IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ERNEST CASTRO,	)	No. 64318-5-I
Appellant,	)	DIVISION ONE
v.	)	
HENSEN EQUIPMENT, LLC,	)	UNPUBLISHED
Respondent.	)	FILED: July 26, 2010

Cox, J. — Whether specific jurisdiction lies over nonresident defendants depends on the quality and nature of the defendants' acts in Washington. Here, Hensen Equipment LLC's act of servicing a forklift in Colorado for another Colorado company was not an act showing Hensen purposely availed itself of the privilege of doing business in Washington. Thus, it did not invoke the benefits and protections of Washington's law. Because Washington lacks personal jurisdiction over Hensen, we affirm the trial court's order granting summary judgment in its favor.

Hensen Equipment LLC is a limited liability corporation under the laws of Colorado with its principal place of business in Henderson, Colorado. Hensen rents, sells, and services large forklifts and aerial lifts for use in the construction industry. Hensen has never conducted any business or had a customer in Washington. Hensen solicits no business in Washington, maintains no offices, employees or agents in this state, and is listed in no Washington telephone book.

In March 2005, Hensen sold a forklift to PCL Construction Services, Inc., another Colorado corporation. In September 2005, a PCL manager had Hensen conduct maintenance on the forklift in Colorado. PCL did not inform Hensen that the forklift would be sent to Washington State after it was serviced.

In November 2005, PCL shipped the forklift from its Colorado facility to its Tukwila, Washington jobsite. Later that month, PCL employee Ernest Castro was injured when he attempted to adjust one of the forks of the forklift. PCL determined that the injury was caused by a missing safety lock pin, which Hensen had failed to replace when it serviced the forklift in Colorado in September.

Castro sued Hensen in November 2008.

Hensen filed a motion for summary judgment in which it argued that Castro's suit must be dismissed for lack of personal jurisdiction. After considering sworn declarations from counsel for both parties, from Hensen's manager Dennis Hensen, and from PCL's health, safety and environmental manager Michael Fallon, the trial court granted the motion to dismiss and awarded Hensen attorney fees under RCW 4.28.185(5).

Castro appeals.

PERSONAL JURISDICTION

Where a dispute as to personal jurisdiction is presented before trial in the form of a summary judgment motion, we apply traditional CR 56 de novo review.[1]

[1] CTVC of Hawaii Co., Ltd. v. Shinawatra, 82 Wn. App. 699, 707-08, 919 P.2d 1243 (1996).

Thus, we must consider the facts and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party.[2] The plaintiff has the burden of establishing that jurisdiction exists and need only show a prima facie case.[3] We conclude that Castro did not meet that burden here.

State courts in Washington may exercise either general or specific personal jurisdiction over a nonresident defendant.[4] General jurisdiction exists if a nonresident defendant is "transacting substantial and continuous business of such character as to give rise to a legal obligation," regardless of whether the cause of action is related to the defendant's contacts with Washington.[5] A Washington court may exercise specific personal jurisdiction over a nonresident defendant when the defendant's limited contacts give rise to the cause of action.[6]

Castro argues specific jurisdiction is properly exercised here, under Washington's "long-arm" statute, RCW 4.28.185. This statute provides, in part:

> (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person ... to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
> ….
>
> (b) The commission of a tortious act within this state;
> ....

---

[2] Id. at 708.
[3] Id.
[4] Id. at 708.
[5] MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc., 60 Wn. App. 414, 418, 804 P.2d 627 (1991) (citing Crose v. Volkswagenwerk Aktiengesellschaft, 88 Wn.2d 50, 54, 558 P.2d 764 (1977)).
[6] MBM Fisheries, 60 Wn. App. at 422-23; RCW 4.28.185.

> (3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.[7]

Castro argues in his opening brief that the mere fact that the injury occurred within Washington is sufficient to justify applying the long-arm statute in this case. As Hensen correctly notes, however, the authority on which Castro relies was modified by our state supreme court to comport with the United States Supreme Court's development of the law of due process in 1985 and 1987.[8] It is now settled law that to satisfy the requirements of due process, a Washington court properly exercises specific personal jurisdiction over a foreign entity only when the following factors are satisfied, in addition to the requisites of the long-arm statute:

> (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.[9]

---

[7] RCW 4.28.185.

