STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2257

Stratasys, Inc.,
Respondent,

vs.

ProtoPulsion, Inc.,
Defendant,

Phillip T. Trinidad,
Appellant.

Filed July 18, 2011
Reversed
Schellhas, Judge

Hennepin County District Court
File No. 27-CV-10-1841

Edward P. Sheu, Best & Flanagan LLP, Minneapolis, Minnesota (for respondent)

Daniel S. McGrath, Steingart, McGrath & Moore P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges a district court's order denying his motion to dismiss for lack of personal jurisdiction. Because appellant does not have sufficient minimum contacts

with Minnesota to satisfy due process and because the record does not support exercising personal jurisdiction over appellant on the basis of vicarious personal jurisdiction, we reverse.

FACTS

ProtoPulsion Inc. is a California corporation with a registered address in California. Appellant Phillip Trinidad is CEO of ProtoPulsion and a California resident. Respondent Stratasys Inc. is a Delaware corporation with its principal place of business in Minnesota. Stratasys and ProtoPulsion entered into reseller agreements in January and February 2009, at conferences hosted by Stratasys in California, Florida, Nevada, and Mexico. In his capacity as CEO, Trinidad signed the agreements on behalf of ProtoPulsion. The agreements authorized ProtoPulsion to purchase Stratasys's products, which included maintenance contracts, and to resell the products. None of ProtoPulsion's customers was located in Minnesota. A forum-selection clause in the agreements subjected ProtoPulsion to personal jurisdiction in Minnesota.

In September 2009, after discovering accounting irregularities concerning Stratasys's business with ProtoPulsion, Robert Gallagher, CFO of Stratasys, traveled to California to meet with Trinidad in ProtoPulsion's office. After the meeting, Trinidad sent two e-mails from his ProtoPulsion e-mail account to Gallagher. These e-mails explained the problems and focused on resolving the issues.

On January 8, 2010, Stratasys commenced this breach-of-contract action against ProtoPulsion, alleging that ProtoPulsion failed to fully compensate Stratasys for Stratasys's products that ProtoPulsion had sold. ProtoPulsion timely served an answer,

admitting that it owed Stratasys some amount of money but denying the allegations of the complaint and asserting 16 affirmative defenses. On February 4, Stratasys served discovery, including requests for admissions, on ProtoPulsion. The discovery sought the exact amount of monies that ProtoPulsion owed Stratasys. Stratasys extended ProtoPulsion's discovery deadline to March 10. On March 10, ProtoPulsion provided Stratasys with responses to the requests for admissions but did not provide any responsive documents, response to requests for the production of documents, or answers to interrogatories. Stratasys's attorney conferred with ProtoPulsion's attorney, and they arranged to hold a telephone conference with the district court on March 24 to address the discovery issues. During the telephone conference, the court informed ProtoPulsion that it had two weeks to provide discovery, and if not provided, Stratasys could move to compel discovery.

By April 19, ProtoPulsion had not submitted discovery responses, its attorney withdrew as counsel, and Stratasys served a second set of discovery on ProtoPulsion. The discovery included additional requests for admissions aimed at whether Trinidad had used ProtoPulsion funds for personal use or to fund other businesses. Stratasys also moved to compel discovery and, on May 11, the district court granted the motion. On June 9, Stratasys moved for leave to amend its complaint, for an order deeming its additional requests for admissions admitted, and for sanctions. The district court granted Stratasys's motion for leave to amend its complaint, stating:

> *Defendant's discovery failures are the basis for the present motions.* Plaintiff first moves to amend the Complaint to add a veil-piercing claim against ProtoPulsion's

> principal, Phillip T. Trinidad . . . . Plaintiff argues its discovery requests were directed to learn whether Trinidad had been abusing the corporate form and using the corporation as an "alter ego." Plaintiff contends there are already adequate facts suggesting an alter-ego veil-piercing claim would succeed and that an amendment would not prejudice the Defendant at this time. At the very least, the amendment is justified due to Defendant's failure to respond to Plaintiff's discovery requests.

(Emphasis added.) The court concluded that "[t]he proposed amendment is not futile and would not substantially prejudice *the Defendant*." (Emphasis added.)

