IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-284

No. COA20-427

Filed 15 June 2021

Orange County, No. 19 CVS 810

DAVID SCHAEFFER, Plaintiff,

v.

SINGLECARE HOLDINGS, LLC; SINGLECARE SERVICES, LLC; RXSENSE HOLDINGS, LLC; RICHARD A. BATES; and DARCEY SCHOENEBECK, Defendants.

Appeal by Defendants from order entered 22 November 2019 by Judge Susan Bray in Orange County Superior Court. Heard in the Court of Appeals 27 April 2021.

Julia C. Ambrose for Defendants-Appellants.

Kornbluth Ginsberg Law Group, P.A., by Michael A. Kornbluth, for Plaintiff-Appellee.

GRIFFIN, Judge.

¶ 1 Defendants SingleCare Holdings, LLC; SingleCare Services, LLC; RxSense Holdings, LLC; Richard A. Bates; and Darcey Schoenebeck (collectively, the "Defendants") appeal from an order denying their Rule 12(b)(2) motion to dismiss counts one through nine of Plaintiff David Schaeffer's ("Plaintiff") complaint. Defendants argue that North Carolina lacks personal jurisdiction over any of the

Defendants. We agree. We reverse the trial court's order denying Defendants' motion to dismiss counts one through nine of Plaintiff's complaint.

I. Procedural History

¶ 2 On 13 June 2019, Plaintiff filed a Summons and Complaint ("Complaint") in Orange County Superior Court against SingleCare Holdings, LLC ("SingleCare Holdings"); SingleCare Services, LLC ("SingleCare Services"); RxSense Holdings, LLC ("RxSense"); Richard A. Bates; and Darcey Schoenebeck.

¶ 3 Plaintiff's Complaint alleged various tort and contract claims against Defendants, relating to equity compensation and termination of employment. In total, the Complaint alleged ten counts.

¶ 4 On 19 August 2020, Defendants filed a Rule 12(b)(2) and 12(b)(6) motion to dismiss Plaintiff's Complaint. The Rule 12(b)(2) argument applied only to counts one through nine of the Complaint. Defendants later supplemented their motion to dismiss with a memorandum of law, an affidavit, and other supporting evidence. Plaintiff responded with an affidavit and exhibits.

¶ 5 The trial court denied Defendants' motion to dismiss and did not make findings of fact in its order (filed 22 November 2019). Defendants gave timely notice of appeal of the Rule 12(b)(2) motion to dismiss.

II. Factual Background

¶ 6 "[H]ere, the record contains no indication that the parties requested that the trial court make specific findings of fact, and the order appealed from contains no findings." *McCullers v. Lewis*, 265 N.C. App. 216, 220-21, 828 S.E.2d 524, 531 (2019) (citations omitted). Therefore, "we presume that the trial court made factual findings sufficient to support its ruling, and . . . [we] review the record to determine whether it contains evidence that would support the trial court's legal conclusions." *Id.*

A. Plaintiff's Complaint

¶ 7 Plaintiff's Complaint alleged the following facts pertinent to this appeal:

¶ 8 Defendants SingleCare Holdings, SingleCare Services, and RxSense are each Delaware limited liability companies with principal offices in Massachusetts. SingleCare Services is a subsidiary of SingleCare Holdings (collectively "SingleCare"). Defendant Darcey Schoenebeck is a citizen and resident of Minnesota. Defendant Richard A. Bates is a citizen and resident of Massachusetts.

¶ 9 Plaintiff was jointly employed by SingleCare and RxSense from 1 May 2017 to 22 October 2018. On 28 August 2018, Plaintiff "was informed that he was going to be terminated." Plaintiff was formally terminated on 22 October 2018.

B. Defendants' Response

¶ 10 Defendants' memorandum of law, and its attached exhibits, in support of their motion to dismiss stated the following:

¶ 11 Defendants maintained no offices or records in North Carolina and owned no property in North Carolina. Plaintiff was a resident of California when he was offered employment by SingleCare. No language in the offer letter required or requested that Defendant work in North Carolina. The Award Agreement between Plaintiff and SingleCare Holdings, dated 1 November 2017, specifies that Delaware law would govern the agreement. The Award Agreement does not mention North Carolina.

C. Plaintiff's Affidavit in Response

¶ 12 "Where, as here, the defendant supplements his motion to dismiss with an affidavit or other supporting evidence, the plaintiff cannot rest on the unverified allegations in the complaint; rather, the plaintiff must respond by affidavit or otherwise . . . setting forth specific facts showing that the court has [personal] jurisdiction." *McCullers*, 265 N.C. App. at 220, 828 S.E.2d at 530 (citation and internal quotation marks omitted).

