

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

COACH USA, INC. and
KEESHIN CHARTER SERVICE,
INC.,

Plaintiffs,

v.

VAN HOOL N.V.,

Defendant.

OPINION and ORDER

06-C-457-C

In this civil action for monetary relief, plaintiffs Coach USA, Inc. and Keeshin Charter Services, Inc. contend that defendant Van Hool N.V. is liable in tort for damage caused when a bus manufactured by Van Hool and leased to plaintiffs by former defendant Coach USA caught fire on July 15, 2005. Jurisdiction is present under 28 U.S.C. § 1332.

Presently before the court is defendant Van Hool N.V.'s unopposed motion to dismiss plaintiffs' claims against it under Fed. R. Civ. P. 12(b)(2), or in the alternative, under Rule 12(b)(6). The motion will be granted because defendant has had no contacts with Wisconsin that would permit this court to exercise personal jurisdiction over it.

From the facts alleged in the complaint, the parties' lease agreement and the facts

averred in the affidavit submitted by defendant, I find for the sole purpose of deciding this motion that the following facts are undisputed and material. Purdue Research Foundation v. Sanofi-Synthelabo, S.A., 338 F.3d 773, 782 (7th Cir. 2003) (court accepts all well-pleaded allegations in complaint as true, unless controverted by challenging party's affidavits; any conflicts concerning relevant facts are to be decided in favor of party asserting jurisdiction).

FACTUAL ALLEGATIONS

A. Parties

Plaintiff Coach USA, Inc. is a Delaware corporation with its principal place of business in Paramus, New Jersey.

Plaintiff Keeshin Charter Service, Inc. is an Illinois corporation with its principal place of business in Chicago, Illinois. It is a wholly owned subsidiary of plaintiff Coach USA.

Defendant Van Hool, N.V. is a foreign corporation organized under the laws of Belgium that manufactures motor coaches, transit buses and other commercial vehicles.

B. Defendant's Contacts with Wisconsin

_____ Defendant is located in Belgium. It does not conduct business, own property or have any employees or agents in Wisconsin. It has no registered agent for service of process

located in Wisconsin. (Defendant was served with the complaint in this case in Belgium.)

Defendant has never conducted business in Wisconsin. At no time has it entered into any contract with a Wisconsin resident or sold its products directly into Wisconsin.

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 the defendant is 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. Although several could conceivably cover defendant's alleged act of producing a defective vehicle that later caused injury to property in Wisconsin, see e.g., § 801.05(4)(a), plaintiff has not suggested which, if any, of the long-arm statutes provisions applies to this case. Moreover, even if the statute did reach defendant's activities, it is difficult to see how the exercise of personal jurisdiction over defendant could comport with due process.

Under Wisconsin law, finding that 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 them would not violate their due process rights. To make that finding, the court must be able to find that defendant "purposefully established minimum contacts in the forum State," Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985). If defendant did so, the court must then consider those contacts "in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" Id. at 476 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945)); Hyatt International Corp. v. Coco, 302 F.3d 707, 716 (7th Cir. 2002). The crucial inquiry is whether the defendant's contacts with the state are such that it should reasonably anticipate being haled into court because it 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, 471 U.S. at 474).

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 has no ongoing contact with Wisconsin; therefore, 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.

Although defendant manufactures buses, products that will foreseeably be used in interstate travel, that alone is not enough to establish personal jurisdiction over defendant in Wisconsin. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (“[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.”). Defendant is a Belgian corporation that sells no products in Wisconsin, has no registered agent or employees in Wisconsin and has never entered into a contract with anyone in Wisconsin. Defendant has done nothing to avail itself of the benefits of Wisconsin law and has no contacts with the state, however minimal. Consequently, defendant’s motion to dismiss for lack of personal jurisdiction will be granted. Because I conclude that this court lacks personal jurisdiction over defendant, I need not

address whether dismissal would be appropriate also under Fed. R. Civ. P. 12(b)(6).

ORDER

IT IS ORDERED that the motion to dismiss of defendant Van Hool, NV for lack of personal jurisdiction is GRANTED. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 10th day of January, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge