



1 of 100 DOCUMENTS

**NORTH AMERICAN WINDOW & DOOR CO., INC., Plaintiff-Respondent, v.
AMERICAN PROPERTIES REALTY, INC. AND AMERICAN PROPERTIES AT
DEMAREST, LLC, Defendants-Appellants.**

DOCKET NO. A-3216-07T3

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

2009 N.J. Super. Unpub. LEXIS 1238

April 27, 2009, Argued

May 21, 2009, Decided

NOTICE: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

SUBSEQUENT HISTORY: Certification denied by *N. Am. Window & Door Co. v. Am. Props. Realty*, 200 N.J. 210, 976 A.2d 386, 2009 N.J. LEXIS 889 (N.J., July 16, 2009)

PRIOR HISTORY: [*1]

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. DJ-300871-07.

COUNSEL: David M. Hutt argued the cause for appellants (Hutt & Shimanowitz, P.C., attorneys; Mr. Hutt, of counsel and on the brief).

Glenn R. Reiser argued the cause for respondent (LoFaro & Reiser, L.L.P., attorneys; Mr. Reiser, on the brief).

JUDGES: Before Judges Lisa and Sapp-Peterson.

OPINION

PER CURIAM

Plaintiff, **North American Window** and Door Co., Inc. (**North American**) obtained a default judgment against defendants in the Court of Common Pleas of Chester County, Pennsylvania on September 20, 2007 in the amount of \$ 59,808.74, together with 1.5% per month interest from December 12, 2005, plus costs of suit. Defendants are related New Jersey entities, headquartered in New Jersey, and conduct business exclusively in New Jersey. They both conduct business at the same address in Iselin. After **North American** obtained the judgment, it docketed it in the New Jersey Superior Court. Defendants moved to vacate the docketed judgment, contending the Pennsylvania court lacked personal jurisdiction over them. Based upon the motion record, and after hearing oral argument, Judge Kieser denied the motion. He issued an [*2] order to that effect on February 5, 2008, which included a comprehensive written statement of reasons.

On appeal, the principal argument presented by defendants is that Judge Kieser's finding that defendants had sufficient minimum contacts with Pennsylvania to justify long-arm jurisdiction and that subjecting defendants to long-arm jurisdiction did not offend traditional notions of fair play and substantial justice was erroneous. Defendants further argue that the judge erred in refusing to vacate the default judgment because one of the defendants was not a party to the underlying agreement with **North American** and **North American** was not the party with which defendants exclusively

dealt.¹ Finally, they argue the judge erred in refusing to vacate that portion of the default judgment providing for 1.5% interest per month both pre and post-judgment. We reject these arguments and affirm substantially for the reasons expressed by Judge Kieser in his February 5, 2008 order and decision.

1 During the course of dealing between the parties, an entity known as Custom **Window Designs** (Custom) sometimes acted on behalf of or in concert with **North American**. Counsel for **North American** has represented [*3] that Custom is a subsidiary of **North American**. Custom operates out of the same Pennsylvania address as **North American**.

North American's principal place of business is in West Chester, Pennsylvania. It is a regional distributor of high-end doors and **windows** for estate homes, country clubs and commercial establishments. Defendant **American Properties Realty, Inc.**, and its affiliated companies, are in the business of constructing luxury single-family estates in master planned communities of apartments, condominiums and townhouses. It has been in business for more than thirty years and has constructed about 15,000 such housing units.

As part of one of its construction projects for luxury condominiums in Demarest, defendants sought to purchase custom doors from **North American**. Although the initial contact occurred in New Jersey, negotiations and exchange of information proceeded for a period of about six months, by telephone, fax, and other communications, directed to **North American's** Pennsylvania business location, leading up to an order on May 26, 2005. At that time, defendants ordered custom doors for a total price of \$ 190,651.60. The order was placed by fax and phone directed to **North American's** Pennsylvania address. On several occasions during the dealings between the parties, employees of defendants told **North American's** employees that defendants wanted **North American** to submit proposals on other projects they were considering.

