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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3001-21**

DANIEL GINZBURG, on behalf
of P.G., a minor,

Plaintiff-Appellant,

v.

GOLDEN ARROW, LLC, a/k/a
GOLDEN ARROW LAKESIDE
RESORT,

Defendant-Respondent.

Argued September 11, 2023 – Decided September 25, 2023

Before Judges Sabatino, Marczyk, and Chase.

On appeal from the Superior Court of New Jersey, Law
Division, Middlesex County, Docket No.
DC-002481-21.

Daniel Ginzburg, appellant, argued the cause pro se.

Edward Testino argued the cause for respondent
(Edward Testino, LLC, attorney; Edward Testino, on
the brief).

PER CURIAM

Plaintiff Daniel Ginzburg, on behalf of P.G., a minor, appeals from the April 29, 2022 trial court order dismissing plaintiff's complaint for lack of personal jurisdiction and under the doctrine of forum non conveniens. Based on our review of the record and the applicable legal principles, we vacate and remand for further proceedings.

I.

In 2019, plaintiff registered his son, P.G., to participate in a hockey tournament in Lake Placid, New York, through CAN/AM. CAN/AM is an organization that hosts hockey tournaments throughout the country. As part of CAN/AM's tournament package, plaintiff obtained lodging in Lake Placid at defendant's hotel, Golden Arrow, LLC ("Golden Arrow").

On March 7, 2020, P.G. and his friends were engaged in a game of "knee hockey" in a hallway at Golden Arrow. An employee of defendant allegedly approached P.G. and physically removed a miniature hockey stick from him. Plaintiff contends the physical removal of the hockey stick was an assault and battery upon P.G.

In March 2021, plaintiff filed a complaint in the Special Civil Part against defendant. Thereafter, the parties completed discovery.¹ Defendant then filed a motion to dismiss plaintiff's complaint for lack of personal jurisdiction. The parties filed competing certifications addressing the jurisdictional issues. The trial court granted defendant's motion by order dated April 29, 2022. The order contained a brief addendum stating:

The motion is granted for the following reasons: 1) The incident occurred in New York, all the witnesses, except for the plaintiffs, live in New York, and the case is governed by New York tort law; and 2) the only contacts with New Jersey are with the non-party CAN[/]AM, and there is no indication that the [d]efendant has any degree of control over CAN[/]AM sufficient to make it the "agent" of the [d]efendant. Therefore[,] the complaint is dismissed under the doctrine of forum non conveniens and for lack of jurisdiction.

This appeal followed.

¹ As discussed below, because defendant did not file a motion to dismiss based on a lack of personal jurisdiction until the close of discovery, the parties did not engage in jurisdictional discovery.

II.

A.

Plaintiff primarily argues the motion court had specific jurisdiction over defendant because, acting through CAN/AM, defendant purposefully directed its activities at New Jersey.² In the alternative, plaintiff asserts there are significant facts in dispute which required a plenary hearing to resolve the jurisdictional dispute.

The question of personal jurisdiction involves a mixed question of law and fact. Zahl v. Eastland, 465 N.J. Super. 79, 92 (App. Div. 2020). We will not disturb a trial court's factual findings concerning jurisdiction if they are supported by substantial credible evidence. Rippon v. Smigel, 449 N.J. Super. 344, 358 (App. Div. 2017). We review de novo the legal aspects of personal jurisdiction. Ibid. (citing Mastondrea v. Occidental Hotels Mgmt. S.A., 391 N.J. Super. 261, 268 (App. Div. 2007)). Moreover, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not

² Plaintiff asserts defendant earned \$80,000 in revenue stemming from CAN/AM's solicitation of New Jersey residents and entities for this particular tournament. We make no finding here as to whether that computation is accurate.

entitled to any special deference [on appeal]." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

New Jersey courts "may exercise in personam jurisdiction over a non-resident defendant 'consistent with due process of law.'" Bayway Refin. Co. v. State Utils., Inc., 333 N.J. Super. 420, 428 (App. Div. 2000) (alterations omitted) (quoting R. 4:4-4(b)(1)). Our courts exercise jurisdiction over nonresident defendants "to the uttermost limits permitted by the United States Constitution." Jardim v. Overley, 461 N.J. Super. 367, 377 (App. Div. 2019) (quoting Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971)).

A two-part test governs the analysis of personal jurisdiction: (1) defendant must have "certain minimum contacts" with the forum state, and (2) maintaining the suit in that state cannot offend "traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). "[T]he requisite quality and quantum of contacts is dependent on whether general or specific jurisdiction is asserted" Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 526 (App. Div. 1996).

