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CLERK OF COURT
CLERMONT COUNTY, OHIO

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

**PINNACLE PRINTING EQUIPMENT, :
ET AL.**

Plaintiffs

vs.

FLEXOEXPORT, LTD, ET AL. :

Defendants

CASE NO. 2016 CVH 00858

Judge McBride

DECISION/ENTRY

Ragonesi Law Firm, Christopher Ragonesi, counsel for the plaintiffs Pinnacle Printing Equipment and James Christopher Leyes, 8226 Wooster Pike, Cincinnati, Ohio 45227

Graydon Head & Ritchey LLP, Kara A. Czanik, counsel for the defendants FlexoExport, Ltd. and David Duthrie, 7759 University Drive, Suite A, West Chester, Ohio 45069

Weltman, Weinberg & Reis Co., L.P.A., Jason A. Mosbaugh, counsel for the defendant Anchor Printing Company, 525 Vine Street, Suite 800, Cincinnati, Ohio 45202

This cause is before the court for consideration of a motion to dismiss for lack of personal jurisdiction filed by the defendants FlexoExport, Ltd. (hereinafter referred to as "FlexoExport") and David Duthrie on August 17, 2016.

The plaintiffs Pinnacle Printing Equipment (hereinafter referred to as "Pinnacle") and James Christopher Leyes filed a complaint against the defendants on June 22, 2016 setting forth nine causes of action. The causes of action alleged in the complaint against the defendants FlexoExport. and Duthrie are tortious interference, unjust enrichment, and fraud, and the plaintiffs are seeking both compensatory and punitive

damages. The plaintiffs have also alleged a cause of action for breach of the covenant of good faith and fair dealing against FlexoExport. On August 17, 2016, FlexoExport and Duthrie filed a motion to dismiss for lack of personal jurisdiction.

The court held an evidentiary hearing on the defendants' motion to dismiss for lack of personal jurisdiction on November 10, 2016. The plaintiffs filed their post-hearing brief in opposition to the defendants' motion to dismiss on January 3, 2017. The defendants filed their post-hearing brief in support of the motion to dismiss on January 10th, and the plaintiffs filed a response to the defendants' brief on January 13th. On January 13th, this court heard oral arguments on the motion to dismiss. At the conclusion of the oral arguments, the court took the issues raised in the motion under advisement.

Upon consideration of the motion, the record of the proceedings, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

PROCEDURAL POSTURE AND STANDARD OF REVIEW

"In order to render a valid judgment, a court must have personal jurisdiction over the defendant."¹ If the court has not acquired personal jurisdiction over the defendant, then the judgment is void.²

¹ *Nix v. Lytle*, 12th Dist. Butler No. CA2012-06-119, 2013-Ohio-331, ¶ 11, citing *Maryhew v. Yova*, 11 Ohio St.3d 154, 156 (1984). See *EnQuip Technologies Group, Inc. v. Tycon Technologies, S.R.L.*, 2d Dist. Greene Nos. 2009 CA 42, 2009 CA 47, 2010-Ohio-28, ¶ 57, citing *Maryhew*, 11 Ohio St.3d at 156 (holding same).

² *Nix*, 2013-Ohio-331 at ¶ 11, citing *Beachler v. Beachler*, 12th Dist. Preble No. CA2006-03-007, 2007-Ohio-1220, ¶ 13.

Civ.R. 12(B) provides, in pertinent part:

“Every defense, law or fact, to a claim of relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: * * * (2) lack of jurisdiction over the person.”³

The defense of lack of personal jurisdiction “usually must be raised either in the defendant’s answer or in a motion filed prior to the filing of the answer.”⁴ When an objection based on personal jurisdiction is made, “the plaintiff has the burden of establishing that the court has jurisdiction.”⁵

The court may resolve the issue of whether personal jurisdiction exists by “hear[ing] the matter on affidavits, depositions, or interrogatories, or it may hold a hearing on the issue and receive oral testimony.”⁶ If the trial court holds an evidentiary hearing, instead of deciding based on the complaint and record alone, the plaintiff is required to demonstrate personal jurisdiction by a preponderance of the evidence.⁷

FACTS OF THE CASE

³ Civ.R. 12(B)(2).

⁴ *Beacher*, 2007-Ohio-1220 at ¶ 17, citing *Franklin v. Franklin*, 5 Ohio App.3d 74, 75-76 (7th Dist. 1981).

⁵ *Beachler*, 2007-Ohio-1220 at ¶ 14. See *Simmons v. Budde*, 38 N.E.3d 960, 2015-Ohio-3780, ¶ 7 (10th Dist.), citing *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St.3d 81, 2010-Ohio-2551, 930 N.E.2d 785, ¶ 27 (“Upon a defendant’s motion to dismiss, the plaintiff bears the burden of establishing that the trial court has personal jurisdiction over the defendant.”).

⁶ *Beachler*, 2007-Ohio-1220 at ¶ 15, citing *Jurko v. Jobs Europe Agency*, 43 Ohio App.2d 79, 85 (8th Dist. 1975).

⁷ *Dahlhausen v. Aldred*, 187 Ohio App.3d 536, 2010-Ohio-2172, 932 N.E.2d 949, ¶ 21 (12th Dist.) See *American Office Services, Inc. v. Sircal Contracting, Inc.*, 8th Dist. Cuyahoga No. 82977, 2003-Ohio-6042, ¶ 7, citing *Giachetti v. Holmes*, 14 Ohio App.3d 306, 307, 471 N.E.2d 165 (8th Dist. 1984) (explaining that “a decision made following an evidentiary hearing requires proof by a preponderance of the evidence.”).

Based upon the evidence that was presented during the evidentiary hearing, and for purposes of consideration only of the defendants' motion, the court makes the following findings of fact:

The present case stems from a dispute over a lost sale of printing presses, and consequently a lost sales commission fee. The plaintiff Pinnacle Printing Equipment (hereinafter referred to as "Pinnacle") is an Ohio sole proprietorship with its principal place of business in Ohio.⁸ The plaintiff James Christopher Leyes owns Pinnacle and is a resident of Clermont County, Ohio.⁹

The defendant David Duthrie is a Connecticut resident and is employed by the defendant FlexoExport in Connecticut.¹⁰ FlexoExport is a Connecticut corporation with its principal place of business in Old Saybrook, Connecticut.¹¹ The defendant Anchor Printing Company (hereinafter referred to as "Anchor"), which is not a party to this motion, is a Michigan corporation with its principal place of business in Novi, Michigan.¹²

Pinnacle is a broker of aquaflex printing presses, and Anchor is a printing company. In January 2015, Anchor agreed to have Pinnacle and Leyes broker the sale of two of its aquaflex presses.

