This opinion is nonprecedential except as provided by Minn.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
A24-0795

U.S. Holdings, Inc.,
Respondent,

vs.

Williston Holding Company, Inc., et al.,
Appellants.

Filed February 10, 2025
Affirmed
Ede, Judge

Hennepin County District Court
File No. 27-CV-23-13999

Donald R. McNeil, Brian W. Varland, Elizabeth R. Scott, Heley, Duncan & Melander, PLLP, Minneapolis, Minnesota (for respondent)

Jevon C. Bindman, Samuel L. Lacy, Jeremy D. F. Krahn, Maslon LLP, Minneapolis, Minnesota (for appellants)

Considered and decided by Ede, Presiding Judge; Larkin, Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this appeal challenging the district court's denial of their motion to dismiss for lack of personal jurisdiction, appellants Williston Holding Company Inc. and Marcus Jundt argue that the court erred by determining that it had personal jurisdiction over Jundt. In particular, although Williston and Jundt no longer contest the district court's personal jurisdiction over Williston, they maintain that respondent U.S. Holdings Inc.'s claims do not arise under the forum-selection clause of a subscription agreement and that Jundt was not closely related to the dispute such that it was foreseeable that he would be bound by the clause. We affirm.

FACTS

The following factual summary is based on the complaint, as well as the district court's memorandum and order denying Williston and Jundt's motion to dismiss. Consistent with applicable law, we take the facts alleged in the complaint as true.

U.S. Holdings is a corporation organized under the laws of North Dakota, with its principal place of business in that state. U.S. Holdings' sole owner and operator is Ryan Visser.[1] Williston is a corporation organized under the laws of Nevada that owns and operates two restaurants in North Dakota. Jundt is the chief executive officer (CEO), "chairman of the board and, directly or indirectly, majority/controlling shareholder of" Williston.

Upon meeting Visser in late 2012 or early 2013 in North Dakota, Jundt represented that he was a successful restaurant entrepreneur. Relying on this representation, Visser caused U.S. Holdings to invest "a total amount of $600,750 in Williston." Each time U.S. Holdings invested in Williston, "it entered into securities purchase agreements, subscription agreements, or other similar agreements." The last investment U.S. Holdings made was for the purchase of 400,000 shares in Williston "by way of a Subscription

[1] Ryan Visser is not party to this appeal.

Agreement, dated July 30, 2018." The subscription agreement contains the following forum-selection clause:

> This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to the conflicts-of-law principles thereof. The venue for any action hereunder shall be in the State of Minnesota, whether or not such venue is or subsequently becomes inconvenient, and the parties consent to the jurisdiction of the courts of the State of Minnesota, County of Hennepin, and the U.S. District Court, District of Minnesota. Accordingly, the parties hereby submit to the process, jurisdiction and venue of any such courts. Each party hereby waives, and agrees not to assert, any claim that it is not personally subject to the jurisdiction of the foregoing courts in the State of Minnesota or that any action or other proceeding brought in compliance with this Section is brought in an inconvenient forum.

Moreover, the subscription agreement specifies that U.S. Holdings would become a shareholder in Williston.

In 2021, Visser learned of wrongdoing at one of Williston's restaurants and requested an accounting of the related damages. Jundt refused and told Visser that he would not receive any other information about Williston. Although U.S. Holdings later requested financial information about Williston, Jundt thwarted those efforts.

Two years later, U.S. Holdings filed a ten-count complaint in the Fourth Judicial District Court (Hennepin County). As alleged, U.S. Holdings made specific claims against both Williston and Jundt, as well as separate claims against Williston alone and Jundt alone. Against both Williston and Jundt, U.S. Holdings asserted: count I (declaratory and injunctive relief); count VI (unjust enrichment); count VII (promissory estoppel); and count VIII (quantum meruit). Against Williston alone, U.S. Holdings asserted: count II (breach of contract); count III (breach of the duty of good faith and fair dealing); and count V (accounting). And against Jundt alone, U.S. Holdings asserted: count IV (breach of fiduciary duty); count IX (fraud); and count X (negligent misrepresentation).

