STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0106

Bruce A. Rasmussen & Associates, LLC,
Appellant,

vs.

Brooks Di Santo S.E.N.C.,
Respondent.

Filed October 9, 2023
Affirmed
Cochran, Judge

Hennepin County District Court
File No. 27-CV-21-3435

Bruce A. Rasmussen, Bruce A. Rasmussen & Associates, LLC, Minneapolis, Minnesota (for appellant)

Erica A. Holzer, Maslon LLP, Minneapolis, Minnesota; and

William H. Newman (pro hac vice), Law Office of William H. Newman, Brooklyn, New York (for respondent)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal, appellant challenges the district court's dismissal of appellant's complaint for lack of personal jurisdiction. Because Minnesota's exercise of personal jurisdiction over the respondent would violate due process, we affirm.

FACTS

This case arises from a dispute between appellant Bruce A. Rasmussen & Associates, LLC (Rasmussen) and respondent Brooks Di Santo, S.E.N.C. (Di Santo) over a loan known as a debenture. *See Black's Law Dictionary* 504 (11th ed. 2019) (defining "debenture" as "[a] debt secured only by the debtor's earning power, not by a lien on any specific asset"). Rasmussen is a Minnesota limited liability company. Di Santo is a Canadian accounting firm. Di Santo's sole office is in Montreal, Canada. Di Santo does not have any offices, employees, or property in Minnesota, and it does not conduct any business in Minnesota. Rasmussen alleges that Di Santo is withholding from Rasmussen certain debenture funds that Rasmussen is entitled to, as explained below.

On November 1, 1999, BDP Retirement Homes, Inc. (BDP) issued a debenture in the amount of $1,000,000 in Canadian currency to Globe-X Management Holding Ltd. (Globe-X), a Bahamian company. On June 5, 2005, Globe-X directed Di Santo to hold Globe-X's dividends from the debenture "in trust until such time as [Globe-X] can instruct [Di Santo] as to their disposition."

On August 15, 2005, Globe-X merged with Mendota Capital, Inc. (Mendota), a Minnesota corporation. Approximately five years later, on June 15, 2010, BDP issued a

check in the amount of $5,722.50 in Canadian currency to Mendota in connection with the debenture.

On September 3, 2010, Rasmussen, acting on behalf of Mendota, wrote a letter to Di Santo explaining that Mendota is the successor in interest to Globe-X and, as such, was entitled to the debenture funds held by Di Santo on behalf of Globe-X. On October 30, 2012, Rasmussen wrote another letter to Di Santo explaining that Mendota had assigned the debenture funds to two individuals as part of a settlement agreement. Mendota also assigned the debenture funds to Rasmussen. On November 9, 2018, Rasmussen notified Di Santo that Mendota's assignment to the two individuals was "null and void." Shortly thereafter, on January 16, 2019, Rasmussen requested that Di Santo remit the debenture funds to Rasmussen. There is no evidence in the record of any response by Di Santo to Rasmussen's communications.

On March 25, 2021, Rasmussen filed a complaint against Di Santo seeking to recover the remaining debenture funds, which allegedly amounted to $235,934.22 in Canadian currency. Rasmussen alleged that Di Santo "refused and failed to remit" the debenture funds to Rasmussen because Di Santo falsely believed that another entity was entitled to them. Based on these allegations, Rasmussen requested that the district court order Di Santo to remit the debenture funds to Rasmussen.

Di Santo filed a motion to dismiss, arguing, in relevant part, that the district court lacked personal jurisdiction over Di Santo. Rasmussen opposed the motion, asserting that the district court had personal jurisdiction over Di Santo by virtue of its minimum contacts

with Minnesota or, in the alternative, that Di Santo consented to the district court's jurisdiction by "undert[aking] the trusteeship" for Globe-X.

The district court granted Di Santo's motion to dismiss for lack of personal jurisdiction, concluding that Di Santo did not have the requisite contacts with Minnesota to be subject to the personal jurisdiction of Minnesota courts and did not consent to the district court's personal jurisdiction.

Rasmussen appeals.

DECISION

Rasmussen argues that the district court erred by granting Di Santo's motion to dismiss for lack of personal jurisdiction. "Whether personal jurisdiction exists is a question of law, which we review de novo." *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 749 (Minn. 2019) (quotation omitted). When reviewing a motion to dismiss for lack of personal jurisdiction, we accept all factual allegations in the complaint and supporting affidavits as true and use them to determine whether the plaintiff has made a prima facie showing of personal jurisdiction. *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016).

To be exercised, personal jurisdiction must be both authorized by Minnesota law and consistent with the Due Process Clause of the United States Constitution. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 29 (Minn. 1995). Because Minnesota's long-arm statute extends personal jurisdiction to the limits of the Due Process Clause, the due-process analysis generally is dispositive of whether a court may exercise personal jurisdiction over a defendant. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410-11 (Minn. 1992); *see* Minn. Stat. § 543.19 (2022) (Minnesota's long-arm statute).

