2013 IL App (2d) 120711-U
No. 2-12-0711
Order filed March 14, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

RONALD H. DAVIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-SC-6712
	)	
FLOS S.P.A. and FLOS USA, INC.,	)	Honorable
	)	Peter W. Ostling,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff failed to meet his burden in establishing that defendants had sufficient minimum contacts with Illinois, through either general or specific jurisdiction, to be subjected to the personal jurisdiction of Illinois courts. Thus, we affirmed the trial court's dismissal of plaintiff's complaint for lack of personal jurisdiction.

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¶ 2 Plaintiff, Ronald H. Davis, brought the current lawsuit against defendants, FLOS S.P.A. and FLOS USA, Inc., alleging breach of warranty and consumer fraud. Defendants moved to dismiss plaintiff's complaint for lack of personal jurisdiction pursuant to section 2-209 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-209(a) (West 2010)). The trial court granted defendants'

motion and plaintiff now appeals, contending that the trial court erred in dismissing his complaint. We affirm.

¶ 3 I. Background

¶ 4 The pleadings reflect that plaintiff resides in Naperville. Defendant FLOS S.P.A. is an Italian corporation with its principle place of business in Brescia, Italy. Defendant FLOS USA is a New York corporation with its principle executive office located in Huntington Station, New York. Defendants supply lighting fixtures.

¶ 5 In 2009, plaintiff visited Crest Lighting store in Lisle and reviewed a 2009 FLOS product catalog. Plaintiff inquired into the price and availability of an ALL LIGHT lamp, a product advertised in the catalog. Plaintiff visited Room & Board in Oak Brook, where he inspected a FLOS ARCO lamp on display. Plaintiff also observed promotional material for ALL LIGHT displayed on websites for stores that have retail offices in Illinois, including Crest Lighting, Room & Board, and Lightology, which has a store in Chicago. According to plaintiff, product literature distributed by defendants described the ALL LIGHT as being "white in color."

¶ 6 Thereafter, plaintiff decided to purchase an ALL LIGHT, "shopped around for the best deal among retailers," and ultimately concluded that he "could get the best deal by purchasing an ALL LIGHT from Ylighting," a Delaware corporation with its principle place of business in San Francisco, California. On July 23, 2009, plaintiff purchased an ALL LIGHT from Ylighting and accepted delivery of the product approximately one week later at his Naperville residence. Based on his inquiries to a Ylighting employee, plaintiff believed that defendants provided a one-year warranty for the ALL LIGHT. When plaintiff received the ALL LIGHT, the product was white.

However, by June 1, 2010, the product's "polycarbonate body was yellow in color in areas where the polycarbonate material had been exposed to sunlight."

¶ 7 On October 21, 2011, plaintiff filed his complaint. As amended, count I alleged that defendants breached a warranty agreement. Plaintiff alleged that, on June 1, 2010, he contacted defendants to report a defect in the ALL LIGHT and requested that defendants replace the product. Plaintiff alleged that, on June 23, 2010, defendants "promised to send a replacement" for the ALL LIGHT, but on August 3, 2010, defendants informed plaintiff that he would have to pay $242.50 for the replacement. Plaintiff did not pay the $242.50, and defendants did not send the replacement.

¶ 8 Count II alleged consumer fraud. Plaintiff alleged that defendants manufactured the ALL LIGHT from polycarbonate material and advertised to consumers in Illinois that the fixture was white in color. Plaintiff alleged that defendants advertised the ALL LIGHT as being suitable for outdoor use, but were aware that "the color polycarbonate materials are subject to change to a yellowed color" when exposed to sunlight. Plaintiff alleged that defendants concealed this information from consumers, and such information "was a material fact to consumers when considering purchase of an ALL LIGHT." Count III also alleged consumer fraud against defendants. Plaintiff alleged that defendants advertised their products as being sold with a one-year warranty, which "promised to repair or replace any defects in material workmanship." Plaintiff alleged that defendants advertised the warranty to consumers in Illinois to induce them into purchasing defendants' products and were aware that the warranty "was a material fact to a consumer when considering purchase of products manufactured by [defendants]." Plaintiff alleged that he submitted to defendants photographs of the defective ALL LIGHT that he purchased, but defendants failed to

either repair or replace the product pursuant to the terms of the warranty. Defendant sought $637.78 in actual damages and $9,362.22 in punitive damages.