Williston and Jundt moved to dismiss the complaint under Minnesota Rule of Civil Procedure 12.02(b), arguing that the district court lacked personal jurisdiction over them. In a memorandum supporting their motion to dismiss, Williston and Jundt maintained that, "[a]side from the allegation that [U.S. Holdings] and [Williston] entered into an agreement stipulating that conduct-related disputes would be venued in Minnesota—which [U.S. Holdings] has yet to produce—Minnesota is in no way implicated by this case." U.S. Holdings filed a memorandum in opposition to Williston and Jundt's motion to dismiss, attached a copy of the subscription agreement, and argued that the agreement required U.S. Holdings to bring suit in Minnesota.

After hearing argument from the parties and taking the matter under advisement, the district court filed an order denying Williston and Jundt's motion to dismiss. Because the district court decided that the subscription agreement is enforceable and that the claims arise under the subscription agreement, it determined that Minnesota is the proper forum and that it had personal jurisdiction over Williston and Jundt.

Although the district court's analysis focused on determining that seven of the ten counts alleged in the complaint arise under the subscription agreement, the court also broadly reasoned that U.S. Holdings' "claims are all premised on the rights conferred on [it] by the subscription agreement." The district court further determined that Jundt is a closely related "third party because the claims against him relate to his role as CEO, chairman of the board, and majority shareholder of" Williston. As a result, the district court ruled that it was foreseeable that claims against Jundt would be governed by the forum-selection clause. This appeal follows.[2]

DECISION

As mentioned above, although both Williston and Jundt appeal the district court's denial of their motion to dismiss, they no longer contest the district court's exercise of personal jurisdiction over Williston.[3] Rather, Williston and Jundt's brief focuses on whether the district court correctly determined that it has personal jurisdiction over the claims U.S. Holdings has asserted against Jundt. Accordingly, our analysis addresses only the district court's determination that it has personal jurisdiction over those counts,[4] and we conclude that the court did not err in reaching that decision.

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[2] "Orders denying motions to dismiss are, generally, *not* appealable." *Stone v. Invitation Homes, Inc.*, 986 N.W.2d 237, 246 (Minn. App. 2023), *aff'd*, 4 N.W.3d 489 (Minn. 2024). But an order denying a motion to dismiss for lack of personal jurisdiction is immediately appealable as a matter of right under Minnesota Rule of Civil Appellate Procedure 103.03(j) and *Hunt v. Nevada State Bank*, 172 N.W.2d 292, 300 (Minn. 1969).

[3] Williston and Jundt do not explain why they are no longer challenging the district court's personal jurisdiction over Williston, instead stating only as follows in a footnote: "Although both [Williston] and Jundt appealed from the [district court's] order [denying appellants' motion to dismiss], [Williston] no longer contests personal jurisdiction. Accordingly, [Williston and Jundt's appellate] brief addresses only the district court's jurisdiction over Jundt."

[4] As explained in the facts section, U.S. Holdings has asserted the following claims against Jundt: count I (declaratory and injunctive relief); count IV (breach of fiduciary duty); count VI (unjust enrichment); count VII (promissory estoppel); count VIII (quantum meruit); count IX (fraud); and count X (negligent misrepresentation).

"Whether personal jurisdiction exists is a question of law, which [appellate courts] review de novo." *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 749 (Minn. 2019) (quotation omitted). "Personal jurisdiction refers to a court's power to exercise control over the parties in a case." *Young v. Maciora*, 940 N.W.2d 509, 514 (Minn. App. 2020) (quotation omitted), *rev. denied* (Minn. May 19, 2020). "The requirement that a court have personal jurisdiction flows from the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *Husky Constr., Inc. v. Gestion G. Thibault, Inc.*, 983 N.W.2d 101, 107 (Minn. App. 2022) (quotation omitted), *rev. denied* (Minn. Mar. 14, 2023). "The Due Process Clause . . . limits the ability of a state to exercise its coercive power by asserting jurisdiction over non-resident defendants." *Bandemer*, 931 N.W.2d at 749. "Due process is satisfied if a nonresident had sufficient 'minimum contacts' with the forum state, and maintaining the suit does not 'offend traditional notions of fair play and substantial justice.'" *Young*, 940 N.W.2d at 515 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). "Minnesota's long-arm statute prevents personal jurisdiction over a nonresident defendant if it would 'violate fairness and substantial justice.'" *Bandemer*, 931 N.W.2d at 749 (quoting Minn. Stat. § 543.19, subd. 1(4)(ii) (2018)).

