

## Recent Personal Jurisdiction Cases in North Carolina

**Albert Diaz**

*Special Superior Court Judges for Complex  
Business Cases*

Presented at the Fall Conference of  
North Carolina Superior Court Judges  
October 23, 2008  
Chapel Hill, North Carolina<sup>1</sup>

1. *Rossetto USA, Inc. v. Greensky Financial, LLC*, \_\_\_ N.C. App. \_\_\_, 662 S.E.2d 909 (N.C. Ct. App. 2008)

In 2004, Plaintiff Rossetto USA, Inc. (“Rossetto”) entered into a contract to sell furniture to Defendant EclecticGlobal, LLC (“Eclectic”), whose principal place of business was in Georgia. Greensky Financial, LLC (“Greensky”), a financing company with a contractual relationship with Eclectic, also had its principal place of business in Georgia. Greensky frequently made payments on behalf of Eclectic to Plaintiff either by mailing checks to Plaintiff or wiring funds to Plaintiff’s account in North Carolina. Defendant Furniture Retailers, LLC (“Retailers”) also maintained its principal place of business in Georgia.

In 2006, while furniture was in transit from Plaintiff to Eclectic, Plaintiff learned from Greensky that Retailers had begun to assume the business of Eclectic. Plaintiff issued a revised invoice to Retailers, who took possession of the furniture upon delivery.

After learning that Greensky had attempted to sell Rossetto’s furniture without paying for it, Rossetto filed a complaint against Defendants alleging breach of contract or quasi-contract and conversion.

The Court of Appeals affirmed the trial court’s denial of Defendant Greensky’s motion to dismiss for lack of personal jurisdiction. The following factors supported the trial court’s finding that it had personal jurisdiction: (1) in connection with sales of furniture from Rossetto to Eclectic, Rossetto would ship furniture from North Carolina to Georgia; (2) payments for this furniture were frequently made by Greensky, either by mailing checks to Rossetto’s office in North Carolina or by wiring payments to Rossetto’s account in North Carolina; (3) Rossetto received numerous communications and phone calls from Greensky directed to its office in North Carolina; (4) Greensky informed Rossetto that Retailers had assumed control of Eclectic; and (5) an e-mail from one of Rossetto’s customers revealed that Greensky attempted to sell Rossetto furniture without paying for it. According to the Court, this evidence was sufficient to support a finding of minimum contacts and purposeful availment.

The Court, however, reversed the portion of the trial court’s order denying Defendant Retailers’ motion to dismiss for lack of personal jurisdiction. The Court found the following evidence insufficient to establish minimum contacts with North Carolina: Retailers passively

---

<sup>1</sup> I wish to acknowledge and thank my law clerk Ryan P. Ethridge for his assistance in preparing this case summary.

received the shipment of furniture from Rossetto, which was intended for Eclectic; it allegedly made one phone call to Rossetto in North Carolina; and it attempted to sell the Rossetto furniture on eBay.

In his dissent, Judge Tyson reached the opposite conclusion, finding that the trial court had no personal jurisdiction over Greensky, but that Retailers could be compelled to defend itself in North Carolina.

**2. *Dailey v. Popma*, \_\_\_ N.C. App. \_\_\_, 662 S.E.2d 12 (N.C. Ct. App. 2008)**

Plaintiff, a resident of North Carolina, claimed that Defendant, a resident of Georgia, posted defamatory statements about Plaintiff in bulletin board discussions on the internet. The trial court dismissed Plaintiff's claims on the ground that Defendant had insufficient contacts with the State of North Carolina for personal jurisdiction to exist in the State of North Carolina.

The Court of Appeals affirmed. According to the Court, whether internet postings conferred jurisdiction in a particular forum hinged on the manifested intent and focus of the Defendant. The fact that some unspecified number of participants in the internet discussion groups may have been North Carolinians did not establish that Defendant had targeted those North Carolina participants.

Because Plaintiff failed to establish that Defendant posted the material with the intent to direct his content to a North Carolina audience, personal jurisdiction did not exist over Defendant in North Carolina.