FlexoExport is a broker of used flexographic presses and flexographic printing equipment.¹³ Duthrie is the Vice President of Sales at FlexoExport¹⁴ and brokers sales for buyers and sellers of flexographic printing presses.

⁸ Compl., ¶ 1.

⁹ Compl., ¶¶ 2.

¹⁰ Aff. of D. Duthrie, ¶ 2.

¹¹ Aff. of S. Beaudoin, ¶ 5.

¹² Compl., ¶ 3.

¹³ Aff. of S. Beaudoin, ¶ 4.

¹⁴ Compl., ¶ 8.

The parties agree that Leyes initially contacted FlexoExport and Duthrie in 2015 about selling Anchor's aquaflex printing presses to potential clients of FlexoExport.¹⁵ Leyes and Duthrie negotiated with one another for approximately a month, and during that time, Duthrie brought Leyes an offer from a client. However, when Leyes presented that offer to Anchor, Anchor instructed Leyes to discontinue the search for a buyer for the time being as it was still using the aquaflex presses.

Then, in the fall of 2015, Anchor instructed Leyes to begin his search for a buyer again. In November 2015, Leyes began marketing the presses to multiple potential buyers, including Duthrie and FlexoExport. Duthrie informed Leyes that FlexoExport had a purchaser for the aquaflex printing presses. Duthrie and Leyes negotiated this prospective sale via a number of phone calls, emails, and text messages. During these negotiations, Leyes was in Ohio.

At some point in the negotiations, Duthrie stopped negotiations and informed Leyes that FlexoExport's client would not purchase the presses. A few days later, Duthrie re-initiated contact with Leyes by email and phone calls in order to reopen negotiations for the printing presses. The negotiations proceeded by having Duthrie send Leyes offers in Ohio from FlexoExport's client, The Little Great Box Company. Leyes would then present those offers to his client Anchor in Michigan.

Duthrie did not know the name of Leyes' and Pinnacle's client. Duthrie wanted to know the name of the client and repeatedly asked Leyes for it. Leyes told Duthrie he did not want to tell him because he did not trust him. Duthrie responded by promising that he would not contact Pinnacle's client if Leyes disclosed the client's name. Duthrie gave multiple assurances that he would not engage in such contact. Thereafter, Leyes

¹⁵ Aff. of D. Duthrie, ¶ 8.

disclosed the name of its client Anchor to Duthrie in an email that he carbon copied to Duthrie.

The negotiations slowed and stopped shortly after Leyes disclosed that his client was Anchor. Duthrie then directly contacted Anchor and purchased the presses on behalf of FlexoExport for its client. As a result, Leyes and Pinnacle did not receive any commission, as previously agreed upon with Anchor, for the sale.

After the sale, Leyes contacted Duthrie and continued to have some email communications regarding Duthrie's decision to work directly with Anchor, at which time Duthrie acknowledged that he made the sale with Anchor directly. Duthrie relayed that Anchor would still pay Leyes' commission; however, Leyes alleges that he did not receive payment.

FlexoExport does not maintain an Ohio office and does not have employees or representatives in Ohio.¹⁶ However, FlexoExport has "occasionally" sent agents to Ohio in the last three years.¹⁷ FlexoExport maintains that the agents who went to Ohio did so at the customers' request and only did so to inspect equipment.¹⁸ In the past three years, FlexoExport claims that less than two percent of its sales have been related to Ohio.¹⁹ FlexoExport alleges that all of the business it has transacted in Ohio has been fortuitous and not the result of marketing targeting Ohio.²⁰

Generally, Duthrie conducts business on behalf of FlexoExport from Connecticut or from the location of customers.²¹ Duthrie does not own any property in Ohio and

¹⁶ Aff. of S. Beaudoin, ¶ 6.

¹⁷ Aff. of S. Beaudoin, ¶ 6.

¹⁸ Aff. of S. Beaudoin, ¶ 6.

¹⁹ Aff. of S. Beaudoin, ¶ 7.

²⁰ Aff. of S. Beaudoin, ¶ 3.

²¹ Aff. of D. Duthrie, ¶ 5.

does not insure any person, property, or risk in Ohio.²² Like FlexoExport's other agents, Duthrie has "occasionally been contracted by owners of equipment in Ohio," who hire his services at FlexoExport to market their equipment for sale.²³ However, Duthrie did not travel to Ohio for the sale of Anchor's equipment.²⁴

In the last three years, Duthrie claims he has been to Ohio twice, at the request of a seller.²⁵ However, during the evidentiary hearing it was established that Duthrie also went to Ohio in 2015 at the request of a buyer. He made four Ohio related sales over the last three years, and his remaining 293 sales were made elsewhere.²⁶

FlexoExport has 30 contacts in Ohio that it maintains on its mailing list for email marketing.²⁷ Leyes knew of FlexoExport and Duthrie from prior business dealings in 2011. He further knew of FlexoExport from the hundreds of marketing emails that FlexoExport sends him. Leyes estimates that he receives marketing emails from FlexoExport five to six times per week. Additionally, FlexoExport sends mail advertisements to Leyes in Ohio.

LEGAL ANALYSIS

The legal analysis contained herein, and the conclusions reached by the court, are based on the findings of fact as determined by the court based upon the preponderance of the evidence.

²² Aff. of D. Duthrie, ¶ 3.

²³ Aff. of D. Duthrie, ¶ 5.

²⁴ Aff. of D. Duthrie, ¶ 8.

²⁵ Aff. of D. Duthrie, ¶ 6.

²⁶ Aff. of D. Duthrie, ¶ 7.

²⁷ Aff. of S. Beaudoin, ¶ 5.

In Ohio, to determine whether a trial court has personal jurisdiction over a nonresident defendant, the trial court must determine “(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.”²⁸ Thus, even if the Ohio long-arm statute confers jurisdiction over a nonresident defendant, “an Ohio court cannot exercise personal jurisdiction over [the defendant] if doing so would violate [the defendant’s] right to due process.”²⁹

I. LONG-ARM STATUTE

Ohio’s long-arm statute is R.C. 2307.382, which outlines specific activities by which a nonresident defendant comes within an Ohio court’s personal jurisdiction.³⁰

R.C. 2307.382 provides, in pertinent part:

“(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person’s:

(1) Transacting any business in this state;

* * *

(3) Causing tortious injury by an act or omission in this state;

²⁸ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 28, citing *U.S. Sprint Communications Co. Ltd. Partnership v. Mr. K’s Foods, Inc.*, 68 Ohio St.3d 181, 183-184, 624 N.E.2d 1048 (1994). See *Clark v. Connor*, 82 Ohio St.3d 309, 312, 695 N.E.2d 751 (1998), citing *U.S. Sprint Communications Co. Ltd. Partnership*, 68 Ohio St.3d at 183-184 (holding same).