¶ 9 On January 27, 2012, defendants filed their motion to dismiss pursuant to section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301 (West 2010)). Defendants argued that plaintiff failed to demonstrate in his pleadings that defendants had sufficient minimum contacts within Illinois, and therefore, defendants could not be subject to the jurisdiction of Illinois. Specifically, defendants argued that plaintiff alleged that defendants transacted business in Illinois by advertising that it sold products within Illinois in various retail outlets, and that mere advertisement or solicitation of business was not enough to sustain personal jurisdiction. Defendants noted that plaintiff purchased the ALL LIGHT from Ylighting, "a distinct legal entity with no legal relationship or connection to [defendants]," and further argued that, even if the product warranty was valid, a warranty by itself was not sufficient to establish personal jurisdiction.

¶ 10 In support of their motion, defendants submitted two affidavits from Peter Kaiteris, general counsel for FLOS USA. Kaiteris averred FLOS USA did not have any employees, offices, or retail stores in Illinois. Kaiteris averred that FLOS USA did not mail advertising materials directly to Illinois residents; did not advertise in magazines with a local circulation; did not advertise that its products come with a one-year warranty; and did not provide floor models or samples to any retailers or distributors in Illinois. Kaiteris further averred that FLOS USA did not have any contractual agreements with persons or entities within Illinois authorizing those entities to represent "or bind" FLOS USA.

¶ 11 On February 24, 2012, plaintiff filed his response to defendants' motion. Plaintiff attached his affidavit in which he averred that he "saw promotional literature for the ALL LIGHT and other

[defendants'] lighting fixture products displayed on the websites for [defendants]." Plaintiff averred that he "saw promotional literature" for ALL LIGHT displayed on websites for stores that had retail locations in Illinois, including Room & Board, Lightology, and Crest Lighting; and he viewed a product catalog issued by defendants at Crest Lighting. Plaintiff averred that he "saw and inspected FLOS ARCO lamp" while visiting a Room & Board store. Plaintiff averred that product literature and catalog information influenced him to purchase the ALL LIGHT.

¶ 12 On June 12, 2004, the trial court entered an order dismissing plaintiff's complaint. The trial court found that plaintiff "failed to plead and establish sufficient minimum contacts with the State of Illinois to create jurisdiction over [defendants], and this matter is dismissed without prejudice for lack of jurisdiction." Plaintiff filed his notice of appeal.

¶ 13 II. Discussion

¶ 14 Before reaching the merits, we must first address the threshold question of appellate jurisdiction, despite this issue not being raised by the parties. See *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453 (2006) (noting that courts have a duty to consider jurisdiction *sua sponte*). Here, the trial court's order dismissed plaintiff's lawsuit "without prejudice," but also noted that "[t]his case is closed."

¶ 15 Appellate jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception. *Cole v. Hoogendoorn*, 325 Ill. App. 3d 1152, 1153 (2001). The finality of an order is determined by an examination of the order's substance as opposed to form, but "[n]ormally, an order striking or dismissing a complaint is not final and therefore not appealable unless its language indicates the litigation is terminated and the plaintiff will not be permitted to replead." *Id.* Because an order's finality is determined by its substance, "incantation of any

particular magic words" is not determinative, but rather, our inquiry focuses on the order's effect. *Schal Bovis, Inc. v. Casualty Insurance Co.*, 314 Ill. App. 3d 562, 567-68 (2000). Thus, if a pleading's deficiency can be cured by a simple technical amendment, the order is not appealable; but if the dismissal is due to a perceived legal deficiency, the dismissal order is final regardless of the words "without prejudice" being included. See *id.* at 568 (holding that the relevant order was final and appealable despite the order containing the words "without prejudice"). Nonetheless, our supreme court has cautioned that the inclusion of the words "without prejudice" manifests an intent by the trial court that an order is not final. *Pfaff v. Chrysler Corp.*, 155 Ill. 2d 35, 62-63 (1993) (overruled on other grounds) (concluding an order stating that the trial court's ruling was "without prejudice" and granting leave to amend was not final).

