FILED
United States Court of Appeals
Tenth Circuit

August 4, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

KEVIN GOULD,

Plaintiff - Appellant,

v.

MICHAEL WYSE; WYSE ADVISORS, LLC; CRYSTAL FINANCIAL,

Defendants - Appellees,

and

DW PARTNERS,

Defendant.

No. 22-2075
(D.C. No. 1:19-CV-00382-WJ-JFR)
(D.N.M.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **MORITZ** and **EID**, Circuit Judges.

Kevin Gould sued DW Partners LP, Crystal Financial SBIC LP, Michael Wyse, and Michael Wyse Advisors, LLC in New Mexico for allegedly reneging on promises to pay Gould a transaction bonus for work he performed as an executive at a failing aircraft manufacturer, ONE Aviation Corporation. The district court dismissed all the defendants except for DW Partners for lack of personal jurisdiction,

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

and Gould appeals. Because Gould fails to make a prima facie showing of personal jurisdiction as to the dismissed defendants, we affirm.

Background[1]

This case arises from Gould's efforts to reverse the financial fortunes of the now-defunct aircraft manufacturer ONE Aviation, which was headquartered in Albuquerque, New Mexico. ONE Aviation formed in 2015 through a merger of two entities, Eclipse Aerospace and Kestrel Aircraft, whose defaulted debts had recently been acquired by DW Partners and Crystal Financial. In acquiring these debts, DW Partners and Crystal Financial had hoped to improve ONE Aviation's condition and sell their debt position for a profit.

But by mid-2017, the company "was in dire financial trouble" as it faced declining revenues, a budget shortfall, and unpaid debts owed to creditors. App. vol. 1, 24. So in August, DW Partners contacted Gould, who specializes in reviving distressed companies, to solicit ideas for turning things around at ONE Aviation and to discuss him potentially taking over as chief executive officer. After negotiations with DW Partners, Gould entered a consulting agreement with Crystal Financial. Around the same time, a DW Partners executive named John Buck arranged for ONE Aviation to hire Mike Wyse to chair its board of directors.

[1] Because the district court resolved this case on motions to dismiss for lack of personal jurisdiction, we take the facts from Gould's complaint and accompanying declaration, accepting all well-pleaded allegations as true and viewing them in the light most favorable to him. *See Dental Dynamics, LLC v. Jolly Dental Grp.*, 946 F.3d 1223, 1228 (10th Cir. 2020).

In September and October, Gould spoke to Wyse and various officials at DW Partners and Crystal Financial about becoming ONE Aviation's chief operating officer. Gould expressed interest in the position but voiced concern about whether ONE Aviation would be able to pay him if (as expected) it filed for bankruptcy, a process that could void any contract the parties entered. To assuage this concern, Gould negotiated for a "transaction bonus" that would entitle him to a percentage of the proceeds from any sale of Crystal Financial and DW Partners' debt interest in ONE Aviation that occurred during his employment. *Id.* at 49 (capitalization standardized). According to Gould, the bonus provision reflected a general understanding that "[a]lthough [he] was to be officially employed by [ONE Aviation], . . . [his] role was to support efforts to secure a buyer for the loans held by the senior secured lenders, for the benefit of the senior secured lenders." *Id.* at 27. On October 18, following several days of negotiations with Wyse and Buck about the bonus and other issues, Gould agreed to take the position. He moved to Albuquerque from California a few days later and began serving as ONE Aviation's chief operating officer on October 23, 2017. Gould later signed a written employment contract memorializing his agreement with ONE Aviation.

In a series of transactions over the next nine months, various third parties acquired DW Partners and Crystal Financial's entire debt position in ONE Aviation for $30.5 million. Gould's employment contract with ONE Aviation entitled him to a $915,000 transaction bonus for arranging these sales, but ONE Aviation filed for bankruptcy in October 2018. When DW Partners and Crystal Financial refused to pay

the bonus, Gould sued them, Wyse, and Wyse's company, Wyse Advisors, in New Mexico state court, asserting an array of tort and contract claims.[2] In essence, these claims alleged that the defendants (1) breached repeated promises to pay Gould a transaction bonus; and (2) made misrepresentations or fraudulent statements about their intent to pay such a bonus and about Wyse purportedly representing DW Partners and Crystal Financial's interests, despite his role as the chair of ONE Aviation's board of directors.

