

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-03317

Lauris Richards et al v. KK Bakery Investment Company LLC et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss Motion to Dismiss All Claims Against Defendant AIAC and Memorandum in Support (Motion: 1)
Filer: Eric David Jones
Filed Date: December 20, 2021

DECISION ON DEFENDANTS' MOTION TO DISMISS

This matter is before the court on Defendant American Industrial Acquisition Corporation's ("AIAC") motion to dismiss all claims for lack of personal jurisdiction pursuant to V.R.C.P. 12(b)(2). Mot. Dismiss All Claims Against Def. AIAC and Mem. Supp. (filed Dec. 12, 2021). Plaintiffs allege claims in contract, tort, statutory law, and equity arising from the corporate acquisition of KKB against AIAC and other defendants. See Compl. (filed Oct. 22, 2021). AIAC moves to dismiss for lack of personal jurisdiction, asserting that "AIAC has no connection to Vermont or to the subject matter of Plaintiffs' lawsuit." Mot. Dismiss All Claims Against Def. AIAC and Mem. Supp. at 1. Specifically, Defendant AIAC asserts that Plaintiffs have not established that AIAC has sufficient minimum contacts with Vermont to justify the court's exercise of personal jurisdiction over it. For the reasons stated below, the court finds Plaintiffs are entitled to discovery on the jurisdiction questions presented by the motion and the motion to dismiss is therefore denied without prejudice.

Background

This case arises from Defendants' acquisition of distressed Vermont corporation, Koffee Kup Bakery, Inc. ("KKB"),¹ on April 1, 2021. Plaintiffs are former employees of KKB: Mr. Morin was its Chief Executive Officer and Mr. Richards was its Vice President of Manufacturing. Compl. ¶¶ 15, 18. Defendant Jeffrey Sands is a Vermont resident, whom Plaintiffs allege was AIAC's agent and/or principal directing personnel, payroll, and management decisions with respect to Plaintiffs while in Vermont. *Id.* ¶¶ 3, 10, 22. AIAC is a Delaware Corporation. *Id.* ¶ 8.

Through their Complaint, Plaintiffs allege that AIAC acquired KKB, on its own or through KKBIC, and directed its activities and eventual closure within Vermont. *Id.* ¶ 3. Specifically, AIAC, alone or through KKBIC, acquired KKB and its affiliated entities on or about April 1, 2021 by purchasing a majority

¹ The company KKBIC actually acquired was Kup Co., which was a holding company for KK Bakery Inc. and its wholly owned subsidiaries, Vermont Bread Company and Superior Bakery, Inc.
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of the shares in KKB and its affiliated entities and, following that acquisition, maintained and controlled and/or owned and operated KKB and its affiliated entities. *Id.* ¶¶ 13–14, 27. After the acquisition, Plaintiffs assert that AIAC made all decisions at KKB and its affiliated entities, and that KKB was completely dependent upon AIAC for their daily operating funds. *Id.* ¶ 27. AIAC, through its agent and/or principal Jeffrey Sands, made personnel, payroll, and management decisions with respect to Plaintiffs while they lived in Vermont, causing damages to Plaintiffs within Vermont. *Id.* ¶ 3, 10, 22, 27. The Plaintiffs assert that, as a result of its corporate structure, AIAC and KKBIC constituted a “single employer” and/or “joint employer” of the Plaintiffs along with KKB. See *id.* ¶¶ 25, 27(a)–(k).

All of Plaintiffs’ claims, whether brought in contract, tort, equity, or pursuant to statute, arise generally from (1) employment contracts between Plaintiffs and KKB that predate KKBIC’s and/or AIAC’s acquisition of KKB, and (2) post-acquisition conduct allegedly undertaken by Defendants vis-à-vis those contracts and related rights. See *id.* ¶¶ 15–27; *id.* Exs. A and B. Mr. Morin’s and Mr. Richards’ employment agreements with KKB specified their annual base pay, bonus provisions, and severance payment upon termination of their employment. *Id.* ¶¶ 15–18; *id.* Exs. A and B. These agreements provided that if KKB was sold and Plaintiffs did not remain in their positions following the sale, they would be entitled to certain severance payments as specified therein. *Id.* ¶¶ 15–18.

