STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0966

Nemadji Research Corporation, et al.,
Respondents,

vs.

California Reimbursement Enterprises, Inc.,
a California corporation,
Defendant,

Iver A. Iversen, et al.,
Appellants.

Filed March 4, 2013
Affirmed; motions denied
Collins, Judge[*]

Pine County District Court
File No. 58-CV-11-666

Mark J. Briol, Scott A. Benson, William G. Carpenter, Briol & Associates, Minneapolis, Minnesota (for respondents)

Thomas H. Boyd, Craig S. Krummen, Winthrop & Weinstine, Minneapolis, Minnesota; and

David Z. Ribakoff, Teri T. Pham, Enenstein & Ribakoff, Santa Monica, California (for appellants)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Collins, Judge.

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

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellants challenge the district court's denial of their motions to dismiss the underlying action for lack of personal jurisdiction or, in the alternative, on forum non conveniens grounds. Also, both parties filed motions on appeal. We affirm the prima facie jurisdiction determination and forum non conveniens ruling and deny the parties' collective motions.

FACTS

In 1985, Eugene Lourey founded respondent Nemadji Research Corporation (Nemadji) as a family-owned Minnesota business. The company utilized Lourey's proprietary computer software designed to maximize reimbursements to healthcare providers from Medicare, Medicaid, and other programs. In 1992, Lourey began working with appellant Iver Iversen as subcontractors for appellants William Copeland and Linda Glenn on projects in California. In 1994, Lourey and Iversen formed California Reimbursements Enterprises, L.L.C. hoping to acquire the California projects that they had previously subcontracted.

In 1998, the L.L.C. reorganized as a California corporation entitled California Reimbursement Enterprises, Inc. (CRE) with its principal place of business in Downey, California. Copeland and Glenn became shareholders and directors of appellant CRE. Following incorporation of CRE, Nemadji held 60-percent ownership, Iversen held 20 percent, and Copeland and Glenn each held 10 percent.

Lourey died in 2008 and his interest in Nemadji passed to his widow. Their daughter, Kim Lourey Bohnsack, became acting CEO of CRE. The management and operation of CRE give rise to the present dispute.

On September 20, 2011, Bohnsack issued a "special meeting" notice to the directors of CRE, which indicated the meeting would take place in Bruno, Minnesota. Copeland and Glenn, responding through counsel, objected to the proposed meeting and asserted that Nemadji had violated fiduciary duties. Copeland and Glenn also demanded additional documents and information. The fiduciary-violation claims alleged that since early 2000, CRE has not held any board or shareholder meetings, that minority shareholders had had limited access to financial information, and that Nemadji had received over $40 million since the incorporation of CRE.

On November 18, after providing the requested documents, Bohnsack and Nemadji took two separate actions. First, Bohnsack issued a second "special meeting" notice. This notice included a "Notice of Action by Written Consent" that informed "the remaining" shareholders of CRE that Nemadji had newly elected three of the five board members; the remaining shareholders were directed to elect the other two. Second, Nemadji filed the underlying action in Pine County district court, seeking a declaration that its special meeting notices were proper, its election of new board members was appropriate, and the fiduciary-violation claims were derivative and therefore subject to review by the new board of CRE. In the action, Nemadji also claimed that Iversen had agreed to sell his CRE shares to Nemadji.

In early 2012, Copeland and Glenn, individually residents of Arizona, moved for dismissal of Nemadji's action for lack of personal jurisdiction. In the alternative, CRE, joined by Copeland and Glenn, moved for dismissal on the ground of forum non conveniens.

The district court denied Copeland and Glenn's motions disputing jurisdiction, finding that their alleged contacts with Minnesota were sufficient to establish long-arm jurisdiction. The district court then weighed the public and private factors inherent in a forum non conveniens analysis, concluded that Minnesota's interests in providing a forum were "slightly stronger" than California's, and denied the forum non conveniens motions. The district court reasoned that, even though California was an available forum where all defendants had consented to jurisdiction, the case "ultimately concerns the management decisions of a Minnesota resident and corporation; albeit, those decisions concern the functioning of a California business." The district court also noted that California courts are burdened by heavier congestion. This appeal was filed on June 5, and the next day appellants filed an action asserting fiduciary violations in California superior court. Respondents' attempts to enjoin the California action were unsuccessful. The California court determined appellants' claims were not derivative subject to the approval of CRE and set trial for February 4, 2013.