On June 27, 2005, **North American** received from defendants a \$ 63,550.51 deposit at its Pennsylvania office. On July 26, 2005, defendants modified the specifications and mailed and faxed the change order to Pennsylvania, resulting in additional charges of \$ 2,883.20. Until all of the specifications were finalized, the doors could not be manufactured. As requested by

defendants, the doors were manufactured by Architectural Doors, Inc., which is located in New Jersey.

Shipments were made to defendants' construction site as requested. Shipments were made directly from the manufacturer to defendants' construction site on December 12, 2005 and February 24, 2006. However, defendants requested a delay in the shipment of some doors because units were not selling as quickly as expected. **North American** stored those doors in a warehouse in West Chester, Pennsylvania until defendants were ready to receive them, and they were shipped on March 6, 2006.

Defendants [*5] made additional installment payments of \$ 24,298.74 on February 21, 2005, and \$ 45,876.81 on April 10, 2006. No additional payments were made, leaving a balance due of \$ 59,808.74.

The doors were installed in defendants' project. The condominium units in which they were installed each sold for approximately \$ 2 million.

North American filed the Pennsylvania action seeking damages for the unpaid balance on the contract. Defendants acknowledged that they were properly served with process. Although they initially requested an extension of time to respond, they chose not to respond in Pennsylvania. Default judgment was then entered in Pennsylvania and docketed on December 5, 2007 in the New Jersey Superior Court pursuant to the Uniform Enforcement of Foreign Judgments Act, *N.J.S.A. 2A:49A-25 to -33*. As required by the Act, the clerk immediately notified defendants of the docketed judgment. On December 13, 2007, defendants filed a motion objecting to and seeking vacation of the judgment based on Pennsylvania's lack of personal jurisdiction. On January 2, 2008, a writ of execution was issued, reflecting a total judgment amount at that time of \$ 81,667.84.²

2 Defendants have posted a bond as [*6] security, thus resulting in a stay of a turnover order against their bank account.

In support of its motion, defendants filed a certification of an employee setting forth factual information and attaching documentation regarding the transaction between the parties. **North American** filed a responding certification of its president, together with attached documentation. The employee of defendants

filed a supplemental certification by way of reply.

On February 1, 2008, Judge Kieser heard oral argument. He announced his decision to deny the motion and advised counsel that he would submit a written decision with a detailed statement of reasons, which he did on February 5, 2008, along with the order denying the motion.

The judge found that the Pennsylvania long-arm statute confers personal jurisdiction on Pennsylvania courts to the full extent authorized by the United States Constitution. He found that defendants purposely engaged in these dealings with a Pennsylvania entity, thus availing themselves of the benefits and protections of Pennsylvania law. He found that the nature of the transaction was substantial and detailed, as opposed to a casual, isolated, or relatively trivial one. He recognized [*7] that random, fortuitous and attenuated contacts are insufficient to establish sufficient minimum contacts and found that "[d]efendants chose to purchase custom doors for [their] condominiums from [North American]. Defendants continuously contacted [North American] over a six (6) month period by telephone and fax in [North American]'s office in West Chester, Pennsylvania." He concluded that "because Defendant[s] sought to transact with [North American], a Pennsylvania corporation, it was proper for the Pennsylvania Superior Court to exercise personal jurisdiction over Defendant[s] in the within matter. This Court will give full faith and credit to the properly docketed judgment in Pennsylvania."

Our review of a trial court's interpretation of the law is de novo. *Manalapan Realty L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378, 658 A.2d 1230 (1995). We are in agreement with Judge Kieser's legal analysis. We set forth the following discussion, which is consistent with Judge Kieser's statement of reasons, for purposes of completeness.

All states must provide due process of law. *U.S. Const. amend. XIV, § 1*. The *Due Process Clause of the Fourteenth Amendment* restricts the ability of a state court to issue [*8] a valid judgment against a nonresident defendant. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 564, 62 L. Ed. 2d 490, 497 (1980). A judgment violating due process "is void in the rendering State and is not entitled to full faith and credit elsewhere." *Ibid.* (citing *Pennoyer v. Neff*, 95 U.S. 714, 732-33, 24 L. Ed. 565 (1878)).

