

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

ROBERT T. WRIGHT and	:	NO. CV-2024-00232
YVONNE C. WRIGHT,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION - LAW
	:	
MASSARO CORPORATION, et al.,	:	
Defendants.	:	
	:	
vs.	:	
	:	
STEEL SUPPLY & ENGINEERING CO.,	:	
Additional Defendant,	:	
	:	
vs.	:	
	:	
CENTURY STEEL ERECTORS COMPANY,	:	Preliminary Objections
Additional Defendant.	:	filed by Nucor Defendants

OPINION AND ORDER

The matter captioned above was transferred to this Court from the Court of Common Pleas of Philadelphia County. The Court conducted a status conference on September 3, 2024, for the purpose of developing a Scheduling Order. During that status conference, counsel called to the Court’s attention that three (3) sets of preliminary objections filed in Philadelphia County have long lingered, and that those preliminary objections have delayed progress in the matter. For that reason, the Court has elected to resolve all three (3) preliminary objections, before proceeding with a Scheduling Order.

I. BACKGROUND

This matter was commenced by Complaint filed October 27, 2022, by Robert T. Wright and Yvonne C. Wright (hereinafter “Plaintiffs”) in the Court of Common Pleas of Philadelphia County, alleging personal injuries sustained by Robert in a construction accident which occurred in Lycoming County on October 27, 2020. A Joinder Complaint was filed on March 14, 2023, against Steel Supply & Engineering Company (hereinafter “Steel Supply”) by WG Yates & Sons Construction Company, Yates Construction LLC,

Massaro Corporation, Massaro Construction Management Services LLC, Yates-Massaro Joint Venture, Yates Construction of Florida LLC, Yates Services LLC, Yates Engineers LLC, The Yates Companies Inc., and Yates Construction and Yates Construction Company Inc. (hereinafter collectively as “Yates-Massaro”). Another Joinder Complaint was filed on April 4, 2023, by Steel Supply against Century Steel Erectors Company (hereinafter “Century”); the Joinder Complaint alleges one (1) count of Breach of Contract for Defense and Indemnification, contending that a) Century had a duty to provide Defense to Steel Supply and failed to provide that defense, b) Century had a duty to indemnify Steel Supply and failed to indemnify, and c) Century has waived any protection under the Workers’ Compensation Act.

Plaintiffs filed an Amended Complaint on April 13, 2023, alleging four (4) counts of negligence, one (1) count of strict liability, and one (1) count of lost consortium. In the Amended Complaint, Plaintiffs contend, among other things, that Nucor Corporation and/or Nucor Building Systems Sales Corporation (hereinafter collectively “Nucor Defendants”) “designed, manufactured, sold and supplied” the Nucor Model A325TC Tension Bolts and a “pre-engineered metal structure,” the failure of which caused the injuries suffered by Plaintiff Robert Wright. Amended Complaint at ¶¶ 52, 125, 126, 129. Nucor Defendants filed Preliminary Objections to the Amended Complaint on May 3, 2023. Yates-Massaro also filed Preliminary Objections to the Amended Complaint on May 3, 2023. Century filed Preliminary Objections on May 8, 2023, to the Joinder Complaint by Steel Supply.

In the Preliminary Objections filed by Nucor Defendants on May 3, 2023, the Nucor Defendants contend that they “had no knowledge that those [Model A325TC Tension Bolts] would be sold into the Commonwealth of Pennsylvania and took no steps to direct the bolts to the Commonwealth of Pennsylvania.” Nucor Defendants’ Preliminary Objections at 3. Furthermore, Nucor Defendants contend that—regarding the “pre-engineered metal structure”—Plaintiffs “did not provide sufficient information in their complaint for the Nucor Defendants to understand what they were referring to, but [] Nucor Corporation has no record of selling any such structure for use at the site [in

question], and Nucor Building Systems Sales Corporation does not make or sell any such structure at all, and thus would not have sold the one at issue.” *Id.* Nucor Defendants therefore contend that this Court lacks personal jurisdiction—general or specific—because a) the Nucor Defendants are not “‘at home’ in Pennsylvania” and that “[n]either is incorporated in Pennsylvania or maintains a principal place of business in Pennsylvania”; and b) the Nucor Defendants “did not purposely direct their activities toward Pennsylvania, [P]laintiffs’ alleged injuries did not arise out of or relate to the Nucor Defendants’ contacts in Pennsylvania....” *Id.* at 3-4.