¶ 16 In this case, we conclude that the trial court's order was final despite including the words "without prejudice." We agree with the court in *Schal Bovis* that we must look at the order's substance, and not merely the words "without prejudice." While the trial court's order included such language, its written order also made clear that plaintiff's complaint was dismissed because he failed to establish personal jurisdiction over defendants. As in *Schal Bovis*, the trial court dismissed plaintiff's complaint due to a perceived legal deficiency as opposed to a technical deficiency that could have been cured with a simple technical amendment, and therefore, the words "without prejudice" do not deprive this court of jurisdiction. See *Schal Bovis*, 314 Ill. App. 3d at 568.

¶ 17 Further, although we are cognizant of our supreme court's holding in *Pfaff*, we find that case distinguishable. In *Pfaff*, the trial court's order dismissed portions of the pleading without prejudice and granting leave to amend. *Pfaff*, 155 Ill. 2d. at 63. Conversely, in this case, while the order stated the trial court's ruling was "without prejudice," the order also provided that the case was closed.

Thus, because the trial court dismissed plaintiff's complaint for a legal deficiency as opposed to a technical deficiency, and noted that the case was closed as opposed to granting leave to amend, the order's inclusion of the words "without prejudice" did not prevent the trial court's order from being final and appealable.

¶ 18 Turning to the merits, the only issue in this appeal is whether the trial court erred in dismissing plaintiff's complaint for failing to establish that defendants had sufficient minimum contacts to create personal jurisdiction. Plaintiff argues that defendants "actively entered into [Illinois] to develop a market for its products among Illinois consumers and to pursue its commercial interests within this [s]tate."

¶ 19 A plaintiff has the burden of establishing a *prima facie* case for jurisdiction when seeking jurisdiction over a nonresident defendant. *Bolger v. Nautica International, Inc.*, 369 Ill. App. 3d 947, 949 (2007). When, as here, the trial court decides the issue of personal jurisdiction based solely on documentary evidence, our standard of review is *de novo*. *Id.* at 949-50 (citing *Keller v. Henderson*, 359 Ill. App. 3d 605, 611 (2005)). A reviewing court addressing a challenge to personal jurisdiction must resolve conflicts in the pleadings and affidavits in favor of the plaintiff (*Khan v. Van Remmen, Inc.*, 325 Ill. App. 3d 49, 56 (2001)); but nonetheless, a plaintiff's *prima facie* case for jurisdiction can be overcome by a defendant's uncontroverted evidence that defeats personal jurisdiction (*Keller*, 359 Ill. App. 3d at 611). When reviewing a challenge to personal jurisdiction based solely on documentary evidence, if we decide a plaintiff has made a *prima facie* case of jurisdiction over defendant, we must then determine if a material evidentiary conflict exists. *Viktron Ltd. Partnership v. Program Data, Inc.*, 326 Ill. App. 3d 111, 116 (2001). If a material conflict does exist, then we must remand to the trial court for an evidentiary proceeding. *Id.*

¶ 20 Section 2-209(c) of the Code provides that a court may exercise jurisdiction on any basis consistent with the Illinois Constitution and the Constitution of the United States. 735 ILCS 5/2-209(c) (West 2010); *Soria v. Chrysler Canada, Inc.*, 2011 IL Ap (2d) 101236, ¶ 16. In other words, section 2-209(c) of the Code is coextensive with the due process requirements of the Illinois and United States Constitutions, and therefore, provides an independent basis for a court to exercise personal jurisdiction. *Kostal v. Pinkus Dermatopathology Laboratory, P.C.*, 357 Ill. App. 3d 381, 387 (2005). "Accordingly, our analysis will focus on whether plaintiff has established that federal and Illinois due process requirements have been met." *MacNeil v. Trambert*, 401 Ill. App. 3d 1077, 1080 (2010) (stating that, because section 2-209(c) of the Code and due process requirements are coextensive, it is "wholly unnecessary" for a court to consider whether defendant performed any of the acts enumerated in the Code).

