



## **Lettieri's Inc. v. McLane Co. Inc.**

2003 | Cited 0 times | D. Minnesota | November 10, 2003

### MEMORANDUM OPINION AND ORDER

#### Introduction

This matter comes before the Court on Third-Party Defendant MarketFare Foods, Inc.'s ("MarketFare") Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction. MarketFare moves to dismiss Third-Party Plaintiff Lone Star Bakery, Inc.'s ("Lone Star") Complaint on the ground that MarketFare's contacts with Minnesota are insufficient to permit exercise of personal jurisdiction over it. For the reasons set forth below, the Court will deny MarketFare's motion.

#### Background and Jurisdictional Facts

##### I. The Parties

Lone Star is a Texas corporation with its principal place of business in China Grove, Texas. It produces frozen baked goods, including biscuits used in breakfast sandwiches. (Azman Aff. Ex. 2 (Third Party Compl. ¶¶ 4, 11); Pl.'s Mem. in Opp'n at 2.) MarketFare is a Delaware corporation with its principal place of business in Phoenix, Arizona. It manufactures breakfast sandwiches, some of which contain biscuits made by Lone Star. (Def.'s Mem. in Supp. at 2; Carfora Aff. ¶¶ 2, 5; Azman Aff. Ex. 2 (Third Party Compl. ¶ 5).) MarketFare has production facilities in Arizona, Virginia, Utah, and Missouri. (Carfora Aff. ¶ 2.)

##### II. Factual Background and Procedural History

This case began with the purchase of a contaminated breakfast sandwich from a Save-A-Lot convenience store in Daytona Beach, Florida.<sup>1</sup> (Azman Aff. Ex. 2 (Third-Party Compl. ¶ 17).) MarketFare manufactured the sandwich using Lone Star biscuits that were allegedly contaminated with *listeria monocytogenes* ("LM") bacteria.<sup>2</sup> (Id.; see Pl.'s Mem. in Opp'n at 2.) The Florida consumer who purchased the contaminated sandwich reported it to the Florida Department of Agriculture and Consumer Services ("FDACS"). (Azman Aff. Ex. 2 (Third-Party Compl. ¶ 18).) The FDACS collected samples of the sandwiches from the Florida Save-A-Lot, conducted microbiologic testing, and reported the presence of LM in two sandwiches. (Id. ¶¶ 19-20.) The FDACS filed a complaint with the Food and Drug Administration regarding the LM. (Id. ¶ 21.) Later, MarketFare was notified that its sandwiches had tested positive for LM and after further testing it stopped production of items using Lone Star biscuits. (Id. ¶¶ 22, 30.) On April 1, 2002, MarketFare informed



## Lettieri's Inc. v. McLane Co. Inc.

2003 | Cited 0 times | D. Minnesota | November 10, 2003

7-Eleven that the Lone Star biscuits tested positive for LM. (Id. ¶ 31.) Due to the alleged contamination, 7-Eleven discontinued using Lone Star biscuits. (Pl.'s Mem. in Opp'n at 2; Azman Aff. Ex. 1 (Lettieri's Second Am. Compl. ¶ 20).)

As a result, Lettieri's Inc., a Minnesota corporation with its principal place of business in Burnsville, Minnesota, which, like MarketFare, manufactures breakfast sandwiches for 7-Eleven using Lone Star biscuits, sued McLane Company, Inc. (a wholesaler to 7-Eleven), 7-Eleven, and Lone Star in this Court for the damages it incurred when 7-Eleven discontinued using Lone Star biscuits. (Azman Aff. Ex. 1 (Lettieri's Second Am. Compl).) Lettieri's did not name MarketFare as a defendant.

In turn, on June 23, 2003, Lone Star filed a third-party complaint against MarketFare asserting that MarketFare caused Lettieri's damages by allowing improper collection methods when its sandwiches were tested and by prematurely notifying 7-Eleven of the alleged LM contamination. (Azman Aff. Ex. 2 (Third Party Compl. ¶¶ 24-25, 49); Pl.'s Mem. in Opp'n at 2.) In response, Market Fare has moved to dismiss the third-party Complaint asserting that this Court lacks personal jurisdiction over it.

