

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 6, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2247

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

**DR. SUJAN SINGH CHADA, D/B/A
CHADA IMPORTS & EXPORTS AND
INTERNATIONAL FINE JEWELRY
IMPORTS & EXPORTS, ATIMA,**

PLAINTIFF-APPELLANT,

V.

FIRST SPECIALTY INSURANCE CORPORATION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
PATRICIA D. McMAHON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Dr. Sujan Singh Chada, d/b/a Chada Imports & Exports (Chada) appeals from an order granting summary judgment in favor of First Specialty Insurance Corporation (First Specialty) for lack of personal

jurisdiction. Chada claims the trial court erred when it concluded that the case must be dismissed for lack of personal jurisdiction. Because our due process analysis demonstrates that personal jurisdiction over First Specialty was not established, we affirm.

I. BACKGROUND

The following facts are undisputed. Dr. Chada was doing business as a sole proprietor selling jewelry with offices in Chicago, Illinois. He resides in Franklin, Wisconsin. In 1995 he purchased a theft insurance policy from First Specialty, a Missouri corporation, through an insurance agent in Coral Gables, Florida, who had obtained the policy from an underwriter in Boston, Massachusetts. The policy's named insured is "Chada Imports & Exports & International Fine Jewelry Imports & Exports, ATIMA." The insured's address is 5 North Wabash Avenue, Chicago, Illinois, 60602. The policy designated an agent in Chicago, Illinois, for service of process. The policy contained "jeweler's block" coverage in the amount of \$867,000. While Chada was exhibiting his jewelry in Las Vegas on August 19, 1995, an alleged theft occurred for which Chada filed a claim with First Specialty for \$500,000. First Specialty denied the claim.

Chada filed suit against First Specialty in Wisconsin. First Specialty filed a motion to dismiss for lack of personal jurisdiction. The trial court treated

the motion as one for summary judgment and granted First Specialty's motion to dismiss.¹ Chada now appeals.

II. ANALYSIS

Chada contends the trial court erred in dismissing his claim because Wisconsin statutes permit a Wisconsin resident to sue an insurance company in Wisconsin under § 801.05(10)(a), STATS.

Whether Wisconsin courts obtain personal jurisdiction over a foreign corporation is a question of law which we review independently. *See Landreman v. Martin*, 191 Wis.2d 787, 798, 530 N.W.2d 62, 66 (Ct. App. 1995). We note, however, that we do place high value on the trial court's analysis. This review involves a two-fold inquiry. *See id.* First, we must determine whether our long-arm statute, § 801.05, STATS., permits suit against the non-resident foreign corporation. *See id.* Second, if the long-arm statute extends to the non-resident foreign corporation, we must determine whether the exercise of jurisdiction comports with due process requirements. *See id.* Even though our long-arm statute requires liberal construction to acquire jurisdiction, due process dictates that a defendant have certain minimum contacts with the state so that the "maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotemarks and quoted source omitted).

¹ From our review of the record, it appears that the trial court considered undisputed matters outside of the pleadings and, consequentially, treated the motion as one for summary judgment. Thus, our review should be as if the matter was decided on summary judgment. *See Doe v. Archdiocese of Milwaukee*, 211 Wis.2d 312, 331, 565 N.W.2d 94, 101 (1997).

The relevant portion of the statute upon which Chada relies states that personal jurisdiction is present under the following circumstances:

INSURANCE OR INSURERS. In any action which arises out of a promise made anywhere to the plaintiff or some 3rd party by the defendant to insure upon or against the happening of an event and in addition either:

(a) The person insured was a resident of this state when the event out of which the cause of action is claimed to arise occurred.

Section 801.05(10)(a), STATS. It is undisputed that there has been compliance with this portion of the long-arm statute. Dr. Chada was a resident of Franklin, Wisconsin, at the time that the alleged theft occurred, and Chada Imports had an insurance policy with First Specialty which presumably offered coverage for the alleged theft loss. This conclusion, however, does not complete our examination. Compliance with the long-arm statute creates merely a presumption of jurisdiction that can be overcome through a due process analysis. *See Brown v. LaChance*, 165 Wis.2d 52, 68, 477 N.W.2d 296, 303 (Ct. App. 1991). We must now determine whether the exercise of jurisdiction comports with due process requirements.

