

IN THE COURT OF COMMON PLEAS

FILED

LAKE COUNTY, OHIO

2015 DEC 23 P 1:42

STATE FARM FIRE & CASUALTY
COMPANY

MAUREEN G. KELLY
LAKE CO. CLERK OF COURT

Plaintiff,

CASE NO. 15 CV 000451

vs.

OPINION AND JOURNAL ENTRY

MIFLEX 2 S.R.L., et al.

December 23, 2015

Defendants.

This matter is before the court to address defendant Miflex 2 S.R.L.'s (Miflex) motion to dismiss plaintiff's complaint against it pursuant to Civ.R. 12(b)(2) (lack of personal jurisdiction). Plaintiff State Farm Fire & Casualty Company (State Farm) filed a brief in opposition followed, in turn, by a reply brief by Miflex.

This case arose when a water supply hose to a washing machine failed in 2013, causing substantial damage to a residence. The washing machine was a GWL15 manufactured by Fisher & Paykle Appliance, Inc. (a business based in New Zealand) and sold by Bloom Brothers Supply, Inc. (based in Chesterland, Ohio) to the owner of the residence in 2006. The water supply hose was manufactured by Miflex, a business entity organized under the laws of the Republic of Italy with its headquarters and principal place of business located at Strada Provinciale 7 Per Lesmo, 4 20058 Villasanta (MB) Italy. State Farm was the insurer, assignee and subrogee of the owner of the residence. State Farm sued Miflex claiming the water supply house was defective in design and formulation pursuant to R.C. 2307.75 when it was introduced into the stream of commerce. Miflex moved to dismiss the complaint against it arguing that it has not transacted any business in Ohio, that it did not purposefully direct its products to Ohio and that it had not committed a tortious act that has effects in Ohio. It claims that the 'stream of commerce' theory is inapplicable in this case. Included in its motion is an affidavit from the managing director of Miflex.

When a defendant moves to dismiss a complaint for lack of personal jurisdiction pursuant to Civ.R. 12(B)(2), the plaintiff has the burden of making a prima facie showing of personal jurisdiction. *Arrow Machine Co., Ltd. v. Array Connector Corp.*, 11th Dist. Lake No. 2008-L-161, 2009-Ohio-1439, ¶ 32. A trial court is not confined to the allegations of the complaint in

reviewing a motion to dismiss for lack of personal jurisdiction. *Id.* The court may hear the matter on affidavits, depositions, interrogatories, or receive oral testimony. *Id.* If a court holds no evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdiction to withstand a motion to dismiss. *Id.* at ¶ 33. If the plaintiff produces evidence from which reasonable minds could find personal jurisdiction, the court must refuse dismissal, absent an evidentiary hearing. *Id.* When a court decides the motion without a hearing, it is to view the allegations in the pleadings and the documentary evidence in a light most favorable to the plaintiffs, resolving all reasonable competing inferences in their favor. *Id.* citing *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 236, 638 N.E.2d 541 (1994).

When determining whether an Ohio court has personal jurisdiction over a nonresident defendant, courts are obligated to engage in a two-step analysis and thus determine: (1) whether the state's 'long arm' statute and applicable rule of civil procedure confer personal jurisdiction; and if so (2) whether granting jurisdiction under the statute and rule would deprive the defendant of the right to due process of law under the Fourteenth Amendment to the United States Constitution. *LaFarge N. Am., Inc. v. Forbes*, 11th Dist. Trumbull No. 2008-T-0034, 2008-Ohio-5864, ¶ 15; *Kopas v. MTR Gaming Group*, 11th Dist. Portage No. 2013-P-0053, 2014-Ohio-1157, ¶ 10.

State Farm argues that personal jurisdiction over Miflex is proper under R.C. 2307.382(A)(1). R.C. 2307.382(A)(1) provides that a court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's transacting any business in this state. Transacting business is broad and encompasses more than a contract. *Akro-Plastics v. Drake Industries*, 11th Dist. Portage No. 99-P-0124, 2001 WL 435408, at *4, citing *Kentucky Oaks Mall Co., v. Mitchell's Formal Wear, Inc.* 53 Ohio St.3d 73, 75, 559 N.E.2d 477 (1990). The Ohio Supreme Court has broadly defined "transacting business" to include conducting negotiations, carrying on a business and having dealings. *Kentucky Oaks Mall Co.* Because the definition is so broad, cases involving questions of what constitutes "transacting business" have been resolved on highly particularized facts that do not lend themselves to generalization. *Goldstein*.

