

No. 121281

IN THE SUPREME COURT OF ILLINOIS

ASPEN AMERICAN INSURANCE CO.,)	On Petition for Leave to Appeal from
as subrogee of Eastern Fish Company,)	the Appellate Court of Illinois, First
)	District, No. 1-15-1876
Plaintiff-Appellee,)	
)	There Heard on Appeal from the Circuit
v.)	Court of Cook County, Illinois, Law
)	Division, Case No. 14 L 7376
INTERSTATE WAREHOUSING, INC.,)	
)	Hon. John P Callahan, Jr.
Defendant-Appellant.)	Judge Presiding

BRIEF OF PLAINTIFF-APPELLEE

***** Electronically Filed *****

121281

04/12/2017

Supreme Court Clerk

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NATURE OF THE ACTION

Plaintiff initiated this action to recover damages resulting from the loss of plaintiff's food products destroyed while stored in defendant's warehouse on or about March 8, 2014. A roof collapse at defendant's facility resulted in ruptured gas lines and an ammonia leak within the facility. The ruptured gas lines and ammonia leak contaminated the food products, rendering them unfit for human consumption. Upon information and belief, defendant destroyed the contaminated food products. Also, defendant destroyed the warehouse in which the food products were stored, along with all evidence related to the loss.

Defendant requested and received authority from the Illinois Secretary of State to transact business in the state of Illinois. *A75, SR 48*. Defendant has a facility in Illinois. *A64-65, SR 37-38*. Defendant has employees in Illinois. *A64-65, SR 37-38*. Defendant conducts "day-to-day operations" at its Illinois facility. *A64, SR 37, ¶ 2-3*.

Plaintiff filed its complaint on July 14, 2014. *A36-60, SR 8-32*. Plaintiff served a summons and complaint on defendant at its facility in Illinois. *A63, SR 36*. Service of the summons and complaint were made on the general manager of defendant's warehouse in Illinois. *A63-65, SR 36-38*. Defendant moved to quash service and for dismissal of the complaint for lack of jurisdiction. *A29-35, SR 1-38*. The trial court denied defendant's motion on June 8, 2015. *A27, SR 49*. On September 11, 2015, the Illinois Appellate Court granted defendant's petition for leave to appeal. After briefing and oral argument, the Illinois Appellate Court affirmed the decision of the trial court. *A2-26*. Defendant petitioned for leave to appeal to this Court. This Court granted defendant's petition on November 23, 2016. *A28*.

The trial court properly exercised personal jurisdiction over a corporation that is authorized to transact business within the state of Illinois, pays employees in Illinois and pays taxes to Illinois. Consistent with Illinois law and United States Supreme Court decisions, the trial court denied defendant's motion to dismiss for lack of personal jurisdiction and the Illinois Appellate Court affirmed.

ISSUES PRESENTED FOR REVIEW

Plaintiff ascribes no error in the courts below.

STATEMENT OF FACTS

The statement of facts submitted by defendant is incomplete and incorrect.

1. Interstate Warehousing, Inc. ("Interstate Warehousing") is an Indiana corporation that transacts business in Illinois. *A75, SR 48.*
2. On or before November 15, 1988, Interstate Warehousing applied to the Illinois Secretary of State for permission to conduct business within Illinois, and the Illinois Secretary of State approved the application. *A75, SR 48.*
3. Interstate Warehousing remains an "active" corporation within the state of Illinois. *A75, SR 48.*
4. Interstate Warehousing operates a warehouse within the state of Illinois. *A64, SR 37, ¶ 3-4.*
5. On its website and on corporate letterhead, Interstate Warehousing promotes its Chicago warehouse location. *A51, 55 and 56; SR 23, SR 27 and SR 28.*
6. Interstate Warehousing's general manager, Ryan Shaffer, is an Interstate Warehousing employee working within the state of Illinois. *A62, SR 35, ¶ 9; A64, SR 37, ¶ 2.*

7. Interstate Warehousing conducts business on a daily basis at its Illinois warehouse. Ryan Shaffer is “responsible for day-to-day operations” at Interstate Warehousing’s Illinois warehouse. *A64, SR 37, ¶ 3.*

8. Interstate Warehousing has operational divisions at its Illinois warehouse. Managers of the operational divisions at Interstate Warehousing’s Illinois warehouse report to Ryan Shaffer. *A64, SR 37, ¶ 4.*

9. Ryan Shaffer received the summons and complaint for the instant matter at Interstate Warehousing’s Illinois facility. *A64, SR 37, ¶ 7; A65, SR 38, ¶ 8, ¶ 9, ¶ 12.*

ARGUMENT

The United States Supreme Court’s decision in *Daimler AG v. Bauman* and Illinois law support the trial court’s denial of Interstate Warehousing’s motion to dismiss for lack of personal jurisdiction. Defendant’s position, if adopted, would extend the U.S. Supreme Court’s decisions in *Daimler AG* and *Goodyear* to create an even higher standard than required for personal jurisdiction under Illinois law.