The district court also deemed the following requests for admissions admitted under Minn. R. Civ. P. 36.01, because more than 30 days had passed from the date Trinidad was served with the additional requests and he had failed to respond:

> **REQUEST NO. 4:** Admit that Phillip T. Trinidad spread himself and his resources too thin and over committed financially in the course of serving as a reseller for Plaintiff as reflected in your October 14, 2009 email to Robert Gallagher.
>
> **REQUEST NO. 5:** Admit that Phillip T. Trinidad "was trying to run and support multiple business endeavors with one set of financial and human resources," as reflected in your October 14, 2009 email to Robert Gallagher.
>
> **REQUEST NO. 6:** Admit that Phillip T. Trinidad leveraged maintenance dollars on margin instead of providing those maintenance dollars to Plaintiff.
>
> **REQUEST NO. 7:** Admit that ProtoPulsion, Inc. provided the financial support for Calibowl and Simple Wave, LLC.
>
> **REQUEST NO. 8:** Admit that Phillip T. Trinidad used monies owed to Plaintiff for Calibowl and Simple Wave, LLC.

The court stated that "[t]he specific requests for admission at issue relate to facts that would expose Trinidad to certain liability under an alter-ego veil-piercing theory."

In its amended complaint, Stratasys alleged the following:

> 34. Trinidad is liable for ProtoPulsion's debt to [Stratasys] because Trinidad has undercapitalized ProtoPulsion and has abused the corporate form for his personal uses.
> 35. *Trinidad is the alter ego of ProtoPulsion* and, on information and belief, has failed to follow corporate formalities, and has failed to maintain separate accounts.
> 36. Trinidad has used monies destined for [Stratasys] for his personal gain and his other business ventures, as reflected on Exhibit D.
> 37. It would be fraudulent, inequitable, and unjust to permit Trinidad to avoid liability by use of the corporate veil.
> 38. As a result, Trinidad should be found personally liable for all amounts owed to [Stratasys] by ProtoPulsion in this action.

(Emphasis added.) Stratasys alleged that the district court "has personal jurisdiction over *Defendants* based on *Defendants' consent* to the jurisdiction of this Court, as set forth in the attached contracts, and based on *Defendants' other substantial contacts to Minnesota*. . . . *Defendants* irrevocably submitted to the jurisdiction of [Minnesota]." (Emphasis added.) Stratasys did not allege jurisdiction over Trinidad on a basis of vicarious personal jurisdiction.

On September 2, Stratasys moved the district court for partial summary judgment on its breach-of-contract claim, and Trinidad moved to dismiss for lack of personal jurisdiction. Trinidad asserted that he did not have sufficient minimum contacts with Minnesota to satisfy due process and denied that he consented to jurisdiction in Minnesota, pointing out that he was not a party to the reseller agreements between

ProtoPulsion and Stratasys. In the alternative, Trinidad argued that if the court found that he was subject to personal jurisdiction, it should continue the trial date and amend the scheduling order to allow for additional discovery on the issue of his personal liability.

Stratasys opposed Trinidad's motion to dismiss, arguing that (1) the amended complaint alleges that Trinidad is the alter ego of ProtoPulsion, which for purposes of Trinidad's motion must be accepted as true; and (2) "[a]s the alter ego of ProtoPulsion, Trinidad has purposefully availed himself of jurisdiction in Minnesota by his alter ego's contracts with a Minnesota-based corporation and by his misappropriation of revenues rightly due a Minnesota-based corporation."

Stratasys also opposed Trinidad's alternative motion for additional discovery time on the basis that an extension would prejudice Stratasys, arguing that it had "diligently prosecuted" the action while "Trinidad and his alter ego have refused to participate in discovery [and] Defendants have made no efforts to participate in [the] action" and that a delay "would only benefit and reward Defendants for their dilatory tactics." Pointing to the requests for admissions already deemed admitted by the court, Stratasys argued that Trinidad failed to identify discovery that he would seek that would not be futile.

After a hearing on the parties' motions, the district court granted Stratasys's motion for partial summary judgment on its breach-of-contract claim, leaving damages as the only issue to be litigated at the trial. The court reserved Trinidad's motion for dismissal for lack of personal jurisdiction.

During a court trial in November, the district court orally denied Trinidad's motion to dismiss but granted his alternative request for relief—additional time for

discovery on the issue of his personal liability, allowing an additional 90 days. The court issued a written order denying Trinidad's motion to dismiss on December 13, 2010, concluding that Trinidad had sufficient minimum contacts with Minnesota to be subject to the court's jurisdiction. The court did not address Stratasys's argument that the court could exercise personal jurisdiction over Trinidad on the theory of vicarious personal jurisdiction based on Trinidad being ProtoPulsion's alter ego. The court made no findings on the alter-ego issue. Trinidad immediately appealed the district court's denial of his motion to dismiss.

In January 2011, the district court issued findings of fact, and conclusions of law, and order for partial judgment against ProtoPulsion in the amount of $553,011.

On appeal, Trinidad argues that his contacts with Minnesota are insufficient for Minnesota to exercise personal jurisdiction over him. Stratasys argues that Trinidad has sufficient minimum contacts with Minnesota and renews its argument that Trinidad is subject to personal jurisdiction because he is the alter ego of ProtoPulsion.[1]

D E C I S I O N

Whether personal jurisdiction exists is a question of law, which an appellate court reviews de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). Before trial, a plaintiff need only make a prima facie showing of personal jurisdiction, and the complaint and any supporting evidence are taken as true. *Hardrives,*

[1] Before the district court and this court, Stratasys has argued that personal jurisdiction over Trinidad exists because Trinidad is the alter ego of ProtoPulsion. Stratasys has not argued the personal jurisdiction over Trinidad exists because ProtoPulsion is the alter ego of Trinidad.

Inc. v. City of La Crosse, 307 Minn. 290, 293, 240 N.W.2d 814, 816 (1976). "Once a defendant challenges personal jurisdiction, the burden of proof is on the plaintiff to show the jurisdiction exists." *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 533 (Minn. App. 2009) (citing *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 n.1 (Minn. 1983)). To satisfy this burden, the plaintiff may not rely on general statements in the pleadings when the defendant's motion to dismiss is supported by affidavits. *Sausser v. Republic Mortg. Investors*, 269 N.W.2d 758, 761 (Minn. 1978).

Minnesota's long-arm statute addresses personal jurisdiction over foreign defendants. Minn. Stat. § 543.19 (2010). Because Minnesota's long-arm statute and the federal Due Process Clause are co-extensive, in ascertaining whether personal jurisdiction exists, Minnesota courts may simply apply federal law. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992). Due process requires that a foreign defendant have minimum contacts with the forum state so that the exercise of jurisdiction complies with "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945) (quotation omitted). The contacts must establish that the foreign defendant "purposefully avail[ed] itself of the privilege of conducting activities within the forum" and would have "reasonably anticipate[d] being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980) (quotation omitted). In cases involving contract disputes, "the contract must have a substantial connection with the state." *Dent-Air*, 332 N.W.2d at 907.

> A five-factor test determines whether sufficient contacts give rise to personal jurisdiction over a nonresident defendant: (1) the quantity of contacts with Minnesota; (2) the nature and quality of the defendant's contacts with Minnesota; (3) the connection between the cause of action and the defendant's contacts; (4) Minnesota's interest in providing a forum; and (5) the convenience of the parties.

C.H. Robinson, 772 N.W.2d at 536 (citing *Dent-Air*, 332 N.W.2d at 907). The first three factors determine whether minimum contacts exist, and the last two determine whether the exercise of jurisdiction is reasonable, that is, whether it comports with traditional notions of fair play and substantial justice. *Juelich*, 682 N.W.2d at 570. "The first three factors carry the most weight in the court's overall personal-jurisdiction determination." *C.H. Robinson*, 772 N.W.2d at 536. The greater the showing on minimum contacts, the less a showing of reasonableness is needed, and a strong showing of reasonableness may fortify a borderline showing of minimum contacts. *Juelich*, 682 N.W.2d at 570–71 (quotation omitted).

