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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-290

Filed 2 July 2024

Mecklenburg County, No. 22-CVS-5503

WANDA FRENCH-BROWN and LOUIS ADIMANDO, Plaintiffs/Counterclaim Defendants,

v.

ALPHA MODUS VENTURES, LLC, Defendant/Counterclaim Plaintiff/Crossclaim Plaintiff,

v.

JOHN HAYES, Crossclaim Defendant.

Appeal by defendant and third-party plaintiff Alpha Modus Ventures, LLC from order entered 15 September 2022 by Judge J. Thomas Davis in Mecklenburg County Superior Court. Heard in the Court of Appeals 19 September 2023.

No brief filed for pro se plaintiff-appellee Wanda French-Brown.

No brief filed for pro se plaintiff-appellee Louis Adimando.

Bray & Long, PLLC, by Charles J. Bridgmon, for defendant-appellant Alpha Modus Ventures, LLC.

The Mitchell Law Group, by Grant S. Mitchell, for third-party defendant-appellee John Hayes.

STADING, Judge.

Alpha Modus Ventures, LLC (“AMV”) appeals the trial court’s grant of John

Hayes’ (“Hayes”) N.C. R. Civ. P. 12(b)(2) motion to dismiss for lack of personal jurisdiction. For the reasons below, we reverse and remand for further proceedings.

I. Background

AMV’s suit comes before this Court on appeal amid an intra-defendant fight over AMV’s judicial dissolution sought by Wanda French-Brown and Louis Adimando (together, “plaintiffs”). On 15 February 2021, plaintiffs, Hayes, Christopher Chumas, and William Alessi entered into an operating agreement (“LLC Agreement”) to incorporate AMV as a North Carolina entity, in which Alessi would hold a majority equity share as its managing member. French-Brown is a New Jersey resident, Adimando is a New York resident, Hayes is a Florida resident, and Alessi is a North Carolina resident.

Two days after entering the LLC Agreement, Alessi and Hayes entered into an agreement, labeled as a memorandum of understanding (“MOU”), designating AMV as the assignee of Hayes’ patents in exchange for twenty-five percent of all net proceeds from its monetization. The agreement contemplated that AMV would monetize the patents through the efforts of Alessi and others.

Hayes then assigned his patents to AMV. The terms of the patent assignment stated that Hayes “agreed to irrevocably transfer and assign to [AMV] all of its rights, title and interest, on a worldwide basis” in the identified patents. Hayes was to deliver AMV the original letters patent; originals of all patent agreements; each patent prosecution file; and relevant portions of laboratory notebooks and related

documents and things reasonably related to the conception, reduction to practice, and prosecution of any of the subject patents.

As AMV's Chief Executive Officer ("CEO"), Alessi communicated about the patent assignment with Hayes through text messages and emails between their respective North Carolina and Florida residences. Hayes cumulatively texted and emailed AMV personnel in North Carolina eight times over 2021 before souring on the enterprise's slower methodology.

On 3 March 2022, Hayes served AMV and plaintiffs with a demand letter seeking the return of his patent to his holding company, Fifth App, LLC. Based on Alessi's allegedly poor business practices and communication strategies, plaintiffs sought a corporate dissolution of AMV in their capacities as its minority members. When Alessi refused to participate in this dissolution, plaintiffs and Hayes entered into an agreement on 31 March 2022 that purported to reassign the patents back to Hayes. Faced with a deadlocked board, plaintiffs filed suit against AMV, seeking judicial dissolution of the corporate entity. They alleged that Alessi was not fulfilling his obligations towards the monetization of the patents and in communicating his progress.

On 16 May 2022, AMV filed a “crossclaim”¹ (or rather a third-party complaint) against Hayes, alleging that plaintiffs lacked the legal authority to reassign “the rights, title, and interest of every kind . . . to . . . the [p]atents” back to Hayes. The third-party complaint also alleged that Hayes committed tortious interference with the contract because he directly solicited the reversion of the patent assignment from plaintiffs.

Under N.C. R. Civ. P. 12(b)(2), Hayes moved to dismiss, asserting that the trial court lacked personal jurisdiction over him as a Florida resident. He attested to having never owned North Carolina property, hired a North Carolina employee, or served as an officer in any North Carolina business. Hayes also alleged that plaintiffs approached about joining AMV’s business venture before its incorporation.

