

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
MARK P. CIARROCCA
JUDGE



COURTHOUSE
ELIZABETH, NEW JERSEY
07207-6001

LETTER OPINION

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE OF OPINIONS

October 2, 2018

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Re: Jardim v. Overley
UNN-L-2341-18

Dear Counsel:

Presently before the Court is Defendant Michael Edward Overley's motion to dismiss Plaintiff Joseph Jardim's Complaint, with prejudice, pursuant to R. 4:6-2(b), for lack of personal jurisdiction.

This matter arises out of the sale of a 1960 Buick Invicta from Defendant to Plaintiff based on the Private Party Purchase Bill of Sale that was executed on May 29, 2018.

I. POSITIONS OF THE PARTIES

Defendant asserts that he is a resident of California, and the subject vehicle was located in California at the time of advertising. Defendant contends that he posted a listing for the vehicle on Hemmings.com, a forum where private parties could sell vehicles. Defendant posits that this was his first time using Hemmings.com to sell a vehicle, and that the listing specified that the vehicle and himself were located in California. Defendant avers he is not in the business of selling vehicles. Defendant maintains that Plaintiff's agent, Mark Mannuzza, originated contact with him regarding buying the vehicle, and agreed on the price of \$40,000.00 prior to Plaintiff signing the Private Party Purchase Bill of Sale. Defendant claims to have completed the title transfer paperwork in California and mailed same to Plaintiff's financing bank in New Jersey. Defendant asserts that Mannuzza arranged to have R&E Trucking, LLC, a Philadelphia, Pennsylvania based company, pick up the vehicle in California on June 20, 2018, and transport the vehicle to New Jersey. Defendant contends that his only involvement with the transportation process was to make the vehicle available for R&E Trucking, LLC to pick-up. Based on these alleged facts, Defendant argues that the Courts of New Jersey do not have personal jurisdiction over him, therefore, Plaintiff's Complaint should be dismissed with prejudice.

In opposition, Plaintiff argues that Defendant has purposely established his contacts with New Jersey by entering into negotiations with a New Jersey resident, which were designed to finalize the transaction. Plaintiff contends that Defendant's contacts with New Jersey were intentional and continuous. Plaintiff claims this suit is subject to specific jurisdiction because of Defendant's purposeful conduct of entering negotiations designed to make profit.

II. LAW & ANALYSIS

A. PERSONAL JURISDICTION

R. 4:6-2(b) states that "[e]very defense, legal or equitable, in law or fact, to a claim for relief in any complaint...may at the option of the pleader be made by motion, with briefs:...(b) lack of jurisdiction over the person."

In personam jurisdiction, or personal jurisdiction, is the power of the forum court over the defendant's person or entity. James H. Rhodes & Co. v. Chausovsky, 137 N.J.L. 459, 461 (Sup. Ct. 1948). "New Jersey courts may exercise personal jurisdiction over a non-resident defendant to the outermost limits permitted by the United States Constitution." Kam-Tech Sys. Ltd. v. Yardeni,

340 N.J. Super. 414, 429 (App. Div. 2001) (internal quotation marks and citations omitted). Personal jurisdiction generally arises from a party's presence within the state. *Ibid.* If, however, the defendant is not present within the territory of the forum, in order for the forum court to exercise personal jurisdiction over that defendant, the defendant must have certain "minimum contacts" with the forum such that the maintenance of the suit does not "offend traditional notions of fair play and substantial justice." Blakey v. Continental Airlines, Inc., 164 N.J. 38, 66 (2000) (citing Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945)).

Minimum contacts must be evaluated on a case-by-case basis, focusing on the relationship among the defendant, the forum, and the litigation. *Blakey*, 164 N.J. at 67. Minimum contacts that are sufficient to establish specific jurisdiction consist of "purposeful acts by that party, directed toward a state, which make it reasonable for the defendant to anticipate being haled into court there." Giangola v. Walt Disney World Co., 753 F. Supp. 148 (D.N.J. 1990). The requirement that the defendant has purposefully availed himself of the benefits and protections afforded to him by the forum state ensures that a defendant will not be haled into a jurisdiction solely as a result of "random, fortuitous, or attenuated contacts." *Blakey*, 164 N.J. at 67 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)). In other words, the "minimum contacts" requirement is satisfied so long as the defendant's contact with the forum state resulted from the defendant's purposeful conduct in or directed at the forum state, and not the unilateral activities of the plaintiff. *Id.* at 67 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98 (1980)).

Where the defendant is a non-resident of the forum state, the plaintiff bears the burden of proving the existence of jurisdiction. *Id.* at 71. "Once [a defendant] has shown that they have no territorial presence in [the forum] state, the burden shifts . . . to [the plaintiff]," who must then demonstrate why an exercise of personal jurisdiction over the defendant is proper. Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519, 533 (App. Div. 1996). The plaintiff must establish a defendant's contacts with the jurisdiction through the use of "sworn affidavits, certifications, or testimony." Catalano v. Lease & Rental Mgmt. Corp., 252 N.J. Super. 545, 547-48 (Law Div. 1991) (internal citations omitted).