²⁹ *Maui Toys v. Brown*, 2014 IER Cases 150, 215, 2014-Ohio-583, ¶ 55 (7th Dist.), citing *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 45.

³⁰ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 29.

(4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

* * *

(6) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state * * *.³¹

Civ.R. 4.3 permits service of process on nonresidents in specific circumstances and mirrors the long-arm statute.³² Civ.R. 4.3 provides, in relevant part:

"Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. 'Person' includes an individual, an individual's executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who, acting directly or by an agent, has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's:

(1) Transacting any business in this state;

* * *

(3) Causing tortious injury by an act or omission in this state, including, but not limited to, actions arising out of the ownership, operation, or use of a motor vehicle or aircraft in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if the person regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

³¹ R.C. 2307.382.

³² *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 35.

* * *

(9) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when the person to be served might reasonably have expected that some person would be injured by the act in this state * * * .³³

Taken together, R.C. 2307.382(A)(1) and Civ.R. 4.3(A)(1) enable a court to exercise personal jurisdiction over a nonresident defendant and provide for service of process to effectuate that jurisdiction if the cause of action arises from the nonresident defendant's "[t]ransacting any business in this state."³⁴ "The phrase 'transacting any business' is broad and encompasses more than 'contract.'³⁵ This phrase also includes "to carry on business" and "to have dealings."³⁶ Furthermore, transacting business " * * * may involve business negotiations which have been either wholly or partly brought to a conclusion."³⁷

Due to this broad definition, personal jurisdiction under the long-arm statute does not necessarily require the defendant's physical presence in Ohio.³⁸ "The transacting business clause of R.C. 2307.382 and Civ.R. 4.3 was meant to extend personal jurisdiction of Ohio courts to the federal constitutional limits of due process."³⁹

³³ Civ.R. 4.3.

³⁴ *Clark*, 82 Ohio St.3d at 312.

³⁵ *Id.*, quoting *Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.*, 53 Ohio St.3d 73, 75, 559 N.E.2d 447 (1990).

³⁶ *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 236, 638 N.E.2d 541 (1994), quoting *Kentucky Oaks Mall Co.*, 53 Ohio St.3d at 75.

³⁷ (Emphasis omitted.) *Kentucky Oaks Mall Co.*, 53 Ohio St.3d at 75, quoting Black's Law Dictionary (5 Ed.1979) 1341.

³⁸ *Goldstein*, 70 Ohio St.3d at 236, citing *Kentucky Oaks Mall*, 53 Ohio St.3d 73.

³⁹ *Escada Internatl., Inc. v. Eurocargo Express*, 8th Dist. Cuyahoga No. 89761, 2002-Ohio-4035, ¶ 49. See *Cincinnati Art Galleries v. Fatzie*, 70 Ohio App.3d 696, 699, 591 N.E.2d 1336 (1st Dist. 1990), citing *Creech v. Roberts*, 908 F.2d 75 (6th Cir. 1990) (noting " * * * the settled

Moreover, because of the large breadth of the phrase “transacting any business,” “questions concerning the applicability of R.C. 2307.382(A)(1) and Civ.R. 4.3(A)(1) have been resolved on ‘highly particularized fact situations, thus rendering any generalization unwarranted.’”⁴⁰

One “often significant factor” courts weigh in determining whether the nonresident defendant transacted business in Ohio is whether the defendant initiated business contact.⁴¹ Other factors Ohio courts weigh include whether the nonresident participated in business negotiations, ordered work to be performed in Ohio, remitted payments to or owed other obligations to Ohio,⁴² and where the parties conducted their negotiations or discussions.⁴³

A final important factor regarding whether a nonresident transacted business in Ohio is whether the defendant “corresponded regularly with an Ohio company and regularly emailed and called plaintiffs in Ohio.”⁴⁴ On the other hand, the “mere solicitation of a business by a nonresident defendant does not constitute transacting

proposition of Ohio law that R.C. 2307.382(A)(1) was intended to extend jurisdiction to the constitutional limits.”)

⁴⁰ *Clark*, 82 Ohio St.3d at 312-313, quoting *U.S. Sprint Communications Co. Ltd. Partnership*, 68 Ohio St.3d at 185. See *Goldstein*, 70 Ohio St.3d at 236, quoting *U.S. Sprint Communications Co. Ltd. Partnership*, 68 Ohio st.3d at 185.

⁴¹ *Booth v. Watershed Wellness Ctr.*, 12th Dist. Butler No. CA2013-04-065, 2013-Ohio-5272, ¶ 12, citing *Am. Office Services, Inc.*, 2003-Ohio-6042 at ¶ 12. See *Am. Office Services, Inc.*, 2003-Ohio-6042 at ¶ 12 (explaining that the nonresident defendant had not transacted business in Ohio where it had been solicited by the Ohio resident).

⁴² (Citations omitted.) *N. Am. Software, Inc. v. James I. Black & Co.*, 1st Dist. Hamilton No. C-100696, 2011-Ohio-3376, ¶ 15.

⁴³ *Specialized Machinery Hauling and Rigging, LLC v. D & L Transport, LLC.*, S.D. Ohio No. 3:08-cv-445, 2009-WL-1045908, *6 (Apr. 20, 2009), citing *Shaker Construction Group, LLC v. Schilling*, S.D. Ohio No. 1:08cv278, 2008 WL 4346777 (Sept. 18, 2008).

⁴⁴ *Kendle v. Whig Enterprises, LLC*, S.D. Ohio No. 2:15-cv-1295, 2016 WL 6551680, *5 (Sep. 30, 2016), quoting *MedChoice Fin., LLC v. ADS All. Data Sys., Inc.*, S.D. Ohio No. 2:11-cv-212, 2012 WL 995309, *6 (Mar. 22, 2012). See *Redhawk Global, LLC v. World Projects Intern.*, S.D. Ohio No. 2:11-cv-666, 2012 WL 6032951, *6 (Dec. 4, 2012) (finding R.C. 2308.382(A)(1) met where the defendants conducted phone calls and other correspondence with the plaintiff, which they knew was in Ohio).

business in Ohio.”⁴⁵ Further, “the mere fact that parties engage in various communications incident to their transaction” does not, in and of itself, constitute transacting business in Ohio.⁴⁶

The Ohio Supreme Court found that R.C. 2307.382(A)(1) was satisfied although a nonresident defendant did not maintain a physical presence in Ohio in the seminal case of *Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.*, 53 Ohio St.3d 73, 559 N.E.2d 477 (1990). In that case, a nonresident defendant, a Georgia corporation, negotiated a commercial lease for Kentucky property with an Ohio-based company.⁴⁷ When examining the defendant's contacts with Ohio, the court cited the following facts: the lease was negotiated via telephone with an Ohio company, the defendant entered into a 10-year contract that was mailed to Ohio, and the contract created ongoing duties and obligations.⁴⁸ Upon examining the definition of “transacting business,” described above, the Court held that the defendant's conduct fell within the ambit of R.C. 2307.382(A)(1) and Civ.R. 4.3(A)(1).