"Once a defendant challenges personal jurisdiction, the burden of proof is on the plaintiff to show the jurisdiction exists." *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 533 (Minn. App. 2009). "When multiple parties are named as defendants, personal jurisdiction must be established for each defendant." *Id.* "At the pretrial stage, a plaintiff need only make a prima facie showing of jurisdiction, and the complaint and supporting evidence will be taken as true." *Id.* "In doubtful cases, doubts should be resolved in favor of retention of jurisdiction." *Id.* at 534 (quotation omitted).

"Because personal jurisdiction is a matter of individual liberty, [a party can] consent to the exercise of personal jurisdiction." *TRWL Fin. Establishment v. Select Int'l, Inc.*, 527 N.W.2d 573, 578 (Minn. 1995). "This [can] occur by entering into a contract containing a valid forum selection clause." *Id.* "A third party may be bound by a forum-selection clause where [the third party] is closely related to the dispute such that it becomes foreseeable that [the third party] will be bound." *C.H. Robinson Worldwide*, 772 N.W.2d at 534 (quotation omitted).

"Whether a forum-selection clause applies is a question of law, which this court reviews de novo." *Alpha Sys. Integration, Inc. v. Silicon Graphics, Inc.*, 646 N.W.2d 904, 907 (Minn. App. 2002), *rev. denied* (Minn. Oct. 15, 2002). "The decision to enforce a forum-selection clause lies within the district court's discretion and will not be disturbed unless the clause is so unreasonable that its enforcement would be clearly erroneous and against both logic and the facts on record." *C.H. Robinson Worldwide*, 772 N.W.2d at 534 (quotation omitted).

Williston and Jundt assert that the district court erred by deciding to exercise personal jurisdiction over Jundt based on the forum-selection clause because U.S. Holdings' claims against him "are not an 'action hereunder' within the scope of the subscription agreement."[5] We analyze first (A) whether U.S. Holdings' claims against

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[5] Jundt does not otherwise argue that the forum-selection clause is unfair or unreasonable. *See Hauenstein & Bermeister, Inc. v. Met-Fab Indus., Inc.*, 320 N.W.2d 886, 890

Jundt fall under the subscription agreement and then consider (B) whether the district court abused its discretion by deciding to enforce the forum-selection clause against Jundt.

A. U.S. Holdings' claims against Jundt arise under the subscription agreement.

In the complaint, U.S. Holdings alleges seven counts against Jundt. We conclude that the scope of the subscription agreement—which encompasses "any action hereunder"—extends to all counts U.S. Holdings has asserted against Jundt because those claims are all premised on rights, benefits, and obligations conferred on Jundt and U.S. Holdings by the agreement. *See Alpha Sys. Integration*, 646 N.W.2d at 908 (concluding that, because the appellant's allegations were all premised on a right afforded the appellant by an agreement that contained a forum-selection clause, the allegations were governed by the clause).