Due process requires that a defendant be subject to the rendering court's personal jurisdiction. *Ibid.* (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945)). Personal jurisdiction requires that if the defendant is not present within a forum's territory, the defendant must have "minimum contacts" with the forum "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe, supra*, 326 U.S. at 316, 66 S. Ct. at 158, 90 L. Ed. at 102 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S. Ct. 339, 342, 85 L. Ed. 278, 283 (1940)).

The Supreme Court distinguishes between situations in which a cause of action relates directly to a defendant's contacts with a State, and those where a cause of action is unrelated to those contacts. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404, 411 (1984). [*9] A cause of action directly relating to a non-resident's contacts with the forum state involves "specific" jurisdiction; a cause of action unrelated to those contacts involves "general" jurisdiction. *Id.* at 466 U.S. at 414 n.9, 104 S. Ct. at 1872, 80 L. Ed. 2d at 411. Where a plaintiff's cause of action is based on specific jurisdiction, a single act may suffice to establish specific jurisdiction. *See, e.g., McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223, 78 S. Ct. 199, 201, 2 L. Ed. 2d 223, 226 (1957). This case is best analyzed as one of specific jurisdiction.

With respect to "minimum contacts," a nonresident defendant must commit an act by which it purposefully avails itself of the benefits and protections of the forum state's laws for the courts of that state to have personal jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183, 85 L. Ed. 2d 528, 542 (1985). A defendant deliberately engaging in significant activities within a state or creating continuing obligations between that state's residents and himself manifestly "avail[s] himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' [*10] of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." *Id.* at 471 U.S. at 475-76, 105 S. Ct. at 2184, 85 L. Ed. 2d at 543. The foreseeability aspect of due process analysis requires that a defendant's "conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen, supra*, 444 U.S. at 297, 100 S. Ct. at 567, 62 L. Ed. 2d at 501.

The "purposeful availment" requirement prevents a defendant from being haled into court purely

as a result of "random," "fortuitous," or "attenuated" contacts, or of the "unilateral activity of another party or a third person[.]" Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State. Thus, where the defendant "deliberately" has engaged in significant activities within a State, or has created "continuing obligations" between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits [*11] and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

[*Burger King, supra, 471 U.S. at 475-76, 105 S. Ct. at 2183-84, 85 L. Ed. 2d at 542-43* (internal citations omitted).]

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." *U.S. Const. art. IV, § 1. See also 28 U.S.C.A. § 1738.* "A judgment properly entered in accordance with local procedures is entitled to full faith and credit in the courts of any other state . . . provided that the judgment is not rendered in violation of the *Due Process Clause of the Fourteenth Amendment.*" *Maglio & Kendro, Inc. v. Superior Enerquip Corp., 233 N.J. Super. 388, 393, 558 A.2d 1371 (1989)* (citing *World-Wide Volkswagen, supra, 444 U.S. at 291, 100 S. Ct. at 564, 62 L. Ed. 2d at 497 (1980); Hupp v. Accessory Distribs., Inc., 193 N.J. Super. 701, 708, 475 A.2d 679 (App. Div. 1984).* *See also Sonntag Reporting Serv., Ltd. v. Ciccarelli, 374 N.J. Super. 533, 537, 865 A.2d 747 (App. Div. 2005)* (citing *Durfee v. Duke, 375 U.S. 106, 109-11, 84 S. Ct. 242, 244-45, 11 L. Ed. 2d 186, 190-91 (1963); President & Dirs. of Bank of Ala. v. Dalton, 50 U.S. 522, 528, 13 L. Ed. 242, 245 (1850); [*12] First Wis. Nat'l Bank v. Kramer, 202 Ill. App. 3d 1043, 560 N.E.2d 938, 941, 148 Ill. Dec. 341 (1990).*)

A copy of an authenticated judgment from another jurisdiction filed by the Clerk of the Superior Court of New Jersey has the same effect as a New Jersey Superior Court judgment. *N.J.S.A. 2A:49A-27.* The jurisdiction in which the judgment was rendered is the appropriate forum to defend a claim. *Sonntag, supra, 374 N.J. Super. at 537* (citing *Morris v. Jones, 329 U.S. 545, 552, 67 S. Ct. 451, 456, 91 L. Ed. 488, 496 (1947)*).

