
NO. A10-263

State of Minnesota
 In Court of Appeals

JL Schwieters Construction, Inc.,

Respondent,

v.

Goldridge Construction, Inc., et al.,

Defendants/ Cross-Claimants,

and

Goldridge Group, LLP,

Appellant.

APPELLANT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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ISSUES

1. Whether the Trial Court committed error in refusing to dismiss Goldridge Group, LLP and holding the Goldridge Group, LLP is subject to jurisdiction of Minnesota Courts.

STATEMENT OF THE CASE

On December 10, 2009, the Honorable Judge Joseph T. Carter entered an order denying Defendant Goldridge Group, LLP's ("GG and/or Appellant") motion to dismiss for lack of personal jurisdiction. In the fall of 2008 the Plaintiff commenced an action against several parties including Goldridge Group WP IGH, LLC, a Wisconsin Limited Liability Corporation ("WPIGH") and Goldridge Construction, Inc. ("GCI"). In September of 2009, about a year later, Plaintiff amended its Complaint, and for the first time asserted an action against Goldridge Group, LLP, a Wisconsin Limited Liability Partnership ("Appellant") for alleged fraudulent transfers made from WPIGH to GG. Certain Defendants also asserted amended cross-claims against GG. Appellant filed its Motion to Dismiss the Amended Complaint and any alleged cross-claims and Brief in support of its motion on October 21, 2009. A-27 and A-30. Respondent J.L. Schwieters Construction, Inc. ("Respondent") filed its memorandum in opposition on November 3, 2009. A-40. Appellant then filed its reply memorandum on November 6, 2009. A-82. Appellant's motion to dismiss was heard by the Honorable Joseph T. Carter on November 9, 2009. The Court denied Appellant's motion in its order dated December 10, 2009. A-114.

On February 4, 2010 Appellant served and filed with this Court its Notice of Appeal from the December 10, 2009 order.

STATEMENT OF THE FACTS

Appellant Goldridge Group, LLP is a Wisconsin Limited Liability Partnership organized and operating solely in the State of Wisconsin. A-38. Appellant is a related entity to GCI and WPIGH, both entities organized in the State of Wisconsin. A-84–A-87.

GCI and WPIGH operated in Wisconsin and Minnesota and are defendants to the above captioned District Court lawsuit. A-84-A-87. As this brief will make clear, Appellant's involvement was limited to signing a guaranty for a loan made to WPIGH and accepting seven wire transfers from a bank which has locations in South Dakota and Minnesota. Appellant did not conduct business in Minnesota, did not own property in Minnesota, and did not control the actions of WPIGH or GCI. A-38.

ARGUMENT

I. THE DISTRICT COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION

a. STANDARD OF REVIEW

"An order denying a motion to dismiss for lack of personal jurisdiction is appealable as a matter of right." Domtar, Inc. v. Niagara Fire Ins. Co., 518 Minn.App.2d 58, 1994 citing Stanek v. A.P.I., Inc., 474 N.W.2d 829, 831 (Minn.App.1991) pet. for rev. denied (Minn. Oct. 31, 1991), and cert. Denied, 503 U.S. 977, 112 S.Ct. 1603, 118 L.Ed.2d 316 (1992). Whether personal jurisdiction exists is a question of law that the Court of Appeals reviews de novo on appeal. Id.

b. THE DISTRICT COURT DID NOT CONDUCT A THOROUGH DUE PROCESS ANALYSIS AS REQUIRED BY THE U.S. CONSTITUTION

The decision of the District Court should be reversed because the Court incorrectly considered the contacts between two Wisconsin entities to weigh in favor of personal jurisdiction, the Court incorrectly considered wire transfers as contacts in favor of jurisdiction, and finally, the Court incorrectly relied on an isolated contact unrelated to

the Respondent to support personal jurisdiction. This brief will show that interpretation of Minnesota's long-arm statute and Minnesota case law interpreting the Federal Due Process requirements have consistently held that similarly situated defendants to that of Appellant are not subject to jurisdiction of Minnesota Courts.

Section 543.19 of the Minnesota Statutes provides the only circumstances in which a Minnesota Court may extend jurisdiction over foreign corporations. This "long-arm" statute allows Courts to extend jurisdiction over foreign corporations if the foreign corporation:

- (1) owns, uses or possesses any real or personal property situated in this state; or
- (2) transacts any business within the state; or
- (3) commits any act in Minnesota causing injury or property damage; or
- (4) commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found
 - (i) Minnesota has no substantial interest in providing a forum; or
 - (ii) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice. MINN. STAT. §543.19, 2009.

