

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1417**

William H. Davis,
Appellant,

vs.

EagleBank,
Respondent,

Launch Sport Performance, P.C., et al.,
Respondents.

**Filed June 20, 2022
Reversed and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-19-7874

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Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Smith,

John P., Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Minnesota resident sued a Maryland resident and two Maryland-based companies. The district court dismissed the case on the ground that there is a lack of personal jurisdiction over each of the three defendants. We conclude that there is personal jurisdiction over two defendants. We further conclude that the third defendant waived the defense of lack of personal jurisdiction. Therefore, we reverse and remand.

FACTS

The facts relevant to this appeal are found primarily in the complaint and also in the defendants' answers and the parties' affidavits.

William H. Davis is a resident of Minneapolis. In 2005, he met and became friends with Elizabeth Wheeler while she was working in Minnesota. Two years later, Wheeler moved to Maryland. In 2010, Wheeler started a business, Launch Sport Performance P.C. (LSP), which provided physical therapy, athletic training services, and nutrition counseling to elite athletes and others.

Approximately three years later, Wheeler sought to expand LSP and told Davis that she was looking for investors. Davis told Wheeler about his experience in applying for a loan guaranteed by the Small Business Administration (SBA). Specifically, Davis told Wheeler that he had applied for an SBA loan using two of his Minneapolis rental properties as collateral. Wheeler decided that LSP would apply for an SBA loan. Wheeler and Davis agreed that Wheeler could use Davis's two Minneapolis rental properties as collateral for LSP's loan application. Davis alleges that, in exchange, he and Wheeler agreed that he

would receive a nine-percent ownership interest in LSP and would be paid \$1,667 per month as a consultant, with LSP having the option to defer Davis's monthly payments for two years.

In September 2013, EagleBank, which is chartered by and headquartered in the state of Maryland, approved LSP's application for a \$500,000 loan. Wheeler signed a loan-commitment agreement on behalf of LSP, which identified the following as collateral: a first-priority lien on all of LSP's assets, a lien on Davis's two Minneapolis rental properties, and a lien on real property owned by the Margaret D. Lundgren Trust (Lundgren Trust). Wheeler emailed the agreement to Davis. In October 2013, Davis signed the agreement after making two changes. First, he crossed out one of his two Minneapolis rental properties. Second, he added a paragraph stating that, in the event of a default, EagleBank must first exercise its right to foreclose on the land owned by the Lundgren Trust before exercising its right to foreclose on his Minneapolis rental property. Davis faxed the revised commitment agreement to Wheeler, who signed it and submitted it to EagleBank. In December 2013, EagleBank sent Davis eight loan-related documents that required his signature. Some of those documents identify both of Davis's Minneapolis rental properties as collateral, and none of those documents mention the Lundgren Trust. Davis signed all eight of the documents.

In 2018, LSP defaulted on the loan. EagleBank foreclosed on both of Davis's Minneapolis rental properties, which were sold at a foreclosure sale in January 2019. EagleBank did not foreclose on property owned by the Lundgren Trust.

In May 2019, Davis commenced this action against LSP, Wheeler, EagleBank, and the Lundgren Trust. His complaint asserts eight causes of action: (1) a declaration that his guaranty is void, against all defendants; (2) rescission of the guaranty, against all defendants; (3) breach of contract, against all defendants; (4) quiet title, against EagleBank; (5) promissory estoppel, against the Lundgren Trust; (6) subrogation, against LSP; (7) contribution, against Wheeler; and (8) breach of contract, against LSP. Davis alleges, among other things, that he did not receive any documentation of his ownership interest in LSP and did not receive any consulting fees from LSP.

In June 2019, EagleBank served and filed its answer. In July 2019, LSP and Wheeler jointly moved to dismiss Davis's complaint. LSP and Wheeler argued that there is a lack of personal jurisdiction over them and that Davis failed to state a claim upon which relief can be granted. In August 2019, EagleBank moved for judgment on the pleadings with respect to Davis's claims against the bank, arguing that he failed to state a claim upon which relief can be granted. Various counter-claims and cross-claims also were asserted, but they are not relevant to this appeal. In September 2019, the parties stipulated to the dismissal of all claims by and against the Lundgren Trust.