Legal Conclusions: Personal Jurisdiction

It is well settled that Vermont courts must have both statutory and constitutional power to exercise personal jurisdiction over a nonresident defendant. The analysis consists of a two-part inquiry: (1) whether the defendant is amenable to service of process under Vermont’s laws, and (2) whether the court’s assertion of jurisdiction under those laws comports with the requirements of due process. *Ehrenfeld v. Mahfouz*, 489 F.3d 542, 547 (2d Cir. 2007). “Vermont’s long-arm statute, 12 V.S.A. § 913(b), permits state courts to exercise jurisdiction over nonresident defendants ‘to the full extent permitted by the Due Process Clause’ of the U.S. Constitution.” *Fox v. Fox*, 2014 VT 100, ¶ 9, 197 Vt. 466 (quoting *Northern Aircraft, Inc. v. Reed*, 154 Vt. 36, 40 (1990)). The first part of the test therefore merges with the second part, and the sole question is whether the assertion of personal jurisdiction satisfies due process. *Id.*; *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 567 (2d Cir. 1996).

“Personal jurisdiction is permitted where the defendant has sufficient ‘minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Havill v. Woodstock Soapstone Co.*, 172 Vt. 625, 626 (2001) (quoting *Dall v. Kaylor*, 163 Vt. 274, 275 (1995)). Thus, the due process “analysis consist[s] of two components: the ‘minimum contacts’ test and the ‘reasonableness’ inquiry.” *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 127 (2d Cir. 2002). “The jurisdictional issue must be resolved under federal constitutional law, as defined in *International Shoe . . .* and its progeny.” *Northern Aircraft, Inc.*, 154 Vt. at 41.

1. Minimum Contacts

When determining whether a defendant has the necessary minimum contacts, courts distinguish between specific and general personal jurisdiction. *In re Terrorist Attacks on September 11*,

2001, 714 F.3d 659, 673 (2d Cir. 2013); *State v. Atl. Richfield Co.*, 2016 VT 22, ¶ 14, 201 Vt. 342. General jurisdiction “applies to suits not arising out of or related to the defendant’s contacts with the forum state,” whereas specific jurisdiction requires that the Plaintiffs’ injuries arise from the Defendants’ purposeful activities with the forum. *Id.* (quoting *Fox*, 2014 VT 100, ¶ 27 and *Burger King Corp. v. Rudzewics*, 471 U.S. 462, 472 (1985)).

In this case, Plaintiffs argue the court has personal jurisdiction over AIAC based upon specific personal jurisdiction. Compl. ¶ 3; Pls.’ Opp. to Def. AIAC Mot. Dismiss at 11 (filed Feb. 11, 2022). “For the purpose of establishing specific personal jurisdiction, the necessary fair warning requirement is satisfied 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.” *In re Terrorist Attacks*, 714 F.3d at 674 (internal quotation marks omitted); *Shat Acres Highland Cattle, LLC v. Am. Highland Cattle Ass’n*, No. 2:20-CV-62-JMC, 2021 WL 2125357, at *9 (D. Vt. Jan. 13, 2021). There must be “some act by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

The Supreme Court has clarified that the “‘minimum contacts’ analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Walden v. Fiore*, 571 U.S. 277, 285 (2014). The Defendant must create the contacts itself, *id.* at 284, not the “unilateral activity of another party or a third person,” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984). “[A] defendant’s contacts with the forum State may be intertwined with [its] transactions or interactions with the plaintiff or other parties,” but “the plaintiff cannot be the only link between the defendant and the forum.” *Walden*, 571 U.S. at 285–86. Defendant’s conduct must form the necessary connection with the forum State as the basis for the State’s jurisdiction.

Here, the pleadings allege that AIAC played a significant role in the purchase of a group of Vermont companies. Plaintiffs also claim that AIAC was involved in post-purchase business decisions. AIAC’s precise role in the purchase of stock, and in the decision to lay off workers, is less clear. Plaintiffs claim that AIAC was directly involved in the purchase of Vermont companies, and directed the activities of its agent and/or principal, Jeffrey Sands, in the decisions that ultimately ended Plaintiffs’ employment and resulted in their employment contracts being breached and subsequent damages. Their allegations of unlawful conduct arise out of those Vermont contacts. Accepting Plaintiffs’ allegations as true, and construing the allegations in their favor, the court finds that AIAC may have reached out and engaged with Vermont in a manner that constituted purposeful availment. Whether the company had a physical presence in Vermont is not a factor, as the Supreme Court has long held that actual presence in the state is not a prerequisite for minimum contacts. *Burger King*, 471 U.S. at 476.

2. Reasonableness

Plaintiffs have also shown that litigating in this Court would be reasonable. If the court finds AIAC has sufficient minimum contacts with the forum state to support personal jurisdiction, the burden then shifts to the defendants to present a “compelling case” that the assertion of personal jurisdiction

would offend traditional notions of fair play and substantial justice, such that it would be unreasonable. *Bank Brussels Lambert*, 305 F.3d at 129. When determining whether personal jurisdiction is reasonable, a court considers:

(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies.