¶ 21 For personal jurisdiction to satisfy federal due process requirements, a defendant must have minimum contacts with the forum state so that maintaining suit there would not offend " 'traditional notions of fair play and substantial justice.' " *Spartan Motors, Inc. v. Lube Power, Inc.*, 337 Ill. App. 3d 556, 560 (2003) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Stated differently, once a court decides that a defendant has purposely established minimum contacts with a forum state, those contacts should be considered in light of other factors to determine whether asserting personal jurisdiction would comport with fair play and substantial justice. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985). The minimum contacts requirement for personal jurisdiction must be based on some act in which the defendant purposely avails itself to conducting activities within a state, thus invoking the benefits and protections of its laws. *Spartan Motors*, 337 Ill. App. 3d at 560-61. The purposeful availment requirement exists to ensure that an alien defendant

will not be forced to litigate in an inconvenient forum solely as a result of random or attenuated contacts or the unilateral act of a consumer or other third person. *Keller*, 359 Ill. App. 3d at 613 (citing *Burger King Corp.*, 471 U.S. at 475). Finally, a court engaging in a federal due process analysis must consider whether (1) the nonresident defendant had minimum contacts with the forum state such that there was "fair warning" that the nonresident defendant may be haled into court in that state; (2) the action arose out of or related to the defendant's contacts with the forum state; and (3) it is reasonable to require the defendant to litigate in the forum state. *Burger King Corp.*, 471 U.S. at 471-77.

¶ 22 In addition, the meaning of "minimum contacts" for personal jurisdiction is dependant upon whether the forum asserts general or specific jurisdiction. *Keller*, 359 Ill. App. 3d at 613. A court has general jurisdiction over a defendant if it has continuous and systematic general business contacts with the forum state, and the defendant may be sued in that forum for suits that neither arise out of nor are related to defendant's contact with the forum state. *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 857 (2001) (citing *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1972)). Specific jurisdiction refers to jurisdiction over the defendant if the suit directly arises " 'out of the contacts between the defendant and the forum.' " *MacNeil*, 401 Ill. App. 3d at 1081 (quoting *Spartan Motors*, 337 Ill. App. 3d at 561). Plaintiff appears to argue that general jurisdiction and specific jurisdiction exist over defendants, and we will address both.

¶ 23 A. General Jurisdiction

¶ 24 Illinois limits general jurisdiction over nonresidents to situations where the nonresident was present and doing business in the forum, which requires the nonresident to carry on business activity in this state " 'not occasionally or casually, but with a fair measure of permanence and continuity.' "

Wiggen v. Wiggen, 2011 IL App (2d) 100982, ¶ 26 (quoting *Rosier v. Cascade Mountain, Inc.*, 367 Ill. App. 3d 559, 562 (2006)). This standard is "quite high," and "[t]ransient contact, such as attendance at trade shows, advertising, or the mere solicitation of customers is insufficient to establish general jurisdiction." *Id.* Put differently, The United States Supreme Court recently noted that, for an individual, the paradigm forum of the exercise of general jurisdiction is the person's domicile; and for a corporation, "it is an equivalent place, one in which the corporation is fairly regarded as at home." *Goodyear Dunlop Tires Operations v. Brown*, 131 S. Ct. 2846, 2853-54 (2010). This demanding standard is necessary because the consequences are severe—if a defendant is subject to a state's general jurisdiction, that defendant may be called into court there for any alleged wrong, committed in any place, no matter how unrelated to the defendant's contacts with the forum. *uBID, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421, 425 (2010).

¶ 25 In *Rosier*, the plaintiffs brought a negligence action in Illinois against the defendants, a ski and snowboard facility in Wisconsin. *Rosier*, 367 Ill. App. 3d at 560. The defendants moved to dismiss the case for lack of personal jurisdiction, and attached an affidavit from their president and director. *Id.* The affidavit averred that the defendants did not own any real estate or other assets in Illinois; maintain any personnel, offices, or business equipment in Illinois; or file tax returns in Illinois. *Id.* The affidavit specified that the defendants contracted with an Illinois telecommunications provider for an Illinois telephone number and secured a loan and a line of credit with an Illinois bank. *Id.* The plaintiffs countered that the defendants' local telephone number, local marketing, and interactive website established sufficient contacts with Illinois. *Id.* at 561. Reversing the trial court, the reviewing court in *Rosier* concluded:

> "While the record indicates [the defendants] advertise in Illinois, sometimes appear at Illinois trade shows, maintain an Illinois telephone number, and derive some revenue from the residents of this state, these contacts amount to mere solicitation to do business in Wisconsin, which is an insufficient basis for inferring that [the defendants] have subjected themselves to the jurisdiction of Illinois courts. Maintaining an Illinois phone number is not enough to sustain jurisdiction. [Citation.] Nor is soliciting Illinois residents to transact business in Wisconsin, through a booth at a trade show, magazine advertisements, and radio broadcasts." *Id.* at 564.

The reviewing court further rejected the plaintiffs' argument that Illinois courts exercising jurisdiction over the defendants was proper because individuals were able to use the defendants' website to subscribe to e-mail bulletins, and the website provided for online purchases of gift certificates, season passes, insurance, and equipment rental. *Id.* The court in *Rosier* concluded that "e-mail bulletins are analogous to other advertising mediums the defendants use in this jurisdiction, such as radio and magazine advertising, and that the e-mail messages at most solicit Illinois residents to transact business in Wisconsin and are not a basis for exercising jurisdiction in this forum." *Id.* The reviewing court noted that the plaintiffs failed to offer evidence that the defendants' website was used for actual purchases and that failure "[was] significant *** because the plaintiffs bear the burden of demonstrating the necessary minimum contacts to support general jurisdiction" and two prior cases from the United States District Court in Illinois concluded that maintenance of a website was insufficient to exercise general jurisdiction. *Id.* at 564-65.

¶ 26 In this case, we find the reasoning in *Rosier* persuasive and conclude that plaintiff has failed to meet his burden in establishing the necessary minimum contacts to support general jurisdiction.

Defendants' contacts with Illinois are more attenuated than the defendants in *Rosier*. Specifically, unlike the defendants in *Rosier*, the record before us is devoid of any indication that defendants maintain an Illinois phone number or participate in Illinois trade shows. Rather, the only connection to Illinois proffered by plaintiff was that defendants advertised in catalogs found in Illinois retail stores, advertised on websites maintained by companies with retail offices in Illinois, displayed one product in a retail store, and maintained a website. As defendants note, the record does not reflect whether those retailers obtained defendants' products directly from defendants or whether the retailers obtained the products from a third party, as plaintiff himself did.

¶ 27 Thus, consistent with the holding in *Rosier*, merely soliciting business through advertising, without more, is insufficient to establish general jurisdiction. See *id.* at 564. Accordingly, plaintiff has not demonstrated that defendants conducted business in Illinois with permanency and continuity, and the record is devoid of evidence that defendants' general business contacts with Illinois were continuous and systematic. Accordingly, plaintiff has failed to establish that defendants had sufficient minimum contacts to allow Illinois courts to exercise jurisdiction.

¶ 28 B. Specific Jurisdiction

¶ 29 As noted above, a court has specific jurisdiction over a defendant if the suit directly arises out the contacts between the defendant and the forum. *MacNeil*, 401 Ill. App. 3d at 1081. Plaintiff maintains that specific jurisdiction is proper because defendants transacted business in Illinois by advertising and selling products in Illinois, and defendants entered into a contract that was "substantially connected with Illinois." Plaintiff further maintains that defendants committed a tortious act in Illinois. We will address each argument in turn.

¶ 30 1. Transacting Business

¶ 31 Plaintiff first argues that specific jurisdiction is proper because defendants transacted business in Illinois by advertising and selling products through Illinois retailers. The United States Court of Appeals for the Seventh Circuit recently addressed the issue of whether a defendant's advertising in Illinois was sufficient to establish specific jurisdiction. In *uBID, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421 (7th Cir. 2010), the defendant offered website registration services since 2000. The defendant was incorporated and headquartered in Arizona; its computer servers, as well as the vast majority of its offices and employees, were located in Arizona. *Id.* at 424. While the defendant had "taken pains" to limit its physical presence to Arizona, "its virtual presence in the rest of the country [could not] be ignored." *Id.* The defendant had "imprinted itself on the national consumer consciousness" with a national advertising campaign that included television advertisements, including ads on Super Bowl broadcasts, and advertised at sporting venues, including the home ballparks of the Chicago Cubs and the Chicago White Sox. *Id.* The national advertising campaign had "paid dividends" for the defendant, and in 2008, the defendant had customers in Illinois numbering in the hundred of thousands. *Id.*

¶ 32 The plaintiff sued the defendant in Illinois for permitting its customers to engage in "cybersquatting," and the defendant moved to dismiss for lack of personal jurisdiction. *Id.* at 424-25. The trial court granted the motion. *Id.*

