IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-679

Filed: 3 March 2020

Wake County, No. 18 CVS 12556

INDUSTRIAL HEMP MANUFACTURING, LLC, Plaintiff,

v.

AMERICAN HEMP SEED GENETIC, LLC, Defendant.

Appeal by Defendant from order entered 25 February 2019 by Judge Bryan Collins in Wake County Superior Court. Heard in the Court of Appeals 5 February 2020.

Anderson Jones, PLLC, by Peyton D. Mansure, Todd A. Jones, and Lindsey E. Powell, for the Plaintiff-Appellee.

Vann Attorneys, PLLC, by James A. Beck, II, Lindsey B. Revels, and James R. Vann, for the Defendant-Appellant.

BROOK, Judge.

American Hemp Seed Genetic, LLC ("Defendant") appeals the trial court's order denying its motion to dismiss for lack of personal jurisdiction. We hold that the trial court correctly concluded that it had personal jurisdiction over Defendant and therefore affirm the order of the trial court.

I. Background

Industrial Hemp Manufacturing, LLC ("Plaintiff") and Defendant entered into a contract on 26 April 2018 related to the sale of industrial hemp seeds by Defendant to Plaintiff. The parties' recitals in that contract state that Plaintiff "is in the business of providing hemp biomass through farmers in North Carolina" and that Defendant "has need for significant amounts of hemp biomass and [is] in the business of providing high quality genetic hemp seeds." The contract provided for the sale by Defendant to Plaintiff of "103 lbs of high CBD, low THC hemp seeds for the growing of 1,000 acres of hemp biomass, seeds valued at $700,000." The consideration offered in exchange for these hemp seeds included Plaintiff's use of its best efforts "to use all the seeds supplied to grow 1,000 acres of hemp biomass and [to] pay [Defendant] 10% of the value of the seeds supplied ($70,000) as a down payment with the balance ($630,000) due on or before February 15, 2019." The consideration additionally included that "[a]fter harvest and initial processing . . . , approximately November 15, 2018, [Plaintiff] will provide 8.5% of the total harvested and pelletized biomass to [Defendant] at [Plaintiff's] plant in Spring Hope, North Carolina." The contract additionally stated in relevant part that "[a]ny dispute arising out of or related to this Agreement shall be venued [sic] in Raleigh, North Carolina."

Plaintiff initiated an action for breach of this contract in Wake County Superior Court on 12 October 2018, asserting additional claims for breach of express and

implied warranties, intentional misrepresentation or negligent misrepresentation in the alternative, incidental and consequential damages, unfair and deceptive trade practices, and fraud. In lieu of filing an answer, Defendant moved to dismiss the complaint under Rule 12(b)(2) of the North Carolina Rules of Civil Procedure for lack of personal jurisdiction on 31 December 2018.

The motion came on for hearing before the Honorable Bryan Collins in Wake County Superior Court on 18 February 2019. Judge Collins denied the motion in an order entered 25 February 2019.

Defendant entered timely written notice of appeal on 18 March 2019.

II. Motion to Dismiss

Plaintiff filed a motion to dismiss the appeal on 30 October 2019 based on Defendant's failure to comply with Rules 28 and 41 of the North Carolina Rules of Appellate Procedure. The alleged appellate rule violations include the failure of Defendant to include in its appellate brief a clear statement of the procedural history of the case, a complete statement of facts, and a statement of the applicable standard of review, and the failure to file an Appeal Information Statement with our Court.

However, these appellate rule violations, while significant, are non-jurisdictional. *See Dogwood Dev. and Mgmt. v. White Oak Transp.*, 362 N.C. 191, 197-98, 657 S.E.2d 361, 364-65 (2008) (observing that jurisdictional rule violations consist of failures to comply with the rules "necessary to vest jurisdiction in the

appellate court," such as Rule 3 and Rule 4(a)(2)). "[A] party's failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal." *Id.* at 198, 657 S.E.2d at 365. We hold that Defendant's non-compliance with Rules 28 and 41 does not rise to the level of a "substantial failure or gross violation" justifying the "extreme sanction" of dismissal because the non-compliance has not impaired our "task of review[,] and . . . review on the merits would [not] frustrate the adversarial process." *Id.* at 200, 657 S.E.2d at 366-67. Plaintiff's motion to dismiss the appeal is therefore denied.

III. Personal Jurisdiction

The sole question presented by the appeal is whether the trial court erred in denying Defendant's motion to dismiss for lack of personal jurisdiction. We hold that it did not. We therefore affirm the order of the trial court.

Although an appeal from a denial of a motion to dismiss for lack of personal jurisdiction is interlocutory, "pursuant to N.C. Gen. Stat. § 1-277(b), any interested party shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant." *Eaker v. Gower*, 189 N.C. App. 770, 772, 659 S.E.2d 29, 31 (2008) (internal marks and citation omitted). Where the factual basis for the court's exercise of personal jurisdiction over a party is disputed and the court determines whether jurisdiction exists based on written submissions from the parties such as affidavits rather than conducting an

evidentiary hearing, "the trial judge must determine the weight and sufficiency of the evidence presented in the affidavits much as a juror." *Banc of Am. Secs. v. Evergreen Int'l Aviation*, 169 N.C. App. 690, 693-94, 611 S.E.2d 179, 182-83 (2005) (internal marks and citation omitted).

This Court has summarized the relevant principles as follows:

> North Carolina's long-arm statute, N.C. Gen. Stat. § 1-75.4, was enacted to make available to the North Carolina courts the full jurisdictional powers permissible under federal due process. Since the North Carolina legislature designed the long-arm statute to extend personal jurisdiction to the limits permitted by due process, the two-step inquiry merges into one question: whether the exercise of jurisdiction comports with due process.
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> . . .
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> In determining whether the exercise of personal jurisdiction comports with due process, the crucial inquiry is whether the defendant has certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. In order to have minimum contacts[] the defendant must have purposefully availed itself of the privilege of conducting activities within the forum state and invoked the benefits and protections of the laws of North Carolina. The relationship between the defendant and the forum state must be such that the defendant should reasonably anticipate being haled into a North Carolina court.
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> This Court [] discussed five factors to be considered to determine whether the defendant has had sufficient minimum contacts with the forum state. The factors are: (1) quantity of the contacts between the defendant and the forum state, (2) quality and nature of the contacts, (3) the

> source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) convenience of the parties.

Eaker, 189 N.C. App. at 773-74, 659 S.E.2d at 32 (internal marks and citation omitted).

An appeal from a trial court determination of personal jurisdiction "is limited to a determination of whether North Carolina statutes permit our courts to entertain this action against [the] defendant, and, if so, whether this exercise of jurisdiction violates due process." *Id.* at 773, 659 S.E.2d at 32 (internal marks and citation omitted). In conducting said review, "this Court . . . considers only whether the findings of fact by the trial court are supported by competent evidence in the record; if so, this Court must affirm the order of the trial court." *Banc of Am. Secs.*, 169 N.C. App. at 694, 611 S.E.2d at 183. "Competent evidence is evidence that a reasonable mind might accept as adequate to support [a] finding." *City of Asheville v. Aly*, 233 N.C. App. 620, 625, 757 S.E.2d 494, 499 (2014).

In the present case, the trial court made the following findings of fact in support of its conclusion that it had personal jurisdiction over Defendant:

> 1. Plaintiff is a Nevada limited liability company authorized to conduct business in the state of North Carolina and maintains a principal place of business in North Carolina.
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> 2. Defendant is an Oregon limited liability company.
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> 3. The present dispute arises out of a contract for the sale

of industrial hemp seeds.

4. On April 26, 2018, Plaintiff and Defendant entered into a contract for the sale of industrial hemp seeds.

5. Pursuant to the contract, Defendant was to receive 8.5% of the total harvested and pelletized hemp biomass from Plaintiff at Plaintiff's plant in Spring Hope, North Carolina.

6. Further pursuant to the contract, "[a]ny dispute arising out of or related to this Agreement shall be venued [sic] in Raleigh, North Carolina."

7. The venue selection clause does not contain language indicating that the parties intended Raleigh, North Carolina to have sole or exclusive jurisdiction.

8. The industrial hemp seeds sold by Defendant are a product, material, or thing processed, serviced, or maintained by Defendant.

9. The industrial hemp seeds sold by Defendant were to be planted, grown, harvested, and pelletized in North Carolina.

10. Defendant knew the industrial hemp seeds were to be planted, grown, harvested, and pelletized in North Carolina.

11. Defendant is engaged in the business of growing and selling industrial hemp seeds.

12. The industrial hemp seeds sold by Defendant were to be used or consumed in North Carolina in the ordinary course of trade.

13. In contracting with Plaintiff, Defendant knew the contract was to be substantially performed in North Carolina and agreed to the contract venue of Raleigh,

North Carolina.

Based on these findings of fact, the court concluded as a matter of law in relevant part as follows:

> 2. The forum selection clause contained in the April 26, 2018 contract is a consent to jurisdiction clause whereby Defendant has consented to personal jurisdiction before this Court and has waived any objection it might have to personal jurisdiction;
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> 3. Furthermore, North Carolina's Long-Arm Statute authorizes personal jurisdiction over the Defendant pursuant to Section 75.4(4)(b);
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> 4. The April 26, 2018 contract has a substantial connection with the state of North Carolina such that Defendant may reasonably anticipate being hailed in court in North Carolina;
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> 5. The exercise of personal jurisdiction over the Defendant does not offend traditional notions of due process because the Defendant has sufficient minimum contacts with the state of North Carolina[.]

Competent evidence supports the trial court's disputed finding that Defendant waived any objection to personal jurisdiction by entering into a contract with Plaintiff stating that "[a]ny dispute arising out of or related to this Agreement shall be venued [sic] in Raleigh, North Carolina." This finding quotes the exact language of the parties' contract. Competent evidence also supports the trial court's findings that the hemp seeds were (1) "a product, material, or thing processed, serviced, or maintained by Defendant"; (2) they "were to be planted, grown, harvested, and pelletized in North

Carolina"; and (3) that after harvesting and performing initial processing of the biomass produced from cultivating the hemp seeds the "Defendant was to receive 8.5% of the total harvested and pelletized hemp biomass *from Plaintiff at Plaintiff's plant in Spring Hope, North Carolina.*" (Emphasis added.) The findings demonstrate that the contract did, in fact, have a substantial connection to the forum state of North Carolina.

We hold that these findings in turn support the trial court's conclusion that Defendant's involvement with North Carolina as a forum state meets the standard articulated in North Carolina's long-arm statute because "[p]roducts, materials or thing[s] processed . . . by the defendant were used . . . within this State in the ordinary course of trade" and there is an "action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant[.]" N.C. Gen. Stat. § 1-75.4(4) (2019). We additionally hold that the exercise of personal jurisdiction over Defendant by North Carolina courts with respect to the transaction from which this dispute arises is consistent with due process, as the trial court also found. Though this contract may have been entered into by the parties outside North Carolina, performance of obligations imposed by the contract on both parties substantially involves North Carolina, where Plaintiff shipped Defendant's hemp seeds and planted the seeds and harvested their produce and where Plaintiff under the contract was to "provide 8.5% of the total harvested

and pelletized hemp biomass to [Defendant] at [Plaintiff's] plant in Spring Hope, North Carolina." The parties' performance of obligations owed by each under the contract in North Carolina constitutes purposeful availment by each of the laws of North Carolina. Receiving the biomass after harvest would have required Defendant to arrange for transportation of the biomass after harvest, for example, a contemplated purposeful availment by Defendant of North Carolina's laws.

IV. Conclusion

The trial court did not err in denying Defendant's motion to dismiss for lack of personal jurisdiction.

AFFIRMED.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).