After removing the case to federal court, the defendants—all out-of-state residents[3]—separately moved to dismiss the claims against them for lack of personal jurisdiction and for failure to state a claim on which relief could be granted. *See* Fed. R. Civ. P. 12(b)(2), (6). The district court denied DW Partners' motion[4] but granted the remaining defendants' motions, determining that it lacked personal jurisdiction over Wyse, Wyse Advisors, and Crystal Financial.[5] After the district court entered judgment as to the dismissed defendants, *see* Fed. R. Civ. P. 54(b), Gould filed this

[2] The tort claims included misrepresentation and fraud; the contract claims included breach of contract, breach of the duty of good faith and fair dealing, and unjust enrichment.

[3] According to the complaint, Wyse "resides in New Jersey," Wyse Advisors is "located in New York," Crystal Financial "is located in Boston, Massachusetts," and DW Partners "is located in New York." App. vol. 1, 23–24; *see also* Crystal Br. i–iv (noting Crystal Financial's Massachusetts citizenship and listing state citizenship of its limited partners).

[4] Although the district court found that it had personal jurisdiction over DW Partners, it dismissed all but one of the claims against DW Partners under Rule 12(b)(6).

[5] The district court also denied Gould's request for jurisdictional discovery as to the dismissed defendants. Gould does not appeal that decision.

appeal challenging the district court's adverse personal-jurisdiction rulings.

Analysis

I. Personal Jurisdiction

We review orders dismissing defendants under Rule 12(b)(2) for lack of personal jurisdiction de novo. *Dental Dynamics*, 946 F.3d at 1228. To avoid dismissal, Gould must make a prima facie showing of personal jurisdiction. *Id.* That is, he must point to well-pleaded factual allegations—both in the complaint and in any supporting affidavits—that, if true, would support New Mexico's jurisdiction over each defendant. *Id.*; *see also Newsome v. Gallacher*, 722 F.3d 1257, 1266 (10th Cir. 2013) (noting that "personal[-]jurisdiction requirements 'must be met as to each defendant'" (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980))). In considering the facts, we ignore conclusory allegations and resolve all factual disputes in Gould's favor. *Id.*

The sole issue on appeal is whether the district court properly dismissed Wyse, Wyse Advisors, and Crystal Financial for lack of personal jurisdiction. The district court could exercise jurisdiction over those nonresident defendants only if doing so complied with the forum state's long-arm statute and the Fourteenth Amendment's Due Process Clause. *See Eighteen Seventy, LP v. Jayson*, 32 F.4th 956, 965 (10th Cir. 2022). New Mexico's long-arm statute authorizes personal jurisdiction to the same extent as the Due Process Clause. *Fireman's Fund Ins. Co. v. Thyssen Mining Constr. of Can., Ltd.*, 703 F.3d 488, 492 (10th Cir. 2012); *see also Eighteen Seventy*, 32 F.4th at 965 (explaining that when state's long-arm statute claims jurisdiction to full extent

of Due Process Clause, state-law inquiry "'effectively collapses into'" constitutional inquiry "of whether personal jurisdiction comports with due process" (quoting *Anzures v. Flagship Rest. Grp.*, 819 F.3d 1277, 1279 (10th Cir. 2016))). Due process requires that the defendants had sufficient "'minimum contacts' with the forum state, such that having to defend the lawsuit there would not 'offend traditional notions of fair play and substantial justice.'" *Eighteen Seventy*, 32 F.4th at 965 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). A defendant's minimum contacts may give rise to either "general (sometimes called all-purpose) jurisdiction [or] specific (sometimes called case-linked) jurisdiction." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021).

Only specific jurisdiction is at issue here.[6] To satisfy the minimum-contacts requirement for specific jurisdiction, Gould must show (1) that each defendant "'purposefully directed its activities at residents of the forum state'"[7] and (2) that his

[6] Gould did not argue general jurisdiction below and does not argue it on appeal. On this record, any such argument would fail because Gould does not allege that New Mexico is the "home" state for any of the defendants. *See Ford*, 141 S. Ct. at 1024 (explaining that general jurisdiction exists only in states where defendant is "'essentially at home,'" which for individuals means their "place of domicile" and for corporations typically means their "place of incorporation and principal place of business" (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011))).