D E C I S I O N

Individual appellants, Copeland and Glenn, challenge the denial of their motions to dismiss the underlying action, alleging that the district court lacked personal jurisdiction. At the pleadings stage of the litigation, we determine that respondents met

their prima facie obligation to establish personal jurisdiction. Appellants collectively contend that the district court abused its discretion in not dismissing this dispute on forum non conveniens grounds. We disagree and affirm the district court's determinations.

Before reaching the substantive issues, we address two motions filed by the parties on appeal. Appellants moved this court to take judicial notice of their California proceeding. Respondents oppose the motion, noting that Minn. R. Civ. App. P. 110.01 requires the record on appeal to be limited to the papers filed in the district court. It is undisputed that the California proceeding commenced after the district court's determination and therefore falls outside of rule 110.01. Nevertheless, as an appellate court, we may consider "documentary evidence of a conclusive nature (uncontroverted) which supports the result obtained in the lower court[.]" *Vill. Apartments v. State (In re Objections & Defs. to Real Prop. Taxes)*, 335 N.W.2d 717, 718 n.3 (Minn. 1983). Although appellants seek reversal, not affirmance, they are not submitting the California proceeding as "uncontroverted" evidence of any fact determined by the district court. Rather, this submission informs this court of the current status of the litigation. Because the submission of the California proceeding is not to "prove" a disputed fact, we conclude that we can acknowledge the relevant developments without formally taking judicial notice. The same reasoning dispenses with respondents' motion that we strike all references to the subsequent Minnesota district court orders and the California proceeding. Because we are simply acknowledging the pendency and progress of

relevant litigation, without considering the merits of the orders, we find no "dispute" mandating the requested strike. Accordingly, we deny both motions.[1]

I.

Copeland and Glenn contend that the district court erred by failing to dismiss respondents' suit for lack of general or specific personal jurisdiction. Whether personal jurisdiction exists is a question of law, which this court reviews de novo. *Nw. Airlines, Inc. v. Friday*, 617 N.W.2d 590, 592 (Minn. App. 2000), *aff'd*, 617 N.W.2d 590 (Minn. 2000). In order to establish jurisdiction, it is the plaintiff's burden to prove "the minimum contacts necessary to satisfy due process" when opposing a preliminary motion to dismiss. *Hardrives, Inc. v. City of LaCrosse*, 307 Minn. 290, 293, 240 N.W.2d 814, 816 (Minn. 1976). However, when jurisdiction is challenged on the basis of the pleadings, a plaintiff "need only make a prima facie showing of sufficient Minnesota-related activities through the complaint and supporting evidence, which will be taken as true." *Id.* In a close case, doubts are resolved in favor of retaining jurisdiction. *Nw. Airlines*, 617 N.W.2d at 592.

A Minnesota court can exercise personal jurisdiction over a nonresident defendant when personal jurisdiction is authorized by the Minnesota long-arm statute, Minn. Stat. § 543.19, subd. 1 (2012), and the nonresident defendant has certain "minimum contacts" with the forum state as required by constitutional due-process guarantees. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 29 (Minn. 1995). Minnesota's long-arm statute

[1] We address respondents' additional motion, to dismiss the forum non conveniens issue, in our analysis of that issue in part II below.

is coextensive with the constitutional limits of due process. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410-11 (Minn. 1992).

A plaintiff satisfies due-process standards by showing that a nonresident defendant's "minimum contacts" with the forum state are such that maintenance of the lawsuit in the selected forum does not offend traditional notions of fair play and substantial justice. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). Minimum contacts are necessary to support the exercise of either general or specific personal jurisdiction. *Domtar*, 533 N.W.2d at 30 (quotation omitted); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 nn.8-9, 104 S. Ct. 1868, 1872 nn.8-9 (1984) (distinguishing between general and specific jurisdiction); *Valspar*, 495 N.W.2d at 411 (same).