The long-arm statute and the federal due process requirements are co-extensive meaning that if the personal jurisdiction requirements of the federal constitution are met, the requirements of the long-arm statute are also met. Valspar Corp. v. Lukken Color Corp., 495 N.W.2d 408, 410-11 (Minn.1992). Therefore, "Minnesota courts may simply apply the federal case law." Id. at 411.

In its order, the District Court held that a corporation organized under the laws of the state of Wisconsin, and which has had one isolated contact with Minnesota is subject to the jurisdiction of Minnesota Courts. A-114-A-120. The District Court's order fails to review GG's motion to dismiss according to the proper standard. The Court misidentifies

the question as “whether Defendant GG has transacted any business within Minnesota.” A-119. This standard is incorrect. A due process review requires not only that the defendant have minimum contacts with the forum state, but the Court must also review the nature and quality of those contacts as an investigation of the quality of contacts “insures that a defendant will not have to appear in a jurisdiction solely because of ‘attenuated contacts’ or the ‘unilateral activity of another party or third person.’” Johnson Brothers Corporation v. Arrowhead Co., 459 N.W.2d 160, 163, 1990 *citing* Rostad v. On-Deck, Inc., 372 N.W.2d at 719-20 (Minn.1985). See also Johnson *citing* Hardrives, 307 Minn. At 294, 240 N.W.2d at 817. in which the Court held that “isolated occurrence[s] [are] insufficient to sustain jurisdiction.” Additionally, it is “**essential** in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws.” Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283 (1958). (Emphasis added). Minnesota’s long-arm statute should not be applicable just because a party “deals with a Minnesota resident in any way.” Walker Management, Inc. v. FHC Enterprises, Inc., 446 N.W.2d 913, 914 (Minn.App.1989).

In deciding Defendant’s motion to dismiss, the District court did not review defendant’s contacts with Minnesota in accordance with the Due Process requirements articulated in the above cases. Instead, the District Court bases its decision on the actions of related entities of GG, seven wire transfers from Minnwest Bank to GG, and a provision in a guaranty signed by GG unrelated to the Plaintiff in this litigation. On appeal, a thorough

due process analysis will show that GG's contact with Minnesota are so isolated and insignificant that it is not subject to jurisdiction in Minnesota.

c. **THE ACTIONS OF WPIGH AND GOLDRIDGE CONSTRUCTION, INC. ARE DISTINCT FROM AND SHOULD NOT HAVE BEEN CONSIDERED BY THE DISTRICT COURT IN ITS ORDER DENYING APPELLANT'S MOTION TO DISMISS**

The District Court's order correctly states that Goldridge Construction Group WPIGH ("WPIGH"), Goldridge Construction, Inc. "GCI" and GG are separate entities, each created for a specific purpose and each incorporated in the State of Wisconsin. A-116-A-118. The District Court's discussion focuses then on the activities (primarily of WPIGH and GCI) as related to the project at issue in this litigation and finds that GCI and WPIGH "engaged in substantial business transactions within the state of Minnesota." A-119. This is not disputed. The order finds that payments went directly from WPIGH to GG (transfers that took place entirely in the State of Wisconsin) and that GG is owned by the same two people who own WPIGH, that being Gerald Koehn and Steve Stamm. A-116, A-117, A-119. Finally, the Order relies on Zimmerman v. American Inter-Insurance Exchange, 386 N.W.2d 825, 828 (Minn.Ct.App.1986) for the proposition that if companies are "organized and operated so that one corporation is an instrumentality or alter-ego of the other corporation" a nonresident corporation may be subject to jurisdiction of Minnesota "by virtue of the activities of its subsidiary company." Order page 6. In Zimmerman, the Court held that personal jurisdiction was **improper** because there was no indication that "the parent corporation . . . exercised the type of control or dominance over" its

subsidiary sufficient “to subject it to the personal jurisdiction of Minnesota Courts.” Id. at 828.

Likewise, relying on the activities of GCI and WPIGH to confer personal jurisdiction over GG is improper. “[I]t is generally presumed that the subsidiary is a legally separate entity from its parent corporation.” Busch v. Mann, 397 N.W.2d 391, 395 *citing* United States v. Advance Machine Co., 547 F.Supp.1085, 1093 (D.Minn.1982). Furthermore, “[C]ourts should respect the separateness of parent and subsidiary corporations for jurisdictional purposes.” Leonard, Street, and Deinard, P.A. v. Am. Agri-Technology Corp., 200 WL 31723 (Minn.Ct.App). Jan 18, 2000) (unpublished).

