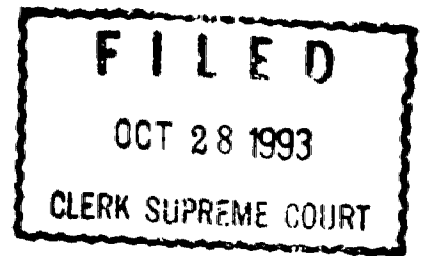


IN THE COURT OF APPEALS OF IOWA

No. 3-250 / 92-1109



PROGRESSIVE COMPANIES, INC., d/b/a STOLLER FISHERIES,

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Appellant,

vs.

ATLANTA BROKERAGE COMPANY and BRISTOL BAY SEAFOOD, INC.,

Appellees.

Appeal from the Iowa District Court for Dickinson
County, James L. McDonald, Judge.

The plaintiff appeals a district court's decision
dismissing its petition for lack of in personam
jurisdiction. **AFFIRMED.**

Joseph A. Quinn of Nyemaster, Goode, McLaughlin,
Voights, West, Hansell & O'Brien, P.C., Des Moines, for
appellant.

Joseph L. Fitzgibbons of Fitzgibbons Brothers,
Estherville, for appellees.

Considered by Donielson, P.J., and Schlegel and
Sackett, JJ.

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DONIELSON, P.J.

Progressive Companies, doing business as Stoller Fisheries, is a Minnesota corporation with its principal place of business in Spirit Lake, Iowa. Stoller purchases and processes fresh and frozen fish and sells the end product to others.

Bristol Bay Seafoods, Inc. is a foreign corporation with its principal place of business in Davisville, Rhode Island. Bristol Bay is in the business of wholesale buying and selling fish and fish brokerage.

Atlanta Brokerage is a food broker with its principal place of business in Decatur, Georgia. Atlanta Brokerage had previously solicited business from Stoller and Stoller had, on occasion, purchased fish through Atlanta Brokerage, although none of the previous transactions involved Bristol Bay. In late November or early December of 1989, Atlanta Brokerage Company contacted Stoller by telephone offering for sale frozen fish from Bristol Bay. Stoller agreed to purchase a quantity of fish at the price Atlanta Brokerage quoted Stoller. Atlanta Brokerage in turn contacted Bristol Bay and indicated that it had located a purchaser for the fish.

Bristol Bay takes each sale on an individual basis and must give its final approval of a sale. Atlanta Brokerage is not in a position to bind Bristol Bay to a contract. Before agreeing to the sale, Bristol Bay obtained, through Atlanta Brokerage, a credit report on Stoller. Bristol Bay

felt Stoller was not credit worthy and it required Atlanta to have Stoller wire funds in order to take possession of the fish. Atlanta Brokerage arranged for Stoller to wire funds from Iowa to Bristol Bay in Rhode Island. Bristol Bay then consented to the sale. It authorized the cold storage warehouse, located in Boston, Massachusetts, to release the fish to Stoller and mailed its sales invoice for the fish directly to Stoller.

Stoller picked up the fish in Massachusetts and returned it to Iowa where Stoller processed it and packaged it for sale. However, the fish spoiled. Stoller brought this action against Bristol Bay and Atlanta Brokerage. Bristol Bay moved to dismiss the case for lack of jurisdiction.

On June 12, 1992, the district court entered its ruling granting the motion to dismiss. The district court found that Atlanta Brokerage was not the agent of Bristol Bay. The district court noted that there was no contract of agency, and the brokerage company had no authority to negotiate the price or to close a deal. On the issue of jurisdiction, the district court noted that this was Bristol Bay's only sale ever consummated in Iowa. The district court also noted that Bristol Bay took no initiative in arranging the transaction nor did it solicit business or advertise in Iowa or seek to serve the Iowa market. Therefore, the district court concluded that

Bristol Bay had insufficient minimum contacts with Iowa to invoke the jurisdiction of the Iowa courts.

Stoller appeals the district court's decision finding that Bristol Bay did not have sufficient contacts with Iowa to warrant an Iowa court taking jurisdiction of the case.