In October 2019, the district court granted LSP and Wheeler's joint motion to dismiss Davis's claims against them for lack of personal jurisdiction. In addition, the district court dismissed Davis's claims against EagleBank for lack of personal jurisdiction. In March 2020, Davis moved for relief under rule 60, and the district court denied the motion. In September 2021, the district court dismissed the remaining counter-claims and cross-claims as moot and ordered the entry of final judgment. Davis appeals.

DECISION

Davis argues that the district court erred by dismissing his complaint for lack of personal jurisdiction.

The concept of personal jurisdiction refers to “the court’s power to exercise control over the parties.” *Leroy v. Great West United Corp.*, 443 U.S. 173, 180 (1979). In Minnesota, a state court’s personal jurisdiction over an out-of-state defendant is the subject of a statute. *See* Minn. Stat. § 543.19, subd. 1 (2020). But the statute is considered broad enough to authorize a state court to exercise personal jurisdiction over a defendant if doing so is permitted by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See Vikse v. Flaby*, 316 N.W.2d 276, 281 (Minn. 1982); *Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 673 (Minn. App. 2000) (stating that “if the personal jurisdiction requirements of the federal constitution are met, the requirements of the long-arm statute will necessarily be met also” (quotation omitted)). Consequently, Minnesota courts apply federal constitutional caselaw to determine whether personal jurisdiction exists. *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 327 (Minn. 2016).

Federal caselaw provides that a state court may exercise personal jurisdiction over an out-of-state defendant if the defendant has “minimum contacts” with the forum state so that the exercise of personal jurisdiction does not offend “traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quotation omitted). To satisfy the requirement of minimum contacts, the out-of-state defendant must have “purposefully availed” itself of the privilege of conducting activities within the forum state such that the defendant “should reasonably anticipate being haled

into court there.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-82 (1985) (quotation omitted); *see also Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *V.H. v. Estate of Birnbaum*, 543 N.W.2d 649, 656-57 (Minn. 1996). There are two types of personal jurisdiction: general jurisdiction and specific jurisdiction. *Domtar, Inc. v. Niagra Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995) (citing *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n.8 (1984)). General jurisdiction “may be exercised based on contacts unrelated to the litigation,” such as “domicile or ‘continuous and systematic’ contacts with the forum state.” *Rilley*, 884 N.W.2d at 327 n.7 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014)). Specific jurisdiction may be exercised if “the defendant’s contacts with the forum state are limited, yet connected with the plaintiff’s claim such that the claim arises out of or relates to the defendant’s contacts with the forum.” *Domtar*, 533 N.W.2d at 30.

If a defendant challenges the existence of personal jurisdiction, the plaintiff has the burden to show that the defendant has sufficient contacts with Minnesota to support the district court’s exercise of jurisdiction. *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 749 (Minn 2019); *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569-70 (Minn. 2004). If a plaintiff commences an action against multiple defendants, the plaintiff must establish personal jurisdiction over each defendant. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984). Upon a motion to dismiss, a plaintiff’s allegations in the complaint and any supporting affidavits are assumed to be true for the purposes of determining whether personal jurisdiction exists. *Rilley*, 884 N.W.2d at 326. If “a defendant supports [a] motion to dismiss with an affidavit, the plaintiff must allege specific

evidence showing personal jurisdiction beyond general statements in the pleadings.” *Young v. Maciora*, 940 N.W.2d 509, 514 (Minn. App. 2020) (citing *Rilley*, 884 N.W.2d at 334-35). Any “doubts” about jurisdiction are “resolved in favor of retention of jurisdiction.” *Hardrives, Inc. v. City of LaCrosse*, 240 N.W.2d 814, 818 (Minn. 1976). This court applies a *de novo* standard of review to a district court’s ruling on personal jurisdiction. *Rilley*, 884 N.W.2d at 326.