[7] We typically describe the first part of the minimum-contacts requirement as "'purposeful direction' in the tort context and 'purposeful availment' in the contract context." *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 877 F.3d 895, 904 n.11 (10th Cir. 2017); *see also Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1071 (10th Cir. 2008) ("[I]n contract cases, . . . we sometimes ask whether the defendant 'purposefully availed' itself of the privilege of conducting activities or consummating a transaction in the forum state."). But no matter which phrasing is used, the meaning is the same: The defendant must deliberately direct his or her

injuries "arise out of [or relate to] the defendant[s'] forum-related activities." *Dental Dynamics*, 946 F.3d at 1229 (quoting *Old Republic Ins. Co.*, 877 F.3d at 903). Gould argues that he made this showing as to all three dismissed defendants and that subjecting them to specific jurisdiction in New Mexico comports with fair play and substantial justice. We consider Gould's arguments about each defendant in turn.

A. Wyse

The claims against Wyse involve allegations that he promised Gould would receive a transaction bonus, made misrepresentations to that effect, and concealed the fact that he was often acting on behalf of DW Partners and Crystal Financial. In assessing whether Gould established personal jurisdiction over Wyse, the district court determined that those allegations all stem from conduct that occurred while Wyse served as the chair of ONE Aviation's board of directors and was thus "act[ing] in his capacity as a board member." App. vol. 2, 276. As a result, the district court reasoned, subjecting Wyse to suit in New Mexico would violate the so-called fiduciary-shield doctrine, a state-law doctrine that precludes courts from exercising personal jurisdiction over corporate employees based on "actions . . . take[n] solely on the corporation's behalf." *Newsome v. Gallacher*, 722 F.3d 1257, 1262 (10th Cir. 2013); *see also Ten Mile Indus. Park v. W. Plains Serv. Corp.*, 810 F.2d 1518, 1527 (10th Cir. 1987) ("Where the acts of individual principals of a corporation in the

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conduct at the forum state and cannot be subjected to suit based on "merely random, fortuitous, or attenuated contacts with the forum state." *Old Republic*, 877 F.3d at 904 n.11 (quoting *Dudnikov*, 514 F.3d at 1071).

[forum] jurisdiction were carried out solely in the individuals' corporate or representative capacity, the corporate structure will ordinarily insulate the individuals from the court's jurisdiction.").[8] And since Gould identified no relevant actions that Wyse took "in an individual capacity," the district court held that Gould did not make the showing required to support personal jurisdiction over Wyse in that capacity. App. vol. 2, 279; *see also Newsome*, 722 F.3d at 1275 (explaining that when fiduciary-shield doctrine applies, any contacts defendant made in capacity as corporate employee "will not count against [the defendant] in the personal[-]jurisdiction analysis").

For the most part, Gould's arguments about Wyse on appeal fail to grapple with the district court's analysis. Gould asserts that subjecting Wyse to personal jurisdiction in New Mexico would not offend due process, both because he has sufficient minimum contacts with the state and because fairness and justice concerns support such a result. But those arguments go to the *constitutional* requirements for personal jurisdiction. They do not address whether *state law* independently bars jurisdiction over Wyse under the fiduciary-shield doctrine. *See Newsome*, 722 F.3d at 1275, 1278 (clarifying that "the fiduciary-shield doctrine is a question of state law, not due process," meaning it may preclude jurisdiction even when defendant has

[8] Although the district court did not mention this doctrine by name, its reliance on *Ten Mile* makes clear that it invoked the doctrine as the basis for its decision. *See Newsome*, 722 F.3d at 1275 (describing *Ten Mile* as our "first clear application of the fiduciary[-]shield doctrine," even though the opinion "never uses the words 'fiduciary shield'").

"substantial [forum] contacts").

