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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1002

Filed 17 September 2024

New Hanover County, No. 23 CVD 2728

WELLS FARGO BANK, N.A., Plaintiff,

v.

RICHARD GEORGE, Defendant.

Appeal by Defendant from order entered 30 October 2023 by Judge Chad Hogston in New Hanover County District Court. Heard in the Court of Appeals 27 August 2024.

Troutman Pepper Hamilton Sanders, LLP., by James D. Horne, Jr., for Plaintiff-Appellee.

Richard George, pro se Defendant-Appellant.

PER CURIAM.

Defendant Robert George appeals from a trial court order denying his motion to dismiss for lack of subject matter and personal jurisdiction. Defendant argues the trial court does not have subject matter jurisdiction over the matter as the contract at issue is allegedly invalid. Defendant also contends the trial court does not have personal jurisdiction over him because he is not a resident of North Carolina. We

disagree with both arguments and affirm the trial court's order.

I. Factual and Procedural Background

On 11 August 2023, Plaintiff filed a complaint in New Hanover County District Court seeking to collect on a consumer credit card debt pursuant to an agreement between Plaintiff and Defendant. The contract which Plaintiff alleged Defendant breached is governed by federal and South Dakota law. One week later, the New Hanover County Sheriff's Office served Defendant with the complaint and summons personally. On 8 September 2023, Defendant moved to dismiss the complaint under North Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(2). On 23 October 2023, the motion came on for hearing in New Hanover County District Court. On 30 October 2023, the Honorable Chad Hogston entered an order denying Defendant's motion. No factual findings were made by the trial court. Defendant timely appealed.

II. Analysis

Defendant contends the trial court erred by denying his motion to dismiss for two reasons. First, Defendant argues the trial court lacks subject matter jurisdiction over the claim. Second, Defendant argues the trial court does not have personal jurisdiction over him because he is a resident of California.

A. Appellate Jurisdiction

Generally, an "order denying a motion to dismiss for lack of subject matter jurisdiction is interlocutory and not immediately appealable." *Burton v. Phoenix Fabricators and Erectors, Inc.*, 185 N.C. App. 303, 305, 648 S.E.2d 235, 237 (2007)

(quoting *Shaver v. N.C. Monroe Constr. Co.*, 54 N.C. App. 486, 487, 283 S.E.2d 526, 527 (1981)). However, a party may immediately appeal from an interlocutory order when the order affects a substantial right and will create injury if not corrected before the trial court's final judgment. *Harris v. Matthews*, 361 N.C. 265, 269, 643 S.E.2d 566, 569 (2007) (citation omitted); see N.C. Gen. Stat. § 1-277(a) (2023) ("An appeal may be taken from every judicial order . . . that affects a substantial right[.]"). An order denying a motion "to dismiss for lack of personal jurisdiction affect[s] a substantial right and [is] immediately appealable." *A.R. Haire, Inc. v. St. Denis*, 176 N.C. App. 255, 257–58, 625 S.E.2d 894, 898 (2006) (citing N.C. Gen. Stat. § 1-277(b)). Because personal jurisdiction is a condition precedent to a court's exercise of subject matter jurisdiction, *Tart v. Prescott's Pharms., Inc.*, 118 N.C. App. 516, 519, 456 S.E.2d 121, 124 (1994) (citation omitted), we immediately review orders denying a defendant's motion concurrently challenging both subject matter jurisdiction and personal jurisdiction. *Church v. Carter*, 94 N.C. App. 286, 288, 380 S.E.2d 167, 168 (1989).

Accordingly, as the trial court order here denied Defendant's motion as to both personal and subject matter jurisdiction, we address both.

B. Subject Matter Jurisdiction

Defendant argues the trial court erred by denying his 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. Specifically, Defendant contends the contract at issue is void *ab initio* and therefore cannot serve as the basis for the court's

subject matter jurisdiction.

We review a trial court's order denying a defendant's motion to dismiss for lack of subject matter jurisdiction *de novo*. *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010) (citing *Harper v. City of Asheville*, 160 N.C. App. 209, 213, 585 S.E.2d 240, 243 (2003)). When reviewing an order *de novo*, we “consider[] the matter anew and freely substitute [our] own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (citation and internal marks omitted).

As a threshold matter, Defendant's argument here seems to vary from the argument he made in support of his motion to dismiss at the trial level. In his motion, Defendant argues the New Hanover County District Court “does not have subject matter jurisdiction since any contract the parties may have entered into was under California law and the highest state court has final authority in determining the construction as well as the validity of contracts entered into under the laws of the state.” Defendant does not make this argument on appeal. Rather, Defendant contends that “[b]ecause [Plaintiff]’s Contract fails to disclose key terms and because [Plaintiff] uses its superior bargaining power to impose arbitrary finance charges, the Contract must be considered void *ab initio* and cannot serve as a valid basis for subject matter jurisdiction.” Generally, we will not address an argument that was not presented to the trial court as “the law does not permit parties to swap horses between courts in order to get a better mount” on appeal. *State v. Sharpe*, 344 N.C.

190, 194, 473 S.E.2d 3, 5 (1996) (citation and internal marks omitted). However, Defendant did present a cognizable argument to the same effect in his reply to Plaintiff's response to the motion. Thus, we address both of Defendant's arguments.

Section 7A-240 of the North Carolina General Statutes codifies the general subject matter jurisdiction of district and superior courts:

Except for the original jurisdiction in respect of claims against the State which is vested in the Supreme Court, original general jurisdiction of all justiciable matters of a civil nature cognizable in the General Court of Justice is vested in the aggregate in the superior court division and the district court division as the trial divisions of the General Court of Justice. Except in respect of proceedings in probate and the administration of decedents' estates, the original civil jurisdiction so vested in the trial divisions is vested concurrently in each division.

N.C. Gen. Stat. § 7A-240 (2023). Here, Plaintiff is not making a claim against the State nor does Defendant argue this case involves the probate of a will or the administration of a decedent's estate. Rather, the underlying cause of action is a standard breach of contract claim – the ilk of which trial courts across the State adjudicate regularly.

Furthermore, Defendant fails to cite any controlling legal authority in support of his argument that a contract null and void from the outset forecloses the exercise of general jurisdiction by our trial courts. Defendant contends that because the contract is unconscionable it is void *ab initio*. He then argues that a contract void *ab initio* cannot serve as “a valid basis for subject matter jurisdiction.” This argument

is conclusory. Whether a contract is unconscionable is a question of law to be answered by a court. *Tillman v. Commercial Credit Loans, Inc.*, 362 N.C. 93, 101, 655 S.E.2d 362, 369 (2008) (citation omitted). To determine whether a contract is unconscionable under North Carolina law – a question of law – a North Carolina court must have subject matter jurisdiction over a claim involving the contract. *See McKoy*, 202 N.C. App. at 511, 689 S.E.2d at 592 (“Subject-matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it.” (citation and internal marks omitted)). The contract at issue has not been determined to be unconscionable by any other court to which we would defer in precedent or through issue preclusion. Thus, Defendant’s argument here is premised on an unfounded legal conclusion. Accordingly, we conclude this argument is without merit.

Defendant also fails to cite any authority showing why a North Carolina Court may not adjudicate claims on a contract entered into in a different state. North Carolina courts routinely entertain and adjudicate controversies premised on contracts entered into outside of the State. *See Schall v. Jennings*, 99 N.C. App. 343, 346, 393 S.E.2d 130, 132 (1990) (“In *Harris v. Pembaur*, 84 N.C. App. 666, 353 S.E.2d 673 (1987), the Court of Appeals found subject matter jurisdiction in a case where neither party was a resident of North Carolina, and the controversy arose out of an agreement for sale of a horse outside of North Carolina.”). Accordingly, Defendant’s second argument is without merit.

