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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CREE, INC., Plaintiff, v. EXEL NORTH AMERICAN LOGISTICS, INC., f/k/a MSAS NORTH AMERICAN LOGISTICS; EXEL NORTH AMERICAN ROAD TRANSPORT, INC., f/k/a ROAD KING EXPRESS; EXEL GLOBAL LOGISTICS, INC., f/k/a MSAS GLOBAL LOGISTICS, INC., Defendants and Third-Party Plaintiffs, and CRST INTERNATIONAL, INC., Defendants, v. SEMICONDUCTOR ENGINEERING GROUP, INC., Third-Party Defendant.	)	1:02CV00319

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Greensboro, N. C.
By

MEMORANDUM OPINION and ORDER

OSTEEN, District Judge

I. BACKGROUND

This matter is presently before the court on Semiconductor Engineering Group, Inc.'s ("SEGI") motion to dismiss for lack of personal jurisdiction. This litigation arose after the sale and attempted delivery of a "sputtering machine," a tool used in the

manufacture of semi-conductors. The original plaintiff, Cree, Inc. ("Cree"), a company located in Durham, North Carolina, filed a complaint alleging negligent handling against the companies involved in the transportation of the machine, Exel North American Logistics, Inc., Exel North American Road Transport, Inc., Exel Global Logistics, Inc., MSAS Global Logistics, Inc., (collectively, "Exel Group"), and CRST International, Inc. ("CRST"). A third-party complaint was filed by the Exel Group Defendants against SEGI, the California-based manufacturer. The Defendants claimed that the damage during transit resulted from SEGI's improper packing, loading, and supervision.

The relationship between SEGI and Cree began during the summer of 2000 when Dale Sitton, marketing manager for SEGI, made a sales call to Cree while in North Carolina on other business. The resulting negotiations culminated in a contract for sale. Part of the contract called for installation by a team of SEGI personnel and up to a week of on-site training.

Typically, SEGI arranges the shipment of its products through its own carrier. In this case, however, Cree made all of the shipping arrangements. Cree contacted the Exel Group to coordinate the shipment, which in turn enlisted the aid of CRST. The machine was picked up at the SEGI facility by CRST in July 2001. It was damaged in transit approximately one week later.

II. ANALYSIS

SEGI moves to dismiss Exel Group's complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). Plaintiffs[1] bear the burden of establishing personal jurisdiction by a preponderance of the evidence. Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 59-60 (4th Cir. 1993). When a court decides such a motion without an evidentiary hearing, the plaintiff must prove at least a prima facie case of personal jurisdiction. Id. at 60. In determining whether a plaintiff has met this burden, the court must resolve all factual disputes and draw all reasonable inferences arising from the pleadings in the plaintiff's favor. Id.

To determine whether personal jurisdiction is proper, the court must engage in a two-part inquiry. First, the court must determine whether the state long-arm statute authorizes the exercise of jurisdiction under the circumstances. Id. Second, if the court finds such authorization under the long-arm statute, it must then consider whether the statutory assertion of jurisdiction is consistent with the Due Process Clause of the Fourteenth Amendment to the Constitution. Id.

North Carolina's long-arm statute is interpreted liberally in favor of finding jurisdiction. Dillon v. Numismatic Funding

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[1]Although originally a defendant, in relation to SEGI the Exel Group is considered a plaintiff.

Corp., 291 N.C. 674, 676, 231 S.E.2d 629, 630 (1977). Following the lead of North Carolina state courts, federal courts consistently have construed the statute as extending jurisdiction to the full extent permitted by the Fourteenth Amendment. See, e.g., Christian Sci. Bd. of Dirs. of the First Church of Christ, Scientist v. Nolan, 259 F.3d 209, 215 (4th Cir. 2001) (citing Century Data Sys., Inc. v. McDonald, 109 N.C. App. 425, 427, 428 S.E.2d 190, 191 (1993)); Vishay Intertechnology Inc. v. Delta Int'l Corp., 696 F.2d 1062, 1065 (4th Cir. 1982); Regent Lighting Corp. v. Galaxy Elec. Mfg., 933 F. Supp. 507, 509-10 (M.D.N.C. 1996); Crown Cork & Seal Co. v. Dockery, 886 F. Supp. 1253, 1257 (M.D.N.C. 1995). For this reason, the personal jurisdiction inquiry is condensed into a one-step due process analysis.