II. QUESTION PRESENTED

WHETHER THIS COURT HAS PERSONAL JURISDICTION OVER THE NUCOR DEFENDANTS.

III. BRIEF ANSWER

THIS COURT HAS PERSONAL JURIDICION OVER NUCOR BUILDING SYSTEMS SALES CORPORATION, BUT LIMITED DISCOVERY WILL BE REQUIRED IN ORDER FOR THE COURT TO DETERMINE WHETHER THE COURT HAS PERSONAL JURISDICTION OVER NUCOR CORPORATION.

IV. DISCUSSION

A. Standard and Scope of Review

Regarding preliminary objections challenging personal jurisdiction, “the court must consider the evidence in the light most favorable to the non-moving party,” and “preliminary objections will be sustained only where the case is free and clear of doubt....” *Fulano v. Fanjul Corp.*, 236 A.3d 1, 12 (Pa. Super. Ct. 2020)(citing *Calabro v. Socolofsky*, 206 A.3d 501, 505 (Pa. Super. Ct. 2019)). Furthermore, “[o]nce the moving party supports its objections to personal jurisdiction, the burden of proving personal jurisdiction is upon the party asserting it.” *Id.*

B. Personal Jurisdiction

As opined by our Supreme Court, personal jurisdiction is the authority of a court over the parties in a particular case:

Equating jurisdiction with the competence of the court to determine the controversy generally aligns with the United States Supreme Court's views. “Jurisdiction to resolve cases

on the merits requires both authority over the category of claim in suit (subject-matter jurisdiction) and authority over the parties (personal jurisdiction), so that the court's decision will bind them.” *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999)...The *Kontrick* Court admonished that the label “jurisdictional” should be reserved “only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority.” *Id.* In *Domus*, we likewise alluded to restricting jurisdictional concepts to this core concern. “Under our Constitution and per statute, the courts of common pleas have unlimited original jurisdiction of all actions, except where otherwise provided by law.” *Domus*, 252 A.3d at 636.

Bisher v. Lehigh Valley Health Network, Inc., 265 A.3d 383, 400 (Pa. 2021).

For corporate defendants, the law recognizes two categories of personal jurisdiction—specific or general jurisdiction. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021). A state court may exercise specific jurisdiction over a corporate defendant only when there is “an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State” so as to make the defendant subject to Pennsylvania’s long-arm statute, 42 Pa.C.S. §5322. *Hammons v. Ethicon, Inc.*, 240 A.3d 537, 559 (Pa. 2020)(citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). A state court may exercise general jurisdiction on claims brought against a foreign corporation, even if the claims do not relate to the forum state or the defendant’s activity there, provided that the defendant has “continuous and systematic” affiliations or business contacts in the forum state. *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014); *Fulano v. Fanjul Corp.*, 236 A.3d 1, 13 (Pa. Super. Ct. 2020)(“General Jurisdiction, on the other hand, is established over a nonresident corporation when it: ‘(1) is incorporated under or qualified as a foreign corporation under the laws of this Commonwealth; (2) consents, to the extent authorized by the consent; or (3) carries on a continuous and systematic part of its general business within this Commonwealth.’”)(citations omitted). Further, the *Fulano* Court restated the following regarding alter ego jurisdiction:

Under the alter-ego theory of personal jurisdiction, “if a subsidiary is ‘merely the agent’ of its parent corporation or the parent corporation ‘controls’ the subsidiary, ‘then personal jurisdiction exists over the parent whenever personal jurisdiction (whether general or specific) exists over the subsidiary.’ ” *Lutz v. Rakuten, Inc.*, 376 F. Supp. 3d 455, 470–71 (E.D. Pa. 2019) (quoting *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 781 (3d Cir. 2018)).

The theory applies only if “the degree of control exercised by the parent is greater than normally associated with common ownership and directorship” and “the parent controls the day-to-day operations of the subsidiary such that the subsidiary can be said to be a mere department of the parent.” *Action Mfg. Co. v. Simon Wrecking Co.*, 375 F. Supp. 2d 411, 422 (E.D. Pa. 2005) (citation omitted).