GCI, WPIGH and GG are three distinct entities. A-38, A-114–A-120. GCI is a corporation registered in the State of Wisconsin. A-84–A-87. WPIGH is a corporation registered in the State of Wisconsin. *id.* Goldridge Group, LLP is a limited liability partnership registered in the State of Wisconsin. A-38. As the District Court noted, each entity was created for a specific purpose. A-117, A-119. One of the entities, GG, conducts business only in Wisconsin and has always conducted business only in Wisconsin. A-38.

The Plaintiff has failed to allege and there is no support for the District Court to determine the control required to subject GG to the jurisdiction of Minnesota Courts. The District Court’s reliance on the activities of GCI and WPIGH were improper to confer and determine personal jurisdiction over GG. In fact, Plaintiff has not even alleged that GCI is a subsidiary of GG – it is simply an entity that conducts business with GG.

In considering the level of control GG had over WPIGH, the District Court cites only that WPIGH owned the land at issue, that GG and WPIGH operated at the same address,

and that the shareholders of both companies are the same two people. A-114-A-120. This is insufficient to show the type of control required under Zimmermann. Additionally, Zimmermann relies upon Scott v. Mego Intern., Inc., 519 F.Supp. 1118, D.C. Minn., 1981. In Mego, the Court found personal jurisdiction where the entities were so intertwined as to make them inseparable. For example, the Court reviewed the following factors before holding that the parent company was subject to jurisdiction based on the activities of the subsidiary:

Defendant Mego International, Inc. conducts business through its wholly-owned subsidiaries which are closely interrelated. Mego International maintains offices at the same location as defendant Mego. Both of the directors of Mego are also directors of Mego International. A number of the same people are officers of both corporations. Mego International and its subsidiaries issue consolidated summaries of operations, financial statements, statements of income, statements of changes in financial position, and statements of shareholders' equity. Mego International and the domestic subsidiaries file consolidated federal income tax returns, and Mego International guarantees the credit facility of its domestic subsidiaries and funds their pension plans.

Mego International holds itself out to the public as having substantial control over its subsidiaries, including Mego, and its annual report and other financial documents reveal that it does, in fact, have such control. The parent-subsidiary relationship appears to be a convenient means for Mego International to organize its domestic and international business. The Mego International prospectus indicates that Mego International was incorporated "for the purpose of continuing in one venture the business and management of Mego Corp., a New York corporation, and Lion Rock Trading Co., Limited, a Hong Kong corporation." Scott v. Mego Intern., Inc., 519 F.Supp. 1118, D.C. Minn., 1981.

The Respondent has failed to allege that the activities of WPIGH and GG are interrelated to the extent required in Mego. For example, Respondent has alleged that WPIGH shares the same address as GG, and alleges that GG obtained all financial benefits

from WPIGH's transaction. A-1-A-26, A-40-A-76. Additionally, Respondent alleges many facts about WPIGH individually, such as that it owns real property in Minnesota, that it has no bank accounts, employees, and no corporate officers. A-40. These allegations are utterly insufficient to show that GG and WPIGH were first organized and then operated as one entity for jurisdictional purposes. The factors in Mego show that the two entities must be **virtually inseparable** for personal jurisdiction to lie against the parent corporation of a subsidiary operating in the jurisdiction. Here, WPIGH owns property independently of GG, WPIGH files its own tax returns, creates its own financial statements and balance sheet, has its own corporate records which have been supplied to the Respondent, and had bank accounts. A-38, A-76-A-79. WPIGH controls its own operations, as does GG. A-35. WPIGH operates in Minnesota, GG does not. A-38, A-84-A-87. WPIGH is subject to jurisdiction in Minnesota, but Appellant is not. A-38, A-84-A-87.

The District Court erred in considering the activities of GCI in determining whether GG is subject to jurisdiction based on the actions of a subsidiary as GCI is unrelated and is not a subsidiary of Appellant and Appellant and GCI are not virtually inseparable. Furthermore, the Court erred when it held that the relationship between GG and WPIGH and GCI rose to the level of control required to exert jurisdiction over GG.

