

2013 IL App (2d) 120931-U
No. 2-12-0931
Order filed June 28, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

GEORGE P. HEALY, d/b/a Galactic Tool Company,)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,)	
v.)	
CHARLES TODD, d/b/a Talever,)	No. 12-L-118
Defendant-Appellant.)	Honorable Edward Prochaska, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court had specific personal jurisdiction over defendant where defendant engaged in a commercial transaction in Illinois by deliberately targeting the sale of his milling machine to plaintiff and directly negotiating and contracting with plaintiff through email; trial court is affirmed.

¶ 2 Defendant, George P. Healy, appeals the trial court's order denying his motion to dismiss plaintiff's complaint for lack of personal jurisdiction over defendant. On appeal, defendant argues that the trial court's order denying his motion to dismiss must be reversed because: (1) there was no reasonable expectation that defendant would be subject to Illinois jurisdiction; (2) defendant took

the necessary steps to make it clear to plaintiff that Nevada, and not Illinois, law applied to resolve any conflict; and any argument to the contrary is moot and prevented by the action of defendant and by the parties' contract. We affirm for the reasons stated below.

¶ 3

I. BACKGROUND

¶ 4 The following facts are taken from the pleadings and attached document. In August 2011, plaintiff responded to defendant's advertisement he had placed on the internet website site, eBay.com for a "CNC Milling Profiler20 HP Tool Changer High Speed" (milling machine). Plaintiff did not place a bid for the milling machine through eBay.com; instead, the parties began to communicate through private email and telephone.

¶ 5 On April 24, 2012, plaintiff filed a two-count complaint against defendant. The first count alleged breach of contract as follows. Plaintiff contracted with defendant to manufacture a machine valued at \$140,000 for the price of \$85,000. Plaintiff attached a copy of the eBay.com advertisement and the parties' contract. The contract provided that the milling machine was to be shipped to Illinois. Plaintiff paid a down payment of \$10,000 pursuant to the contract. Defendant refused to manufacture the milling machine without an additional \$25,000. The contract provided defendant to return the \$10,000 to plaintiff or deliver the milling machine. Defendant refused to do either. Plaintiff attached an unsigned copy of the agreement to his complaint. Plaintiff also attached email correspondence between plaintiff and defendant and defendant's eBay.com advertisement.

¶ 6 The second count alleged fraud, realleging the facts in count one and additionally alleging the following. Defendant had no intention of building and shipping the milling machine to Illinois, but intended only to commit fraud against plaintiff by keeping the \$10,000 deposit.

¶ 7 Defendant filed a motion to dismiss plaintiff's complaint alleging that the trial court lacked personal jurisdiction because he was not present in Illinois, was not a resident of Illinois, did not consent to jurisdiction and did not have minimum contacts with Illinois. Defendant also alleged that the trial court lacked special jurisdiction because the governing law of the parties' contract was that of Nevada, plaintiff resided in and conducted business in Nevada and that none of the acts alleged by plaintiff occurred in Illinois. Defendant also claimed that the trial court lacked general jurisdiction of defendant and that Illinois was not the proper venue.

¶ 8 Plaintiff filed an answer to defendant's motion to dismiss, arguing that the trial court had specific and general jurisdiction of defendant pursuant to section 2-209(c) of the Code of Civil Procedure (735 ILCS 5/2-209(c) (West 2010)) because defendant directly marketed his product in Illinois through the internet, directly targeted his product to plaintiff in Illinois through personal contact, negotiated a contract with plaintiff and sent a contract to plaintiff in Illinois.

¶ 9 Without holding a hearing, the trial court denied defendant's motion to dismiss. This court granted defendant's petition for leave to appeal pursuant to Supreme Court Rule 306(a)(2).

¶ 10 II. ANALYSIS

¶ 11 Defendant argues that the trial court erred by denying his motion to dismiss plaintiff's complaint for lack of jurisdiction. When, as here, the trial court denies a motion to dismiss for lack of jurisdiction based solely on documentary evidence, our review is *de novo*. *Aasonn, LLC, v. Delaney*, 2011 IL App (2d) 101125, ¶ 10 (2011). Once a defendant has challenged a court's exercise of personal jurisdiction, the plaintiff has the burden of proving a *prima facie* case for jurisdiction when seeking jurisdiction over a nonresident defendant. *Id.*

¶ 12 Illinois courts may assert specific personal jurisdiction over a nonresident defendant only if the assertion comports with section 2-209 of the Code of Civil Procedure (735 ILCS 5/2-209 (West 2010)), known as the Illinois long-arm statute, and with the due process guarantees of the Illinois and the United States Constitutions. Ill. Const. 1970, Art. 1, § 2; U.S. Const., amend. XIV. See also *Aasonn, LLC*, 2011 IL App (2d) 101125, ¶ 11. The long-arm statute provides, in relevant part:

“(a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

(1) The transaction of any business within this State;

* * *

(7) The making or performance of any contract or promise substantially connected with this State;

* * *

(c) A court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.” 735 ILCS 5/2-209 (West 2010).

