

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

July 1, 2020

[Cite as *07/01/2020 Case Announcements #2, 2020-Ohio-3474.*]

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## MERIT DECISIONS WITHOUT OPINIONS

### **2020-0154. LG Chem, Ltd. v. Hagan.**

In Prohibition. On respondent's motion to dismiss. Motion granted. Cause dismissed.

O'Connor, C.J., and French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

Kennedy, J., dissents, with an opinion.

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#### **KENNEDY, J., dissenting.**

{¶ 1} Because respondent, Cuyahoga County Court of Common Pleas Judge Emily Hagan, has failed to demonstrate beyond doubt that relator, LG Chem, Ltd., can prove no set of facts warranting relief, I would deny the motion to dismiss LG Chem's complaint for a writ of prohibition and order Judge Hagan to answer. The majority does not. I therefore dissent.

{¶ 2} In reviewing the motion to dismiss, we must presume that the allegations in LG Chem's complaint are true. *State ex rel. Brady v. Pianka*, 106 Ohio St.3d 147, 2005-Ohio-4105, 832 N.E.2d 1202, ¶ 6. According to those allegations, Nader M. Harb—who is not a party in this prohibition action—filed a products-liability suit in the Cuyahoga County Court of Common Pleas and named LG Chem as one of the defendants. Harb alleged that he bought a defective LG HG2 18650 battery, manufactured by LG Chem, from Cleveland Vape Distribution, L.L.C. Cleveland Vape had purchased the battery from an Illinois corporation, Midwest Goods, Inc.

{¶ 3} LG Chem made a special appearance and moved to be dismissed as a party in the product-liability litigation, arguing that the trial court did not have personal jurisdiction over it.

LG Chem asserted that it is a South Korean corporation, that it is neither incorporated in Ohio nor registered to do business here, and that it does not have any physical presence in this state. LG Chem also contended that it “manufactures lithium-ion cells for use in specific applications by sophisticated companies” and that it does not “design, manufacture, distribute, advertise, or sell lithium-ion cells for use by individual consumers as standalone, replaceable, rechargeable batteries in electronic cigarette or vaping devices.” LG Chem stated that it has never delivered, distributed, or sold an 18650 battery in Ohio. And LG Chem’s evidence supporting its motion to dismiss showed that it has never done business with Cleveland Vape or Midwest Goods or authorized either company to distribute or sell LG brand lithium-ion cells for any purpose.

{¶ 4} In the trial court, Harb countered that he had sufficiently alleged that LG Chem could reasonably have expected the battery to be used or consumed in Ohio. He also pointed out that LG Chem, through its United States subsidiaries, targeted the market in the United States for the sale of lithium-ion batteries for over a decade and derived substantial revenue from its business in the United States. Harb noted that one subsidiary, LG Chem America, has a license to do business in Ohio and that LG Chem ships lithium-ion batteries “directly to a U.S. subsidiary and to other businesses, who in turn facilitate the distribution of such goods in Ohio.” Harb explained that LG Chem regularly supplies batteries in Ohio, including a 7 MW/3 MW battery energy-storage system to the village of Minster, Ohio, lithium-ion batteries for the redevelopment of a Duke Energy plant in New Richmond, Ohio, and at least 529 distinct shipments of products from South Korea to business addresses in Ohio. Harb further asserted that LG Chem regularly uses the distribution port in Cleveland and has research relationships with Ohio’s colleges and universities. Lastly, Harb argued that LG Chem has appeared and defended similar product-liability suits in Ohio. And because LG Chem does substantial business within the United States, it should have foreseen that an injury from one of its batteries would occur in Ohio, which is the seventh most populous state in the United States. The trial court summarily denied LG Chem’s motion to dismiss.

{¶ 5} LG Chem then filed a complaint for a writ of prohibition in this court, asserting that Judge Hagan patently and unambiguously lacks personal jurisdiction over it. Judge Hagan moved to dismiss, asserting that LG Chem “cannot prove that personal jurisdiction is patently and unambiguously lacking and it has the adequate remedy of appeal to challenge any alleged errors in [Judge Hagan’s] decision.”

{¶ 6} Whether an Ohio trial court has personal jurisdiction over a nonresident requires a two-step analysis: “(1) whether the long-arm statute and the applicable rule of civil procedure confer jurisdiction and, if so, (2) whether the exercise of jurisdiction would deprive the nonresident defendant of the right to due process of law under the Fourteenth Amendment to the United States Constitution.” *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St.3d 81, 2010-Ohio-2551, 930 N.E.2d 784, ¶ 28. LG Chem’s response to Judge Hagan’s motion to dismiss focuses primarily on whether the trial court’s exercise of personal jurisdiction over LG Chem offends the United States Constitution’s Due Process Clause.

{¶ 7} The Due Process Clause of the Fourteenth Amendment “limits the personal jurisdiction of state courts.” *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1773, 1779, 198 L.Ed.2d 395 (2017). The United States Supreme Court has recognized two types of personal jurisdiction that state courts may exercise: general and specific. *Id.* at 1779-1780.