In determining whether a subsidiary is the alter ego of its parent corporation, courts consider the following factors:

(1) ownership of all or most of the stock of the related corporation; (2) common officers and directors; (3) common marketing image; (4) common use of a trademark or logo; (5) common use of employees; (6) integrated sales system; (7) interchange of managerial and supervisory personnel; (8) performance by the related corporation of business functions which the principal corporation would normally conduct through its own agent or departments; (9) acting of the related corporation as marketing arm of the principal corporation, or as an exclusive distributor; and (10) receipt by the officers of the related corporation of instruction from the principal corporation. *Lutz*, 376 F. Supp. 3d at 471 (quotations and citations omitted).

Fulano v. Fanjul Corp., 236 A.3d 1, 20 (Pa. Super. Ct. 2020).

Within the Commonwealth of Pennsylvania, personal jurisdiction over foreign corporations is controlled by 42 Pa.C.S. § 5301(a)(2), which provides that the “tribunals of this Commonwealth” may exercise jurisdiction over corporations incorporated or qualified as a foreign corporation under our law, or by consent, or by “the carrying on of a continuous and systematic part of its general business within this Commonwealth.” 42 Pa. Stat. and Cons. Stat. § 5301.

On June 27, 2023, the United States Supreme Court, in *Mallory v. Norfolk Southern Railway Co.*, opined as follows:

Pennsylvania Fire controls this case. Much like the Missouri law at issue there, the Pennsylvania law at issue here provides that an out-of-state corporation “may not do business in this Commonwealth until it registers with” the Department of State. 15 Pa. Cons. Stat. § 411(a). As part of the registration process, a corporation must identify an “office” it will “continuously maintain” in the Commonwealth. § 411(f); *see also* § 412(a)(5). Upon completing these requirements, the corporation “shall enjoy the same rights and privileges as a domestic entity and shall be subject to the same liabilities, restrictions, duties and penalties ... imposed on domestic entities.” § 402(d). Among other things, Pennsylvania law is explicit that “qualification as a foreign corporation” shall permit state courts to “exercise general personal jurisdiction” over a registered foreign corporation, just as they can over domestic corporations. 42 Pa. Cons. Stat. § 5301(a)(2)(i).

....

Pennsylvania Fire held that suits premised on these grounds do not deny a defendant due process of law. Even Norfolk Southern does not seriously dispute that much. It concedes that it registered to do business in Pennsylvania, that it established an office there to receive service of process, and that in doing so it understood it would be amenable to suit on any claim....

In the proceedings below, the Pennsylvania Supreme Court seemed to recognize that *Pennsylvania Fire* dictated an answer in Mr. Mallory's favor. Still, it ruled for Norfolk Southern anyway. It did so because, in its view, intervening decisions from this Court had “implicitly overruled” *Pennsylvania Fire*. *See* 266 A.3d at 559, 567. But in following that course, the Pennsylvania Supreme Court clearly erred. As this Court has explained: “If a precedent of this Court has direct application in a case,” as *Pennsylvania Fire* does here, a lower court “should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.” *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989)....

....

In reality, then, all *International Shoe* did was stake out an additional road to jurisdiction over out-of-state corporations. *Pennsylvania Fire* held that an out-of-state corporation that has consented to in-state suits in order to do business in the

forum is susceptible to suit there. *International Shoe* held that an out-of-state corporation that has not consented to in-state suits may also be susceptible to claims in the forum State based on “the quality and nature of [its] activity” in the forum. 326 U.S. at 319, 66 S.Ct. 154. Consistent with all this, our precedents applying *International Shoe* have long spoken of the decision as asking whether a state court may exercise jurisdiction over a corporate defendant “ ‘that has not consented to suit in the forum.’ ” *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915, 927–928, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011) (emphasis added); see also *Daimler AG v. Bauman*, 571 U.S. 117, 129, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014)....

[B]ut the fact remains that *International Shoe* itself eschewed any “mechanical or quantitative” test and instead endorsed a flexible approach focused on “the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.” 326 U.S. at 319, 66 S.Ct. 154. Unquestionably, too, *International Shoe* saw this flexible standard as expanding—not contracting—state court jurisdiction. See *Daimler*, 571 U.S. at 128, and n. 6, 134 S.Ct. 746. As we later put the point: “The immediate effect of [*International Shoe*] was to increase the ability of the state courts to obtain personal jurisdiction over nonresident defendants.” *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977).

Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 134-39 (2023).