General jurisdiction exists when the plaintiff's claims arise out of the defendant's "continuous and systematic" contacts with the forum state.

Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 416 (1984); Baanyan Software Servs., Inc. v. Kuncha, 433 N.J. Super. 466, 474, 478 (App. Div. 2013). For general jurisdiction to attach, a defendant's activities must be "so continuous and systematic as to render [it] essentially at home in the forum State." FDASmart, Inc. v. Dishman Pharm. & Chems., Ltd., 448 N.J. Super. 195, 202 (App. Div. 2016) (alteration in original) (internal quotation marks omitted) (quoting Daimler AG v. Bauman, 571 U.S. 117, 127 (2014)).³

Specific jurisdiction is available when the "cause of action arises directly out of a defendant's contacts with the forum state" Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 119 (1994). In examining specific jurisdiction, the "minimum contacts inquiry must focus on 'the relationship among the defendant, the forum, and the litigation.'" Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). "The 'minimum contacts' requirement is satisfied [if] . . . the contacts resulted from the defendant's purposeful conduct and not the unilateral activities of the plaintiff." Ibid. (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291, 297-98 (1980)). "In determining whether the defendant's contacts are

³ Although plaintiff asserts there is general jurisdiction in its preliminary statement, only specific jurisdiction is addressed in the point headings.

purposeful, a court must examine the defendant's 'conduct and connection' with the forum state and determine whether the defendant should 'reasonably anticipate being haled into court [in the forum state].'" Bayway Refin. Co., 333 N.J. Super. at 429 (alteration in original) (quoting World-Wide Volkswagen Corp., 444 U.S. at 297).

"Although the plaintiff bears the burden of demonstrating facts that support personal jurisdiction, courts [should allow] jurisdictional discovery unless the plaintiff's claim is clearly frivolous." Rippon, 449 N.J. Super. at 359 (quoting Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 456 (3d Cir. 2003)). We have stated that "discovery is permitted and may be necessary to resolve the jurisdictional issues." Maine v. SeKap, S.A. Greek Coop. Cigarette Mfg. Co., S.A., 392 N.J. Super. 227, 243 (App. Div. 2007). When "a plaintiff presents factual allegations [suggesting] with reasonable particularity the possible existence of the requisite contacts between [the party] and the forum state, [the] plaintiff's right to conduct jurisdictional discovery should be sustained." Rippon, 449 N.J. Super. at 359 (quoting Toys "R" Us, 318 F.3d at 456) (alterations in original).

We first address plaintiff's contention the record before the trial court was replete with factual disputes such as (1) "whether there was a contractual

relationship between defendant and CAN[/]AM, [(2)] whether CAN[/]AM was authorized to book rooms on behalf of the [h]otel, and [(3)] whether the [h]otel confirmed reservations directly with guests in advance of their arrival."

The parties submitted conflicting certifications to the trial court concerning how plaintiff booked his room. Plaintiff certifies he did not communicate with defendant to reserve a hotel room, but rather used CAN/AM's website, and CAN/AM effectively acted as defendant's agent. Defendant maintains CAN/AM was not authorized to book rooms on its behalf and "[a]ll reservations are made and confirmed directly by our hotel with the customer."

Jennifer Holderied, general manager of Golden Arrow, certified defendant did not have any contacts with the State of New Jersey and does not advertise or conduct business in New Jersey. Defendant further contends it had no contract with CAN/AM. Plaintiff counters Golden Arrow had a business relationship with CAN/AM since at least 2013, and CAN/AM books rooms for tournament participants on defendant's behalf. Plaintiff argues that even if there is not a formal contract between the parties, a business relationship is sufficient for CAN/AM to be considered an agent of Golden Arrow. Moreover, plaintiff asserts there is evidence in the record to suggest there was a contract between

CAN/AM and defendant. Plaintiff references an exhibit⁴ he asserts "demonstrates that CAN[/]AM and [d]efendant had a contractual relationship [as] the document states that there is a 'Contract Date.'" Plaintiff further contends, "there were clearly monies exchanged between defendant and CAN[/]AM because CAN[/]AM asked defendant to submit an invoice to it."

