

2017 IL App (1st) 162423-U

No. 1-16-2423

Order filed June 22, 2017

Fourth Division

**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 DISTRICT

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ACCURATE PERSONNEL, LLC,	)	
	)	Appeal from the
Plaintiff-Appellant	)	Circuit Court of
	)	Cook County
v.	)	
	)	
RALPH COLEMAN INTERNATIONAL	)	
LIMITED d/b/a RCI US CORPORATION and	)	No. 15L1430
IFCO SYSTEMS US, LLC,	)	
	)	
Defendants,	)	
	)	Honorable
(Ralph Coleman International Limited,	)	Thomas R. Mulroy, Jr.,
	)	Judge Presiding.
Defendant-Appellee.)	)	

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JUSTICE BURKE delivered the judgment of the court.  
Justices McBride and Howse concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the circuit court’s judgment finding that it lacked personal jurisdiction over RCIL where exercising jurisdiction would violate due process.

¶ 2

## I. BACKGROUND

¶ 3 Plaintiff, Accurate Personnel, LLC, filed a complaint in the circuit court of Cook County naming RCI US Corporation (RCI US) and IFCO Systems US, LLC (IFCO) defendants. In its complaint, plaintiff stated that it was a temporary staffing agency that provided temporary personnel to employers with its principal place of business in Schaumburg, Illinois. Plaintiff asserted that IFCO provided, among other services, for the pooling and distribution of various containers and was an Illinois corporation with its principal place of business in Tampa, Florida. Plaintiff also contended that RCI US provided pallet washing services for IFCO and was an Illinois corporation with its principal place of business in Bolingbrook, Illinois.

¶ 4 Plaintiff contended that IFCO directed RCI US to provide staffing services for a facility IFCO maintained in Bolingbrook. RCI US contacted plaintiff for temporary personnel and plaintiff and RCI US entered into a written “Fee and Terms Agreement” (Agreement) whereby plaintiff would provide personnel to RCI US for one year. Plaintiff asserted that it performed all of its obligations under the Agreement, but RCI US failed to fulfill its obligations and ultimately owed plaintiff more than \$600,000. Plaintiff asserted claims against IFCO and RCI US for breach of contract, unjust enrichment, quantum meruit, and account stated for failing to perform pursuant to the terms of the Agreement.

¶ 5 Plaintiff subsequently filed an amended complaint naming “Ralph Coleman International Limited d/b/a RCI US Corporation” (RCIL) and IFCO as defendants. Plaintiff repeated the claims contained in its original complaint and contended that at all times relevant to the complaint, RCIL “owned, operated, maintained[,] and controlled” RCI US as its subsidiary.

¶ 6 RCIL filed a motion to dismiss the complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2014)) alleging that Illinois courts

lacked personal jurisdiction over RCIL. RCIL contended that it was a United Kingdom company with its principal place of business in Warwickshire, England, and does not conduct any business in the United States. RCIL contended that RCI US, a wholly owned subsidiary of RCIL, signed the Agreement with plaintiff, not RCIL. The circuit court held a hearing on RCIL's motion where the parties were given the opportunity to present evidence and witnesses.

¶ 7 At the hearing, RCIL presented the testimony of Stephen Edmondson. Edmondson testified that he was a consultant for RCI US and was not an employee of RCI US or RCIL. Edmondson testified that he was hired by Alan Pitman, who was the president of RCI US and was also the managing director of RCIL. Edmondson testified that he was responsible for negotiating and signing any agreement on behalf of RCI US and that RCIL was not involved, but acknowledged that he was paid by RCIL. Edmondson testified that he signed all contracts as a representative of RCI US. Edmondson acknowledged that even though he was not an employee of RCI US, he told vendors that he was the Human Resources Vice President for RCI US because he needed to maintain credibility. Edmondson maintained that this was necessary because RCI US was a small start-up company.