I. Standard of review.

The standard of review for this appeal is *de novo*.

When, as here, the circuit court decides a jurisdictional question solely on documentary evidence, without an evidentiary hearing, our review is *de novo*. Any conflicts in the pleadings and affidavits must be resolved in the plaintiff’s favor, but the defendant may overcome plaintiff’s *prima facie* case for jurisdiction by offering uncontradicted evidence that defeats jurisdiction.

(internal citations omitted). *Russell v. SNFA*, 2013 IL 113909, ¶ 28.

II. Personal jurisdiction under Illinois law.

Pursuant to 735 ILCS 5/2-209(b)(4), “[a] court may exercise jurisdiction in any action arising within or without this State against any person who...is a natural person or

corporation doing business within this State.” Defendant is a corporation “doing business within this State.” *See A64, SR 37, ¶ 3-4; A75, SR 48.*

Defendant has continuous and permanent business activity in Illinois. Defendant’s Illinois contacts “go beyond mere solicitation and constitute sufficient substantial business.” *St. Louis-San Francisco Ry. Co. v. Gitchoff*, 68 Ill.2d 38, 45, 11 Ill.Dec. 598, 601 (1977). In the instant case, defendant operates a warehouse in Illinois on a daily basis. Defendant is authorized to transact business in Illinois, maintains a registered agent in Illinois, and has employees in Illinois. Defendant has subjected itself to the jurisdiction and laws of Illinois. Under Illinois law, defendant “shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.” 805 ILCS 5/13.10. Therefore, as provided under the Illinois Business Corporation Act, Interstate Warehousing may “sue and be sued, complain and defend, in its corporate name” in Illinois courts, just like domestic corporations. 805 ILCS 5/3.10(b).

In addition, the Illinois long-arm statute, 735 ILCS 5/2-209(c), provides the circumstances under which Illinois courts can exercise personal jurisdiction. The long-arm statute provides “multiple grounds for exercising jurisdiction.” *Russell v. SNFA*, 2013 IL 113909, ¶ 29 (2013). Under § 2-209(c), “[a] court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.” Illinois courts refer to § 2-209(c) as a “catch-all provision,” that allows the exercise of jurisdiction when a “nonresident defendant’s connection or contact with Illinois is sufficient to satisfy federal and Illinois due process.” *Russell v. SNFA*, 2013 IL 113909, ¶ 30. For the trial court to have personal jurisdiction, the defendant must have minimum contacts with the forum state.

The minimum contacts required for personal jurisdiction must be based on some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.

(internal citations omitted) *Graver v. Pinecrest Volunteer Fire Department*, 2014 IL App (1st) 123006 at ¶ 14. Here, the court properly exercised general jurisdiction over defendant.

In Illinois, and consistent with U.S. Supreme Court decisions, a defendant may be sued where the defendant has continuous and systematic general business contacts with the forum state. *Id.* at ¶ 15.

General jurisdiction occurs when the events that are the basis of the lawsuit do not arise out of and are not related to any activities within the forum state, but the minimum contacts requirement has been satisfied by the defendant's "continuous and systematic" contacts with the forum state. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, — U.S. —, —, 131 S.Ct. 2846, 2851, 180 L.Ed.2d 796 (2011); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415–16, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

Chraca v. U.S. Battery Mfg. Co., 2014 Ill App (1st) 132325 at ¶ 28.

The "doing business" standard is quite high and requires a showing that the defendant is conducting business of such character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the forum. The defendant must transact business in Illinois "not occasionally or casually, but with a fair measure of permanence and continuity." Thus, the statute requires a "course of business" or "regularity of activities" as opposed to isolated or sporadic acts. **Once the doing business standard is satisfied, the defendant is deemed a resident of Illinois and may be sued on causes of action both related and unrelated to its Illinois activities.**

(internal citations omitted) (emphasis supplied). *Alderson v. Southern Co.*, 321 Ill.App.3d 832, 848-849, 254 Ill.Dec. 514, 529, 747 N.E.2d 926, 940 (1st Dist. 2001).

As this Court held in *Russell v. SFNA*, "[g]eneral jurisdiction for a corporate defendant exists when it has engaged in continuous and substantial business activity within the forum, the paradigm example for a corporation being a location where it 'is fairly

regarded as at home'." *Russell*, 2013 IL 113909, ¶ 36 (citing *Goodyear*, 564 U.S. at —, 131 S.Ct. at 2853–54).

Therefore, under Illinois law, the *prima facie* case for personal jurisdiction requires plaintiff to show a defendant's continuous and substantial business activity in Illinois. Here, plaintiff satisfied the *prima facie* requirements to establish personal jurisdiction. Defendant's Illinois contacts "go beyond mere solicitation and constitute sufficient substantial business." *St. Louis-San Francisco Ry. Co. v. Gitchoff*, 68 Ill.2d 38, 45, 11 Ill.Dec. 598, 601 (1977). It is undisputed that defendant is authorized by the Illinois Secretary of State to transact business within the state of Illinois. Pursuant to Illinois law, a foreign corporation that is authorized to transact business within Illinois enjoys "the same, but no greater, rights and privileges as a domestic corporation" and "shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character." 805 ILCS 5/13.10. It is undisputed that defendant operates a warehouse in Illinois. It is undisputed that defendant conducts business on a daily basis within Illinois. It is undisputed that defendant has employees within Illinois. Defendant's Illinois contacts are not tenuous or random, but have been continuous and systematic for over twenty-five years. Interstate Warehousing has engaged in continuous and substantial business activity within Illinois and is subject to personal jurisdiction under Illinois law.

III. Personal jurisdiction under *Daimler AG* and *Goodyear*.

In its brief, defendant presents the U.S. Supreme Court's holdings in *Daimler AG* and *Goodyear* as some radical change in the law. However, *Daimler AG* and *Goodyear* are consistent with personal jurisdiction under Illinois law.

In *Daimler AG*, the court held that a German parent corporation was not subject to jurisdiction in California based on the business activities of its subsidiary within California where the subsidiary had no relation to the law suit and the dispute involved actions in another country. Referencing its previous decision in *Goodyear*, the *Daimler AG* court reminded litigants:

Goodyear did not hold that a corporation may be subject to general jurisdiction only in a forum where it is incorporated or has its principal place of business....

134 S.Ct. at 760. More specifically, the court provided that general jurisdiction is appropriate if a corporate defendant is “at home” in the forum. 134 S.Ct. at 761. The court explained that the phrase “at home” includes “instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit ... on causes of action arising from dealings entirely distinct from those activities.” 134 S.Ct. at 761 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 378, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). The *Daimler* court found that the German corporation’s “slim contacts with the State hardly render it at home there,” and concluded that the German corporation was not subject to general jurisdiction in California. 134 S.Ct. at 761.

The facts of the instant case are distinguishable from the facts of *Daimler AG*. Here, Interstate Warehousing has continuous operations within Illinois. Interstate Warehousing maintains a warehousing operation in Illinois, employs people in Illinois and advertises its capabilities to serve customers in Illinois. These are not “slim contacts,” but direct evidence of substantial business in, and related to, Illinois. With the instruction from the U.S. Supreme Court that general jurisdiction is appropriate beyond a defendant’s state of

incorporation and principal place of business, the instant action represents a case where the trial court properly exercised jurisdiction over Interstate Warehousing.

IV. A defendant is subject to personal jurisdiction beyond its state of incorporation and principal place of business under both Illinois law and *Daimler AG*.

Illinois law and the U.S. Supreme Court decisions are consistent with respect to personal jurisdiction. Indeed, this Court's holding in *Russell v. SFNA* quotes language from the U.S. Supreme Court's *Goodyear* decision, a case also relied on by the *Daimler AG* court. Under Illinois law, "[g]eneral jurisdiction for a corporate defendant exists when it has engaged in continuous and substantial business activity within the forum...." *Russell*, 2013 IL 113909, ¶ 36. Similarly, *Daimler AG* instructed that "the inquiry under *Goodyear* is...whether that corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." (internal citation omitted). 134 S.Ct. at 761. Whether viewed under *Russell v. SFNA* or pursuant to the *Daimler AG* decision, both courts rely on *Goodyear* to shape their holdings related to jurisdiction. *Russell v. SFNA*, 2013 IL 113909, ¶ 36; *Daimler AG*, 134 S.Ct. at 761.

