Rel: February 28, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180629

Ex parte LED Corporations, Inc., and Anthony Florence

PETITION FOR WRIT OF MANDAMUS

(In re: SDM Electric, LLC v. Anthony Florence; Paul Metzler; William Ofshlag; and LED Corporations, Inc.)

(Etowah Circuit Court, CV-18-900987)

STEWART, Justice.

LED Corporations, Inc. ("LED"), and Anthony Florence petition this Court for a writ of mandamus directing the Etowah Circuit Court ("the trial court") to vacate its order denying their motions to dismiss for lack of personal jurisdiction an action filed against them by SDM Electric, LLC

("SDM"), and to enter an order dismissing the case against them. We deny the petition.

Facts and Procedural History

SDM is an Alabama corporation that served as an electrical subcontractor for a construction project at a high school in Calhoun County, Alabama. LED is a Florida corporation owned by Florence, its sole shareholder. In 2017, SDM contacted LED to solicit a bid for lighting fixtures for use in the construction project. William Ofshlag, an employee of LED, traveled from Florida to Alabama to meet with SDM and other members of the construction team to discuss a potential bid. After Ofshlag met with SDM, LED submitted to SDM a bid for lighting fixtures. On December 29, 2017, SDM executed and delivered to LED a purchase order for lighting fixtures in the amount of $181,514. Ofshlag sent SDM a letter on February 6, 2018, which acknowledged that LED had received a deposit of $90,757 on December 29, 2017, and stated that the remaining balance would be due "upon shipment." According to SDM, on a conference call on February 6, 2018, Florence assured SDM that the fixtures were ready to ship, and SDM paid LED the remaining balance of the purchase order. The fixtures were

never shipped, and, on December 21, 2018, SDM sued LED, Florence, Ofshlag, and Paul Metzler.[1] SDM raised three claims in its complaint. The first claim was ostensibly a breach-of-contract claim (SDM alleged that it was damaged when the defendants failed to abide by the terms of the purchase order after payment by SDM); the second claim alleged fraudulent misrepresentation; and the third claim was a conversion claim. SDM's complaint does not contain a description of the parties or any jurisdictional averments.

On February 14, 2019, LED filed a motion to dismiss pursuant to Rule 12(b)(2), Ala. R. Civ. P., for lack of personal jurisdiction, and Rule 12(b)(6), for failure to state a claim upon which relief could be granted. On the same date, Florence, who had not been served, filed a notice of limited appearance and a motion to dismiss based on a lack of personal jurisdiction. Florence also asserted that the fiduciary-shield doctrine prevented the trial court from exercising jurisdiction over him.

[1]Metzler and Ofshlag were not parties to Florence's and LED's motions to dismiss and are not parties to this petition.

Florence and LED attached an affidavit from Florence to their motions to dismiss, in which Florence testified, among other things:

> "My name is Anthony Florence. I live in Florida and I am above the age of nineteen. I am the owner and sole shareholder of LED Corporations, Inc. ('LED Corp'), which is a Florida corporation with its principal place of business located in Florida. LED Corp has never been registered to do business in the State of Alabama. LED Corp has never advertised in Alabama; does not own property in Alabama; does not make important business decisions in Alabama; does not maintain records or accounts in Alabama; and does not have employees in Alabama. However, LED Corp has advertised on the internet in the past.
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> "In 2017, SDM Electric, LLC contacted LED Corp about purchasing certain fixtures. At that time I had no communication with SDM Electric. My employees were the individuals with whom SDM Electric spoke, and those employees work and live in Florida. Almost all of the communications took place via email and telephone. SDM issued and sent LED Corp the attached purchase order (attached as Exhibit 1) dated December 29, 2017 to LED Corp's Florida office. Later, LED Corp employee Bill Ofsh[la]g sent SDM a letter on February 6, 2018 regarding SDM's purchase order from LED Corp. That letter is attached here as Exhibit 2. As shown by these documents, any agreement or arrangement that may have been reached had to be between LED Corp and SDM -- not me personally. And again, I had no contact with SDM at this point, and LED Corp had in no way targeted Alabama regarding the services it offered or purposefully directed its business to Alabama.
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> "As I stated previously, I did not have any communications with SDM at the time the purchase order was submitted or when the subsequent letter

> from Mr. Ofsh[la]g was sent. Furthermore, I live and work in Florida and do not own property in Alabama. I do not personally conduct business in Alabama or employ individuals in Alabama. While I'm a shareholder of LED Corp, I do not personally have connections to the State of Alabama."