¶ 8 Edmondson further testified that when he met with representatives from plaintiff, he presented them with an RCIL business card because RCI US did not yet have business cards printed, but he wanted to provide plaintiff with his contact information. Edmondson testified that he never conducted any business on behalf of RCIL in Illinois and that RCI US made all payments to vendors through its own bank account. On cross-examination, Edmondson stated that RCI US was a wholly-owned subsidiary of RCIL and the Agreement was performed entirely within Illinois by RCI US.

¶ 9 Pitman testified that he was the managing director of RCIL and the president of RCI US. He described RCI US as a tray washing company and stated that he hired Edmondson on behalf of RCI US to negotiate contracts with vendors. Pitman testified that RCI US paid the employees provided by plaintiff from its own bank account, which was separate from RCIL's account. Pitman testified extensively about RCIL's involvement in Illinois and the United States:

“Q. At any point in time did [RCIL] pay the employees at the Bolingbrook plant any benefits?

A. No.

Q. As far as any and all contracts that were entered into for the Bolingbrook plant, were any of those entered and signed by [RCIL]?

A. No.

Q. Who would have entered into those contracts with vendors for that plant, what company?

A. RCI US Corporation.

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Q. Has [RCIL] ever maintained any offices in Illinois?

A. No.

Q. Has [RCIL], did they ever register to conduct business or seek a business license in the state of Illinois?

A. No.

Q. Did [RCIL] ever bid on any projects here in Illinois?

A. No.

Q. At any point in time did [RCIL] advertise in the State of Illinois?

A. No.

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Q. Does [RCIL] own any property, whether real property, land, or personal property, in the State of Illinois?

A. No.

Q. Has [RCIL] ever transacted business in the State of Illinois?

A. No.

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Q. Does [RCIL] have any employees who work outside of Warwickshire, England?

A. No, we only have employees in the [United Kingdom].”

Pitman further testified that he was the only employee from RCIL who was involved in RCI US and that RCIL owned all of the stock in RCI US. Pitman testified that RCIL did not control the day-to-day operation or decision-making of RCI US and that RCI US and RCIL had separate boards of directors, bank accounts, and taxes. Pitman further testified that RCI US did not have any duty to follow any directive from RCIL, RCI US was never included in any advertising by RCIL, and RCI US was not authorized to initiate or prosecute trademark infringement lawsuits on behalf of RCIL. Pitman testified that RCI US filed for bankruptcy in June or July of 2015. On cross-examination, Pitman stated that Darren Smail, the operations manager of RCIL, came to the Bolingbrook facility to mentor site managers and general managers.

¶ 10 In ruling on RCIL's motion, the court found that plaintiff failed to meet its burden to establish that RCIL had sufficient minimum contacts with Illinois such that the court's exercise of jurisdiction would not offend "traditional notions of fair play and substantial justice." The court determined that the evidence showed that RCIL had no contacts with Illinois and had limited involvement in the day-to-day operation of RCI US. The court further observed that RCIL and RCI US had separate business ventures, separate corporate formalities, and did not share advertising. The court determined that plaintiff failed to present evidence to show that RCIL, as the parent, exercised control over RCI US such that it would be proper for the court to exercise personal jurisdiction over RCIL. The court therefore granted RCIL's motion to dismiss the complaint, and subsequently denied plaintiff's motion for reconsideration. Plaintiff now appeals.

¶ 11

## II. ANALYSIS

¶ 12 On appeal, plaintiff contends that the trial court erred in finding that it lacked personal jurisdiction over RCIL by focusing on the parent-subsidiary relationship between RCI US and

RCIL rather than on the provisions of the Illinois long-arm statute. Plaintiff asserts that RCIL's actions subject it to jurisdiction under the long-arm statute where it negotiated and performed a contract in Illinois. Plaintiff maintains that although RCIL asserts that RCI US is a separate and distinct entity, the actions and behaviors of Pitman and Edmondson caused plaintiff to believe that it was entering into a contract with RCIL. Plaintiff further contends that RCIL's actions in Illinois subject it to the general or specific jurisdiction of Illinois courts.