In relying on the definition of “transacting business” developed in *Kentucky Oaks Mall Co.*, the Eighth District Court of Appeals found that the Ohio long-arm statute was met in *National Court Reporters, Inc. v. Rebecca N. Strandberg & Associates*, 8th Dist. Cuyahoga No. 92035, 2009-Ohio-2271. In that case, the plaintiff contracted with the defendant, a Maryland corporation, to perform court reporting litigation services.⁴⁹

⁴⁵ *Dahlhausen*, 2010-Ohio-2172 at ¶ 27, citing *U.S. Sprint Communications Co. Ltd. Partnership*, 68 Ohio st.3d at 185.

⁴⁶ *Dahlhausen*, 2010-Ohio-2172 at ¶ 27, citing *Bulford v. Von Wilhendorf, L.L.C.*, 12th Dist. Warren No. CA2006-02-022, 2007-Ohio-347, ¶ 14.

⁴⁷ *Kentucky Oaks Mall Co.*, 53 Ohio St.3d at 74-76.

⁴⁸ *Id.* at 76.

⁴⁹ *Natl. Court Reporters, Inc. v. Rebecca N. Strandberg & Assoc.*, 8th Dist. Cuyahoga No. 92035, 2009-Ohio-2271, ¶ 1.

Although the nonresident defendant claimed it did not know it was engaging in business with an Ohio company, the court found that the defendant had transacted business in Ohio because the parties had negotiated the services, entered into a contract, memorialized the contract with faxes and phone calls, and the defendant sent payment to the plaintiff.⁵⁰ The court reflected that “[t]hese were not one-time events, but part of a month-long course of dealing * * *,” and as such the parties were transacting business within the meaning of R.C. 2307.382(A)(1).

By contrast, in *Bulford v. Von Wilhendorf, L.L.C.*, 12th Dist. Warren No. CA2006-02-022, 2007-Ohio-347, the Twelfth District Court of Appeals found that R.C. 2307.382 did not extend personal jurisdiction over the defendant.⁵¹ In *Bulford*, an Ohio resident contracted to purchase three dogs from a Connecticut corporation and sued the company when he received dogs that each had health problems.⁵² The parties negotiated the purchases via numerous telephone calls and emails and the contracts were executed and sent via fax.⁵³ The Twelfth District Court of Appeals highlighted that these were isolated sales that did not create an ongoing business relationship with the Ohio resident.⁵⁴ The court also noted that the defendant had not sold any other dogs in Ohio, did not solicit business in Ohio, and neither owned property nor maintained a statutory agent in Ohio.⁵⁵ As such, the court concluded that the trial court lacked personal jurisdiction under the long-arm statute, R.C. 2307.382(A)(1), for transacting business.

⁵⁰ Id. at ¶ 8.

⁵¹ *Bulford*, 2007-Ohio-347 at ¶ 14.

⁵² Id. at ¶¶ 3-4.

⁵³ Id. at ¶ 3.

⁵⁴ Id. at ¶ 13.

⁵⁵ Id. at ¶ 14.

Likewise, in *North American Software, Inc. v. James I. Black & Co.*, 1st Dist. Hamilton No. C-100696, 2011-Ohio-3376, the court held that the defendant had not transacted business in Ohio under R.C. 2307.382(A)(1).⁵⁶ The court highlighted that the plaintiff had solicited contact with the defendant, and the plaintiff provided no evidence that the defendant had actively negotiated the terms of the agreement.⁵⁷ Although numerous emails had passed between the parties, it was unclear what the nature of the emails were.⁵⁸ As such, the court ultimately concluded that the defendant did not have a "substantial enough connection with Ohio" to demonstrate that the defendant transacted business in Ohio.⁵⁹

In turning to the case at bar, it is a close case as to whether FlexoExport and Duthrie transacted business in Ohio. The court ultimately finds that the defendants' conduct falls within the large breadth of "transacting business," thus conferring jurisdiction under the Ohio long-arm statute. The phrase transacting business includes not only contracting business, but also "to carry on business" and "to have dealings."⁶⁰ To examine Duthrie first, he has completed four Ohio related sales in the last three years. In that same time period he also visited Ohio three times on business related matters, while representing either buyers or sellers of printing presses.

However, as discussed, which party initiated the business dealings is a factor considered in whether the defendant transacted business.⁶¹ Leyes initially contacted Duthrie regarding the two printing presses. However, contravening the strength of this

⁵⁶ *N. Am. Software, Inc.*, 2011-Ohio-3376 at ¶ 16.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Kentucky Oaks Mall Co.*, 53 Ohio St.3d at 75.

⁶¹ *Booth*, 2013-Ohio-5272 at ¶ 12, citing *Am. Office Services, Inc.*, 2003-Ohio-6042 at ¶ 12.

factor is the fact that after Duthrie ended negotiations regarding the printing presses, he later contacted Leyes to begin negotiations anew.

Another factor weighing against finding that Duthrie transacted business in Ohio is that he never reached the point of entering into a contract with Leyes.⁶² On the other hand, transacting business “* * * may involve business negotiations which have been either wholly or partly brought to a conclusion.”⁶³ Courts consider whether the defendant entered into business negotiations with the plaintiff⁶⁴ and where the parties conducted their negotiations or discussions.⁶⁵ Duthrie engaged in considerable negotiations with Leyes and Pinnacle for approximately a month during summer 2015, and then again during November of that year, during which they called, emailed, and texted each other regarding the prospective sale. During this time, Leyes was always negotiating from Ohio.

Given the totality of the circumstances, Duthrie was transacting business in Ohio. He has travelled to Ohio for business deals, he has made Ohio related sales, and, specific to this case, he engaged in prolonged business negotiations with an Ohio business.

With respect to FlexoExport, the circumstances evidencing that it conducted business in Ohio is stronger than with Duthrie. All of the contacts Duthrie has had with Ohio, as described above, have been as an agent of FlexoExport and are therefore attributable to FlexoExport as well. Admittedly, FlexoExport “occasionally” sends

⁶² (Citations omitted.) *N. Am. Software, Inc.*, 2011-Ohio-3376 at ¶ 15.

⁶³ (Emphasis omitted.) *Kentucky Oaks Mall Co.*, 53 Ohio St.3d at 75, quoting Black’s Law Dictionary (5 Ed.1979) 1341.

