SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2362-21

RICARDO ORTIZ,

Plaintiff-Respondent,

v.

BRANER USA, INC., a/k/a, f/k/a, d/b/a BRANER ENGINEERING INC.,

Defendant-Appellant,

and

ENGLERT, INC.,

Defendant.

———————————————————

Submitted October 11, 2022 – Decided November 9, 2022

Before Judges Whipple, Mawla and Smith.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-1604-21.

Kinney Lisovicz Reilly & Wolff PC, attorneys for appellant (Justin N. Kinney, of counsel and on the briefs; Gerald William DeLaney, on the briefs).

Chasan Lamparello Mallon & Cappuzzo, PC, attorneys for respondent (Peter L. MacIsaac, of counsel and on the brief).

PER CURIAM

Defendant Braner USA Inc. (Braner) appeals from a November 3, 2021 interlocutory order denying its motion to dismiss for lack of personal jurisdiction. We remand for further findings.

H.R. Braner Engineering, Inc. (HRBE), now defunct, was incorporated and maintained its principal place of business in Illinois. In 1983, HRBE manufactured and sold a slitter machine to a company in California. This machine was ultimately re-sold to a company in New Jersey—Englert, Inc. (Englert)—and allegedly caused plaintiff Ricardo Ortiz's injuries. HRBE was not involved in the resale to New Jersey.

In 1987, Repco Metal Center Machine, Inc. (Repco) was incorporated in Illinois. Repco entered into an Asset Purchase Agreement with HRBE, and the combined companies changed their name to Braner USA, Inc. Each of these companies has manufactured and sold "customized slitting systems that cut large rolls of metal coil into smaller strips or slits."

Braner argues it did not assume all of HRBE's liabilities—specifically, it did not assume any liability "arising out of previously manufactured products." Braner also maintains it has had limited contact with New Jersey since its inception. However, Braner has made four sales within New Jersey between 2007 to 2021, and Repco/Braner made three sales within our state prior to 2007. None of these sales included the slitter machine in question or involved Englert. The four sales defendant made to New Jersey companies between 2007-2021 totaled $1,090,000, which Braner claims accounts for "less than half of one percent of all [its] sales."

Plaintiff was injured by a slitter machine, originally manufactured by HRBE, while working for Englert in New Jersey. He filed a complaint against Braner for violations of the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1 to -7. Braner moved to dismiss the claim for lack of personal jurisdiction.

On November 3, 2021, the judge denied Braner's motion finding it "manufactured, sold, designed and/or participated in the production of commerce directed at New Jersey" and "by its own admission affirmatively markets, sells and services in New Jersey, and, thus, specific jurisdiction is appropriate."

We denied Braner's motion for to leave to file an interlocutory appeal. Our Supreme Court, however, granted Braner's motion for leave to apppel, and remanded the matter to us for consideration. Therefore, we now address Braner's arguments, which are as follows:

> POINT ONE: THE MOTION JUDGE'S CONCLUSION THAT THE COURT HAD JURISDICTION OVER BRANER USA BASED ON THE "STREAM OF COMMERCE" THEORY IS UNCONSTITUTIONAL.
>
> POINT TWO: THE MOTION JUDGE ERRED IN FINDING FACTS THAT DO NOT EXIST.
>
> POINT THREE: THE MOTION JUDGE ERRED AS A MATTER OF LAW BECAUSE THE NEW JERSEY COURTS LACK PERSONAL JURISDICTION OVER BRANER USA.

We conclude the record contains insufficient findings of fact to evaluate at least some of the above arguments, and we remand for additional findings as explained below.

I.

Personal jurisdiction involves "mixed question[s] of law and fact." Patel v. Karnavati Am., LLC, 437 N.J. Super. 415, 423 (App. Div. 2014) (quoting Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996)). We therefore "examine whether the trial court's factual findings are supported

by substantial, credible evidence in the record." Ibid. (internal quotation marks omitted) (quoting Mastondrea v. Occidental Hotels Mgmt. S.A., 391 N.J. Super. 261, 268 (App. Div. 2007)). "However, whether these facts support the court's exercise of personal jurisdiction over a defendant is a question of law, which we review de novo." Ibid. (internal quotation marks omitted) (quoting YA Global Invs., L.P. v. Cliff, 419 N.J. Super. 1, 8 (App. Div. 2011)).

