SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2261-21

ROBERT DALEY,

Plaintiff-Respondent,

v.

TMS PRECISION MACHINERY,

Defendant-Appellant,

and

LUKE S. AUSTIN, MD, MD, JONAS L. MATZON, MD, and ROTHMAN INSTITUTE OF NEW JERSEY,[1]

Defendants-Respondents,

and

RAYMOND RAGLAND, III,

Defendant.

---

[1] Improperly plead as Rothman Orthopaedic Institute.

Argued October 6, 2022 – Decided December 1, 2022

Before Judges Gooden Brown and DeAlmeida.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-0588-21.

David A. Semple argued the cause for appellant (McCormick & Priore, PC, attorneys; Philip D. Priore, of counsel; David A. Semple, on the briefs).

Jeremy P. Cooley argued the cause for respondents Luke S. Austin, MD, Jonas L. Matzon, MD, and Rothman Institute of New Jersey (Buckley Theroux Kline & Cooley, LLC, attorneys; Sean C. Garrett, on the brief).

Mitchell Lee Goldfield argued the cause for respondent Robert Daley (Mitchell Lee Goldfield, attorney, join in the brief of respondents Luke S. Austin, MD, Jonas L. Matzon, MD, and Rothman Institute of New Jersey).

PER CURIAM

By leave granted, defendant TMS Precision Machinery (TMS) appeals from a February 14, 2022 Law Division order denying its motion for reconsideration of the trial judge's December 3, 2021 order. The December 3, 2021 order denied TMS's motion to dismiss a personal injury complaint for lack of personal jurisdiction. We affirm.[2]

[2] Although the order denying the motion was dated December 3, 2021, the judge actually rendered his decision on December 17, 2021.

I.

We glean these facts from the record. TMS is a business located and incorporated in Pennsylvania. On February 26, 2021, plaintiff Robert Daley, a New Jersey resident, filed a ten-count complaint against TMS; TMS's employee, Tony Smith (fictitious name); Luke Austin, Raymond Ragland, III, and Jonas Matzon, three doctors licensed and practicing in New Jersey; and Rothman Institute of New Jersey, a medical facility with a principal office located in Pennsylvania. In the complaint, Daley alleged that he sustained injuries as a result of defendants' negligence in connection with an accident that occurred on TMS's property. Specifically, Daley asserted that on February 28, 2019, while acting on behalf of his employer, Willier Electric Motors (Willier), a New Jersey business, he delivered an engine to TMS for repair. While on TMS's property, a TMS employee operating a forklift allegedly struck the engine that Daley was holding, causing both the engine and Daley to fall.

As a result, Daley allegedly sustained fractures to his wrist and elbow. These injuries were subsequently exacerbated by the purportedly negligent medical treatment provided by defendant doctors. As against TMS, Daley

alleged in the complaint that TMS was "vicariously" and "individually" responsible for the conduct of its employee, and that TMS negligently entrusted the forklift to Smith, failed to properly train and supervise Smith, and failed to take reasonable precautions and otherwise exercise due care in operating the forklift on its property.

TMS moved to dismiss the complaint for lack of personal jurisdiction. In support of the motion, Antonio Silva, TMS's "sole owner," certified that TMS was "a machinery repair shop . . . with its sole place of business" in Pennsylvania and was licensed as a corporation under the laws of Pennsylvania. According to Silva, TMS did not "transact business" in New Jersey; "supply goods or services" in New Jersey; "maintain an office, employees, agents, bank accounts, telephone listings, or real estate" in New Jersey; "advertise" in New Jersey; "maintain a registered agent" in New Jersey; or "incur or pay taxes" in New Jersey.

Both Daley and the doctors opposed TMS's motion. After the judge permitted the parties to conduct jurisdictional discovery, Daley submitted a certification from Donald Willier, Sr., the president of Willier, stating that Willier was "in the business of the sale and service of electrical motors and related component parts" and that "[s]ometime prior to 2016, Willier began

utilizing TMS . . . for the purpose of making certain parts for certain motors." According to Donald,[3] pursuant to their arrangement, Willier employees "would take motors to TMS" for servicing, and "[b]etween 2016 and 2021, Willier paid TMS approximately $47,000 for work . . . performed on motors for Willier."

Daley also submitted a summary of TMS's sales indicating that between October 1, 2016 and October 1, 2021, TMS generated $148,790 in income from fifteen New Jersey-based clients, including Willier. Additionally, Daley submitted his own certification, averring that he made "approximately [twenty to twenty-five] deliveries from Willier to TMS" during his two and one-half-years of employment "as a driver" for Willier. He further certified that each delivery was "prearranged" between "a representative of Willier and . . . the owner of TMS," and that he would always "return to TMS within [two] to [three] days" to retrieve the serviced item.

The parties initially appeared for oral argument on December 3, 2021, during which they agreed with the judge that New Jersey did not have general jurisdiction over TMS and that the issue was whether there were sufficient contacts to establish specific jurisdiction. At the close of the hearing, the judge

[3] We refer to Donald Willier, Sr. by his first name to distinguish him from his company. We intend no disrespect.

allowed both parties to conduct additional discovery on the extent and nature of TMS's business relationships in New Jersey. As a result, Daley submitted an additional certification prepared by Donald detailing how Willier arranged with TMS for services.

According to the certification, when Willier needed TMS's services, a Willier representative "would call . . . Silva . . . from [Willier's New Jersey] office and would negotiate the date of delivery to TMS . . . as well as the cost for each job." After Willier's initial contact concerning each job, Silva "would typically call . . . back with the [negotiated] cost for [the] job." Once the "job was completed," Silva would call Willier to arrange to pick up the part. Donald certified that "Willier would never randomly deliver motors to TMS" for repair; instead, "[a]ll jobs were prearranged and discussed by phone before eventual delivery to TMS."

Oral argument resumed on December 17, 2021, after which the judge denied TMS's motion. In an oral opinion, the judge reviewed the general principles regarding specific jurisdiction, acknowledging that the inquiry must "focus upon the relationship among the defendant, the forum and the litigation." The judge concluded that the extent and nature of TMS's "ongoing, continuous business relationships for over five years with . . . [fifteen]" New Jersey business

entities, including Willier, established "the minimum contacts" required by due process to subject TMS to suit in a New Jersey court. Further, the judge found that exercising personal jurisdiction over TMS would not "offend traditional notions of fair play and substantial justice."

TMS subsequently moved for reconsideration, which was denied in an oral opinion on February 14, 2022. In denying the motion, the judge applied "the interest of justice standard" articulated in Rule 4:42-2 and reiterated the grounds for denial stated on the record on December 17, 2021. The judge also stressed that TMS was not "a passive party" and that the back-and-forth nature of the dealings between Willier and TMS that preceded each job, along with the long-term nature of their business relationship, distinguished the case from one where a party "would be hauled into the jurisdiction solely as a result of a random, fortuitous, or attenuated contact."

We granted TMS leave to appeal the order denying its motion to dismiss and denying reconsideration. On appeal, TMS raises the following arguments for our consideration:

> POINT I
>
> THE TRIAL COURT ERRED IN FINDING NEW JERSEY HAS PERSONAL JURISDICTION OVER TMS.

A. The Trial Court Erred In Finding New Jersey Has Specific Jurisdiction Over TMS.

i. As TMS Did Not Initiate Any Contacts With New Jersey, It Did Not Purposely Avail Itself Of Conducting Business In This State.

ii. The Alleged Telephonic Contact Between TMS And Willier Was Not Sufficient To Establish Minimum Contacts.

iii. Plaintiff Has Not Established A Causal Relationship Between Any Purposeful Acts By TMS Directed Toward New Jersey And The Subject Accident.

iv. TMS's Dealings With Other New Jersey Business Entities Cannot Be Considered When Evaluating Whether New Jersey Has Specific Jurisdiction Over TMS.

B. The Trial Court Was Correct In Ruling New Jersey Does Not Have General Jurisdiction Over TMS.

C. The Trial Court Erred In Finding That Exercising Personal Jurisdiction Over TMS Does Not Offend "Traditional Notions Of Fair Play And Substantial Justice."

II.

"A motion to dismiss for lack of personal jurisdiction pursuant to Rule 4:6-2(b) presents '"a mixed question of law and fact" that must be resolved at the outset, "before the matter may proceed[.]"'" Zahl v. Eastland, 465 N.J. Super. 79, 92 (App. Div. 2020) (alteration in original) (quoting Pullen v. Galloway, 461 N.J. Super. 587, 596 (App. Div. 2019)). "While we generally defer to the motion judge's factual findings, . . . '[w]e review de novo the legal aspects of personal jurisdiction.'" Ibid. (quoting Pullen, 461 N.J. Super. at 596).

Turning to the general principles, "[a] New Jersey court may exercise in personam jurisdiction over a non-resident defendant 'consistent with due process of law.'" Bayway Refin. Co. v. State Utils., Inc., 333 N.J. Super. 420, 428 (App. Div. 2000) (emphasis omitted) (quoting R. 4:4-4(b)(1)). The test governing "due process requires only that . . . a defendant . . . have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Blakey v. Cont'l Airlines, Inc., 164 N.J. 38, 66 (2000) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

In making this determination, we consider "the burden on the defendant," New Jersey's interest in the matter, "the plaintiff's interest in obtaining relief"

on its claims, the interstate justice system's interest in having the matter resolved in the most efficient manner, and "'the shared interest of the several States' in furthering fundamental substantive social policies.'" Lebel v. Everglades Marina, Inc., 115 N.J. 317, 328 (1989) (quoting Asahi Metal Indus. Co. v. Superior Ct. of Cal., 480 U.S. 102, 113 (1987)). As to the required minimum contacts, "the requisite quality and quantum of contacts is dependent on whether general or specific jurisdiction is asserted." Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 526 (App. Div. 1996).

"General jurisdiction exists when the plaintiff's claims arise out of the defendant's 'continuous and systematic' contacts with the forum state." Pullen, 461 N.J. Super. at 597 (quoting Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 416 (1984)). "For general jurisdiction to attach, a defendant's activities must be 'so continuous and systematic as to render [it] essentially at home in the forum State.'" Ibid. (alteration in original) (quoting FDASmart, Inc. v. Dishman Pharms. & Chems., Ltd., 448 N.J. Super. 195, 202 (App. Div. 2016)). TMS does not contest the judge's ruling that it is not subject to general jurisdiction in this State. Thus, the issue before us is whether plaintiff's cause of action against TMS arises out of a sufficient relationship between TMS and the State of New Jersey to invoke this court's specific jurisdiction.

"Specific jurisdiction is available when the 'cause of action arises directly out of [a] defendant's contacts with the forum state . . . .'" Ibid. (quoting Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 119 (1994)). In the specific jurisdiction analysis, the "minimum contacts inquiry must focus on 'the relationship among the defendant, the forum, and the litigation.'" Ibid. (quoting Lebel, 115 N.J. at 323). "The minimum contacts requirement is satisfied if 'the contacts expressly resulted from the defendant's purposeful conduct and not the unilateral activities of the plaintiff.'" Ibid. (quoting Lebel, 115 N.J. at 323).

"In determining whether the defendant's contacts are purposeful, a court must examine the defendant's 'conduct and connection' with the forum state and determine whether the defendant should 'reasonably anticipate being haled into court [in the forum state].'" Bayway Refin. Co., 333 N.J. Super. at 429 (alteration in original) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). We have previously explained that the test for whether a defendant has established a sufficient connection to the forum "is whether the defendant . . . 'has engaged in significant activities within' the forum or has created '"continuing obligations" between himself and the residents of the forum.'" Rippon v. Smigel, 449 N.J. Super. 344, 360 (App. Div. 2017) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-76 (1985)).

To that end, "New Jersey courts have found it significant to identify the initiator of the commercial contact." Id. at 430. Still, "the existence of minimum contacts turns on the presence or absence of intentional acts of the defendant to avail itself of some benefit of a forum state." Waste Mgmt., 138 N.J. at 126. "This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts." Lebel, 115 N.J. at 323 (quoting Burger King, 471 U.S. at 475).

Further, "[i]n order for a state court to exercise [specific] jurisdiction over a nonresident defendant, the lawsuit 'must aris[e] out of or relat[e] to the defendant's contacts with the forum.'" Jardim v. Overley, 461 N.J. Super. 367, 376 (App. Div. 2019) (third and fourth alterations in original) (quoting Daimler AG v. Bauman, 571 U.S. 117, 127 (2014)). Indeed, "[i]n addition to . . . purposeful availment or conduct by the defendant, the plaintiff's claim must 'arise out of or relate to' the defendant's forum-related activities." Ibid. (quoting Helicopteros, 466 U.S. at 414).

To be sure, "physical presence in the forum is not a prerequisite to jurisdiction." Walden v. Fiore, 571 U.S. 277, 285 (2014) (citing Burger King, 471 U.S. at 476). "'[I]t is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire

communications across state lines, thus obviating the need for physical presence within a State in which business is conducted.'" Lebel, 115 N.J. at 328 (quoting Burger King, 471 U.S. at 476). Therefore, our approach in New Jersey is to exercise jurisdiction over nonresident defendants "to the uttermost limits permitted by the United States Constitution." Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971). We have also acknowledged the fact-specific nature of the jurisdictional assessment, which must be made "on a case-by-case basis." Bayway Refin. Co., 333 N.J. Super. at 429 (citing Blakey, 164 N.J. at 66). Ultimately, it is the plaintiff who "bears the 'burden of establishing a prima facie basis for exercising personal jurisdiction over [the] defendant[].'" Zahl, 465 N.J. Super. at 93 (quoting Baanyan Software Servs., Inc. v. Kuncha, 433 N.J. Super. 466, 476 (App. Div. 2013)).