Our standard of review of a motion to dismiss for lack of jurisdiction is set forth in Meyers v. Kallestead, 476 N.W.2d 65 (Iowa 1991), cert. denied, 112 S. Ct. 1294, reh'g denied, 112 S. Ct. 2001 (1992):

[W]e accept as true the allegations of the petition and the contents of uncontroverted affidavits. The plaintiff has the burden to sustain the requisite jurisdiction, but when he establishes a prima facie case the defendant has the burden of producing evidence to rebut that showing. The trial court's findings of fact have the effect of a jury verdict and are subject to challenge only if not supported by substantial evidence in the record; we are not bound, however, by the trial court's application of legal principles or its conclusions of law.

Id. at 66 (quoting Percival v. Bankers Trust Co., 450 N.W.2d 860, 861 (Iowa 1990)).

In resolving nonresident jurisdictional questions, we employ a two-part test. Cortright v. Pettit, 461 N.W.2d 202, 204 (Iowa App. 1990); Robert Half of Iowa, Inc., v. Citizens Bank, 453 N.W.2d 236, 237 (Iowa App. 1990); Martin v. Ju-Li Corp., 332 N.W.2d 871, 874 (Iowa 1983). We first determine whether a statute or rule authorizes assuming jurisdiction over the nonresident defendant. Citizens Bank, 453 N.W.2d at 237; Egli v. Egli, 447 N.W.2d 409, 411 (Iowa App. 1989). If so, we then determine whether exercising jurisdiction would offend due process.

Cortright, 461 N.W.2d at 204-05; Citizens Bank, 453 N.W.2d at 237.

Neither party asserts on appeal that Iowa's long-arm statute applies. See Iowa Code § 617.3 (1991). The district court did not make any finding on the existence of a contract which would give Iowa courts jurisdiction under the statute. We decline to address the issue on appeal. Instead, Stoller served Bristol Bay under Iowa Rule of Civil Procedure 56.2 which states in pertinent part:

Every corporation, . . . partnership or association that shall have the necessary minimum contact with the state of Iowa shall be subject to the jurisdiction of the courts of this state, and the courts of this state shall hold such corporation, . . . partnership or association amenable to suit in Iowa in every case not contrary to the provisions of the Constitution of the United States.

Iowa R. Civ. P. 56.2. This rule extends Iowa's jurisdiction to the limits allowed by due process. Hagan v. Val-Hi, Inc., 484 N.W.2d 173, 176 (Iowa 1992) (citing Larsen v. Scholl, 296 N.W.2d 785, 788 (Iowa 1980)). "The due process clause operates to limit the power of a state to assert personal jurisdiction over a nonresident defendant." Meyers, 476 N.W.2d at 67 (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 413-14, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404, 410 (1984) (citing Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565 (1878))).

In order to exercise jurisdiction consistent with due process, the court must find the defendant has "certain minimum contacts with [the state] such that the maintenance

of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158-59, 90 L. Ed. 2d 95, 102-03 (1945). The nonresident defendant must "purposefully avail" itself of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of its laws. Hager v. Doubletree, 440 N.W.2d 603, 607 (Iowa 1989) (citing Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1239, 2 L. Ed. 2d 1283, 1298 (1958)). This purposeful availment ensures that a defendant will not be subject to suit solely on the basis of "random," "isolated," or "fortuitous," contacts. Keeton v. Hustler Magazine, Inc. 465 U.S. 770, 774, 104 S. Ct. 1473, 1478, 79 L. Ed. 2d 790, 797 (1984). The contact with the forum state must be sufficient so that the defendant reasonably should have anticipated being haled into court in the forum state. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 566, 62 L. Ed. 2d 490, 501 (1980); Bankers Trust Co. v. Fidata Trust Co., 452 N.W.2d 411, 413 (Iowa 1990); Robert Half, Inc., 453 N.W.2d at 238 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183, 85 L. Ed. 2d 528, 542 (1985)). A "'relationship among the defendant, the forum, and the litigation' is the essential foundation of in personam jurisdiction." Schaffer v. Heitner, 433 U.S. 186, 204, 97 S. Ct. 2569, 2579, 53 L. Ed. 2d 683, 698 (1977).

