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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000549-MR

MITCHELL L. WALKER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 14-CI-402018

PBI BANK, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, COMBS AND D. LAMBERT, JUDGES.

LAMBERT, D., JUDGE: Mitchell L. Walker appeals from the Jefferson Circuit Court's grant of summary judgment against him and in favor of the Appellee, PBI Bank, Inc. ("PBI"). The issue presented for our review is whether the trial court properly exercised personal jurisdiction over Walker under Kentucky's "long-arm" statute (Kentucky Revised Statute (KRS) 454.210). Walker acted as an out-of-

state guarantor of a loan to a Kentucky business entity. Having reviewed the record, we find the circuit court did have jurisdiction and consequently affirm.

I. FACTUAL AND PROCEDURAL HISTORY

Walker is the president, organizer, managing member, and registered agent of L.M. Walker Asset Management, LLC (“LMW”), a Kentucky limited liability company. Walker is also a resident of the state of New York. On December 1, 2006, Walker, acting on behalf of LMW, sought and obtained a loan from PBI, secured by realty owned by LMW in Jefferson County. When PBI demanded additional security, Walker agreed to personally guarantee the LLC’s debt. PBI mailed the guaranty documentation to Walker in New York, which he executed, and mailed back to PBI in Kentucky. LMW later defaulted on this note, prompting PBI to initiate a civil action to enforce its security interest in the real property. PBI named Walker as a defendant personally, in order to recover any deficiency following a judicial sale.

Walker answered PBI’s complaint, asserting that the trial court lacked personal jurisdiction over him. PBI moved for summary judgment, to which Walker responded, again asserting lack of personal jurisdiction as a defense. The matter was referred to the Master Commissioner, who adopted PBI’s arguments regarding personal jurisdiction in a report to the trial court. Walker contends that position is a misinterpretation of the case law interpreting KRS 454.210.

The trial court agreed with PBI and the Master Commissioner’s interpretation, granted PBI’s motion for summary judgment, and overruled

Walker's objection on April 22, 2015. Walker filed a motion to reconsider, which the trial court also overruled. This appeal followed, wherein Walker argues that the trial court erred in exercising personal jurisdiction over him.

II. ANALYSIS

A. STANDARD OF REVIEW

On appeal, review of a trial court's decision to grant summary judgment is limited to whether the trial court correctly determined that the record presented no genuine issue of material fact. *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476 (Ky. 1991). Absent a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. Kentucky Rule of Civil Procedure (CR) 56.03. A court must review the record in the light most favorable to the non-moving party and draw all reasonable inferences in his favor. *Bituminous Casualty Corp. v. Kenway Contracting, Inc.*, 240 S.W.3d 633 (Ky. 2007). Only when it appears impossible from the record that the non-moving party can produce any evidence at trial upon which the fact-finder could possibly find in his favor should a court grant summary judgment. *Scifres v. Kraft*, 916 S.W.2d 779 (Ky. App. 1996).

Because a trial court's examination of the record seeks only to discover the existence of unresolved questions of fact and not to weigh the evidence, Kentucky law considers any findings resulting from that examination as questions of law, subject to a *de novo* review. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000).

**B. THE TRIAL COURT CORRECTLY EXERCISED PERSONAL
JURISDICTION OVER WALKER**

Walker contends that the Kentucky Supreme Court’s decision in *Caesar’s Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51 (Ky. 2011), rendered the body of case law regarding long-arm jurisdiction invalid, as the analysis no longer focuses entirely on federal due process concerns. Indeed, *Caesar’s* did change the analysis into a two-pronged test, first requiring an examination of the circumstances through the lens of KRS 454.210, and then applying the traditional due process analysis from *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945), and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). However, the pre-existing body of law is far from invalid, and we cannot, as Walker urges, ignore it. Nor does this case require us, as Walker also suggests, to look to decisions of Ohio courts to resolve.

We will begin our analysis with Kentucky’s long-arm statute, KRS 454.210. Though there are nine instances which confer personal jurisdiction enumerated in the statute, the most relevant language to this situation provides:

(2)(a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person’s:

1. Transacting any business in this Commonwealth;

. . . .

(b) When jurisdiction over a person is based solely upon this section, only a claim arising from acts enumerated in this section may be asserted against him.

KRS 454.210(2). The question becomes whether Walker engaged in the transaction of business within our Commonwealth.