General personal jurisdiction exists when the nonresident defendant has "continuous and systematic" contacts with the forum state. *Helicopteros Nacionales*, 466 U.S. at 415-16, 104 S. Ct. at 1872-73. Specific personal jurisdiction exists when the cause of action arises out of, or relates to, the defendant's contact with the forum state. *Id.* at 414 n.8, 104 S. Ct. at 1872 n.8. A single contact with the forum state may be sufficient to establish specific jurisdiction if the cause of action arose out of that contact. *See McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223, 78 S. Ct. 199, 201 (1957) (finding jurisdiction over insurance company when contract was delivered in forum state, premiums were mailed from forum state, and insured was resident of forum state at time of death). Copeland and Glenn maintain that neither general nor specific personal jurisdiction attach in this case and that, as a result, the district court erred in denying their

motion to dismiss. Despite their claims, we are convinced that, at the prima facie pleadings stage, respondents demonstrated sufficient contacts to support specific personal jurisdiction.[2]

In order to establish a prima-facie case of specific personal jurisdiction, Nemadji must demonstrate that Copeland and Glenn had sufficient contact with Minnesota to the extent that they invoked the benefits and protections of our laws. *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 906-07 (Minn. 1983). Copeland and Glenn contend that they are Arizona residents having little or no contact with Minnesota for the past ten years. To support its finding of jurisdiction, the district court noted that Copeland and Glenn are "co-owners of a business that uses Minnesota services to provide its product. CRE generates revenue through the work that [Nemadji] performs in Minnesota." Through their affidavits presented to the district court, respondents estimated that Nemadji performs approximately 80 percent of CRE's work in Minnesota. This includes managing accounts payable and receivable, generation of payroll and related taxes, management of all corporate documents, administration of employee benefits, and routine daily work on accounts. Copeland and Glenn contend that much of

[2] Respondents identify numerous contacts Copeland and Glenn have had with Minnesota dating from their association with Lourey and continuing through 2009. Based on these contacts, they urge that Copeland and Glenn have sufficient contacts with Minnesota to support a finding of general personal jurisdiction. However, "[m]inimum contacts must exist either at the time the cause of action arose, the time the suit is filed, or within a reasonable period of time immediately prior to the filing of the lawsuit." *Pecoraro v. Sky Ranch for Boys, Inc.*, 340 F.3d 558, 562 (8th Cir. 2003). While we accept respondents' alleged contacts as true at the pleadings stage, we are not convinced that these pre-2009 contacts are close enough in time to the alleged cause of action to support a finding of general personal jurisdiction evincing continuous and systematic contacts with Minnesota. *See id.*

the evidence the district court relied upon is inadmissible hearsay. But at the pretrial stage we accept the allegations of plaintiffs as true, even if disputed. *Id.* at 907 n.1.

The pivotal question becomes whether Copeland and Glenn are responsible for the economic benefits they theoretically receive, as shareholders and board members of CRE, through the day-to-day activities Nemadji undertakes for CRE in Minnesota. Respondents cite the only case directly on point, *Kopperud v. Agers*, 312 N.W.2d 443 (Minn. 1981). There, the supreme court determined that a foreign shareholder, director, and officer of a corporation, despite the fact that his activities occurred in Arizona, was subject to Minnesota jurisdiction because his actions were "directed toward attaining a commercial benefit in Minnesota." *Id.* at 445. While the supreme court specifically considered the fact that the foreign director's activities in Minnesota were fraudulent, the court did not state that he was subject to jurisdiction only because of this fraudulent behavior. *Id.* Rather, jurisdiction attached because of the foreign director's overall aim at attaining commercial benefits in Minnesota. *Id.* Similarly here, Copeland and Glenn, as shareholders and current board members of CRE, rely heavily on the actions of Nemadji's Minnesota location for its day-to-day operations. This constitutes actions "directed toward attaining a commercial benefit in Minnesota." *Id.* Therefore, as corporate officers, Copeland and Glenn should have had a reason to expect being haled into a Minnesota court.[3]