On 15 September 2022, the trial court granted Hayes’ motion to dismiss for lack of personal jurisdiction. In relevant part, it found that:

3. The Court finds that [AMV] has only established that Mr. Hayes lives in Florida; that there were electronic communications between him and [AMV], which is domiciled in North Carolina.

4. Mr. Hayes engaged in those electronic communications through emails and texts with members of [AMV], who resided in New York, New Jersey, North Carolina and

¹ Though labeled as a “crossclaim,” AMV’s claim against Hayes is instead a third-party claim because the original plaintiffs, French-Brown and Adimando, first sued only AMV. *Compare* N.C. R. Civ. P. 13(g) (defining a crossclaim as “any claim by one party against a coparty arising out of the same transaction or occurrence of the original action.”) (brackets and ellipses omitted), *with id.* 14(a) (allowing a defendant to “assert any claim against another third-party defendant arising out of the transaction or occurrence of the plaintiff’s claim against” defendant) (brackets and ellipsis omitted).

South Carolina; that there were preliminary negotiations in regard to two contracts regarding the assignment of a patent, the first of which was an assignment from Mr. Hayes to [AMV], and the second was an assignment from [AMV] back to Mr. Hayes through the named original Plaintiffs in this case; and that those agreements included a choice-of-law provision designating the law of the State of Delaware as governing the agreements.

5. [AMV] has failed to make a prima facie showing of any other contacts between Mr. Hayes and North Carolina.

The trial court also found that the reassignment agreement contained “no terms nor any indication as to how cooperation would take place in regard to whether” Hayes’ business engagement, that is the performance of “any cooperation or services,” took place in Florida or North Carolina. AMV timely appealed.

II. Appellate Jurisdiction

Under N.C. Gen. Stat. § 1-277(b) (2023), a party may “immediate[ly] appeal from an adverse ruling as to” a trial court’s determination of personal jurisdiction. *See, e.g., Eaker v. Gower*, 189 N.C. App. 770, 772, 659 S.E.2d 29, 31 (2008) (citing § 1-277(b)).

III. Analysis

AMV raises a single appellate issue: whether the trial court erred in dismissing the claim against Hayes for lack of personal jurisdiction. The Court reviews the record to determine whether competent evidence contradicts an appellant’s assigned factual errors, yet it reviews a trial court’s resulting conclusions of law *de novo*. *See State ex rel. Stein v. E.I. du Pont de Nemours & Co.*, 382 N.C. 549, 555–56, 879 S.E.2d

537, 543–43 (2022) (citations omitted). Though we cannot revisit questions of evidence “credibility or weight already decided by the trial court,” we analyze whether “the exercise of personal jurisdiction would violate defendant’s due process rights” as a matter of law. *Deer Corp. v. Carter*, 177 N.C. App. 314, 321–22, 629 S.E.2d 159, 165 (2006) (citations and ellipses omitted).

Our courts may exercise “general” or “specific” personal jurisdiction over a defendant. *Id.* (citation omitted). The former arises from “continuous and systematic contacts between the defendant” and North Carolina. *Id.* (citation and internal quotation marks omitted). The latter—at issue here—pertains to “where a case arises from or is related to the defendant’s contacts with” North Carolina. *Id.* Under N.C. R. Civ. P. 12(b)(2), a plaintiff, whether first party or third party, bears the burden of proving that a trial court may exercise personal jurisdiction over a particular defendant. *See Mucha v. Wagner*, 378 N.C. 167, 861 S.E.2d 501 (2021) (citation omitted).

We use a two-step process to assess their specific personal jurisdiction authority over foreign defendants. First, North Carolina’s relevant long-arm statutes must grant them statutory authority to exercise the jurisdiction. *Stein*, 382 N.C. at 556, 879 S.E.2d at 543 (citing § 1-75.4). Second, exercising jurisdiction must accord with federal constitutional protections under the Fourteenth Amendment’s Due Process Clause. *Id.* (citations omitted).