New Jersey will enforce a judgment entered in a sister state unless due process has been denied. *Id. at 538.* Due process is denied if the state rendering the decision lacks personal jurisdiction over a judgment debtor. *Ibid.* (quoting *Choi v. Kim, 50 F.3d 244, 248 (3d Cir. 1995)*; citing *Sec. Benefit Life Ins. Co. v. TFS Ins. Agency, 279 N.J. Super. 419, 423, 652 A.2d 1261 (App. Div.)*), *certif. denied, 141 N.J. 95, 660 A.2d 1194 (1995).* Absent a denial of due process, a judgment rendered in a sister state determines the parties' rights in every state, and res judicata precludes parties from raising any new defenses that could have been raised in the forum state. *Ibid.* (citing *DeGroot, Kalliel, Traint & Konklin, P.C. v. Camarota, 169 N.J. Super. 338, 343, 404 A.2d 1211 (App. Div. 1979)*).

New [*13] Jersey courts may question the jurisdiction of the state rendering the original judgment before being bound by that judgment, and if the rendering court lacked personal jurisdiction, New Jersey need not afford the judgment full faith and credit. *Maglio & Kendro, supra, 233 N.J. Super. at 394* (quoting *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n, 455 U.S. 691, 705, 102 S. Ct. 1357, 1366, 71 L. Ed. 2d 558, 570-71 (1982)*). A New Jersey court's analysis of the forum court's jurisdiction requires applying the law of the forum state. *See, e.g., ibid.* (applying the Wisconsin long-arm statute to determine whether a Wisconsin default judgment against a nonresident defendant was enforceable in New Jersey).

Pennsylvania's long-arm statute provides in relevant part:

(a) GENERAL RULE. -- A tribunal of this Commonwealth may exercise personal jurisdiction over a person . . . who acts directly or by an agent, as to a cause of action or other matter arising from such person:

(1) Transacting any business in this Commonwealth. Without excluding other acts which may constitute transacting business in this Commonwealth, any of the following shall constitute transacting [*14] business for the purpose of this paragraph:

(i) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object.

(ii) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.

....

(b) EXERCISE OF FULL CONSTITUTIONAL POWER OVER NONRESIDENTS. -- In addition to the provisions of subsection (a) the jurisdiction of the tribunals of this Commonwealth shall extend to all persons who are not within the scope of section 5301 (relating to persons) to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.

[42 PA. CONS. STAT. §5322.]

Applying these principles, we agree with Judge Kieser that defendants purposely availed themselves of the benefits and protections of Pennsylvania's laws by their own intentional conduct in dealing with a

Pennsylvania company. Defendants entered into a contract with that Pennsylvania company after [*15] a long series of negotiations. These were two substantial and well experienced business entities. The contract involved a custom order for high-end doors manufactured to defendants' specifications. After the original order was placed, defendants submitted a change order, which was approved and incorporated into the specifications.

Payments were made to **North American** in Pennsylvania. Some of the doors were stored temporarily at defendants' request, and they were stored in Pennsylvania at the location of **North American's** business. During the course of dealings, representatives of defendants expressed to **North American** their intentions to engage in continuing dealings on other projects. Although it appears that no further dealings have occurred, that is probably the result of the unpleasant outcome of this contract. Nevertheless, during the course of dealings, it was within defendants' contemplation to engage in an ongoing business relationship with this Pennsylvania entity.

The dealings here were not random, fortuitous or attenuated. They were deliberate, substantial, and detailed. They plainly resulted from defendants' own conduct, and not from unilateral activity by any other party.