¶ 33 On appeal, the Seventh Circuit reversed, concluding that Illinois courts exercising specific jurisdiction over the defendant was proper. The reviewing court began its analysis by addressing the defendant's contacts with Illinois, and phrased the issue as whether the relationship between the plaintiff's claim and the defendant's contacts with Illinois made it fair to hale the defendant to court in Illinois. *Id.* The reviewing court concluded that doing so would be fair, noting that the defendant

"has thoroughly, deliberately, and successfully exploited the Illinois market." *Id.* at 427. The reviewing court emphasized that the defendant had engaged in an extensive national advertising campaign which had successfully reached Illinois customers, and those customers have sent "many millions of dollars to [the defendant] each year." The reviewing court rejected the defendant's argument that it did not target Illinois in particular, but Illinois was rather part of a national advertising campaign, by noting that "[t]he evidence shows that [the defendant's] marketing campaign has already created substantial business for [the defendant] in Illinois." *Id.* at 428. The reviewing court further rejected the defendant's argument that its sales to Illinois residents were initiated by the Illinois residents, concluding that the defendant was "aware that it earns many millions of dollars annually from Illinois customers, and it cannot be unhappy to have had such success in the state. Its contacts cannot fairly be described as random, fortuitous, or attenuated." *Id.* 428-29. After concluding that the defendant had sufficient minimum contacts with Illinois for specific jurisdiction purposes, the reviewing court concluded that the plaintiff's claim arose out of those contacts and that requiring the defendant to defend itself in Illinois did not offend traditional notions of fair play. *Id.* at 429-33.

¶ 34 Although the court in *uBID* concluded that Illinois courts could exercise specific jurisdiction over the defendant, we find its reasoning instructive. The essence of the holding in *uBID* is that, when a company engaged in a large national advertising campaign, and as a result, gained "hundreds of thousands" Illinois customers, specific jurisdiction existed in Illinois even if the national advertising campaign did not target Illinois in particular.

¶ 35 Put mildly, no such evidence exists on the record before us. Unlike *uBID*, the only evidence of defendants' advertising in Illinois was one product catalog viewed in one unaffiliated retail store,

one product on display in another unaffiliated retail store, the websites for retail stores advertising defendants' products, and defendants maintaining a website. As noted above, the record is devoid of any indication that defendants purposefully distributed the catalogue or the product that was on display to the retail stores located within Illinois; or whether, like plaintiff, those retail stores obtained defendants' catalogue and product from an unrelated third party. Further, plaintiff has failed to present any evidence reflecting the volume of defendants' sales and resulting profits in Illinois. Thus, unlike *uBID*, we conclude that defendants' contacts with Illinois were random and attenuated, and therefore, defendants have not purposefully availed themselves to Illinois through a "deliberate and continuous exploitation of that market." *Cf. uBID,* 623 F.3d at 429.

¶ 36 Moreover, plaintiff's argument that specific jurisdiction is appropriate because defendants "engaged in the making or performance of a contract" substantially connected to Illinois is equally unavailing. Plaintiff's warranty claim seeks a contractual remedy. See *Spartan Motors*, 337 Ill. App. 3d at 563. An individual's contract with a nonresident defendant does not automatically establish the requisite minimum contacts. *Bolger*, 369 Ill. App. 3d at 952. "Instead, the factors a court considers to determine whether a defendant has sufficiently transacted business in Illinois so as to have purposefully availed him or herself of the benefits of Illinois law are: (1) who initiated the transaction; (2) where the contract was formed; and (3) where the performance of the contract was to take place." *Id.*

¶ 37 In this case, defendants did not purposefully avail themselves of the benefits and protections of Illinois law. The record is clear that plaintiff initiated the contact when he purchased the ALL LIGHT from Ylighting. The record is devoid of any indication that defendants communicated with plaintiff at all, much less in Illinois, when plaintiff purchased the product and warranty. Defendants

did not enter Illinois, and there is no indication in the contract or elsewhere in the record that defendants ever contemplated entering Illinois. See *id.* (holding that specific jurisdiction pursuant to a contract did not exist even though both parties communicated between Illinois and Florida; the plaintiff initiated contact; the defendant did not enter Illinois, and the contract did not contemplate that the defendant would enter Illinois).