LED and Florence also attached the purchase order and Ofshlag's letter to their motions. On February 26, 2019, SDM filed a response to Florence's motion to dismiss in which it only requested a hearing on the motion and did not include any substantive response.

On April 8, 2019, the trial court held a hearing on both pending motions to dismiss, at which it heard ore tenus testimony from Jenny Pitts, the vice president and chief financial officer of SDM.[2]

[2]At the beginning of the hearing, LED and Florence objected to SDM's intent to introduce testimony from Pitts. LED and Florence argued that Pitts's testimony was untimely because it was not submitted two days before the hearing. In their petition, LED and Florence state, without citation to authority, that this evidence was "untimely" in response to their motions to dismiss. In their motions to dismiss, LED and Florence challenged personal jurisdiction, pursuant to Rule 12(b)(2), and evidentiary matters are "freely considered on a motion attacking jurisdiction." Committee Comments on 1973 Adoption of Rule 12, Ala. R. Civ. P. (citing Williams v. Minnesota Mining & Manufacturing Co., 14 F.R.D. 1 (S.D. Cal. 1953)). LED and Florence have not cited any authority indicating that SDM was required to submit its evidence before the April 8, 2019, hearing.

Pitts testified that, when Ofshlag visited Alabama, he "met with [two SDM employees] at [SDM's] office, and then he went and met with the school board, the owners, the architect, and the general contractors at the job site to sell them this package." Pitts testified that it took approximately one month for SDM to execute a purchase order with LED, because Ofshlag "had to work with the architect's office to make sure they met the specs of the project, which took a little bit of time. It kept going back and forth, but after they were approved, we issued the [purchase order]." Pitts testified that those negotiations were conducted over the telephone and by e-mail. Pitts acknowledged that she never met Florence in person. Pitts testified that LED never delivered the fixtures that were ordered, although it did deliver "a few fixtures that weren't even anything that was specced for the job." Pitts testified that she spoke to Florence and Ofshlag in a conference call on February 6, 2018, and that she believed that Florence was in Florida during that call. Pitts testified that, during that conference call, Florence assured SDM that the fixtures were ready to ship as soon as SDM sent LED the balance of the purchase price. According to Pitts, Florence "said 'I'm the owner. I assure you personally that these

fixtures are ready to ship' ... and he said, 'I promise you they will be there. Go ahead and send the money.'" Pitts testified that SDM "wired the second payment after [Florence] assured us that the fixtures were sitting there in China ready to be loaded." Pitts testified that representatives of SDM spoke on the telephone several times with Florence after the February 6 conference call and that

> "[Florence] kept assuring us that they were going to be there. They were going to be there. 'I'm working on it personally. I guarantee you those will be there,' and then finally it got to a point where we said, 'Look, we're going to have to do something because we're under contract, and we're going to miss deadlines ourselves.' And about the money, I wrote a letter to LED to cancel the whole order and refund our money, and I had talked with [Florence] personally, and he said, 'I realize we owe the money. I'll get it back to you.'"

On April 26, 2019, the trial court entered an order, which did not include any findings of fact, denying Florence's and LED's motions to dismiss. Florence and LED timely filed their petition for a writ of mandamus to this Court on May 16, 2019.

Standard of Review

> "A petition for a writ of mandamus is the proper vehicle by which to challenge the denial of a motion to dismiss for lack of personal jurisdiction. Ex parte Dill, Dill, Carr, Stonbraker & Hutchings, P.C., 866 So. 2d 519, 525 (Ala. 2003). 'An appellate

> court considers de novo a trial court's judgment on a party's motion to dismiss for lack of personal jurisdiction.' Elliott v. Van Kleef, 830 So. 2d 726, 729 (Ala. 2002). However, 'an appellate court must give deferential consideration to any findings of fact made by a trial court based on evidence received ore tenus in connection with a determination as to the nature and extent of a foreign defendant's contacts with the forum state.' Ex parte American Timber & Steel Co., 102 So. 3d 347, 353 n.7 (Ala. 2011).
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> > "'A writ of mandamus is an extraordinary remedy, and it will be "issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court." Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993).'
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> "Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998)."

Ex parte Merches, 151 So. 3d 1075, 1078 (Ala. 2014).