We first address Trinidad's argument that the alleged contacts are insufficient to satisfy due process because he was acting in his capacity as CEO of ProtoPulsion. Trinidad's status as a corporate officer of ProtoPulsion cannot alone establish sufficient contacts to exercise personal jurisdiction. *See State v. Cont'l Forms, Inc.*, 356 N.W.2d 442, 444 (Minn. App. 1984) (stating that personal jurisdiction over corporation does not confer personal jurisdiction over corporation's officers). Nor is he shielded from personal jurisdiction simply because his actions were taken in his capacity as CEO. *See Oakridge Holdings, Inc. v. Brukman*, 528 N.W.2d 274, 278 (Minn. App. 1995) (declining to apply "fiduciary shield" doctrine to nonresident officers of Minnesota corporation and

stating that Minnesota has not adopted doctrine), *review denied* (Minn. May 16, 1995). Even if Trinidad's contacts resulted from his activity as CEO, he may be subject to personal jurisdiction if minimum contacts are established. *See Behm v. John Nuveen & Co.*, 555 N.W.2d 301, 306 (Minn. App. 1996) (applying minimum-contacts analysis to determine whether corporate officers were subject to personal jurisdiction based on contacts only as officers). Consequently, whether Trinidad's contacts with Minnesota are limited to contacts made in his capacity as CEO is not controlling on the issue of personal jurisdiction.

Turning to the minimum-contacts analysis, we first address the quantity of Trinidad's contacts with Minnesota. Generally, the exercise of personal jurisdiction requires that the quantity of contacts is "numerous and fairly frequent or regular in occurrence." *NFD, Inc. v. Stratford Leasing Co.*, 433 N.W.2d 905, 908 (Minn. App. 1988) (quotation omitted), *review granted* (Minn. Feb. 10, 1989), *appeal dismissed* (Minn. Sept. 8, 1989). According to the pleadings, Trinidad's contacts with the forum are limited to (1) two e-mails he wrote to Gallagher and (2) his signature, in his capacity as CEO, on the agreements between ProtoPulsion and Stratasys. Based on the record before us, Trinidad does not have any other contacts with Minnesota. Trinidad is a California resident who: has not lived, been employed, or possessed real or personal property in Minnesota; has not voted or held a driver's license in Minnesota; has not engaged in personal business in Minnesota; and has never traveled to Minnesota. As CEO of ProtoPulsion, Trinidad works from a California office and almost all of his communications with Stratasys employees were with employees located in Stratasys's

California office. Significantly, Trinidad never traveled to Minnesota to conduct business with Stratasys or work with or on behalf of a customer in Minnesota. The quantity of Trinidad's contacts with Minnesota are minimal.

Concerning the quantity of Trinidad's contacts, Stratasys erroneously argues that the minimum-contacts test is satisfied because in the facts deemed admitted, Trinidad admitted to using revenues owed to Stratasys for other business ventures, which was a single act that caused injury in Minnesota to a Minnesota company. Stratasys does not provide citation to legal authority to support this argument.

In *Marquette Nat'l Bank of Minneapolis v. Norris*, the Minnesota Supreme Court recognized that "even one single, isolated transaction between a nonresident [and a resident] can be a sufficient contact to justify exercising personal jurisdiction." 270 N.W.2d 290, 295 (Minn. 1978). But subsequent caselaw clarifies *Marquette*, which turned on a nonresident's "aggressive initiation." *Dent-Air*, 332 N.W.2d at 908. And the scope of *Marquette* has been limited to single incidents in which a nonresident "purposefully solicits contacts, or initiated or induced the transaction." *Viking Eng'g & Dev., Inc. v. R.S.B. Enters.*, 608 N.W.2d 166, 169 (Minn. App. 2000), *review denied* (Minn. May 23, 2000). Stratasys has not alleged or provided evidence to support an allegation that Trinidad initiated or induced Stratasys to enter into the agreements with ProtoPulsion. Even assuming that the district court properly deemed admitted Stratasys's requests for admissions to ProtoPulsion, the quantity of Trinidad's contacts with Minnesota is insufficient to satisfy due process for the exercise of personal jurisdiction.