⁶⁴ (Citations omitted.) *N. Am. Software, Inc.*, 2011-Ohio-3376 at ¶ 15.

⁶⁵ *Specialized Machinery Hauling and Rigging, LLC*, 2009-WL-1045908 at *6, citing *Shaker Construction Group, LLC*, 2008 WL 4346777.

agents to Ohio to conduct business and it derives a small portion of its sales from Ohio, less than two percent. FlexoExport also includes 30 Ohio businesses in its email marketing.

Most significantly, FlexoExport consistently inundates the plaintiff Leyes, and thereby Pinnacle, with marketing emails and mail in Ohio. As mentioned, a significant factor in determining whether a nonresident transacted business in Ohio is whether the defendant “corresponded regularly with an Ohio company” and regularly emailed the plaintiffs in Ohio.⁶⁶ Leyes submitted evidence of the numerous emails he regularly receives, as well as an example of a mailing. He also testified that FlexoExport contacts him via email five to six days per week with marketing solicitations, and he did not request to receive their email or mail marketing. Viewing the evidence on the whole, the court finds that FlexoExport transacted business in Ohio within the meaning of R.C. 2307.382(1) and Civ.R. 4.3(A)(1).

Although the court finds that the Ohio long-arm statute confers personal jurisdiction over the defendants under R.C. 2307.382(A)(1), the court alternatively finds that jurisdiction is conferred under (A)(6).⁶⁷ R.C. 2307.382(A)(6) and Civ.R. 4.3(A)(9) permit a court to exercise personal jurisdiction over a nonresident defendant and provide for service of process to effectuate that jurisdiction “if the cause of action arises from a tortious act committed outside Ohio with the purpose of injuring persons, when the nonresident defendant might reasonably have expected that some person would be

⁶⁶ *Kendle*, 2016 WL 6551680 at *5, quoting *MedChoice Fin., LLC*, 2012 WL 995309 at *6.

⁶⁷ The plaintiffs also maintain that personal jurisdiction is proper under R.C. 2307.382(A)(3) and (4). Since the court has already concluded that R.C. 2307.382(A)(1) and (6) are satisfied, it will not examine bases under (A)(3) and (A)(4).

injured thereby in Ohio.”⁶⁸ “* * *Ohio state courts have determined that fraudulent communications or misrepresentations directed at Ohio residents satisfy the requirements of § 2307.382(A)(6).”⁶⁹

Courts take a “broad approach” to applying R.C. 2307.382(A)(6).⁷⁰ For instance, in *Nationwide Life and Annuity Insurance Co. v. Golden*, S.D. Ohio No. 2:12-cv-213, 2013 WL 97718 (Jan. 7, 2013), the Southern District of Ohio found that (A)(6) applied when the nonresident defendants knowingly sent false documents to Ohio in an application for life insurance and the defendants reasonably expected that the Ohio plaintiff would have been injured in Ohio.⁷¹

In the instant case, the plaintiffs claim that Duthrie and FlexoExport committed fraud. Specifically, the plaintiffs claim that Duthrie induced Leyes to provide the identity of Leyes’ client on the promise that Duthrie would not contact the client. The plaintiffs allege that Duthrie had no intention of honoring his promise, and in fact breached it by contacting Anchor and completing the sale, thereby depriving Leyes from receiving a commission on the sale. The defendants counter that Duthrie did not reasonably expect that the plaintiffs would be injured in Ohio because Duthrie believed that Anchor would still pay Leyes his commission.

Although Duthrie told Leyes that he would still receive his commission from Anchor, the court does not find that statement to be credible. Duthrie made this statement during a conversation in which he was providing explanation to Leyes, and

⁶⁸ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 43, quoting *Clark*, 82 Ohio St.3d at 313.

⁶⁹ *Nationwide Life and Annuity Ins. Co. v. Golden*, S.D. Ohio No. 2:12-cv-213, 2013 WL 97718, *5 (Jan. 7, 2013), citing *Schneider v. Hardesty*, 669 F.3d 693, 700 (6th Cir. 2012).

⁷⁰ *Nationwide Life and Annuity Ins. Co.*, 2013 WL 97718 at *5, citing *Schneider*, 669 F.3d at 700.

⁷¹ *Nationwide Life and Annuity Ins. Co.*, 2013 WL 97718 at *5.

attempting to placate him, regarding the fact that he contacted Anchor directly and made the sale between Anchor and The Great Little Box Company without Leyes' involvement .

Duthrie's actions speak more than his statements as to what he reasonably expected would have happened to Leyes following the alleged fraud. Without telling Leyes that he was doing so, Duthrie contacted Anchor and completed the sale without Leyes' involvement. Afterwards, he did not reach out to Leyes to inform him that the sale took place and that he would still be compensated. It was only after multiple attempts to contact Duthrie that Duthrie divulged to Leyes that he contacted Anchor in contravention of his assurances and that the sale was already complete. Duthrie's behavior before, during, and after the sale indicates that he reasonably expected that Leyes would be injured by his decision to make an independent agreement with Anchor. Because Duthrie's actions, as an agent for FlexoExport, are attributable to FlexoExport, the court finds that R.C. 2307.382(A)(6) and Civ.R. 403(A)(9) confer personal jurisdiction over both defendants.⁷²

II. DUE PROCESS

⁷² Of note "[o]nce an Ohio court acquires personal jurisdiction over a nonresident defendant for claims arising in Ohio, Civ.R. 18(A) permits joinder of related claims that do not arise in Ohio, as long as granting jurisdiction for all claims does not deprive the defendant of the right to due process of law."⁷² *U.S. Sprint Communications Co. Ltd. Partnership*, 68 Ohio St.3d at the syllabus. Civ.R. 18(A) states: "A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party." Thus, "[o]nce it has been determined that the defendant is transacting business in Ohio pursuant to the 'long-arm' statute, a court may accordingly exercise personal jurisdiction *over the defendant*. The court need not exercise jurisdiction *over each claim*." (Emphasis original). *U.S. Sprint Communications Co. Ltd. Partnership*, 68 Ohio St.3d at 185. Therefore, even if R.C. 2307.382(A)(1) did not apply to confer personal jurisdiction for transacting business, because (A)(6) applies due to the claim of fraud, there is personal jurisdiction over the defendants for all of their claims.