{¶ 8} General jurisdiction encompasses “situations where a foreign corporation’s ‘continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.’ ” (Brackets in *Daimler*.) *Daimler AG v. Bauman*, 571 U.S. 117, 127, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014), quoting *Internatl. Shoe Co. v. Washington*, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.Ed. 95 (1945). As the court has explained, “[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011). Put another way, “[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State,” *id.* at 919, “i.e., [the affiliations are] comparable to a domestic enterprise in that State,” *Daimler AG* at 133, fn. 11.

{¶ 9} However, the allegations of the complaint do not establish that LG Chem can be regarded as “at home” in Ohio. There is no allegation or evidence that LG Chem is incorporated in Ohio, that it is licensed to do business in this state, or that it has either a principal place of business or any physical presence here. *See id.* at 127. And the limited projects and sales pointed to in Harb’s response to the motion to dismiss filed in the trial court are not so continuous or

systematic as to equate LG Chem with an Ohio Corporation. Accordingly, the allegations in Harb's complaint and his response to the motion to dismiss do not support a finding that the trial court has general jurisdiction over LG Chem.

{¶ 10} “Specific jurisdiction, on the other hand, depends on an ‘affiliatio[n] between the forum and the underlying controversy,’ principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” (Brackets in *Goodyear*.) *Goodyear* at 919, quoting von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv.L.Rev. 1121, 1136 (1966). That is, a state tribunal has specific jurisdiction when a defendant’s in-state activity is continuous and systematic and *that activity* gave rise to the cause of action. *Goodyear* at 923.

{¶ 11} But when the defendant’s activity could be categorized as only single or occasional acts or having only an impact within the forum state, the court “has inquired whether there was ‘some act by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’ ” *Goodyear*, 564 U.S. at 924, 131 S.Ct. 2846, 180 L.Ed.2d 796, quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958). And even then, specific jurisdiction extends only to litigation in which the alleged injuries “arise out of or relate to” those activities in the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *see also Kauffman Racing Equip.*, 126 Ohio St.3d 81, 2010-Ohio-2551, 930 N.E.2d 784, at ¶ 47-49.

{¶ 12} In addressing specific jurisdiction, the Supreme Court has stated that “[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-298, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). But this stream-of-commerce test is not an exception to the requirement that the defendant must have purposefully directed activity at the forum state. *See Burger King* at 473. Rather, “[t]he defendant’s transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.” *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882, 131 S.Ct. 2780, 180 L.Ed.2d 765 (2011) (lead opinion); *see also World-Wide Volkswagen* at 295

(“ ‘[F]oreseeability’ [that a product may enter the forum state] alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause”); *id.* at 297 (“the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State”).

{¶ 13} In this case, LG Chem may have purposefully availed itself of the privilege of doing business in Ohio when it delivered batteries to this state, including 529 distinct shipments to Ohio businesses. But the alleged injury in this case does not arise from those sales or from any of the other contacts with Ohio that Harb cited in his response to LG Chem’s motion to dismiss in the trial court. Instead, the battery at issue in this case was acquired by Cleveland Vape from Illinois-based Midwest Goods and sold by Cleveland Vape to Harb in Ohio. Harb has not alleged that LG Chem targeted the Ohio market through these companies or that it has any connection to them, and LG Chem has presented evidence that it has no business relationships with either entity and has never authorized either entity to sell its batteries.

{¶ 14} Importantly, Harb has not alleged that LG Chem purposefully directed the sale of the LG HG2 18650 battery at Ohio. Rather, Harb simply alleged that LG Chem placed the battery into the stream of commerce with the “reasonable expectation” that it would end up being used by an Ohio consumer. Essentially, he is asserting that because LG Chem sells batteries somewhere in the United States, the company *should have* expected that its batteries would be acquired by a third party (with whom LG Chem has no business relationship) and then resold to a fourth party within this state. But that argument stretches due process too far—“unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). That a foreign company might have expected that its products could be resold in Ohio is not the same thing as it purposefully directing those products into Ohio. *See World-Wide Volkswagen*, 444 U.S. at 295, 297, 100 S.Ct. 559, 62 L.Ed.2d 490.

{¶ 15} A writ of prohibition may issue when a trial court proceeds despite an absence of personal jurisdiction. *See Clark v. Connor*, 82 Ohio St.3d 309, 315, 695 N.E.2d 751 (1998). Dismissal of a complaint seeking a writ of prohibition is appropriate if, after presuming the truth of all material factual allegations of the complaint and making all reasonable inferences in the relator’s favor, it appears beyond doubt that the relator can prove no set of facts entitling it to the

requested extraordinary relief in prohibition. *Brady*, 106 Ohio St.3d 147, 2005-Ohio-4105, 832 N.E.2d 1202, at ¶ 6. Judge Hagan has failed to meet that burden. Taking the allegations as true, LG Chem could prove that Judge Hagan patently and unambiguously lacks personal jurisdiction over it by showing that it never purposefully directed the battery at issue here into Ohio.

{¶ 16} Accordingly, I would deny Judge Hagan’s motion to dismiss. However, at this stage of the proceeding, it is unclear whether Judge Hagan disputes any of the allegations in LG Chem’s complaint, and a peremptory writ of prohibition is premature. I would therefore order Judge Hagan to answer the complaint. Because the majority grants Judge Hagan’s motion to dismiss, I dissent.

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