IN THE COURT OF APPEALS OF IOWA

No. 0-349 / 99-1562
Filed August 30, 2000

NORWEST MANUFACTURED HOUSING PRODUCTS, INC.,
Plaintiff-Appellant,

vs.

LIPPERT MANUFACTURING, INC,
Defendant-Appellee.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Hamilton County, David R. Danilson, Judge.

The plaintiff appeals from the district court's ruling dismissing a breach of contract action against the defendant for lack of personal jurisdiction. **REVERSED AND REMANDED.**

Douglas Cook of Brekken, Deppe, Wynia, Cook & Hyland, P.C., Jewell, for appellant.

George S. Eichhorn of Eichhorn Law Office, Stratford, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

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MAHAN, J.

The plaintiff appeals from the district court's ruling dismissing a breach of contract action against the defendant for lack of personal jurisdiction. The plaintiff claims the district court erred in determining the defendant, an Indiana business, lacked sufficient minimum contact with Iowa for the court to exercise personal jurisdiction over the defendant. We reverse and remand.

Sometime in June 1998, defendant Lippert Components, Inc. (hereinafter Lippert), contacted plaintiff Norwest Manufactured Housing Products, Inc. (hereinafter Norwest) by telephone to see if Norwest would be interested in supplying refurbished and recycled axles and tires, and running chassis, to Lippert. Lippert is a Delaware corporation that does business in Indiana and does not maintain any offices, facilities, or employees within the State of Iowa. Norwest is an Iowa corporation. Both parties agree Lippert initiated the transaction with Norwest.[1] On June 18, 1998, the parties entered into a contract that was to last until the end of the year.[2]

After the agreement was made, Norwest provided two to four deliveries per week to Lippert's Goshen, Indiana facility. While the deliveries were made to Indiana, all the gathering and shipping of the product initiated within the State of Iowa. Norwest delivered almost a million dollars worth of chassis to Lippert. In

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[1] Lippert initiated business contact by making a telephone call to Norwest President Donald Dunnegan in Stanhope, Iowa. Lippert called to determine if Norwest could deliver chassis to the Lippert plant in Indiana. Lippert actively sought out Norwest because the Iowa corporation is one of very few companies in the nation that could meet Lippert's needs.

[2] Said contract was made by use of telephone and fax.

late 1998, Lippert began to unilaterally make deductions from the agreed purchase price. Telephone calls from Lippert to Norwest in August and December of 1998 related to concerns about the quality of the product. Said telephone calls were confirmed by follow-up memorandums sent by Lippert.

Based on the contract and agreement by the parties, Norwest alleged in its cause of action, filed March 18, 1999, that Lippert failed to make payments and made unauthorized deductions from Norwest shipments. Lippert filed a motion to dismiss arguing it has not had sufficient minimum contacts with the State of Iowa to be subjected to the jurisdiction of Iowa courts. The district court sustained Lippert's motion and Norwest appeals.

I. Standard of Review. When reviewing a ruling on a motion to dismiss for lack of personal jurisdiction, 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, but we are not bound by the trial court's application of legal principles or its conclusions of law. *All Tech Inc. v. Power Prods. Co.*, 581 N.W.2d 202, 203 (Iowa App. 1998). The plaintiff has the burden to sustain the requisite jurisdiction, but once a prima facie case has been established, the defendant bears the burden of producing evidence to rebut that showing. *Cascade Lumber Co. v. Edward Rose Bldg. Co.*, 596 N.W.2d 90, 92 (Iowa 1999).

II. Jurisdiction. Norwest contends the district court erred when it found Lippert did not have significant minimum contacts within the State of Iowa for Iowa courts to maintain jurisdiction. For Iowa to assert personal jurisdiction over Lippert, Lippert must have had "certain minimum contacts with [Iowa] such that

maintenance of the suit [in Iowa] does not offend 'traditional notions of fair play and substantial justice.'" *All Tech.*, 581 N.W.2d at 204. (citing *International Shoe v. Washington*, 326.U.S. 310, 316-17, 66 S. Ct. 154, 158-59, 90 L. Ed. 95, 102-03 (1945)). The "constitutional touchstone" in deciding the issue of personal jurisdiction is whether a defendant has purposefully established minimum contacts with the state and whether a defendant's conduct and actions are such that defendant should have reasonably anticipated being haled into court in the forum state. *Omnilingua, Inc. v. Great Golf Resorts of World, Inc.*, 500 N.W.2d 721, 723 (Iowa App. 1993) (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 566, 62 L. Ed. 2d 490, 501 (1980)). Unilateral activity by a plaintiff with a nonresident defendant does not satisfy the minimum contacts required. *Id.* It is essential a defendant perform some act whereby it "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws." *All Tech.*, 581 N.W.2d at 204 (citing *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L. Ed. 2d 1283, 1298 (1958)).

The Court in *Burger King v. Rudzewicz*, 471 U.S. 462, 479, 105 S.Ct. 2174, 2185, 85 L.Ed.2d 528, 545 (1985), concluded a contract alone cannot automatically establish sufficient contacts, but it went on to observe the following which our supreme court finds to be pertinent:

> [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." 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.**

Hager v. Doubletree, 440 N.W.2d 603, 607 (Iowa 1989).

In determining whether a court possesses personal jurisdiction over a nonresident defendant, we examine five factors, the first three of which are most heavily weighed: (1) the quantity of the contacts the party has with the state seeking to exercise jurisdiction; (2) the nature and quality of the contact; (3) the source and connection of the cause of action with these contacts; (4) the interest of the forum state; and (5) the convenience of the parties. *All Tech Inc.*, 581 N.W.2d at 204. We apply the constitutional minimum contacts standard on a case-by-case basis. *Id.*

We must apply the same standard of fairness to nonresident purchasers that we would expect Iowa purchasers to receive in foreign jurisdictions. *Al-Jon, Inc. v. Garden St. Iron and Metal, Inc.* 301 N.W.2d 709, 714 (Iowa 1981). What may be fair to one nonresident purchaser may not be fair to another. *Id.* Our supreme court has stated:

> We have recognized a stronger interest in seeing jurisdiction extended to nonresident sellers than to nonresident purchasers. In testing minimum contacts we consider: (1) whether the subject of the contract substantially impacts on Iowa; (2) our interest in protecting citizens of our state; and (3) a seller is more often the "aggressor" and "receives not only a profit but the benefit and protection of the forum state's laws." The third consideration does not preclude extension of Iowa jurisdiction in cases involving nonresident purchasers who may be characterized as "active" in contrast with "passive" purchasers, that is, we perceive a difference between a nonresident who aggressively seeks purchase from a resident seller as contrasted with one who merely responds to solicitation by a resident seller.

Cascade Lumber, 596 N.W.2d at 92 (citations omitted).

In our present case, the parties agree it was Lippert who initiated and contacted Norwest about supplying them with running chassis. It was Lippert who actively sought out Norwest. Norwest did not solicit Lippert's business. We find this to be a key distinction and a critical factor in our analysis of the jurisdictional issue. *All Tech.*, 581 N.W.2d at 204. Our supreme court has held:

> [w]here a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, and the litigation results from alleged injuries that "arise out of or relate to" those activities.

Hodges v. Hodges, 572 N.W.2d 549, 552 (Iowa 1997) (citing *Burger King*, 471 U.S. at 471, 105 S. Ct. at 2182, 85 L. Ed. 2d at 540) (footnote omitted and citations omitted). By soliciting to contract with a corporation in Iowa, Lippert had purposefully injected itself into the Iowa market thereby availing itself of the privilege of conducting activities within this state, thus invoking the benefits and protections of Iowa laws.

The record in this case reveals Lippert sought out and contacted Norwest to supply it with products. Lippert was an active purchaser who aggressively sought business contacts from a resident seller as contrasted with one who merely responds to a solicitation by a resident seller. Lippert purposefully directed its business activities at Norwest. Maintenance of this suit in Iowa would not offend traditional notions of fair play and substantial justice. Having reviewed all of the facts in the record, we find Lippert's conduct constitutes sufficient

minimum contacts with Iowa to support personal jurisdiction over Lippert. Therefore, we conclude the trial court erred in granting Lippert's motion to dismiss based on lack of personal jurisdiction. We reverse and remand for proceedings consistent with this opinion.

REVERSED AND REMANDED.