In evaluating the constitutional standard, we examine five factors, the first three being the most important:

- (1) the quantity of the contacts;
- (2) the nature and quality of the contacts;
- (3) the source and connection of the cause of action with those contacts;
- (4) the interest of the forum state; and
- (5) the convenience of the parties.

Egli, 447 N.W.2d at 411 (quoting Larsen, 296 N.W.2d at 788).

Our examination of the circumstances of this case as they relate to the first three factors reveals virtually no contact between appellee Bristol Bay and the forum state. Appellee is a Rhode Island corporation. It has no employees, sales agents, officers, property, or presence in Iowa. It has never targeted Iowa in its sales efforts. Prior to this transaction, appellee never had done any business in Iowa. The only direct contact was in mailing a confirmatory sales invoice to Stoller after the transaction was completed. Appellee did not initiate the transaction, nor did it deal with appellant directly during the transaction. Appellee did not receive the money in Iowa nor deliver the product in Iowa. The destination of the product after appellant took possession was not known to appellee. This quantity and quality of contacts is not sufficient to confer jurisdiction under the due process clause.

The district court found, and we agree, that Atlanta Brokerage was not acting as an agent of Bristol Bay.

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Appellee controverted the assertions of appellant's amended and substituted petition. Appellee introduced sufficient evidence to rebut appellant's allegation of Atlanta's agency. No contract or agency agreement existed between Bristol Bay and Atlanta Brokerage. Atlanta had no authority to negotiate prices other than its markup over Bristol Bay's set price. Nor could Atlanta bind Bristol Bay or close a sale. Atlanta could not act on appellee's behalf and was not under appellee's control. See Farmers Grain Co., Inc. v. Irving, 401 N.W.2d 596, 601 (Iowa App. 1986). Since Atlanta Brokerage was not Bristol Bay's agent, we do not consider Atlanta's actions when evaluating Bristol Bay's contacts with Iowa.

Iowa does not have a great interest in exercising jurisdiction. Stoller Fisheries is a Minnesota corporation with its principal place of business in Spirit Lake, Iowa. None of the transaction took place in Iowa. Appellant's location in Iowa is insufficient to raise Iowa's interest in this action when contrasted with the complete lack of contact with the state by the other parties or the transaction itself.

Appellant asserts Iowa would be the more convenient forum because all the records and witnesses concerning the spoiled fish are in Iowa. That argument, however, goes to the merits of the damage claim. Other than appellant, the parties and records pertinent to the transaction are all located outside Iowa.

Appellant also argues Svendson v. Questor Corp., 304 N.W.2d 428 (Iowa 1981), is not distinguishable from this situation and requires that appellee be subject to personal jurisdiction in Iowa courts. We disagree. In Svendson, the Missouri manufacturer regularly sold its products to an Omaha distributor which then sold the products to Iowa residents. The court noted:

While the record does not disclose the marketing territory of [the manufacturer], or the volume of business in which they engaged, it is reasonable to infer that their commercial transactions resulted in more than insubstantial use and consumption in the state.

Id. at 431. The court also quoted with approval from World-Wide Volkswagen that when the sale is "not simply an isolated occurrence" but is instead from the efforts of the manufacturer to serve the forum state, then jurisdiction is appropriate. Svendson, 304 N.W.2d at 431 (quoting World-Wide Volkswagen, 444 U.S. at 297-98, 100 S. Ct. at 567, 62 L. Ed. 2d at 501-02). The court reasoned when a Missouri manufacturer regularly sold to an Omaha distributor which regularly sold to Iowa residents, it was reasonable to infer foreseeability on the manufacturer's part. Svendson, 304 N.W.2d at 431. In the case at bar, the record does disclose the marketing territory and volume of business of appellee. The territory primarily targeted was the west coast. No sales had ever been made in Iowa, and few in the Midwest. This sale was an "isolated occurrence," not solicited by appellee which took place

outside Iowa. In contrast to Svendson, Bristol Bay and Atlanta Brokerage are not located close to Iowa. Their geographic distance from Iowa weakens any inference of foreseeability just as strongly as the geographic proximity in Svendson strengthened the inference. See id.

For the reasons discussed above, we affirm the decision of the district court sustaining appellee's motion to dismiss for lack of personal jurisdiction.

Costs of this appeal are assessed to appellant.

AFFIRMED