Discussion

LED and Florence argue that they do not have sufficient contacts with Alabama to allow the trial court to exercise personal jurisdiction over them. SDM argues that it presented evidence to the trial court indicating that both LED and Florence purposefully directed actions toward Alabama, related

to this litigation, that allow the trial court to exercise personal jurisdiction over them.

> "'"'In considering a Rule 12(b)(2), Ala. R. Civ. P., motion to dismiss for want of personal jurisdiction, a court must consider as true the allegations of the plaintiff's complaint not controverted by the defendant's affidavits, Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253 (11th Cir. 1996), and Cable/Home Communication Corp. v. Network Productions, Inc., 902 F.2d 829 (11th Cir. 1990), and "where the plaintiff's complaint and the defendant's affidavits conflict, the ... court must construe all reasonable inferences in favor of the plaintiff." Robinson, 74 F.3d at 255 (quoting Madara v. Hall, 916 F.2d 1510, 1514 (11th Cir. 1 990))."'
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> "'Wenger Tree Serv. v. Royal Truck & Equip., Inc., 853 So. 2d 888, 894 (Ala. 2002) (quoting Ex parte McInnis, 820 So. 2d 795, 798 (Ala. 2001)). ...'
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> "Ex parte Covington Pike Dodge, Inc., 904 So. 2d 226, 229-30 (Ala. 2004) ...."

Ex Parte Excelsior Fin., Inc., 42 So. 3d 96, 103 (Ala. 2010).

Rule 4.2(b), Ala. R. Civ. P., which allows Alabama courts to exercise personal jurisdiction over nonresident defendants, states, in relevant part:

> "An appropriate basis exists for service of process outside of this state upon a person or entity in any action in this state when the person or entity has such contacts with this state that the prosecution of the action against the person or entity in this state is not inconsistent with the constitution of this state or the Constitution of the United States ...."

Rule 4.2(b) extends the personal jurisdiction of Alabama courts to the permissible limits of due process under the United States and Alabama Constitutions. See Ex parte Edgetech I.G., Inc., 159 So. 3d 629, 633 (Ala. 2014). See also Hiller Invs. Inc. v. Insultech Grp., Inc., 957 So. 2d 1111, 1114-15 (Ala. 2006).

> "'The Due Process Clause of the Fourteenth Amendment permits a forum state to subject a nonresident defendant to its courts only when that defendant has sufficient "minimum contacts" with the forum state. International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945). The critical question with regard to the nonresident defendant's contacts is whether the contacts are such that the nonresident defendant "'should reasonably anticipate being haled into court'" in the forum state. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985), quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).'"

Hiller Investments, 957 So. 2d at 1115 (quoting Elliott v. Van Kleef, 830 So. 2d 726, 730 (Ala. 2002)).

A defendant's minimum contacts with the forum state can give rise to either general jurisdiction or personal jurisdiction. General jurisdiction exists when the defendant's contacts with the forum state "are so 'continuous and systematic' as to render them essentially at home in the forum State." Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919, 131 S.Ct. 2846, 2851 (2011).

> "The 'paradigm' forums in which a corporate defendant is 'at home' ... are the corporation's place of incorporation and its principal place of business. Daimler [AG v. Bauman, 571 U.S. 117, 134 S.Ct. 746, 760 (2014),]; Goodyear, 564 U.S. at 924, 131 S.Ct. 2846. The exercise of general jurisdiction is not limited to these forums; in an 'exceptional case,' a corporate defendant's operations in another forum 'may be so substantial and of such a nature as to render the corporation at home in that State.' Daimler [AG v. Bauman, 571 U.S. at 139, 134 S.Ct. at 761]."

BNSF Ry. v. Tyrrell, 581 U.S. ___, ___, 137 S.Ct. 1549, 1558, 198 L.Ed.2d 36 (2017).

This is not an exceptional case where the evidence establishes that LED's contacts with Alabama render it at home in Alabama. To the contrary, it is undisputed that LED is incorporated in Florida; that it has no offices, property, or

employees in Alabama; and that its principal place of business is not in Alabama. Accordingly, we conclude that the trial court does not have general jurisdiction over LED.

