

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

VICTORY FIREWORKS, INC.,

Plaintiff,

v.

SCHNEIDER LOGISTICS, INC.,
SCHNEIDER NATIONAL CARRIERS, INC.,
FIREWORKS NORTHWEST, LLC and
SCOTT MILLER,

Defendants.

OPINION AND ORDER

12-cv-716-bbc

In June 2012, plaintiff Victory Fireworks, Inc. hired defendant Schneider Logistics, Inc. to transport a shipment of fireworks from plaintiff's warehouse in Ellsworth, Wisconsin to its retail store in Tulalip, Washington. Schneider Logistics retained defendant Schneider National Carriers, Inc. to transport the shipment, but the shipment never arrived at plaintiff's Washington store. Instead, according to plaintiff and the Schneider defendants, defendant Scott Miller, acting on behalf of his company defendant Fireworks Northwest, LLC, contacted Schneider National Carriers, Inc., represented himself as an agent of plaintiff and asked that the fireworks be delivered to Fireworks Northwest's warehouse. Plaintiff and the Schneider defendants contend that Miller and Fireworks Northwest accepted delivery of the shipment, knowing it was not intended for them, and sold all of the fireworks to third parties. Plaintiff has sued defendants Schneider Logistics and Schneider National Carriers

for losses under the Carmack Amendment, 49 U.S.C. § 14706, and defendants Miller and Fireworks Northwest for violations of Wisconsin state law. The Schneider defendants have filed a crossclaim against Miller and Fireworks Northwest for “intentional deceit” and conversion under state law.

Defendants Scott Miller and Fireworks Northwest, LLC have filed a motion to dismiss the claims against them for lack of personal jurisdiction. Dkt. #31. In the alternative, they argue that the case should be dismissed for improper venue under 28 U.S.C. § 1406 or transferred to the Western District of Washington under 28 U.S.C. § 1404. In response, plaintiff and the Schneider defendants argue that Miller and Fireworks Northwest, LLC are subject to personal jurisdiction in this district, that venue is proper and that the case should not be transferred. However, neither plaintiff nor the Schneider defendants have shown that defendants Miller and Fireworks Northwest, LLC are subject to personal jurisdiction in this district. Therefore, I am granting the motion to dismiss the claims against Miller and Fireworks Northwest, LLC.

OPINION

Plaintiff has the burden to show that subjecting defendants Miller and Fireworks Northwest to suit in this state is consistent with both Wisconsin's long arm statute, Wis. Stat. § 801.05, and the due process clause. Purdue Research Foundation v. Sanofi-Synthelabo, S.A., 338 F.3d 773, 782 n.11 (7th Cir. 2003); Hyatt International Corp. v. Coco, 302 F.3d 707, 713 (7th Cir. 2002); Giotis v. Apollo of the Ozarks, Inc., 800 F.2d

660, 664 (7th Cir. 1986). Because the Schneider defendants asserted cross-claims against Miller and Fireworks Northwest, they also must show that personal jurisdiction exists. At this stage of the proceedings, plaintiff and the Schneider defendants must adduce enough evidence to make a prima facie showing that Wisconsin has jurisdiction over Miller and Fireworks Northwest. Central States, Southeast and Southwest Areas Pension Fund v. Phencorp Reinsurance Co., Inc., 440 F.3d 870, 876-77 (7th Cir. 2006) (when motion is decided on written submissions, question is whether plaintiff has “established a prima facie case for personal jurisdiction, such that it should [be] allowed to conduct discovery”).

Plaintiff did not include any allegations regarding personal jurisdiction in its complaint and the Schneider defendants included no such allegations in their cross-claim. In support of their motion to dismiss, Miller and Fireworks Northwest submitted an affidavit from Miller stating that neither Miller nor Fireworks Northwest has contacts with Wisconsin. Dkt. #33. Miller resides in Washington state, Fireworks Northwest has its principal place of business in Washington and they order their fireworks from distributors in Texas and Missouri. Miller has contacted Schneider Logistics regarding shipments of goods, but it does so through a Schneider representative in Oregon, not Wisconsin. Id.