¶ 13 Plaintiff's affidavit and supporting exhibits in response to Defendants' motion to dismiss alleged the following:

¶ 14 On or around 25 July 2018, Plaintiff moved to North Carolina and thereafter substantially performed his work for Defendants in North Carolina. The corporate Defendants "facilitated" Plaintiff's move to North Carolina. On or around 4 June 2018, Defendant Schoenebeck "facilitated" Plaintiff's move by sending a letter (on

SingleCare letterhead) to Plaintiff's North Carolina mortgage lender confirming that Plaintiff "has the ability to work away from our headquarters in Boston, MA."

¶ 15 Defendants paid taxes to the State of North Carolina based upon Plaintiff's work in the State, mailed tax documents to Plaintiff at his home in North Carolina, paid Plaintiff in North Carolina, and reimbursed Plaintiff's travel and office expenses in North Carolina. Plaintiff and Defendant Schoenebeck corresponded on a regular basis via telephone and email while Plaintiff was working in North Carolina.

¶ 16 "Defendants solicit pharmacy benefit management business and pharmaceutical benefit card services in North Carolina. [Plaintiff's] employment for Defendants included furthering services targeted at North Carolina residents and businesses." Defendants have employed and recruited other individuals in North Carolina. A Third-Party Administrator (Towers Administrators LLC), wholly owned by the corporate Defendants, operates in North Carolina. Plaintiff's work included "selling services . . . which the Defendants needed to work with Towers Administrators LLC . . . to administer Defendants' services." SingleCare Services and RxSense each have a registered agent in North Carolina.

III. Analysis

¶ 17 Defendants argue that the trial court erred when it denied their motion to dismiss for lack of personal jurisdiction. We agree.

A. Appellate Jurisdiction

¶ 18 Although Defendants' appeal is interlocutory, Defendants have "the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the [D]efendant[s.]" N.C. Gen. Stat. § 1-277(b); N.C. Gen. Stat. § 7A-27(b)(4); *see also A.R. Haire, Inc. v. St. Denis*, 176 N.C. App. 255, 257-58, 625 S.E.2d 894, 898 (2006) ("[M]otions to dismiss for lack of personal jurisdiction affect a substantial right and are immediately appealable." (citation omitted)).

B. Standard of Review

¶ 19 We review *de novo* the trial court's conclusion of law that personal jurisdiction exists over Defendants. *McCullers*, 265 N.C. App. at 221, 828 S.E.2d at 531. "Under a *de novo* review, [this C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citation and internal quotation marks omitted).

C. Personal Jurisdiction

¶ 20 "[U]pon a defendant's motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of making out a *prima facie* case that jurisdiction exists." *Bauer v. Douglas Aquatics, Inc.*, 207 N.C. App. 65, 68, 698 S.E.2d 757, 761 (2010) (citation omitted).

¶ 21 Two types of personal jurisdiction may be exercised over non-resident defendants: general jurisdiction and specific jurisdiction. *See Daimler AG v. Bauman*, 571 U.S. 117, 126-27 (2014). Plaintiff has not alleged a theory of general jurisdiction.

We therefore consider whether North Carolina may exercise specific jurisdiction over the Defendants.

D. Specific Jurisdiction

¶ 22 Specific jurisdiction is applicable when "the suit aris[es] out of or relate[s] to the defendant's contacts with the forum." *Daimler*, 571 U.S. at 127 (alterations in original) (citations and internal quotation marks omitted). For a North Carolina court to exercise personal jurisdiction over a nonresident defendant, (1) "North Carolina's 'long-arm' statute must confer jurisdiction", and (2) "the exercise of personal jurisdiction over a defendant must not violate the defendant's due process rights." *Lulla v. Effective Minds, LLC*, 184 N.C. App. 274, 277, 646 S.E.2d 129, 132 (2007) (citation omitted). Because North Carolina's "long-arm" statute is "liberally construed to find personal jurisdiction over nonresident defendants to the full extent allowed by due process[,]" the single question is whether the exercise of personal jurisdiction over the nonresident defendant would violate the defendant's due process rights. *Jaeger v. Applied Analytical Indus. Deutschland GMBH*, 159 N.C. App. 167, 171, 582 S.E.2d 640, 644 (2003) (citations and internal quotation marks omitted).

¶ 23 "To comport with due process, the defendant must have minimum contacts in the forum state." *Corbin Russwin, Inc. v. Alexander's Hardware, Inc.*, 147 N.C. App. 722, 724, 556 S.E.2d 592, 595 (2001) (citation omitted). Minimum contacts must be such that the exercise of personal jurisdiction "does not offend traditional notions of

fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citation and internal quotation marks omitted). The lawsuit "must aris[e] out of or relat[e] to the defendant's contacts with the *forum*." *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017) (alterations in original) (citations and internal quotation marks omitted).