And on that dispositive state-law issue, Gould says little. He does not dispute, for example, that New Mexico recognizes the fiduciary-shield doctrine or that its protection extends to claims like his.[9] Instead, in a single paragraph of his opening brief, he disputes the conclusion that led the district court to apply the doctrine here: that all the contacts purportedly supporting personal jurisdiction over Wyse involve his actions and statements as a ONE Aviation board member acting on its behalf. That conclusion is mistaken, Gould says, because the well-pleaded factual allegations show that at all relevant times, Wyse was actually "acting as an outside consultant for [DW Partners and Crystal Financial] and acting on *their* behalf." Aplt. Br. 25 (emphasis added).

But even if that were true, it would not avoid the fiduciary-shield doctrine's application to Wyse. If, as Gould suggests, Wyse made the alleged promises and misrepresentations about the transaction bonus on behalf of the lenders, that would just mean that he was acting as their corporate agent instead of ONE Aviation's. *See Hydro Res. Corp. v. Gray*, 173 P.3d 749, 760 (N.M. 2007) ("An agent is one

[9] Gould's silence on this point is odd considering the district court did not address whether New Mexico recognizes the fiduciary-shield doctrine. Instead, it simply cited *Ten Mile*'s statements about the doctrine as applied in Wyoming, which "do not establish the existence of the [doctrine]" in other states. *Newsome*, 722 F.3d at 1277, 1279. Despite the district court's oversight, we need not resolve whether New Mexico recognizes the fiduciary-shield doctrine. Because Gould does not dispute that it does, he has waived the issue. *See Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) ("[W]e routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief.").

authorized by another to act on [their] behalf and under [their] control." (quoting *Hansler v. Bass*, 743 P.2d 1031, 1036 (N.M. Ct. App. 1987))); *Alfaro-Huitron v. Cervantes Agribusiness*, 982 F.3d 1242, 1251 (10th Cir. 2020) ("Central to the notion of agency [under New Mexico law] is that the agent acts 'on behalf of' the principal."). It would not change the dispositive fact that Wyse was acting in a "'representative capacity'" on behalf of some principal (or principals) rather than "in [his] own interest at the principal's expense." *Newsome*, 722 F.3d at 1277, 1279 (quoting *Ten Mile*, 810 F.2d at 1527). So whether Wyse engaged in forum activity as an agent for ONE Aviation or for the lenders, the result is the same: Under the fiduciary-shield doctrine, he could not be subjected to suit in New Mexico based on such conduct. *See id.* at 1275. And because Gould does not suggest that Wyse otherwise deliberately directed conduct at the forum state, the district court properly dismissed him as a defendant. *See Ten Mile*, 810 F.2d at 1527.

B. Wyse Advisors

Gould's attempt to establish personal jurisdiction over Wyse Advisors can be dispensed with more easily. The district court dismissed Wyse Advisors because, in its view, Gould "ha[d] not adequately pled how Wyse Advisors . . . played a role in any of the events leading to the [lawsuit] or had any connection to New Mexico." App. vol. 2, 278.

We agree. As the district court observed, Gould's complaint and accompanying jurisdictional declaration "hardly mention[]" Wyse Advisors. *Id.* The complaint simply notes that Wyse Advisors is based in New York and that Wyse is a

managing partner there. It does not allege that Wyse Advisors engaged in any activity related to Gould's claims that could support personal jurisdiction. Nor does the declaration, which includes one passing reference to a DW Partners' official who allegedly "reassured" Gould when discussing his compensation that the lenders and Wyse Advisors "would take care of [him]." App. vol. 1, 171. But as in the district court, Gould never contextualizes that statement or explains why it supports specific jurisdiction over Wyse Advisors in New Mexico. In any event, the statement does not help Gould because it was made by a third party (a DW Partners' official), and not by anyone with Wyse Advisors. *See Kuenzle v. HTM Sport-Und Freizeitgerate AG*, 102 F.3d 453, 458 (10th Cir. 1996) ("[A] nonresident corporate entity creates contacts for personal jurisdiction purposes through its authorized representatives: its employees, directors, officers[,] and agents."); *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (explaining that plaintiff cannot satisfy minimum-contacts requirement "by demonstrating contacts between the plaintiff (or third parties) and the forum [s]tate"; specific jurisdiction "must arise out of contacts that the 'defendant *himself*' creates with the forum [s]tate" (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985))). Because Gould does not allege that Wyse Advisors itself did anything to establish a connection to New Mexico that would support specific jurisdiction there, the district court correctly dismissed Wyse Advisors. *See Eighteen Seventy*, 32 F.4th at 965.

C. Crystal Financial

Finally, Gould challenges the dismissal of Crystal Financial. As mentioned

earlier, the complaint asserted both tort and contract claims against Crystal Financial. These claims alleged that Crystal Financial made misrepresentations and fraudulent statements about its intent to pay Gould's transaction bonus (the tort claims) and that it breached repeated promises to pay such a bonus (the contract claims). When opposing dismissal below, Gould argued that requiring Crystal Financial to defend against these claims in New Mexico would not offend due process because Crystal Financial had, through its employees and agents, created sufficient minimum contacts with the forum related to the claims. *See Kuenzle*, 102 F.3d at 458. For support, Gould asserted that Wyse's forum contacts should count towards Crystal Financial in the personal-jurisdiction analysis because Wyse was acting as its agent. The district court, however, determined that Gould offered only "conclusory allegations" to support the existence of such an agency relationship, so it declined to attribute Wyse's contacts to Crystal Financial. App. vol. 2, 286. Then, considering only the forum contacts allegedly created by Crystal Financial's "actual employees and agents," the district court held that those contacts could not support specific jurisdiction.[10] *Id.*

In challenging the district court's analysis, Gould renews his argument that

[10] Because the district court found minimum contacts lacking, it did not address whether exercising personal jurisdiction over Crystal Financial in New Mexico would offend traditional notions of fair play and substantial justice. *Eighteen Seventy*, 32 F.4th at 965. We likewise do not reach that issue because, as we will explain, we agree with the district court's minimum-contacts analysis. *See Anzures*, 819 F.3d at 1282 (declining to consider fair-play-and-substantial-justice inquiry because "defendants d[id] not have the minimum contacts necessary to support the exercise of specific jurisdiction").

Wyse's contacts should count as Crystal Financial's because Wyse acted as its agent. To prove that such an agency relationship existed, Gould must show that Wyse had either actual or apparent authority to act on Crystal Financial's behalf. *See Diversified Dev. & Inv., Inc. v. Heil*, 889 P.2d 1212, 1219 (N.M. 1995). Gould does not suggest that Wyse had actual authority; he argues only that Wyse had apparent authority. That is, Gould argues that Crystal Financial "placed [Wyse] in a position which would lead a reasonably prudent person to believe that [he] did indeed possess that apparent authority." *Vickers v. N. Am. Land Devs., Inc.*, 607 P.2d 603, 605 (N.M. 1980). But as explained below, the well-pleaded factual allegations in the complaint and Gould's declaration do not satisfy that standard.

As support for his apparent-authority argument, Gould primarily relies on an allegation in his declaration about a comment Wyse made in an early August 2018 text-message thread. In this thread, Gould apparently "expressed . . . frustration over still having not been paid [his] bonus . . . and threatened to quit." App. vol. 1, 195. According to Gould, Wyse responded by urging Gould "not to take any action yet" and, crucially, remarking that "'if [Wyse] controlled the purse strings, [Gould] would have [his] money already.'" *Id.* Gould argues that Wyse's comment establishes apparent authority because someone "acting as the chair[] of the board of a company *would* have control of the purse strings." Rep. Br. 8 (emphasis added). Gould reasons that when Wyse stated that he lacked such control—that he "lacked authority to pay an employee of the company that he chaired"—Wyse suggested that he "was acting . . . on behalf of the . . . lenders," including Crystal Financial. *Id.*

But even when construed in the light most favorably to Gould, Wyse's purse-strings comment cannot establish apparent authority because it does not involve *Crystal Financial*'s representations about Wyse's authority. *See Tercero v. Roman Cath. Diocese of Norwich*, 48 P.3d 50, 56 (N.M. 2002) ("To establish apparent authority, the relying party must base the relationship upon words or acts of the *principal*, and not the representations or acts of the *agent*." (emphases added) (quoting *Damian Servs. Corp. v. PLC Servs., Inc.,* 763 F. Supp. 369, 372–73 (N.D. Ill. 1991))). Moreover, the comment itself at best implies that someone else besides Wyse controlled payment of Gould's bonus. Even assuming the someone else was Crystal Financial, that implication in no way suggests that Wyse had authority to act on its behalf. If anything, it suggests the opposite: By stating that he did not control the purse strings, Wyse effectively *disclaimed* his ability to arrange for payment on behalf of whoever did control them. And contrary to Gould's view, a reasonable person would not find it unusual for Wyse to make such a disclaimer in his role as chair of ONE Aviation's board of directors. Rather, Wyse could simply have been conveying what is clear from Gould's employment contract with ONE Aviation: that any bonus would come from the proceeds Crystal Financial and DW Partners received from the third-party sales of their interests, meaning that only those entities could pay Gould. Thus, Wyse's purse-strings comment does not support apparent authority.

The remaining allegations Gould cites likewise do not establish that Wyse had apparent authority to act as Crystal Financial's agent. Gould highlights the complaint's unsupported assertion that Wyse "made promises on behalf of" Crystal Financial, App.

vol. 1, 26, but such "conclusory allegations are insufficient to establish jurisdiction," *Dental Dynamics*, 946 F.3d at 1231. Plus, even if Wyse purported to act on Crystal Financial's behalf, that would not suffice because, as just discussed, apparent authority arises from the principal's representations, not the agent's.[11] *See Tercero*, 48 P.3d at 56. And the only representation involving Crystal Financial that Gould points to is an allegation that it knew about his demands for a transaction bonus, which Gould says "makes clear that the circumstances of the negotiations over [his] compensation [were] being conveyed back to Crystal Financial by Wyse." Rep. Br. 6. But the complaint and declaration nowhere allege that any knowledge Crystal Financial had about the negotiations or the bonus came from Wyse. Nor do they otherwise allege that Crystal Financial ever represented that Wyse had the authority to act on its behalf concerning the bonus. Since Gould's allegations are either conclusory or fail to show that Crystal Financial represented that Wyse had authority to act on its behalf, they do not support an agency relationship between Wyse and Crystal Financial. Thus, the district court rightly concluded that "Wyse's actions have no bearing on whether jurisdiction is proper over Crystal [Financial]." App. vol. 2, 286.

With Wyse's actions excluded from the analysis, Crystal Financial lacks

[11] Gould acknowledges that apparent authority requires some manifestation from the principal but points out that such manifestation may stem from the principal "plac[ing the agent] in a position which would lead a reasonably prudent person to believe that the agent did indeed possess that apparent authority." Rep. Br. 5 (quoting *Vickers*, 607 P.2d at 605). That is true enough. But nothing in Gould's complaint or declaration suggests that Crystal Financial placed Wyse—a ONE Aviation executive—in a position to make the promises he purportedly made. Even under Gould's view, then, Gould still fails to establish apparent authority.

sufficient minimum contacts to support specific jurisdiction in New Mexico. In particular, for both the tort claims and contract claims, Gould's well-pleaded factual allegations do not show that Crystal Financial "purposefully directed its activities at [New Mexico] residents."[12] *Dental Dynamics*, 946 F.3d at 1229 (quoting *Old Republic Ins.*, 877 F.3d at 903).

To satisfy the purposeful-direction requirement for the tort claims, Gould must show that Crystal Financial (1) committed "an intentional act[]," (2) "expressly aimed" that act at New Mexico, and (3) did so "with knowledge that the brunt of the injury would be felt" there. *Id.* at 1231. But Gould cannot make it past the first element because he does not "adequately allege[]" that Crystal Financial committed an "intentional[ly] tortious action." *Eighteen Seventy*, 32 F.4th at 968. More precisely, his well-pleaded factual allegations do not "permit an inference that" Crystal Financial committed such an act. *Dudnikov*, 514 F.3d at 1073; *cf. also id.* (finding first element satisfied because "[p]laintiffs' allegations [went] beyond 'labels and conclusions' to include facts detailing what defendants did," "what they knew," and "the basis for that knowledge").

[12] The district court did not expressly link its analysis to the purposeful-direction inquiry, relying instead on the requirement that Gould's claims "'arise out of or relate to [Crystal Financial's] contacts' with the forum." *Ford Motor Co.*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255, 258 (2017)). But we "can affirm the district court's dismissal on any ground sufficiently supported by the record." *GF Gaming Corp. v. City of Black Hawk*, 405 F.3d 876, 882 (10th Cir. 2005).; *cf. also Wolfgang v. Mid-Am. Motorsports, Inc.*, 111 F.3d 1515, 1524 (10th Cir. 1997) (noting that when reviewing issues de novo, "we are not constrained by the district court's conclusions" and "may affirm . . . on any legal ground supported by the record").

Gould asserts that the purportedly tortious conduct here is Crystal Financial communicating intentional misrepresentations and false statements about the bonus to Gould "through email[s], . . . phone conversations, and text messages." Aplt. Br. 17. But neither the complaint nor his declaration supports that allegation with any specificity, let alone with the requisite particularity. *George v. Urb. Settlement Servs.*, 833 F.3d 1242, 1254 (10th Cir. 2016) (noting Fed. R. Civ. P. 9(b)'s requirement that plaintiffs plead fraud "with particularity," meaning they "must 'set forth the time, place[,] and contents of the false representation[;] the identity of the party making the false statements[;] and the consequences therefore" (quoting *Koch v. Koch Indus.*, 203 F.3d 1202, 1236 (10th Cir. 2000))). Indeed, as Crystal Financial notes, the relevant section of the complaint "refers generally to all 'Defendants'" when alleging misrepresentation and fraud, never making a specific allegation about Crystal Financial.[13] Crystal Br. 23. Gould's declaration similarly lacks the specifics required to adequately plead intentional misrepresentation and fraud. As Crystal Financial again notes, although the declaration references scattered interactions between Gould and two Crystal Financial officers, none of those interactions mention a "promise[] to pay [the] transaction bonus" or otherwise "relat[e] to his claims for a transaction bonus." *Id.* at 9. In short, because Gould has not adequately alleged that Crystal Financial committed an "intentional[ly] tortious act[]," he cannot satisfy the

[13] Gould asserts that Rule 9(b)'s heightened pleading requirements do not apply to his separate claim for negligent misrepresentation. But even if that's true, Gould still fails to allege that Crystal Financial specifically made *any* misrepresentations—negligent or otherwise—that could support personal jurisdiction.

purposeful-direction requirement for his tort claims. *Eighteen Seventy*, 32 F.4th at 968.

Gould fares no better in attempting to prove purposeful direction for his contract claims. For those claims, purposeful direction turns on whether Crystal Financial reached out and formed "continuing relationships with the forum state and its residents." *Dental Dynamics*, 946 F.3d at 1230 (internal quotation marks omitted); *see also Benton v. Cameco Corp.*, 375 F.3d 1070, 1077 (10th Cir. 2004) ("[W]ith respect to interstate contractual obligations . . . parties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other [s]tate for the consequences of their activities." (ellipses in original) (quoting *Burger King*, 471 U.S. at 473)). Gould tries to show that Crystal Financial developed such relationships based on the same allegations underlying his tort claims—that Crystal Financial made "misrepresentations" and "oral promises that his transaction bonus would be paid." Rep. Br. 2–3. But as explained above, Gould offers nothing aside from conclusory allegations to show that anyone from Crystal Financial ever promised to pay his transaction bonus. Thus, Gould also fails to show purposeful direction for his contract claims. *See Dental Dynamics*, 946 F.3d at 1231 ("[C]onclusory allegations are insufficient to establish jurisdiction.").

In sum, because the purposeful-direction requirement is not met, Crystal Financial lacks sufficient minimum contacts to support specific jurisdiction in New Mexico. Thus, the district court properly dismissed Crystal Financial under Rule

12(b)(2).

Conclusion

Gould has not carried his burden to make a prima facie showing of personal jurisdiction as to Wyse, Wyse Advisors, or Crystal Financial. Because that failure supports dismissal under Rule 12(b)(2), we affirm the district court's orders dismissing those defendants.

Entered for the Court

Nancy L. Moritz
Circuit Judge