Neither plaintiff nor the Schneider defendants submitted any evidence in support of their briefs in opposition showing that Miller and Fireworks Northwest have conducted business in Wisconsin or that they have any contacts with Wisconsin. They cite § 801.05(5)(d) of the long arm statute, which authorizes jurisdiction when the action “[r]elates to goods, documents of title, or other things of value shipped from this state by the

plaintiff to the defendant on the defendant's order or direction.” Wis. Stat. § 801.05(5)(d). Plaintiff argues in its opposition brief that § 801.05(5)(d) applies because defendants Miller and Fireworks Northwest contacted Schneider National Carriers, a Wisconsin corporation, and “fraudulently re-routed the delivery of Plaintiff’s shipment” to Fireworks Northwest’s own warehouse. Plt.’s Br., dkt. #39, at 3-4. Similarly, the Schneider defendants argue that § 801.05(5)(d) applies because Miller and Fireworks Northwest “directed” the shipment of goods from plaintiff to themselves. Schneider Br., dkt. #40, at 5-6. Plaintiff and the Schneider defendants also argue that Miller and Fireworks Northwest anticipated being haled into court in Wisconsin because “the physical change of the delivery location of the fireworks” was made by a sales representative for Schneider National “while he was sitting in his office located in Green Bay, Wisconsin.” Schneider Br., dkt. #40, at 8-9; Plt.’s Br., dkt. #39, at 4.

I am not persuaded that § 801.05(5)(d) applies in this situation. Neither plaintiff nor the Schneider defendants cite any case in which a court applied § 801.05(5)(d) to facts similar to those in this case. Typically, this section applies to situations in which an out-of-state defendant orders goods from a company to be shipped from Wisconsin to the defendant. E.g. Johnson Litho Graphics of Eau Claire, Ltd. v. Sarver, 2012 WI App 107, ¶¶ 11-12, 344 Wis. 2d 374, 387, 824 N.W.2d 127, 133; Wausau Container Corp. v. Westview Packaging, LLC, 2010 WL 4531407, *3 (E.D. Wis. Nov. 2, 2010); Kuhn Knight, Inc. v. VMC Enterprises, Inc., 464 F. Supp. 2d 806, 811 (W.D. Wis. 2006); Leer Manufacturing Co. v. Arctic Ice, 135 Wis. 2d 541, 401 N.W.2d 27 (Ct. App. 1986). As the Wisconsin

Supreme Court has explained, § 801.05(5) requires “some degree of consensual privity between the plaintiff and defendant with respect to the action brought. . . [T]he basis for personal jurisdiction is . . . that the defendant has entered some consensual agreement with the plaintiff which contemplates a substantial contact in Wisconsin.” Afram v. Balfour, Maclaine, Inc., 63 Wis. 2d 702, 709, 218 N.W. 2d 288, 292 (1974). In particular, § 801.05(5)(d) contemplates a “promise to deliver . . . goods, documents or title, or other things of value” by the plaintiff from Wisconsin. Id. at 710.

In this case, there are no allegations that defendants Miller and Fireworks Northwest entered into any consensual or contractual relationship with plaintiff or anyone else to ship fireworks from Wisconsin to Washington. Instead, plaintiff alleges that it contracted with Schneider to ship fireworks from its Wisconsin location to its Washington store. Miller and Fireworks Northwest were not involved in the transaction. Assuming plaintiff’s allegations are true, Miller contacted Schneider and rerouted the shipment while it was already en route. Although the route change may have been entered by an employee in Wisconsin, there is no allegation that Miller contacted a Schneider representative in Wisconsin or that Miller knew he was rerouting a shipment from Wisconsin. There is certainly no allegation that there was any “degree or consensual privity” or agreement between Miller or Fireworks Northwest and plaintiff regarding the goods. Therefore, § 801.05(5)(d) does not support the exercise of personal jurisdiction.

In addition, exercising jurisdiction over defendants Miller and Fireworks Northwest would be inconsistent with the due process clause, which requires that the defendant have

“certain minimum contacts with [the forum state] such 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) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). Contacts are not sufficient unless the defendant has “purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Hanson v. Denckla, 357 U.S. 235, 253 (1958). Stated another way, the question is whether the defendant has obtained a benefit from Wisconsin or inflicted an injury on one of its citizens that would lead him to reasonably anticipate being haled into court here. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

Personal jurisdiction under the due process clause is divided into two types, general and specific. Mobile Anesthesiologists Chicago, LLC v. Anesthesia Associates of Houston Metroplex, P.A., 623 F.3d 440, 444 (7th Cir. 2010). General jurisdiction means that the defendant “may be called into court there to answer for any alleged wrong, committed in any place.” uBID, Inc. v. GoDaddy Group, Inc., 623 F.3d 421, 425-26 (7th Cir. 2010). This “is a demanding standard that requires the defendant to have such extensive contacts with the state that it can be treated as present in the state for essentially all purposes.” Id. Neither plaintiff nor the Schneider defendants suggest that they can meet that standard as to defendants Miller and Fireworks Northwest.

The question for specific jurisdiction is whether the 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.

Plaintiff and Schneider's only arguments regarding defendants Miller and Fireworks Northwest's contacts with Wisconsin are that these defendants "knowingly contact[ed] a Wisconsin corporation," "intentionally redirect[ed] a shipment that originated from the State of Wisconsin," and "knowingly and intentionally attempt[ed] to defraud two companies [they] knew to be Wisconsin corporations." Plt.'s Br., dkt. #39, at 6. See also Schneider Br., dkt. #40, at 7-9. Miller and Fireworks Northwest's alleged actions are not sufficient to satisfy due process because none of them actually show that Miller or Fireworks Northwest had contacts with Wisconsin. At most, these allegations suggest that plaintiff and the Schneider defendants have connections with Wisconsin and that the goods at issue in this case originated in Wisconsin. There are no allegations or evidence suggesting that Miller or Fireworks Northwest "purposefully avail[ed] [themselves] of the privilege of conducting activities within the forum State" such that they would have reasonably anticipated being haled into court here.

The Schneider defendants ask that, in the event the court is not persuaded by their arguments, the court allow them to conduct “limited discovery” on the question of defendants Miller and Fireworks Northwest’s Wisconsin contacts. That request will be denied. Discovery is appropriate when there is a threshold showing that further investigation is reasonably likely to uncover contacts with the state sufficient to satisfy the due process clause. GCIU-Employer Retirement Fund v. Goldfarb Corp., 565 F.3d 1018, 1026 (7th Cir. 2009) (“In order to garner discovery, ‘[a]t a minimum, the plaintiff must establish a colorable or prima facie showing of personal jurisdiction.’”) (quoting Central States, Southeast and Southwest Areas Pension Fund v. Reimer Express World Corp., 230 F.3d 934, 946 (7th Cir. 2000)). It is not appropriate to allow parties to go on a fishing expedition when they did not have a good faith basis for believing before they filed suit that defendants Miller and Fireworks Northwest could be sued here.

Finally, I note that in some situations, it may be appropriate to transfer a case to a court that can exercise jurisdiction over all of the parties rather than dismiss only some of the defendants. However, neither plaintiff nor the Schneider defendants made arguments in favor of transfer. Therefore, I am dismissing defendants Miller and Fireworks Northwest from the suit. Plaintiff and the Schneider defendants will have to decide whether they want to pursue two separate lawsuits or refile their claims in a court that can exercise personal jurisdiction over Miller and Fireworks Northwest.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendants Fireworks Northwest, LLC and Scott Miller, dkt. #31, is GRANTED. The claims against Miller and Fireworks Northwest, LLC are DISMISSED without prejudice for lack of personal jurisdiction.

Entered this 23d day of May, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge