

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THE WISCONSIN CHEESEMEN, INC.
d/b/a SCOTT'S OF WISCONSIN,

Plaintiff,

v.

JUSTIN P. DINORSCIA and
DIANE D. BONVETTI,

Defendants.

OPINION and ORDER

06-C-079-C

Just over one year ago, plaintiff The Wisconsin Cheeseman, Inc. filed this civil diversity action, in which it contends that defendants Justin Dinorscia and Diane Bonvetti (formerly known as Diane Dinorscia) breached the terms of their Individual Guarantee Agreement with plaintiff. Since that time, the case has been fraught with procedural difficulties.

First, defendant Disnorscia failed to answer the complaint, prompting plaintiff to move for entry of default on April 4, 2007. Default was entered, but judgment was reserved for the conclusion of the case. At the same time, plaintiff was having difficulty locating and serving defendant Bonvetti with its complaint. After obtaining two extensions for service,

plaintiff succeeded in serving defendant Bonvetti in late October 2006.

On January 31, 2007, defendant Bonvetti moved for dismissal of plaintiff's claims against her pursuant to Fed. R. Civ. P. 12(b)(2), contending that she has no past or present connection to the state of Wisconsin. That unopposed motion is now before the court. Because defendant has averred facts from which it is impossible to conclude that she is subject to jurisdiction in this court, and plaintiff has come forward with no contradictory evidence, the motion will be granted.

When a party files a motion to dismiss for lack of personal jurisdiction, the court has two options. It may hold a hearing or issue a ruling based on the parties' written submissions. When the court holds an evidentiary hearing to determine jurisdiction, the plaintiff must establish jurisdiction by a preponderance of the evidence. Purdue Research Foundation v. Sanofi-Synthelabo, S.A., 338 F.3d 773, 782 (7th Cir. 2003); Hyatt International Corp. v. Coco, 302 F.3d 707, 713 (7th Cir. 2002). However, when the district court rules on a defendant's motion to dismiss based on the submission of written materials, without the benefit of an evidentiary hearing, the plaintiff "need only make out a prima facie case of personal jurisdiction." Id.

In evaluating whether the prima facie standard has been satisfied, the plaintiff "is entitled to the resolution in its favor of all disputes concerning relevant facts presented in the record." Purdue Research Foundation, 338 F.3d at 782; see also RAR, Inc. v. Turner

Diesl, Ltd., 107 F.3d 1272, 1275 (7th Cir. 1997). However, in this case, plaintiff has chosen not to oppose defendant Bonvetti's motion. By doing so, I understand plaintiff to concede that the facts she alleges in her affidavit are true. Therefore, I draw the following jurisdictional facts (meager though they are) from defendant Bonvetti's affidavit in support of her motion to dismiss and from the allegations of plaintiff's complaint, when uncontradicted by other evidence.

FACTUAL ALLEGATIONS

Plaintiff The Wisconsin Cheeseman, Inc., d/b/a Scott's of Wisconsin, is a Wisconsin corporation with its principal place of business in Sun Prairie, Wisconsin.

Defendant Diane Bonvetti is a citizen of Delaware. She has never entered the state of Wisconsin for any purpose and has no assets located in Wisconsin. She "never personally" entered into a contract or agreement with plaintiff or with any other Wisconsin business. The signature bearing her name that appears on the Individual Guarantee Agreement is not her own. Until 2006, defendant Bonvetti was unaware of the existence of the Individual Guarantee Agreement. Defendant Bonvetti has never performed services on plaintiff's behalf. Defendant Bonvetti has never operated, conducted, engaged in, or carried on a business in Wisconsin or had an office or agency in the state. No agent or representative of hers has ever conducted any such activities on her behalf.

OPINION

Personal jurisdiction is “an essential element of the jurisdiction without which the court is “powerless to proceed to an adjudication” of the merits of a lawsuit. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 584 (1999) (citing Employers Reinsurance Corp. v. Bryant, 299 U.S. 374, 382 (1937)). A federal court has personal jurisdiction over a non-consenting, nonresident defendant if a court of the state in which that court sits would have jurisdiction over the lawsuit. Giotis v. Apollo of the Ozarks, Inc., 800 F.2d 660, 664 (7th Cir. 1986). Under Wisconsin law, determining whether personal jurisdiction may be exercised requires a two-step inquiry. First, the court must determine whether defendants are subject to jurisdiction under Wis. Stat. § 801.05, Wisconsin’s long-arm statute. Kopke v. A. Hartrodt S.R.L., 2001 WI 99, ¶ 8, 245 Wis. 2d 396, 629 N.W.2d 662. Then, if the statutory requirements are satisfied, the court must consider whether the exercise of jurisdiction comports with due process requirements. Id. Plaintiff bears the minimal burden of making a prima facie showing that constitutional and statutory requirements for the assumption of personal jurisdiction are satisfied. Id.

Wisconsin’s jurisdictional statute, Wis. Stat. § 801.05, authorizes courts in the state to exercise jurisdiction over nonresident defendants in a number of specified circumstances. Plaintiff does not identify in its complaint the subsection of Wis. Stat. § 801.05 under which it believes the court may exercise personal jurisdiction over defendant Bonvetti. None is

apparent. However, even if defendant Bonvetti were to fall within the ambit of the statute, her motion to dismiss would be granted.

Under Wisconsin law, finding that a defendant's activities come within the reach of the state's long-arm statute is just the first of a two-part inquiry. The second step requires a finding that exercise of jurisdiction over the defendant would not violate its due process rights. To determine whether jurisdiction over an out-of-state defendant comports with due process, a court looks to whether (1) the defendant purposefully directed her activities at residents of the forum state, (2) the claim arises out of or relates to the defendant's activities with the forum state, and (3) the assertion of personal jurisdiction is reasonable and fair. Electronics For Imaging, Inc. v. Coyle, 340 F.3d 1344, 1350 (Fed. Cir. 2003).

The crucial inquiry is whether the defendant's contacts with the state are such that she should reasonably anticipate being haled into court because she has "purposefully availed itself" of the privilege of conducting activities in the forum state, invoking the benefits and protections of the state's laws. International Medical Group, Inc. v. American Arbitration Association, Inc., 312 F.3d 833, 846 (7th Cir. 2002) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985)).

Personal jurisdiction comes in two forms: specific and general. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984). General jurisdiction exists only when a party has "continuous and systematic" contacts with the forum state. Helicopteros

Nacionales de Colombia, S.A., 466 U.S. at 416. When general jurisdiction exists, a party may be sued in the forum state on any matter, even one unrelated to the party's contacts with the state. Id. Because the consequences of finding general jurisdiction are more far-reaching than those flowing from a finding of specific jurisdiction, the constitutional standard for general jurisdiction is considerably more stringent than the standard for specific jurisdiction. Purdue Research Foundation, 338 F.3d at 787; Bancroft & Masters, Inc. v. Augusta National Inc., 223 F.3d 1082, 1086 (9th Cir. 2000) (general jurisdiction "requires that the defendant's contacts be of the sort that approximate physical presence"). In this case, defendant Bonvetti has never been to Wisconsin, much less established an ongoing presence here. Consequently, general jurisdiction does not exist.

Specific jurisdiction is established when a lawsuit "arises out of" or is "related to" a party's minimum contacts with the forum state. Requiring a nexus between a party's contacts and the parties' dispute adds a degree of predictability to the legal system by allowing potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit. Hyatt International Corp., 302 F.3d at 716. The reason for this is simple:

Potential defendants should have some control over—and certainly should not be surprised by—the jurisdictional consequences of their actions. Thus, when conducting business with a forum in one context, potential defendants should not have to wonder whether some aggregation of other past and future contacts will render them liable to suit there.

Id.

It is not entirely clear why the name and signature that defendant Bonvetti avers are not her own appear on the Individual Guarantee Agreement. She has not provided an explanation *why* she was unaware of the contract entered into by defendant Dinorscia (whose relationship to her is unknown), only that she *was* unaware. Again, because plaintiff has made no effort to stand by the allegations of its complaint or otherwise demonstrate that defendant Bonvetti knowingly engaged in a business relationship with it, I will consider the facts averred in her affidavit as undisputed. Defendant Bonvetti avers that she has never engaged in business relations with plaintiff and that she had never heard of plaintiff before 2006. She has never performed any services on plaintiff's behalf or asked plaintiff to perform any services for her.

In short, defendant Bonvetti has not purposefully directed any activities toward the state of Wisconsin. The parties' present dispute cannot arise out of or relate to defendant Bonvetti's activities within this state because she has not engaged in any. Furthermore, it would be both unreasonable and unfair to require her to defend herself in a forum to which she is connected only by the filing of this lawsuit. Because plaintiff has not met its burden of showing that this court may exercise personal jurisdiction over her, defendant Bonvetti's motion to dismiss will be granted.

One last matter requires attention. On September 5, 2006, default was entered against respondent Dinorscia because of his failure to appear in this lawsuit. However, judgment was not entered at that time. Under Fed. R. Civ. P. 55(b)(2) the court is required to determine damages before entering default judgment against any party. Therefore, I will schedule a hearing for Wednesday, March 21, 2007 at 8:30 a.m. to determine whether default judgment should be entered against defendant Disnorscia and, if so, in what amount.

ORDER

IT IS ORDERED that defendant Diane Bonvetti's motion to dismiss plaintiff's claims against her for lack of personal jurisdiction is GRANTED.

FURTHER, IT IS ORDERED that a hearing be held on Wednesday, March 21, 2007, at 8:30 a.m. to determine whether default judgment should be entered against defendant Justin Disnorscia and, if so, in what amount.

Entered this 12th day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge