STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1882

Knitcraft Corporation,
Respondent,

vs.

Daswani Clothiers, LLC,
a Connecticut limited liability company,
Appellant.

Filed June 15, 2010
Affirmed
Toussaint, Chief Judge

Winona County District Court
File No. 85-CV-09-893

Gregory A. Wohletz, Wohletz Law Office, P.A., Winona, Minnesota (for respondent)

James R. Carlson, Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for appellant)

Considered and decided by Toussaint, Chief Judge; Bjorkman, Judge; and Collins, Judge.*

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

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellant Daswani Clothiers, LLC, a Connecticut limited liability company, challenges the denial of its motion to dismiss for lack of personal jurisdiction. Because we conclude that appellant had sufficient minimum contacts with Minnesota based on appellant's purchase of clothing from respondent Knitcraft Corporation, we affirm.

FACTS

Appellant is a men's clothing store located in West Hartford, Connecticut. Respondent is a manufacturer of made-to-order, high-quality clothing whose principal place of business is in Goodview, Minnesota. Ronald Simon, a sales representative for respondent, went to Connecticut to solicit business from appellant. Simon contends that he presented a credit application to appellant's president, Jaikishin Daswani, which he completed and returned to Simon by fax. The credit application provides, among other things, that appellant consents to jurisdiction and venue in Winona County, Minnesota. Appellant contends that the credit application was not signed by Jaikishin Daswani or any other authorized agent of appellant.

It is undisputed that appellant began purchasing made-to-order clothing from respondent in March 2006 and continued throughout 2006, 2007, and 2008. Appellant submitted at least two orders per year for clothing to be manufactured in Minnesota and shipped to Connecticut. The order worksheets contain the standard terms and conditions for the sale, including that the orders are non-cancelable and that the customer consents to jurisdiction and venue in Minnesota.

Sometime in 2008, Simon manually prepared order worksheets that he personally provided to Jaikishin Daswani. After obtaining Jaikishin Daswani's final approval, Simon submitted the order electronically to respondent and sent a copy of the computer-generated order form to Jaikishin Daswani. Respondent manufactured the goods that appellant had ordered and shipped the first part of the order to appellant.

After receiving the first part of the order, appellant informed Simon that the goods were not selling at an acceptable rate. Appellant did not pay for any portion of the order. Respondent brought suit in Minnesota for the value of the goods.

Appellant moved for dismissal on the ground of lack of personal jurisdiction. The district court denied the motion, and appellant now challenges the denial, contending that its contacts with Minnesota are not sufficient to support jurisdiction and that it never consented to jurisdiction in Minnesota.

D E C I S I O N

Whether personal jurisdiction exists is a question of law subject to de novo review. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). In doubtful cases, courts should favor retaining jurisdiction. *Hardrives, Inc. v. City of LaCrosse*, 307 Minn. 290, 296, 240 N.W.2d 814, 818 (Minn. 1976).

The Minnesota long-arm statute, Minn. Stat. § 543.19 (2008), permits Minnesota courts to assert personal jurisdiction over defendants to the extent permitted by the federal constitutional requirements of due process. *See Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410 (Minn. 1992). To satisfy due process, a plaintiff must demonstrate that the defendant committed "'some act by which the defendant

purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Hardrives*, 307 Minn. at 294, 240 N.W.2d at 817 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958)). "When a defendant deliberately engages in significant activities in a state or creates continuing obligations between itself and residents of the state, the defendant purposefully avails itself of the protections of the law, as required to support the exercise of personal jurisdiction under the Due Process Clause." *Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 675-76 (Minn. App. 2000) (quotation omitted).

To determine if a defendant has sufficient contact with Minnesota, courts consider: (1) the quantity of contacts with Minnesota; (2) the nature and quality of the defendant's contacts with Minnesota; (3) the connection between the cause of action and the defendant's contacts; (4) Minnesota's interest in providing a forum; and (5) the convenience of the parties. *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983). The first three factors are primary and assess whether the requisite minimum contacts exist; the last two are secondary and determine whether the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Marquette Nat'l Bank of Minneapolis v. Norris*, 270 N.W.2d 290, 295 (Minn. App. 1984).

We conclude that appellant had sufficient contacts with Minnesota and that exercising jurisdiction over appellant comports with fair play and substantial justice. Appellant and respondent had multiple contacts in connection with appellant's purchases of made-to-order clothes; the contacts were for the purpose of maintaining a three-year

business relationship; and this cause of action arose out of those contacts. More importantly, appellant voluntarily maintained continuing obligations between itself and respondent. Therefore it is irrelevant that Simon went to Connecticut to solicit appellant's business, that appellant never targeted Minnesota for sales purposes, and that all in-person contact between the parties took place in Connecticut. Appellant purposefully availed itself of the protections of Minnesota law by entering into several contracts for the purchase of made-to-order clothing over a three-year period, thereby giving Minnesota personal jurisdiction in a lawsuit arising out of a purchase.

Moreover, appellant consented to jurisdiction and venue in Minnesota by signing a credit application and other correspondence that contained a jurisdiction clause providing that:

> Choice of venue and jurisdiction: customer consents to jurisdiction in the State of Minnesota, County of Winona. Customer agrees that any litigation between customer and [respondent] may be brought in Winona County District Court, State of Minnesota and customer agrees and consents to such venue. [1]

Appellant claims that this is "boilerplate" language and relies on *TRWL Financial Establishment v. Select Intern.*, 527 N.W.2d 573, 579-80 (Minn. App. 1995) (holding that some "boilerplate language" is not enforceable). But *TRWL* is distinguishable: the relevant language there appeared in a confirmatory memorandum and was an unbargained-for surprise. *Id.* at 579. Here, the relevant language appeared on most, if

[1] Appellant argues that the credit application was fraudulently signed. But numerous other documents from respondent contained the clause at issue and were signed by an agent of appellant; appellant does not contest their validity. Therefore, we do not address the issue of fraud or the legality of using the credit application as evidence.

not all, of the correspondence that appellant signed each time it placed an order with respondent. Thus, even if there were not sufficient contacts to satisfy the minimum contacts requirement, appellant consented to jurisdiction by repeatedly signing documents containing the jurisdiction clause.

Affirmed.