[3] Appellants argue that *Johnson v. Woodcock* supports their argument that jurisdiction is lacking. 444 F.3d 953, 955 (8th Cir. 2006). There, the court declined to find specific jurisdiction because the alleged contacts were conclusory and sporadic. *Id.* at 956. While *Johnson* might diminish the present significance of much of the alleged pre-2009 contacts

Specific personal jurisdiction exists when the cause of action arises out of, or relates to, the defendant's contact with the forum state. *Helicopteros Nacionales*, 466 U.S. at 414 n.8, 104 S. Ct. at 1872 n.8. Here, the cause of action links directly to the actions of Nemadji, a Minnesota corporation, and how those actions impact the management, operation, and board elections of CRE. Because we accept respondents alleged contacts as true, we agree with the district court's conclusion that "CRE-INC's management is intertwined with Minnesota connections that Defendants Copeland and Glenn have been exposed to and participated in." Thus, Copeland and Glenn, as shareholders and board members of CRE, are subject to specific jurisdiction due to CRE's heavy reliance on Minnesota activities for its economic viability. Because we conclude that specific personal jurisdiction attaches, we need not analyze the additional contacts identified by respondents that may support general personal jurisdiction. *See Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569-70 (Minn. 2004) (outlining a five-factor test to determine whether general personal jurisdiction attaches under the due-process clause based on the contacts alleged).[4] Our jurisprudence and the due-process clause require only a demonstration of specific or general personal jurisdiction, not both. *Domtar*, 533 N.W.2d at 30. At this pleadings stage, we are satisfied that the district court's assertion of jurisdiction over Copeland and Glenn does

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that Copeland and Glenn had with Minnesota, it does nothing to address the economic benefit they currently receive due to CRE's reliance on Minnesota activities through Nemadji. As a result, we find *Johnson* distinguishable in light of *Kopperud*'s guidance.

[4] The district court applied this test, leading us to believe that it concluded Copeland and Glenn are subject to general personal jurisdiction. However, as our review is de novo, we choose to resolve the issue as one of specific personal jurisdiction. *See Nw. Airlines*, 617 N.W.2d at 592.

not offend "traditional notions of fair play and substantial justice" because the cause of action relates directly to the alleged contacts. *See Int'l Shoe Co.*, 326 U.S. at 316, 66 S. Ct. at 158.

We note that our affirmance does not preclude the district court from reconsidering its jurisdiction as the case proceeds. Copeland and Glenn have been unwavering in their arguments that the contacts respondents have alleged and rely upon are unfounded. At a further pretrial hearing, such as summary judgment, or at trial, factual disputes will be relevant and respondents will have to demonstrate more than a prima facie showing of jurisdiction. *See Sprint Corp. v. DeAngelo*, 12 F.Supp.2d 1184, 1185 (D. Kan. 1998) (stating that until pretrial hearing or trial, prima facie showing suffices notwithstanding controverted facts); *LaRose v. Sponco Mfg. Inc.*, 712 F.Supp. 455, 458-59 (D.N.J. 1989) (noting that if plaintiff meets the prima facie burden, plaintiff may proceed to trial and be challenged to establish jurisdiction again at a pretrial hearing where the burden is raised to a preponderance standard, or at trial where the higher burden also applies). It is clear from the district court's order that it applied only the prima facie test and has not, as yet, conducted a heightened preponderance-of-the-evidence analysis.

II.