Specific jurisdiction over a nonresident "focuses on 'the relationship among the defendant, the forum, and the litigation.'" Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 775, 104 S.Ct. 1473, 1478 (1984) (quoting Shaffer v. Heitner, 433 U.S. 186, 204, 97 S.Ct. 2569, 2579 (1977)). For a court to exercise specific jurisdiction over a nonresident defendant, "there must be 'a clear, firm nexus between the acts of the defendant and the consequences complained of,'" Hiller Investments, 957 So. 2d at 1115 (quoting Duke v. Young, 496 So. 2d 37, 39 (Ala. 1986)), such that the defendant should reasonably anticipate being haled into court in the forum state. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473-77, 105 S.Ct. 2174, 2182-84 (1985)(discussing the due-process requirements necessary to establish personal jurisdiction over a nonresident). A nonresident defendant's physical presence in Alabama is not a prerequisite to personal jurisdiction over that defendant. Sieber v. Campbell, 810 So. 2d 641, 644 (Ala. 2001). Rather, "[t]he critical question with regard to the nonresident defendant's contacts is whether the

contacts are such that the nonresident defendant '"should reasonably anticipate being haled into court"' in the forum state." Elliott v. Van Kleef, 830 So. 2d at 730 (quoting Burger King, 471 U.S. at 486, 105 S.Ct. at 2189, quoting in turn World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567 (1980)).

In relation to claims based on contract, the Supreme Court in Burger King stated:

> "If the question is whether an individual's contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on 'mechanical' tests, International Shoe Co. v. Washington, supra, 326 U.S. [310] at 319[, 66 S.Ct. 154 at 159 (1945)], or on 'conceptualistic ... theories of the place of contracting or of performance,' Hoopeston Canning Co. v. Cullen, 318 U.S. [313] at 316[, 63 S.Ct. 602 at 604 (1943)]. Instead, we have emphasized the need for a 'highly realistic' approach that recognizes that 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.' Id., at 316-317, 63 S.Ct., at 604-605. 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."

Burger King, 471 U.S. at 478-79, 105 S.Ct. at 2185.

In the context of intentional torts, the Supreme Court has held that in order for the forum state to exercise specific personal jurisdiction a defendant's minimum contacts can be established by weighing the effects of the defendant's intentional conduct aimed at the forum state. See Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482 (1984). See also Ex parte Gregory, 947 So. 2d 385, 394 (Ala. 2006)(explaining that the "effects test" "has been limited to intentional-tort cases"). To satisfy the "effects test," a plaintiff must show that "the defendant (1) committed an intentional tort (2) that was directly aimed at the forum, (3) causing an injury within the forum that the defendant should have reasonably anticipated." Oldfield v. Pueblo De Bahia Lora, S.A., 558 F.3d 1210, 1220 n.28 (11th Cir. 2009). The Supreme Court refined the "effects test" in Walden v. Fiore, 571 U.S. 277, 134 S.Ct. 1115 (2014), stating that the "effects" of a nonresident defendant's alleged actions must create sufficient contacts with the forum, not just with the plaintiff. In Walden, the Supreme Court further explained that "[a] forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates

the necessary contacts with the forum." 571 U.S. at 286, 134 S.Ct. at 1123.

In their petition to this Court, LED and Florence argue that SDM failed to sustain its burden of showing in response to their motions to dismiss that LED and Florence have sufficient contacts with Alabama. Relying on this Court's decisions in Steel Processors, Inc. v. Sue's Pumps, Inc. Rentals, 622 So. 2d 910 (Ala. 1993), and Elliot v. Van Kleef, supra, LED and Florence contend that their suit-related conduct was too attenuated for them to foresee that they would be haled into court in Alabama. In Steel Processors, Sue's Pumps, a Florida corporation, accepted a bid from Steel Processors, an Alabama corporation located in Mobile, for labor and materials needed to repair a barge located in Florida. After Steel Processors began work on the project and after Sue's Pumps remitted partial payment, Steel Processors sued Sue's Pumps in Alabama for the balance owed. In affirming the trial court's judgment granting Sue's Pumps' motion to dismiss, this Court concluded that there was

> "no evidence that Sue's Pumps had contacts with Alabama other than those it had with Steel Processors during the repair work on the barge in Florida. These contacts were limited to a series of telephone calls concerning the repair job in

> Florida, and the sending of checks to Steel Processors in Alabama. ... Nothing in the record indicates that Sue's Pumps initiated contact with Steel Processors; the repair project in Florida was developed by an Ohio business; the repairs were made in Florida; and no goods or services went out of Florida. Although Sue's Pumps did send payments for the repairs to Steel Processors in Alabama, and although its representatives made several telephone calls to Steel Processors in Alabama, this is insufficient to qualify as 'conduct and connection with the forum State such that [Sue's Pumps] should reasonably anticipate being haled into court there.' World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 562, 62 L. Ed. 2d 490 (1980)."