But because North Carolina’s long-arm statute has been interpreted to allow the exercise of personal jurisdiction to the fullest extent permitted by the due process clause, the two-step analysis collapses into one. *See BIRTHA v. Stonemor, N.C., LLC*, 220 N.C. App. 286, 289, 727 S.E.2d 1, 4–5 (2012) (“The long-arm statute is liberally construed to find personal jurisdiction over nonresident defendants to the full extent allowed by due process.”); *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 676, 231 S.E.2d 629 (1977) (holding that North Carolina’s long-arm statute “make[s] available to the North Carolina courts the full jurisdictional powers permissible under federal due process.”).

For a North Carolina court to exercise personal jurisdiction, “there must be sufficient minimum contacts between the nonresident defendant and our state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Skinner v. Preferred Credit*, 361 N.C. 114, 122, 638 S.E.2d 203 (2006) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)) (internal quotation marks omitted); *Beem USA, LLLP v. Grax Consulting, LLC*, 373 N.C. 297, 316, 838 S.E.2d 158, 158 (2020).

Within the business context, our Supreme Court recently noted the following factors in assessing a defendant’s contacts with North Carolina:

- (1) whether the defendant maintains offices or agents in the forum state;
- (2) whether the defendant owns property in the forum state; (3) whether the defendant reached into the forum state to solicit or initiate business;
- (4) whether the defendant deliberately engaged in significant or long-term business activities in the forum state; (5) whether the parties

contractually agreed that the law of the forum state would govern disputes; (6) whether the defendant made in-person contact with the resident of the forum in the forum state regarding the business relationship; (7) the nature, quality and extent of the parties' communications about the business being transacted; and (8) whether the performance of contractual duties was to occur within the forum.

Schaeffer v. SingleCare Holdings, LLC, 384 N.C. 102, 110, 884 S.E.2d 698, 706 (2023) (quoting *Universal Leather, LLC v. Koro AR, S.A.*, 773 F.3d 553, 560 (4th Cir. 2014)). “The crux of the purposeful availment analysis is whether a defendant reached out beyond its home—by, for example, exploiting a market in the forum State or entering a contractual relationship centered there.” *Id.* (quoting *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359, 141 S. Ct. 1017, 1025, 209 L. Ed. 2d 225 (2021)) (brackets, citations, and internal quotation marks omitted).

“[T]here is no mechanical test for determining jurisdiction between contracting parties[.]” *Toshiba Glob. Com. Sols., Inc. v. Smart & Final Stores LLC*, 2022-NCSC-81, ¶ 10, 381 N.C. 692, 700, 873 S.E.2d 542, 549. The inquiry does not turn on “the place of contracting or of performance,” nor can “an individual’s contract with an out-of-state party alone . . . automatically establish sufficient minimum contacts in the other party’s home forum[.]” *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 478, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985) (emphasis in original). Instead, courts are to consider the parties’ “prior negotiations and contemplated future consequences, along with the terms of the contract and the parties’ actual course of dealing.” *Toshiba*

Global Commerce Sols., Inc., 2022-NCSC-81 ¶ 10, 873 S.E.2d 542 (quoting *Burger King*, 471 U.S. at 479, 105 S.Ct. 2174).

In this case, Hayes maintains that North Carolina lacks personal jurisdiction over him. He argues that he never owned North Carolina property, hired a North Carolina employee, or operated a North Carolina business. To him, the reassignment agreement between Hayes and AMV *qua* plaintiffs is Hayes’ only apparent contractual relationship, even tangentially related to North Carolina within the past five years. Before this litigation, Hayes claims that he sent only one text message and seven email exchanges to AMV personnel in North Carolina, none of which he initiated. Though AMV’s founding members incorporated AMV under North Carolina law on 15 February 2021, the MOU signed on 17 February 2021 by Alessi (for AMV) and Hayes included a choice-of-law provision directing any litigation towards Richmond County, New York. *See Tejal Vyas, LLC v. Carriage Park, L.P.*, 166 N.C. App. 34, 41, 600 S.E.2d 881, 887 (2004), *aff’d sub nom. Tejal Vyas, LLC v. Carriage Park Ltd. P’ship*, 359 N.C. 315, 608 S.E.2d 751 (2005) (citing *Corbin Russwin, inc. v. Alexander’s Hdwe., Inc.*, 147 N.C. App. 722, 728, 556 S.E.2d 592, 597 (2001) (“While choice of law clauses are not determinative of personal jurisdiction, they express the intention of the parties and are a factor in determining whether minimum contacts exist and due process was met.”). But inaction on Hayes’ part is not fatal to an exercise of jurisdiction. *See Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 368, 348 S.E.2d 782, 787 (1986) (“Lack of action by defendant in a