**3. *Soft Am., Inc. v. Plainview Batteries, Inc.*, \_\_\_ N.C. App. \_\_\_, 659 S.E.2d 39 (N.C. Ct. App. 2008)**

The parties were involved in the battery and energy storage business. The Plaintiff-supplier alleged that it was owed payments for goods sold to the Defendant-purchasing company. The two corporate Defendants—the purchasing company and a related company—were corporations organized under New York law. Plaintiff also sued two corporate officers of the Defendant companies.

The Court of Appeals held that personal jurisdiction existed over the related company because the complaint sufficiently stated a basis for a claim of piercing the corporate veil based on allegations that (1) Defendants violated certain corporate laws and formalities, (2) the individual Defendants exercised control over the finances, policies, and business practices of both corporate Defendants, and (3) assets were diverted from the purchasing company to the related company, leaving the purchasing company inadequately capitalized. Because the complaint stated a basis for a claim of piercing the corporate veil, the trial court properly exercised personal jurisdiction over the related company.

Personal jurisdiction, however, did not exist over one of the individual Defendants—an officer of both corporate Defendants—because the supplier failed to allege that any act the officer committed occurred within his individual capacity.

Judge Arrowood dissented in part, finding that the Plaintiff alleged sufficient facts to support personal jurisdiction over the individual defendant because he (1) was an officer and principal shareholder of the corporate Defendants, (2) visited North Carolina at least once to conduct business

with Plaintiff, and (3) negotiated the terms of the contracts at issue and was otherwise personally involved in the transactions.

**4. *Eaker v. Gower*, \_\_\_ N.C. App. \_\_\_, 659 S.E.2d 29 (N.C. Ct. App. 2008)**

The Plaintiff-student filed a verified complaint naming the school and its president as Defendants, alleging that they breached a contract of enrollment, were unjustly enriched, and committed unfair or deceptive trade practices. The trial court denied Defendants' motion to dismiss for lack of personal jurisdiction over the Defendant-president.

The Court of Appeals reversed, finding that the exercise of jurisdiction over the president did not comport with due process. Plaintiff's complaint alleged that the president was a citizen and resident of North Carolina and that the president and school were engaged in commerce in North Carolina. The president filed an affidavit, however, stating she was a resident of Florida, and Plaintiff failed to present evidence to the contrary.

Moreover, Plaintiff's assertion that Defendants were engaged in commerce in North Carolina was a legal conclusion rather than a factual allegation. The record was silent as to the number of times the president may have visited North Carolina or even directed communications there, or as to the quality and nature of the contacts between the president and North Carolina. The Court could not make assumptions regarding the important facts, but rather was required to rely only upon the facts in the record before it.

**5. *State ex rel. Cooper v. Ridgeway Brands Mfg., LLC*, \_\_\_ N.C. App. \_\_\_, 655 S.E.2d 446 (N.C. Ct. App. 2008)**

This was the second time this year this case had come before the Court of Appeals. Plaintiff was allowed to amend its First Amended Complaint in order to add Trevally, Inc. ("Trevally"), an Arizona corporation, as a Defendant. In the Plaintiff's Second Amended Complaint, it added a seventh claim against Trevally, seeking to recover funds transferred from Ridgeway Brands Manufacturing, LLC ("Ridgeway") to Trevally at a time when Ridgeway did not have sufficient assets to pay its liability to the State of North Carolina under section 66-291 of the North Carolina General Statutes.

The State alleged the trial court erred in holding that it lacked personal jurisdiction over Trevally, reasoning that: (1) the foreign corporation was the "alter ego" of Ridgeway, a North Carolina corporation; (2) jurisdiction existed under section 1-75.4(3) of the North Carolina General Statutes arising out of a local act or omission; and (3) jurisdiction existed under section 1-75.4(6) because the transaction involved local property, which was within North Carolina at the time that the foreign corporation acquired possession or control over it.

The Court of Appeals affirmed. The Court noted that the trial court's order was devoid of any findings of fact pertaining to an alter ego theory. In any event, the State's conclusory allegation was insufficient to establish an alter ego theory of liability for personal jurisdiction purposes. Second, the record contained no evidence of any act or omission by Trevally committed within North Carolina. Finally, the trial court specifically found that Trevally was not in the State of North Carolina when it received the funds from Ridgeway.