Although the defendants may fall within Ohio's long-arm jurisdiction, "[t]he extent to which the reach of the long-arm statute is limited by due process is a question of federal law."⁷³ Under the Fourteenth Amendment, "[t]he Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'"⁷⁴ If a court enters a judgment absent due process, then that judgment is void.⁷⁵

To obtain personal jurisdiction over a nonresident defendant, the defendant must have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."⁷⁶ As long as the defendant has sufficient minimum contacts with the forum state, the defendant need not have a physical presence in the forum state.⁷⁷ If minimum contacts are established, then courts consider the contacts "in light of other facts to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'"⁷⁸

There are two types of personal jurisdiction, general or specific, and the type of jurisdiction that the forum state maintains over a nonresident depends upon "the nature

⁷³ *Joffe v. Cable Tech, Inc.*, 163 Ohio App.3d 479, 2005-Ohio-4930, 839 N.E.2d 67, ¶ 26 (10th Dist.), quoting *Scullin Steel Co. v. Natl. Ry. Utilization Corp.*, 676 F.2d 309, 311 (6th Cir. 1982).

⁷⁴ *Burger King Corp. v. Rudewicz*, 471 U.S. 462, 471-472, 105 S.Ct. 2174, 85 L.Ed. 528 (1985), citing *International Shoe Co. v. Washington*, 326 U.S. 310, 319, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

⁷⁵ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

⁷⁶ *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). See *Burger King Corp.*, 471 U.S. at 474, quoting *International Shoe Co.*, 326 U.S. at 316 (explaining that the "constitutional touchstone" of due process "remains whether the defendant purposely established 'minimum contacts' in the forum state.").

⁷⁷ *Burger King Corp.*, 471 U.S. at 476.

⁷⁸ *Id.*, quoting *International Shoe Co.*, 326 U.S. at 320.

of the contacts that the defendant has with the forum state.”⁷⁹ General jurisdiction exists when “a defendant’s contacts with the forum state are of such a continuous and systematic nature that the state may exercise personal jurisdiction over the defendant even if the action is unrelated to the defendant’s contacts with the state.”⁸⁰ “* * * Ohio does not recognize general jurisdiction over non-residents.”⁸¹ The plaintiffs do not claim that the court has general jurisdiction over FlexoExport or Duthrie, and it is clear that, as nonresidents of Ohio, the court does not have general jurisdiction.

Therefore, the court must consider whether it has specific jurisdiction over FlexoExport and Duthrie. In contrast to general jurisdiction, specific jurisdiction arises when “a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant’s contact with the forum.”⁸²

The Sixth Circuit Court of Appeals has articulated a three-part test for determining whether a court holds specific jurisdiction over a nonresident defendant:

“First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant’s activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.”⁸³

⁷⁹ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 46, citing *Conti v. Pneumatic Prods. Corp.*, 977 F.2d 978, 981 (6th Cir. 1992).

⁸⁰ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 46, citing *Bird v. Parsons*, 289 F.3d 865, 873 (6th Cir. 2002).

⁸¹ *Kendle*, 2016 WL 6551680 at *3, citing *Dayton Superior Corp. v. Yan*, 228 F.R.D. 151, 160 (S.D. Ohio 2010).

⁸² *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 414, fn. 8.

⁸³ *Bird*, 289 F.3d at 874, quoting *Southern Machine Company v. Mohasco Industries, Inc.*, 401 F.2d 374, 381 (6th Cir. 1968).

Under the first prong of the specific jurisdiction test, the nonresident defendant must have “purposely avail[ed] [himself] of the privilege of conducting activities with the forum State.”⁸⁴ A defendant has purposely availed himself when his “contacts with the forum state ‘proximately result from actions by the defendant *himself* that create a ‘substantial connection’ with the forum State.”⁸⁵ The contacts must be such that the defendant can “reasonably anticipate being haled into court” in the forum state.⁸⁶ Accordingly, in ascertaining minimum contacts “the focus is on “* * * the relationship among the defendant, the forum, and the litigation.”⁸⁷ Notably, sometimes “the plaintiff’s residence in the forum may, because of the defendant’s relationship with the plaintiff, enhance the defendant’s contacts with the forum.”⁸⁸ Indeed, in certain circumstances the plaintiff’s residence in the forum state “may be the focus of the activities of the defendant out of which the suit arises.”⁸⁹

When evaluating the contacts, courts will examine any “prior negotiations contemplated, future consequences, along with the terms of the contract and the parties’ ‘actual course of dealing’ to determine whether [the nonresident defendant] purposely established minimum contacts with the forum.”⁹⁰

⁸⁴ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 45, quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

⁸⁵ (Emphasis original.) *Burger King Corp.*, 471 U.S. at 475, quoting *McGee v. Internatl. Life Ins. Co.*, 355 U.S. 220, 223, 78 S.Ct. 199, 2 L.Ed 223 (1957).

⁸⁶ *Burger King Corp.*, 471 U.S. at 474, quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 295.

⁸⁷ *Fallang*, 40 Ohio St.3d at 107.

⁸⁸ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 51, quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S.Ct. 1473, 79 L.E.2d 790 (1984).

⁸⁹ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 51, quoting *Keeton*, 465 U.S. at 770.

⁹⁰ *Clark*, 82 Ohio St.3d at 314, quoting *Burger King Corp.*, 471 U.S. at 479.

Regarding fraud claims, even though a fraud claim sounds in tort, it may still be predicated “upon the defendant’s transaction of business within the state.”⁹¹ Furthermore, “[p]urposeful availment may exist when a defendant sends communications into the forum that ‘form the bases of the action.’”⁹²

The second prong of the specific jurisdiction test involves determining whether the plaintiff’s claims arose from the defendant’s contacts with the forum state.⁹³ An action arises from the defendant’s contacts when the contacts “are related to the operative facts of the controversy.”⁹⁴ “This ‘does not require that the cause of action formally arise from defendant’s contacts with the forum; rather this criterion requires only that the cause of action, of whatever type, *have a substantial connection with the defendant’s in-state activities.*”⁹⁵ Courts apply a lenient standard when evaluating the “arising from” requirement.⁹⁶

For the final step in the specific jurisdiction test, the defendant’s acts or consequences “must have a substantial connection to the forum state to make exercise of jurisdiction over the defendant reasonable.”⁹⁷ When the first two prongs of the

⁹¹ *Cincinnati Art Galleries*, 70 Ohio App.3d at 700, citing *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.3d 220, 229 (6th Cir. 1972).

⁹² *Nationwide Life and Annuity Ins. Co.*, 2013 WL 97718 at *6, citing *Schneider*, 668 F.3d at 701-702. See *Redhawk Global, LLC*, 2012 WL 6032951 at *7 (“The acts of making phone calls and sending facsimiles into the forum, standing alone, may be sufficient to confer jurisdiction on the foreign defendant where the phone calls and faxes form the bases of the action.”).

⁹³ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 70.

⁹⁴ *Compuserve, Inc. v. Patterson*, 89 F.3d 1257, 1267 (6th Cir. 1996).

⁹⁵ (Emphasis original.) *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 70, quoting *Third Natl. Bank in Nashville v. WEDGE Group, Inc.*, 882 F.2d 1087, 1091 (6th Cir. 1989).