"Due process requires that the defendant have 'certain minimum contacts' with the forum state and that the exercise of jurisdiction over the defendant does not offend 'traditional notions of fair play and substantial justice.'" *Juelich v. Yamazaki Optonics Corp.*, 682 N.W.2d 565, 570 (Minn. 2004) (footnote omitted) (quoting *Burnham v. Superior Ct. of Cal.*, 495 U.S. 604, 618 (1990)). Minnesota courts consider the following factors when evaluating whether an exercise of jurisdiction is consistent with the Due Process Clause: "(1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state [in] providing a forum; and (5) the convenience of the parties." *Bandemer*, 931 N.W.2d at 749 (quotation omitted). The first three factors address the "key inquiry" of whether the nonresident defendant has "minimum contacts" with the forum state, and the last two factors "determine whether jurisdiction is reasonable according to traditional notions of fair play and substantial justice." *Rilley*, 884 N.W.2d at 328 (quotation omitted). "The first three factors are the primary factors, with the last two deserving lesser consideration." *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983).

The nature and quality of contacts required for personal jurisdiction varies depending on which type of personal jurisdiction is being asserted—general or specific. *Domtar*, 533 N.W.2d at 30. Only specific personal jurisdiction is at issue here. A state has specific personal jurisdiction over a nonresident defendant when "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 [state]." *Id.*

When determining whether a nonresident defendant's contacts with Minnesota are sufficient to support the exercise of specific personal jurisdiction, we focus on whether the defendant's litigation-related conduct created a "substantial connection" with the state. *Bandemer*, 931 N.W.2d at 750 (quotation omitted). The defendant does not need to be physically present in Minnesota to have a substantial connection with the state. *Id.* "[R]ather, sufficient minimum contacts may exist when [a nonresident] defendant purposefully directs activities at the forum state, and the litigation arises out of or relates to those activities." *Id.* (quotations omitted). But the minimum-contacts inquiry is limited to the defendant's contacts *with the forum state*, "not [to] the defendant's random, fortuitous, or attenuated contacts with persons affiliated with the [s]tate or persons who reside there." *Id.* (quotations omitted). If a nonresident defendant does not have the minimum contacts required for specific personal jurisdiction, we need not decide whether exercising personal jurisdiction over the defendant would offend the concepts of fair play and substantial justice. *See id.*; *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255, 262 (2017) ("In order for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum." (emphasis removed) (quotation omitted)); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) ("Once it has been decided that a defendant purposefully established minimum contacts within the forum [s]tate, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice." (quotation omitted)).

Rasmussen contends that the district court erred by granting Di Santo's motion to dismiss for lack of personal jurisdiction because Di Santo had the requisite minimum contacts with Minnesota to justify the exercise of specific personal jurisdiction. In the alternative, Rasmussen asserts that Di Santo consented to personal jurisdiction by agreeing to hold funds in trust for a foreign entity. We consider each argument in turn.

I. Minnesota does not have specific personal jurisdiction over Di Santo.

Our analysis of whether Rasmussen has made a prima facie showing of personal jurisdiction over Di Santo is guided by the first three factors of the due-process analysis: (1) the quantity of contacts with Minnesota, (2) the nature and quality of the contacts, and (3) the connection between the contacts and the cause of action. *Bandemer*, 931 N.W.2d at 749. Our review of these three factors demonstrates that Di Santo lacks sufficient minimum contacts to support the exercise of specific personal jurisdiction by Minnesota courts over Di Santo in this litigation.

Rasmussen alleges that this litigation arose from a single contact between Di Santo and Minnesota: Di Santo's failure to remit the debenture funds to Rasmussen, a Minnesota resident. Rasmussen argues that this contact is sufficient to support personal jurisdiction. Di Santo counters that the only contact Rasmussen identifies—"that [Di Santo] allegedly holds funds that belong to a Minnesota plaintiff"—is insufficient to satisfy the minimum-contacts requirement.

We conclude that Di Santo's alleged holding of debenture funds in Canada and alleged refusal to remit those funds to Rasmussen, who resides in Minnesota, does not provide sufficient minimum contacts with Minnesota to establish specific personal

jurisdiction over Di Santo in this case. A "single, isolated transaction between a nonresident defendant and a resident plaintiff can be a sufficient contact to justify exercising personal jurisdiction." *Marquette Nat'l Bank of Minneapolis v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978). But a nonresident defendant's single contact with the forum state establishes personal jurisdiction only if, through that contact, the defendant "purposefully avails" itself of the benefits and protections of the state and therefore can "reasonably anticipate being haled into the state's court." *Dent-Air*, 332 N.W.2d at 907 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum [s]tate." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

Di Santo's alleged refusal to remit the debenture funds to Rasmussen does not establish specific personal jurisdiction given the nature of the alleged contact. First, the alleged conduct—the refusal to remit funds—occurred in *Canada* and therefore cannot be the basis for specific personal jurisdiction in *Minnesota*. *See Dent-Air*, 332 N.W.2d at 907; *Hanson*, 357 U.S. at 253. Second, Minnesota's only connection to this litigation is by virtue of Rasmussen, a Minnesota resident, who allegedly contacted Di Santo to seek remittance of the debenture funds. Although Rasmussen alleges that Di Santo refused to remit the debenture funds to Rasmussen, the record does not contain any evidence of any correspondence from Di Santo setting forth its refusal. Rasmussen's unilateral communications with Di Santo, standing alone, are insufficient to create the "substantial connection" needed to support the exercise of specific personal jurisdiction in Minnesota.

