not solicit insurance in New Jersey, maintain offices or own property in the state, or maintain any bank accounts in the state. Similarly, TTI is not incorporated in New Jersey, nor is its headquarters in New Jersey. Like BCBS Michigan, TTI is incorporated and headquartered in Michigan.

Defendants now move for dismissal of Plaintiff's Complaint in its entirety, alleging that the State of New Jersey lacks personal jurisdiction over Defendants. Specifically, Defendants argue that New Jersey is not the correct forum to litigate this matter, because neither defendant is "at home" in New Jersey to confer general jurisdiction, nor are there "sufficient minimum contacts" with New Jersey to confer specific jurisdiction. Plaintiff opposes the motion, arguing that both general and specific jurisdiction are applicable, and therefore, New Jersey is the proper forum for this litigation.

For the reasons set forth below, Defendants' motion to dismiss for lack of personal jurisdiction is hereby **DENIED**.

PROCEDURAL HISTORY

Plaintiff brought the instant matter asserting contractual, quasi-contractual, and tort-based claims. Defendants then removed the matter to the United States District Court for the District of New Jersey, alleging that Plaintiff's claims were preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), and that federal question jurisdiction under 28 U.S.C. 1331 was applicable. Plaintiff subsequently moved to remand the matter to the Superior Court of New Jersey, Law Division, arguing that Defendants' removal was improper, and that federal courts do not have federal question jurisdiction over this matter.¹

The Honorable Cathy L. Waldor, U.S.M.J., issued a Report and Recommendation ("R&R") stating that the federal district court did not have federal question jurisdiction in this instance, and that the matter was not preempted by ERISA. The Honorable Susan D. Wigenton, U.S.D.J., adopted the R&R in part and remanded the matter to state court. The matter is now restored to the active trial calendar in the Superior Court of New Jersey, Law Division, Civil Part.

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION STANDARD

On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of proving, through affidavits or other competent evidence, that jurisdiction is proper. R. 4:6-2(b). The plaintiff is not entitled to a presumption that personal jurisdiction exists simply because the plaintiff asserts that to be the case. Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519,

¹ It must be noted that Plaintiff elected to pursue this litigation through state common law claims, rather than through ERISA. Furthermore, the Complaint purports to disclaim ERISA's applicability altogether. Therefore, because Plaintiff disclaims ERISA and asserts only non-ERISA claims, Plaintiff cannot utilize ERISA's provision for nationwide services of process as a basis to establish jurisdiction over Michigan-domiciled BCBS Michigan and TTI in the State of New Jersey.

535 (App. Div. 1996). Therefore, unlike a motion to dismiss for failure to state a claim under Rule 4:6-2(e), a motion to dismiss for lack of personal jurisdiction is not confined by the pleadings in making a jurisdictional determination. Carteret Sav. Bank v. Shushan, 954 F.2d 141, 142 (3d Cir. 1992).

“New Jersey’s long-arm statute provides for jurisdiction coextensive with the due process requirements of the United States Constitution.” Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 96 (3d Cir. 2004) (citing R. 4:4-4(c)). Personal jurisdiction is constitutionally proper only if the plaintiff can establish either general or specific personal jurisdiction over the defendant(s). Daimler AG v. Bauman, 571 U.S. 117, 126 (2016). General jurisdiction permits a lawsuit within the forum regarding dealings that have no relationship to the forum state. Id. Specific jurisdiction permits a lawsuit within the forum where the suit arises out of the defendant’s contacts with the forum state. Id. In either case, it is the plaintiff who bears the burden of establishing facts justifying jurisdiction.

RULES OF LAW AND DECISION

I. Defendants Lack Sufficient Contacts with the State of New Jersey to Warrant the Assertion of General Personal Jurisdiction

General personal jurisdiction exists when the defendant’s contacts with the forum state are so systematic and continuous that the defendant is essentially “at home” in the forum state. Daimler AG v. Bauman, 571 U.S. 117 (2014); Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011). In 2017, the New Jersey Superior Court, Appellate Division “join[ed] the many courts that have circumscribed to the view of general jurisdiction post-Daimler. Dutch Run-Mays Draft, LLC v. Wolf Block, LLP, 450 N.J. Super. 590, 608 (App. Div. 2017).

When the defendant is an individual, the standard forum for personal jurisdiction is the individual's domicile. Goodyear, 564 U.S. at 924. Under New Jersey law, an individual is domiciled in the state where that person "has his true, fixed, permanent home and principal establishment and to which whenever he is absent, he has an intention of returning." Kurilla v. Roth, 132 N.J. 213, 215 (2014). While an individual may have multiple residences, he or she may only have one domicile. State v. Benny, 20 N.J. 238, 251 (1955).

Concerning business entities, the term "at home" has a particular meaning: where the defendant is incorporated or has its principal place of business. Daimler, 571 U.S. at 137-38. Each situs, incorporation and principal place of business, "ordinarily indicates only one place" and is "easily ascertainable." Id. at 137.

In this matter, it appears that New Jersey does not have general personal jurisdiction over Defendants. Both BCBS Michigan and TTI are incorporated under Michigan law. Both corporations also maintain their headquarters and principal places of business in Michigan. While Horizon Blue Cross Blue Shield of New Jersey is incorporated in New Jersey and has its principal place of business in New Jersey, this entity is separate and distinct from BCBS Michigan. Furthermore, facts in the record suggest that TTI maintained an office in Florham Park, New Jersey. However, this appears to be a satellite office of TTI, and cannot be considered the corporation's "nerve center," which would justify the imposition of general jurisdiction in New Jersey. Hertz Corp. v. Friend, 559 U.S. 77, 80-81 (2010).

As both Defendants are incorporated in the State of Michigan and do not maintain a corporate headquarters or principal place of business in New Jersey, it would be inappropriate for the State of New Jersey to exercise general personal jurisdiction upon Defendants.

II. Sufficient Minimum Contacts Exist Between Defendants and New Jersey to Justify the Imposition of Specific Personal Jurisdiction in the State

In order to exercise specific jurisdiction over an out-of-state defendant, “the defendant’s suit-related conduct must create a substantial connection with the forum state.” Walden v. Fiore, 571 U.S. 277, 284 (2014). This relationship “must arise out of contacts that the ‘defendant himself’ creates with the forum state.” Id. (citing Burger King v. Rudzewicz, 471 U.S. 462, 475 (1985)); Bristol-Meyers Squibb Co. v. Superior Ct. of Cal., 137 S. Ct. 1773, 1780 (2017) (stating that specific jurisdiction is “confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction”). Furthermore, when analyzing defendant’s contacts, the court should consider “the defendant’s contacts with the forum State *itself*, not the defendant’s contacts with *persons* who reside there.” Id. at 285 (emphasis added). Without affiliation between the controversy and the forum, “specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” Bristol-Meyers Squibb Co., 197 S. Ct. at 1780.

The plaintiff must establish specific jurisdiction for each claim asserted against each defendant. Remick v. Manfredy, 238 F.3d 248, 255-56 (3d. Cir. 2001) (claim-specific analysis); Rush v. Savchuk, 444 U.S. 320, 332 (1980) (defendant-specific analysis).

To establish specific jurisdiction under the purposeful availment standard in a contractual or quasi-contractual cause of action: (1) the defendant must have either purposefully availed himself of the privilege of conducting activities in the forum, or purposefully directed his activities into the forum; (2) the cause of action must have arisen out of the defendant’s forum-related activity; and (3) the exercise of jurisdiction must be fair and reasonable. O’Connor v. Sandy Land Hotel Co., 496 F.3d 312, 317 (3d Cir. 2007).

Similarly, for a cause of action involving an intentional tort, the following requisite elements must be satisfied: (1) the defendant took intentional action; (2) expressly aimed at the forum state; and (3) causing harm that the defendant knows is likely to be suffered in the forum state. Calder v. Jones, 465 U.S. 783 (1984); Display Works, LLC, 182 F.Supp. 3d at 180. In the following subsections, it is clear that Plaintiff has met the above elements for specific jurisdiction as to all claims for both Defendants.

A. Defendants Have Purposefully Availed Themselves of the Forum State and Purposefully Directed Activities Towards the Forum State

The first element of the specific jurisdiction test requires that the defendant either “purposefully availed” himself of the forum state or “purposefully directed activities” towards the forum state. O’Connor, 195 F.3d at 317. The “purposeful availment” standard applies to contractual and quasi-contractual claims, while the “purposeful direction of activities” standard applies to tortious claims. McIntyre Mach. Ltd. v. Nicastro, 564 U.S. 873, 880 (2011) (stating that the applicable standard in contractual matters is “purposeful availment”); Display Works, LLC v. Bartley, 182 F.Supp. 3d 166, 180 (D.N.J. 2016) (setting forth the “purposeful direction” standard as applicable to causes of action sounding in tort).

Here, the “purposeful availment” standard would be applicable to Plaintiff’s claims for breach of contract, promissory estoppel, and account stated claims. Likewise, the “purposeful direction” standard would apply to Plaintiff’s claim for fraudulent inducement.

Regarding Plaintiff’s claims as to TTI, it is clear that TTI purposely availed itself of New Jersey and purposefully directed its activities towards the state. While TTI’s state of incorporation and principal place of business are both Michigan, the record supports a finding that TTI maintained an office in Florham Park, New Jersey. Furthermore, TTI employed a staff

at this office, which included Patient. TTI provided a self-insured insurance plan for employees at its New Jersey office.

In operating a New Jersey office and providing health insurance coverage for employees in New Jersey, TTI had continuous and systematic contacts with New Jersey. TTI “purposefully availed” itself of the forum state and “purposefully directed activities” toward the state by operating an office, hiring employees, and conducting business from its Florham Park, New Jersey office.