II.

Rule 4:4-4, New Jersey's "long arm" jurisdiction statute, vests our courts with personal jurisdiction over out-of-state entities to the outer limits permitted by federal due process. Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971). Due process requires a foreign defendant "have certain minimum contacts with [a state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Lebel v. Everglades Marina, Inc., 115 N.J. 317, 322 (1989) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). When a cause of action relates to particular contacts within a state, the exercise of jurisdiction is said to be "specific." On the other hand, "general" jurisdiction subjects a defendant to suit on unrelated claims—but only if the defendant's activities are "continuous and systematic"

such that the defendant is essentially at home in New Jersey. Lebel, 115 N.J. at 323.

Here, the motion judge exercised specific jurisdiction, so we confine our review to that issue. Specific jurisdiction is appropriate where a defendant "purposely avails 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, 254 (1958) (quoting Int'l Shoe Co., 326 U.S. at 319). Any inquiry into whether a defendant has had minimum contacts with our State should be centered around "the relationship among the defendant, the forum, and the litigation." Lebel, 115 N.J. at 323 (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). Said contacts must be "purposeful" to the extent that "the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." Id. at 324 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). Finally, the cause of action "must arise[] out of or relate[] to the defendant's contacts with the forum." Daimler AG v. Bauman, 571 U.S. 117, 127 (2014) (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n.8 (1984)).

The sale of complex, high value items to sophisticated buyers within our State can satisfy the purposeful availment component of the minimum contacts test. See Lebel, 115 N.J. at 330. Sometimes, courts have used the phrase "stream of commerce" as shorthand to describe the practice of broadly retailing products "with the expectation that they will be purchased by consumers in the forum State." J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 881-82 (2011) (quoting World-Wide Volkswagen Corp., 444 U.S. at 278). Nicastro clarified that this theory is relevant insofar as it informs the traditional "purposeful availment" standard. Id. at 882. "The defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State." Ibid. As such, use of the term "stream of commerce" does not automatically render a finding invalid. We reject defendant's argument that the motion judge's mere mention of the phrase "stream of commerce" is disqualifying.

Our main inquiry remains whether there was "purposeful availment," and to that end, the Supreme Court's recent decision in Ford Motor Company v. Montana Eighth Judicial District Court is instructive. 141 S. Ct. 1017 (2021). Ford concerned the sale of an allegedly defective car to a consumer in

Washington State, which was then subsequently sold as a used car to a buyer in Montana. Id. at 1023. Ford argued that because the car at issue had not been designed, manufactured, or sold by Ford in Montana, the company had not "purposefully" availed itself of the Montana market, and therefore, was not subject to specific jurisdiction there. Id. at 1022-24.

The Court rejected this argument. "[W]e have never framed the specific jurisdiction inquiry as always requiring proof of causation—i.e., proof that the plaintiff's claim came about because of the defendant's in-state conduct." Id. at 1026. Instead, specific jurisdiction attaches when a company "serves a market for a product in the forum State and the product malfunctions there," even if the specific product at issue was not originally sold within the State. Id. at 1027. Therefore, Montana could properly exercise specific jurisdiction over Ford because the company marketed, sold, and serviced the same model of vehicle within that state, and enjoyed the benefits and protection of that State's laws vis-a-vis that product. Id. at 1029, 1032.

We conclude that Ford may indeed control this case, but the record contains insufficient factual findings for us to properly evaluate the motion judge's decision at present. Two important questions remain unanswered by the motion judge's opinion: 1) whether the slitter at issue, manufactured by

HRBE, is substantially the same "product" as the subsequent slitters sold by Braner to New Jersey customers; and 2) whether Braner assumed HRBE's liability for the slitter, either on a theory of successor liability or otherwise. As the record does not provide us with the answers to these key questions, we must remand the case to the trial court for further consideration.

Remanded for factual findings consistent with this opinion. We do not retain jurisdiction.