In Asahi Metal Industry Co. v. Super. Ct. of Cal., 480 U.S. 102, (1987), the Supreme Court affirmed the rule that the substantial connection between the defendant and the forum state necessary for a finding of minimum contacts "must come about by an action of the defendant

purposefully directed toward the forum State." Id. at 112. The Supreme Court opined in Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478-79 (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. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, International Shoe Co. v. Washington, supra, at 319, or on "conceptualistic . . . theories of the place of contracting or of performance," Hoopston Canning Co. v. Cullen, 318 U.S., at 316. Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." Id., at 316-317. It is these factors -- prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing -- that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

[Id. at 478-79.]

The Court in Matter of Mut. Ben. Life Ins. Co., 258 N.J. Super. 356, 370 (App. Div. 1992), held that "in specific jurisdiction matters, the fact that a nonresident has entered into a contract with a party in the forum state is a factor to be considered. While such a contract will not automatically establish sufficient minimum contacts with the forum state, it will be examined in the context of the overall business transactions related to and surrounding the contract and the parties' relationship." Id. at 370.

Once a court finds that a defendant has met the threshold for minimum contacts with a state, the court must next decide "whether those minimum contacts establish jurisdiction consistent with considerations of fair play and substantial justice." Kam-Tech, 340 N.J. Super. at 429. Factors the court considers in determining whether an exercise of personal jurisdiction is fair include "the burden on defendant, the interests of the forum state, the plaintiff's interest in obtaining relief, the interstate judicial system's interest in efficient resolution of disputes, and the shared interest of the states in furthering fundamental substantive social policies." Blakey, 164 N.J. at 69 (internal quotation marks and citations omitted).

Here, after review of all the cases cited to by counsel for both parties, briefs, and hearing oral argument, this Court finds no personal jurisdiction over Defendant Overlay. In the various cases cited to by Plaintiff, the courts found important that out-of-state defendants actively solicited business in the forum state, initiated contact with a resident of the forum state, agreed to a choice-of-law provision choosing the forum state's law, had longstanding prior relationships or

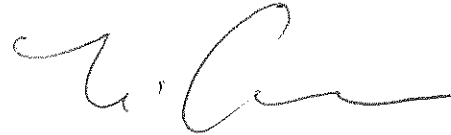
continuous relationships with the forum state's residents, physically travelled to the forum state, instituted criminal proceeding against the in-state plaintiff, or were the general partners of a limited partnership subject to the jurisdiction of the court. In particular, Plaintiff depends on Lebel v. Everglades Marina, Inc., 115 N.J. 317 (1989) (upholding New Jersey jurisdiction in a dispute between a New Jersey resident and a Florida boat manufacturer) and Halak v. Scovil, 296 N.J. Super. 363 (App. Div. 1997) (upholding New Jersey jurisdiction in a dispute between a New Jersey resident and a Maryland corporation that chartered a boat for him). In Lebel, the defendant, a manufacturer and seller of boats, met the plaintiff at a New York City boat show it hosted and then called the plaintiff at least twenty times over two years to solicit business from him. Lebel, 115 N.J. at 320. In Halak, the defendant was in the business of regularly renting boats and had a prior business relationship with the plaintiff. Halak, 296 N.J. Super. at 369.

This Court finds those cases distinguishable from the present matter as those contacts do not exist here. Overley placed a listing to sell his car on an internet forum, one that did not target any specific state or location, but was nationwide. Overley and the vehicle were located in California at all relevant times prior to shipment. There is no dispute that Overley is not in the business of selling vehicles. There is no evidence in the record that there was a prior relationship or ongoing relationship between the parties outside of the sale of the vehicle. This Court finds that Jardim initiated contact by responding to Overley's internet posting, and although they negotiated the price of the vehicle, this Court finds those negotiations do not create sufficient minimum contacts with New Jersey to attach personal jurisdiction to Overley. There is no evidence that Overley was in New Jersey at any relevant point during this one-time transaction. Once the parties signed the Private Party Purchase Bill of Sale, Mannuzza, Plaintiff's agent, arranged to have R&E Trucking, LLC, a Philadelphia, Pennsylvania based company, pick up the vehicle in California on June 20, 2018, and transport the vehicle to New Jersey. Defendant's only involvement with the transportation process was to make the vehicle available for R&E Trucking, LLC to pick-up. This Court finds that Plaintiff has failed to make a showing that Defendant has purposefully made minimum contacts sufficient to meet the threshold for minimum contacts with New Jersey. As this Court has found Defendant lacks the minimum contacts required to establish personal jurisdiction over him, this Court need not delve into "whether those minimum contacts establish jurisdiction consistent with considerations of fair play and substantial justice." Kam-Tech, 340 N.J. Super. at 429.

Since this Court finds no personal jurisdiction existing over Defendant Overley, Plaintiff's Complaint must be dismissed, with prejudice.

III. HOLDING

Whereas, Defendant's motion to dismiss Plaintiff's Complaint due to lack of personal jurisdiction is hereby, **GRANTED**.



HON. MARK P. CIARROCCA, P.J.Cv.