Due process requires that “minimum contacts” must exist between the non-resident defendant and Wisconsin before a Wisconsin court may exercise jurisdiction. *See Marsh v. Farm Bureau Mut. Ins. Co.*, 179 Wis.2d 42, 53, 505 N.W.2d 162, 166 (Ct. App. 1993). If minimum contacts exist, such exercise does not violate traditional notions of fair play and substantial justice. *See id.* In *Marsh*, we created a methodology for establishing minimum contacts, stating:

In order to establish minimum contacts, the defendant must purposefully avail himself of the privilege of conducting business in the forum state, thus invoking the benefits and protections of its laws. The defendant’s activity vis-à-vis the forum state is the crucial question; the

unilateral activity of one seeking to claim a relationship with a defendant cannot satisfy the minimum contacts. The touchstone of the exercise of personal jurisdiction is reasonableness and fairness. The defendant's conduct and connection with the forum state must be such that he should reasonably anticipate being haled into court there.

Id. at 53-54, 505 N.W.2d at 166 (citations omitted).

This is the correct standard to be applied in our analysis and is the same standard applied by the trial court at the motion hearing. We have reviewed the trial court's oral decision and conclude that the court, after reviewing the pleadings and affidavits, correctly applied the *Marsh* methodology and arrived at the correct decision.² We hereby adopt the oral bench decision of the trial court as that of this court and affirm.³

² The trial court ruled in pertinent part:

The Court must still look at the due process analysis to determine whether or not the facts in this case -- under the facts of this case personal jurisdiction is appropriate. And, certainly, that burden is on the plaintiff to establish such jurisdiction and to establish that there are sufficient minimum contacts to determine minimum contacts so that the due process questions are satisfied. There must be an examination of whether or not there are sufficient minimum contacts between the defendant and the forum state and whether the exercise of personal jurisdiction would violate traditional notions of fair play and substantial justice.

... In order to establish minimum contacts, the defendant must purposely avail himself of the privilege of conducting business in the forum state here, Wisconsin

The focus is on the defendant's actions. It is a unilateral activity of one seeking to claim a relationship with the defendant cannot constitute minimum contacts, and the touchstone is reasonableness and is fairness. And the contacts must be such that it is reasonable that the defendant would anticipate being brought into the Wisconsin courts. And so the Courts look at the quantity of contacts, the nature and quality of these contacts, the source of the cause of action, the interest of Wisconsin in the action, and the convenience of the parties and the witnesses.

....

(continued)

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[The facts in this case reveal that Chada] has an established business in Chicago, Illinois. It has no offices in Wisconsin. The policy was issued to an address in Illinois. It names an Illinois resident as agent for service of process. While the sole proprietor is the beneficiary of the insurance coverage under the policy, the policy relates to the business that operates in Illinois....

[The convenience for the witnesses is] a relevant factor[, but] not an issue ... The question is whether Wisconsin has the ability to require this defendant to come to Wisconsin and engage in litigation in this state.... Marsh is instructive.... [There is] no purposeful avilment of jurisdiction in Wisconsin. There's nothing here more than the residency of the sole proprietor. That's the only contact with Wisconsin.

The insurance policy was intended to apply to activities emanating from the Illinois base and has no relationship to the sole proprietor's residence in Wisconsin. Wisconsin has no interest in litigation regarding an insurance policy between a Missouri corporation and an Illinois sole proprietorship relating to an incident that took place in Nevada.... [T]here's nothing in this record to suggest that the defendant's action should cause it to have any reasonable expectation of being brought into court in Wisconsin.... [T]herefore, ... due process analysis is not met.

There is no appropriate jurisdiction in this state, and therefore the motion to dismiss is granted.

³ Chada requests of this court that in the event we conclude that personal jurisdiction was not acquired, we nevertheless remand the case for further discovery. This issue was not raised at the trial court level and we eschew the opportunity to exercise our discretionary authority. *See Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). We deem the issue waived.