The second factor we consider is the nature and quality of the contacts. When a nonresident has had few contacts with Minnesota, "the nature and quality of the contact[s] become dispositive." *Marquette*, 270 N.W.2d at 295 (emphasis omitted). In assessing this factor, we ascertain whether the foreign defendant has "purposefully availed [himself] of the benefits and protections of Minnesota law." *Dent-Air*, 332 N.W.2d at 907. "The impact in Minnesota of the transaction . . . is considered, but the foreseeability of an impact alone is not sufficient to confer personal jurisdiction." *Id.* The foreseeability critical to due process is whether the defendant would "reasonably anticipate being haled into court" in the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183 (1985) (quotation omitted).

In *Dent-Air*, the supreme court declined to exercise personal jurisdiction over a foreign corporate lessee or its foreign sole shareholder. 332 N.W.2d at 905–06. The case arose out of an action by a Minnesota corporation for breach of three lease agreements that the foreign sole shareholder had executed outside of Minnesota. *Id.* at 906, 909. The sole shareholder conducted all of his negotiations and activity concerning the leases from outside of Minnesota and never traveled to Minnesota. *Id.* at 906, 909. And although the sole shareholder personally guaranteed the leases that he signed on behalf of the corporation, the supreme court concluded that he was not subject to personal jurisdiction in Minnesota. *Id.* Similarly, Trinidad executed the reseller agreements outside of Minnesota and never traveled to Minnesota in connection with the agreements or for any other purpose. And, in contrast to *Dent-Air*, which arguably presented a stronger basis on

which to exercise personal jurisdiction over the sole shareholder, Trinidad did not personally guarantee the agreements he executed on behalf of ProtoPulsion.

This court has declined the exercise of personal jurisdiction over a foreign corporate defendant when, as in this case, every significant element in the formation of an agreement occurred outside of Minnesota. *Walker Mgmt., Inc. v. FHC Enters., Inc.*, 446 N.W.2d 913, 915 (Minn. App. 1989), *review denied* (Minn. Dec. 15, 1989); *NFD,* 433 at 909. And this court has deemed phone and mail contacts alone, even in cases involving more contacts than the two e-mails in this case, to be insufficient to exercise personal jurisdiction over a nonresident defendant. *S.B. Schmidt Paper Co. v. A to Z Paper Co.*, 452 N.W.2d 485, 488–89 (Minn. App. 1990).

In considering the quality of contacts to assess their sufficiency for purposes of the exercise of personal jurisdiction, we also consider whether the nonresident defendant was the aggressor or was induced by a Minnesota corporation to enter into a transaction. *Trident Enters. Int'l, Inc. v. Kemp & George, Inc.,* 502 N.W.2d 411, 415–16 (Minn. App. 1993). Whether a nonresident solicited a sale or actively engaged in the negotiation can be crucial factors, especially when the contacts with the forum are minimal or only a single transaction. *KSTP-FM, LLC v. Specialized Commc'ns, Inc.*, 602 N.W.2d 919, 924 (Minn. App. 1999). Here, Stratasys has not alleged or provided any evidence to show that Trinidad solicited the transaction or that his actions induced Stratasys to enter into the agreements. In fact, Stratasys is the seller and ProtoPulsion is the buyer, and our caselaw recognizes that, traditionally, "the seller is the aggressor in the interstate

relationship; the seller solicits customers, advertises, or otherwise initiates the dealings." *Dent-Air*, 332 N.W.2d at 907.

Based on the quality of Trinidad's contacts with Minnesota, he could not reasonably have expected to have been haled into court in Minnesota. The nature and quality of Trinidad's contacts with Minnesota do not establish that he purposefully availed himself of the benefits and protections of Minnesota law.

