

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2019-013154

04/27/2020

HON. SHERRY K. STEPHENS

CLERK OF THE COURT  
T. DeRaddo  
Deputy

SHAWN MARTIN

BRETT L SLAVICEK

v.

GRECH MOTORS INC, et al.

DAVID A WEBER

C MEGAN FISCHER  
JAMES F WEES  
JUDGE STEPHENS

MINUTE ENTRY

East Court Building - Courtroom 712

9:00 a.m. This is the time set for Oral Argument on Defendant Westinghouse Air Brake Technologies Corporation, dba Wabtec Corporation, and dba Vapor Bus International's *Specially Appearing Defendant Westinghouse Air Brake Technologies Corporation's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Arizona Rule of Civil Procedure 12(b)(2)*, filed December 13, 2020. Appearing on behalf of Plaintiff, Shawn Martin, is counsel, James Fucetola for counsel, Brett Slavicek. Appearing on behalf of Defendant, Grech Motors, Inc., is counsel, David Weber. Appearing on behalf of Defendant Westinghouse Air Brake Technologies Corporation dba Wabtec Corporation, and dba Vapor Bus International, is counsel, John Williams for C. Megan Fischer. Appearing on behalf of Defendants, Top Notch Transportation, LLC, Phx Limo, LLC, Adam Burkhalter and Eric Chen, is counsel, James F. Wees.

A record of the proceedings is made digitally in lieu of a court reporter.

The Court has read and considered all briefing on Defendant Westinghouse Air Brake Technologies Corporation, dba Wabtec Corporation, and dba Vapor Bus International's *Specially*

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*Appearing Defendant Westinghouse Air Brake Technologies Corporation's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Arizona Rule of Civil Procedure 12(b)(2), filed December 13, 2020.*

The parties present argument on the Motion.

IT IS ORDERED taking this motion under advisement.

9:28 a.m. Matter concludes.

**LATER:**

The Court has considered Specially Appearing Defendant Westinghouse Air Brake Technologies Corporation's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Arizona Rule of Civil Procedure 12(b)(2) filed December 13, 2019, Plaintiff's Response to Defendant Westinghouse Air Brake Technologies Corporation's Motion to Dismiss for Lack of Personal Jurisdiction filed March 13, 2020, Specially Appearing Defendant Westinghouse Air Brake Technologies Corporation's Reply Brief in Support of Motion to Dismiss Pursuant to FRCP 12(b)(2) for Lack of Personal Jurisdiction filed March 19, 2020, and the oral argument conducted on April 27, 2020. The parties conducted discovery on the issue of personal jurisdiction after this motion was filed.

Plaintiff's hand was injured, and a finger was amputated, while approaching the door of a party bus. Plaintiff alleges in the complaint that Defendant Westinghouse Air Brake Technologies Corporation (WABTEC) sold the electrically actuated passenger doors and lock mechanisms to Defendant Grech Motors, Inc. (Grech). The complaint further alleges Defendant Grech equipped the party bus with those parts and designed, manufactured, and modified the party bus before selling it to Defendants Top Notch Transportation, LLC and PHX Limo, LLC. The complaint alleges a claim for strict product liability.

In this motion, Defendant WABTEC seeks dismissal of the complaint on the ground Arizona lacks general personal jurisdiction or specific personal jurisdiction. Defendant WABTEC is a Delaware corporation with its principal place of business in Pittsburg, Pennsylvania. It is not registered to do business in Arizona. Defendant WABTEC acknowledges it has shipped doors to Arizona but those doors had different locking systems and different mechanisms. The doors used in this case did not come directly to Arizona from WABTEC. The doors came to Arizona from California after installation was completed on the bus by another defendant.

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Rule 12 (b)(2), Ariz.R.Civ.P., provides lack of jurisdiction over the person is a defense to a claim and may be asserted in a motion to dismiss.