Walker created his business entity, LMW, in Kentucky. He manages and operates LMW as it conducts business in Kentucky, though he does so from New York. LMW purchased real estate located within Kentucky, and borrowed from a Kentucky bank using the same realty as security. Walker became the personal guarantor of the loan to LMW when PBI needed greater security.

Without denying any of these facts, Walker argues that these activities are insufficient to confer personal jurisdiction on Kentucky courts. Walker invokes the “fiduciary shield doctrine,” as a defense. This doctrine is not recognized in Kentucky, but “states that ‘if an individual has contact with a particular state only by virtue of his acts as a fiduciary of the corporation, he may be shielded from the exercise, by that state, of jurisdiction over him personally on the basis of that conduct.’” *Johnson v. Diamond Shine, Inc.*, 890 F.Supp.2d 763, 771-72 (W.D. Ky. 2012) (quoting *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899 (2d Cir. 1981)).

The Sixth Circuit has explicitly rejected this doctrine in previous opinions. Actions by defendants “undertaken in an official rather than personal capacity [do] not preclude the exercise of personal jurisdiction over those defendants.” *Id.* The rule of the Sixth Circuit is instead that “where an out-of-state agent is actively and personally involved in the conduct giving rise to the claim,

the exercise of personal jurisdiction should depend on traditional notions of fair play and substantial justice[.]” *Id.* at 772 (quoting *Balance Dynamics Corp. v. Schmitt Indus., Inc.*, 204 F.3d 683, 698 (6th Cir. 2000)). Even though the rejection came in the context of a federal due process analysis, we see no need to adopt a doctrine so soundly rejected by our federal counterparts.

Walker did not deny that LMW transacts business in Kentucky. His own actions in refusing to remit payment for the outstanding balance of the loan after LMW’s default constitutes a breach of contract. Because his guaranty arose from the loan transaction, which Walker actively and personally negotiated on behalf of LMW, Walker’s breach of that guaranty contract falls squarely within the scope of *Balance Dynamics* and KRS 454.210(2)(a)(1).

Having determined that Walker did transact business in Kentucky, the analysis now turns to the more traditional long-arm jurisdiction analysis under due process. Due process is satisfied and personal jurisdiction may attach when traditional notions of fair play and substantial justice are met. *See Int’l Shoe*. Fair play and substantial justice require an individual have “fair warning that a particular activity may subject [him] to the jurisdiction of a foreign sovereign[.]” *Hinners v. Robey*, 336 S.W.3d 891, 897 (Ky. 2011) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring)). Further, the “fair warning” requirement is met when “the defendant has ‘purposefully directed’ his activities at residents of the forum[.]” *Hinners* at 897 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984)). “So long as a commercial actor’s efforts are

‘purposefully directed’ toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 466 (1985).

Walker’s business dealings were purposefully directed at a Kentucky resident, PBI, in particular. Both Kentucky state and federal courts have previously ruled that the act of executing a personal guaranty by an out-of-state party creates a sufficiently substantial connection to allow the courts of the forum state to assert personal jurisdiction. *See Perry v. Central Bank & Trust Co.*, 812 S.W.2d 166 (Ky. App. 1991); *Nat’l Can Corp. v. K Beverage Co.*, 674 F.2d 1134, 1138 (6th Cir. 1982) (Signing a personal guaranty for a “business in which one has an economic interest is the sort of conduct and connection with the [forum] state” that confers personal jurisdiction.).

In light of these authorities, it is beyond question that Walker purposefully availed himself of the laws and protections of Kentucky, and for that reason he is subject to personal jurisdiction here.

C. THE TRIAL COURT PROPERLY ENTERED SUMMARY JUDGMENT

The only unresolved issue between the parties before the trial court was legal in nature; namely whether the trial court could exercise personal jurisdiction and determine the validity of the contract. Because this is a legal issue, the trial court properly entered judgment resolving it, and then properly denied the motion to reconsider.

III. CONCLUSION

Having reviewed the record and the arguments of the parties, this Court concludes that the trial court acted appropriately both in exercising personal jurisdiction over Walker and in granting summary judgment. Accordingly, we affirm the trial court's judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

Judson Wagenseller
Prospect, Kentucky

BRIEF FOR APPELLEE:

David N. Hise
Louisville, Kentucky