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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0495**

Aon Corporation, et al.,
Respondents,

vs.

Paul B. Haskins, et al.,
Defendants,

Lockton, Inc., et al.,
Appellants.

**Filed January 14, 2013
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-11-12993

J Jackson, Andrew Brantingham, Dorsey & Whitney LLP, Minneapolis, Minnesota (for respondents)

Joseph M. Sokolowski, Lindsay J. Sokolowski, Krista A.P. Hatcher, Pamela Abbate-Datillo, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellants challenge the district court's denial of their motion to dismiss, arguing that (1) the district court erred by determining that appellants had waived the defense of lack of personal jurisdiction and (2) appellants are not subject to personal jurisdiction in Minnesota. Because we conclude that appellants waived the defense of lack of personal jurisdiction by failing to properly raise it, we affirm.

FACTS

In December 2009, respondents Aon Corporation and Aon Risk Services Central, Inc. (collectively Aon) commenced suit in federal district court against three corporate defendants: Lockton, Inc.; Lockton Companies, LLC; and Kansas City Series of Lockton Companies (Kansas City Series), and three individual defendants: Paul B. Haskins, Jeffrey J. Herman, and Frederick O. Flemig, all of whom are former Aon employees and current Lockton employees.¹

In the complaint, Aon alleged claims of breach of contract, statutory, and common-law duties against the individual defendants and claims of tortious procurement of those breaches against the corporate defendants. Aon's claims are based on allegations that Lockton and the individual defendants developed and executed a plan to open an office in Minnesota in direct competition with Aon. The basic theory of Aon's case is that Lockton lured experienced employees (the three individual defendants) away from

¹ Because the parties' federal suit is not a part of the record before us, our reference to that matter is based on the representations set forth by the parties.

Aon in order to establish itself as a provider of insurance and risk-management products and services in the Minnesota health-care industry. The plan was called “project Mayo,” likely referencing the fact that the Mayo Clinic was a major client of Lockton and had previously been a client of individual defendant Flemig while he worked for Aon. According to Aon, after Lockton hired the individual defendants, Lockton successfully diverted clients and revenues from Aon as a result of the individual defendants’ disclosure of Aon’s confidential and trade-secret information.

In a footnote in its answer to the federal complaint, the defendants stated that the corporate defendants, with the exception of Kansas City Series, were not “proper parties” to this action and that if Aon did not consent to their dismissal they would “bring an appropriate motion” to dismiss them from the action. The defendants neither asserted the defense of lack of personal jurisdiction nor filed a motion to dismiss any of the defendants from the action for lack of personal jurisdiction or any other reason.

In June 2011, the federal district court sua sponte dismissed the case without prejudice on the ground that its diversity jurisdiction had been destroyed by the addition, by amended complaint, of Kansas City Series as a defendant.

Aon re-filed its complaint in state district court against the same defendants plus two additional corporate defendants: Lockton Insurance Agency, Inc. and Lockton Management, LLC. The defendants acknowledged service of the summons and complaint on June 27, 2011, and filed an answer on July 22, 2011. In their answer, the defendants included a footnote that was substantially identical to the footnote included in the federal answer, asserting that, except for Kansas City Series, the corporate defendants

(Lockton, Inc.; Lockton Companies, LLC; and Lockton Management, LLC) are not “proper parties” to the action and that if Aon did not consent to their dismissal, they would “bring an appropriate motion.”² The defendants’ answer did not specify whether the basis for the motion would be lack of personal jurisdiction or some other reason. Aon did not consent to the dismissal, and discovery commenced.

In October 2011, Lockton provided Aon with notice of its motion to dismiss the corporate defendants except for Kansas City Series “pursuant to Minnesota Rule of Civil Procedure 12.02.” The notice did not specify on what basis the defendants sought dismissal of the four corporate defendants. On December 2, 2011, Lockton filed a memorandum of law in support of its motion, arguing that the corporate defendants, except Kansas City Series, are not subject to personal jurisdiction in Minnesota.

The district court denied Lockton’s motion to dismiss the complaint, reasoning that (1) Lockton had waived the right to assert a personal-jurisdiction defense by failing to raise that defense in its answer or a pre-answer motion; (2) even if it were to construe the answer as having raised the defense of lack of personal jurisdiction, appellants waived the defense by conduct; and (3) corporate defendant Lockton Companies, LLC had consented to personal jurisdiction in Minnesota by appointing a registered agent for service of process in the state.

This appeal follows. Because Kansas City Series does not challenge the district court’s personal jurisdiction, Aon’s claims against that entity, as well as its claims against

² The omission of Lockton Insurance Agency, Inc. from this footnote appears to be inadvertent.

the three individual defendants (Haskins, Herman, and Flemig), are still pending in state district court. In addition, Lockton Companies, LLC concedes that it consented to personal jurisdiction by appointing an agent for service of process in Minnesota. Therefore, Lockton Companies, LLC is no longer a party to this appeal. The three appellants before us are Lockton, Inc.; Lockton Insurance Agency, Inc.; and Lockton Management, LLC.

