

IN THE SUPERIOR COURT OF WHITFIELD COUNTY
STATE OF GEORGIA

BRADY ZELAYA
CLERK OF
SUPERIOR COURT

FILED & RECORDED
WHITFIELD COUNTY, GA.
2021 MAY 28 AM 11:30

HARRINGSON ZELAYA; and BRADY ZELAYA,)
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Plaintiff,)
)
)
v.)
)
)
KING BIRD FIREWORKS, LLC)
)
)
)
Defendant.)

CIVIL ACTION
No. 19-CI-00020

ORDER DENYING DEFENDANT KING BIRD FIREWORKS, LLC's MOTION TO SET ASIDE DEFAULT FOR LACK OF PERSONAL JURISDICTION

Before the Court is Defendant King Bird Fireworks, LLC's ("King Bird") Motion to Set Aside Default for Lack of Personal Jurisdiction. On March 12, 2021, King Bird filed its Motion arguing this Court lacks jurisdiction over King Bird, a non-resident defendant, whose contacts with the forum state are insufficient as a matter to justify the exercise of personal jurisdiction. On April 9, 2021, Plaintiffs Harrington Zelaya and Brady Zelaya (collectively "Zelaya") filed a response arguing this Court has jurisdiction and King Bird waived any jurisdiction argument by seeking ruling on the merits. On May 12, 2021, King Bird replied to Zelaya's arguing the cases cited in Zelaya's April 9 filing are without merit.

After considering all the facts of both parties, Supreme Court of the United States and Georgia case precedent, and the entire record, the Defendant's Motion to Set Aside Default for Lack of Personal Jurisdiction is **DENIED**.

Discussion

King Bird's March 12, 2021, filing argues this Court lacks personal jurisdiction over King Bird. Federal and State courts throughout the United States interpret the Fourteenth Amendment's Due Process Clause for personal jurisdiction as either based on general jurisdiction or specific jurisdiction. See *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915, 919 (2011).

A state court may exercise general jurisdiction only when a defendant is "essentially at home" in the State. *Ford Motor Company v. Montana Eighth Judicial District*

Court, 141 S. Ct. 1017, 1024 (2021) (quoting *Goodyear*). General jurisdiction, as its name implies, extends to “any and all claims” brought against a defendant. *Id.* Those claims need not relate to the forum State or the defendant's activity there; they may concern events and conduct anywhere in the world. *Id.*

The *Ford* Court deftly illustrates the nuances of specific jurisdiction, which relate to a narrower class of claims for defendants less intimately connected with a State:

The contacts needed for this kind of jurisdiction often go by the name “purposeful availment.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). The defendant, we have said, must take “some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). The contacts must be the defendant's own choice and not “random, isolated, or fortuitous.” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984). They must show that the defendant deliberately “reached out beyond” its home—by, for example, “exploit[ing] a market” in the forum State or entering a contractual relationship centered there. *Walden v. Fiore*, 571 U.S. 277, 285 (2014) (internal quotation marks and alterations omitted). Yet even then—because the defendant is not “at home”—the forum State may exercise jurisdiction in only certain cases. The plaintiff’s claims, we have often stated, “must arise out of or relate to the defendant's contacts” with the forum. *Bristol-Myers*, 582 U. S., at ----, Or put just a bit differently, “there must be ‘an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.’ ” *Bristol-Myers*, 582 U. S., at ---- – ----, ----, 137 S.Ct., at 1780 (quoting *Goodyear*, 564 U.S., at 919).

Ford, 141 S. Ct. at 1024, 1025.

King Bird argues this Court should set aside its granting default judgment in favor of Zelaya based on O.C.G.A. § 9-11-60 (d)(1) which states, “A motion to set aside may be brought to set aside a judgment based upon lack of jurisdiction over the person or the subject matter.” King Bird’s March 12 filing argues three points claiming this Court lacks personal jurisdiction to hear this case. First, King Bird argues this Court does not have personal general jurisdiction because King Bird is not essentially at home in Georgia. Secondly, King Bird argues this Court does not have specific personal jurisdiction due to the lack of a nexus between King Bird’s activities with Georgia and the events leading to Zelaya’s claim. Last, King Bird argues that King Bird did not waive a personal jurisdiction

defense, as Zelaya claims, when King Bird requested to the court to issue a Summary Judgment in King Bird's favor in a previous filing. The Court addresses those arguments below.

