

NOTICE  
Decision filed 03/12/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 160061-U

NO. 5-16-0061

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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ROMEO TORIO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Jefferson County.
	)	
v.	)	No. 13-L-40
	)	
DAVIDSON SURFACE/AIR, INC.,	)	Honorable
	)	Jerry E. Crisel,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE WELCH delivered the judgment of the court.  
Presiding Justice Barberis and Justice Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's dismissal of the action for the plaintiff's failure to make a *prima facie* showing that the defendant is subject to the general personal jurisdiction in Illinois, and that constitutional due process requirements would not be met were the state to exercise general personal jurisdiction over this defendant, is affirmed.

¶ 2 The plaintiff filed a class action lawsuit in the circuit court of Jefferson County, Illinois. The defendant, a Missouri corporation, filed a verified motion to object to jurisdiction. The trial court dismissed the class action suit, finding that the State of Illinois lacked personal jurisdiction over the defendant. For the following reasons, we affirm.

¶ 3

## BACKGROUND

¶ 4 On August 16, 2013, the plaintiff filed a complaint alleging the following: (1) the plaintiff is a Missouri resident; (2) the defendant is a Missouri corporation which does substantial business in Illinois, including picking up and making deliveries in Illinois; (3) on various dates from August 2011 through May 2013 the plaintiff was an employee of the defendant; (4) during various weeks, the plaintiff worked in excess of 40 hours per week; (5) the number of hours worked in excess of 40 hours totaled 185.05 hours; (6) "[t]hat under the well settled applicable law, an employer is required to pay time and a half for each hour of work per week that is worked, in excess of 40 [hours]"; (7) the defendant underpaid the plaintiff in the amount of \$5551.50; (8) the defendant's actions proximately caused damages to the plaintiff in the amount of \$5551.50, plus interest and attorney fees; (9) the defendant employs and fails to pay numerous employees for legally required overtime; and (10) that class status should be assigned and a class representative appointed.

¶ 5 On September 20, 2013, the defendant filed a verified motion to object to jurisdiction pursuant to section 2-301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-301 (West 2012)). The defendant argued that (1) the named plaintiff is Romeo Torio; (2) the plaintiff is a Missouri resident; (3) the defendant is a Missouri corporation whose contacts with Illinois, according to the complaint, consist of picking up and making deliveries in Illinois; (4) the plaintiff was employed in Missouri and seeks damages for the defendant's alleged failure to pay overtime; (5) specific jurisdiction is not applicable because the defendant's Illinois contacts are not related to the underlying litigation or the

controversy at issue; (6) for a court to assert general jurisdiction, the plaintiff bears the burden of showing the defendant has such systematic, continuous, and substantial contacts with Illinois that the court's exercise of general jurisdiction would not violate the defendant's due process rights; (7) the defendant did not maintain an office in the State of Illinois, nor did it have a registered agent, or any employees, in the state, and all Illinois deliveries were done on an as-needed basis with no guarantee of being systematic, continuous, or substantial; and (8) the action should be dismissed for lack of jurisdiction.

¶ 6 Before the objection was ruled on by the state circuit court, the defendant filed for removal to federal court in the Southern District of Illinois. The plaintiff filed a motion with the federal court asking it to remand the case back to state court, arguing that there was no federal question as the claim was based on violations of a Missouri state statute and not the Fair Labor Standards Act, as defendant asserted. Finding a lack of subject matter jurisdiction, the federal district court remanded the case to Illinois state court.

¶ 7 On September 21, 2015, the trial court found that the plaintiff had failed to make a *prima facie* showing that the defendant is doing business in Illinois as required by the Code (735 ILCS 5/2-209(b)(4) (West 2012)) and that constitutional due process requirements are not met in this case because the court's exercise of jurisdiction over the defendant would not be fair, just, and reasonable. Therefore, the trial court granted the defendant's motion and dismissed the case for lack of personal jurisdiction.

¶ 8 On February 1, 2016, the trial court denied the plaintiff's motion to reconsider. In its order, the court found that *Colletti v. Crudele*, 169 Ill. App. 3d 1068 (1988), was distinguishable because the defendant did not have a registered agent in the State of

Illinois and had not entered general appearances in any prior lawsuits in the State of Illinois, thereby subjecting itself to the jurisdiction of the court, both of which occurred in *Colletti*. The court found that based on the facts in this case:

"The contacts between Illinois and the Defendant are not sufficient to satisfy the constitutional requirements of due process because the Plaintiff has failed to establish that the Defendant is, as a corporation, engaging in a regularity of activities in Illinois sufficient to show that such activities are not occasional or casual but with a fair measure of permanence and continuity \*\*\*."

¶ 9 On February 11, 2016, the plaintiff filed a notice of appeal.

¶ 10 ARGUMENT

¶ 11 On appeal, the plaintiff argues that the defendant's occasional pickups and deliveries and its utilization of Illinois roads and highways is sufficient to establish that the defendant has sufficient continuous and systematic contacts within the state to make it subject to general personal jurisdiction in Illinois. The defendant argues that it should not be subject to personal jurisdiction in this state because its contacts are so sporadic and on an as needed basis such that it is not at home in Illinois. Initially, we note that the parties' briefs in this case were filed with the court prior to the supreme court's disposition of *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, which we find controlling and informative as to the narrow definition of general personal jurisdiction in this state. Therefore, in applying *Aspen American Insurance Co.*, we conclude that the defendant should not be subject to personal jurisdiction.