Although we generally will not disturb a trial court's factual findings when supported by substantial credible evidence, we are constrained to remand under these circumstances, because the court made factual findings despite conflicting certifications. These underlying jurisdictional factual disputes are apparent when comparing the certifications submitted by the parties. We have observed when "[p]resented with a motion to dismiss on the basis of lack of jurisdiction, a trial court must make findings of the 'jurisdictional facts,' because disputed 'jurisdictional allegations cannot be accepted on their face'" Rippon, 449 N.J. Super. at 359 (quoting Citibank, 290 N.J. Super. at 531-32). "If the pleadings and certifications submitted to the trial court do not permit resolution of the jurisdictional question, the trial court must conduct a 'preliminary

⁴ The document contains Golden Arrow's logo and provides hotel rates for Fall 2019 and Spring 2020 and lists CAN/AM as the "group name" and sets forth a revised contract date of June 20, 2019.

evidential hearing after affording the parties an appropriate opportunity for discovery." Ibid. (quoting Citibank, 290 N.J. Super. at 532).

Here, the record confronting the trial court contained disputed jurisdictional allegations that could not be resolved on the papers. Rather, the court should have allowed the parties to conduct jurisdictional discovery to develop the record, followed by a hearing to resolve any factual disputes. At the very least, there are fact issues as to whether: there was a contract between defendant and CAN/AM, CAN/AM was authorized to book rooms on behalf of defendant, defendant confirmed reservations directly with plaintiff, and CAN/AM was an agent of defendant. Because of these factual issues, we cannot determine if defendant purposefully directed its activities at New Jersey for the purposes of establishing specific jurisdiction and the trial court must conduct a hearing.

In short, a plenary hearing was needed because there were factual disputes as to personal jurisdiction. Therefore, we vacate and remand for the trial court to allow for a brief period of jurisdictional discovery and a plenary hearing to resolve the factual disputes raised in the conflicting certifications.

B.

We next turn to the trial court's dismissal of plaintiff's complaint based on the doctrine of forum non conveniens. The court here sua sponte dismissed plaintiff's case based on forum non conveniens. Forum non conveniens is an equitable doctrine allowing a court to "decline jurisdiction whenever the ends of justice indicate a trial in the forum selected by the plaintiff would be inappropriate." Aguerre v. Schering-Plough Corp., 393 N.J. Super. 459, 474 (App. Div. 2007) (quoting D'Agostino v. Johnson & Johnson, Inc., 225 N.J. Super. 250, 259 (App. Div. 1988), rev'd on other grounds, 133 N.J. 516 (1993)). Dismissal of an action based on the doctrine of forum non conveniens falls within the discretion of the trial court, and that decision will not be overturned unless we find an abuse of discretion. In re Vioxx Litig., 395 N.J. Super. 358, 364 (App. Div. 2007) (citing Kurzke v. Nissan Motor Corp., 164 N.J. 159, 165 (2000)).

The minimum requirements of due process of law are notice and an opportunity to be heard. Doe v. Poritz, 142 N.J. 1, 106 (1995). The opportunity to be heard contemplated by the concept of due process means an opportunity to be heard at a meaningful time and in a meaningful manner. Ibid. Our rules of court mandate that motions be made in writing. R. 1:6–2(a). Due process

affords the parties notice and a meaningful opportunity to respond. Here, the record furnished to us does not reflect plaintiff was given appropriate notice the court would consider a dismissal pursuant to the doctrine of forum non conveniens. "We cannot condone a procedure whereby a judge sua sponte, without notice to a party, resorts to a shortcut for the purposes of good administration and circumvents the basic requirements of notice and opportunity to be heard." Klier v. Sordoni Skanska Const. Co., 337 N.J. Super. 76, 84-85 (App. Div. 2001) (internal quotation marks omitted). In view of the lack of necessary notice to plaintiff, we determine the court—despite its undoubtedly good intention to be thorough—misapplied its discretion. Therefore, we vacate the order insofar as it dismissed plaintiff's claims based on the doctrine of forum non conveniens. Moreover, to the extent the court again considers raising the issue, it should be evaluated in the context of Mastondrea, 391 N.J. Super. at 279 (a dismissal on the grounds of forum non conveniens requires the defendant show the choice of forum is "demonstrably inappropriate") and related caselaw.⁵

⁵ Plaintiff argues for the first time in a footnote of his reply brief defendant's motion was untimely pursuant to Rules 4:6-3 and 6:3-1 because it was filed more than thirty days after defendant filed its answer. This issue was not raised before the trial court. Moreover, we generally do not address arguments raised for the first time in reply briefs and decline to do so here. See Pannucci v. Edgewood Park Senior Hous. – Phase 1, LLC, 465 N.J. Super. 403, 409-10 (App. Div. 2020)

Vacated and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

(citing State v. Smith, 55 N.J. 476, 488 (1970) (noting impropriety of expanding on a main argument in a reply brief)).