[8] See Grange Ins. Ass'n v. State, 110 Wn.2d 752, 758-60, 757 P.2d 933 (1988) (discussing Smith v. York Food Machinery Co., 81 Wn.2d 719, 504 P.2d 782 (1972); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-78, 105 S. Ct. 2174, 2181-85, 85 L. Ed. 2d 528 (1985); and Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987); see also Raymond v. Robinson, 104 Wn. App. 627, 642 n.2, 15 P.3d 697 (2001) (discussing Grange and Smith).

[9] CTVC of Hawaii, 82 Wn. App. at 709-710 (quoting Shute v. Carnival Cruise Lines, 113 Wn.2d 763, 767, 783 P.2d 78 (1989)).

At issue here is the first factor. To satisfy this factor, "the plaintiff must establish that the nonresident defendant 'purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thereby invoking the benefits and protections of its laws.'"[10] This inquiry focuses on the defendant's activities in the forum, and the sufficiency of the contacts is determined by the nature and quality of those activities, not the number of acts or other mechanical standards.[11]

Addressing the correct test in his reply, Castro contends that the purposeful availment factor is satisfied because Hensen "has sold and serviced equipment for PCL for years", "is well aware that PCL is a large corporation conducting business in many states" and is "well aware that the forklift it sold and serviced could be used in any state that PCL Construction conducts business, including Washington State." Castro, however, does not cite to the record in support of these factual assertions. Significantly, the declarations provided by Castro and Hensen do not even inferentially support such statements.

The declarations in the record establish only that Hensen sold and serviced the particular forklift at issue in 2005, and during the same period, a Hensen employee serviced one backhoe for PCL. The record is silent as to whether Hensen had sold PCL the backhoe. There is no basis to infer from this

[10] CTVC of Hawaii, 82 Wn. App. at 710 (quoting Walker v. Bonney-Watson Co., 64 Wn. App. 27, 34, 823 P.2d 518 (1992)).

[11] Id.

information that Hensen had sold and serviced PCL equipment for years. Nor is there any support for an inference that Hensen, or any of its agents, was aware of the size of PCL's business, or that PCL conducted business in Washington State. While the declaration of PCL's manager Michael Fallon recites that the forklift in question had been transferred from a New Mexico work site before it was serviced in Colorado, nothing suggests this information was imparted to anyone at Hensen. Nor did Fallon in any way controvert the Hensen manager's declaration that "No one at Hensen Equipment knew that [t]he [f]orklift was going to be sent to a project in Washington."

In applying the purposeful minimum contacts requirement, our state supreme court has distinguished between nonresident manufacturers and nonresident retailers. Minimum contacts are established for manufacturers when it is shown that they place their products in the stream of interstate commerce because it is fair to charge a manufacturer with knowledge that its conduct might have consequences in another state.[12] However, absent showing that a retailer should know that his or her transactions might have consequences in Washington, "a retailer's mere placing of a product into interstate commerce is not by itself a sufficient basis to infer the existence of purposeful minimum contacts."[13] Moreover, when, as here, the underlying allegation is of negligence in the provision of a service, the location of that service is of additional importance.[14]

[12] Grange Ins., 110 Wn.2d at 761.
[13] Id. at 761-62.

In MBM Fisheries, Inc. v. Bollinger Machine Shop & Shipyard, Inc., the court held that a Louisiana shipbuilder was not subject to jurisdiction in Washington when a Washington corporation took one of its boats to the shipbuilder in Louisiana for a repair estimate, the parties negotiated a contract for the repair work in Louisiana, and a principal of the Washington corporation returned to Louisiana to pick up the boat.[15]

Here, the only connection with Washington shown in the record is that PCL decided to ship its forklift to Washington to use at its job site after Hensen serviced it. That was a decision in which Hensen had no part and of which Hensen received no notice. This is even less of a connection than the insufficient contacts in MBM Fisheries. We accordingly conclude that Castro did not meet the minimal burden of establishing a prima facie case that Hensen purposefully availed itself of the benefits of conducting business in Washington. The trial court properly granted Hensen's motion to dismiss.

ATTORNEY FEES

Hensen requests attorney fees on appeal under RCW 4.28.185(5), which authorizes an award of attorney fees to prevailing parties served outside of the state.[16] The trial court awarded Hensen fees under RCW 4.28.185(5). We award Hensen reasonable fees, subject to compliance with RAP 18.1(d).

We affirm the summary judgment order.

---

[14] Id. at 763.

[15] 60 Wn. App. 414, 424, 804 P.2d 627 (1991).

[16] See generally Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 859 P.2d 1210 (1993); Hewitt v. Hewitt, 78 Wn. App. 447, 896 P.2d 1312 (1995).

Cox, J.

WE CONCUR: