

I. BACKGROUND

{¶2} Appellant, an Ohio corporation with its principal place of business in Franklin County, Ohio, filed a complaint for breach of contract against Cavallaro, a Rhode Island resident, on November 3, 2010. Cavallaro telephoned Austin T. Miller ("Miller"), appellant's president, to purchase an antique chandelier in June 2007. The parties agreed that Cavallaro would initially pay \$18,000 and that appellant would retain possession of the chandelier until Cavallaro paid the balance of the \$28,000 purchase price. Appellant alleges that Cavallaro failed to pay the \$10,000 balance, despite appellant's demands for payment and notification that, if Cavallaro failed to pay, appellant would sell the chandelier to another buyer. Appellant sold the chandelier at auction for \$5,115 and, in its complaint, demanded judgment against Cavallaro in the amount of \$4,885.

{¶3} Cavallaro moved the trial court to dismiss this action for lack of personal jurisdiction, pursuant to Civ.R. 12(B)(2), and he submitted an affidavit in support of his motion and a supplementary affidavit with his reply memorandum. Cavallaro claims that he has never entered the state of Ohio, has never owned property in Ohio, and has never solicited, transacted or otherwise done business in Ohio. Cavallaro's affidavits present the following facts. Appellant listed the subject chandelier for sale in a catalog that Cavallaro received, unsolicited, in June 2007. Cavallaro contacted Miller by telephone, negotiated to purchase the chandelier, and mailed appellant a check for \$18,000. Cavallaro contacted Miller in August 2010 and requested to reduce the balance due to \$5,000. Miller did not disclose that he had sold the chandelier at

auction, and Cavallaro mailed appellant a \$5,000 check. When Miller did not ship the chandelier and did not return phone messages, Cavallaro stopped payment on the check and reported a theft of \$18,000 by Miller to the Columbus Police Department. Cavallaro claims that all contacts between the parties with respect to this transaction were conducted by telephone and/or U.S. mail only.

{¶4} In opposition to Cavallaro's motion, appellant submitted an affidavit from Miller, who stated that appellant mails catalogs only to prior customers and to others who request them, and that Cavallaro was on appellant's mailing list based on a previous purchase. Miller states that he agreed to the payment terms stated in Cavallaro's affidavit based on the parties' previous transaction. Miller states that Cavallaro telephoned him several months after sending the initial payment to indicate that he needed additional time to pay the balance and that he did not hear from Cavallaro again until August 2010, when Cavallaro telephoned and asked to settle the balance for \$5,000. Miller sold the chandelier at auction in August 2009, but contends that he did not recall the sale in August 2010 when he spoke with Cavallaro. Miller states that Cavallaro's \$5,000 check was returned for insufficient funds when he attempted to cash it.

{¶5} On April 21, 2011, without a decision, the trial court granted Cavallaro's motion and dismissed appellant's action.

II. ASSIGNMENT OF ERROR

{¶6} Appellant filed a timely notice of appeal and now asserts the following assignment of error:

THE TRIAL COURT ERRED IN GRANTING [CAVALLARO'S] MOTION TO DISMISS FOR LACK OF IN PERSONAM JURISDICTION WHERE [APPELLANT] ESTABLISHED [CAVALLARO] TRANSACTED BUSINESS IN OHIO AND JURISDICTION COMPORTED WITH DUE PROCESS.

III. DISCUSSION

{¶7} When a defendant moves to dismiss a case for lack of personal jurisdiction, the plaintiff must establish that the trial court has personal jurisdiction over the defendant. *Joffe v. Cable Tech, Inc.*, 163 Ohio App.3d 479, 2005-Ohio-4930, ¶10, citing *Robinson v. Koch Refining Co.* (June 17, 1999), 10th Dist. No. 98AP-900, and *Giachetti v. Holmes* (1984), 14 Ohio App.3d 306, 307. Where, as here, the trial court determines personal jurisdiction without an evidentiary hearing, the plaintiff need only establish a prima facie showing of personal jurisdiction, which requires sufficient evidence to allow reasonable minds to conclude that the trial court has personal jurisdiction. *Robinson; Giachetti* at 307. The trial court "must assume the truth of the facts in the nonmoving party's affidavits and complaint for purposes of [a Civ.R. 12(B)(2)] motion to dismiss" and must resolve all reasonable competing inferences in the plaintiff's favor. *Wilkerson Shoe Co. v. Natl. Super Mkts., Inc.* (July 26, 1994), 10th Dist. No. 94APE01-116; *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 236, 1994-Ohio-229. If the plaintiff makes a prima facie showing of personal jurisdiction, the trial court may not dismiss the complaint without an evidentiary hearing. *Robinson*, citing *Giachetti* at 307. Personal jurisdiction is a question of law that an appellate court reviews de novo. *Joffe* at ¶10.

