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NO. COA03-297

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2003

DOROTHY M. WALLACE,
Plaintiff,

v.

Gaston County
No. 02 CVS 2206

BEN R. SMITH, JR.,
Defendant.

Appeal by plaintiff from order entered 18 November 2002 by Judge Timothy S. Kincaid in Gaston County Superior Court. Heard in the Court of Appeals 20 November 2003.

Garland and Drum, P.A., by J. Boyce Garland, Jr., for plaintiff-appellant.

Arthurs and Foltz, by Nancy E. Foltz, for defendant-appellee.

TYSON, Judge.

I. Background

Ben R. Smith, Jr. ("defendant") owns The Peach Tree, in York County, South Carolina, which sells fruit and vegetables. On 23 June 1999, Dorothy M. Wallace ("plaintiff") was injured while shopping in defendant's store and filed an action in Gaston County, North Carolina on 13 June 2002. In her unverified complaint, plaintiff alleged that she was a citizen and resident of Gaston County, North Carolina, and that defendant was a citizen and resident of York County, South Carolina.

Defendant moved to dismiss for lack of personal jurisdiction on 13 August 2002. In an affidavit attached to his motion, defendant stated that he did not own any real or personal property in North Carolina, did not travel to North Carolina on a regular basis, and did not have any accounts receivable in North Carolina. Defendant admitted placing a three-by-five inch advertisement, approximately twice weekly, in The Charlotte Observer and The Gaston Gazette during June, July, and one week in August. Plaintiff's response to defendant's motion asserted that defendant had placed 379 advertisements for The Peach Tree in The Charlotte Observer and 110 advertisements in The Gaston Gazette. She also attached affidavits and invoices showing advertisements in both newspapers, along with affidavits naming approximately twenty North Carolina residents who had shopped at The Peach Tree.

The trial court granted defendant's motion to dismiss and concluded that "defendant lacks sufficient contact with the State of North Carolina to be subject to jurisdiction of this Court."

II. Issue

The sole issue on appeal is whether the trial court had *in personam* jurisdiction over defendant.

III. Personal Jurisdiction

Plaintiff contends the trial court erred because sufficient minimum contacts existed to give North Carolina courts personal jurisdiction over defendant. "The test for establishing *in personam* personal jurisdiction over a foreign [defendant] is two-fold: first, 'Whether North Carolina's 'long-arm' statute

permits courts in this jurisdiction to entertain the action;' and second, 'whether exercise of this jurisdictional power comports with due process of law.'" *Fran's Pecans, Inc. v. Greene*, 134 N.C. App. 110, 112, 516 S.E.2d 647, 649 (1999) (quoting *ETR Corporation v. Wilson Welding Service*, 96 N.C. App. 666, 668, 386 S.E.2d 766, 767 (1990)).

A. Long-Arm Statute

North Carolina's long-arm statute, N.C. Gen. Stat. § 1-75.4, is to be liberally construed in favor of finding jurisdiction. *Starco, Inc. v. AMG Bonding and Ins. Services*, 124 N.C. App. 332, 338, 477 S.E.2d 211, 216 (1996).

The statute allows the exercise of personal jurisdiction in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury . . . :

a. solicitation or services activities were carried on within this State by or on behalf of the defendant

Fran's Pecans, Inc., 134 N.C. App. at 113, 516 S.E.2d at 649 (citing N.C. Gen. Stat. § 1-75.4(4)(a) (1996)). "To exercise personal jurisdiction over a foreign [defendant], the plaintiff must establish: 1) an action claiming injury to a North Carolina person or property; 2) that the alleged injury arose from activities by the defendant outside of North Carolina; and 3) that the defendant was engaging in solicitation or services within North Carolina at or about the time of the injury." *Fran's Pecans, Inc.*, 134 N.C. App. at 113, 516 S.E.2d at 649-650 (citation omitted).