⁹⁶ *Bird*, 289 F.3d at 875. See *Nationwide Life and Annuity Ins. Co.*, 2013 WL 97718 at *6, quoting *Air Prods. & Controls, Inc. v. Safetech Int’l, Inc.*, 503 F.3d 544, 553 (6th Cir. 2007) (“This component is analyzed under a ‘lenient standard.’”).

⁹⁷ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 71.

specific jurisdiction test are satisfied, then “an inference arises that this third factor is also present.”⁹⁸ Only in unusual cases will this third prong be unmet.⁹⁹

Courts will consider “the burden on the defendant, the forum State’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.”¹⁰⁰ With respect to the defendant’s burden, courts recognize that “* * * modern transportation and communications made it much less burdensome for a party sued to defend himself in a state where he engages in economic activity.”¹⁰¹ Regarding the forum state’s interest, it is “beyond dispute” that the forum state will have a “* * * significant interest in redressing injuries that actually occur within the state.”¹⁰² Moreover, “Ohio has a legitimate interest in protecting the business interests of its citizens * * *,”¹⁰³ as well as exercising jurisdiction over “* * * those who commit torts within its territory.”¹⁰⁴

In *Bulford v. Von Wilhendorf, L.L.C.*, 12th Dist. Warren No. CA2006-02-022, 2007-Ohio-347, discussed above, involving the selling of three dogs, the Twelfth District Court of Appeals found that, not only did the Ohio long-arm statute not provide personal

⁹⁸ *Compuserve, Inc.*, 89 F.3d at 1268. See *Redhawk Global, LLC*, 2012 WL 6032951 at *8, quoting *Nordcold, Inc. v. Greg Lund Prods.*, 109 F.Supp.2d 819, 826 (S.D. Ohio) (“When a court finds that a defendant has purposefully availed itself of the privilege of conducting activities within Ohio and the cause of action arose from that contact, it is presumed that the assertion of personal jurisdiction is proper.”).

⁹⁹ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 71, quoting *Am. Greetings Corp. v. Cohn*, F.2d 1164, 1170 (6th Cir. 1988).

¹⁰⁰ (Internal Citations Omitted.) *Burger King Corp.*, 471 U.S. at 477, quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 292.

¹⁰¹ *Goldstein*, 70 Ohio St.3d at 237, citing *Burger King Corp.*, 471 U.S. 462.

¹⁰² *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 72, quoting *Keeton*, 465 U.S. at 776.

¹⁰³ *Bird*, 289 F.3d at 875.

¹⁰⁴ (Citation omitted.) *Fallang*, 40 Ohio St.3d at 108.

jurisdiction over the defendant for transacting business, but minimum contacts were also lacking.¹⁰⁵ The court first highlighted that “‘single’ or ‘occasional’ acts are insufficient to establish jurisdiction ‘if their nature and quality of the circumstances of their commission’ create only an ‘attenuated’ affiliation with the forum.”¹⁰⁶ In reviewing the facts of the case, the court noted that the purchases of the dogs were isolated events that the plaintiff initiated after learning of the defendant from a friend.¹⁰⁷ Further, the court highlighted again that the defendant did not sell dogs in Ohio on any other occasions, did not solicit business in Ohio, and did not own property or maintain a statutory agent in Ohio.¹⁰⁸ Moreover, the fact that the defendant had placed advertisements on the internet and in nationally circulated magazines did not support a finding that jurisdiction existed.¹⁰⁹ As such, the court concluded that the trial court did not have personal jurisdiction over the defendant.¹¹⁰

In the case of *Neal v. Janssen*, 270 F.3d 328, 2001 Fed.App. 0379P (6th Cir. 2001), the Sixth Circuit Court of Appeals had to determine whether fraudulent communications by a nonresident defendant satisfied personal jurisdiction. In *Neal* the plaintiffs, Tennessee residents, met with the defendant in Florida, who was a citizen in Belgium, to have the defendant sell their dressage horse in the Netherlands.¹¹¹ The defendant was to receive a 10% commission on any sale, and the plaintiffs expected

¹⁰⁵ *Bulford*, 2007-Ohio-347 at ¶ 15.

¹⁰⁶ *Id.* at ¶ 17, citing *Burger King*, 471 U.S. at 476.

¹⁰⁷ *Bulford*, 2007-Ohio-347 at ¶ 18.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at ¶ 19. See *Bird*, 289 F.3d at 874, citing *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419-420 (9th Cir. 1997) (finding that maintaining a website that is accessible to anyone via internet is insufficient to establish personal jurisdiction).

¹¹⁰ *Bulford*, 2007-Ohio-347 at ¶ 20.

¹¹¹ *Neal*, 270 F.3d at 330.

the horse would sell for about \$500,000.¹¹² The defendant made phone calls and sent faxes to the plaintiffs with purchase offers and to discuss the sale of the horse.¹¹³ Eventually, the plaintiffs accepted an offer the defendant brought to them of \$312,000, but they subsequently learned that the buyer had actually paid \$480,000 and that the defendant kept \$168,000.¹¹⁴ The plaintiffs sued the defendant for, among other things, fraud, in the Middle District of Tennessee.¹¹⁵

In examining whether the trial court had specific jurisdiction over the defendant, the appellate court first explained that “[t]he acts of making phone calls and sending facsimiles into the forum, standing alone, may be sufficient to confer jurisdiction on the foreign defendant where the phone calls and faxes form the bases for the action.”¹¹⁶ Such was the case in *Neal*, where the plaintiffs contended that the defendant intentionally defrauded them in phone calls and faxes directed to them in Tennessee.¹¹⁷ “When the actual content of the communications into the forum gives rise to an intentional tort action, that alone may constitute purposeful availment.”¹¹⁸

Furthermore, the court observed that “the actions of sending false information into Tennessee by phone and fax had foreseeable effects in Tennessee and were directed to individuals in Tennessee.”¹¹⁹ Although the defendant had never been to Tennessee, the court found that “when a foreign defendant purposefully directs communications into the forum that cause injury within the forum, and those

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 332, citing *Oriental Trading Co. v. Firetti*, 236 F.3d 938, 943 (8th Cir. 2001).

¹¹⁷ *Neal*, 270 F.3d at 332.

¹¹⁸ *Id.* at 332, quoting *LAK, Inc. v. Deer Creek Enter.*, 885 F.2d 1292, 1301 (6th Cir. 1989).