It appears that Nucor Building Systems Sales Corporation has a Registered Office in Philadelphia County as a foreign business corporation. Business search info for Nucor, PENNSYLVANIA DEPARTMENT OF STATE (Oct. 21, 2024), <https://file.dos.pa.gov/search/business>. Because Pennsylvania law explicitly provides that “‘qualification as a foreign corporation’ shall permit state courts to ‘exercise general personal jurisdiction’ over a registered foreign corporation, just as they can over domestic corporations,” this Court has personal jurisdiction over Nucor Building Systems Sales Corporation. 600 U.S. at 134 (citing 42 Pa. Cons. Stat. § 5301(a)(2)(i)). It is less clear whether Nucor Corporation is registered as a foreign business corporation in the Commonwealth of Pennsylvania. It is possible that Nucor is subject to Pennsylvania

jurisdiction as a result of “the carrying on of a continuous and systematic part of its general business within this Commonwealth,” or based upon the theory that Nucor Building Systems Sales Corporation is an alter ego of Nucor Corporation as articulated in *Fulano*. 42 Pa. Cons. Stat. § 5301(a)(2); *Fulano v. Fanjul Corp.*, 236 A.3d 1, 20 (Pa. Super. Ct. 2020).

ORDER

AND NOW, this 23rd day of October, 2024, upon consideration of the Preliminary Objections (filed by Nucor Corporation and Nucor Building Systems Sales Corporation on May 3, 2023), it is hereby **ORDERED** and **DIRECTED** that the above-noted Preliminary Objections are **DISMISSED** as to Defendant Nucor Building Systems Sales Corporation. Plaintiff is granted ninety (90) days from the date hereof to conduct limited discovery to determine whether Nucor Corporation is registered as a foreign business corporation in the Commonwealth of Pennsylvania, or whether Nucor Building Systems Sales Corporation is an alter ego of Nucor Corporation, or whether Nucor Corporation has continuous and systematic contacts with Pennsylvania under 42 Pa.C.S. § 5301(a)(2)(iii). The Court will, by separate Order, schedule a follow-up oral argument for the above Preliminary Objections in February 2025.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: **Arthur L. Bugay, Esquire** (Attorney for Plaintiffs)

Law Offices of Arthur L. Bugay & Associates, P.C.

Suburban Square

The Times Building

32 Parking Plaza, Suite 401

Ardmore, PA 19003

Pamela J. Devine, Esquire (Attorney for Defendants NBBJ Architecture PLLC and NBBJ, LLC, improperly named as ESI Design)

Bardsley Law, LLC

1235 Westlakes Drive

Suite 130

Berwyn, PA 19312

(Continued on next page)

Geoffrey F. Sasso, Esquire (Attorney for Defendants Highmark Inc, Geisinger Health, Geisinger Medical Center Muncy and Geisinger-HM Joint Venture LLC)
Buchanan Ingersoll & Rooney, P.C.
50 South 16th Street
Suite 3200
Philadelphia, PA 1910

Frederick M. Brehm, Esquire and John R. Eyre, Esquire (Attorneys for Defendants NCR Design, P.C. and Reuther & Bowen, P.C.)
Brehm, Nofer & McCarter
161 Washington Street
Suite 1450
Conshohocken, PA 19428

Samuel W. Silver, Esquire and Richard D. Walk, III, Esquire (Attorneys for Defendants Nucor Building Systems Sales Corporation and Nucor Corporation)
Welsh & Recker, P.C.
306 Walnut Street
Philadelphia, PA 19106

John T. Donovan, Esquire and Caroline S. Vahey, Esquire (Attorneys for Additional Defendant Steel Supply & Engineering Co.)
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Two Commerce Square
2001 Market Street, Suite 3100
Philadelphia, PA 19103

Christopher M. Moreland, Esquire (Attorney for Defendants, Churches Engineering, LLC and Century Steel Erectors Company)
Swartz Campbell, LLC
Koppers Building
436 - 7th Avenue, 8th Floor
Pittsburgh, PA 15219

David A. Levine, Esquire and Courtney Wentzel, Esquire (Attorneys for Defendants WG Yates & Sons Construction Company, Yates Construction LLC, Massaro Corporation, Massaro Construction Management Services LLC, Massaro Corporation, Yates-Massaro A Joint Venture, Yates Construction Of Florida LLC, Yates Services LLC, Yates Engineers LLC, Yates Engineering Corporation, The Yates Companies Inc, Yates Constructors LLC and Yates Construction)
McNees Wallace & Nurick, LLC
One Oxford Centre
301 Grant Street
Suite 1100
Pittsburgh, PA 15219