Through the subscription agreement, U.S. Holdings acquired Williston stock and—per the express terms of the agreement—became a shareholder of Williston. In count I (declaratory and injunctive relief), U.S. Holdings seeks declaratory judgment determining that Williston has 3,073,139 outstanding shares, that U.S. Holdings holds 500,683 of those shares (i.e., 16.29% of Williston's outstanding shares), and that U.S. Holdings is entitled to all the rights afforded a shareholder under applicable law, including the right to production, inspection, and copying of Williston's financial statements, corporate books,

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(Minn. 1982) ("[W]hen the parties to a contract agree that actions arising from that contract will be brought in a particular forum, that agreement should be given effect unless it is shown by the party seeking to avoid the agreement that to do so would be unfair or unreasonable.").

and records. Williston and Jundt note that "count I does not mention Jundt's name or describe how his conduct is related to the remedy [U.S. Holdings] seeks" and that U.S. Holdings instead asserts in count I that "a controversy exists between [U.S. Holdings], on the one hand, and Williston . . . , on the other hand." On that basis, Williston and Jundt contend that count I "does not allege a cause of action against Jundt personally that arises under the subscription agreement," even if it does as to Williston.[6] But this argument ignores U.S. Holdings' incorporation of "the [complaint's] previous allegations into [count I,] as though fully set forth [t]herein." Those allegations include that Jundt is the CEO, chairman of the board, and majority shareholder of Williston.

In that connection, U.S. Holdings alleges in count IV (breach of fiduciary duty) that Jundt owes fiduciary obligations of good faith, loyalty, fair dealing, due care, and candor to Williston and its shareholders—including U.S. Holdings—because of his role as CEO, chairman of the board, and majority shareholder of Williston. And U.S. Holdings asserts that Jundt breached his fiduciary obligations by, among other things, acting "out of avarice and self-interest" in: causing Williston to fund his extravagant lifestyle; improperly denying or diminishing U.S. Holdings' ownership interest in Williston; and making Williston improperly issue him and his friends additional shares for no consideration, which resulted in a dilution of the value of U.S. Holdings' shares.

[6] Although they have not specifically conceded that count I arises under the subscription agreement, we note that—as discussed above—Williston and Jundt no longer contest the district court's exercise of personal jurisdiction over Williston as to count I.

Similarly, U.S. Holdings asserts in count IX (fraud): that Jundt falsely represented to U.S. Holdings that if it invested, Williston would use U.S. Holdings' investment funds for the operation and expansion of Williston's business; that Jundt did not disclose to U.S. Holdings that he would use U.S. Holdings' investment funds to pay for his extravagant personal lifestyle rather than operating and expanding Williston's business; that Jundt's representations and omissions were knowingly false, fraudulent, and intended to induce U.S. Holdings' reliance in making investments in Williston; and that U.S. Holdings reasonably and in good faith relied on Jundt's false representations and omissions to U.S. Holdings' detriment by investing in Williston.

Count I (declaratory and injunctive relief), count IV (breach of fiduciary duty), and count IX (fraud) are all actions under the subscription agreement. "[A] majority or controlling shareholder owes a fiduciary duty to the corporation or its other shareholders." *Advanced Commc'n Design, Inc. v. Follett*, 615 N.W.2d 285, 293–94 (Minn. 2000). Count I concerns the amount of Williston shares held by U.S. Holdings and a declaration of U.S. Holdings' shareholder rights—determinations that are necessarily "related to the relationship between the parties created by the" subscription agreement, *Gander Mountain Co. v. Lazard Middle Mkt., LLC*, No. A11-0221, 2012 WL 118236, at *3 (Minn. App. Jan. 17, 2012).[7] This includes the majority-minority shareholder relationship between Jundt and U.S. Holdings, of which the subscription agreement is an inextricable part. Count IV likewise relates to the asserted breaches of fiduciary obligations owed by Jundt to U.S.

[7] Consistent with Minnesota Rule of Civil Appellate Procedure 136.01, subdivision 1(c), we cite this nonprecedential opinion only as persuasive authority.

Holdings because of U.S. Holdings' shareholder status, which again is established by the express terms of the subscription agreement. And count IX deals with U.S. Holdings' claim that Jundt employed fraud to induce U.S. Holdings' investment in Williston under the subscription agreement.

