

Personal Jurisdiction in Today's Commercial World: It Doesn't Take Much to be Conducting a Business Venture

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Florida's Second District Court of Appeal recently issued an interesting and important decision on personal jurisdiction in today's commercial world. [*Kapila v. RJPT, Ltd.*, Case No. 2D22-837 \(Fla. 2d DCA Feb. 17, 2023\)](#). The defendant is a Texas investment firm that invests its capital in other businesses for profit. After performing some initial due diligence in Florida, it entered into an agreement to purchase a membership interest in the Laser Spine Institute, a Florida limited liability company. The agreement included a Florida choice of law provision making Hillsborough County, Florida, the exclusive venue for any suit brought on the agreement. The defendant also agreed to be bound by the Florida company's operating agreement. Over the years, the defendant received \$18 million in distributions from its ownership interest. It did not physically come to Florida during this period, although it did purchase and sell interests from or to Florida residents. The defendant was sued in Florida for avoidance and recovery of certain of the distributions. The trial court dismissed the suit for lack of personal jurisdiction, ruling that the defendant's investment "was entirely passive," and that none of the claims arose out of its initial due diligence in Florida or the initial distribution. The appellate court reversed, holding that the defendant "engaged in a business venture in Florida within the meaning of the long-arm statute and, further, that the exercise of jurisdiction in this case does not violate due process." Noting that whether a nonresident is "doing business" or "engaged in a business venture" in Florida depends on the facts of the particular case, the court stressed that a party may be engaged in a business venture without engaging in a business where there is a "general course of business activity in the state for pecuniary benefit." The court noted several factors in this regard, but emphasized that none was dispositive and even "a single act for profit can amount to a business venture." In this case, the defendant made several purchases of membership interests and received distributions from those interests in Florida, after the initial distribution. The purchases constituted its only business, rather than "being merely incidental to some other transactions . . ." In addition, the defendant agreed that some of its purchases were to be

performed in Florida, and also agreed to Florida choice of law and venue provisions for claims based on them. Under the circumstances, defendant’s “activity in Florida cannot be considered passive for purposes of defeating personal jurisdiction.” The court then addressed the “connexity” requirement of specific jurisdiction, which is “a causal connection between the defendant’s activities in Florida and the plaintiff’s cause of action . . .” The court easily found that connection between the plaintiff’s claims seeking to avoid certain distributions as fraudulent and the defendant’s receipt of those distributions as a direct result of purchasing the membership interests in Florida. Finally, the court concluded that the “sophisticated” defendant also had “minimum contacts with Florida sufficient to satisfy constitutional requirements of due process,” having “negotiated and executed several multimillion-dollar contracts over a period of six years to buy and sell membership interests in the same Florida company.” Once again, the court relied on the contract provisions, saying that although they were “not dispositive,” they weighed “against any due process violation.” The court summarily rejected the defendant’s claim that it lacked sufficient minimum contacts with Florida because, except for one initial visit to Florida to investigate the potential investment, it conducted its business remotely from Texas. Citing long-established Supreme Court precedent that “minimum contacts” do not require any physical presence in “modern commercial life” for business to be conducted in a state, the court explained “[t]hat statement about ‘modern commercial life’ in 1985 is only truer today.” Pointing yet again to the contract venue provision whereby the defendant agreed to litigate claims related to this investment in Florida, the court said there was nothing unfair in requiring the defendant to litigate this claim in Florida. **Tips**

- Do not assume that passive foreign investors are beyond the reach of Florida courts.
- Be careful in preparing contracts with provisions that may be seized upon to create personal jurisdiction in other states.
- In litigating personal jurisdiction issues, consider whether changes in the way business is conducted today will allow you to distinguish adverse authority or give you a basis to change that law.

Authored By



Sylvia H. Walbolt



Peter D. Webster

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