Applying these principles, we are satisfied that the jurisdictional facts found by the judge, which are entitled to deference on appeal, support a finding that TMS's activities established the requisite minimum contacts to subject it to specific jurisdiction in New Jersey. Further, in the absence of "'a compelling case that the presence of some other considerations would render jurisdiction unreasonable,'" we are persuaded that it does not offend constitutional norms of

"fair play and substantial justice" to hale TMS into a New Jersey court. Lebel, 115 N.J. at 328 (quoting Burger King, 471 U.S. at 477).

This is not a situation where plaintiff unilaterally brought about the contacts. Although TMS did not initiate each commercial contact, for over five years, it negotiated jobs and reached agreements over the telephone with a Willier representative in New Jersey and engaged in similar business activities with fourteen other New Jersey entities. Aside from its dealings with the other New Jersey entities, by virtue of its agreements, TMS created an affirmative obligation to Willier, a New Jersey corporation, each time it accepted a job. See Rippon, 449 N.J. Super. at 360 (stating that purposeful availment test may be satisfied where a defendant creates "continuing obligations" between himself and forum residents).

In furtherance of that business relationship, TMS invited representatives of Willier onto its property to deliver parts and pick up completed projects. Thus, plaintiff's lawsuit arises from the very same business dealings upon which the jurisdictional analysis is predicated because plaintiff was on TMS's property delivering an engine on behalf of his employer when the accident occurred. But for the business relationship between TMS and Willier, plaintiff likely would never have been on TMS's property. See Mastondrea v. Occidental Hotels

Mgmt. S.A., 391 N.J. Super. 261, 271-72 (App. Div. 2007) (upholding exercise of personal jurisdiction over the defendant, a Mexican hotel, in a guest's personal injury lawsuit in part because the hotel's "ongoing" relationship with a marketing company that targeted New Jersey customers was "causally connected" to the plaintiff's decision to stay at the hotel).

Individually, these contacts would not suffice to establish the requisite minimum contacts. However, "the combined effect of several contacts with the state, no one of which is sufficient, might under some circumstances establish 'minimum contacts.'" Bayway Refin. Co., 333 N.J. Super. at 433. Here, we consider the specialized nature of the work TMS performed for Willier, the fact that TMS essentially worked to-order, the direct line of communication between TMS and Willier for each job, the length of TMS's business relationship with Willier, the frequency with which TMS performed its services for Willier, and TMS's performance of services for other New Jersey business entities.

Viewing the totality of the circumstances, we are convinced sufficient minimum contacts exist to subject TMS to specific jurisdiction in New Jersey. See McKesson Corp. v. Hackensack Med. Imaging, 197 N.J. 262, 278 (2009) (holding that a New Jersey defendant was properly subjected to Texas jurisdiction because "defendant entered into what was intended to be a long-

term commercial relationship with plaintiff; placed nine separate orders with plaintiff in Texas; sent a credit application to plaintiff in Texas; and sent two checks . . . to plaintiff in Texas as purported payment for the products defendant purchased from plaintiff"); Lebel, 115 N.J. at 324-25 (upholding specific jurisdiction in New Jersey where the defendant, a Florida boat retailer, "allegedly telephoned the buyer in New Jersey to iron out the details of the contract, mailed the contract to the buyer in New Jersey for signing in New Jersey, and received payment from the plaintiff, who defendant knew was a New Jersey resident"); see also United Coal Co. v. Land Use Corp., 575 F. Supp. 1148, 1157 (W.D. Va. 1983) (considering "[t]elephone conversations, telexes and letters travel[ing] to and from the state" as part of the contacts sustaining jurisdiction); Hoster v. Monongahela Steel Corp., 492 F. Supp. 1249, 1251-53 (W.D. Okla. 1980) (holding that a defendant who made several telephone calls to plaintiff in the forum state, corresponded twice with plaintiff there, and sent agent to the forum state to negotiate with plaintiff had sufficient contacts to establish jurisdiction in plaintiff's state).

Affirmed.