The [*16] facts here are similar to those our Supreme Court recently found sufficient to confer long-arm jurisdiction by a Texas court over a New Jersey entity. *McKesson Corp. v. Hackensack Med. Imaging*, 197 N.J. 262, 962 A.2d 1076 (2009). The Court recognized the fundamental principle that the existence of a contract with an out-of-state entity, standing alone, is insufficient to establish the necessary minimum contacts for long-arm jurisdiction analysis. *Id.* at 278. However, the Court found sufficient minimum contacts by virtue of the following factors: the New Jersey defendant intended to have a long-term business relationship with the Texas plaintiff; the defendant placed nine separate orders with the plaintiff over a six-month period for a total amount of nearly \$ 21,000; the defendant sent a credit application to the plaintiff in Texas; and the defendant sent two checks to the plaintiff in Texas in payment of the items purchased (which were dishonored for insufficient funds). *Id.* at 268, 278. The Court had "no hesitation in concluding that, in those specific circumstances, plaintiff has established that defendant had sufficient minimum

contacts to justify the exercise of personal jurisdiction by the [*17] Texas court." *Id.* at 278.

Turning to the second part of the analysis, whether, once minimum contacts are established, allowing jurisdiction in the forum would be consistent with traditional notions of fair play and substantial justice, the Court was convinced that the New Jersey defendant made no showing that it would be unfair or unjust to subject it to the jurisdiction of the Texas court. *Id.* at 278-79. The Court noted that the plaintiff reached out on a repeated basis over a significant period of time to the Texas company when it thought it to be to its own economic advantage. *Id.* at 279. It intended to engage in a long-term relationship with the Texas company and it issued two checks with insufficient funds causing damage to that company in Texas. *Ibid.*

Naturally, all cases involving minimum contacts analysis are fact-sensitive. The material components of the *McKesson* analysis are present here. Defendants purposefully did business with **North American** in Pennsylvania. They entered into a contract for a substantial purchase of custom items, manufactured to their specifications. The negotiations went on for about six months, and the continued dealings from placement of the order until [*18] final shipment of doors to defendants lasted another ten months. By failing to pay the balance due, a Pennsylvania company was damaged in Pennsylvania. Defendants purposely availed themselves of the benefits and protections of Pennsylvania. Pennsylvania has an interest in protecting its businesses from damage by nonpayment of debts. There is nothing inconvenient or otherwise offensive about requiring defendants to respond to a claim for such damages in the Pennsylvania courts.

We also find a similarity in a decision by a Pennsylvania court. In that case, the Pennsylvania appellate court, applying Pennsylvania's long-arm statute, found that Pennsylvania had jurisdiction over a New

York corporation. *Aventis Pasteur, Inc. v. Alden Surgical Co.*, 2004 PA Super 138, 848 A.2d 996, 997-98 (Pa. Super. Ct. 2003), appeal denied, 580 Pa. 703, 860 A.2d 488 (Pa. 2004). Over a two month period, the defendant had ordered nearly \$ 1 million worth of vaccine from the plaintiff in the course of sixteen telephone purchase orders. *Id.* at 998, 1000. Because of Pennsylvania's interest in protecting its businesses from nonpayment of delivered goods, and the defendant's "purposeful and voluntary" contacts with Pennsylvania, the court held [*19] that Pennsylvania had personal jurisdiction. *Id.* at 1000. Although there is a difference in that the doors in the case before us were manufactured in New Jersey, whereas the vaccine in *Aventis* was manufactured in Pennsylvania, *id.* at 998, the result is the same. All factors must be considered in their totality. When doing so, we conclude that the weight of the relevant factors establishes sufficient minimum contacts in this case.

We can dispose of defendants' remaining arguments quite summarily. The defenses they seek to raise in New Jersey, regarding the identity of parties and the propriety of the amount of interest assessed on the judgment, are not cognizable here. The sole issue for the New Jersey courts is a jurisdictional one, whether the Pennsylvania court had personal jurisdiction over defendants. As we have explained, defenses, whether based upon the identity of the parties, alleged defects in the goods or other breach of contract, or the amount of interest, are cognizable in the rendering court.³

³ We have been furnished with an order entered by the Court of Common Pleas of Chester County, Pennsylvania on November 5, 2008 modifying the interest in the Pennsylvania judgment [*20] to 6% per annum from December 12, 2005 instead of 1.5% per month from that date.

Affirmed.