Id. Accepting the allegations in the Complaint and supporting affidavits as true, AIAC has been party to several significant Vermont acquisitions and may therefore be able to litigate here without an undue burden. Vermont has a “manifest interest” in providing means of redress for its residents, *Burger King*, 471 U.S. at 483, and Plaintiffs have an interest in adjudicating where they reside. The court finds the final two factors are neutral and not dispositive. The Court therefore finds that, in accepting Plaintiffs’ factual allegations as true, the court’s jurisdiction over Defendants comports with “traditional notions of fair play and substantial justice,” *Int’l Shoe Co.*, 326 U.S. at 316, and satisfies the reasonableness inquiry of the Due Process Clause.

3. *Without Prejudice*

Finally, AIAC protests that Plaintiffs’ claims, which are based “upon information and belief,” are incorrect based on the Affidavit submitted along with its motion, and insufficient to establish jurisdiction over AIAC. See Mot. Dismiss All Claims Against Def. AIAC and Mem. Supp. at 7–8 (referencing Compl. ¶¶ 3, 13–14, 22, 25, 27).

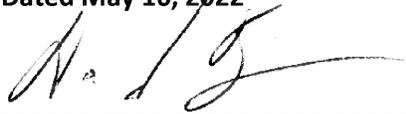
On a Rule 12(b)(2) motion, it is a plaintiff’s burden to show the court has jurisdiction over the defendants. *Shat Acres Highland Cattle*, 2021 WL 2125357, at *2 (citing *Metro. Life Ins. Co.*, 84 F.3d at 566). A plaintiff must make a *prima facie* showing of personal jurisdiction over defendants by pleading “in good faith, legally sufficient allegations of jurisdiction.” *Dorchester Fin. Sec. Inc. v. Banco BRJ S.A.*, 722 F.3d 81, 84 (2d Cir. 2013). Courts may consider the pleadings and affidavits to determine whether plaintiffs have met their burden, or permit discovery and conduct an evidentiary hearing. *Id.* at 86. All factual disputes are drawn in plaintiffs’ favor, but the court does not need to “accept as true a legal conclusion couched as a factual allegation.” *Shat Acres Highland Cattle*, 2021 WL 2125357, at *3 (citing *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d at 673); see *Wiley v. Baker*, No. 2:20-CV-154-WKS-JMC, 2021 WL 2652869, at *2 (D. Vt. Jan. 28, 2021), *report and recommendation adopted*, No. 2:20-CV-154, 2021 WL 2652868 (D. Vt. June 28, 2021) (“conclusory non-fact specific jurisdictional allegations or legal conclusion[s] couched as . . . factual allegation[s] will not establish a *prima facie* showing of jurisdiction”). “Conclusory allegations showing the presence of jurisdiction, particularly those stated only upon information and belief, are insufficient to establish that the court has personal jurisdiction over the defendant.” *Cernansky v. Lefebvre*, 88 F. Supp. 3d 299, 308 (D. Vt. 2015) (quoting *Guo Jin v. EBI, Inc.*, 2008 WL 896192, at *2 (E.D.N.Y. March 31, 2008)).

At this early stage in the case, drawing all factual disputes in Plaintiffs' favor reveals that the pleadings and affidavits support a *prima facie* showing of personal jurisdiction. Evidentiary support is not required. See *Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990) (“[p]rior to discovery . . . the plaintiff's *prima facie* showing may be established solely by allegations”). However, ultimately, Plaintiffs must demonstrate personal jurisdiction by a preponderance of evidence. *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981). Evaluating whether Plaintiffs can meet that burden requires additional factual development. See *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36, 40 (2d Cir. 2000) (“the court may not deny the motion to dismiss merely by assuming the truth of the facts alleged by the plaintiff and disputed by the defendant”). The primary tool for developing such facts is jurisdictional discovery. This is particularly true when, as in this case, plaintiffs have not had “ample opportunity to secure and present evidence relevant to the existence of jurisdiction.” *Id.* Thus, while the court concludes that Plaintiffs have sufficiently made a *prima facie* showing of personal jurisdiction over AIAC, the motion is denied without prejudice such that Defendant AIAC may refile its motion to dismiss for want of personal jurisdiction on a more complete record.

Order

For the reasons stated above, the Court *DENIES* AIAC's motion to dismiss without prejudice, such that Plaintiffs can engage in jurisdictional discovery and the motion may be re-filed on a more developed record.

Dated May 16, 2022



David Barra
Vermont Superior Court Judge
Electronically signed