In count VI (unjust enrichment), U.S. Holdings alleges that Williston and Jundt received a benefit from U.S. Holdings—investments "based upon [Williston and Jundt's] representations that the investments would be used for the operation and business of Williston." U.S. Holdings makes a similar allegation in count VIII (quantum meruit), asserting that it had conferred many benefits on Williston and Jundt—including by investing in Williston—and that U.S. Holdings has not received any dividends or distributions from its investment. Because these counts concern the benefits that U.S. Holdings afforded Williston and Jundt through the purchase of shares via the subscription agreement, both counts VI and VIII arise under the subscription agreement.

Turning to count VII (promissory estoppel), U.S. Holdings claims that appellants made clear and definite promises to it, including that U.S. Holdings' investments would be used for the operation and expansion of Williston's business rather than for "funding Jundt's extravagant personal lifestyle." U.S. Holdings further asserts that Williston and Jundt intended to induce U.S. Holdings to rely on their promises, that U.S. Holdings reasonably and in good faith did so rely, and that appellants have not fulfilled those promises. In other words, this count relates to the promises Williston and Jundt made to U.S. Holdings—and on which U.S. Holdings relied—when U.S. Holdings invested in

Williston through the subscription agreement. Count VII is therefore an action under the subscription agreement as well.[8]

Lastly, in count X (negligent misrepresentation), U.S. Holdings asserts that "Jundt, in the course of his business, had a duty to [U.S. Holdings] and supplied information to [U.S. Holdings] for guidance . . . in a business transaction," but the information was false, "Jundt failed to exercise reasonable care or competence in obtaining or communicating the false information," and U.S. Holdings "reasonably and in good faith relied, to its detriment, on the false information provided by Jundt." The complaint does not define "a business transaction" and there is some suggestion that count X might relate to an investment project, discussed elsewhere in the complaint, that does not concern the subscription agreement. But, as noted above, we resolve doubts in favor of retaining jurisdiction. *C.H. Robinson Worldwide*, 772 N.W.2d at 534. Because U.S. Holdings' purchase of Williston stock through the subscription agreement was also a business transaction involving Jundt, we conclude that count X is an action under the subscription agreement.

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[8] Although Williston and Jundt have abandoned any challenge to the district court's exercise of personal jurisdiction over Williston as to count VI (unjust enrichment), count VII (promissory estoppel), and count VIII (quantum meruit), they nonetheless argue that those counts allege equitable claims that do not arise under the subscription agreement and are available only in the absence of an enforceable contract. In support of this argument, appellants cite *U.S. Fire Ins Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981), for the proposition that "equitable relief cannot be granted where the rights of the parties are governed by a valid contract." We are not persuaded. *U.S. Fire Ins.* is distinguishable because, in that case, the parties' contract specifically provided for remedies if one party defaulted. 307 N.W.2d at 493. By contrast, the subscription agreement here does not set forth the remedies available to U.S. Holdings for any action thereunder. Moreover, in *Alpha Sys. Integration*, we concluded that appellant's claims, including unjust enrichment, fell within the purview of a forum-selection clause in a valid contract. 646 N.W.2d at 908.

Having decided that all claims that U.S. Holdings has asserted against Jundt fall under the subscription agreement, we now review the district court's decision to enforce the forum-selection clause against Jundt.

B. The district court did not abuse its discretion in deciding to enforce the forum-selection clause against Jundt.

As discussed above, "[a] third party may be bound by a forum-selection clause where [the third party] is closely related to the dispute such that it becomes foreseeable that [the third party] will be bound." *C.H. Robinson Worldwide*, 772 N.W.2d at 534 (quotation omitted). We conclude that the district court did not abuse its discretion in deciding to enforce the forum-selection clause against Jundt. The district court correctly ruled that Jundt is so closely related to the dispute that it was foreseeable that he would be bound by the forum-selection clause set forth in the subscription agreement.

Our decision in *C.H. Robinson Worldwide* is instructive. In that case, a corporation sued eight former employees and their new employer. *Id.* at 532–33. Three former employees had signed confidentiality and nondisclosure agreements that contained a forum-selection clause; two former employees signed agreements that contained choice-of-law provisions but did not require the employees to consent to the jurisdiction of Minnesota courts. *Id.* at 533–34. On appeal from the district court's denial of the nonresident defendants' motion to dismiss, this court affirmed, relying on *Medtronic, Inc.*

v. Endologix, Inc., 530 F. Supp. 2d 1054 (D. Minn. 2008), as persuasive authority.[9] *Id.* at 535–39.