The third factor we consider is the connection of the contacts with the cause of action. "Minimum contacts may establish 'general' or 'specific' personal jurisdiction." *Behm*, 555 N.W.2d at 306. "Specific jurisdiction arises when the defendant's contacts . . . are limited—yet connected with the plaintiff's claim—such that the claim arises out of or is related to the defendant's contacts . . . ." *Id.* (citing *Burger King*, 471 U.S. at 472, 105 S. Ct. at 2182). Because the agreements are the subject of this lawsuit, Trinidad's execution of the agreements is connected to the cause of action. But this connection with the forum is not alone sufficient to establish personal jurisdiction. *See Dent-Air*, 332 N.W.2d at 908–09 (declining to exercise personal jurisdiction over sole shareholder even when all contacts concerning negotiation and execution of three lease agreements "unquestionably gave rise to the cause of action and thus are properly connected to it"). If a business transaction is insufficient to establish personal jurisdiction, then subsequent contacts resulting from efforts to resolve a dispute arising from the transaction cannot confer personal jurisdiction. *KSTP-FM*, 602 N.W.2d at 925; *see In re Shipowners Litig.*, 361 N.W.2d 112, 115 (Minn. App. 1985) (declining to exercise personal jurisdiction over

company when focus of single meeting in forum was not promotion of business but negotiation of settlement on contract dispute).

In this case, Trinidad's execution of the agreements is not alone sufficient to support jurisdiction, and because he wrote the two e-mails in an effort to resolve problems after he learned about the alleged breach, the e-mails did not give rise to the cause of action. Therefore, the connection between Trinidad's e-mail contacts and the cause of action are not sufficient to support the exercise of personal jurisdiction.

Concerning the fourth factor, Minnesota has an interest in providing a forum for its residents who allegedly have been wronged. *Dent-Air*, 332 N.W.2d at 908. "This interest, however, is not a contact and cannot establish personal jurisdiction." *Id.* Here, based on the minimal quantity and the nature and quality of Trinidad's contacts, Minnesota's interest in providing a forum does not support the exercise of jurisdiction. *Cf. Trident*, 502 N.W.2d at 416 (viewing Minnesota's interest in providing forum in light of other factors that favored exercising jurisdiction to determine that Minnesota's interest in providing forum supported exercise of jurisdiction).

The fifth factor we consider is the convenience of the parties. A strong presumption exists in favor of a plaintiff's choice of forum. *Bergquist v. Medtronic, Inc.*, 379 N.W.2d 508, 511 (Minn. 1986). "[B]ecause modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity, it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity." *Burger King*, 471 U.S. at 474, 105 S. Ct. at 2183 (quotation omitted). Although Trinidad

would be required to travel to Minnesota, California is not so distant to make jurisdiction in Minnesota unreasonable.

The fourth and fifth factors are secondary factors; an inability to establish jurisdiction under the first three factors requires a conclusion that personal jurisdiction does not exist. *Walker*, 446 N.W.2d at 916. We conclude that Trinidad does not have sufficient minimum contacts with Minnesota to satisfy due process for the exercise of personal jurisdiction over him in Minnesota.

Vicarious Personal Jurisdiction

On appeal Stratasys renews its argument that Trinidad is subject to vicarious personal jurisdiction in Minnesota because he is the alter ego of ProtoPulsion. The district court did not address Stratasys's jurisdictional argument based on an alter-ego theory or make a finding on whether Trinidad is ProtoPulsion's alter ego.

Minnesota has recognized that a foreign corporation may be subject to jurisdiction in a forum by virtue of its subsidiary's activities in the forum, but "the companies must be organized and operated so that one corporation is an instrumentality or alter-ego of the other." *Zimmerman v. Am. Inter-Ins. Exch.*, 386 N.W.2d 825, 828 (Minn. App. 1986), *review denied* (Minn. July 31, 1986). Similarly, other jurisdictions have held that personal jurisdiction may be exercised over a foreign shareholder whose dominance and control over a corporation establishes that the corporation is merely the shareholder's alter ego. *Lakota Girl Scout Council, Inc., v. Harvey Fund-Raising Mgmt. Inc.*, 519 F.2d 634, 636–38 (8th Cir. 1975). This court recently applied the principle of vicarious personal jurisdiction to support the exercise of personal jurisdiction over a foreign parent

company based on its relationship with its subsidiary. *See JL Schwieters Constr., Inc. v. Goldridge Constr., Inc.*, 788 N.W.2d 529, 535–36 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010). But Minnesota has not applied the principle of vicarious personal jurisdiction to establish personal jurisdiction over a dominant individual shareholder who is the alleged alter ego of a corporation.