jurisdiction is not now fatal to the exercise of long-arm jurisdiction.”). To the contrary, “[i]n light of modern business practices, the quantity, or even the absence of actual physical contacts with the forum state, merely constitutes a factor to be considered and is not of controlling weight.” *Ciba–Geigy Corp. v. Barnett*, 76 N.C. App. 605, 607–08, 334 S.E.2d 91, 93 (1985) (emphasis in original). What is controlling is the “regular contractual performance of a contractual obligation . . . even if the location of the performance is not dictated by the contract.” *Toshiba Glob. Com. Sols., Inc.*, 2022-NCSC-81 ¶ 22, 873 S.E.2d 542.

Weighing all the evidence here, the Court concludes that the parties’ actual course of dealing and contemplated consequences show that the initial patent assignment and the disputed reassignment have a substantial connection with North Carolina and, therefore, jurisdiction over Hayes satisfies due process. *McGee v. Int’l Life Ins.*, 355 U.S. 220, 223, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957) (holding that the Due Process Clause does not preclude a state court from entering a judgment against a contracting party when “the suit was based on a contract which had substantial connection with that [s]tate.”).

Hayes transferred his patents to AMV, a North Carolina LLC. *See Hundley v. AutoMoney, Inc.*, 284 N.C. App. 378, 384, 876 S.E.2d 765 (2022) (“While a contractual relationship between an out-of-state defendant and a North Carolina resident is not dispositive of whether minimum contacts exists, a single contract may be a sufficient

basis for the exercise of specific personal jurisdiction if it has a substantial connection with this State.” (citations and internal quotation marks omitted)).

The terms of the patent assignment required Hayes to send AMV—which was in North Carolina—the original letters patent; originals of all patent agreements; each patent prosecution file; and relevant portions of laboratory notebooks and related documents and items related to the conception, reduction to practice, and prosecution of any of the subject patents. *See Calder v. Jones*, 465 U.S. 783, 789, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984) (holding that for jurisdiction to vest in a particular forum state under the purposeful direction test, a defendant must “expressly aim” their conduct at that state).

In exchange for the assignment, Hayes expected to profit from AMV’s monetization of the patents, primarily through the efforts of AMV’s CEO, who lived and worked in North Carolina.

In sum, by entering a contract with a North Carolina LLC and having a substantial connection with it, Hayes purposefully availed himself of the protection and benefits of North Carolina law. *See Mucha v. Wagner*, 2021-NCSC-82, ¶ 13, 861 S.E.2d 501, 507 (noting that North Carolina courts may “exercise personal jurisdiction over the defendant because there was evidence indicating the defendant knew (or should have known) that conduct directed at the plaintiff was conduct directed at the State of North Carolina.”); *Tom Togs, Inc.*, 318 N.C. at 367, 348 S.E.2d at 787 (holding that a defendant had purposefully availed itself of the benefits and

protections of the laws of North Carolina when it entered a contract with the clothing manufacturer).

Further, one of the underlying claims concerns whether the patents that Hayes transferred to AMV are still held by AMV in North Carolina or reassigned back to Hayes in Florida. *Schaeffer*, 384 N.C. at 113, 884 S.E.2d at 708 (finding personal jurisdiction against a corporate defendant when plaintiff's "claims further arise out of and are related to Corporate Defendants' activities in North Carolina."). In other words, a North Carolina LLC has possibly suffered injury on account of the patent reassignment back to Hayes, and the damaging effect of this conduct is felt in this State. *See Ciba-Geigy Corp. v. Barnett*, 76 N.C. App. 605, 608, 334 S.E.2d 91, 93 (1985) (recognizing "powerful public interest of a forum state in protecting its citizens against out-of-state tortfeasors" where the defendant committed fraud upon North Carolina corporation without physically coming into this State). Accordingly, North Carolina has a "manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." *Schaeffer*, 384 N.C. at 115, 884 S.E.2d at 710 (quoting *Tom Togs, Inc.*, 318 N.C. at 367, 348 S.E.2d at 787 (citation and internal quotation marks omitted)). *See also Cherry Bekaert & Holland v. Brown*, 99 N.C. App. 626, 633, 394 S.E.2d 651, 656 (1990) (explaining that North Carolina has a legitimate interest in the establishment and operation of enterprises and trade within its borders and the protection of its residents in making contracts with persons and agents who enter the State for that purpose).