The District Court takes a giant leap in assuming that Appellant, GCI and/or WPIGH are virtually inseparable and alter egos. Although Respondent recklessly and wrongfully asserts the same, there is no evidence to support these obligations. The District Court cannot just take a leap of faith and assume an alter ego. This must be established by the Respondent with facts and evidence. This has not been done because such facts and

evidence do not exist. The District Court is not free to just make this assumption without any facts or evidence.

d. THE DISTRICT COURT'S ORDER INCORRECTLY RELIES ON THE GUARANTY OF GG GIVEN TO MINNWEST BANK

The order of the District Court denying GG's motion to dismiss also improperly relies upon a guaranty of corporate indebtedness given from GG to Minnwest Bank. The Court's reliance on the guaranty is misplaced as the guaranty was given for a specific purpose, the guaranty was not given to the Respondent and is not at issue in this litigation. This grant of the guaranty to Minnwest is precisely the brand of isolated contact that is insufficient to sustain jurisdiction over Appellant.

The guaranty at issue is a corporate guaranty GG signed in favor of Minnwest Bank. A-120. The guaranty consented to jurisdiction in Minnesota for any litigation arising out of the guaranty between Minnwest Bank and GG. A-120. The consent to jurisdiction in this instance was an isolated contact given for a specific purpose that was not given to the Respondent and is insufficient to support jurisdiction over GG in this litigation. Unlike Minnwest, the Respondent never sought nor obtained a provision in its contract conferring jurisdiction in Minnesota. In fact, there is no privity between Appellant and the Respondent.

The District Court held that the guaranty given by GG to Minnwest in the context of one contract unrelated to the Plaintiff allows Minnesota Courts to confer jurisdiction over GG in this litigation. By doing so, the District Court ignored long established precedent that "entering into a contract with a Minnesota resident can justify the exercise of specific

jurisdiction but **only** where the dispute involves the contract.” Marshall v. Inn on Madeline Island, 610 N.W.2d 670, Minn.App., 2000 citing Domtar, Inc. v. Niagara Fire Ins. Co., 533 N.W.2d 25, 31 (Minn.1995). In Marshall, the defendant and the plaintiff had entered into a contract **with each other**, but because the contract itself was not at issue in the litigation, the contract was insufficient to confer personal jurisdiction.

Here, the contract is not at issue in this litigation. In fact, there is no contract between Respondent and Appellant. Instead, the District Court relies on a contract between GG and a third party that is unrelated to the Respondent. No contract consenting to jurisdiction exists between the Respondent and the Appellant. Additionally, the guaranty does not consent to jurisdiction in Minnesota for any purpose and for any litigation that arises at any time in the future. The guaranty consents to jurisdiction in Minnesota for the limited and specific purpose of litigation arising out of the guaranty and between Minnwest and GG. A-120.

To hold that the guaranty between GG and Minnwest is sufficient to confer jurisdiction over GG would overturn clear and established precedent. Marshall is directly on point and does not allow a contract to be sufficient for a court to confer jurisdiction in Minnesota unless the contract itself is at issue in the litigation. Here, not only is the contract not at issue, but the contract is not between the Respondent and the Appellant. Accordingly, the District Court erred when it relied heavily upon the guaranty when it held that Appellant is subject to jurisdiction in Minnesota.

e. THE DISTRICT COURT ERRED IN RELYING ON THE SEVEN WIRE TRANSFERS TO ESTABLISH JURISDICTION OVER GG

Finally, the only other contact (if one can even count this to be a contact) GG has ever had with Minnesota consists of the seven wire transfers cited by the District Court. A-96. Reliance by the District Court on the wire transfers is misplaced.

The wire transfers discussed by the District Court were wire transfers from Minnwest to GG. These transfers are unrelated to the Respondent. Unrelated wire transfers between the Appellant and an unrelated third party should not be relied upon to confer jurisdiction over Appellant. In making the due process analysis, courts in the Eighth Circuit consistently hold that “the use of arteries of interstate mail, telephone, railway and banking facilities is insufficient, standing alone, to satisfy due process.” Mountaire Feeds, Inc. v. Agro Impex, S.A. 677 F.2d 651 C.A. Ark., 1982, citing Aaron Ferer & Sons v. Atlas Scrap Iron & Metal Co., 558 F.2d at 453; see McQuay, Inc. v. Samuel Schlosberg, Inc., 321 F.Supp. 902, 905-06 (D.Minn.1971). See also K-Tel Intern. Inc. v. Tristar Products, Inc., 169 F.Supp.2d 1033 D. Minn., 2001 in which the court found that a wire transfer alone is not sufficient to find personal jurisdiction. These cases are clearly on point. The District Court’s reliance on these wire transfers to confer jurisdiction is clearly inconsistent with Minnesota authorities.

CONCLUSION

For the reasons outlined above, this proceeding should be remanded with instructions to dismiss Appellant from the District Court above captioned District Court lawsuit.

Respectfully submitted,

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