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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-792

Filed: 2 May 2017

Nash County, No. 15 CVS 1134

FRED COHEN, executor of the estate of DENNIS ALAN O'NEAL, deceased, and  
FRED COHEN, executor of the estate of DEBRA DEE O'NEAL, deceased, Plaintiff,

v.

CONTINENTAL MOTORS, INC. (f/k/a TELEDYNE CONTINENTAL MOTORS,  
INC. and/or TELEDYNE CONTINENTAL MOTORS); TELEDYNE  
TECHNOLOGIES, INC.; AIR CARE AVIATION SERVICES, INC.; AIR-CARE, INC.  
(d/b/a AIR CARE, INC.); and AIRCRAFT ACCESSORIES OF OKLAHOMA, INC.,  
Defendants.

Appeal by defendant from order entered 10 March 2016 by Judge Marvin K.  
Blount III in Nash County Superior Court. Heard in the Court of Appeals  
6 March 2017.

*Blanchard, Miller, Lewis & Isley, P.A., by Philip R. Miller, III, and The Wolk  
Law Firm, by Michael S. Miska, for plaintiff-appellees.*

*Ellis & Winters LLP, by Leslie C. Packer and Nora F. Sullivan, for defendant-  
appellant Aircraft Accessories of Oklahoma, Inc.*

McGEE, Chief Judge.

Aircraft Accessories of Oklahoma, Inc. ("Aircraft Accessories") appeals from an  
order of the trial court denying its motion to dismiss pursuant to N.C. Gen. Stat. §

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1A-1 and Rule 12(b)(2) of the North Carolina Rules of Civil Procedure. For the reasons stated herein, we affirm the order of the trial court.

I. Background

On 13 March 2015, Fred Cohen (“plaintiff”), executor of the estates of Dennis Alan O’Neal and Debra Dee O’Neal (“O’Neals”), filed a complaint against Continental Motors, Inc. (f/k/a/ Teledyne Continental Motors, Inc. and/or Teledyne Continental Motors) (“CMI”), Teledyne Technologies, Inc. (“Teledyne”), Air Care Aviation Services, Inc. (“ACAS”), Air-Care, Inc. (d/b/a/ Air Care, Inc.) (“Air Care”) and Aircraft Accessories (collectively “defendants”). CMI and Teledyne are collectively referred to as “CMI defendants.” ACAS and Air Care are collectively referred to as “Air Care defendants.”

The complaint alleged that the Air Care defendants are North Carolina corporations whose principal place of business was located in Wilson County and Aircraft Accessories is an Oklahoma corporation. On 31 March 2013, the O’Neals were flying in a Lancair LC-42 aircraft piloted by Debra Dee O’Neal when the “engine lost power after it lost oil pressure and then failed to make power.” The O’Neals’ aircraft collided with trees in a forced landing and caught fire, resulting in the O’Neals’ death. The complaint further alleged that the defective condition of the engine was undetectable to plaintiff’s decedents prior to their departure and that the aircraft’s engine suffered a “catastrophic failure due to starvation of oil to its rotating

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components.” The CMI defendants and Aircraft Accessories supplied components to be installed on the aircraft during maintenance in North Carolina by the Air Care defendants. The components included the starter adapter gear, “which if defective or improperly installed can cause oil to exit an engine resulting in this type of failure.” Plaintiff advanced the following claims: strict liability, negligence, breach of express and implied warranties, and negligent misrepresentation against the CMI defendants and Aircraft Accessories; fraud against the CMI defendants, Air Care defendants, and Aircraft Accessories; negligence, breach of express and implied warranties, negligent misrepresentation, and breach of contract against the Air Care defendants; and recklessness, outrageous, willful and wanton conduct, and unfair and deceptive trade practices against all defendants.

On 26 May 2015, Aircraft Accessories filed a motion to dismiss plaintiff's complaint pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure.

On 10 March 2016, the trial court entered an order denying Aircraft Accessories' motion to dismiss. The trial court found that the decedents were residents of North Carolina, that the aircraft owned by decedents was registered in North Carolina, and that decedents died in a crash in North Carolina. The trial court also made the following findings of fact, in pertinent part:

- 11) Prior to the accident, defendant Air Care, Inc., located in Rocky Mount, North Carolina, installed a starter adapter it received from Aircraft Accessories of Oklahoma following overhaul and exchange, into the

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accident aircraft.

12) Aircraft Accessories is an Oklahoma corporation.

13) Aircraft Accessories specializes in the repair, overhaul and exchange of aircraft components.

14) Aircraft Accessories had shipped this part into North Carolina for its use on the accident aircraft, and billed Air Care \$4,750 for this component.

15) Aircraft Accessories sold the accident components to Air Care in North Carolina.

16) Aircraft Accessories conducted business with Air Care with respect to the sale of the subject starter adapter, and routinely has done business with Air Care and other various customers in North Carolina.

17) For the period of time from June 21, 2012 until December 16, 2013, Aircraft Accessories engaged in \$16,157.75 of business with defendant Air Care.

18) Aircraft Accessories maintains a mailing list and also conducts business with other customers in North Carolina.

19) Aircraft Accessories has sold over \$262,000 worth of products to North Carolina customers since January 2012, and continues to do business with North Carolina companies at present.

The trial court concluded that the actions of Aircraft Accessories satisfied North Carolina's long-arm statute and that it was "proper for this Court to authorize the exercise of jurisdiction over this defendant." It further concluded as follows, in pertinent part:

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Aircraft Accessories, Inc. has a distinct contacts [sic] to North Carolina, through goods being sold and shipped here. These goods are causally related to the deaths of two North Carolina residents in North Carolina. Aircraft Accessories has not disputed the fact that it sold the accident components to Air Care in North Carolina.

Given the contacts in this State, the harm in this State, and Aircraft Accessories reaching out into this State, this Court finds Aircraft Accessories is subject to specific jurisdiction, and that this comports with due process.

Aircraft Accessories appeals.

II. Discussion

The sole issue on appeal is whether the trial court erred by denying Aircraft Accessories' motion to dismiss for lack of personal jurisdiction. On appeal, Aircraft Accessories relies on *Walden v. Fiore*, 571 U.S. \_\_\_, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014), and contends that the United States Supreme Court recently "tightened its standards for specific jurisdiction." It argues that when the trial court exercised specific jurisdiction, it applied incorrect standards and misapplied the law.

When this Court reviews a decision as to personal jurisdiction, it considers only whether the findings of fact by the trial court are supported by competent evidence in the record; . . . [w]e are not free to revisit questions of credibility or weight that have already been decided by the trial court. If the findings of fact are supported by competent evidence, we conduct a *de novo* review of the trial court's conclusions of law and determine whether, given the facts found by the trial court, the exercise of personal jurisdiction would violate defendant's due process rights.

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*Deer Corp v. Carter*, 177 N.C. App. 314, 321-22, 629 S.E.2d 159, 165 (2006) (internal quotation marks and citations omitted).

We first note that Aircraft Accessories does not challenge any of the trial court's findings of fact. Therefore, they are binding on appeal. *See Mussa v. Palmer-Mussa*, 366 N.C. 185, 191, 731 S.E.2d 404, 409 (2012) (stating that a trial court's unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal). We will now review the trial court's decision in order to determine if there was an error of law.

"To ascertain whether North Carolina may assert personal jurisdiction over a nonresident defendant, we employ a two-step analysis. Jurisdiction over the action must first be authorized by N.C.G.S. § 1-75.4[.]" North Carolina's long-arm statute. *Brown v. Ellis*, 363 N.C. 360, 363, 678 S.E.2d 222, 223 (2009). N.C. Gen. Stat. § 1-75.4(5)(e) provides as follows, in pertinent part:

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

....

(5) Local Services, Goods or Contracts. - In any action which:

....

e. Relates to goods, documents of title, or other

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things of value actually received by the plaintiff in this State from the defendant through a carrier without regard to where delivery to the carrier occurred.

N.C. Gen. Stat. § 1-75.4(5)(e) (2015).

In the present case, the trial court determined that jurisdiction over Aircraft Accessories under the long-arm statute was satisfied due to the fact that Aircraft Accessories had shipped a starter adapter to North Carolina via common carrier. Because Aircraft Accessories does not challenge the first step of the trial court's personal jurisdiction analysis, we only consider the second step of the personal jurisdiction analysis.

"[I]f the long-arm statute permits consideration of the action, exercise of jurisdiction must not violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution." *Brown*, 363 N.C. at 363, 678 S.E.2d at 223 (citation omitted). "Due process requires that the defendant have minimum contacts with the state in order to satisfy traditional notions of fair play and substantial justice." *Cooper v. Shealy*, 140 N.C. App. 729, 734, 537 S.E.2d 854, 857 (2000) (citation internal and quotation marks omitted).

The United States Supreme Court has recognized two bases for finding sufficient minimum contacts: specific jurisdiction and general jurisdiction. Specific jurisdiction exists when the controversy arises out of the defendant's contacts with the forum state. General jurisdiction may be asserted over a defendant even if the cause of action is unrelated to defendant's activities in the forum as long as

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there are sufficient continuous and systematic contacts between defendant and the forum state.

*Lab. Corp. of Am. Holdings v. Caccuro*, 212 N.C. App. 564, 569, 712 S.E.2d 696, 701 (2011).