As for the convenience of the parties, while litigating in North Carolina would not be convenient for Hayes, litigating anywhere else would not be convenient for the other parties. The record does “not indicate that any one State would be more convenient to all of the parties and witnesses than another.” *Banc of Am. Sec. LLC v. Evergreen Int’l Aviation, Inc.*, 169 N.C. App. 690, 691, 611 S.E.2d 179, 181 (2005). *See Climatological Consulting Corp. v. Trattner*, 105 N.C. App. 669, 675, 414 S.E.2d 382, 385 (1992) (holding that although three of the defendant’s material witnesses were in Washington, D.C., “this fact is counterbalanced by the fact that plaintiff’s materials and offices are located here[,]” and “North Carolina is a convenient forum to determine the rights of the parties”).

IV. Conclusion

After examining the relationship between Hayes, the forum, and the cause of action, we find sufficient minimum contacts to justify the exercise of personal jurisdiction over Hayes. As such, we conclude that North Carolina has personal jurisdiction over Hayes. We, therefore, reverse the trial court’s decision and remand this case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Chief Judge DILLON concurs.

Judge ARROWOOD dissents by separate opinion.

Report per Rule 30(e).

No. COA23-290 – *French Brown v. Alpha Modus Ventures, LLC*.

ARROWOOD, Judge, dissenting.

I respectfully dissent from the majority’s holding that the trial court erred in dismissing AMV’s claim against Hayes for lack of personal jurisdiction. Because this case involves a single contract with Hayes, an out-of-state party whose contacts with this State were fleeting at best, no substantial connection to North Carolina existed. Therefore, I would affirm the trial court’s ruling on the motion to dismiss.

While Alessi and Hayes entered into the MOU making AMV the assignee of Hayes’s patent, as the majority notes, a single contract with an out-of-state party cannot serve as the sole basis for establishing minimum contacts. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985) (“If the question is whether an individual’s contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party’s home forum, we believe the answer clearly is that it cannot.” (emphasis in original)).

The majority seemingly relies on our Supreme Court’s opinion in *Toshiba Global v. Smart & Final Stores*, 381 N.C. 692 (2022), specifically the Court’s recognition that determining the presence of minimum contacts requires consideration of “contemplated future consequences” in a contractual relationship, along with the “actual course of dealing[.]” Although it is true that our courts consider these factors when determining minimum contacts, these are not the only factors we

must consider, nor are they necessarily more important. Further, the United States Supreme Court has explained that these factors must be considered “along with the terms of the contract” *Burger King*, 471 U.S. at 479. As the majority takes care to note, the minimum contacts analysis requires consideration of a *variety* of factors, many of which our Supreme Court outlined in *Schaeffer v. SingleCare Holdings, LLC*, 384 N.C. 102, 110 (2023).

Here, Hayes did not purposefully avail himself of the privilege of conducting business in North Carolina. Hayes is a Florida resident and has no property, employee, or business located in this State. Despite the MOU entered between Alessi, a North Carolina resident, and Hayes, the MOU included a choice of law provision that directed all legal matters be adjudicated in the state of New York.

Additionally, the amount of contacts was significantly higher in *Toshiba Global* than in this case. The defendant’s contacts in *Toshiba Global* included thousands of parts shipments and repairs, 381 N.C. at 697, whereas the contacts in this case amounted to the re-assignment agreement and a total of eight responsive messages to AMV personnel in North Carolina. In light of the “actual course of dealing” here, Hayes’s contacts were far from sufficient to contemplate the same “future consequences” as the defendant in *Toshiba Global*. *See id.* at 702. Because the majority’s application of *Toshiba Global* is not appropriate here, I would affirm the trial court’s ruling. Accordingly, I dissent.