In *Goodyear*, two residents of North Carolina were killed in a bus crash while traveling in France. The estates of the decedents filed suit against the tire manufacturer in North Carolina against subsidiaries of the U.S.-based tire manufacturer. The U.S. Supreme Court held that the subsidiaries were not subject to general jurisdiction in North Carolina. The court addressed the following question: "Are foreign subsidiaries of a United States parent corporation amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State?" 564 U.S. at 918, 131 S.Ct. at 2850. The court held that Goodyear's placement of tires into the stream of commerce did not satisfy the jurisdictional

requirements to maintain suit in North Carolina. 564 U.S. at 920, 131 S.Ct. at 2851. The Goodyear subsidiaries “are not registered to do business in North Carolina. They have no place of business, employees, or bank accounts in North Carolina. They do not design, manufacture, or advertise their products in North Carolina. And they do not solicit business in North Carolina or themselves sell or ship tires to North Carolina customers.” 564 U.S. at 921, 131 S.Ct. at 2852.

The *Goodyear* court cited two cases that examined the exercise of general jurisdiction: *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 467, 72 S.Ct. 413 (1952), and *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S.Ct. 1868 (1984). The Perkins case involved a Philippine mining corporation that conducted business and had an office in Ohio during World War II. In that case, though the claim did not arise in Ohio, the court held that jurisdiction was appropriate. *Perkins*, 342 U.S., at 447–448, 72 S.Ct. at 413. In *Helicopteros*, the survivors of U.S. citizens killed in a helicopter crash in Peru filed suit in Texas against the Colombian owner of the helicopter. The Colombian owner was not authorized to transact business in Texas, had no place of business in Texas and visited Texas only to negotiate contracts and train. These links were not enough to support jurisdiction. *Helicopteros*, 466 U.S. at 415–416.

V. Interstate Warehousing is “at home” in Illinois.

The instant case aligns more closely to the *Perkins* decision. Interstate Warehousing’s facility, employees and operations extend far beyond the activities of *Helicopteros* and consistent with the activities of the defendant in *Perkins*. The *Daimler AG* court (citing *Goodyear*) provided that general jurisdiction is appropriate if a corporate defendant is “at home” in the forum. 134 S.Ct. at 761. The court explained that the phrase

“at home” includes “instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit ... on causes of action arising from dealings entirely distinct from those activities.” 134 S.Ct. at 761 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 378, 66 S.Ct. 154, 90 L.Ed. 95 (1945)).

Here, defendant’s connections to Illinois are so substantial that it can be considered “at home” in Illinois. Therefore, *Daimler AG* supports the exercise of jurisdiction of defendant in the instant matter.

VI. Plaintiff presented a *prima facie* case for jurisdiction, which defendant failed to refute with any evidence whatever.

In order to satisfy a *prima facie* case for jurisdiction in Illinois law, plaintiff must show that the defendant had sufficient minimum contacts with Illinois and that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice. *SNFA*, 2013 IL 113909, ¶ 34. Plaintiff established that Interstate Warehousing is authorized to transact business in Illinois, operates a warehouse in Illinois, has employees in Illinois and advertises its Illinois facility. Plaintiff established sufficient minimum contacts with Illinois to satisfy the *prima facie* requirements.

Once plaintiff established its *prima facie* case for jurisdiction, the burden shifted to Interstate Warehousing to “overcome [the] plaintiff’s *prima facie* case for jurisdiction by offering uncontradicted evidence that defeats jurisdiction.” *SNFA*, 2013 IL 113909, ¶ 28. In this case, Interstate Warehousing offered no such evidence.

CONCLUSION

The trial court committed no error in denying defendant’s motion to dismiss for lack of jurisdiction. The decision of the trial court should be affirmed.

Date: April 12, 2017

Respectfully submitted,

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s/ Timothy S. McGovern

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SUPREME COURT RULE 341(c) CERTIFICATE OF COMPLIANCE

I, Timothy S. McGovern, certify that this *Brief of Plaintiff-Appellee* conforms to the requirements of Illinois Supreme Court Rule 341(a) and (b). The length of this Brief is 12 pages.

s/ Timothy S. McGovern

CERTIFICATE OF SERVICE

I, Timothy S. McGovern, certify that I electronically filed the foregoing *Brief of Plaintiff-Appellee* with the Illinois Supreme Court on April 12, 2017, via the Illinois Supreme Court electronic filing service. I further certify that I served counsel of record on April 12, 2017, by sending a copy of the foregoing Brief of Plaintiff-Appellee to counsel of record at the email addresses listed below:

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Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

s/ Timothy S. McGovern

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