In determining whether sufficient minimum contacts exist, our Courts consider (1) the quantity of the contacts between defendant and North Carolina; (2) the nature and quality of such contacts; (3) the source and connection of plaintiff's cause of action to those contacts; (4) the interest of North Carolina in having plaintiff's case tried here; and (5) the convenience of the parties. No single factor controls, but they all must be weighed in light of fundamental fairness and the circumstances of the case.

*Bell v. Mozley*, 216 N.C. App. 540, 545, 716 S.E.2d 868, 872 (2011) (citation omitted).

Here, the trial court found that Aircraft Accessories was subject to specific jurisdiction, comporting with due process. It did not rely on general jurisdiction. Aircraft Accessories argues that the Supreme Court's holding in *Walden* has "tightened" the standards for specific jurisdiction. We do not agree.

Our Court has held that "[w]ith respect to specific jurisdiction, the relationship among the defendant, the forum state, and the cause of action is the essential foundation for the exercise of *in personam* jurisdiction." *Lab. Corp.*, 212 N.C. App. at 570, 712 S.E.2d at 701. This is in line with the standard as stated in *Walden*. *Walden*, 571 U.S. at \_\_\_, 134 S. Ct. at 1121, 188 L. Ed. 2d at 19-20 ("The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation." (internal



quotation marks and citation omitted)). “[T]he relationship must arise out of contacts that the defendant *himself* creates with the forum State.” *Id.* at \_\_\_, 134 S. Ct. at 1122, 188 L. Ed. 2d at 20 (citing *Burger King Corp. v. Rodzewicz*, 471 U.S. 462, 475, 85 L. Ed. 2d 528 (1985)). In addition, the “minimum contacts” analysis “looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* (citing *International Shoe Co. v. Washington*, 326 U.S. 301, 90 L. Ed. 95 (1945)).

The trial court cited to and properly relied on *Dailey v. Popma*, 191 N.C. App. 64, 662 S.E.2d 12 (2008), for its analysis as to whether Aircraft Accessories was subject to specific jurisdiction. *Dailey* provides that “[w]hat constitutes minimum contacts depends on the quality and nature of the defendant’s contacts on a case-by-case basis, but, regardless of the circumstances, there must be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State.” *Id.* at 70, 662 S.E.2d at 16-17 (internal quotation marks and citation omitted). “The defendant’s contact with the forum state must be ‘such that he should reasonably anticipate being haled into court there.’” *Id.* at 70, 662 S.E.2d at 17 (citing *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 365, 348 S.E.2d 782, 786 (1986)).

We apply the stated principles to the case before us. The trial court made the following unchallenged findings of fact, pertinent to the quantity, nature, and quality

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of contacts with North Carolina: Aircraft Accessories purposely created contacts with North Carolina by selling a starter adapter to Air Care, located in North Carolina, for \$4,750 and by shipping this part into North Carolina. Aircraft Accessories was found to have routinely done business with Air Care, engaging in \$16,157.75 worth of business with Air Care for the period of 21 June 2012 to 16 December 2013. Aircraft Accessories also routinely conducted business with other customers in North Carolina, maintained a mailing list of North Carolina customers, and sold over \$260,000 worth of products to North Carolina customers since January 2012. The trial court found that Aircraft Accessories had continued to conduct business with North Carolina companies. As to the source and connection of plaintiff's cause of action to those contacts, the trial court found that the goods Aircraft Accessories sold and shipped to North Carolina were "causally related to the deaths" of the O'Neals. It is well-established that "a state has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." *Baker v. Lanier Marine Liquidators, Inc.*, 187 N.C. App. 711, 716, 654 S.E.2d 41, 45 (2007). Thus, North Carolina has a manifest interest in providing plaintiff a convenient forum for redressing the injuries inflicted by Aircraft Accessories, an out-of-state actor. Lastly, there is no evidence in the record to indicate that it would be more convenient for the parties to litigate the present matter in a different forum. "Litigation on interstate business transactions inevitably involves inconvenience to

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one of the parties. When the inconvenience to defendant of litigating in North Carolina is no greater than would be the inconvenience of plaintiff of litigating in defendant's state . . . no convenience factors . . . are determinative[.]” *Cherry Bekaert & Holland v. Brown*, 99 N.C. App. 626, 635, 394 S.E.2d 651, 657 (1990) (internal citations, quotation marks, and brackets omitted).

Based on the foregoing, we hold that the trial court did not err by concluding that Aircraft Accessories had sufficient minimum contacts with North Carolina to justify the exercise of personal jurisdiction over it without violating the due process clause.

III. Conclusion

The order of the trial court denying Aircraft Accessories' motion to dismiss is affirmed.

AFFIRMED.

Judges McCULLOUGH and DAVIS concur.

Report per Rule 30(e).

Judge McCullough concurred in this opinion prior to 24 April 2017.