



Miller v. Cobra Enterprises of Utah, Inc. et al

2022 | Cited 0 times | S.D. West Virginia | April 21, 2022

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON DIVISION

FRANK KENNETH MILLER, JR.,

Plaintiff, v. CIVIL ACTION NO. 2:18-cv-00269 BEARMAN INDUSTRIES, LLC,

Defendant.

MEMORANDUM OPINION AND ORDER

DENIED WITHOUT PREJUDICE.

I. BACKGROUND Plaintiff instituted a products liability action against Cobra Enterprises of Utah, Inc. (ECF No. 1.) On July 11, 2019, this Court granted Default Judgment Order against Cobra, (ECF No. 80-81). On September 3, 2020, this Court entered an

Bearman. (ECF No. 86.) The Third Amended Complaint alleges that, on July 11, 2018, Mr. Jared

Yeates (Yeates) the owner of Cobra which was filed on February 24, 2020. (See ECF No. 87 at ¶¶ 11, 20.)

On November 30, 2021, Bearman filed the pending motion to dismiss for lack of personal jurisdiction and, in the alternative, for failure to state a claim upon which relief can be granted. (ECF No. 109.) Plaintiff timely responded, (ECF No. 115), and Bearman timely replied, (ECF No. 116). As such, the motion is fully briefed and ripe for adjudication.

II. LEGAL STANDARD A. Federal Rule of Civil Procedure 12(b)(2)

When a district court considers a motion to dismiss under Rule 12(b)(2) for lack of personal

Hawkins v. i-TV Digitalis Tavkozlesi zrt., 935 F.3d 211, 226 (4th Cir. 2019). This prima facie analysis resembles the plausibility analysis under Rule 12(b)(6). Id. jurisdiction assuming they are true make out a case of personal jurisdiction over the party Id. (citing Sneha Media & Ent., LLC v. Associated



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Broad. Co. P Ltd., 911 F.3d 192, 196-97 (4th Cir. 2018)).

In considering a challenge to personal jurisdiction at the pleadings stage, a district court may consider affidavits and other exhibits submitted by the parties. *UMG Recordings, Inc. v. Kurbanov*, 963 F.3d 344, 350 (4th Cir. 2020). The allegations of the complaint are taken as true only if they are not controverted by evidence from the defendant. See *Wolf v. Richmond Cnty. Hosp. Auth.*, 745 F.2d 904, 908 (4th Cir. 1984). Where both sides present evidence about personal jurisdiction, factual conflicts must be resolved in favor of the party asserting jurisdiction for the limited purpose of determining whether a prima facie showing has been made. *v. Akzo, N.V.*, 2 F.3d 56, 62 (4th Cir. 1993); *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989);

Universal Leather, LLC v. Koro AR, S.A., 773 F.3d 553, 560 (4th Cir. 2014) (directing courts to .

B. Limited Jurisdictional Discovery

discovery problems , 304 F.Supp.2d 789, 794 (E.D. Va. 2004) (citing *Carefirst of Md., Inc., v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 402 (4th Cir. 2003)). However, when a plaintiff offers only speculation or

jurisdictional discovery. *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 716 n.3 (4th Cir. 2002). Similarly, [t]he court does not abuse its discretion to deny jurisdictional denying jurisdictional acts or contacts *The Sports Corp.*, 304 F.Supp.2d at 794 (citing

McLaughlin v. McPhail, 707 F.2d 800, 807 (4th Cir. 1983)). Thus, the converse follows that jurisdictional discovery may be appropriate where a plaintiff provides more than bare allegations to dispute a defendant's denial of personal jurisdiction. *Weirton Area Water Bd. v. 3M Co.*, No. 5:20-CV-102, 2020 WL 8184647, at *3 (N.D. W. Va. Nov. 20, 2020) (internal citation omitted) unt to nothing more than a fishing expedition.

III. DISCUSSION *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (citing Fed. R. Civ. P. 4(k)(1)(A)). -arm -arm statute is *UMG Recordings, Inc. v. Kurbanov*, 963 F.3d 344, 350 (4th Cir. 2020). The long-arm statutes of many states are coextensive with due process, collapsing the two-prong test into one inquiry. *Id.* at 350-51. But the Supreme Court of Appeals of West Virginia has held that -arm statutes are not coextensive with due process and, thus, courts - *State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319 (W. Va. 2016); but see *In re Celotex*

Corp., 124 F.3d 619, 627 (4th Cir. 1997) (citing *Pittsburgh Terminal Corp. v. Mid Allegheny Corp.*, 831 F.2d 522, 525 (4th Cir. 1987)) (holding -arm statutes are coextensive with due process). 1