¶ 13 A. Standard of Review

¶ 14 RCIL brought its motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Code (735 ILCS 2-619 (West 2014)). A motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the complaint, but asserts affirmative matters outside of the complaint. *Hoover v. Country Mut. Ins. Co.*, 2012 IL App (1st) 110939, ¶ 31. When ruling on a section 2-619 motion to dismiss, the court must view all pleadings in a light most favorable to the non-moving party (*Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8), and accept as true all well-pleaded facts (*Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31). We review the dismissal of a cause of action pursuant to section 2-619 of the Code *de novo*. *Hoover*, 2012 IL App (1st) 110939, ¶ 31.

¶ 15 B. Illinois Long-Arm Statute

¶ 16 It is well-settled that plaintiff has the burden of establishing a *prima facie* basis to exercise personal jurisdiction over a non-resident defendant. *Russell v. SNFA*, 2013 IL 113909, ¶ 28. The plaintiff's *prima facie* case may be overcome, however, by uncontradicted evidence that defeats jurisdiction. *Hanson v. Ahmed*, 382 Ill. App. 3d 941, 943 (2008). Section 2-209 of the Code, referred to as the Illinois long-arm statute, governs the exercise of personal jurisdiction by

an Illinois court over a nonresident. *Id.* ¶ 29; 735 ILCS 5/2-209 (West 2012). The statute provides that:

“[a]ny 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 \*\*\* to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any such acts.” 735 ILCS 5/2-209 (West 2012).

Subsections (a)(1) and (a)(7) of section 2-209 extend jurisdiction to anyone who transacts business within the State or anyone who makes or performs any contract “substantially connected” with the State. 735 ILCS 5/2-209(a)(1), (7) (West 2012).

¶ 17 The long-arm statute also contains a “catchall provision,” which provides that 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). In light of this catchall provision, this court has recognized that:

“Because of the coextensive nature of the long-arm statute and due process requirements, the first step traditionally employed by Illinois courts in personal jurisdiction analysis, that is, whether the defendant performed any of the acts enumerated in the long-arm statute, is now ‘wholly unnecessary.’ [Citation.] In other words, the long-arm statute is satisfied when due process concerns are satisfied, regardless of whether the defendant performed any of the acts enumerated in the long-arm statute. [Citation.]” *Keller v. Henderson*, 359 Ill. App. 3d 605, 612 (2005).

The supreme court agreed with this condensed analysis finding that courts should not “consider our long-arm statute separately from federal due process concerns.” *Russell*, 2013 IL 113909, ¶ 33. Accordingly, “[i]f both the federal and Illinois due process requirements for personal

jurisdiction have been met, the Illinois long-arm statute is satisfied and no other inquiry is required.” *Keller*, 359 Ill. App. 3d at 612. Conversely, if the requirements of due process are not satisfied, then personal jurisdiction under the long-arm statute is not proper. *Hanson*, 382 Ill. App. 3d at 943. (“Thus, the reach of the long-arm statute may lie within or may touch, but cannot extend beyond, the bounds circumscribed by the requirements of due process.”).

¶ 18

### C. Due Process

¶ 19 Due process “requires that the defendant have certain minimum contacts with the forum State such that maintenance of the suit there does not offend ‘traditional notions of fair play and substantial justice.’” (Internal quotation marks omitted.) *Russell*, 2013 IL 113909, ¶ 34 (citing *Wiles v. Morita Iron Works Co.*, 125 Ill. 2d 144, 150 (1988)). The determination of whether defendant has the requisite minimum contacts depends on whether plaintiff is seeking general or specific jurisdiction. *Russell*, 2013 IL 113909, ¶ 36 (citing *Keller*, 359 Ill. App. 3d at 613). “General jurisdiction for a corporate defendant exists when it has engaged in continuous and substantial business activity within the forum” *Russell*, 2013 IL 113909, ¶ 36 (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923-24). Specific jurisdiction, in contrast, “requires a showing that the defendant purposefully directed its activities at the forum state and the cause of action arose out of or relates to the defendant’s contacts with the forum state.” *Russell*, 2013 IL 113909, ¶ 40.