¶ 24 A determination of whether minimum contacts exist between a nonresident "defendant and North Carolina requires individual consideration of the specific facts of each case." *First Union Nat'l Bank of Del. v. Bankers Wholesale Mortg., LLC*, 153 N.C. App. 248, 253, 570 S.E.2d 217, 221 (2002) (citation omitted). In making that determination, this Court should consider

> (1) the quantity of contacts between [the] defendants and North Carolina; (2) the nature and quality of such contacts; (3) the source and connection of [the] plaintiff's cause of action to any such contacts; (4) the interest of North Carolina in having this case tried here; and (5) convenience to the parties.

Id. "No single factor controls; rather, all factors must be weighed in light of fundamental fairness and the circumstances of the case." *Corbin Russwin, Inc.,* 147 N.C. App. at 725, 556 S.E.2d at 595 (citation and internal quotation marks omitted). Additionally, we consider "(1) whether [D]efendants purposefully availed themselves of the privilege of conducting activities in North Carolina, (2) whether [D]efendants could reasonably anticipate being brought into court in North Carolina, and (3) the

existence of any choice-of-law provision contained in the parties' agreement." *First Union Nat'l Bank of Del.*, 153 N.C. App. at 253, 570 S.E.2d at 221 (citations omitted).

E. Specific Jurisdiction Over Defendants in the Present Case

¶ 25 We conclude that counts one to nine of Plaintiff's Complaint do not arise out of, or relate to, Defendant's alleged contacts with North Carolina. *See Bristol-Myers Squibb*, 137 S. Ct. at 1780 ("In order for a state court to exercise specific jurisdiction, the *suit* must aris[e] out of or relat[e] to the defendant's contacts with the *forum*." (alterations in original) (citations and internal quotation marks omitted)). Therefore, North Carolina may not exercise specific jurisdiction over Defendants.

i. Quantity, Nature, and Quality of Contacts

¶ 26 Many of the alleged contacts between Defendants and North Carolina were created by Plaintiff's unilateral actions. Plaintiff alleges that the corporate Defendants "facilitated" Plaintiff's move to North Carolina; that Defendant Schoenebeck sent a letter to Plaintiff's North Carolina mortgage lender; that Plaintiff "corresponded with Defendant Schoenebeck on a regular basis via telephone and email" while working in North Carolina; and that "Defendants paid taxes to the State of North Carolina based upon [Plaintiff's] work in the [S]tate, mailed tax documents to [Plaintiff] at [his] home in North Carolina, reimbursed [Plaintiff's] travel and office expenses in North Carolina, and paid [Plaintiff] in North Carolina."

¶ 27 These alleged contacts occurred only because Plaintiff relocated to North Carolina on or around 25 July 2018. Plaintiff relocated of his own accord. He does not allege that any of Defendants required or suggested that he move to North Carolina. The Offer Letter and the Award Agreement do not mention North Carolina.

¶ 28 Defendants' acquiescence with Plaintiff's move to North Carolina, and subsequent communications with Defendant in North Carolina, do not create personal jurisdiction. In *Fields v. Sickle Cell Disease Ass'n of Am., Inc.*, 376 F. Supp. 3d 647, 650 (E.D.N.C. 2018), *aff'd*, 770 F. App'x 77 (4th Cir. 2019), a non-resident defendant corporation accommodated the plaintiff's request to work remotely from North Carolina. *Id.* The court found no personal jurisdiction over the defendant. *Id.* at 654. The court reasoned that the plaintiff's "complet[ion of] many tasks" for the defendant while in North Carolina and defendant's "direction and control" of plaintiff's tasks were "properly characterized as unilateral activity by the plaintiff[.]" *Id.* at 652; *see also Wright v. Zacky & Sons Poultry, LLC*, 105 F. Supp. 3d 531, 540 (M.D.N.C. 2015) (finding no personal jurisdiction over out-of-state defendant and noting that "while [the plaintiff employee] performed duties under his contract in North Carolina, neither [the defendant employer] nor the contract required him *to be in North Carolina* while performing those duties.").

¶ 29 Excluding Plaintiff's unilateral actions, the remaining alleged contacts are that Defendants solicit business and services in North Carolina; that Defendants

employ and recruit other individuals in North Carolina; that the corporate Defendants operate a Third-Party Administrator in North Carolina; and that SingleCare Services and RxSense each have a registered agent in North Carolina.

ii. Purposeful Availment and Anticipation of Litigation

¶ 30 Defendants' alleged contacts with North Carolina (apart from those created by Plaintiff's unilateral actions) weigh in favor of concluding that Defendants could reasonably anticipate being brought into court in North Carolina and purposefully availed themselves of the privilege of conducting activities in North Carolina. *See Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 679, 231 S.E.2d 629, 632 (1977) (holding that defendant corporation had "purposefully [availed] itself of the privilege of conducting activities within the forum State" by actively soliciting orders from North Carolina residents (alteration in original) (citation omitted)); *see also Universal Leather, LLC v. Koro Ar, S.A.*, 773 F.3d 553, 559-60 (4th Cir. 2014) (factors to consider in determining purposeful availment, such that defendant should reasonably anticipate being brought into court in forum state, include maintaining agents in forum state and "reach[ing] into the forum state to solicit or initiate business" (citation omitted)).