¶ 38 2. Tort

¶ 39 Plaintiff further contends that specific jurisdiction over defendants is proper because defendants committed a tort within Illinois. Specifically, plaintiff notes that he alleged that defendants engaged in consumer fraud by engaging in deceptive advertising.

¶ 40 "For allegations of intentional torts, the Supreme Court has held that constitutionally sufficient contacts can be imputed to a defendant if the alleged actions are 'expressly aimed' at the forum state.' " *Hoffman v. Barnes*, 2012 U.S. Dist. LEXIS 40934, at *4-5 (N.D. Ill. Mar. 26, 2012) (quoting *Calder v. Jones*, 465 U.S. 783, 789-90 (1984)). Pursuant to *Calder*, three requirements must be met to establish personal jurisdiction: (1) intentional conduct; (2) expressly aimed at the forum state; (3) with defendant's knowledge that the effects would be felt. *Tamburo v. Dworkin*, 601 F.3d 693, 704-08 (7th Cir. 2010).

¶ 41 In *Hoffman*, the plaintiffs, who worked in the screen printing industry, sued the defendant, who also worked in the industry, for defamation, among other causes of action, for comments the defendant allegedly made about the plaintiffs on multiple websites. *Hoffman*, 2012 U.S. Dist. LEXIS 40934, at *1-2. The defendant moved to dismiss the complaint for lack of personal jurisdiction, which the trial court granted. *Id.* at *1. With respect to the intentional tort argument, the trial court concluded that the defendant did not expressly aim his comments at Illinois. *Id.* at

*12. The court noted that, although the defendant's comments encouraged readers to purchase other products, there were no allegations that any customers were swayed to do so. *Id.* Further, the alleged statements served to point out purported flaws in the plaintiffs' equipment design and sales tactics, and appeared to be a personal attack on the plaintiffs. *Id.* Because Illinois merely happened to be where the plaintiffs were located, the court concluded that it did " 'not believe that the Supreme Court in *Calder* was saying that any plaintiff may hale any defendant into court in the plaintiff's home state merely by asserting that the defendant has committed a tort against the plaintiff.' " *Id.* at 13 (quoting *Wallace v. Herron*, 778 F.3d 391, 394 (7th Cir. 1985)).

¶ 42 We find the underlying reasoning in *Hoffman* persuasive to this case. Although plaintiff alleged that, "upon information and belief," the defendants concealed that the color of the ALL LIGHT would change from white to yellow when installed outdoors, that was a material fact to consumers in Illinois when purchasing the product, and defendants used that information to induce Illinois consumers to purchase ALL LIGHT, plaintiff does not allege that any other Illinois residents, other than himself, purchased the product. There is no dispute that plaintiff purchased the ALL LIGHT from Ylighting, a corporation unrelated to defendants, and the record is devoid of any indication that defendants were aware that their product was being advertised and sold in Illinois. On the contrary, Kaiteris averred that defendants did not advertise directly to any Illinois residents, did not advertise in any local magazines, and did not provide advertising to the general public in Illinois. Kaiteris also averred that defendants did not provide samples or floor models to any retailers, dealers, or distributors located in Illinois. Kaiteris's affidavit is unrebutted. Because we cannot discern whether the retailers who had defendants' catalogue and product sample obtained them from defendants or whether, like plaintiff, from a third party, we cannot conclude that

defendants aimed their allegedly tortious acts at Illinois. Rather, like *Hoffman*, Illinois merely happens to be where plaintiff resides. See *Hoffman*, 2012 U.S. Dist. LEXIS 40934, at *12.

¶ 43 In sum, we agree with the court in *Hoffman* that plaintiff may not hale defendants into court in his own state where defendants have attenuated contacts merely by asserting that defendants committed a tort against plaintiff. See *Hoffman*, 2012 U.S. Dist. LEXIS 40934, at *12. Therefore, plaintiff has failed to carry his burden of establishing specific jurisdiction over defendants in Illinois.

¶ 44 III. Conclusion

¶ 45 For the reasons set forth above, plaintiff has failed to meet its burden in establishing that Illinois courts can exercise either general or specific personal jurisdiction over defendants. Accordingly, we affirm the judgment of the circuit court of Du Page County granting plaintiff's motion to dismiss.

¶ 46 Affirmed.