### III. Contacts With Minnesota

The pertinent facts in this Motion concern MarketFare's contacts with the forum state - Minnesota. In 1999, MarketFare was registered to transact business in Minnesota, but its registration was revoked in 2000 for non-payment of fees.<sup>3</sup> (Azman Aff. Ex. 3 (Jurisdictional Interrog. Answer 2).) In April 2003, MarketFare re-registered to transact business in Minnesota not only for 2003, but also for 2000, 2001 and 2002. (Id.; Id. Ex. 4 (Docs. MF-PJ-0014, 0024 - 0032).) On April 17, 2003, Minnesota's Secretary of State reinstated MarketFare's registration, but MarketFare filed a withdrawal request, which was granted on May 16, 2003. (Id. Ex. 4 (Doc. MF-PJ-0017).) During 1999, 2000 and one month in 2003, MarketFare had a registered agent in Minnesota. (Id. Ex. 3 (Jurisdictional Interrog. Answer 32).) MarketFare also filed Minnesota tax returns for 2000 and 2002, and a corporate franchise tax return in 2001. (Id. Ex. 3 (Jurisdictional Interrog. Answer 20); Id. Ex. 4 (Docs. MF-PJ-0041- 0062).)

In addition, MarketFare uses a Minnesota broker, consults with a Minnesota package design firm, and purchases Minnesota products for use in its production facilities.<sup>4</sup> (Def.'s Mem. in Supp. at 5-6; Azman Aff. Ex. 3 (Jurisdictional Interrog. Answers 4(h), 15); Azman Aff. Ex. 4 (Bates Doc. MF-PJ-0033, 0075).) MarketFare personnel traveled to Minneapolis, Minnesota in 2002 for a national trade show and in 2003 to tour an Ohio company's sample production facility. (Def.'s Reply Mem. in Supp. at 6; Azman Aff. Ex. 3 (Jurisdictional Interrog. Answer 31); Azman Aff. Ex. 4 (Production of Documents Response 19).) MarketFare promotes its products nationwide and created a website in 2003. (Azman Aff. Ex. 3 (Jurisdictional Interrog. Answers 12, 30); Azman Aff. Ex. 4 (Production of Documents Response 11; Doc. MF-PJ-0001 -0006, 00037 - 0038).)

Finally, MarketFare sells products to four Minnesota distributors, who resell MarketFare products to Minnesota customers.<sup>5</sup> (Azman Ex. 3 (Jurisdictional Interrog. Answer 2); Carfora Aff. ¶ 7A.)



## Lettieri's Inc. v. McLane Co. Inc.

2003 | Cited 0 times | D. Minnesota | November 10, 2003

MarketFare is in regular telephone and mail contact with these Minnesota distributors. (Azman Aff. Ex. 3 (Jurisdictional Interrog. Answer 4(f).) MarketFare also sells products to a Wisconsin Wal-Mart distribution center and some of these products are re-sold in Minnesota Sam's Clubs. (Carfora Aff. ¶ 7B.) None of the Minnesota sales, however, involves products containing the Lone Star biscuit. (Id. ¶¶ 9, 11, 12.) MarketFare has received complaints from Minnesota consumers regarding products other than the product at issue. (Id.)

### Standard of Review

To survive a motion to dismiss for lack of personal jurisdiction, a plaintiff need only make a prima facie showing of personal jurisdiction over the defendant. *Pecoraro v. Sky Ranch For Boys, Inc.*, 340 F.3d 558, 561 (8th Cir. 2003) (citing *Digi-Tel Holdings, Inc. v. Proteq Telecomm., Ltd.*, 89 F.3d 519, 522 (8th Cir. 1996)). The Court views the evidence in the light most favorable to the plaintiff. Id. Jurisdiction over a non-resident defendant must satisfy the requirements of the forum state's long-arm statute and of due process. Id. Because Minnesota's long-arm statute permits jurisdiction to the extent permitted by the Due Process Clause, the Court's inquiry is whether the exercise of personal jurisdiction comports with due process. *Wessels, Arnold & Henderson v. Nat. Med. Waste, Inc.*, 65 F.3d 1427, 1431 (8th Cir. 1995); see *PSINet Consulting Solutions Knowledge Services, Inc. v. Saudi Petro Gas Co. Ltd.*, Civ. No. 01-320 (RHK/JMM), 2001 WL 869616, at \*5 (D. Minn. Aug. 1, 2001) (Kyle, J.).

Jurisdiction is appropriate only where a defendant has sufficient "minimum contacts" with the forum state that are more than random, fortuitous, or attenuated, "such that summoning the defendant would not offend traditional notions of fair play and substantial justice." *Pecoraro*, 340 F.2d at 561 (citations omitted). "The central question is whether a defendant has purposefully availed itself of the privilege of conducting activities in the forum state and should, therefore, reasonably anticipate being haled into court there." Id. at 562 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). The Court must consider the defendant's contacts with the forum in the aggregate and must look at the totality of the circumstances. *Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383, 1388 (8th Cir. 1995).