¹¹⁹ *Neal*, 270 F.3d at 332.

communications form the 'heart' of the cause of action, personal jurisdiction may be present over that defendant without defendant's presence in that state."¹²⁰ Accordingly, the Sixth Circuit concluded that the trial court had personal jurisdiction over the nonresident defendant.¹²¹

In examining the present case, the court must first determine whether FlexoExport and Duthrie purposefully availed themselves of the privilege of acting in Ohio or causing a consequence in Ohio. As discussed, Duthrie had some contacts with Ohio, namely he had four Ohio related sales in three years, he travelled to Ohio three times in three years for business, and he engaged in long term negotiations with Leyes while Leyes was in Ohio. As noted, sometimes the "plaintiff's residence in the forum may, because of the defendant's relationship with the plaintiff, enhance the defendant's contacts with the forum."¹²² Such is the case here, where Duthrie's allegedly fraudulent statements to Leyes were directed to Ohio. As discussed, "when a defendant sends communications into the forum that 'form the bases of the action,'" he purposefully avails himself to Ohio.¹²³

In this case, Duthrie has conducted business in Ohio before, has travelled to Ohio before for business, and in the present action his statements to Leyes in Ohio form

¹²⁰ Id. at 333.

¹²¹ Id. See *Redhawk Global, LLC*, 2012 WL 6032951 at *7 (finding that the plaintiff satisfied demonstrating that the defendants "acts of sending correspondence allegedly containing fraudulent misrepresentations into Ohio via telephone and email shows purposeful availment of acting in Ohio and causes consequences in Ohio."); *FRC Intern, Inc. v. Taifun Feuerloschgeratebau Und Vertriebs GMBH*, N.D. Ohio No. 3:01 CV 7533, 2002 WL 31086104, *4 (Sept. 18, 2002) (finding the defendants purposefully availed themselves to Ohio jurisdiction where fraudulent communications between the nonresident defendant and plaintiff in Ohio formed the bases for the plaintiff's breach of contract and fraud claims).

¹²² *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 51, quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S.Ct. 1473, 79 L.E.2d 790 (1984).

¹²³ *Nationwide Life and Annuity Ins. Co.*, 2013 WL 97718 at *6, citing *Schneider*, 668 F.3d at 701-702.

the basis of this action. Duthrie allegedly made representations to Leyes that he knew were false, he intended for Leyes to rely on those representations, and Leyes did rely on Duthrie's representations that he would not directly contact Anchor, suffering damages as a result. Duthrie's action of making fraudulent misrepresentations to a person residing in Ohio had foreseeable effects in Ohio and was directed to a business in Ohio with the intent that the business rely on the misrepresentations and reveal its client's name. Duthrie's fraudulent statements to Leyes form the heart of the plaintiffs' fraud claim and are integral facts to each of their other claims against Duthrie and FlexoExport. As such, the purposeful availment component of the three-part specific jurisdiction test is satisfied as to Duthrie.

Purposeful availment is likewise satisfied for FlexoExport as well. Again, as the vice president of sales, Duthrie's actions on behalf of FlexoExport are attributable to FlexoExport. In addition to Duthrie's contacts, FlexoExport also has business related to Ohio in less than 2% of sales and occasionally sends agents to Ohio. FlexoExport directs marketing emails to 30 businesses in Ohio as well. The most significant factor buttressing FlexoExport's connection to Ohio is that it directed almost daily marketing emails to the plaintiffs, as well as occasional marketing materials by mail, soliciting the plaintiffs' business. In doing so, FlexoExport has purposely availed itself to personal jurisdiction in Ohio.

Next, the plaintiffs' causes of action must arise from the defendants' activities in Ohio. As discussed, the plaintiffs' fraud claim directly arises from the allegedly fraudulent statements that Duthrie made to Leyes in Ohio. Those communications were allegedly received, read, and relied upon by the plaintiff in Ohio, and form the basis of

the plaintiffs' fraud claim. Furthermore, Duthrie's other communications via email, phone, and text messages with Leyes negotiating the terms of the prospective sale were all directed to Ohio. The court finds Duthrie's contacts with Ohio, and by extension FlexoExport's contacts as well, have a substantial connection with the plaintiffs' claims.

Finally, the court must consider whether Duthrie and FlexoExport's acts or any consequences they have caused bear a substantial enough connection with Ohio to make the exercise of jurisdiction over them reasonable. As explained, when the first two prongs of the specific jurisdiction test are satisfied, then an inference arises that this third requirement is also present.¹²⁴ In the case at bar, Ohio has a legitimate interest in protecting the business interests of its citizens, such as the plaintiffs,¹²⁵ as well as exercising jurisdiction over those who commit torts within Ohio, like FlexoExport and Duthrie.¹²⁶

Moreover, having the litigation take place in Ohio reaches the most efficient resolution. The defendant Anchor has not moved to dismiss this case for lack of personal jurisdiction and submitted to Ohio jurisdiction when it filed its answer. Because Duthrie, and possibly other FlexoExport representatives, may well be witnesses regarding the claims alleged against Anchor, Duthrie and FlexoExport's other representatives would need to travel to Ohio for trial irrespective of whether they are defendants in the Ohio case.

There is, of course, an additional burden on FlexoExport and Duthrie to litigate in Ohio, as they are out-of-state defendants. With respect to the defendant's burden,

¹²⁴ *Compuserve, Inc.*, 89 F.3d at 1268.

¹²⁵ *Bird*, 289 F.3d at 875.

¹²⁶ (Citation omitted.) *Fallang*, 40 Ohio St.3d at 108.

courts have long recognized that modern transportation and communications make it much less burdensome for a party sued to defend itself in a state in which it is not a resident.¹²⁷ In viewing all of these factors cumulatively, the court finds that this is not the unusual case in which the reasonableness requirement is unmet.¹²⁸

The court thus finds that having an Ohio court exercise personal jurisdiction over FlexoExport and Duthrie does not offend notions of fair play and substantial justice. Because the defendants' due process rights are not infringed upon, and because the Ohio long-arm statute confers jurisdiction over the defendants, the court finds it has personal jurisdiction over the defendants FlexoExport and Duthrie.

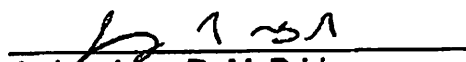
CONCLUSION

For the foregoing reasons, the court finds the defendants FlexoExport LTD and David Duthrie's motion to dismiss for lack of personal jurisdiction not well-taken and shall be denied.

Counsel are directed to contact the Assignment Commissioner (513-732-7108) within five business days of the date of filing of this Decision and to schedule a case management conference which shall be held within thirty days thereafter.

IT IS SO ORDERED.

DATED: 4-6-17



Judge Jerry R. McBride

¹²⁷ *Goldstein*, 70 Ohio St.3d at 237, citing *Burger King Corp.*, 471 U.S. 462.

¹²⁸ *Kauffman Racing Equip., L.L.C.*, 2010-Ohio-2551 at ¶ 71, quoting *Am. Greetings Corp.*, F.2d at 1170.