Steel Processors, 622 So. 2d at 914. Accordingly, this Court concluded that the Alabama court did not have specific jurisdiction over Sue's Pumps.

In Elliot, an Arkansas lawyer and his Arkansas-based law firm had represented a client in a personal-injury action in Arkansas. The client sued the lawyer and the firm in Alabama under the Alabama Legal Services Liability Act. The only contacts the lawyer and the firm had with Alabama were telephone calls, faxes, and letters sent by the lawyer to the client in Alabama. This Court affirmed the decision of the trial court to dismiss the action for a lack of personal jurisdiction because there was no "evidence indicating that all of the telephone calls or faxes even related to [the

client's] case" and the letters sent by the lawyer did not "support a theory of [the lawyer's] complicity in the conduct of which [the client] complain[ed]." Elliot, 830 So. 2d at 732. Therefore, this Court concluded, the lawyer and the firm's contacts with Alabama "d[id] not provide 'a clear, firm nexus between the acts of the defendant and the consequences complained of.'" Id. (quoting Duke v. Young, 496 So. 2d at 39).

In the present case, neither party disputes that the contract at issue involved the one-time sale of goods between LED and SDM and that there had been no prior dealings between the parties. In addition, LED and Florence presented uncontroverted evidence that LED is a Florida corporation that has no employees or agents in the State of Alabama, that it does not directly target Alabama in its advertising, that it has not delivered products into Alabama previously, and that Florence, a Florida resident, has no connections to Alabama. Unlike the circumstances in Steel Processors and Elliot, however, the contract at issue in the present case involved the supply of goods by a Florida corporation to an Alabama corporation to be used in a construction project in Alabama. The defendants in Steel Processors and Elliot performed their

respective duties under a contract in a state other than the forum state. In Steel Processors, the plaintiff was the supplier of the labor and materials that were used in a repair project in Florida, whereas SDM, the plaintiff in this case, purchased the goods from LED, and LED agreed to supply the goods to SDM for use in an Alabama construction project. Although SDM initiated contact with LED and although communication leading up to the purchase order occurred via telephone, e-mail, and text messaging, the evidence established that LED sent an employee to Alabama to determine the specifications required for a customized lighting-fixture package. Physical entry into the forum state by an agent of the defendant "is certainly a relevant contact." Walden, 571 U.S. at 285, 134 S.Ct. at 1122. According to the testimony presented to the trial court, the visit to Alabama by LED's employee was integral to negotiations between the parties and to the ultimate formation of the purchase order that SDM submitted to LED.

The contract between SDM and LED alone is not sufficient to establish LED's and Florence's minimum contacts with Alabama. But because the contract involved the purchase of materials that were to be shipped to an Alabama corporation

for use in a construction project in Alabama and because LED, through its employee's visit, undertook substantial efforts within Alabama to assist the school board, the owners, the architect, the general contractors, and SDM with formulating the specifications for the lighting portion of the project, SDM has established a clear nexus between LED's conduct and the alleged injurious consequences of that conduct in Alabama such that LED should have reasonably anticipated being sued in an Alabama court. World-Wide Volkswagen, 444 U.S. at 297, 100 S.Ct. at 567. Although based on a single contract, we cannot say that LED's contacts are random, fortuitous, or so attenuated that the Due Process Clause of the Fourteenth Amendment constrains an Alabama court from exercising personal jurisdiction over LED as it relates to SDM's breach-of-contract claim. Burger King, 471 U.S. at 475, 105 S.Ct. at 2184 (quoting Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774, 104 S.Ct. 1473, 1478 (1984)). Personal jurisdiction, thus, is proper as to LED.