Analysis

I. King Bird is not subject to this Court's personal general jurisdiction.

The *Ford* court enumerated the test for when State courts may exercise general jurisdiction.

A state court may exercise general jurisdiction only when a defendant is "essentially at home" in the State [Plaintiff's] claims need not relate to the forum State or the defendant's activity there; they may concern events and conduct anywhere in the world [A]n individual is subject to general jurisdiction in her place of domicile And the "equivalent" forums for a corporation are its place of incorporation and principal place of business.

Ford, 141 S. Ct. at 1024.

King Bird is not essentially at home in Georgia. King Bird is incorporated in Indiana, and maintains a principal place of business in Indiana; therefore, King Bird does not meet the requirements for general personal jurisdiction in Georgia.

II. King Bird is subject to specific personal jurisdiction in Georgia.

The *Ford* court also described the requisite test for determining whether a State court has specific personal jurisdiction. *Ford*, 141 S. Ct. at 1024, 1025, *supra*. The conjunctive wording of the *Ford*'s court discernment of the requisites for specific personal jurisdiction evidences this Court's decision.

First, the defendant must take "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *Id.* Second, the contacts must be the defendant's own choice and not "random, isolated, or fortuitous." *Id.* Third, the [contacts] must show that the defendant deliberately "reached out beyond" its home – by, for example, "exploit[ing] a market" in the forum State or entering a contractual relationship centered there. *Id.* Fourth, "there must be 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" *Id.* King Bird attempts to shoe horn another requisite by arguing the link must be causal in nature, in that the defendant's forum conduct must give rise to the plaintiff's claims. And that requisite requires Zelaya to bring suit in another State. We address the argument in linear fashion.

First, King Bird has taken “some act” by selling fireworks to retailers in Georgia. Second, the selling of the fireworks in Georgia by King Bird is not random, isolated, or fortuitous. Third, King Bird profits from the selling of its fireworks by exploiting a market for its fireworks in Georgia. Fourth, the activity resulting in Zelaya filing suit happened in Georgia. What the *Ford* court explicitly rejects, and the argument made by King Bird, is that the sale of the specific product or item giving rise to Zelaya’s claim be made in the forum State for the forum State to have jurisdiction.

Paraphrasing the *Ford*’s court recitation of the seminal case *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 295 (1980), here, if King Bird’s business deliberately extended into Georgia, then Georgia’s courts can hold King Bird accountable for a product’s claims in Georgia – even though King Bird’s firework is designed and made overseas and sold in Tennessee. *Ford*, 141 S. Ct. at 1027. Therefore, because all the requirements are met for this Court to hear the suit, and there is no requirement that the product be sold within this Court’s geographic locality, this Court has specific personal jurisdiction over King Bird.

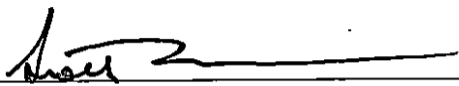
III. Argument by Zelaya that King Bird waived a personal jurisdiction defense are moot because this Court has personal jurisdiction over King Bird.

For the reasons stated above, this Court has personal jurisdiction over King Bird. King Bird has the right to defend a claim against Zelaya based on a lack of personal jurisdiction by this Court to hear the claim. King Bird’s rationale for this Court lacking personal jurisdiction is denied. Therefore, any argument that this Court somehow did not have jurisdiction but subsequently acquired jurisdiction as the result of a filing by King Bird is moot.

Conclusion

Based on the foregoing, the Court hereby **DENIES** Defendant King Bird Fireworks, LLC’s Motion to Set Aside Default For Lack of Personal Jurisdiction.

So **ORDERED** this 28 day of MAR, 2021.



Judge B. Scott Minter
Superior Court, Conasauga Judicial
Circuit