The Fourteenth Amendment limits personal jurisdiction of state courts. The primary focus of a personal jurisdiction inquiry is the defendant's relationship to the forum state. There are two types of personal jurisdiction: (1) general (all-purpose); and (2) specific (case-related). Arizona permits the exercise of long-arm jurisdiction to the extent allowed by the United States Constitution. *See* Ariz. R. Civ. P. 4.2(a). The reach of Arizona's long-arm jurisdiction is not unlimited. *See Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Properties, Ltd.*, 226 Ariz. 262, 246 P.3d 343 (2011). Assertion of jurisdiction is constitutionally permissible only if the defendant's business contacts within the state are substantial or continuous and systematic. Absent such contacts, ties or relations with the forum, the state cannot exercise jurisdiction despite an interest or inconvenience to the parties. *Armstrong v. Aramco*, 155 Ariz. 345, 746 P.2d 917 (App. 1987).

General jurisdiction is the individual's domicile or, for a corporation, an equivalent place, one in which the corporation is regarded as at home. A court with general jurisdiction may hear any claim against that defendant even if all incidents underlying the claim occurred in a different state. *See Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. \_\_\_, 137 S. Ct. 1773 (2017). Due process protects individuals from being subject to a binding judgment of a forum with which they have established no meaningful contacts, ties, or relations by requiring that they have fair warning that a particular activity may subject them to a foreign court's jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). Statutes do not create general jurisdiction by implied consent. Merely conducting business activities in Arizona is not sufficient to create general jurisdiction when a corporation is neither incorporated nor has its principal place of business in Arizona. Merely registering a foreign corporation in Arizona and appointing agents for service of process is not sufficient to establish general jurisdiction. A corporation is not deemed to have consented to waive due process where a statute gives no notice that waiver is the price of registration. *Walmart Stores, Inc v. Lemaire*, 242 Ariz. 357 (2017).

When a defendant's activities in the forum state are not so pervasive as to subject it to general jurisdiction, the court may still find specific jurisdiction if: (1) the defendant purposefully avails himself of the privilege of conducting business in the forum; (2) the claim arises out of or relates to the defendant's contacts or activities with the forum; and (3) the exercise of jurisdiction is reasonable. *See Williams v. Lakeview Co.*, 299 Ariz. 1 (2000) and *A. Uberti and C. v. Leonardo*, 181 Ariz. 565, 892 P.2d 1354 (1995). Although specific jurisdiction may arise without the defendant ever setting foot in the forum state, and may arise incident to a single act directed to the forum, it does not arise from the plaintiff's or a third party's unilateral activity or from the non-resident defendant's mere foreseeability that a claim may arise. *See*

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*Batton v. Tennessee Farmers Mut. Ins. Co.*, 153 Ariz. 268, 736 P.2d 2 (1987) (as noted in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 at 474 (1985) the foreseeability of an injury in another state is not a sufficient benchmark for exercising personal jurisdiction). If the defendant has purposefully directed its activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities, the fair warning requirement is satisfied. *Armstrong v. Aramco*, 155 Ariz. 345, 746 P.2d 917 (App. 1987). If there is no suit-related activity that creates a substantial connection between the defendant and the forum, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the state. *Bristol Myers Squibb Co. v. Superior Court*, 137 S. Ct. at 1773, 1781 (2017). There must be a direct nexus between a foreign defendant's Arizona-related activities and the claims. *Leon v. Peterbilt Motors*, 2019 WL 859580 (D. Ariz. February 22, 2019).

