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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBERT COBURN d/b/a COBURN'S CAR CENTER,

Plaintiff-Appellant,

vs.

TOWN & COUNTRY STATE BANK OF NEWPORT,

Defendant-Appellee.

Filed November 24, 1981

1-311
2-66182

Appeal from Polk District Court - Ray Hanrahan, Judge.

Plaintiff appeals from trial court's ruling on defendant's special appearance in this suit arising from the bank's refusal to honor a cashier's check issued by it, asserting 1) that the Iowa long arm statute applies because this action is a claim in tort and the alleged tort was committed in whole or in part in Iowa and 2) that the defendant bank had sufficient minimum contact with Iowa to allow the Iowa courts to assert jurisdiction over it in compliance with the requirements of due process. AFFIRMED.

Thomas J. Reilly and William J. Conroy, Jr., of the Thomas J. Reilly Law Firm, P.C., Des Moines, Iowa, for plaintiff-appellant.

Steven L. Nelson of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, Iowa, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff, Robert Coburn, d/b/a Coburn's Car Center, appeals from trial court's ruling on defendant's, a Minnesota bank's, special appearance in this suit arising from the bank's refusal to honor a cashier's check issued by it. Plaintiff contends trial court erred in ruling that the defendant bank was not subject to the personal jurisdiction of the Iowa courts. He asserts 1) that the Iowa long arm statute applies because this action is a claim in tort and the alleged tort was committed in whole or in part in Iowa and 2) that the defendant bank had sufficient minimum contact with Iowa to allow the Iowa courts to assert jurisdiction over it in compliance with the requirements of due process. We affirm.

Plaintiff's petition was filed on March 21, 1980, wherein plaintiff alleged that defendant had issued a cashier's check upon which plaintiff was the payee, that defendant had willfully, wantonly, maliciously, and with gross negligence stopped payment on the check, and that this conduct was the proximate cause of plaintiff's actual damages in the amount of $2,389.67. In addition, plaintiff sought exemplary damages of $75,000.

On May 19, 1980, defendant filed a special appearance contending that the Iowa court could not exercise personal jurisdiction over it because 1) the facts alleged did not support application of section 617.3, The Code, and 2) defendant did not have sufficient minimum contact with Iowa to allow the court to take jurisdiction without offending defendant's due process rights. The special appearance was supported by an affidavit of the vice-president of the bank in which he asserted that the bank does no business in Iowa. The court granted a motion to allow limited discovery on the jurisdictional issue. The bank's response to the resulting interrogatories revealed the following contacts between the bank and the State of Iowa: the bank sought one judgment against a former Minnesota resident who moved to Iowa with a delinquent loan balance; and the bank at one time made a mortgage to an individual who at the time was a Minnesota resident, still is a Minnesota resident, but inherited certain real property located in Iowa upon which the bank obtained a mortgage to secure the previous debts.

In resistance to the special appearance, plaintiff contended that its petition asserted a tort claim and that the long arm statute applied. At the same time, plaintiff filed an amendment to the petition for the purpose of making it clear that a tort claim was intended. The amendment consisted of an assertion that "defendant owed plaintiff a duty of reasonable care and that it breached that duty."

The court granted the special appearance on December 12, 1980, ruling that the plaintiff's claim was in contract, not tort. However, the court also stated that "the case involved neither a contract to be formed in whole or part in Iowa, nor a tort committed in whole or part in Iowa," and that the prerequisites for the application of the long arm statute were thereby unsatisfied. The court further concluded that the defendant had insufficient minimum contact with Iowa to allow the Iowa court to assert jurisdiction over the defendant. Plaintiff's petition was dismissed.

On December 29, 1980, plaintiff filed a motion to expand trial court's ruling in which it asked the court to include a ruling on the motion to amend the petition. The court, in denying the motion, stated that the amendment was then of no significance as "[a]ll the amendment does is more specifically plead his [plaintiff's] negligence claim." This appeal followed.

I. Scope of Review. The scope of our review in this type of case was reiterated in Kagin's Numismatic Auctions, Inc. v. Criswell, 284 N.W.2d 224 (Iowa 1979).

> In passing on a special appearance we accept the obligations of the petition as true. Plaintiff has the burden of sustaining the requisite jurisdiction, but once it has made a prima facie case, the burden is on the defendant to produce evidence to rebut or overcome the prima facie showing. This is a special proceeding in which the findings of the trial court have the force and effect of a jury verdict. (citations omitted.)

284 N.W.2d at 225, quoting Rath Packing Co. v. Intercontinental Meat Traders, Inc., 181 N.W.2d 184, 185 (Iowa 1970). "We have also said, 'Of course, we are not bound by the trial court's conclusions of law or by its application of legal principles.'" Id., quoting DeCook v. Environmental Security Corp., 258 N.W.2d 721, 726 (Iowa 1977).

In analyzing cases involving a challenge to the district court's exercise of personal jurisdiction under our long arm statute, we generally follow a two-step analysis, first determining whether section 617.3 is applicable and then considering the constitutional issue. Berkley International Co. v. Devine, 289 N.W.2d 600, 602 (Iowa 1980).

II. Nature of Plaintiff's Action. Plaintiff argues that trial court erred in characterizing the cause of action as one "sound[ing] in contract, not tort." He further argues that since his cause of action is based on defendant's negligence, defendant therefore is subject to the jurisdiction of Iowa courts by virtue of Iowa's long arm statute, section 617.3, The Code. We believe that it is unnecessary to decide this issue since resolution of this case turns upon the constitutional analysis. We thus turn to that analysis.

III. Minimum Contact. Assertion of in personam jurisdiction over a nonresident defendant must satisfy the requirements of due process. International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 102 (1945). This requires that a defendant have certain minimum contacts with the forum state such that maintenance of the suit does not offend "traditional notions of fair play and substantial justice." Id., 326 U.S. 316, 66 S. Ct. at 158, 90 L. Ed. at 102. In a contract action, minimum contact has been construed to mean that the defendant have a substantial connection with the state which is asserting jurisdiction. McGee v. International Life Insurance Co., 355 U.S. 220, 223, 78 S. Ct. 199, 201, 2 L. Ed. 2d 223, 226 (1957). The United States Supreme Court further refined the International Shoe standard in Hanson v. Denckla, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958), when it stated:

> The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the foreign state. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the form state, thus invoking the benefits and protections of its laws.

357 U.S. at 253, 78 S. Ct. 1240, 2 L. Ed. 2d at 1298, as quoted in Kagin's, 284 N.W.2d at 228. The court further stated that:

> [This standard] is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. [citations]. We recognize that this determination is one in which few answers will be written "in black and white. The greys are dominant and even among them the shades are innumerable." [citations].

Kulko v. California Superior Court, 436 U.S. 84, 92, 98 S. Ct. 1690, 1697, 56 L. Ed. 2d 132, 141 (1978), as quoted in Larsen v. Scholl, 296 N.W.2d 785, 788 (Iowa 1980).

We are required to apply the above standard in light of five factors outlined by the Court of Appeals for the Eighth Circuit, and specifically adopted by the Iowa Supreme Court:

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.

Larsen, 296 N.W.2d at 788. The first three of these factors are most important. Id.

In resolving this issue, we must enumerate the defendant bank's contacts with this state. In this regard, trial court found:

* * *

> Defendant is a nonresident corporation doing business in Minnesota and licensed to do business in Minnesota as a bank. The defendant, in Minnesota, at the insistence and request of the third party [a Minnesota resident], issued a cashier's check payable to the plaintiff. Defendant stopped payment on the check, which plaintiff learned after depositing it in his bank in Des Moines.
>
> The defendant has no office in Iowa, owns no real estate, is not registered to do business in Iowa, has no officers or employees that reside or work in Iowa. The remittur of the cashier's check is a Minnesota business entity with its place of business in Minnesota. The cashier's check was issued by the defendant in Newport, Minnesota and was delivered to the remittur in Minnesota. At the time the cashier's check was issued, the defendant had no knowledge that the plaintiff (payee) was located in Iowa or would deposit the check in Iowa banks. Defendant does not advertise in Iowa or solicit business from Iowa residents. Defendant took no actions outside the State of Minnesota regarding the transaction and occurrences underlying plaintiff's petition.
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> The defendant at one time made a loan to a Minnesota resident. Subsequently the borrower inherited real property in Iowa, and the bnak [sic] obtained a mortgage on that real property to secure the previous debt.
>
> The defendant on one occasion in the past ten years obtained a judgment in an Iowa court. That was against a person who while a resident of Minnesota obtained a loan from the defendant and subsequently moved to Iowa.

We are bound by these findings. Kagin, 284 N.W.2d at 225; Rath, 181 N.W.2d at 185.

We next must analyze the connection those contacts have with the cause of action. Here we find defendant engaged in only two transactions within the last ten years which had even a remote connection with the State of Iowa. Both involved transactions with Minnesota residents and concerned contracts formed in Minnesota. The connection with the State of Iowa was tenuous at best. Although, in one instance, defendant availed itself of the Iowa courts, that occurrence had no relationship to plaintiff's particular transaction with the defendant, or even with the type of transaction that was the basis of plaintiff's action. Further, defendant's business activities were not such that it purposely availed itself of the privilege of conducting activities within this state. See Svendsen v. Questor Corp., 304 N.W.2d 428, 430 (Iowa 1981), citing Hanson, 357 U.S. at 253, 78 S. Ct. at 1240, 2 L. Ed. 2d at 1298.

We also believe that it is important to consider whether defendant's conduct in connection with this state is such that it should reasonably anticipate being brought into court here. See Berkley, 289 N.W.2d at 605. In so doing, we conclude defendant could not reasonably have foreseen that its conduct toward plaintiff would have significant impact in this state. Neither as a result of this conduct or its connection with Iowa could defendant have reasonably anticipated being subject to court action here.

In light of defendant's contacts with Iowa, considering their quantity, nature, quality, source and connection to the cause of action, we conclude that the exercise of *in personam* jurisdiction over the defendant by the Iowa district court would not comply with defendant's rights under the due process clause of the United States Constitution. We thus affirm trial court's ruling.

AFFIRMED.