I. Dismissal of LSP and Wheeler

Davis argues that the district court erred by granting Wheeler and LSP’s motion to dismiss his claims against them for lack of personal jurisdiction. Davis contends that LSP and Wheeler have sufficient contacts with Minnesota to allow for the exercise of specific personal jurisdiction.¹

Minnesota courts apply a five-factor test to determine whether the exercise of personal jurisdiction is consistent with due process: (1) the quantity of contacts with Minnesota; (2) the nature and quality of the contacts with Minnesota; (3) the connection of the cause of action with the contacts with Minnesota; (4) Minnesota’s interest in providing a forum; and (5) the convenience of the parties. *Juelich*, 682 N.W.2d at 570. The first three factors, which are the “primary factors” and determine whether the requisite minimum contacts exist, carry the most weight. *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983). The last two factors, which are the

¹In his principal brief, Davis argued in the alternative that the district court erred on the ground that LSP and Wheeler are necessary and indispensable parties to the action. But Davis affirmatively waived that argument at oral argument.

“secondary factors,” determine whether the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Marquette Nat’l Bank v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978).

In this case, the district court analyzed only the first and second factors and concluded that both factors did not support the exercise of personal jurisdiction over the out-of-state defendants. The parties agree that general jurisdiction does not exist; they disagree as to whether specific jurisdiction exists. To resolve Davis’s arguments for reversal with respect to LSP and Wheeler, we will apply the five-factor test.

1. Quantity of Contacts. LSP and Wheeler had numerous contacts with Davis while he was in Minnesota for the purpose of obtaining his agreement that LSP could use Davis’s Minneapolis rental properties as collateral for LSP’s loan. Davis alleges in the complaint that he and Wheeler talked about her plans to expand LSP and her need to finance the expansion. Davis also alleges that their conversations included a discussion about the possibility of Wheeler and LSP using Davis’s Minneapolis rental properties as collateral for a loan. Davis alleges further that he communicated with other agents of LSP about LSP’s interest in using his Minneapolis rental properties as collateral. In an affidavit,² Davis identifies the persons with whom he spoke and states, “The general tenor of the phone discussions with these individuals was their encouragement of me to provide

²LSP and Wheeler suggest that this court should not consider Davis’s affidavit because the affidavit was submitted to the district court after the parties had submitted their memoranda of law on LSP and Wheeler’s motion to dismiss. The district court did not state that the affidavit was untimely, and the district court did not strike it from the district court record. In any event, the affidavit merely supplies specific details of the contacts that are described more generally in the complaint.

my rental properties as collateral for the Launch Sport loan and that they would not be able to get the loan without me and my rental properties.” Davis also states that LSP sent him, via e-mail, several documents concerning the proposed transaction, including a business plan, a confidentiality agreement, financial statements, and several loan-related documents. It is undisputed that Wheeler, acting on behalf of LSP, later sent a loan-commitment agreement to Davis for his review and signature. In his affidavit, Davis quotes Wheeler’s e-mail message, which stated:

Here is the commitment letter from the bank. If you are comfortable with this, please sign and return ASAP so we can receive the funds within 4-6 weeks. The bank is waiting for you and I to sign this letter. If you would like to have a phone call with Brett and Amir again to discuss Launch’s plan and finances, please let me know. We can set that up ASAP. You are such a huge part of this dream coming true!!!

Davis signed the agreement and faxed it back to Wheeler.

