

IN THE UTAH COURT OF APPEALS

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Fort Pierce Business Park, LC,)	MEMORANDUM DECISION	
a Utah limited liability)	(Not For Official Publication)	
company,)		
)	Case No. 20090091-CA	
Plaintiff and Appellant,)		
)		
v.)	F I L E D	
)	(December 3, 2009)	
)		
<u>Closing Resources, LLC, a</u>)	<table border="1"><tr><td>2009 UT App 357</td></tr></table>	2009 UT App 357
2009 UT App 357			
<u>Maryland limited liability</u>)		
<u>company</u> ; and ST Paper Company,)		
LLC, a Delaware limited)		
liability company,)		
)		
Defendants and Appellee.)		

Fifth District, St. George Department, 080501788
The Honorable G. Rand Beacham

Attorneys: Bryan J. Pattison, St. George, for Appellant
Brett D. Ekins, St. George, for Appellee

Before Judges Greenwood, Bench, and Orme.

GREENWOOD, Presiding Judge:

The trial court granted Closing Resources, LLC's motion to dismiss for lack of personal jurisdiction. At trial and on appeal, Fort Pierce Business Park, LC (Fort Pierce) argues that Utah has jurisdiction over Closing Resources because Closing Resources transacted business in Utah and minimum contacts were established. We reverse and remand.

Recently, in Pohl, Inc. of America v. Webelhuth, 2008 UT 89, 201 P.3d 944, the Utah Supreme Court discussed the nonresident jurisdictional rule in Utah:

The authority of the state to hale a nonresident into a state court hinges on the ability to establish personal jurisdiction. There are two categories of personal jurisdiction: specific jurisdiction and general jurisdiction. General personal jurisdiction permits a court to exercise power over a defendant without regard to the subject of the claim asserted and is

dependent on a showing that the defendant conducted substantial and continuous local activity in the forum state. . . .

[S]pecific personal jurisdiction gives a court power over a defendant only with respect to claims arising out of the particular activities of the defendant in the forum state and only if the defendant has certain minimum local contacts. Whether we have specific jurisdiction depends on two inquiries. First, do [the plaintiff's] claims arise from one of the activities listed in the [long-arm] statute, and second, whether the defendant's contacts with this forum [are] sufficient to satisfy the due process clause of the fourteenth amendment. In determining whether specific jurisdiction exists, our analysis begins with the long-arm statute. If the relevant state statute does not permit jurisdiction, then the inquiry is ended; if it does, then the question is whether the statute's reach comports with due process.

Id. ¶¶ 9-10 (emphases added) (alterations in original) (citations and internal quotation marks omitted). This case involves the issue of specific personal jurisdiction.

Utah's nonresident jurisdiction statute (the long-arm statute) is contained in Utah Code sections 78B-3-201 through 209. See Utah Code Ann. §§ 78B-3-201 to -209 (2008). Section 78B-3-205 provides that a person is subject to Utah jurisdiction if the person does any of several enumerated acts. See id. § 78B-3-205. Fort Pierce argues that the relevant enumerated acts here are (1) "transact[s] . . . any business within this state" and (2) "contract[s] to supply services or goods in this state." Id. § 78B-3-205(1)-(2). Utah Code section 78B-3-201(3) declares that the long-arm statute "should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution." Id. § 78B-3-201(3). Thus, the legislature intended that the long-arm statute be liberally applied.

Closing Resources was the escrow agent for a transaction that was to be closed in Utah. The transaction involved Utah real property and Utah parties as both seller and buyer. The seller and buyer executed an agreement (the Agreement) that included escrow instructions. According to these instructions, the escrow agent was required to deliver the buyer's deposit to the Utah based title company when the transaction closed and, should the transaction fail, to continue to work with Fort Pierce

to resolve Fort Pierce's right to the deposit as liquidated damages. Although Closing Resources did not sign the Agreement, it had a copy of it, agreed via correspondence to act as the escrow agent pursuant to the Agreement, and accepted the buyer's \$80,000 deposit. Based on these factors, we conclude that Closing Resources transacted business and supplied services in Utah. Thus, its actions meet the requirements of section 78B-3-205.

We next consider whether Closing Resources's contacts with Utah were sufficient to meet the requirements of due process. The Pohl decision describes this process as follows:

Federal due process requires that in order to subject a defendant to specific personal jurisdiction, there must be certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. The purpose of requiring minimum contacts between the defendant and the forum state is to ensure that courts only exert jurisdiction in cases where the defendant creates a substantial connection with the forum state such that the defendant should reasonably anticipate being haled into court there. For this reason, [e]ach defendant's contacts with the forum State must be assessed individually. Finally, even if there are minimum contacts, the concept of fair play and substantial justice may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities.

In judging minimum contacts, a court properly focuses on the relationship among the defendant, the forum, and the litigation. The essential question is whether the defendant purposefully and voluntarily direct[ed] his activities toward the forum so that he should expect . . . to be subject to the court's jurisdiction based on his contacts with the forum. A defendant may direct its activities toward the forum by purposefully avail[ing] itself of the benefits of conducting business in the forum state

Pohl, 2008 UT 89, ¶¶ 23-24 (alterations and first omission in original) (citations and internal quotation marks omitted). It is not necessary that a nonresident be physically present in Utah to transact business or provide services. "'So long as a

commercial actor's efforts are purposefully directed toward residents of [Utah], we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction [here].'" SII Megadiamond, Inc. v. American Superabrasives Corp., 969 P.2d 430, 435 (Utah 1998) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985)).

Fort Pierce's description of Closing Resources's contacts with Utah is as follows:

[Closing Resources] sent communications by both email and mail to Fort Pierce in Utah. In accepting the role as escrow agent, Closing Resources knew that it would be required to direct its activities into Utah and for the benefit of a Utah resident--it was, after all, the escrow agent in a transaction for the sale of real property in Utah in which the seller, Fort Pierce, was a Utah resident, the State of Utah itself was the property owner, and the final transaction was to occur in the office of a Utah title company.

Closing Resources argues that the facts do not establish minimum contacts. It concedes it sent two letters to Fort Pierce but argues that the letters do not establish jurisdiction because they were both sent regarding litigation, not escrow services. It also concedes that it sent two emails to Fort Pierce but argues "no business was transacted or solicited in these emails; the emails were merely administrative in nature."

Closing Resources cites Walker v. Conquest Energy, Inc., No. 2:06CV872 DAK, 2007 U.S. Dist. LEXIS 55561, (D. Utah July 30, 2007), in which the federal district court determined that an escrow agent did not have minimum contacts with Utah. The escrow agent "had no business or any other relationship with [the plaintiff], . . . ha[d] never solicited any contact with any individual or entity in Utah, . . . [wa]s not registered to do business in Utah, and . . . [had] never contacted [the plaintiff] by telephone, mail, etc." Id. at *3. The court concluded that the exercise of personal jurisdiction over the escrow agent "would offend 'traditional notions of fair play and substantial justice.'" Id. at *7 (quoting Asahi Metal Indus. Co. v. Superior Court of Cal., 480 U.S. 102, 113 (1987)). However, Walker is distinguishable because the escrow agent had never contacted the plaintiff and the transaction was an exchange of corporate stock. See id. at *1. In this case, however, Closing Resources communicated directly with Fort Pierce and had a fiduciary obligation toward Fort Pierce, and real property in Utah was the subject of the transaction.

Closing Resources also cites our decision in Fenn v. MLeads Enters., Inc., 2004 UT App 412, 103 P.3d 156, rev'd, 2006 UT 8, 137 P.3d 706, for the proposition that "email contacts alone can establish jurisdiction when the contacts are extremely numerous," id. ¶ 18, and argues that because the two emails in this case are not "extremely numerous," they do not establish jurisdiction. However, as was made clear in the Utah Supreme Court's reversal of Fenn, numerous email contacts may be sufficient, but are not necessary to establish specific personal jurisdiction: "[U]nder a minimum contacts analysis . . . , [p]roper inquiry must not focus on the mere quantity of contacts, but rather upon the quality and nature of those contacts as they relate to the claims asserted." Fenn v. MLeads Enterprises, Inc., 2006 UT 8, ¶ 19, 137 P.3d 706 (second alteration in original) (internal quotation marks omitted).

Here, Closing Resources "purposefully and voluntarily direct[ed] [its] activities" toward Utah. Closing Resources is subject to Utah jurisdiction in this case because it transacted business here and established minimum contacts. It communicated directly with parties in Utah for the purpose of completing a particular business transaction, as opposed to simply sending out mass emails for the purpose of soliciting business. The business transaction itself involved property located in and owned by the State of Utah, subject to sale and purchase by Utah entities. Furthermore, despite the fact that Closing Resources did not sign the Agreement, its actions, particularly its acceptance of the buyer's deposit, evidenced its acquiescence to act as escrow agent under the terms of the Agreement. Thus, we conclude that the trial court erred in determining that Closing Resources was not subject to specific personal jurisdiction in Utah.

Reversed and remanded for further proceedings.

Pamela T. Greenwood,
Presiding Judge

WE CONCUR:

Russell W. Bench, Judge

Gregory K. Orme, Judge