In this case, the court cannot conclude that Miflex transacted business in the State of Ohio. Miflex has no manufacturing or distribution facilities in the United States. It does not transact or conduct any business in Ohio. It does not maintain an office in Ohio and does not own, rent or use any real property in Ohio. It has no employees, agents or other physical presence in Ohio. It has never conducted any business in Ohio. It does not advertise, import, distribute or sell any products in Ohio and has never paid any Ohio taxes. It has not contracted to provide services or goods in Ohio. Contracts between Miflex and its customers, including Fisher &

Paykle, which is based in New Zealand, specifically state that the sale is deemed to be “ex works” meaning that the point of sale and delivery of the products manufactured by Miflex will be at its facility and the customer is responsible to accepting and transporting the products away from Miflex’s facility. It does not design or control the system of distribution which carries any of its products and has no distribution agreement with any distributor in the United States. It did not design or target its products for any specific market in the State of Ohio.

This court also finds that exercising personal jurisdiction over Miflex would deprive Miflex of due process under the second step of the personal jurisdictional analysis. A court may exercise jurisdiction over a nonresident defendant only if the defendant has sufficient “minimum contacts” with Ohio so that summoning the defendant would not offend “traditional notions of fair play and substantial justice.” *Internatl. Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed.2d 95 (1945). In order to establish jurisdiction in keeping with due process, the plaintiff must demonstrate that (1) the non-resident defendant purposefully availed itself of the privilege of acting in the forum state or caused a consequence in that state; (2) the cause of action arose from the defendant’s activities in the forum state; and (3) the defendant’s acts or consequences caused by the defendant had a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable. *Lucas v. P & L Paris Corp.*, 7th Dist. Mahoning No. 11-MA-104, 2012-Ohio-4357, ¶ 31.


As discussed above, Miflex did not purposefully avail itself of the privilege of acting in the forum state and the cause of action did not arise from its activities in Ohio. State Farm alleges in count one of its complaint that the hose was defective in design or manufacture at the time it left the hands of Miflex and that at the time of its failure, it had not been materially altered or changed. There is no evidence that Miflex purposely directed its product toward Ohio or that it was even aware that its product would be purchased by a consumer in Ohio. The presence of its product in Ohio is more the result of a random, fortuitous or attenuated contact rather than a purposeful act by Miflex to direct the product towards Ohio.

State Farm argues that Miflex, by placing its product into the stream of commerce, established minimum contacts with Ohio such that summoning it would not violate due process. “Stream of commerce” refers to the movement of goods from manufacturers through distributors to consumers. *J. McIntyre Machinery, Ltd. v. Nicaastro*, ____ U.S. ____, 131 S.Ct. 2760, 2788, 180 L.Ed.2d 765 (2011). Placing goods into the stream of commerce with the expectation that they will be purchased by consumers within the forum state may indicate purposeful availment. *Nicaastro*. Essentially, State Farm argues that as long as Miflex was aware that its product might be marketed in Ohio, the possibility of a lawsuit in Ohio could not be a surprise. Miflex argues

that merely because the stream of commerce may or will sweep it product into Ohio does not mean that it purposely directed the product towards Ohio. This court agrees. There is no evidence that Miflex designed the product for an Ohio market, advertised in Ohio, or marketed the product through a distributor who has agreed to serve as the sales agent in Ohio. Likewise there is no evidence that Miflex was aware that its product would end up in Ohio. At no time did Miflex engage in any activities in Ohio that revealed an intent to invoke or benefit from the protection of its laws. Accordingly, the exercise of jurisdiction would violate due process. See, e.g. *Nicastro*, 131 S.Ct. at 2791.

Defendant Miflex 2 S.R.L.'s motion to dismiss plaintiff's complaint against it pursuant to Civ.R. 12(b)(2) is granted.

IT IS SO ORDERED.



RICHARD L. COLLINS, JR.
Judge of the Court of Common Pleas

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