Copeland and Glenn, joined by Iversen and CRE, challenge the district court's exercise of discretion and refusal to decline jurisdiction on the ground of forum non conveniens. Before reaching the merits of their argument, we address respondents' motion to dismiss the forum non conveniens issue. Respondents are correct that a forum

non conveniens determination is not appealable as a matter of right. However, it is not uncommon for this court to extend discretionary review to suggested alternative grounds for dismissal because such cases often involve closely related facts and arguments. *See, e.g., C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 536, 539 (Minn. App. 2009) (upholding forum-selection clause and affirming district court rulings on personal jurisdiction, minimum contacts, and forum non conveniens). Despite appellants' failure to file a separate petition for discretionary review, we determine that expanding the scope of this appeal to include the suggested alternative grounds for dismissal is judicially expedient. *See* Minn. R. Civ. App. P. 103.04 (allowing review of additional matters in the interest of justice).

Forum non conveniens permits a district court the discretion to decline the exercise of its jurisdiction when another forum would be more convenient for the parties, witnesses, and a district court. *Paulownia Plantations de Panama Corp. v. Rajamannan*, 793 N.W.2d 128, 133 (Minn. 2009). Forum non conveniens determinations are committed to the sound discretion of the district court. *Id.* at 133. We will not reverse a district court's determination unless there has been a clear abuse of discretion. *Id.*

Conducting a forum non conveniens analysis has two parts. First, the district court must identify an adequate and available alternative forum. *Id.* It is undisputed in this case that California is an adequate alternative forum where all defendants have consented to jurisdiction. Second, the district court must weigh the private and public interest factors of both forums. *Id.* at 137. These factors include, among others, accessibility to

evidence, availability of witnesses, administrative difficulties including court congestion, and the forum's familiarity with the law. *Id.*

Here, the district court concluded that the private-interest factors did not weigh strongly for or against a Minnesota forum, largely because witnesses and documents would be required to travel regardless of the forum selected. The only private factor that tilted slightly to a Minnesota forum was the district court's concern that "congestion in California is likely to be heavier." Regarding the public-interest factors, the district court deemed the interests of a Minnesota forum "slightly stronger" because this dispute relies heavily upon the management and operational decisions of Nemadji, a Minnesota corporation.

Appellants point out that their California action is framed to resolve a broad array of issues, not limited to those implicated here, and that the case was accorded "expedited" status. This would tend to alleviate the district court's concern that court congestion in California would significantly delay resolution of the case. However, it was made clear at oral argument that the California court had already continued the case from its February 4, 2013 trial calendar for an indefinite time. Thus, how expedited the California proceedings will prove to be is uncertain, and the district court's other considerations remain undisputed. Regardless of the selected forum, some parties, witnesses, and documents will require lengthy transport. The district court concluded that Minnesota is a proper forum for primarily the same reason that we determined Copeland and Glenn are subject to Minnesota jurisdiction—the fact that CRE relies so heavily on a Minnesota

corporation for much of its day-to-day economic activities.[5] On the record presented, we are satisfied that the district court did not abuse its discretion by denying the motions based on forum non conveniens and electing to exercise its jurisdiction.[6]

Affirmed; motions denied.

[5] The district court phrases this conclusion as "the case ultimately concerns the management decisions of a Minnesota resident [Bohnsack] and corporation; albeit, those decisions concern the functioning of a California business."

[6] Appellants argue that the district court's analysis was flawed because it granted "deference to the plaintiffs' choice of forum." Under Minnesota caselaw, it is a presumption that the plaintiff's selected forum weighs in favor of maintaining jurisdiction. *See Bergquist v. Medtronic, Inc.*, 379 N.W.2d 508, 511 (Minn. 1986). We interpret appellants' argument as stemming from the California court's finding that their fiduciary claims are not derivative and, as a result, they are the true plaintiffs. Appellants point to federal caselaw to support their proposition that declaratory actions are often preemptive strikes that warrant closer analysis before granting any deference due to the plaintiff's forum selection. *See U.S. Fire Ins. Co. v. Goodyear Tire & Rubber Co.*, 920 F.2d 487, 488-89 (8th Cir. 1990). However, as this was only one factor leading to the district court's conclusion, it is not strong enough in our view to warrant a conclusion that the district court abused its discretion. Also, as this argument was never presented to the district court, we will not consider it as a basis to support reversal on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (concluding that generally appellate courts will not consider matters not argued to and considered by the district court).