With these principles in mind, the Court looks to five distinct factors: (1) the nature and quality of the contacts with the forum state, (2) the quantity of those contacts, (3) the relation of the cause of action to the contacts, (4) the interest of the forum state in providing a forum for its residents, and (5) the convenience of the parties. *Pecoraro*, 340 F.2d at 562 (citing *Digi-Tel*, 89 F.3d at 522-23). These considerations incorporate the notions of both "minimum contacts" and "fair play and substantial justice." *Sybaritic, Inc. v. Interport Int'l, Inc.*, 957 F.2d 522, 524 (8th Cir. 1992). The first three are of primary importance, while the last two are secondary. *Pecoraro*, 340 F.2d at 561. The third factor distinguishes specific from general jurisdiction. *Digi-Tel*, 89 F.3d at 522 n.4. Specific jurisdiction refers to jurisdiction over causes of action "arising from or related to a defendant's actions within the



## Lettieri's Inc. v. McLane Co. Inc.

2003 | Cited 0 times | D. Minnesota | November 10, 2003

forum state," *id.* (citing *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 nn.8 & 9 (1984)), while general jurisdiction refers to the powers of the forum state to adjudicate any cause of action involving a particular defendant regardless of where the cause of action arose if the defendant maintains "continuous and systematic" contacts with the forum state, *Morris v. Barkbustor, Inc.*, 923 F.2d 1277, 1281 (8th Cir. 1991) (quoting *Helicopteros*, 466 U.S. at 416, 418-19).

### Analysis

Lone Star concedes that this Court does not have specific personal jurisdiction over MarketFare because the underlying claims for relief in this case do not arise out of or relate to MarketFare's Minnesota contacts. Thus, the question before the Court is whether it has general personal jurisdiction over MarketFare. A defendant's maintenance of "continuous and systematic" contacts with a state may subject it to the state's general jurisdiction; that is, the state may assert personal jurisdiction over the defendant in a suit that neither arises out of nor relates to the defendant's contacts with the forum state. See *Helicopteros*, 466 U.S. at 414 n.9, 416, 418-19; *Morris*, 923 F.2d at 1280-81. Having carefully reviewed the parties' submissions, and viewing the record in the light most favorable to Lone Star, the Court concludes that it has general personal jurisdiction over MarketFare. In the aggregate, MarketFare's Minnesota contacts are of the nature, quality and quantity that justifies a conclusion that they are "continuous and systematic" as these terms have been construed by *Helicopteros* and its progeny.

To start, MarketFare was registered to transact business in Minnesota in 1999, reinstated its registration in April 2003, and had an agent for service of process from 1999 to 2000 and one month in 2003. (*Azman Aff. Ex. 3* (Jurisdiction Interrog. Answers 2, 32).) The Eighth Circuit has held that

appointment of an agent for service of process... gives consent to the jurisdiction of Minnesota courts for any cause of action, whether or not arising out of activities within the state. Such consent is a valid basis of personal jurisdiction, and resort to minimum-contacts or due-process analysis to justify the jurisdiction is unnecessary.

*Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196, 1200 (8th Cir. 1990) (citation omitted) (emphasis added); see *Sondergard v. Miles, Inc.*, 985 F.2d 1389, 1393 (8th Cir. 1993). Because Lone Star filed its Third-Party Complaint against MarketFare on June 24, 2003, and MarketFare admits to having an agent for service of process for one month in 2003 (although MarketFare has not specified which month), the Court finds that Lone Star has made a compelling argument that MarketFare consents to the jurisdiction of Minnesota courts.<sup>6</sup>

Consent aside, however, Lone Star has also made a *prima facie* showing that the aggregation of MarketFare's Minnesota contacts are sufficiently "continuous and systematic" to support general personal jurisdiction. On the record before the Court, Lone Star has shown that MarketFare (1) sold products to Minnesota distributors (totaling \$680,000 annually, or 0.8% of MarketFare's overall sales),