¶ 20

#### 1. General Jurisdiction

¶ 21 Plaintiff contends that jurisdiction is proper under general jurisdiction where RCIL entered into a contract and transacted business in Illinois and performance of the contract took place in Illinois for more than one year. Plaintiff also contends that RCIL brought employees to



Illinois and wholly owned RCI US, which was incorporated in Illinois. Plaintiff maintains that this level of activity was sufficient to support a finding of general jurisdiction.

¶ 22 A finding of general jurisdiction requires a showing that the nonresident defendant “carried on systemic business activity in Illinois ‘not casually or occasionally, but with a fair measure of permanence and continuity.’ ” *Russell*, 2013 IL 113909, ¶ 36 (quoting *Morgan, Lewis & Bockius LLP v. City of East Chicago*, 401 Ill. App. 3d 947, 953 (2010)). Essentially, the foreign corporation must take up residence in Illinois. *Russell*, 2013 IL 113909, ¶ 36. After reviewing the evidence presented, we find that the circuit court did not err in finding that it lacked general jurisdiction over RCIL.

¶ 23 As plaintiff acknowledges, RCIL does not have any offices, assets, property, or employees in Illinois. Nor is RCIL licensed to do business in Illinois. At base, we cannot say that Illinois could be “fairly regarded” as RCIL’s “home.” *Russell*, 2013 IL 113909, ¶ 36 (citing *Goodyear*, 564 U.S. at 923). RCIL is an international corporation that is located in the United Kingdom and does not conduct any business in Illinois. Although plaintiff attributes the actions undertaken by RCI US in Illinois to RCIL, as discussed below, we find that RCI US and RCIL are separate entities for purposes of jurisdiction. Plaintiff has thus failed to show that RCIL engaged in the type of permanent and systematic business activity in Illinois that would justify a finding of general jurisdiction.

¶ 24 *2. Specific Jurisdiction*

¶ 25 Plaintiff next contends that jurisdiction is proper under the test for specific jurisdiction. Specific jurisdiction requires a showing that defendant purposefully directed its activities at the forum state and the cause of action arose from those contacts with the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). Under specific jurisdiction, a nonresident defendant

may be subjected to a forum state's jurisdiction based on certain " 'single or occasional acts' " in the state but only with respect to matters related to those acts. *Goodyear*, 564 U.S. at 923 (quoting *International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement*, 326 U.S. 310, 318 (1945)). A nonresident should be able to "reasonably anticipate" being drawn into litigation in the foreign forum based on its activity in that forum. *Burger King*, 471 U.S. at 474-75.

¶ 26 In support of its contention that specific jurisdiction applies, plaintiff asserts that "principals, officers, and employees" of RCIL came to Illinois to negotiate contracts and conduct business operations. Plaintiff maintains that although these actions were conducted on behalf of RCI US, the actions and behaviors of RCIL were sufficient such that it caused plaintiff to reasonably believe that it was dealing with RCIL. Plaintiff asserts that Pitman was an officer of both RCI US and RCIL, that both Pitman and Edmondson presented plaintiff with RCIL business cards, and that Edmondson was hired and paid by RCIL. The uncontradicted testimony of Pitman and Edmondson, however, belie plaintiff's arguments.

¶ 27 Edmondson testified that although he was hired by RCIL, he was brought on by Pitman as a consultant for RCI US and every action he undertook in connection with plaintiff was on behalf of RCI US, not RCIL. Specifically, he testified that he signed the Agreement on behalf of RCI US, not RCIL. Pitman testified that although he was the managing director of RCIL, he was also the president of RCI US. Pitman testified at length regarding the separate corporate structures of RCIL and RCI US. Both Pitman and Edmondson further testified that they provided plaintiff's representatives with RCIL business cards merely to provide their contact information because RCI US did not yet have business cards. Although plaintiff continually asserts that it believed it was dealing with RCIL and not RCI US, we observe that the original complaint filed

in this case named RCI US as defendant, not RCIL. We also observe that RCIL was not substituted as defendant until plaintiff filed the amended complaint in June 2015, near the time, according to Pitman, RCI US filed for bankruptcy.