In *Schwieters*, a subcontractor initiated a mechanic's lien foreclosure action in Minnesota alleging that a Wisconsin corporation accepted fraudulent transfers of funds from its subsidiary that owned land in Minnesota. *Id.* at 533. Minnesota's jurisdiction over the subsidiary was undisputed. *Id.* at 535. The court determined that the alleged facts established a prima facie showing that the subsidiary company operated as the alter ego of the parent company. *Id.* at 536. The court considered evidence that showed that the parent company (1) was the sole owner of the subsidiary; (2) completely controlled the subsidiary for its own purposes; (3) shared a business address with the subsidiary; (4) guaranteed the debt that secured the subsidiary's mortgage; and (5) "exerted substantial control over [the subsidiary], using the [subsidiary] as a conduit for its own business." *Id.*

For support that Trinidad is the alter-ego of ProtoPulsion, Stratasys points only to its general allegations in its amended complaint and the general facts deemed admitted by the district court. "Conclusory allegations lacking factual specificity . . . do not satisfy plaintiff's burden" of showing a prima facie case for exercising personal jurisdiction. *Alki Partners, L.P. v. Vatas Holding GMBH*, __ F. Supp. __, __ 2011 WL 651056 *3 (S.D.N.Y. 2011). Although the record shows that Trinidad is the sole shareholder of

ProtoPulsion, Stratasys has not alleged or provided evidence of specific facts showing that Trinidad completely controlled ProtoPulsion for his own purposes; that Trinidad and ProtoPulsion shared a business address; that Trinidad's personal finances were mingled with ProtoPulsion's; that Trinidad personally guaranteed any of ProtoPulsion's debts; or that Trinidad dominated and controlled ProtoPulsion, using it as a conduit for personal business. To the contrary, Trinidad states in his affidavit that ProtoPulsion has maintained separate and distinct business bank accounts, that ProtoPulsion's funds or accounts have never been comingled with his personal accounts, and that ProtoPulsion has maintained corporate records and followed all formalities required by California law. *See Sausser*, 269 N.W.2d at 761 (stating that if motion to dismiss is supported by affidavit, non-moving party cannot rely on general statements in pleadings). Stratasys's general allegations and the general statements of fact deemed admitted are not sufficient to establish a prima facie showing that Trinidad is ProtoPulsion's alter ego. *See Guccione v. Flynt*, 617 F. Supp. 917, 919 (S.D.N.Y. 1985) (declining to exercise personal jurisdiction over sole shareholder of defendant corporation in suit alleging invasion of privacy and copyright infringement claims because plaintiff did not allege sufficient facts to justify piercing the corporate veil for jurisdictional purposes). And Stratasys's reliance on *Lakota* is misplaced.

In *Lakota*, in determining that a corporation was the alter ego of a single shareholder in a breach-of-contract dispute, the Eighth Circuit Court of Appeals relied on evidence introduced at trial on the issue of piercing the corporate veil. 519 F.2d at 637–38. The court determined that the jurors' finding that the corporation was the alter ego of

the shareholder was based on "overwhelming" trial evidence that the shareholder "dominated and controlled the business and treated it as his own." *Id.* at 638. In this case, the district court did not make a finding on whether Trinidad is the alter ego of ProtoPulsion and the record does not contain "overwhelming" evidence that Trinidad dominated and controlled ProtoPulsion and treated it as his own. The record here does not support exercising personal jurisdiction over Trinidad on the basis of vicarious personal jurisdiction.

Forum-Selection Clause

Citing *C.H. Robinson*, 772 N.W.2d at 535–36, Stratasys argues that Trinidad, although a nonparty to the agreements between Stratasys and ProtoPulsion, may be bound to the forum-selection clause in the agreements because he is "closely related to ProtoPulsion" and therefore subject to personal jurisdiction in Minnesota—like ProtoPulsion. But Stratasys did not raise this argument in the district court; it neither made the argument in its memorandum of law in opposition to Trinidad's motion to dismiss nor in connection with its motion for partial summary judgment nor orally before the court at trial. We therefore do not consider this argument on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1998) (stating that reviewing court considers only those issues presented to district court).

Reversed.