Plaintiff has the burden of making a prima facie showing of personal jurisdiction. When a defendant challenges personal jurisdiction, the plaintiff cannot rest on bare allegations in the complaint but must present facts, by affidavit or otherwise, to support personal jurisdiction. *In re Consol. Zicam Prod. Liab. Cases*, 212 Ariz. 85 (App. 2006) and *Armstrong v. Aramco Services Co.*, 155 Ariz. 345, 746 P.2d 917 (App. 1987). Once the plaintiff establishes that minimum contacts occurred with the forum state and that the events causing the injury arose out of that contact, a rebuttable presumption arises that the forum reasonably can exercise jurisdiction. *See Williams v. Lakeview Co.*, 199 Ariz. 1, 4, ¶ 7, 13 P.3d 280, 283 (2000) (internal quotations and citations omitted). The court may consider affidavits when ruling on a motion to dismiss for lack of personal jurisdiction. *Maloof v. Raper Sales, Inc.*, 113 Ariz. 485 (1976). If a genuine factual dispute is established, the court may conduct an evidentiary hearing to resolve the dispute. *Gatecliff v. Great Republic Life Ins. Co.*, 154 Ariz. 502 (App. 1987). The court will consider all contacts between non-resident defendants and Arizona to determine whether the non-resident defendants engaged in purposeful conduct for which they could reasonably expect to be hailed into Arizona's courts. Casual or accidental contacts by a defendant cannot sustain the exercise of specific jurisdiction. Contacts must arise from a defendant's purposeful conduct. *Planning Group*, 226 Ariz. At 266.

At oral argument, Plaintiff agreed that only specific personal jurisdiction applies to this case.

Plaintiff argues in his response that Defendant WABTEC directs its business activities to Arizona. It sells, ships, and distributes automatic locks to Arizona persons and entities. Employees of Defendant WABTEC travel to Arizona to market and sell its automatic door products. Defendant WABTEC has more than 150 subsidiaries and 10 business units that direct business to Arizona. Defendant contends Defendant WABTEC has the minimum contacts with Arizona to establish specific personal jurisdiction, citing to *Burger King Corp. v. Rudzewics*, 471

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U.S. 462. Defendant consummated a transaction with a resident of Arizona and Plaintiff's claim arises out of or relates to the defendant's forum-related activity.

In reply, Defendant WABTEC argues that to establish specific jurisdiction, Plaintiff must show that Defendant directed its activities to Arizona and the litigation arose from that activity. In addition, there must be some causal connections between a defendant's forum-related conduct and the plaintiff's claim, citing to *Williams v. Lakeview Co.*, 199 Ariz. 1 (2000) (because plaintiff established no nexus between their cause of action and Defendant's activities in Arizona, Arizona courts cannot assert specific jurisdiction over Defendant). In this case, the conduct that Plaintiff claims led to his injuries (the defective and negligent design, manufacture, assembly and sale) did not occur in Arizona and was not directed to Arizona. The device was sold and shipped to Defendant Grech Motors in California or Mexico. During discovery conducted on the personal jurisdiction issue, Plaintiff was unable to establish that Defendant WABTEC sells or ships this particular item to Arizona or that it conducts any substantial business of any kind within Arizona. Defendant WABTEC has not sold any door/lock mechanisms to Defendant Top Notch Transportation or Defendant PHX in Limo in the last ten years.

The Court finds Plaintiff did not establish that Defendant WABTEC had sufficient minimum contacts with Arizona and that the events causing Plaintiff's injury arose out of those contacts. There is no suit-related activity that created a substantial connection between this defendant and the forum. As noted in *Burger King*, 471 U.S. at 485, the issue of personal jurisdiction cannot be decided by applying a mechanical test or formula but rather after weighing the facts of this case to determine whether personal jurisdiction would comport with fair play and substantial justice. Here, the totality of the evidence presented on the issue of specific personal jurisdiction shows there is not a sufficient causal connection or nexus between this defendant's contacts with Arizona and this cause of action. In his argument, Plaintiff relied heavily on the fact Defendant WABTEC shipped four component parts to Arizona that were used in a mechanism similar to the one at issue in this case. The parts that were shipped were for a completely different device. It is undisputed that Defendant WABTEC never sold a mechanism like the one that allegedly caused injury to Plaintiff to anyone in Arizona. The Court finds the exercise of specific personal jurisdiction as to Defendant WABTEC is not reasonable based on these facts.

For the reasons stated,

**IT IS ORDERED** granting Specially Appearing Defendant Westinghouse Air Brake Technologies Corporation's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Arizona Rule of Civil Procedure 12(b)(2) filed December 13, 2019.