DECISION

We review de novo a district court's denial of a motion to dismiss for lack of personal jurisdiction. *Viking Eng'g & Dev., Inc. v. R.S.B. Enters., Inc.*, 608 N.W.2d 166, 168 (Minn. App. 2000), *review denied* (Minn. May 23, 2000). In conducting our de novo review, we apply the underlying factual determinations unless they are clearly erroneous. *In re Disciplinary Action Against Coleman*, 793 N.W.2d 296, 302 (Minn. 2011). Whether or not a party has waived the right to argue that the district court lacks personal jurisdiction, however, does not typically present a pure question of law: "Waiver generally is a question of fact, and it is rarely to be inferred as a matter of law." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) (quotation omitted).

To raise an affirmative defense, it "must be pleaded specifically." *Rhee v. Golden Home Builders, Inc.*, 617 N.W.2d 618, 621 (Minn. App. 2000) (citing *Melbo v. Rinn*, 280 Minn. 72, 75, 157 N.W.2d 842, 845 (1968)). A personal-jurisdiction defense must be raised in a responsive pleading or by motion prior to responsive pleading. Minn. R. Civ. P. 12.02. If not so raised, the defense of lack of personal jurisdiction is waived. Minn. R. Civ. P. 12.08(a); *Comm'r of Natural Res. v. Nicollet Cnty. Pub. Water/Wetlands*

Hearings Unit, 633 N.W.2d 25, 31 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001).

Appellants argue that they could not have waived a personal-jurisdiction defense because they “never answered the [c]omplaint.” Appellants’ October 2011 motion to dismiss for lack of personal jurisdiction was therefore brought before they ever responded to Aon’s complaint. This theory—which further alleges that Kansas City Series alone answered the complaint—is unavailing. Defendants’ counsel filed an answer, entitled “DEFENDANTS’ ANSWER,” on July 22, 2011. This document does not state or suggest that Kansas City Series was the sole corporate defendant to answer the allegations set forth in the complaint. Not only is the document captioned as an answer of the “defendants,” but it refers to the defendants throughout, without qualification. And the answer’s opening paragraph states that the three individual defendants; Lockton, Inc.; Lockton Companies, LLC; Lockton Management, LLC; and Kansas City Series deny Aon’s claims. The omission of Lockton Insurance Agency, Inc. from that list was apparently an oversight and, in any case, has not been a point of dispute on appeal. In sum, the record patently contradicts appellants’ contention that Kansas City Series was the sole corporate defendant to answer Aon’s complaint. The district court did not err in construing the answer as that of all eight defendants.

Having established that appellants filed an answer, we next determine whether that responsive pleading raised the defense of lack of personal jurisdiction. Appellants’ 31-page answer does not mention “personal jurisdiction.” And the defense of lack of personal jurisdiction is absent from its “defenses” section—which enumerates dozens of

legal and factual defenses allegedly barring Aon’s claims. The answer contains a blanket assertion, at paragraph 38 of the “defenses,” which states that “[a]s a separate . . . defense” Aon’s claims “may be barred by any and all of the affirmative defenses contemplated by [Minn. R. Civ. P.] 8.03 and 12.02.” But that paragraph does not specify any defenses.

At oral argument, appellants’ counsel asserted that the catch-all language of paragraph 38 is sufficient to raise every affirmative defense contained in those rules, thereby preserving appellants’ right to challenge the district court’s personal jurisdiction over them. We disagree. Appellants’ statement—that Aon’s “claims . . . *may* be barred by *any and all*” affirmative defenses—is not only too provisional but far too sweeping to put Aon on notice of what, if any, additional defenses appellants might assert during the course of litigation. *See Hansen v. Robert Half Int’l, Inc.*, 813 N.W.2d 906, 917-18 (Minn. 2012) (recognizing that even under notice-pleading rules, pleadings must fairly apprise a party of claims against it); *Rogers v. Drewry*, 196 Minn. 16, 19, 264 N.W. 225, 226 (1935) (holding that the purpose of pleadings is to notify parties of claims and defenses so that they can prepare their proof). And appellants’ assertion that our law does not require a clear statement of which defenses a party means to raise is unfounded. It is a well-settled principle that an affirmative defense must be pleaded with specificity to avoid waiver. *Rhee*, 617 N.W.2d at 621 (citing *Melbo*, 280 Minn. at 75, 157 N.W.2d at 845 (1968)). Consequently, a catch-all assertion of “any and all defenses” fails to raise any affirmative defense at all. Appellants’ contention that they successfully raised every

defense under rules 8.03 and 12.02 is further defeated by the plain fact that they discussed 10 of those defenses in the answer, but not others.³

Finally, as conceded by appellants' counsel at oral argument, we observe that the footnote in the answer, in which the defendants deny that Lockton, Inc.; Lockton Companies, LLC; and Lockton Management, LLC are "proper parties" to the action, is insufficient to raise a personal-jurisdiction defense. The answer does not allege that those parties are improper on any jurisdictional basis.

We conclude that appellants waived the right to challenge the district court's exercise of personal jurisdiction over them because they did not raise that defense in the answer or by motion prior to responsive pleading. Accordingly, the district court did not err in denying their motion to dismiss for lack of personal jurisdiction. Consequent to our ruling, we need not reach the question of whether appellants may also have waived personal jurisdiction by conduct.

Affirmed.

³ The answer expressly raises the defense of the failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02 and the following defenses under Minn. R. Civ. P. 8.03: laches, waiver, release, accord and satisfaction, payment, estoppel, statute of limitations, contributory negligence, and lack of consideration. Appellants did not mention the remaining 15 defenses provided under these rules.