

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 25, 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. 97-3415

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**LEONARD AUSLOOS,
D/B/A AUSLOOS FUR FARM,**

PLAINTIFF-APPELLANT,

V.

BRAD RESNICK,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Sheboygan County: L. EDWARD STENGEL, Judge. *Reversed and cause remanded.*

Before Snyder, P.J., Nettesheim and Anderson, JJ.

PER CURIAM. Leonard Ausloos, a resident of Wisconsin, has appealed from a judgment dismissing his complaint against Brad Resnick, a resident of New York. The trial court dismissed the action based on a perceived lack of personal jurisdiction over Resnick. We conclude that personal jurisdiction

exists over Resnick and reverse the judgment, remanding the matter for further proceedings in the trial court.

In determining whether personal jurisdiction exists over a nonresident defendant, a court must first determine whether the defendant's contacts with Wisconsin subject him or her to jurisdiction under the Wisconsin long-arm jurisdiction statute, § 801.05, STATS. See *McNamee v. APS Ins. Agency, Inc.*, 110 Wis.2d 72, 76, 327 N.W.2d 648, 650 (1983). If so, the second step is to determine whether the exercise of jurisdiction under the statute comports with due process requirements. See *id.* While findings of fact made by the trial court in reviewing questions of personal jurisdiction will not be set aside unless clearly erroneous, the trial court's ultimate conclusion as to whether jurisdiction exists is one of law which is reviewed de novo by this court. See *State ex rel. N.R.Z. v. G.L.C.*, 152 Wis.2d 97, 103, 447 N.W.2d 533, 535 (1989); *Capitol Fixture & Woodworking Group v. Woodma Distribs., Inc.*, 147 Wis.2d 157, 160, 432 N.W.2d 647, 649 (Ct. App. 1988).

Due process requires that a nonresident defendant have certain minimum contacts with the forum state before being sued in that forum. See *Capitol Fixture*, 147 Wis.2d at 161, 432 N.W.2d at 649. The burden is on the plaintiff to establish that the provisions of the Wisconsin long-arm jurisdiction statute are satisfied in the case. See *N.R.Z.*, 152 Wis.2d at 104, 447 N.W.2d at 535. Compliance with the long-arm jurisdiction statute creates a rebuttable presumption that due process has been satisfied. See *Capitol Fixture*, 147 Wis.2d at 161, 432 N.W.2d at 649. The defendant then has the burden of overcoming that presumption. See *Marsh v. Farm Bureau Mut. Ins. Co.*, 179 Wis.2d 42, 53, 505 N.W.2d 162, 166 (Ct. App. 1993).

Resnick concedes in his respondent's brief that § 801.05(5)(d), STATS., of Wisconsin's long-arm jurisdiction statute confers jurisdiction in this case. He contends, however, that due process requirements preclude the exercise of jurisdiction.

To satisfy due process requirements, a defendant must have certain minimal contacts with the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *See N.R.Z.*, 152 Wis.2d at 103-04, 447 N.W.2d at 535. A defendant's contacts must have a basis in some act by which the defendant purposely avails himself or herself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws. *See id.* at 104, 447 N.W.2d at 535. The unilateral activity of one claiming a relationship with the defendant cannot satisfy the minimum contacts test. *See Marsh*, 179 Wis.2d at 54, 505 N.W.2d at 166. Rather, it is the defendant's activities in relation to the forum state which must be examined. *See id.* at 53, 505 N.W.2d at 166. "An essential criterion in all cases is whether the quality and nature of the defendant's activity is such that it is reasonable and fair to require him to conduct his defense in the state." *N.R.Z.*, 152 Wis.2d at 104, 447 N.W.2d at 535.