See Bandemer, 931 N.W.2d at 750 (quotation omitted); *see also Hanson*, 357 U.S. at 253. Third, Rasmussen does not allege and the record does not reflect that Di Santo "purposefully avail[ed]" itself of Minnesota law in any way before or after this litigation commenced. *See Dent-Air*, 332 N.W.2d at 907 (quoting *Hanson*, 357 U.S. at 253). We therefore conclude that Rasmussen has not made a prima facie showing of specific personal jurisdiction.

We are also unconvinced by Rasmussen's assertion that *Burger King* compels us to rule in Rasmussen's favor. In *Burger King*, the United States Supreme Court held that a Florida court had personal jurisdiction over a Michigan franchisee because the franchisee had "established a substantial and continuing relationship with [the franchisor's] Miami headquarters, [and] received fair notice from the contract documents and the course of dealing that he might be subject to suit in Florida." 471 U.S. at 487. These facts are not present here. Di Santo did not have a substantial and continuing relationship with Rasmussen, nor did the parties enter into *any* contract, let alone one providing that Di Santo may be subject to suit in Minnesota. Rasmussen's citation to *Burger King* is unpersuasive.

This case more closely resembles *Hanson*, 357 U.S. at 251. In *Hanson*, the Supreme Court held that a Florida court did not have personal jurisdiction over a Delaware trust company because the company had no offices in Florida, transacted no business in Florida, did not hold or administer the assets of the relevant trust in the state, and did not solicit business in the state. 357 U.S. at 251. Similarly, here, there is no evidence that Di Santo has any offices in Minnesota, has transacted or solicited any business in the state, or has held or administered any of the debenture funds in the state. Indeed, in *Hanson*, the

defendant trust company had arguably more contacts with Florida than Di Santo has with Minnesota. *See id.* at 238-39 (explaining that the settlor of the trust at issue resided in Florida before her death and that her will was probated in the state). Thus, in addition to being more on point, *Hanson* reinforces our conclusion that Di Santo did not have the requisite minimum contacts with Minnesota to justify being haled into court in the state.

Because Di Santo does not have the necessary minimum contacts with Minnesota to justify the exercise of specific personal jurisdiction, we do not reach the question of whether such jurisdiction would offend traditional notions of fair play and substantial justice. *See Bristol-Myers Squibb*, 582 U.S. at 262; *Burger King*, 471 U.S. at 476; *Bandemer*, 931 N.W.2d at 750. Accordingly, based on our analysis of the first three personal-jurisdiction factors, we conclude that the district court did not err by dismissing Rasmussen's complaint for lack of personal jurisdiction.

II. Di Santo did not consent to Minnesota's personal jurisdiction.

We next consider whether Di Santo consented to the jurisdiction of Minnesota courts. Rasmussen asserts that Di Santo consented to Minnesota's personal jurisdiction because Di Santo "knew that Globe-X . . . was a Bahamian entity and that the beneficiary of the [t]rust [f]und would likely also be a foreign entity." Rasmussen further contends that "[t]hese circumstances would lead a reasonable person to believe that [Di Santo], by accepting the trusteeship, consented to the jurisdiction of the beneficiary's forum wherever it might be."

Rasmussen provides no legal argument or authority to support his assertion that Di Santo consented to personal jurisdiction "wherever [the beneficiary's forum] might be"

by entering into a trust agreement with a foreign entity. We generally do not consider arguments that are unsupported by legal argument or authority. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection."); *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (applying this aspect of *Schoepke*).

Even if we were to consider Rasmussen's consent argument on the merits, relevant caselaw does not support the conclusion that a financial institution consents to jurisdiction *everywhere* simply by accepting funds from a foreign entity. *See, e.g.*, *Smith v. Ghana Com. Bank, Ltd.*, No. CV 13-1010, 2013 WL 12074961, at *1 (D. Minn. Oct. 8, 2013) (dismissing the plaintiff's complaint for lack of personal jurisdiction because the defendant bank's alleged receipt of funds did not establish minimum contacts with Minnesota).[1] We therefore conclude that Rasmussen has not made a prima facie showing that Di Santo consented to specific personal jurisdiction in Minnesota.

Affirmed.

[1] We note that we are not bound by a federal court's interpretation of Minnesota law but may rely on it for its persuasive value, as we do here. *TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 431 (Minn. App. 2017).