In *Medtronic*, an employer (Medtronic) sued two former employees and their current employer in Minnesota state court, alleging a violation of employment agreements by "soliciting their former Medtronic clients on behalf of" their new employer. 530 F. Supp. 2d at 1055. The new employer removed the action to the United States District Court for the District of Minnesota. *Id.* at 1056. Medtronic argued that the action must be remanded to state court because of the forum-selection clauses in the former employees' employment agreements. *Id.* Even though the new employer was not a party to the employment agreements, the federal district court ruled for Medtronic, reasoning:

> There can be little doubt that Endologix is "closely related" to the dispute between Medtronic and [the former employees]. Indeed, it was Endologix's employment of [the former employees]—while it was fully aware of the employment agreements and, hence, the forum-selection clauses—and [the employees'] subsequent solicitation of Medtronic clients on behalf of Endologix that gave rise to this action; this caused not only [the former employees] to be sued, but also caused Endologix to be sued in the same case. Moreover, all of the Defendants clearly share a common interest in this action: the right of [the former employees] to solicit their former Medtronic customers on behalf of their new employer, Endologix. Indeed, were Endologix's interests not so closely aligned with [the former employees'] interests, they could not be represented by the same counsel in this action.

Id. at 1056–57 (citations omitted).

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[9] "Although we are not bound to follow precedent from other states or federal courts, these authorities can be persuasive." *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553, 563 (Minn. App. 2020) (quotation omitted).

In *C.H. Robinson Worldwide*, we relied on *Medtronic* to conclude that the "district court's findings support a conclusion that those appellants who were not parties to the [confidentiality and noncompetition agreements] were sufficiently closely related to the dispute to be bound by them." 772 N.W.2d at 535. We further reasoned that the new employer and two former employees knowingly sought to solicit the three other former employees despite the confidentiality and noncompetition agreements. *Id.* In reaching our decision, we also pointed to the district court's finding that the former employees and the new employer were represented by a common attorney and shared "a common interest in asserting that neither improper use of [the former employer's] information nor improper solicitation of [the former employer's] customers occurred." *Id.* Based on the above, we concluded that the nonparty appellants were "closely related to the dispute such that it bec[ame] foreseeable that they would be bound by the clauses." *Id.* at 536 (quotation omitted).

Like the parties in *C.H. Robinson Worldwide*, Williston and Jundt were represented by a common attorney in the district court. Williston and Jundt also share a common interest in asserting that neither of them engaged in any wrongdoing against U.S. Holdings. Assuming the facts alleged in the complaint are true—as we must, *see id.* at 533—Williston and Jundt undertook a concerted effort to induce U.S. Holdings to invest in Williston and to use those funds to support Jundt's lifestyle. Williston and Jundt's concerted efforts to secure investments from U.S. Holdings resulted in U.S. Holdings initiating this lawsuit not only against Williston but also against Jundt. And at the time of U.S. Holdings' investment in Williston through the time of the allegations in the complaint, Jundt has been the CEO, chairman of the board, and majority/controlling shareholder of Williston. Given the facts before us, we conclude that the district court did not abuse its discretion in determining that Jundt was so closely related to the dispute that it became foreseeable that he would be bound by the forum-selection clause set forth in the subscription agreement.

In sum, because U.S. Holdings' claims against Jundt arise under the subscription agreement and the district court did not abuse its discretion in deciding to enforce the forum-selection clause against Jundt, the court did not err in ruling that it has personal jurisdiction over Jundt. Thus, we affirm the district court's denial of Williston and Jundt's motion to dismiss for lack of personal jurisdiction.[10]

Affirmed.

[10] Based on our conclusion, above, we decline to address Williston and Jundt's additional argument that no other basis for personal jurisdiction exists.