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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0107**

Rebecca Minkoff Apparel, LLC,  
Respondent,

vs.

Rebecca Minkoff, LLC,  
Appellant.

**Filed June 18, 2018  
Affirmed  
Bjorkman, Judge**

Hennepin County District Court  
File No. 27-CV-17-12627

Mark S. Enslin, Kathryn E. Wendt, Ballard Spahr LLP, Minneapolis, Minnesota (for respondent)

Seth Leventhal, Brandon Meshbesher, LEVENTHAL pllc, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and Larkin, Judge.

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

**BJORKMAN**, Judge

Appellant challenges the district court's denial of its motion to dismiss respondent's breach-of-contract action for lack of personal jurisdiction. We affirm.

## FACTS

Appellant Rebecca Minkoff LLC (RM) is a Florida company, with its principal place of business in New York. RM markets and sells women's fashion apparel and accessories under its own name.

In early 2016, RM approached Décor Global, Inc., a Minnesota-based corporation, about the possibility of providing "design and product production services" to RM. In response to RM's inquiry, Décor Global formed respondent Rebecca Minkoff Apparel LLC (Apparel), as a Delaware company, with its principal place of business in Minnesota.

From May 2016 to early 2017, RM and Apparel discussed the possibility of Apparel providing the requested service, negotiating via phone and email. RM and Apparel executed a written contract on February 8, 2017 (contract). The contract notes that Apparel had already provided product to RM as of January 31, 2017, and anticipates that Apparel would make regular product shipments to RM, and invoice RM according to a coordinated pricing scheme, through approximately February 2018. Payment terms expressly include transportation costs and port fees Apparel incurred bringing the product into the country from Shanghai, China.

On August 16, 2017, Apparel initiated this action alleging that RM breached the contract by failing to pay invoices totaling more than \$900,000. RM moved to dismiss based on lack of personal jurisdiction and forum non conveniens. RM asserted that Apparel "was formed directly or indirectly" by a Chinese company, Décor (Suzhou) Co., Ltd. (Décor China), with which RM had executed a garment design and production contract in April 2016, and that Apparel is bound by the clause in that contract requiring dispute

resolution in New York, under New York law. And RM alleged that it signed the 2017 contract with Apparel under duress because Décor China threatened to default on its obligations under the 2016 contract, imperiling RM's brand. The district court denied the motion, reasoning that Apparel is not a party to the 2016 contract and the 2017 contract established contacts sufficient to exercise specific personal jurisdiction over RM. RM appeals.

## D E C I S I O N

### **I. Minnesota courts have specific personal jurisdiction over RM.**

Whether personal jurisdiction exists over a defendant is a question of law, which we review de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). When a defendant challenges personal jurisdiction, the plaintiff must make a prima facie showing that jurisdiction exists. *Id.* at 569-70. But the plaintiff's allegations and supporting evidence must be taken as true.<sup>1</sup> *Id.* at 570. Any doubts about jurisdiction are "resolved in favor of retention of jurisdiction." *Hardrives, Inc. v. City of LaCrosse*, 307 Minn. 290, 296, 240 N.W.2d 814, 818 (1976).

Minnesota courts may exercise personal jurisdiction over a nonresident corporation when Minnesota's long-arm statute, Minn. Stat. § 543.19 (2016), authorizes it and the exercise of such jurisdiction does not violate the due-process requirements of the United States Constitution. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 29 (Minn.

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<sup>1</sup> Because we must assume the truth of the affidavit of Apparel CEO Brian Peck, we quote from that document in our analysis.

1995). Because Minnesota’s long-arm statute is coextensive with the federal constitutional limits of due process, we focus our analysis on those requirements. *Id.* at 29-30.

Due process requires that a defendant “have certain minimum contacts” with the forum state so that the exercise of personal jurisdiction “does not offend the 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) (quotation omitted). This requirement is met if a defendant has “purposefully availed itself of the privilege of conducting business in this state so as to invoke the benefits and protection of Minnesota laws,” making it reasonably foreseeable that it would be “haled into Minnesota’s courts.” *TRWL Fin. Establishment v. Select Int’l, Inc.*, 527 N.W.2d 573, 576 (Minn. App. 1995).

Minnesota courts use a five-factor test to determine whether the exercise of personal jurisdiction over a nonresident defendant satisfies due process.<sup>2</sup> *Juelich*, 682 N.W.2d at 570. Under this test, courts assess (1) the quantity of contacts the nonresident defendant has with Minnesota, (2) the nature and quality of those contacts, (3) the connection of the cause of action with those contacts, (4) Minnesota’s interest in providing a forum, and (5) the parties’ convenience. *Id.* The first three factors address the “key inquiry” of whether minimum contacts exist; the last two factors “determine whether jurisdiction is reasonable according to traditional notions of fair play and substantial justice.” *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 328 (Minn. 2016). A “strong showing” on the last

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<sup>2</sup> “The nature and quality of the requisite contacts varies depending on whether the type of jurisdiction being asserted is general or specific.” *Juelich*, 682 N.W.2d at 570 n.3. Apparel asserts only that Minnesota has specific personal jurisdiction based on the contract between RM and Apparel that is the subject of this litigation.

two factors “may serve to fortify a borderline showing of minimum-contacts factors.” *Id.* (quotation omitted).

RM argues that the quantity, nature, and quality of its contacts with Minnesota do not satisfy the minimum-contacts standard. Because RM’s contacts with Minnesota arise from its contract with Apparel, we consider whether the contract has “a ‘substantial connection’ with the forum state.” *Domtar*, 533 N.W.2d at 31 (quoting *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223, 78 S. Ct. 199, 201 (1957)). In doing so, we recognize that a contract is more than just a document; it is “an intermediate step in the process of negotiation and future performance.” *Id.* Accordingly, we evaluate all phases of the parties’ contractual relationship—initiation, negotiation, contract terms, and actual course of dealing—to determine whether RM established minimum contacts with Minnesota by contracting with Apparel. *See id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479, 105 S. Ct. 2174, 2185-86 (1985)).

We first consider who initiated the contact that led to contract formation. A nonresident’s solicitation of a Minnesota resident to transact business, whether as a buyer or as a seller, indicates purposeful availment of the privilege of doing business in Minnesota. *TRWL*, 527 N.W.2d at 577-78; *see also Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983) (recognizing “traditional” buyer-seller distinction but emphasizing that “only one due process standard, the requirement of minimum contacts, applies to all defendants” (quotation omitted)). That is what happened here. RM initiated contact with Minnesota by approaching Décor Global, a Minnesota-based company, to obtain “design and product production services.” This solicitation led

Décor Global to create Apparel, another Minnesota-based company, to provide the requested services. Thereafter, RM and Apparel continued to discuss, for approximately six months, “the possibility of an arrangement whereby Apparel would provide and deliver garment product to RM.”

From those discussions emerged formal contract negotiations, during which RM continued to make repeated and deliberate contacts with Minnesota. RM negotiated directly with Apparel for at least two months. *See KSTP-FM, LLC v. Specialized Commc’ns, Inc.*, 602 N.W.2d 919, 924 (Minn. App. 1999) (considering whether nonresident contracted with an intermediary or directly with Minnesota resident). RM did not travel to Minnesota for those negotiations, but “physical presence is not determinative.” *See Dent-Air*, 332 N.W.2d at 908. Electronic communications targeting Minnesota residents may support personal jurisdiction in the absence of physical presence in the state. *Rilley*, 884 N.W.2d at 331-32; *see also Viking Eng’g & Dev., Inc. v. R.S.B. Enters., Inc.*, 608 N.W.2d 166, 170 (Minn. App. 2000) (affirming exercise of personal jurisdiction in contract action where nonresident manufacturer/seller never physically traveled to Minnesota), *review denied* (Minn. May 23, 2000). Throughout negotiations, RM contacted Apparel at Minnesota-based phone numbers. Apparel’s side of the email correspondence routinely included a Minneapolis address in signature blocks, and Apparel provided the same Minneapolis address in response to RM’s request for billing information. Based on these communications, RM knew that entering into a contract with Apparel meant contact with Minnesota.

Indeed, the contract itself reflects that the contemplated contact would be frequent and substantial, not a single, “isolated” transaction. *Compare Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 675-76 (Minn. App. 2000) (stating that if a nonresident “creates continuing obligations” between itself and a Minnesota resident, that purposeful act supports the exercise of personal jurisdiction), *with KSTP*, 602 N.W.2d at 924 (stating that an “isolated” commercial transaction, such as a single sale of goods, will not give rise to personal jurisdiction). The contract establishes a business relationship that would continue for approximately one year and expressly contemplates ongoing contact and cooperation throughout the course of that relationship, including regular product request-and-production cycles and Apparel’s agreement to “work with RM” to manage profit margins.

RM relies on *TRWL* to support its contention that the “back-office functions” Apparel performed under the contract are insufficient to establish minimum contacts because the “goods” were not made in or transported to Minnesota. We disagree. Unlike the agreement to purchase numerous pairs of pajamas in *TRWL*, 527 N.W.2d at 575, the contract does not contemplate a simple sale of a defined quantity of “goods.” Rather, by its terms and context, the contract obligates Apparel to perform services—product design and management of the manufacturing and distribution processes according to and in ongoing cooperation with RM. And while the contract does not state that Apparel would perform these services in Minnesota, Apparel’s description of the parties’ course of dealing sufficiently confirms that it did so.<sup>3</sup> Apparel states that at least five Apparel employees

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<sup>3</sup> Apparel did not detail the actual work its Minnesota-based employees performed under the contract. Such information would have better supported Apparel’s claim that it

worked for RM in Minneapolis, and that RM maintained “regular, consistent contact” with them via the same Minneapolis-oriented email addresses and phone numbers utilized during contract negotiations. Apparel also points to the work these employees performed by stating that RM sent them fabric swatches, design sketches, and returned sample products, by mail to its Minneapolis address. And Apparel states that, consistent with its representations during negotiations, it regularly sent RM invoices instructing RM to direct payment to Apparel’s Minneapolis address.

In short, by contracting and doing business with Minnesota-based Apparel for more than a year, RM exercised its privilege to conduct business in this state, making it reasonably foreseeable that RM would be “haled into Minnesota’s courts.” *See TRWL*, 527 N.W.2d at 576.<sup>4</sup> Because the contract at the center of RM’s Minnesota contacts is the basis of this action, satisfying the third minimum-contacts factor, we conclude that Apparel has demonstrated sufficient minimum contacts to support specific personal jurisdiction.

We therefore turn to the two reasonableness factors of the jurisdiction analysis. Minnesota has an interest in providing a forum for this litigation, as it is well established that “Minnesota has ‘an interest in providing a forum for its residents who have allegedly

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performed substantial work for RM in Minnesota. Nonetheless, because we take as true Apparel’s statements about its work here, *Juelich*, 682 N.W.2d at 570, and resolve doubts in favor of jurisdiction, *Hardrives*, 307 Minn. at 296, 240 N.W.2d at 818, we conclude that Apparel’s showing is sufficient.

<sup>4</sup> In support of its motion to dismiss, RM submitted the declaration of Craig Fleishman (an officer and general counsel of RM), which challenges Apparel’s jurisdictional affidavit and alleges that RM was coerced into entering into the contract. At the pretrial stage, we must assume the plaintiff’s allegations are true. *Juelich*, 682 N.W.2d at 570. But we note RM may present this argument in defense of this action.

been wronged.’’ *Volkman v. Hanover Invs., Inc.*, 843 N.W.2d 789, 797 (Minn. App. 2014) (quoting *Dent-Air*, 332 N.W.2d at 908). The practicalities of litigation also favor Minnesota as the forum for this action because Apparel asserts (and we take as true) that its witnesses with knowledge of this dispute and the “majority” of its relevant records and documents are located in Minnesota. *See Hardrives*, 307 Minn. at 299, 240 N.W.2d at 819 (favoring location where witnesses and documentary materials are present). Finally, while RM argues for dismissal based on forum non conveniens, which we address below, RM does not claim that it would actually be inconvenient for it to litigate in Minnesota. On this record, we conclude Minnesota courts have specific personal jurisdiction over RM for purposes of this litigation.<sup>5</sup>

**II. The district court did not abuse its discretion by declining to dismiss this action based on forum non conveniens.**

“The doctrine of forum non conveniens allows a district court with jurisdiction over the subject matter and the parties discretion to decline jurisdiction over a cause of action when another forum would be more convenient for the parties, the witnesses, and the court.” *Paulownia Plantations de Panama Corp. v. Rajamannan*, 793 N.W.2d 128, 133 (Minn. 2009). “Dismissal of a case on the grounds of forum non conveniens may be appropriate when the exercise of personal jurisdiction imposes a hardship that does not rise

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<sup>5</sup> RM argues that even if the record supports personal jurisdiction, it should be afforded jurisdictional discovery for the purpose of defeating personal jurisdiction. This argument runs contrary to the well-established principle that this court takes Apparel’s complaint and supporting affidavit as true for purposes of evaluating personal jurisdiction, *Juelich*, 682 N.W.2d at 570, and its corollary that jurisdictional discovery “is unnecessary where the discovery is unlikely to lead to facts establishing jurisdiction,” *Behm v. John Nuveen & Co.*, 555 N.W.2d 301, 305 (Minn. App. 1996).

to the level of a due process violation.” *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 538-39 (Minn. App. 2009) (quotation omitted). But Minnesota recognizes a “presumption in favor of the plaintiff’s choice of forum.” *Kennecott Holdings Corp. v. Liberty Mut. Ins. Co.*, 578 N.W.2d 358, 360 (Minn. 1998).

RM invokes forum non conveniens based solely on the New York forum-selection clause in its 2016 contract with Décor China. Apparel is not a party to that contract, and nothing in the record indicates that Apparel assumed any of the obligations of that contract. RM insists that Apparel should nonetheless be bound by the forum-selection clause because Apparel and the 2017 contract are closely related to the 2016 contract, citing *C.H. Robinson*. We are not persuaded. A non-party may be bound by a forum-selection clause when the non-party is “closely related to the dispute such that it becomes foreseeable that it will be bound.” *C.H. Robinson*, 772 N.W.2d at 534-35 (quotation omitted). The dispute here concerns the 2017 contract, not the 2016 contract. And it is not foreseeable that Apparel would be bound by a contract that is not in dispute and to which it is not a party. Accordingly, we conclude that the district court did not abuse its discretion by declining to dismiss on grounds of forum non conveniens.

**Affirmed.**