**6. *Brown v. Refuel America, Inc.*, \_\_\_ N.C. App. \_\_\_, 652 S.E.2d 389 (N.C. Ct. App. 2007)**

Defendant Ray Thomas Petroleum Company, Inc. (“Thomas Petroleum”) owed Plaintiff a sum in excess of \$2 million. The parties subsequently negotiated a transaction involving Plaintiff’s loan of an additional \$1 million to Thomas Petroleum; the acquisition by Defendant Refuel America, Inc. (“Refuel”) of Thomas Petroleum; and Refuel’s issuance to Plaintiff of shares in Refuel. When Refuel’s anticipated acquisition of Thomas Petroleum failed to occur, Plaintiff filed suit against Refuel; Ian Williamson—President and a Director of Refuel; and Bruce Wunner—Refuel’s Chief Executive Officer and Vice-Chair of its Board of Directors. Defendant Williamson was a resident of the United Kingdom and Defendant Wunner was a resident of Florida.

The trial court denied the individual Defendants’ motion to dismiss for lack of personal jurisdiction. The trial court’s findings of fact included the following: (1) the individual Defendants visited the State of North Carolina on multiple occasions to evaluate aspects of the transaction at issue; (2) all of the individual Defendants’ communications with the Plaintiff-investor occurred while one or both of the individual Defendants were in North Carolina or were directed to Plaintiff while he was in North Carolina; and (3) the conduct of the individual Defendants induced Plaintiff to loan pay \$1,000,000 to the third-party Defendant company, from which individual Defendants’ affiliates obtained benefits of about \$ 239,000, and also allowed the individual Defendants to receive increased benefits through a share exchange.

The Court of Appeals affirmed, concluding that the individual Defendants contacts with North Carolina supported a finding of specific jurisdiction. Because Defendants were officers and principals in the corporation, the trial court properly attributed their corporate acts to them for the purpose of determining the issue of personal jurisdiction. Note that this case appears to be at odds with the holding in *Soft v. Plainview Batteries* as to how to analyze the acts of a corporate officer for purposes of determining personal jurisdiction.

**7. *Lulla v. Effective Minds, LLC*, 184 N.C. App. 274, 646 S.E.2d 129 (N.C. Ct. App. 2007)**

Plaintiff, a North Carolina resident, filed suit against Effective Minds, LLC (“Effective Minds”)—a Delaware entity with its principal office in New York—and Manika Gulati, who was a resident of New York, alleging breach of contract and unjust enrichment.

Gulati formed Effective Minds and was its sole shareholder, director, and officer. Gulati was also a contract employee of a third-party company, which informed Gulati of its need to relocate one of its systems from New Jersey to Texas (“the relocation project”). Because Gulati was employed by the third-party company and could not submit a bid on the relocation project, she agreed to hire Plaintiff as an employee of Effective Minds so Effective Minds could bid on the project. As part of the agreement, Gulati agreed to pay Plaintiff fifty percent of any profit realized by Effective Minds.

Plaintiff and Gulati agreed that Effective Minds could not perform the work, so Plaintiff located a subcontractor, Strategic Technologies, Inc. (“STI”), based in North Carolina, to perform the work. STI performed the work required to complete the project and the third-party company paid Effective Minds so that it realized a profit of \$120,000. When Plaintiff made demand on Defendants for \$60,000, Gulati refused to pay. Plaintiff alleged he was entitled to receive \$60,000 on the purported contract and also alleged unjust enrichment as an alternative claim for relief.

The Court of Appeals held that personal jurisdiction as to either Defendant would violate due process. Although there was an agreement between a North Carolina resident and the LLC, this alone did not provide sufficient minimum contacts with North Carolina. Additionally, the contract between STI, a North Carolina resident, and Effective Minds provided that it would be governed by Delaware law; there was no evidence as to where the contract was entered; and the contract did not specify that any work performed under the contract was to be performed in North Carolina. Gulati averred that the personnel involved in the project did not originate from North Carolina, and the work performed was completed in New Jersey and Texas. Gulati also stated that she had never been to North Carolina. Finally, Gulati did not take any action in her individual capacity that would permit North Carolina's courts to exercise personal jurisdiction over her.