The due process analysis protects a defendant against being subject to binding judgments in jurisditions where it "has established no meaningful 'contacts, ties, or relations.'" Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72, 105 S. Ct. 2174, 2181-82 (1985) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 319, 66 S. Ct. 154, 160 (1945)). To apply this surrogate for actual presence, a court must ascertain whether the defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co., 326 U.S. at 316, 66 S. Ct. at 158

(quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S. Ct. 339, 343 (1940)).

The analysis of due process differs depending on whether specific or general jurisdiction is viewed. Specific jurisdiction exists when the forum state asserts personal jurisdiction over the defendant in a suit "arising out of or related to" the defendant's contacts with the state. Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 414 n.8, 104 S. Ct. 1868, 1872 n.8 (1984). If, on the other hand, the issues before the court did not arise in the forum state, then the court seeks to exercise general jurisdiction. Id. at 415 n.9, 104 S. Ct. at 1872 n.8. In order to exercise general jurisdiction, the defendant must have sufficient "continuous and systematic contacts" with the forum state in order for jurisdiction to be proper. Id. at 415, 104 S. Ct. at 1872; Wolf v. Richmond County Hosp. Auth., 745 F.2d 904, 909 (4th Cir. 1984).

To determine whether it may assert specific jurisdiction over a defendant, the court considers "(1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable." ALS Scan, Inc. v. Digital Serv.

Consultants, Inc., 293 F.3d 707, 712 (4th Cir. 2002) (internal quotations omitted); see also Nolan, 259 F.3d at 215-16 (citing Burger King, 471 U.S. at 472, 476-77, 105 S. Ct. at 2182, 2184-2185).

A. Purposeful Availment

The requirement of purposeful availment provides fair warning to potential defendants, allowing them to structure their conduct "with some minimum assurance as to where that conduct will and will not render them liable to suit." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980). The "constitutional touchstone" of personal jurisdiction, then, "remains whether the defendant purposefully established 'minimum contacts' in the forum State." Burger King, 471 U.S. at 474, 105 S. Ct. at 2183 (quoting International Shoe Co., 326 U.S. at 316, 66 S. Ct. at 158). Whether jurisdiction is appropriate must be determined based on the facts and circumstances of each case. Id. at 478-79, 105 S. Ct. at 2185.

While the existence of a contract alone is an insufficient basis for personal jurisdiction, id. at 478, 105 S. Ct. at 2185, other factors are present in this case. SEGI's purposeful availment is most clearly evidenced by its solicitation of Cree's business during the summer of 2000. SEGI made the initial sales call to Cree after learning of Cree's interest from another customer. Subsequently, the marketing manager for SEGI, Dale

Sitton, scheduled a visit to Cree's facility and met with Cree's purchasing director. Although later negotiations were conducted from California, SEGI initiated the interaction in North Carolina eventually leading to the sale. This type of activity weighs in favor of finding purposeful availment. Cf. Diamond Healthcare of Ohio, Inc. v. Humility of Mary Health Partners, 229 F.3d 448, 451 (4th Cir. 2000) (noting the defendant had not solicited business from the plaintiff); Chung v. NANA Dev. Corp., 783 F.2d 1124, 1129 (4th Cir. 1986) (same). The fact that negotiations occurred outside of the forum state is a factor mitigating against jurisdiction, but is not itself determinative. Burger King, 471 U.S. at 478-79, 105 S. Ct. at 2185.

Other facts also support a finding of purposeful availment. In August 2000, SEGI entered into a non-disclosure agreement with Cree. The agreement was, by its terms, governed by North Carolina law. While not constituting submission to jurisdiction in North Carolina, the agreement does manifest a purposeful availment of the laws of North Carolina in the transaction taken as a whole. Id. at 481-82, 105 S. Ct. at 2187; Diamond Healthcare, 229 F.3d at 452 (citing Burger King, 471 U.S. at 481, 105 S. Ct. at 2187).

Additionally, the contract between SEGI and Cree was more substantial than a mere sale of goods. Preparation for use of the machine requires a team of three to four people supervising

installation and one team member providing one week of on-site training. Taken together, these contacts are sufficient to show that SEGI purposefully availed itself of the privilege of conducting activities in North Carolina.