SDM, on the other hand, has not established a nexus between Florence's acts and the consequences complained of in relation to the breach-of-contract claim. Applying the "effects test," however, we conclude that SDM has established

that personal jurisdiction is also proper as to Florence. SDM submitted evidence indicating that Florence, as the owner of LED, guaranteed multiple times that the customized lighting fixtures would be shipped to SDM after SDM paid the full purchase price of the fixtures but that LED did not ship the fixtures after accepting payment. Florence testified in his affidavit that he did not communicate with SDM until after the purchase order had been issued, but he did not deny that he had made assurances to SDM that the fixtures would be shipped after SDM paid the remaining balance. Taking SDM's allegations as true, see Excelsior Financial, 42 So. 3d at 103, there is evidence indicating that Florence allegedly fraudulently induced SDM to pay for lighting fixtures he never intended to deliver and that he allegedly wrongfully retained SDM's payment. "This is not an allegation of 'mere untargeted negligence.' Rather, this is an allegation of intentional and tortious action expressly aimed at Alabama residents." Sudduth v. Howard, 646 So. 2d 664, 669 (Ala. 1994). The evidence presented to the trial court on the motions to dismiss established that Florence's alleged misrepresentations made to SDM concerning payment for and delivery of the ordered materials was conduct that Florence directly aimed at Alabama,

and that conduct created a meaningful, substantial connection with Alabama. The effects of the alleged misrepresentation impacted not only SDM, but also had a derivative impact on the construction project at a public high school in Calhoun County. Thus, the impact of the alleged harm extended to general contractors working on the project, to students of the school, to faculty members, and, generally, to all Calhoun County residents. Stated otherwise, the effects of Florence's conduct are connected directly to Alabama "in a way that makes those effects a proper basis for jurisdiction [over him]." Walden, 571 U.S. at 290, 134 S.Ct. at 1125. Accordingly, Florence's alleged misrepresentations and his alleged failure to refund payment to SDM subject Florence to suit in Alabama.

Florence further argues that, under the fiduciary-shield doctrine, his status as owner of LED operates to prevent the trial court from exercising personal jurisdiction over him. The fiduciary-shield doctrine provides that

> "'an officer's or employee's mere association with a corporation is an insufficient basis for the Court to assert jurisdiction over them, even though the Court can assert jurisdiction over the corporation. See 4 C. Wright & A. Miller, Federal Practice and Procedure § 1069 at 370 (2nd ed. 1987). Restated, jurisdiction over individual officers and employees of a corporation may not be predicated on the

> court's jurisdiction over the corporation itself. Id. at 371.'"

Ex parte Kohlberg Kravis Roberts & Co., L.P., 78 So. 3d 959, 974 (Ala. 2011)(quoting Brink v. First Credit Res., 57 F.Supp.2d 848, 858-59 (D. Ariz. 1999)).

SDM argues that the fiduciary-shield doctrine does not prevent the trial court from exercising jurisdiction over Florence because, it argues, Florence personally committed fraud against SDM, in his capacity as owner of LED. In support of its argument, SDM cites Bethel v. Thorn, 757 So. 2d 1154, 1158 (Ala. 1999), in which this Court reasoned that a corporate officer "can be held individually liable for the fraudulent acts or omissions he personally committed in his capacity as a corporate officer." SDM alleged that Florence, in his capacity as owner of LED, personally induced payment from SDM for lighting fixtures that were never delivered by LED.

> "[A]n individual is not shielded from liability simply because his acts were done in furtherance of his employer's interest. In fact, the Court stated [in Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482 (1984),] that the defendants' 'status as employees does not somehow insulate them from jurisdiction.' Calder, supra, 465 U.S. at 790, 104 S. Ct. at 1487."

Duke v. Young, 496 So. 2d at 40. Based on the alleged torts committed by Florence himself, the fiduciary-shield doctrine does not operate to prevent the trial court's exercise of personal jurisdiction over him. See Ex parte Kohlberg Kravis Roberts & Co., 78 So. 3d at 977.

We conclude that the SDM satisfied its burden in opposition to LED's and Florence's motions to dismiss by showing that LED and Florence has sufficient contacts with Alabama to support the exercise of specific personal jurisdiction and that the exercise of jurisdiction over them "complies with traditional notions of fair play and substantial justice." Ex parte DBI, Inc., 23 So. 3d 635, 656 (Ala. 2009).

Conclusion

LED and Florence have not shown a clear legal right to the extraordinary remedy of dismissal of SDM's claims against them. Therefore, their petition for a writ of mandamus is denied.

PETITION DENIED.

Parker, C.J., and Wise and Mitchell, JJ., concur.

Bolin, Shaw, Bryan, Sellers, and Mendheim, JJ., concur in the result.