## Lettieri's Inc. v. McLane Co. Inc.

2003 | Cited 0 times | D. Minnesota | November 10, 2003

(2) had regular telephone and mail communications with the Minnesota distributors, (3) received Minnesota consumer complaints, (4) uses a Minnesota broker, (5) consults with a Minnesota design firm, (6) purchases Minnesota goods (representing approximately 1.6% of MarketFare's overall purchases), (7) filed Minnesota taxes, (8) sent personnel on two trips to Minnesota, and (9) promotes its products in Minnesota. See *supra* Background and Jurisdictional Facts Part III; see also *K-Tel Int'l, Inc. v. Tristar Prod. Inc.*, 169 F. Supp. 2d 1033, 1041-42 (D. Minn. 2001) (finding general personal jurisdiction). Granted, none of these contacts alone would justify a finding of general personal jurisdiction, but the Court must look at the aggregate contacts and the totality of the circumstances. *Northrup King*, 51 F.3d at 1388. When looking at the totality of the circumstances, and ever mindful that "[p]ersonal jurisdiction, unlike subject matter jurisdiction, is primarily concerned with fairness to individual parties," *Knowlton*, 900 F.2d at 1199 (emphasis added), it is clear that MarketFare "has purposefully availed itself of the privilege of conducting activities in [Minnesota] and should, therefore, reasonably anticipate being haled into court [h]ere." *Pecoraro*, 340 F.2d at 562 (citations omitted). In light of MarketFare's "continuous and systematic" contacts with Minnesota, this Court finds due process satisfied and personal jurisdiction over MarketFare appropriate.<sup>7</sup>

### Conclusion

Based on the foregoing, and all of the files, records, and proceedings herein, the Court finds that it has personal jurisdiction. Accordingly, IT IS ORDERED that Third-Party Defendant MarketFare's Motion to Dismiss for Lack of Personal Jurisdiction (Doc. No. 41) is DENIED.

1. The Florida Save-A-Lot that sold the contaminated sandwich is operated by 7-Eleven, which has its principal place of business in Dallas, Texas. (Pl.'s Mem. in Opp'n at 2; Azman Aff. Ex. 1 (Lettieri's Second Am. Compl. ¶ 4).)
2. *Listeria monocytogenes* is a bacteria that causes a general group of disorders called Listeriosis. The manifestations of Listeriosis include septicemia, meningitis (or meningoencephalitis), encephalitis, and intrauterine or cervical infections in pregnant women. The onset of the aforementioned disorders is usually preceded by influenza-like symptoms including fever, nausea, vomiting, and diarrhea. *Listeria monocytogenes* has been associated with such foods as raw milk, cheese, ice cream, raw vegetables, raw meats, and raw fish. There are at least 1600 cases of Listeriosis with 415 deaths per year in the United States. (See United States Food and Drug Administration Center for Food Safety & Applied Nutrition, "Foodborne Pathogenic Microorganisms and Natural Toxins Handbook," "*Listeria Monocytogenes*," available at <http://vm.cfsan.fda.gov/~mow/chap6.html>); see also Fed. R. Evid 201(b).
3. MarketFare has no addresses, employees, bank accounts, or property in Minnesota. (Carfora Aff. ¶¶ 2-3.)
4. MarketFare's Minnesota purchases represent approximately 1.6% of its total purchases. (Def.'s Mem. in Supp. at 6; Azman Aff. Ex. 4 (Doc. MF-PJ-0033).)
5. These Minnesota sales totaled approximately \$680,000 annually, or 0.8% of MarketFare's total sales. (Carfora Aff. ¶ 8.)



## Lettieri's Inc. v. McLane Co. Inc.

2003 | Cited 0 times | D. Minnesota | November 10, 2003

6. Apparently, nothing has changed in the nature or volume of business MarketFare transacted in Minnesota from the time it was registered in 1999 and the period from 2000 to 2003 when it was not registered. MarketFare admits it currently "engage[s] in interstate commerce with entities in Minnesota" (Azman Aff. Ex. 3 (Jurisdictional Interrog. Answer 2), yet is not registered as required. See Minn. Stat. § 303.03. Had it been registered, MarketFare would have been required to maintain a registered agent here from 1999 to 2003, see *id.* § 303.10, and would have thereby consented to jurisdiction here, see Knowlton, 900 F.2d at 1200; Rykoff-Sexton, Inc. v. Am. Appraisal Assoc., Inc., 469 N.W.2d 88, 89-91 (Minn. 1991).

7. The first three factors of the due process analysis -- nature, quality, and quantity of contacts, and their relationship to the cause of action -- are of primary importance, Pecoraro, 340 F.3d at 561, and consideration of the less significant fourth and fifth factors does not alter the Court's conclusion.