¶ 13 Thus, section (c) of the long-arm statute allows an Illinois court to exercise personal jurisdiction on any basis permitted by the Illinois Constitution and the Constitution of the United States. 735 ILCS 5/2-209(c) (West 2010). Section (c) is coextensive with the due process requirements of the Illinois and United States Constitutions. *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 43; *Wiggen v. Wiggen*, 2011 IL App (2d)

100982, ¶ 21. In addition, subsection (c) provides an independent basis for a court exercising personal jurisdiction over a party. *Id.*

¶ 14 For personal jurisdiction to comport with the requirements of federal due process, the defendant must have sufficient minimum contacts with the forum state so that maintaining the suit in the forum state does not offend traditional notions of fair play and substantial justice. *Innovative Garage Door Co. v. High Ranking Domains, LLC*, 2012 IL App (2d) 120117, ¶ 16 (2012).

¶ 15 Plaintiff asserted, in part, that defendant subjected himself to personal jurisdiction in Illinois by transacting business in Illinois under section 2-209(a)(1) of the long-arm statute and by entering into a contract substantially connected with Illinois under section 2-209(a)(7). Defendant argues that plaintiff failed to establish that defendant was “doing business” by virtue of his advertising over the internet that would subject him to personal jurisdiction in Illinois.

¶ 16 Here, contrary to defendant’s contention, we are not presented with a situation where jurisdiction is entirely dependent on the existence of a website. In deciding that Illinois may assert jurisdiction over defendant, we are guided by considerations beyond his advertising over the internet. Generally, “something more” than just the presence of a website is required. See *Millennium Enterprises, Inc.*, 33 F. Supp. 2d at 919 (citing *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997)). However, when assessing internet-based contacts, it is important to consider the extent to which a defendant directed his activities at the forum state. *Innovative Garage Door Co. v. High Ranking Domains, LLC*, 2012 IL App (2d) 120117, ¶ 23. Thus, specific personal jurisdiction may exist where a non-forum defendant purposely directs his activities at the forum state. *Id.* See also *Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985).

¶ 17 In this case, defendant's contacts with Illinois were more significant than posting an ad on eBay. The most significant contact defendant had with Illinois was the nature of his business relationship with plaintiff. The record reveals that after plaintiff expressed interest in defendant's eBay posting, defendant invited plaintiff to communicate with him through private email and telephone. Defendant then directly offered to sell plaintiff a milling machine. The parties negotiated and reached an agreement whereby plaintiff would send defendant a part and a \$10,000 deposit and defendant would manufacture and sell a milling machine which would be delivered to plaintiff in Illinois. We agree with defendant that the document labeled "Agreement for the Sale of Goods" attached to plaintiff's answer to defendant's motion to dismiss is not signed by either party, and thus, was not executed. However, the record contains email correspondence between the parties establishing mutual assent and the essential terms of the parties' agreement and indicates part performance indicating that defendant received plaintiff's part necessary for the milling machine and the \$10,000 deposit.

¶ 18 Here, the agreement clearly established a significant relationship between defendant and plaintiff. The totality of the facts involved with the negotiations, payment of the deposit, and agreement between the parties indicate that it would be fair to entertain jurisdiction in Illinois. Although defendant's eBay posting was not directly targeted at Illinois, subsequently defendant deliberately targeted the sale of his milling machine to plaintiff when he directed the sale of his milling machine specifically at plaintiff. Thus, defendant engaged in a commercial transaction in Illinois by negotiating and contracting with plaintiff. See *Innovative Garage Door Co., LLC*, 2012 IL App (2d) 120117, ¶ 28. Defendant's contacts with Illinois are in no way "random, fortuitous, or attenuated" (*Wiggen*, 2011 IL App (2d) 100982, ¶ 24). Defendant's contacts "arise from substantial

obligations in this state to which [defendant] voluntarily subjected itself by entering into a contract with an Illinois resident.” See *Innovative Garage Door Co.*, 2012 IL App (2d) 120117, ¶ 25. Accordingly, the trial court has specific personal jurisdiction over defendant and the trial court properly denied defendant’s motion to dismiss plaintiff’s complaint.

¶ 19 Defendant cites *MacNeil v. Trambert*, 401 Ill. App. 3d 1077 (2010) to support his argument. In *MacNeil* we held that the sale of a product through eBay to a buyer in Illinois, when the seller has no control over who purchases the item, did not subject the seller to jurisdiction in Illinois without further ties to the state. *MacNeil*, 401 Ill. App. 3d at 1082-83. In this case, defendant had complete control over who purchased his machine because the purported sale was not completed on eBay. Defendant directed his offers and or counteroffers directly to plaintiff through email. Thus, *MacNeil* is distinguishable from this case.

¶ 20 Defendant also argues that the trial court does not have general jurisdiction over him. Because we have already determined that the trial court had a basis to assert specific personal jurisdiction over defendant, we need not discuss the issue of general jurisdiction. See *Madison Miracle Productions, LLC*, 2012 IL App (1st) 112334, ¶ 45 (a trial court may exercise either general or specific personal jurisdiction over a nonresident defendant).

¶ 21 Defendant also argues that the written contract entered into between the parties specifically states that in the event of any dispute the laws of Nevada will apply. As we discussed earlier, we agree with defendant that the document labeled “Agreement for the Sale of Goods” attached to plaintiff’s answer to defendant’s motion to dismiss was not signed by either party, and, thus, was neither executed nor binding. Therefore, the choice of law provision in that document has no effect.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we affirm the circuit court's denial of defendant's motion to dismiss plaintiff's complaint.

¶ 24 Affirmed.