{¶8} To determine whether it has personal jurisdiction over a nonresident defendant, an Ohio court must engage in a two-step analysis. It must first consider whether Ohio's long-arm statute and the applicable civil rule confer personal jurisdiction, and, if so, it must consider whether exercising jurisdiction under the statute and rule comports with the defendant's due process rights under the Fourteenth Amendment to the United States Constitution. *Goldstein* at 235, citing *U.S. Sprint Communications Co., Ltd. Partnership v. Mr. K's Foods, Inc.*, 68 Ohio St.3d 181, 183-84, 1994-Ohio-504.

{¶9} Ohio's long-arm statute, R.C. 2307.382, and the complementary civil rule, Civ.R. 4.3, authorize an Ohio court to exercise personal jurisdiction over a nonresident defendant and authorize out-of-state service to effectuate that jurisdiction when the cause of action arises from the nonresident "[t]ransacting any business in this state." R.C. 2307.382(A)(1); Civ.R. 4.3(A)(1); *Goldstein* at 235-36. As used in R.C. 2307.382(A)(1) and Civ.R. 4.3(A)(1), "[t]ransact" means "to prosecute negotiations; to carry on business; to have dealings." *Ky. Oaks Mall Co. v. Mitchell's Formal Wear, Inc.* (1990), 53 Ohio St.3d 73, 75, quoting Black's Law Dictionary (5th ed.1979). (Emphasis omitted.) The term encompasses "the carrying on or prosecution of business negotiations but it is a broader term than the word "contract" and may involve business negotiations which have been either wholly or partly brought to a conclusion * * *." *Id.* (Emphasis omitted.) Accordingly, "[t]ransacting any business in this state" connotes a broad statement of jurisdiction. *Ky. Oaks Mall* at 75. Nevertheless, cases involving whether a nonresident defendant transacted business in Ohio are determined "on highly particularized fact situations, thus rendering any generalization

unwarranted.' " *U.S. Sprint* at 185, quoting 22 Ohio Jurisprudence 3d (1980) 430, Courts and Judges, Section 280. "With no better guideline than the bare wording of the statute to establish whether a nonresident is transacting business in Ohio, the court must * * * rely on a case-by-case determination." *U.S. Sprint* at 185.

{¶10} With respect to the second step of the court's analysis, due process requires that, to subject a nonresident defendant to a judgment in personam, the defendant must "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Internatl. Shoe Co. v. Wash., Office of Unemployment Comp. & Placement* (1945), 326 U.S. 310, 316, 66 S.Ct. 154, 158. "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla* (1958), 357 U.S. 235, 253, 78 S.Ct. 1228, 1240. This court has applied the three-part test adopted by the Sixth Circuit in *S. Machine Co., Inc. v. Mohasco Industries, Inc.* (C.A.6, 1968), 401 F.2d 374, 381, to analyze the existence of due process minimum contacts. See *KB Circuits Inc. v. BECS Technology, Inc.* (Jan. 18, 2001), 10th Dist. No. 00AP-621. First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. *Id.* Second, the cause of action must arise from the defendant's activities there. *Id.* Third, the defendant's acts or the consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction reasonable. *Id.* The mere existence of a contract involving an Ohio resident

or the making or sending of payments to Ohio may not establish the requisite minimum contacts. *Natl. City Bank v. Yevu*, 178 Ohio App.3d 382, 2008-Ohio-4715, ¶10.