The factors to be considered in determining whether a nonresident defendant has rebutted the presumption that due process is satisfied include the quantity, quality and nature of the defendant's contacts with the state; the source and connection of the cause of action with those contacts; the state's interest in providing a forum for suit; and the inconvenience to the parties of litigating the suit in the state. *See id.* at 105, 447 N.W.2d at 535-36. However, these factors need not all be present in substantial degrees to find jurisdiction. *See Capitol Fixture*, 147 Wis.2d at 162, 432 N.W.2d at 650.

Applying these factors to this case, we conclude that the exercise of personal jurisdiction over Resnick satisfies due process. The pertinent facts are undisputed. Resnick is a resident of New York employed as a broker of fur pelts. The record indicates that he learned from Thomas Winkel, a Wisconsin fur broker with whom he was acquainted, that Ausloos, a mink rancher, had pelts that he was interested in marketing. With Resnick's approval, Winkel negotiated a contract with Ausloos which called for Ausloos to transfer pelts to Resnick for sale. Resnick was to look for buyers for the pelts and receive a portion of the sales proceeds in exchange. These negotiations resulted in a written contract signed by both Ausloos and Resnick dated November 16, 1990.

The contract provided that Resnick would advance \$24,000 to Ausloos as a loan. In return, Ausloos agreed to ship 3728 pelts to New York for sale during the 1989-90 season. Ausloos also promised to ship approximately 4400 additional pelts to Resnick for sale during the 1990-91 season. Ausloos agreed that the proceeds from the sales would first go to pay back the \$24,000 loan. In addition, Resnick testified by deposition that the sales were to be completed only upon the approval of Ausloos.

Pursuant to the agreement, on November 16, 1990, Ausloos shipped 3728 pelts from Wisconsin to Resnick in New York. An additional 4592 pelts were shipped by Ausloos from Wisconsin in January 1991. In accordance with the contract, Resnick advanced \$24,000 to Ausloos on November 20, 1990. An additional \$16,343 was advanced to Ausloos in Wisconsin in two installments in January and February 1991. Resnick arranged various sales pursuant to the agreement and sent written reports memorializing the sales to Ausloos in Wisconsin. Once the loans were paid back, he also wired sales proceeds to Ausloos in Wisconsin.

A defendant may not be haled into a jurisdiction based solely on random, fortuitous or attenuated contacts. *See Fabry Glove and Mitten Co. v. Spitzer*, 908 F. Supp. 625, 632 (E.D. Wis. 1995). However, when a defendant has deliberately engaged in significant activities within another state or has created continuing obligations between himself and a resident of that state, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by the benefits and protections of the forum state's laws, it is presumptively reasonable to require him to submit to the burden of litigation in that forum as well. *See id.* The transmittal of information, materials or money to or from the forum state may be considered in evaluating a nonresident's contacts, even when the communication is by mail, telephone or other indirect means. *See id.* at 632-33.

Here, the nature, quantity and quality of Resnick's contacts with Ausloos indicate that, for a time, he created continuing obligations between himself and Ausloos involving the state of Wisconsin. Specifically, the contract contemplated two separate shipments of pelts from Wisconsin, the transmittal of loan and sales proceeds by Resnick to Wisconsin, continued contact by Resnick with Ausloos to obtain preauthorization for sales, and the transmittal of accountings to Ausloos in Wisconsin. Because these contacts indicate that Resnick knowingly reached out to a Wisconsin business and created continuing obligations between himself and a Wisconsin resident, his contacts with Wisconsin were not random, fortuitous or attenuated and are sufficient to satisfy due process.

None of the other factors to be considered obviate the conclusion that due process is satisfied. This lawsuit arises from the parties' contract and actions taken pursuant to that contract. Wisconsin clearly has an interest in

providing a forum to resolve such disputes between its residents and residents of other states. Finally, while Resnick may be inconvenienced by being subjected to litigation in Wisconsin and while other witnesses may come from outside Wisconsin, in light of the considerations already discussed this single factor does not tip the balance against the exercise of jurisdiction over Resnick.

By the Court.—Judgment reversed and cause remanded.

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

