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## NJ Appellate Division Holds That Residency of Party Making First Contact in Long-Term Business Relationship Is Not “Jurisdictionally Dispositive”

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Personal jurisdiction over an out-of-state defendant cannot be based on the unilateral acts of an in-state plaintiff. Instead, a New Jersey court may assert jurisdiction over a defendant only if that defendant “[reached out](#)” to New Jersey in some meaningful way. Consequently, when an out-of-state defendant is sued by an in-state plaintiff alleging a breach of contract, the court will often look to see which party initiated the contractual relationship when deciding whether it has jurisdiction over the defendant.

In a recent published opinion, however, the New Jersey Appellate Division clarified that, depending on the particular facts of a matter, jurisdiction may be asserted over an out-of-state defendant even when an in-state plaintiff initiated the relationship.

In [Allure Pet Products, LLC v. Donnelly Marketing & Development LLC](#), the plaintiff, a New Jersey-based supplier of pet products, telephoned the defendant, a Utah-based organizer of trade shows, in 2011 to request booth space for a biennial trade show planned for 2012. The agreement was consummated, and the plaintiff exhibited at the 2012 trade show.

In 2013, the defendant mailed to the plaintiff a “special offer” to renew its booth space for the 2014 show. The plaintiff accepted the offer and exhibited at the 2014 show. The same pattern held for the 2016 and 2018 shows: The defendant mailed a special renewal offer to the plaintiff, and the plaintiff accepted.

For the 2020 show, the defendant emailed a renewal offer to the

plaintiff. The plaintiff agreed to renew its booth for the 2020 show and paid the amount due under their agreement. The COVID-19 pandemic, however, caused the cancellation of the 2020 show. The plaintiff demanded its money back, the defendant refused, and the plaintiff sued in New Jersey Superior Court.

The defendant moved to dismiss the complaint, arguing that personal jurisdiction was lacking because the plaintiff had unilaterally initiated the relationship in 2011. The trial court disagreed and denied the motion.

On an interlocutory appeal, the Appellate Division affirmed. Recognizing that in most cases where jurisdiction exists the defendant initiated the parties' first contact, the court found that the "first contact is not always jurisdictionally dispositive" and that, through its "repetitive actions in soliciting and re-soliciting [plaintiff] to renew trade show business," the defendant had "purposefully availed" itself of the benefits of a commercial relationship with a New Jersey resident, even though the New Jersey resident initiated the parties' first transaction.

The Appellate Division also found that exercising jurisdiction over the defendant would "not offend traditional principles of fair play or substantial justice." In so finding, the court stressed that the burden on the Utah-based defendant could be diminished by seeking to conduct any depositions and the bench trial (no party requested a jury) remotely.

Two important lessons can be learned from the Allure decision:

First, if contracting parties have engaged in multiple transactions over a lengthy period, the fact that an in-state plaintiff unilaterally initiated the parties' first transaction does not necessarily mean that jurisdiction is lacking over an out-of-state defendant. The parties' behavior after the first contact must also be considered.

Second, when considering whether the exercise of jurisdiction over a remote defendant would impose a constitutionally unfair burden

on the defendant and thereby “offend traditional principles of fair play or substantial justice,” it is appropriate to consider how the use of remote communications technology may mitigate the defendant’s litigation burden. Given the ubiquitous use and acceptance of such technologies, it will be the rare case where the burden of litigating in a remote jurisdiction will justify a court’s refusal to exercise jurisdiction over a defendant who has engaged in constitutionally sufficient contacts with the forum.

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