FILED
United States Court of Appeals
Tenth Circuit

October 4, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PINE TREE CAPITAL, LLC; ELK MOUNTAIN, INC.; BEAR CREEK TRAIL, LLC; BEAR TRAIL, LLC,

Plaintiffs - Appellants,

v.

BOKF, N.A., d/b/a Bank of Texas, an Oklahoma banking corporation; THOMAS MCCLINTOCK, individually,

Defendants - Appellees.

No. 20-8058
(D.C. No. 2:20-CV-00145-SWS)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **LUCERO**, Senior Circuit Judge, and **MATHESON**, Circuit Judge.

This appeal arises from Plaintiff entities' request for injunctive relief from enforcement of a Texas state court turnover order. The district court dismissed the complaint, finding that it lacked specific personal jurisdiction and, in the alternative, would decline jurisdiction under federal abstention doctrines. Plaintiffs appeal both dismissal of their complaint and denial of their Rule 60(b) motion for relief from judgment. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm for

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

substantially the same reasons as given by the district court. Because the standard of review on appeal to us is de novo, we amplify briefly.

Plaintiffs are a set of Wyoming and Delaware corporate entities all ultimately owned by Marvin Keith. Beginning in 2019, Defendant Bank of Texas ("the Bank") began judicial process in Texas to collect on a foreclosure deficiency judgment it obtained against Keith in 2009. At the Bank's request, a Texas state court issued a pair of turnover orders authorizing the Bank, through its receiver Defendant Thomas McClintock, to seize and sell the leviable assets of both Keith and Plaintiff entities.

Subsequently, Plaintiff entities filed the instant action in Wyoming state court, seeking injunctive relief from enforcement of the Texas turnover orders. Plaintiffs argued that the orders: (1) were entered without personal jurisdiction; (2) violated various provisions of Texas law; and (3) resulted from the Bank's alleged abuse of process, among other purported deficiencies. The Bank and McClintock removed the case to federal district court pursuant to 28 U.S.C. § 1441, which dismissed for lack of personal jurisdiction and, in the alternative, based on abstention doctrines established by Younger v. Harris, 401 U.S. 37 (1971), and Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976).

We review dismissal for want of jurisdiction de novo. Old Republic Ins. Co. v. Cont'l Motors, Inc., 877 F.3d 895, 903 (10th Cir. 2017). Federal courts apply forum state law to determine whether personal jurisdiction exists in diversity cases. Fed. R. Civ. P. 4(k)(1)(A). Wyoming law extends personal jurisdiction to the constitutional limit prescribed by the Due Process Clause. Wyo. Stat. Ann. § 5-1-107

(2020). "[T]o exercise jurisdiction in harmony with due process, defendants must have 'minimum contacts' with the forum state, such that having to defend a lawsuit there would not 'offend traditional notions of fair play and substantial justice.'" Dudnikov v. Chalk & Vermilion Fine Arts, Inc., 514 F.3d 1063, 1070 (10th Cir. 2008) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). At the motion to dismiss stage, Plaintiffs "bear the burden of establishing personal jurisdiction," but can satisfy this burden by making "a prima facie showing" of minimum contacts. Id. at 1069-70.

The district court was correct in finding that it lacked personal jurisdiction. Plaintiffs failed to allege that any of the Bank's efforts to enforce the Texas turnover orders took place in or were directed at Wyoming. Rather, the only link between Defendants' conduct and Wyoming is the fact that Plaintiff entities are incorporated, organized, or have assets in Wyoming. These ties do not satisfy the minimum contacts standard. See Walden v. Fiore, 571 U.S. 277, 285 (2014) ("[T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.").

In the alternative, Plaintiffs assert theories of in rem and quasi in rem jurisdiction. The district court was correct to reject both. In rem jurisdiction does not exist because the complaint did not ask the district court to adjudicate the rights of all persons in Plaintiffs' assets. See Tooele Cnty. v. United States, 820 F.3d 1183, 1188 (10th Cir. 2016). Quasi in rem jurisdiction fails because it requires

substantially the same minimum contacts discussed above. See Shaffer v. Heitner, 433 U.S. 186, 207 (1977). Thus, the district court correctly concluded that it lacked any basis to exercise jurisdiction over the instant action.[1]

Finally, Plaintiff entities contest the district court's denial of their motion for relief from judgement on the basis of "newly discovered evidence," pursuant to Fed. R. Civ. P. 60(b)(2). We review a district court's decisions under Rule 60(b) for abuse of discretion. Wright ex rel. Tr. Co. of Kansas v. Abbott Lab'ys., Inc., 259 F.3d 1226, 1235 (10th Cir. 2001).

In their motion, Plaintiffs raised evidence that the Bank, through McClintock, filed documents asserting ownership of Plaintiff entities in Wyoming bankruptcy court proceedings, contending that these filings establish minimum contacts between Defendants and Wyoming. There is no dispute that these filings were made only after entry of the district court's dismissal judgment and thus do not constitute "newly discovered evidence" within the meaning of Rule 60(b)(2). See Wolfgang v. Mid-Am. Motorsports, Inc., 111 F.3d 1515, 1530 (10th Cir. 1997) ("[N]ewly discovered evidence must have been in existence at the time of trial . . . ."). Plaintiff entities argue instead that their evidence should be considered because it establishes facts that existed before the district court issued its dismissal judgment. This assertion disregards that the facts at issue are when and to what extent the Bank acted in Wyoming. Because the bankruptcy filings were made after the district court

[1] Because the district court lacked jurisdiction, we decline to reach the district court's alternative bases for dismissal grounded in federal abstention doctrines.

entered judgment, the fact of the Bank's involvement in the bankruptcy proceedings could not have existed at the time of judgment. Plaintiffs have therefore failed to demonstrate that the district court's conclusion was an abuse of discretion.

Accordingly, the judgment of the district court is **AFFIRMED**.

Entered for the Court

Carlos F. Lucero
Senior Circuit Judge