¶ 31 However, even assuming *arguendo* that Defendants purposefully availed themselves of conducting activities in North Carolina, this alone is not sufficient to establish specific jurisdiction. Plaintiff must further establish that his suit arises out

of or relates to these contacts. *See Bristol-Myers Squibb,* 137 S. Ct. at 1780 ("In order for a state court to exercise specific jurisdiction, the *suit* must aris[e] out of or relat[e] to the defendant's contacts with the *forum*." (alterations in original) (citations and internal quotation marks omitted)).

iii. Plaintiff's Claims are Unrelated to Alleged Contacts

¶ 32 Counts one through nine of Plaintiff's Complaint do not arise out of, or even relate to, the alleged contacts between Defendants and North Carolina.[1] These claims for relief arise from alleged promises and representations made by Defendants to Plaintiff in 2017. This was before Plaintiff moved to North Carolina. The Award Agreement at issue was negotiated and executed outside of North Carolina and did not mention North Carolina. During most of Plaintiff's performance of the contract (approximately 15 months out of 19 months), Plaintiff was not a resident of North Carolina.

iv. Choice-of-Law Provision, Interest of North Carolina

¶ 33 The Award Agreement is also insufficient to confer specific jurisdiction over Defendants. Although "a single contract may sometimes be sufficient to establish [personal] jurisdiction[,]" such is not the case here. *Corbin Russwin, Inc.,* 147 N.C.

[1] Count ten of Plaintiff's Complaint (wrongful discharge) arises from the termination of Plaintiff's employment, which allegedly occurred in North Carolina, but count ten is not challenged by the Defendants' Rule 12(b)(2) motion to dismiss.

App. at 725, 556 S.E.2d at 596 (citation omitted). The Award Agreement was negotiated, executed, and substantially performed outside of North Carolina. *See Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 348 S.E.2d 782 (1986) (finding personal jurisdiction over out-of-state party to contract where the contract was "made in" and "substantially performed" in North Carolina). "Nothing in the contract specified that any work performed under the contract was to be performed in North Carolina." *Lulla*, 184 N.C. App. at 279, 646 S.E.2d at 134 (finding no personal jurisdiction).

¶ 34 The Award Agreement specified that Delaware law would govern the agreement. This provision weighs against finding personal jurisdiction in North Carolina. *Modern Globe, Inc. v. Spellman*, 45 N.C. App. 618, 624-625, 263 S.E.2d 859, 863-864 (1980).

¶ 35 North Carolina has minimal interest in a contract negotiated outside of this State, formed between non-resident parties, and substantially performed outside of this State. *See Wright*, 105 F. Supp. 3d at 541 ("North Carolina has little interest in a contract executed in California, performed almost entirely outside of North Carolina, and terminated in California.").

v. Convenience

¶ 36 Convenience to the parties is not determinative of the existence of jurisdiction in this case. "Litigation on interstate business transactions inevitably involves

inconvenience to one of the parties. When the inconvenience to defendant of litigating in North Carolina is no greater than would be the inconvenience of plaintiff of litigating in defendant's state . . . no convenience factors . . . are determinative[.]" *Cherry Bekaert & Holland v. Brown,* 99 N.C. App. 626, 635, 394 S.E.2d 651, 657 (1990) (citations, internal quotation marks, and brackets omitted); *see also Brown v. Ellis*, 206 N.C. App. 93, 100, 696 S.E.2d 813, 819 (2005) ("[W]e must consider all of the factors regarding minimum contacts, not just convenience of the parties."). Here, litigation in North Carolina would present both convenience and inconvenience to the parties. Litigation in North Carolina would be convenient for Plaintiff but inconvenient for Defendants, while litigation in Defendants' state(s) would be inconvenient for Plaintiff.

vi. No Products Liability

¶ 37 Plaintiff cites *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021), in support of his argument that specific jurisdiction in North Carolina exists over Defendants. However, *Ford* asserts the principle that personal jurisdiction may exist "[w]hen a company . . . serves a market for a product in a State and that product causes injury in the State to one of its residents." *Id.* at 1022. Here, Plaintiff does not allege injury from any of Defendants' products or services, and therefore *Ford* does not support a finding of specific jurisdiction in this case.

IV. Conclusion

¶ 38 For the foregoing reasons, the trial court's order denying Defendants' motion to dismiss for lack of personal jurisdiction must be reversed as a matter of law.

REVERSED.

Judges INMAN and GORE concur.

Report per Rule 30(e).