Similarly, BCBS Michigan has also purposefully availed itself of New Jersey and purposefully directed its activities towards the state. While BCBS Michigan does not operate an office or hire employees in New Jersey, it agreed to provide insurance to a New Jersey resident through TTI’s self-insured insurance plan. BCBS Michigan would have been on notice that they were providing insurance to a New Jersey resident at the time Patient filed the appropriate paperwork with BCBS Michigan to receive insurance coverage. BCBS Michigan would have also been aware that they were providing insurance coverage to a New Jersey resident for a medical procedure occurring in New Jersey letter. As BCBS Michigan agreed to administer/process the claims of Patient, a citizen of New Jersey and employee of TTI’s New Jersey office, BCBS Michigan purposefully availed itself of the State of New Jersey and purposefully directed its activities towards the forum state.

When considering the activities of Defendants, both TTI and BCBS Michigan should reasonably anticipate being haled into court in New Jersey. See, Remick, 238 F.3d at 255. In their opposition, Defendants seek to rebut the purposeful availment argument on two grounds. Specifically, they contend that the purposeful availment/direction prong is not met because: (1) BCBS Michigan executed its contracts, processed claims, and discharged its contractual duties within Michigan; and (2) BCBS Michigan issued the subject preauthorization request letter to a

New Jersey healthcare provider from Michigan, and at the direction of Plaintiff and not on its own volition.

However, Defendants become lost in the details of the facts at issue in this matter, and fail to appreciate the “bigger picture” of the transactions and contacts between the relevant parties and the forum state. It may be true that BCBS Michigan processed Plaintiff’s claims in Michigan, and that Plaintiff initiated the correspondence that BCBS Michigan directed to New Jersey regarding the preauthorization for the medical procedure.

However, focusing on these two arguments ignores that BCBS Michigan availed themselves of the benefits of the State of New Jersey in seeking to provide a healthcare network for their insures in New Jersey. BCBS Michigan contracted with TTI to provide health insurance coverage for a New Jersey citizen who was employed in the New Jersey office of a corporation conducting business in the state. Finding specific personal jurisdiction as to Defendants based on these contacts would comport with federal due process requirements, as defendant would be haled into court in New Jersey based on their “own affiliation with the State, not based on the random, fortuitous, or attenuated contacts [they] make[] by interacting with other persons affiliated with the State.” Walden, 571 U.S. at 285-86. Therefore, despite Defendants’ arguments to the contrary, Plaintiff has shown that Defendants have purposefully availed themselves of New Jersey to meet the first requisite element of specific personal jurisdiction.

B. Plaintiff’s Cause of Action Arises out of Defendants’ Forum-Related Activity

The second prong of specific personal jurisdiction requires that the causes of action are related to a defendant’s contacts with the forum state. Bristol-Meyers Squibb Co., 137 S. Ct. at 1781. This factor ensures that a non-resident defendant will not be subject to personal jurisdiction based on unconnected contacts with the forum. Id.

To determine this factor, the Court uses a “substantive relevance” tests for contract-based claims, and a “closer and more direct causal connection than that provided by the but-for test” for tort-based claims. O’Connor, 496 F.3d at 323. In any case, the Court makes clear that the same principle animates both tests: “the analysis should hew closely to the reciprocity principle upon which specific jurisdiction rests,” ensuring that this “relatedness prong’s” function is to maintain balance in the exchange of forum benefit with forum obligations. Id.

Here, Plaintiff has made the requisite showing that his contractual/quasi-contractual and tort-based causes of action arise from Defendants’ contacts with the State of New Jersey. TTI decided to conduct business in a New Jersey office, hire a citizen of New Jersey in that office, and provide Patient with health insurance through a self-insured plan. Likewise, BCBS Michigan agreed with TTI to provide insurance coverage to its New Jersey employees. All of Plaintiff’s causes of action in the Complaint stem from Defendants’ agreements to provide health insurance coverage for Patient, and payments related to procedures Patient received while covered by that health insurance plan. Therefore, the second prong for specific personal jurisdiction is also met.

C. The Exercise of Jurisdiction is Fair and Reasonable

The final prong of the specific personal jurisdiction test requires that exercising jurisdiction does not run afoul of one’s constitutional right to due process and “offend traditional notions of fair play and substantial justice.” Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 414 (internal citations omitted). For the reasons set forth above, it is clear that Defendants satisfied the minimum contacts required for personal jurisdiction in New Jersey, and purposefully availed themselves of the benefits of the state by either conducting business within its borders, or providing health insurance coverage to an insured who was a citizen of the state.

Therefore, Defendants should reasonably expect to be haled into court in the State of New Jersey and subject to the state's jurisdiction.

CONCLUSION

It is well-settled law in this jurisdiction that a court may exercise personal jurisdiction over a non-resident defendant to the outermost limits permitted by the United States Constitution. Nevertheless, a court's decision to exercise personal jurisdiction over a non-resident defendant must comport with traditional notions of fair play and substantial justice. In the instant matter, Defendants did purposefully avail themselves of the privilege of conducting activities within this State, and did invoke the benefits and protections of its laws. The record does establish that the Plaintiff was injured in this State and that Defendants directed their conduct towards New Jersey. Therefore, this Court may exercise personal jurisdiction over Defendants.

For the aforementioned reasons, Defendants' Motion to Dismiss the Plaintiff's Complaint is **DENIED**.

It is so ordered.