Even a “single, isolated transaction between a nonresident defendant and a resident plaintiff,” with even a relatively small number of contacts, may be sufficient to justify the exercise of personal jurisdiction. *Marquette Nat’l Bank*, 270 N.W.2d at 293, 295; *see also Northwestern Nat’l Bank v. Kratt*, 226 N.W.2d 910, 911-12, 914 (Minn. 1975); *Viking Eng’g & Dev., Inc. v. R.S.B. Enters., Inc.*, 608 N.W.2d 166, 169 (Minn. App. 2000), *rev. denied* (Minn. May 23, 2000). This court previously has upheld the exercise of personal jurisdiction based on a relatively small number of telephonic or electronic contacts concerning a business transaction. *See Viking Eng’g*, 608 N.W.2d at 168, 170 (concluding that 24 phone calls, faxes, and letters, as well as signing of purchase agreement and acceptance of check, were sufficient to establish minimum contacts); *Trident Enters. Int’l*,

Inc. v. Kemp & George Inc., 502 N.W.2d 411, 415-16 (Minn. App. 1993) (concluding that fewer than ten telephone, mail, and fax contacts that induced Minnesota company to enter into contract were sufficient to establish minimum contacts); *see also Rebecca Minkoff Apparel, LLC v. Rebecca Minkoff, LLC*, 2018 WL 3014942, at *1-4 (Minn. App. June 18, 2018) (concluding that negotiations with Minnesota company by e-mail and telephone were sufficient to establish minimum contacts).

Thus, the quantity of contacts between LSP and Wheeler and Minnesota is sufficient to allow for the exercise of personal jurisdiction.

2. Nature and Quality of Contacts. Because Wheeler and LSP’s contacts with Minnesota are relatively few and concern a single transaction, the quality and nature of the contacts is significant. *See Marquette Nat’l Bank*, 270 N.W.2d at 295. That Wheeler and other representatives of LSP were not present in Minnesota during the relevant time period is not significant. *See id.* Contacts by telephone and e-mail may have the requisite nature and quality. *Rilley*, 884 N.W.2d at 329-32; *Marquette Nat’l Bank*, 270 N.W.2d at 295; *Viking Eng’g*, 608 N.W.2d at 168, 170. The question is whether those contacts “demonstrate ‘purposeful direction’ toward Minnesota and a ‘purposeful availment’ of the benefits of doing business in a Minnesota forum.” *Rilley*, 884 N.W.2d at 333.

The contacts described above relate directly to the transaction that is the factual basis of this lawsuit. LSP and Wheeler wanted—and apparently needed—Davis’s agreement to allow his Minneapolis rental properties be used as collateral for LSP’s loan. Wheeler and other LSP representatives had multiple contacts with Davis to persuade him to assist LSP in that way and to complete the transaction. As far as the record appears,

Davis was located in Minnesota throughout the relevant time period. In doing so, LSP and Wheeler “purposely availed” themselves of the benefits of doing business in Minnesota. LSP and Wheeler relied on and benefitted from Davis’s agreement to provide collateral for LSP’s loan. In addition, LSP and Wheeler indirectly relied on and benefitted from EagleBank’s security interest in Minnesota real property, which allowed EagleBank to recover loan principal and interest by foreclosing on Minnesota real property under Minnesota law. *See Marquette Nat’l Bank*, 270 N.W.2d at 292-97 (concluding that district court properly exercised personal jurisdiction over Illinois guarantors who had negotiated with Minnesota residents and Minnesota bank by telephone and mail); *Northwestern Nat’l Bank*, 226 N.W.2d at 911-12, 914 (concluding that district court properly exercised personal jurisdiction over Illinois guarantor who had negotiated financing of Minnesota housing project via telephone and in-person meetings).

Thus, the nature and quality of contacts between LSP and Wheeler and Minnesota supports the exercise of personal jurisdiction.

3. Connection of the Cause of Action with Contacts. The above-described contacts are directly connected to Davis’s claims against LSP and Wheeler. Thus, this factor supports the exercise of personal jurisdiction.

4. Interest of the State in Providing a Forum. In general, Minnesota has an interest in providing a forum for its residents who allegedly have been wronged. *Dent-Air*, 332 N.W.2d at 908. That principle applies to Davis’s allegations in this case. Thus, this factor supports the exercise of personal jurisdiction.