{¶11} In support of his motion to dismiss, Cavallaro relied on *Culp v. Polytechnic Inst. of N.Y.* (1982), 7 Ohio App.3d 352, in which this court affirmed a dismissal for lack of personal jurisdiction. In *Culp*, the plaintiff, an Ohio resident, sued to recover the purchase price of used computer equipment that he sold to the nonresident defendants. According to the trial court, the plaintiff solicited business with the nonresident defendants; the parties negotiated the sale over the telephone; the defendants mailed a purchase order to the plaintiff in Ohio; and, the plaintiff shipped the equipment from Ohio to the defendants in New York. Without deciding whether the defendants transacted business in Ohio under the long-arm statute, this court determined that the exercise of personal jurisdiction over the defendants was not permissible under the Due Process Clause.

{¶12} In *Culp*, at 354-55, we stated that, to determine whether due process minimum contacts exist, "we must examine the quality and nature of any activity conducted by defendants in this state." Applying that standard, we stated as follows:

Defendants were essentially passive buyers; the relationship was initiated by plaintiff making a telephone solicitation from Ohio to defendants in New York. The goods purchased were not custom-manufactured to defendants' order. * * * [I]t is unlikely from defendants' conduct and their limited connection with Ohio that they reasonably should have anticipated being haled into court in Ohio. See *World-Wide Volkswagen Corp. v. Woodson* (1980), 444 U.S. 286, 100 S.Ct. 559 * * *.

Id. at 355. Therefore, this court determined that the quality and nature of the defendants' activities in Ohio were insufficient to constitute due process minimum contacts and that it would be unfair to require the defendants to defend the action in Ohio. See also *Guardian Fire Alarm Co. v. Andy Elec. Co.* (Mar. 13, 1980), 8th Dist. No. 40694 (holding that the nonresident defendant lacked sufficient minimum contacts in Ohio where the plaintiff, an Ohio corporation, solicited the defendant by phone and the parties negotiated a sale of equipment through telephone and written correspondence); *Ohio Historical Soc. v. Meininger* (June 30, 1986), 10th Dist. No. 85AP-986 (holding that the nonresident defendant had insufficient contacts with Ohio based on his purchase of historical documents from an Ohio resident, where most of the arrangements were conducted by mail and the defendant mailed the purchase price to the seller in Ohio).

{¶13} Although *Culp*, *Guardian Fire Alarm*, and *Ohio Historical Society* involved situations where an Ohio seller directly and specifically solicited the nonresident buyer, that fact is not dispositive. See *Ricker v. Fraza/Forklifts of Detroit*, 160 Ohio App.3d 634, 2005-Ohio-1945, ¶14 (stating that the question of who initiated business dealings was not determinative of the court's jurisdiction); *Military Supply, Inc. v. Reynosa Constr., Inc.* (Jan. 26, 2000), 9th Dist. No. 19326 ("This is not to imply * * * that the determination [of minimum contacts] is always dependent upon *who* initiates contact."). (Emphasis sic.) For example, in *Columbus Pipe & Equip. Co. v. Mid-West Materials, Inc.* (Nov. 17, 1977), 10th Dist. No. 77AP-401, the defendant purchased steel from the plaintiff, resold the steel to its own customer, a Michigan corporation, and had the steel

delivered to its customer in Michigan. After the defendant filed a third-party complaint against its customer, this court agreed that the defendant's nonresident customer lacked minimum contacts with Ohio, even assuming as fact the assertion that the Michigan corporation telephoned the defendant in Ohio to order the steel. Thus, this court affirmed the trial court's dismissal where the purported jurisdiction was based solely on the nonresident's purchase of goods from an Ohio resident by telephone, even assuming that the nonresident buyer initiated the sale.

{¶14} In contrast, the Sixth District Court of Appeals reversed a dismissal for lack of personal jurisdiction in *Hammill Mfg. Co. v. Quality Rubber Prods., Inc.* (1992), 82 Ohio App.3d 369, where the defendant, Quality Rubber Products, Inc. ("QRP"), a California corporation, contracted with an Ohio corporation, Hammill Manufacturing Co. ("Hammill"), for Hammill to design and build a machine for QRP. QRP initially requested that Hammill send it information in California and subsequently telephoned Hammill in Ohio to request a price quotation. After negotiations by telephone and mail, QRP sent a purchase order to Ohio, Hammill designed and built the machine in Ohio, and QRP mailed three payments to Hammill in Ohio. Because QRP was dissatisfied with the machine, the parties engaged in additional negotiations by telephone and mail, and QRP returned the machine to Hammill for modifications. QRP representatives traveled to Ohio on at least two occasions. After Hammill returned the machine to QRP in California, QRP sent Hammill a notice of rescission. The Sixth District Court of Appeals held that QRP purposefully established minimum contacts with Ohio where it initiated the contract, negotiated with an Ohio corporation, agreed to the contract terms,

mailed a purchase order to Ohio for Hammill to produce a machine in Ohio, obligated itself to make payments to Ohio, and sent representatives to Ohio to examine the machine.

{¶15} Unlike this case, the parties' relationship in *Hammill* involved more than a simple consumer sale. The contract, between two corporate parties, required Hammill to design and build a machine in Ohio and deliver it to California. As the court noted, the contract created duties and obligations for the life of the contract. In addition to its payments to Hammill in Ohio, QRP returned the machine to Ohio, required Hammill to make modifications to the machine in Ohio, and sent representatives to Ohio to approve the modifications. While the court concluded, based on all of these factors, that QRP created continuing obligations between itself and Ohio residents and manifestly availed itself of the privilege of conducting business in Ohio, *Hammill* is unpersuasive in light of the different facts in this case.

{¶16} Several federal courts have declined to find that a defendant's mere purchase of goods from another state creates minimum contacts with that state for purposes of personal jurisdiction and have distinguished situations where the nonresident defendant is a buyer, as opposed to a seller. The mere existence of a contract between the defendant and a forum resident does not provide the requisite contacts and "use of interstate facilities (telephone, the mail), the making of payments in the forum state, and the provision for delivery within the forum state are secondary or ancillary factors and cannot alone provide the 'minimum contacts' required by due process." *Scullin Steel Co. v. Natl. Ry. Utilization Corp.* (C.A.8, 1982), 676 F.2d 309,

313-14. The Eleventh Circuit has recognized that a "one-time purchaser of goods from a seller in the forum state cannot be constitutionally subject to the exercise of personal jurisdiction by the courts of the forum state." *Borg-Warner Acceptance Corp. v. Lovett & Tharpe, Inc.* (C.A.11, 1986), 786 F.2d 1055, 1059, citing *Owen of Ga., Inc. v. Blitman* (C.A.5, 1972), 462 F.2d 603. The Seventh Circuit has similarly recognized that "the purchase of goods * * * from the forum state alone is an insufficient foundation upon which to assert personal jurisdiction." *Federated Rural Elec. Ins. Corp. v. Inland Power & Light Co.* (C.A.7, 1994), 18 F.3d 389, 395. Further, "a person would not 'reasonably anticipate being haled into court' simply by buying a product made in a particular state. If the rule were otherwise, a person could be sued in a different state every time she made a purchase." *Genetic Technologies Ltd. v. Interleukin Genetics Inc.* (Aug. 9, 2010), W.D.Wis. No. 10-cv-69-bbc; see also *Borg-Warner* at 1059, quoting *Scullin* at 314.

{¶17} In support of its argument that Cavallaro is subject to personal jurisdiction in Ohio, appellant relies on *Barnabas Consulting Ltd. v. Riverside Health Sys., Inc.*, 10th Dist. No. 07AP-1014, 2008-Ohio-3287, in which this court reversed a dismissal for lack of personal jurisdiction. In *Barnabas*, the nonresident defendant initiated the parties' business relationship when it contacted the Ohio plaintiff by telephone to express interest in retaining the plaintiff's consulting services. The parties negotiated a contract by telephone and email, and the plaintiff began work under the contract in Ohio. The plaintiff's owner and agents communicated with the defendant's representative via email and telephone on a weekly, and sometimes daily, basis. This court noted that a foreign

corporation's initiation of business dealings with an Ohio corporation is a factor for courts to assess in determining whether the foreign corporation was transacting business in Ohio, along with where the parties undertook communications and whether the foreign corporation submitted payments to an Ohio plaintiff.