B. Relatedness of Claims and Contacts

In addition to finding that the defendant purposefully availed itself of the forum, due process requires a sufficient nexus between the defendant's contacts with the forum state and the nature of the claims asserted. Helicopteros, 466 U.S. at 415-16, 104 S. Ct. at 1872-73; ALS Scan, 293 F.3d at 712. Specifically, the plaintiff's cause of action must sufficiently "arise out of" or "relate to" the defendant's contacts with the forum state. Helicopteros, 466 U.S. at 414, 104 S. Ct. at 1872.

The Court in Helicopteros declined to address whether, in the limited context of specific jurisdiction, the claim must "arise out of" the defendant's contacts, or whether the claims may merely "relate to" the relevant contacts. Id. at 415 n.10, 104 S. Ct. at 1872 n.10. The Court's silence has resulted in differing interpretations on the degree of relatedness required by the Constitution. Yates v. Motivation Indus. Equip. Ltd., No. 01-1938, 2002 WL 1343251, at *3 (4th Cir. June 20, 2002). The Sixth Circuit, taking a liberal view, has stated that asserting jurisdiction "does not require that the cause of action formally 'arise from' defendant's contacts with the forum; rather, this

criterion requires only 'that the cause of action, of whatever type, have a substantial connection with the defendant's in-state activities.'" Bird v. Parsons, 289 F.3d 865, 875 (6th Cir. 2002) (citing Third Nat'l Bank in Nashville v. WEDGE Group, Inc., 882 F.2d 1087, 1091 (6th Cir. 1989)). The Ninth Circuit, taking a more restrictive view, uses a "but for" test in measuring an acceptable degree of relatedness. Doe v. Unocal Corp., 248 F.3d 915, 925 (9th Cir. 2001). When using this test, "the Court considers whether plaintiffs' claims would have arisen but for [the defendant's] contacts with [the forum state]." Id.

Under either test there is a sufficient connection between the claims and contacts in this case to uphold personal jurisdiction. Even according to the Ninth Circuit's "but for" analysis, jurisdiction would lie because the Exel Group's claims would not have arisen absent SEGI's contacts with North Carolina. SEGI's initial solicitation of Cree gave rise to the negotiations that culminated in the sales and shipment contracts.

C. Reasonableness

Finally, the court must determine whether the exercise of personal jurisdiction would be constitutionally reasonable. ALS Scan, 293 F.3d at 712. Considering SEGI's repeated contacts with North Carolina, asserting personal jurisdiction over the company is consistent with "traditional notions of fair play and substantial justice." International Shoe Co., 326 U.S. at 316,

66 S. Ct. at 158 (quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S. Ct. 339, 343 (1940)). In making this determination, the court considers the burden on the defendant, the interests of the forum state, the plaintiff's interest in obtaining relief, the efficient resolution of controversies, and the shared interests of the several states in furthering substantive social policies. Lesnick v. Hollingsworth & Vose Co., 35 F.3d 939, 945-46 (4th Cir. 1994).

Although there is an obvious and substantial inconvenience in the distance SEGI will have to travel from California, the nature of SEGI's previous contacts with North Carolina suggests that the burden is not constitutionally unreasonable. By SEGI's own admission, its sales to North Carolina companies to date account for 16.96% of its total sales receipts. (Williams Aff. at 2.) Furthermore, SEGI has in the past sent teams of employees to North Carolina. Installation of SEGI's product has previously required three to four SEGI representatives to visit North Carolina. Finally, SEGI has made as many as 11 trips to North Carolina at the request of existing customers. The president, Donald Williams, was present on three of these trips, and Dale Sitton, the marketing manager, on six or seven. Therefore, because of the significance of SEGI's business relationship with North Carolina and the efficient resolution of the matter, it is

not constitutionally unreasonable to subject SEGI to jurisdiction in North Carolina.

In view of SEGI's purposeful availment of the privilege of conducting activities in the state, the relatedness of the claims and the contacts, and the reasonableness of asserting jurisdiction, there is an adequate basis for asserting personal jurisdiction over SEGI in North Carolina.[2] Therefore, third-party defendant SEGI's motion to dismiss for lack of personal jurisdiction will be denied.

III. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that SEGI's motion to dismiss for lack of personal jurisdiction [23] is denied.

This the 6 day of February 2003.

United States District Judge

[2]The court makes no finding regarding whether the requirements of general jurisdiction are met, having found sufficient basis for asserting specific jurisdiction.