5. Convenience of the Parties. The two key witnesses with respect to Davis’s claims against LSP and Wheeler are Davis and Wheeler. Either Davis will need to travel to Maryland, or Wheeler will need to travel to Minnesota. In this situation, the “convenience of the parties and witnesses is a neutral factor in the analysis.” *Juelich*, 682 N.W.2d at 576. Thus, this factor does not favor either conclusion.

In sum, because all three primary factors weigh in favor of the exercise of personal jurisdiction over LSP and Wheeler, and because the secondary factors do not contradict the primary factors, the district court erred by granting LSP and Wheeler’s motion to dismiss for lack of personal jurisdiction.³

II. Dismissal of EagleBank

Davis also argues that the district court erred by dismissing his claims against EagleBank on the ground that there is a lack of personal jurisdiction over the bank. Davis contends that the district court’s ruling is erroneous for three reasons: (1) there is *in rem* jurisdiction, (2) EagleBank waived the defense of lack of personal jurisdiction, and (3) the

³LSP and Wheeler purport to argue in the alternative that, even if the district court erred by ruling that there is a lack of personal jurisdiction over them, this court may affirm the district court’s dismissal on the alternative ground that Davis failed to state a claim upon which relief can be granted. The district court did not consider that part of LSP and Wheeler’s motion because the district court determined that there was a lack of personal jurisdiction. LSP and Wheeler’s brief does not actually discuss the viability of any of the six claims that Davis has asserted against them. Rather, the brief merely refers, in a general and sweeping manner, to the memoranda that LSP and Wheeler filed in the district court. Because LSP and Wheeler have not properly briefed the viability of Davis’s claims against them, we will not consider the issue. *See State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *Ganguli v. University of Minnesota*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). Nothing in this opinion prevents LSP and Wheeler from renewing their rule 12.02(e) arguments in the district court on remand.

district court improperly ruled *sua sponte* on the issue of personal jurisdiction even though EagleBank did not move to dismiss on that ground.

We begin by considering Davis's second argument. The defense of lack of personal jurisdiction may be asserted either in a responsive pleading or in a motion. Minn. R. Civ. P. 12.02. If asserted by motion, the defense may be asserted along with other grounds for dismissal identified in rule 12.02. Minn. R. Civ. P. 12.07. If a defendant moves to dismiss on another ground identified in rule 12.02 but does not move to dismiss for lack of personal jurisdiction, the defendant "shall not thereafter make a motion based on" a lack of personal jurisdiction. *See id.*

A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (1) if omitted from a motion in the circumstances described in Rule 12.07, or (2) if it is neither made by motion pursuant to this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15.01 to be made as a matter of course.

Minn. R. Civ. P. 12.08(a) (emphasis added).

In this case, EagleBank did not plead the defense of lack of personal jurisdiction in its answer. EagleBank also did not argue in its rule 12 motion that there is a lack of personal jurisdiction. Rather, EagleBank moved to dismiss on the ground that Davis failed to state a claim upon which relief can be granted. Consequently, EagleBank waived the defense of lack of personal jurisdiction. *See* Minn. R. Civ. P. 12.07, 12.08(a).

Thus, the district court erred by dismissing Davis's claims against EagleBank on the ground that there is a lack of personal jurisdiction over EagleBank. In light of that

conclusion, we need not consider Davis's other arguments for reversal with respect to EagleBank.⁴

Reversed and remanded.

⁴EagleBank argues in the alternative that, even if the district court erred by ruling that there is a lack of personal jurisdiction over the bank, this court should affirm on the ground that "the district court's order is analogous to declining jurisdiction under a *forum non conveniens* analysis." This court may affirm a district court's dismissal on an alternative ground if the alternative ground was presented to the district court. *See Day Masonry v. Independent Sch. Dist.* 347, 781 N.W.2d 321, 331 (Minn. 2010). EagleBank did not invoke the doctrine of *forum non conveniens* in its motion to dismiss, and the district court did not discuss the doctrine. Thus, we may not consider EagleBank's alternative argument for the first time on appeal.