Here, the parties agree that: (1) the action involves injury to a North Carolina resident, and (2) the injury arose from activities in South Carolina, outside the forum State. The facts at bar present the question of whether defendant was engaged in "solicitation . . . within North Carolina at or about the time of the injury." *Id.* This Court has held that two or three visits to North Carolina in furtherance of a contract, along with numerous phone calls regarding that contract, is sufficient to satisfy the third-prong of the long-arm statute test. *Carson v. Brodin*, ___ N.C. App. ___, ___, 585 S.E.2d 491, 495 (2003). We have also held that statutory grounds for personal jurisdiction existed when "[d]efendants admitted coming to North Carolina and discussing the repairs and then loading and transporting the car." *Marion v. Long*, 72 N.C. App. 585, 587, 325 S.E.2d 300, 302, *disc. rev. denied*, 313 N.C. 604, 330 S.E.2d 612 (1985).

Here, defendant placed advertisements in two North Carolina newspapers. He mailed payments to North Carolina addresses to satisfy invoices from both The Charlotte Observer and The Gaston Gazette. These advertisements directly solicited business from Mecklenburg and Gaston counties. Numerous North Carolina residents crossed the state line to shop at defendant's business. We conclude that plaintiff provided sufficient evidence of solicitation to establish statutory jurisdiction under N.C. Gen. Stat. § 1-75.4(4)(a) (2003).

B. Due Process

We must next consider whether the exercise of personal

jurisdiction over defendant comports with due process of law. This Court has recognized that "before a state court may subject a non-resident defendant to a judgment *in personam*, 'certain minimum contacts' with the forum state must be established in order that maintenance of the suit not 'offend traditional notions of fair play and substantial justice.'" *Mabry v. Fuller-Shuwayer Co.*, 50 N.C. App. 245, 249, 273 S.E.2d 509, 512, *cert. denied*, 302 N.C. 398, 279 S.E.2d 352 (1981) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 90 L. Ed. 95 (1945)). In considering what satisfies the minimum contacts requirement in North Carolina, this Court has held:

The test for minimum contacts is not mechanical, but instead requires individual consideration of the facts in each case. The activity must be such that defendant could reasonably anticipate being brought into court there. The factors to consider for minimum contacts include: (1) the quantity of the contacts; (2) the quality and nature of the contacts; (3) the source and connection of the cause of action to the contacts; (4) the interests of the forum state; and (5) the convenience to the parties.

Fran's Pecans, Inc., 134 N.C. App. at 114, 516 S.E.2d at 650 (internal citations omitted). We consider defendant's activities "as a whole, and not as isolated acts" in determining whether sufficient minimum contacts exist. *Dumas v. R. R.*, 253 N.C. 501, 507, 117 S.E.2d 426, 430 (1960).

Our United States Supreme Court has held that "if a foreign [defendant] purposefully avails itself of the benefits of an economic market in the forum State, it may subject itself to the State's *in personam* jurisdiction even if it has no physical

presence in the State." *Quill Corp. v. North Dakota*, 504 U.S. 298, 307, 119 L. Ed. 2d 91, 103 (1992). That Court also noted a defendant "purposefully avails" himself by indicating "an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State" *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 112, 94 L. Ed. 2d 92, 104 (1987).

Here, defendant purposefully availed himself of North Carolina's economic market. He solicited business by placing at least 400 advertisements over a five-year period in two newspapers doing business in and distributing in North Carolina. Plaintiff's evidence shows that she became aware of The Peach Tree because of these advertisements and that numerous North Carolina residents also responded to these solicitations. Defendant's business is located fifteen miles across the North Carolina border in York County, South Carolina, and adjoins Gaston County, North Carolina where this action was filed.

Considering these activities collectively, we conclude that defendant targeted and marketed to a certain geographical area within North Carolina in order to obtain financial benefit. The quality and quantity of defendant's activities in North Carolina, along with the lack of inconvenience of defending this action in an adjoining county, is sufficient to allow the exercise of *in personam* jurisdiction over defendant.

IV. Conclusion

The trial court erred in granting defendant's motion to dismiss for lack of personal jurisdiction. We hold that plaintiff established: (1) statutory jurisdiction under North Carolina's long-arm statute, N.C. Gen. Stat. § 1-75.4 (2003), and (2) sufficient minimum contacts within North Carolina, such that exercise of personal jurisdiction over defendant does not "offend traditional notions of fair play and substantial justice." *Mabry*, 50 N.C. App. at 249, 273 S.E.2d at 512. The trial court's order is reversed and this action is remanded.

Reversed and Remanded.

Judges HUDSON and STEELMAN concur.

Report per Rule 30(e).