As section 7A-240 provides both the district and superior courts of this State with concurrent jurisdiction over civil matters, we hold the trial court did not err in denying Defendant's motion to dismiss for lack of subject matter jurisdiction.

C. Personal Jurisdiction

Defendant argues the trial court erred by denying his 12(b)(2) motion to dismiss for lack of personal jurisdiction. Specifically, Defendant contends Plaintiff failed to establish Defendant has the requisite contacts with North Carolina necessary for our State's courts to exercise personal jurisdiction over him.

Personal jurisdiction is the "court's authority to require an individual to appear in the forum and defend an action brought against the individual in that forum." *Slattery v. Appy City, LLC.*, 385 N.C. 726, 730, 898 S.E.2d 700, 704 (2024) (citations and internal marks omitted). A court generally "asserts personal jurisdiction over a defendant through service of process," meaning the defendant is served with both a summons and the complaint. *Id.* (citation omitted); *see also* N.C. Gen. Stat. § 1-75.6 (2023) ("A court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4 may exercise personal jurisdiction over a defendant by service of process in accordance with the provisions of Rule 4(j) or Rule 4(j1) of the Rules of Civil Procedure.").

The standard of review a trial court uses when faced with a motion to dismiss for lack of personal jurisdiction is contingent "upon the procedural context confronting the court." *Torres v. City of Raleigh*, 288 N.C. App. 617, 620, 887 S.E.2d

429, 433 (2023) (citations and internal marks omitted). “Three procedural postures are typical: (1) the defendant makes a motion to dismiss without submitting any opposing evidence; (2) the defendant supports its motion to dismiss with affidavits, but the plaintiff does not file any opposing evidence; or (3) both the defendant and the plaintiff submit affidavits addressing the personal jurisdiction issues.” *Providence Volunteer Fire Dep’t v. Town of Weddington*, 253 N.C. App. 126, 134, 800 S.E.2d 425, 432 (2017) (citation and internal marks omitted). Where the third occurs and the parties submit competing evidence, the trial court may decide the matter based upon the affidavits. *Id.* at 135, 800 S.E.2d at 432. In this context, the trial court “must determine the weight and sufficiency of the evidence presented in the affidavits much as a juror.” *Id.* (citations and internal marks omitted).

When reviewing a decision on personal jurisdiction, we “consider[] only ‘whether the findings of fact by the trial court are supported by competent evidence in the record; if so, [we] must affirm the order of the trial court.’” *Banc of Am. Sec. LLC v. Evergreen Int’l Aviation, Inc.*, 169 N.C. App. 690, 694, 611 S.E.2d 179, 183 (2005) (citations omitted). If a trial court does not make specific findings of fact, as it is not required to do unless a party so requests, then “it is presumed that the court on proper evidence found facts to support its judgment.” *Id.* (citations and internal marks omitted).

Here, Plaintiff submitted with its complaint an affidavit containing exhibits reflecting that Defendant has received mail at a Wilmington, North Carolina address

since as early as December 2022. Defendant however, in his motion to dismiss, affirmed he had “just recently moved to Wilmington, North Carolina.” Defendant does not elaborate on what “recent” means in this context. As the record is devoid of any other indication in support of Defendant’s contention that he is not a resident of North Carolina, we must presume the trial court weighed the competing evidence and ultimately found that Defendant is subject to the personal jurisdiction of North Carolina courts. *Providence*, 253 N.C. App. at 135, 800 S.E.2d at 432. Accordingly, the trial court properly denied Defendant’s motion to dismiss for lack of personal jurisdiction.

III. Conclusion

For the foregoing reasons, we hold the trial court did not err by denying Defendant’s motion to dismiss and affirm the order.

AFFIRMED.

Panel consisting of Judges ZACHARY, CARPENTER and GRIFFIN.

Report per Rule 30(e).