¶ 12 It is the plaintiff's burden to make a *prima facie* showing that a court may exercise personal jurisdiction over a nonresident defendant. *Id.* ¶ 12. As in this case, where the

circuit court's determination is based solely on documentary evidence, this court's review is *de novo*. *Id.* Any conflicts within the pleadings and supporting affidavits will be resolved in plaintiff's favor. *Id.* However, uncontroverted evidence offered by the defendant may defeat jurisdiction. *Id.*

¶ 13 In Illinois, the exercise of personal jurisdiction over a nonresident defendant is permitted by the "long-arm" statute in section 2-209 of the Code (735 ILCS 5/2-209 (West 2012)). The plaintiff argues that section 2-209(b)(4) allows an Illinois court to exercise jurisdiction over a "corporation doing business within this State." *Id.* § 2-209(b)(4). However, the long-arm statute also contains a "catchall" provision which provides that 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." *Id.* § 2-209(c). As several courts have previously held, the enactment of subsection (c) rendered the long-arm statute coextensive with the due process requirements of the Constitution of the United States. *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 43 (quoting *Keller v. Henderson*, 359 Ill. App. 3d 605, 612 (2005)). Because of this coextensive nature, the traditional two-step process in determining jurisdiction in the State of Illinois can now be condensed into a single inquiry, and any inquiry into whether the defendant performed any of the acts enumerated in the long-arm statute is "wholly unnecessary." *Keller*, 359 Ill. App. 3d at 612. Therefore, the only relevant inquiry is whether under both the Illinois and United States Constitutions the due process requirements are met; if so, then the Illinois long-arm statute is satisfied and no other analysis is required. *Id.* Because the plaintiff does

not argue that the Illinois Constitution imposes any additional due process requirements than the United States Constitution, this court will only consider federal constitutional principles.

¶ 14 The United States Supreme Court has held that, in order for a state to exercise personal jurisdiction over a nonresident defendant, the defendant must have "certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." (Internal quotation marks omitted.) *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). A state may assert either general or specific jurisdiction. *Aspen American Insurance Co.*, 2017 IL 121281,

¶ 14. Specific jurisdiction is case-specific and exists where "the plaintiff's cause of action arises out of or relates to the defendant's contacts with the forum state." *Id.* (citing *Russell v. SNFA*, 2013 IL 113909, ¶ 40, citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). Conversely, general jurisdiction is all-purpose and allows a plaintiff to pursue a claim against a defendant even if the conduct of the defendant giving rise to the claim occurred entirely outside the forum state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). Here, the issue is whether the court's exercise of general personal jurisdiction is appropriate against this defendant in Illinois.

¶ 15 The United States Supreme Court, as well as the Illinois Supreme Court, has held that the due process analysis for whether a defendant is subject to general personal jurisdiction does not rest on "whether a foreign corporation's in-forum contacts can be said to be in some sense continuous and systematic." (Internal quotation marks omitted.) *Daimler AG v. Bauman*, 571 U.S. \_\_\_, \_\_\_, 134 S. Ct. 746, 761 (2014); see also *Aspen*

*American Insurance Co.*, 2017 IL 121281, ¶ 16. Instead, the Court in *Daimler* held that for a state to assert general jurisdiction over a foreign defendant, that defendant's affiliations with the forum must be so systematic and continuous that they are rendered to be at home in the forum state. *Daimler*, 571 U.S. at \_\_\_, 134 S. Ct. at 754. A corporate defendant is considered at home in its place of incorporation and its principal place of business. *Id.* at \_\_\_, 134 S. Ct. at 760. In exceptional circumstances, a corporation will be considered at home in additional forums. See *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) (defendant who temporarily relocated to Ohio from the Philippines during World War II determined to be at home in Ohio). The plaintiff's reliance on subsection (b)(4) of the long-arm statute is misguided, as this section cannot constitutionally be applied to circumvent subsection (c) where there is no evidence from the record that the defendant is essentially at home in the forum state. *Aspen American Insurance Co.*, 2017 IL 121281, ¶ 21.

¶ 16 Here, it is undisputed that the defendant is incorporated and has its principal place of business in the state of Missouri. Therefore, it would only be appropriate for Illinois to exercise general personal jurisdiction over this defendant if the defendant's affiliations with Illinois rose to the level of an exceptional circumstance. The plaintiff does not make any argument, nor is there any proof in the record, that any such exceptional circumstance exists. The only contacts this defendant has with Illinois is the occasional and sporadic pickup or delivery within the state, and the use of Illinois roads in making said deliveries. The defendant does not maintain any offices in this state, it has no registered agent in this state, it has no employees in this state, and it enters the state only

on an as-needed basis. Even if this court were to hold, as plaintiff suggests, that the defendant is doing business in Illinois, that would fall far below the standard of an exceptional circumstance such as the one in *Perkins*.

¶ 17 Therefore, the order of the court of Jefferson County is hereby affirmed.

¶ 18 Affirmed.