In this case, Plaintiff asserts that Bearman availed itself to the jurisdiction of this Court by (1) transacting business in West Virginia; (2) contracting to supply products in West Virginia; and (3)



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causing injuries to persons in West Virginia, including Plaintiff. (ECF No. 87 at 2, ¶ 4.) Specifically, Plaintiff alleges that Bearman -manufacturing, modifying and/or altering, fabricating, designing, packaging, shipping, selling, servicing, and/or

1 The Court notes that, -arm statutes are coextensive with the due process clause, it has also held -arm statute in the same manner as the state supreme court. See *Shealy v. Challenger Mfg. Co. Snyder v. Hampton Indus., Inc.*, 521 F. Supp. 130 (D. Md. 1981), , 758 F.2d 649 (4th Cir. 1 -arm statute); see also , 426 U.S. 482, 488 (1976) (explaining that Thus, to be sure, the Court will conduct the two-step inquiry. distributing firearms in the State of West Virginia, including but not limited to a .38 Cal Derringer (Id. at 1, ¶ 2.) Both jurisdictional analyses under the West Virginia long-arm statutes 2 and the Due Process Clause 3

hinge on this factual assertion. motion to dismiss contends that Plainti Motion to Set Aside

Default. (ECF No. 110 at 10.) This affidavit claims, inter alia, that Bearman

for services performed in West Virginia or involving West Virginia- 103-1.) Plaintiff counters that Yeates submitted an affidavit from Mr. Tony Kirkwood, claiming that he purchased a Bearman firearm

in West Virginia, as well as five other exhibits that purport to show that Bearman firearms can be purchased in West Virginia, 4

(see ECF No. 115-1, 115-2, 115-3, 115-4, 115-5, 115-6). In its reply,

2 West Virginia Code § 56-3-33; W. Va. Code § 31D-15-1501(d). 3 *Corp. v. Geometric Ltd.*, 561 F.3d 273, 277 (4th Cir. 2009) (quoting , 326 U.S. 310, 316 (1945)). Courts may evaluate minimum contacts through the prism of general or specific jurisdiction. See *Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 188-89 (4th Cir. 2016). Plaintiff only contends that this Court has specific jurisdiction over the claims against Bearman, (ECF No. 115 at 5), which exists when *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 (1985) (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984), and *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). 4 Plaintiff also argues 6), and (id. at 8). However, despite the nexus between Yeates, Cobra, and Bearman, the Court again notes that they are three distinct entities, as both parties have acknowledged, (ECF Nos. 110 at 4; 115 at 16), and Plaintiff has not even attempted to pierce the corporate veil, see *Southern States Cooperative, Inc. v. Dailey*, 280 S.E.2d 821 (W. Va. 1981) (explaining that the injustice, defeat public convenience or justify wrong see also *Syl. Pt. 2, Norfolk Southern Railway Company v. Maynard*, 437 S.E.2d 277 (W. Va. 1993) (providing eleven factors for courts to consider for jurisdictional veil piercing, as opposed to substantive veil piercing). Bearman offered another affidavit by Yeates, averring, in part, that Bearman sells its firearms [five] discuss, cooperate with, or direct any of the distributors regarding where the distributors sell the



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-1 at 1-2.) Yeates also states that Bearman relationship with any person or business in West Virginia, (Id. at 2.)

Ultimately and minimal substantive evidence are of little help in determining whether Plaintiff has made a prima facie showing of personal jurisdiction. While, see *The Sports Corp.*, 304 F.Supp.2d at 794; *ALS Scan, Inc.*, 293 F.3d at 716 n.3, Plaintiff must only establish a prima facie case of jurisdiction at this stage, see *Hawkins*, 935 F.3d at 226. Similarly, although are being marketed and available

. See *Mylan Labs.*, 2 F.3d at 62; see also *Combs*, 886 F.2d at 676. Further, based on the facts and procedural posture of this case, the Court does *ALS Scan, Inc.*, 293 F.3d at 716 n.3, or that jurisdictional discovery would be *3M Co.*, 2020 WL 8184647, at *3. Therefore, in its broad discretion, the Court finds it appropriate to permit a period of time for the parties to conduct limited jurisdictional discovery.

IV. CONCLUSION For the foregoing reasons, this Court DENIES WITHOUT PREJUDICE Motion to Dismiss. (ECF No. 109.) The Court ORDERS the parties to complete limited jurisdictional discovery within sixty (60) days of entry of this Order. The parties are hereby DIRECTED to conduct limited discovery on the nature and extent of contacts with West Virginia. Discovery shall be limited to the personal jurisdiction issue only.

Further, the Court will hold an evidentiary hearing on the issue of personal jurisdiction on June 30, 2022, at 10:30 a.m.

IT IS SO ORDERED. The Court DIRECTS the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: April 21, 2022

