

No. 1-13-2495

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MARGARET A. ARNOLD,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 M1 124478
	)	
BRIAN A. BLASCHKA and MELISSA BLASCHKA,	)	
a/k/a MELISSA SQUIRES-BLASCHKA,	)	Honorable
	)	Sheryl A. Pethers,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE TAYLOR delivered the judgment of the court.  
Presiding Justice Gordon and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court properly dismissed civil action for want of personal jurisdiction, where property at issue, and alleged breaches of contract and tortious conduct, were outside Illinois and where alleged bases for jurisdiction were that non-resident defendants sought and maintained communication with resident plaintiff and that alleged contract was allegedly finalized here.

¶ 2 This case concerns a civil action by plaintiff Margaret Arnold against defendants Brian and Melissa Blaschka (also known as Melissa Squires-Blaschka) for breach of contract,

negligence, trespass, and conversion, arising out of an alleged lease of real property in the United States Virgin Islands by plaintiff to defendants. Plaintiff appeals *pro se* from the dismissal of her action for want of personal jurisdiction over defendants, contending that the dismissal was erroneous because the exercise of jurisdiction comported with due process and thus the jurisdiction statute.

¶ 3 Plaintiff filed her complaint in April 2013. She alleged that, at all relevant times, she rented an apartment in Chicago and owned a home in St. Croix in the Virgin Islands, while defendants resided either in Milwaukee, Wisconsin, or St. Croix. She alleged that defendants approached her to rent her St. Croix home (the Property) in June of 2009, and that plaintiff and defendants exchanged e-mails between Chicago and Milwaukee concerning such a rental. Defendants requested a rent reduction from \$3,500 to \$2,000 in exchange for maintaining the house, yard, and swimming pool, "stat[ing] they could spend up to \$500 a month for miscellaneous repairs and upkeep on the home in addition to the yard and pool maintenance," and agreeing to pay the utility bill for the Property in addition to the rent. Plaintiff alleged that she met with defendants in Chicago in July 2009 "to finalize the terms," at which time she gave them a list of matters for repair or maintenance at the Property (the List), which defendants agreed to perform. Plaintiff alleged that defendants "failed to complete" the List, owed rent in the amount of \$15,065 and utility bills totaling \$641.33, and caused \$800 damage to the Property's yard and \$980 to its pool by failing to maintain them.

¶ 4 The negligence, trespass, and conversion counts incorporated the allegations above from the breach of contract count. The negligence count alleged that defendants caused enumerated damage to plaintiff's property (fixtures, furniture, etc.) at the Property by failing to exercise ordinary care and/or allowing their children to cause damage beyond ordinary wear and tear.

The trespass count alleged that plaintiff owned a vehicle ("the Vehicle") that she kept at the Property and agreed "at the July 2009 meeting in Chicago" to allow defendants to use the Vehicle until they could purchase their own, that plaintiff made a loan to defendants in September 2009 to purchase a vehicle, that upon defendants doing so plaintiff requested in writing that the Vehicle be stored at a neighbor's home, that defendants did not store the Vehicle but were found by plaintiff's husband in August 2010 to have driven it 5,863 miles since August 2009, that plaintiff told defendants in August 2010 that she would not renew the Vehicle's registration and that they were not allowed or insured to use the Vehicle, and that in September 2012, plaintiff learned that defendants had driven the Vehicle another 2,630 miles, so that plaintiff sought compensation for enumerated items of damage, wear, and lost value to the Vehicle. The conversion count alleged that defendants removed enumerated personal property of plaintiff from the Property without her consent and failed to return said property upon her demand for its return.

¶ 5 Defendants were served with process in St. Croix. In May 2013, they appeared and filed a motion objecting to jurisdiction and seeking to quash service. They noted that plaintiff acknowledged defendants to be non-residents of Illinois. They argued that any landlord-tenant relationship between the parties, and all alleged tortious conduct, was in St. Croix. They argued that the only alleged basis for jurisdiction in Illinois was the July 2009 meeting in Chicago, which they argued is insufficient.

¶ 6 Plaintiff responded to the motion, arguing that defendants had the requisite minimum contacts with Illinois for our courts to exert jurisdiction over them by contacting plaintiff here to negotiate the lease at issue and then having ongoing contact with plaintiff here during the lease. Attached to the response was plaintiff's affidavit. She averred that, in May 2009, a neighbor of

the Property informed her that defendants were interested in renting the Property. She averred that defendants "contacted" her in June 2009 about renting the Property, at which time she resided in Chicago and "had not made a decision whether to rent [the Property] for the coming year," and that defendants continued said contact into July 2009. Plaintiff alleged that, in July 2009, defendants came to Chicago to meet her and "finalize our oral agreement" for rental of the Property: she gave defendants the List "which they agreed to do as part of the agreement" and she gave them the keys to the Property. Plaintiff averred that, during the rental period, she maintained "continuous contact" with defendants by e-mail and telephone "regarding issues concerning repairs, maintenance, and payment of past due rent," and defendants made rent payments to plaintiff by either mailing a check to her Chicago address or wiring funds to her account at a Chicago bank.

¶ 7 Defendants replied in support of their motion, alleging that they reside, and at all times relevant to the complaint resided, in the Virgin Islands and noting that the complaint concerned the Property in the Virgin Islands. Noting that plaintiff had not alleged or averred to the contrary, defendants alleged that in Illinois they "do not maintain an office, residence, mailing address, telephone number, bank account or any kind of physical presence," own no property, pay no taxes, have no business license, have no agent for service of process, "do not regularly – or even occasionally – conduct or solicit business," offer no goods or services for sale or distribution, have no employee or agent, and have never earned income, had a driving license, or been registered to vote here. Defendants argued that the sole contact with Illinois, the Chicago meeting where plaintiff gave them the keys to the Property, was insufficient to assert jurisdiction and that requiring them to defend the case here would be unreasonable and violate due process.

¶ 8 On July 16, 2013, following a hearing on the motion ("the matter having been briefed and argued and the court fully advised,") the circuit court granted dismissal for lack of jurisdiction.

This appeal timely followed.

¶ 9 On appeal, plaintiff contends that dismissal of her action was erroneous because the exercise of jurisdiction over defendants comported with due process and thus the relevant statute.

¶ 10 Section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301 (West 2012)) governs objections to personal jurisdiction in civil cases and provides that:

"Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of this State or on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process. Such a motion may be made singly or included with others in a combined motion, but the parts of a combined motion must be identified. \*\*\* Unless the facts that constitute the basis for the objection are apparent from papers already on file in the case, the motion must be supported by an affidavit setting forth those facts."

735 ILCS 5/2-301(a) (West 2012).

The court "shall consider all matters apparent from the papers on file in the case, affidavits submitted by any party, and any evidence adduced upon contested issues of fact" in ruling on

such a motion. 735 ILCS 5/2-301(b) (West 2012). The plaintiff has the burden of establishing a *prima facie* case for jurisdiction over a non-resident defendant. *Russell v. SNFA*, 2013 IL 113909, ¶ 28. While any conflict in the pleadings and affidavits must be resolved in the plaintiff's favor, the defendant may overcome plaintiff's *prima facie* case by presenting uncontradicted evidence that defeats jurisdiction. *Id.* We review *de novo* the circuit court's decision on personal jurisdiction when the court considered solely documentary evidence; that is, did not hold an evidentiary hearing. *Id.*

¶ 11 Section 2-209 of the Code (735 ILCS 5/2-209 (West 2012)) governs jurisdiction in civil cases and provides that:

"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;
- (2) The commission of a tortious act within this State; [or]
- (7) The making or performance of any contract or promise substantially connected with this State." 735 ILCS 5/2-209(a) (West 2012).

¶ 12 Section 2-209 also includes a catch-all provision: "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(c) (West 2012). This provision is coextensive with the

due process requirements of said constitutions, so that if federal and Illinois due process requirements for personal jurisdiction have been met, section 2-209 is satisfied. *Russell*, 2013 IL 113909, ¶ 29; *Graver v. Pinecrest Volunteer Fire Department*, 2014 IL App (1st) 123006, ¶ 13.

¶ 13 Federal due process requires minimum contacts with the forum State so that maintaining suit there does not offend traditional notions of fair play and substantial justice. *Russell*, 2013 IL 113909, ¶ 34. Such minimum contacts must be based on some act by which the defendant purposefully avails himself of the privilege of conducting activities in the State, thus invoking the benefits and protections of its laws. *Graver*, 2014 IL App (1st) 123006, ¶ 14. The requirement of purposeful availment exists so that a non-resident defendant will not be forced to litigate in a distant or inconvenient forum solely as a result of random, fortuitous, or attenuated contacts or the unilateral act of a consumer or third party. *Id.* Federal due process analysis considers whether: (1) the non-resident defendant had minimum contacts with the forum State such that there was fair warning that he may be haled into court there; (2) the action arose from, or is related to, the defendant's contacts with that State; and (3) it is reasonable to require the defendant to litigate there. *Id.*, ¶ 15. The factors to consider in evaluating reasonableness under the third prong include the: (1) burden imposed on the defendant by requiring him to litigate in a forum where he does not reside, (2) forum State's interest in resolving the dispute, (3) plaintiff's interest in obtaining relief, and (4) interests of other affected forums in the efficient judicial resolution of the dispute and advancement of substantive social policies. *Russell*, 2013 IL 113909, ¶ 87.

¶ 14 As the United States Supreme Court has stated regarding federal due process limits on personal jurisdiction, the key issue is the contact the defendant had with the forum State. *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014). Thus, "however significant the plaintiff's contacts with

the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.' " *Id.*, quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980). Similarly, courts must examine whether the defendant had minimum contacts with the forum State itself, not merely with persons who reside there. *Id.* On one hand, jurisdiction has been upheld when a defendant purposefully reached out into another State by entering a contractual relationship that envisioned continuing and wide-reaching contacts in the forum State, or by circulating merchandise to exploit a market in the forum State, and physical entry into a State is not required but is a relevant contact. *Id.* On the other hand, the plaintiff cannot be the only link between the defendant and the forum. *Id.* " '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.) *Id.* at 1123, quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985).

¶ 15 The minimum contacts requirement differs depending on whether general or specific personal jurisdiction is sought. *Russell*, 2013 IL 113909, ¶ 36. General jurisdiction over a defendant arises where the defendant has continuous and systematic general business contacts with the forum State, while specific jurisdiction over a defendant arises only if the suit arises from, or is related to, the defendant's contacts in that State. *Id.*; *Graver*, 2014 IL App (1st) 123006, ¶ 15. For general jurisdiction, the non-resident defendant must engage in business activity in Illinois not merely occasionally but on a fairly permanent and continuous basis, with contact so extensive and pervasive as to approximate physical presence. *Russell*, 2013 IL 113909, ¶ 36.

¶ 16 A non-resident defendant's contract with an Illinois resident alone does not inherently establish minimum contacts. *Graver*, 2014 IL App (1st) 123006, ¶ 16. Instead, in determining

whether a defendant has purposefully availed himself of the benefits of Illinois law in forming the contract, the court considers: (1) who initiated the transaction, (2) where the contract was formed, and (3) where the contract was performed. *Id.*

¶ 17 Here, we first find that the circuit court did not have general jurisdiction over defendants, assuming that the concept still exists as described above following the Supreme Court decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) ("the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business \*\*\* is unacceptably grasping"). While plaintiff alleged ongoing contact with defendants "regarding issues concerning repairs, maintenance, and payment of past due rent" for the Property and payment of rent therefor, we find that this does not rise to the level of continuous and systematic general business contact with Illinois; that is, the contact was merely occasional and clearly not so extensive and pervasive as to approximate defendants' physical presence here.

¶ 18 As to specific jurisdiction, section 2-209 encompasses the "making or performance of any contract or promise substantially connected with this State." 735 ILCS 5/2-209(a)(7) (West 2012). The issue is whether the contract alleged by plaintiff is substantially connected with the State. Plaintiff clearly alleges that contact was initiated by defendants; they sought to rent the Property. As to where the contract was formed, this is not as clear-cut as plaintiff asserts. All communication for negotiating the contract -- notably, electronic rather than in-person -- could as easily be said to have been made where defendants then resided as in Chicago where plaintiff resides. While defendants erroneously claim that the finalization of the lease agreement in Chicago consisted of a mere delivery of the Property's keys, plaintiff alleged and averred that she also gave defendants the List that is a basis for her complaint. That said, the List merely delineated a duty that defendants had allegedly undertaken earlier. Moreover, any agreement

between the parties concerned the Property in the Virgin Islands. In particular, defendants' alleged duties to maintain the Property at their expense and pay its utility bill were to be performed in the Virgin Islands. Again, it could be as easily said that defendants performed (and allegedly failed to perform) the duty of paying rent for the Property by sending funds from the Virgin Islands as by their receipt in Chicago.

¶ 19 Turning to the federal due process factors -- whether defendants had minimum contacts with Illinois such that there was fair warning that they may be haled into court here, and whether this action arose from, or is related to, defendants' contacts with Illinois -- we conclude that defendants' contacts have, with the exception of one trip to Chicago to obtain the keys to the Property and receive the List, been not with Illinois as a forum but with plaintiff herself. As to whether it is reasonable to require defendants to litigate here, plaintiff's interest in obtaining relief is unquestionable. However, the burden imposed on defendants by requiring them to litigate in Illinois, when they reside thousands of miles away in the Virgin Islands, is palpable. Similarly, while Illinois has no particular interest in resolving the dispute between these parties, the Virgin Islands have a stake in the form of the Property there -- that is, in ensuring that real property there is well-maintained -- and the allegedly unpaid utility is also in the Virgin Islands.

¶ 20 For the aforementioned reasons, we conclude that the circuit court does not have personal jurisdiction over defendants. As plaintiff failed to state a *prima facie* case for jurisdiction, the court did not err in dismissing the cause on that basis.

¶ 21 Accordingly, the judgment of the circuit court is affirmed.

¶ 22 Affirmed.