{¶18} In *Barnabas*, this court determined that the plaintiff made a prima facie showing of personal jurisdiction under the long-arm statute and Civ.R. 4.3(A) and that reasonable minds could conclude that jurisdiction was proper under the Due Process Clause. We stated that the defendant initiated the parties' relationship by telephoning the plaintiff in Ohio and negotiated and agreed to the consulting contract for work to be completed by the plaintiff, mainly in Ohio. In its entirety, the parties' agreement would have required 13 to 19 months to perform. We noted the parties' numerous and lengthy telephone and email communications during the plaintiffs' work under the contract and the defendant's mailing of contractual payments to the plaintiff in Ohio. Although we agreed that the parties' email and telephone communications, standing alone, could not justify Ohio's jurisdiction over the defendant, we stated that, viewing those communications, in conjunction with the other factors, reasonable minds could conclude that the defendant purposefully directed its activities at Ohio residents and purposefully availed itself of the privilege of acting in Ohio. We nevertheless recognized that a single, isolated act is generally insufficient to establish the requisite minimum contacts. There, however, we stated that the parties' business relationship was more significant than a single contract for the sale of goods.

{¶19} Upon review, we conclude that *Barnabas* is distinguishable from this case and does not support a finding that Cavallaro maintained minimum contacts with the state of Ohio. The parties' relationship in *Barnabas* stemmed from a service contract, under which the plaintiff agreed to perform consulting services in Ohio for a lengthy period of time. Here, in contrast, the parties contracted for a single consumer purchase. We reject appellant's attempt to distinguish the parties' transaction from a single, consumer transaction based on the agreed-upon payment terms or Cavallaro's previous purchase from appellant. The parties' agreement that Cavallaro could pay the single purchase price for the chandelier in installments does not alter the isolated nature of the parties' consumer sale. Unlike the contract in *Barnabas*, the contract here did not impose ongoing obligations to be performed in Ohio, and the parties' telephone and mail correspondence did not, alone, provide the requisite minimum contacts for the trial court to exercise jurisdiction over Cavallaro. Neither does Cavallaro's one previous purchase from appellant demonstrate the existence of minimum contacts where the two transactions with appellant were isolated, independent sales and not part of an ongoing business relationship. See *Ricker* at ¶18 (considering the parties' continuous business relationship over a significant period of time as supporting a finding of minimum contacts); *Fritz-Rumer-Cooke Co., Inc. v. Todd & Sargent* (Feb. 8, 2001), 10th Dist. No. 00AP-817 (noting the lack of evidence of a continuing business relationship beyond the subject contract).

{¶20} As additional support for its argument that minimum contacts exist, appellant argues that Cavallaro's report of theft to the Columbus Police Department

demonstrates his understanding that the sales transaction fell under the jurisdiction of Ohio courts and that Cavallaro should have reasonably anticipated being haled into court in Ohio for breach of the parties' contract. We disagree. Ohio jurisdiction over appellant, an Ohio resident, for alleged criminal activity is irrelevant to the civil jurisdiction of Ohio courts over Cavallaro, a nonresident defendant, for breach of contract even if the alleged criminal activity and the alleged breach of contract arise out of the same contractual relationship.

{¶21} This case is most similar to those cases involving a nonresident's isolated purchase of goods from a seller in the forum state. It is undisputed that Cavallaro has not entered the state of Ohio and owns no property in this state. The evidence demonstrates that Cavallaro's only contacts with Ohio involve his two sales transactions with appellant. Neither the mere existence of Cavallaro's contract with an Ohio corporation nor Cavallaro's making of payments to an Ohio corporation establish the requisite minimum contacts for the exercise of jurisdiction by the Ohio courts. See *Yevu*. As in *Columbus Pipe*, even assuming that Cavallaro initiated the parties' relationship with respect to the chandelier by telephoning Miller, as opposed to appellant soliciting the sale by mailing Cavallaro a catalog, the evidence does not establish facts from which reasonable minds could conclude that Cavallaro purposefully availed himself of the privilege of doing business in Ohio. Therefore, we agree with the trial court that Cavallaro had insufficient contacts with Ohio to justify the exercise of personal jurisdiction. As in *Culp*, even assuming that Cavallaro could be said to have

been transacting business in this state, the exercise of jurisdiction over Cavallaro was not permissible under the Due Process Clause, based on his lack of minimum contacts.

IV. CONCLUSION

{¶22} For these reasons, we conclude that the trial court did not err by dismissing appellant's complaint. Therefore, we overrule appellant's single assignment of error and affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BRYANT, P.J., and CONNOR, J., concur.