¶ 28 The evidence presented therefore shows that RCI US was a wholly-owned subsidiary of RCIL, and the actions taken by Pitman and Edmondson were done on behalf of RCI US, not RCIL.<sup>1</sup> Plaintiff, who bore the burden of establishing a *prima facie* case that personal jurisdiction was proper (*Russell*, 2013 IL 113909, ¶ 28), presented no evidence to rebut the testimony presented by RCIL (See *Hanson*, 382 Ill. App. 3d at 943). Accordingly, we find that plaintiff failed to establish a *prima facie* case that specific jurisdiction was proper.

¶ 29 We note that the circuit court, recognizing that RCI US was a wholly-owned subsidiary of RCIL, analyzed whether RCIL, as the parent, could be held liable for the actions of RCI US, the subsidiary. Although plaintiff contends that the circuit court conducted this analysis in error when it should have considered the Illinois long-arm statute, having already found this argument unavailing, we observe that jurisdiction is proper here only if Illinois courts can assert personal jurisdiction over RCIL based upon its parent-subsiary relationship with RCI US.

¶ 30 D. Parent-Subsidiary Jurisdiction

¶ 31 Although not specifically argued by plaintiff in its brief, Illinois courts will assert jurisdiction over a parent corporation if a “subsidiary is acting as the parent corporation’s Illinois agent in the sense of conducting the parent’s business rather than its own.” *Haubner v. Abercrombie & Kent International, Inc.*, 351 Ill. App. 3d 112, 122 (2004) (citing *Maunder v.*

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<sup>1</sup> In its brief, plaintiff quotes a portion of the record in which Edmondson seems to suggest that he signed the Agreement on behalf of RCIL and contends that Edmondson was “unable to the continue with the misrepresentation” that RCI US and RCIL were separate business entities. We observe, however, that quoted portion is taken out of context and in the next line of testimony, Edmondson testified that he signed the Agreement on behalf of RCI US and “[i]t was nothing to do with” RCIL.

*DeHavilland Aircraft of Canada, Ltd.*, 102 Ill. 2d 342 (1984). If, however, the subsidiary is conducting its own business, an Illinois court may not assert personal jurisdiction over the parent simply because it is the parent. *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 854 (2001). In determining whether the parent corporation is doing business in Illinois through its subsidiary, the court will consider:

“(1) the control exercised by the parent over the subsidiary, (2) obligations of the subsidiary to service the parent’s products, (3) inclusion of the subsidiary’s name and address in the parent’s advertising, (4) joint sponsorship of promotional activities, (5) interlocking directorships, (6) the sites of meeting[s] of the subsidiary’s board of directors, and (7) whether the subsidiary is authorized to prosecute trademark infringement suits in the parent’s name.” *Wissmiller v. Lincoln Trail Motosports, Inc.*, 195 Ill. App. 3d 399, 403 (1990); see also *Palen v. Daewoo Motor Co., Ltd.*, 358 Ill. App. 3d 649, 661 (2005) (quoting the factors from *Wissmiller*).

¶ 32 Here, considering the factors identified by the court in *Wissmiller* and *Palen*, we cannot say that RCI US was acting as RCIL’s Illinois agent. Pitman testified that RCIL did not control the day-to-day operation or decision-making of RCI US and that RCI US and RCIL had separate boards of directors, bank accounts, and taxes. Pitman further testified that RCI US did not have any duty to follow any directive from RCIL, RCI US was never included in any advertising by RCIL, and RCI US was not authorized to initiate or prosecute trademark infringement lawsuits on behalf of RCIL. None of these facts were contradicted by plaintiff at the hearing on RCIL’s motion. Plaintiff thus failed to establish a *prima facie* basis for exercising personal jurisdiction over RCIL, a nonresident defendant. We therefore hold that the circuit court did not err in

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finding that plaintiff failed to meet its burden to establish that Illinois courts had personal jurisdiction over RCIL.

¶ 33

### III. CONCLUSION

¶ 34 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.