STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Robert Ayers, Paul Barkal, Susan Barkal, Gloria Bennett, Kurt Blaettler, Vandy Kim, Glenn Kornett, Gudrun Kornett, David Larson, Lucye Larson, Florence Lince, Mike Lince, Michael McGraw, Diane Bernat, and William Schaidle,

Plaintiffs,

vs.

Chris Dixon, Black Harbor Wealth Management, LLC, Samuel J. Dixon, Faw Casson & Co., LLP, ShurWest LLC, and Pacific Life Insurance Company,

Defendants.

Case No.: 2019-CP-04-00752

ORDER DENYING SHURWEST, LLC'S MOTION TO DISMISS

Before the Court is Shurwest, LLC's Motion to Dismiss for Lack of Personal Jurisdiction. The matter has been fully briefed by both Shurwest and Plaintiffs. A hearing was held on the matter on Wednesday July 1, 2020 beginning at 3:00 PM with Robert Rikard of Rikard & Protopapas, LLC appearing on behalf of Plaintiffs and I.S. Leevy Johnson of Johnson Toal and Batiste, PA and Jason Hopkins of DLA Piper appearing on behalf of the Defendant Shurwest. Having fully considered the matter, including the motion, the parties' briefs and memoranda, supplemental filings and oral arguments, it is hereby **ORDERED** that Shurwest's Motion to Dismiss for Lack of Personal Jurisdiction is **DENIED** for the reasons set forth in more detail below.

BACKGROUND

Defendant Shurwest moves to dismiss Plaintiffs' Complaint on the ground that the Court lacks personal jurisdiction – both general and specific – over Shurwest. Plaintiffs argue that they have sufficiently pled facts and causes of action against Shurwest that establishes the Court has both general and specific jurisdiction over Shurwest for purposes of this matter.

This case arises out of Plaintiffs' loss of retirement savings. Plaintiffs were sold indexed universal life insurance policies (IUL) as a financial planning and retirement tool, which they contend were inappropriate for their needs. The IULs were the central component of a marketing and sales strategy designed by Shurwest that was known as the "IRA Reboot Program". To help fund the IULs, Plaintiffs also purchased structured cash flow products through Future Income Payments, LLC ("FIP"). Plaintiffs allege that their insurance agents, Chris Dixon and Samuel Dixon, advised them to purchase FIP to allow them to fund the IULs at higher levels and that the Dixons' advice was based on the recommendation, education and training that Shurwest provided to the Dixons. Plaintiffs allege that Shurwest and Melanie Shulze-Miller, National Life Director at Shurwest, were the architects of the IRA Reboot Program.

Plaintiffs further allege that Shurwest was aware that Melanie Shulze-Miller and other Shurwest employees were recommending FIP to its network of insurance agents and brokers in order to fund purchases of IULs (and fund them at higher levels) and that Shurwest received commissions on the purchase and sale of the IULs and therefore benefitted from the IRA Reboot Program.

Shurwest denies these allegations. Shurwest further argues that Shurwest never made any money from FIP, that the IUL policies are legitimate and legal and that Melanie-Shulze-Miller was a rogue employee who was operating outside the scope of her employment with Shurwest.

LEGAL STANDARD

At this stage, a plaintiff need only make a *prima facie* showing of jurisdiction, either in the allegations of the complaint, evidence presented to court, or both. *Sullivan v. Hawker Beachcraft Corp.,* 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). The plaintiff bears the burden of proving the existence of grounds for jurisdiction by the preponderance of the evidence under Rule 12(b)(2). *See Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996).

When a motion to dismiss attacks the allegations of the complaint on the issue of personal jurisdiction, the court is not confined to the allegations of the complaint but may also consider affidavits or other evidence. *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 562-63, 683 S.E.2d 486, 490 (2009).

Personal jurisdiction is exercised as "general jurisdiction" or "specific jurisdiction." *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478. S.C. Code Ann. § 36–2–802 governs general jurisdiction and states: "A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action." A court may assert general jurisdiction if the defendant has an "enduring relationship" with the forum state. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 495, 611 S.E.2d 505, 510 (2005). To establish an "enduring relationship," the defendant's

contacts must be "continuous and systematic" as well as "so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities." *See Id.* at 17, 655 S.E.2d at 479 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.Ed. 95 (1945)).

S.C. Code Ann. § 36–2–803 governs specific jurisdiction and provides that a court may exercise personal jurisdiction over a person who acts directly "as to a cause of action arising from the person's: (1) transacting any business in this state; . . . (4) causing tortious injury or death in this State by an act or omission outside this State if the regularly does or solicits business" in this state. South Carolina's long-arm statute extends to the constitutional limits of due process, and, as a result, state law analysis collapses into constitutional analysis. Thus, the question becomes whether the non-resident defendant has sufficient "minimum contacts" with South Carolina such that the maintenance of the suit in South Carolina does not offend traditional notions of fair play and substantial justice. *Young v. Jones,* 1992, 816 F.Supp. 1070, *affirmed* 103 F.3d 1180, *cert. denied* 118 S.Ct. 329, 522 U.S. 928, 139 L.Ed.2d 255.

Due Process permits the exercise of specific personal jurisdiction over a defendant if "the defendant [has] purposefully established minimum contacts in the form State such that it should reasonably anticipate being hailed into court there." *Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 189 (4th Cir. 2016). Specific jurisdiction can be exercised if "the defendant has purposefully directed his activities at residents of the forum, and the litigation results from the alleged injuries that arise out of or relate to those activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985).

ANALYSIS

Here, the evidence before the Court establishes that Plaintiffs have made a *prima facie* showing that Shurwest is subject to both general and specific personal jurisdiction in South Carolina.

A. General Jurisdiction

Plaintiffs have alleged and shown that Shurwest is registered with the South Carolina Department of Insurance and the South Carolina Secretary of State's Office and has been for many years. **Exhibits 4 & 5** to Pls' Memo. in Opposition. As such, Shurwest has an "enduring relationship" with South Carolina and its contacts with the State are "substantial, continuous and systematic" to justify suit against Shurwest on causes of action that are not related Shurwest's specific activities in South Carolina. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 495, 611 S.E.2d 505, 510 (2005); *Coggeshall v. Reproductive Endocrine Associates of Charlotte*, 376 S.C. 17, 655 S.E.2d 476, 479 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.Ed. 95 (1945)).

B. Specific Jurisdiction

Plaintiffs have presented ample evidence to support their allegations that Shurwest purposefully directed activities toward South Carolina and that Plaintiffs' causes of action arise out of those activities. As noted above, Shurwest is and has been registered with the South Carolina Department of Insurance and the South Carolina Secretary of State's Office for some time. **Exhibits 4 & 5** to Pls' Memo. in Opposition. Christopher Dixon proposed a retirement planning strategy for Plaintiffs that paired the purchase of Indexed

Universal Life Insurance Policies with FIP as a funding mechanism designed to generate income for Plaintiffs that could be used to pay the IUL policy premiums. (Compl. ¶¶ 4, 6). Dixon and a member of his staff traveled to Shurwest's offices in Arizona to meet with Melanie Shulze-Miller and to learn more about the IRA Reboot Program. (Compl. ¶ 7). Melanie Shulze-Miller also traveled to South Carolina to visit Christopher Dixon and his staff to provide education, training and in person illustrations regarding the IRA Reboot program. (Compl. ¶ 6). Following these trips, Shulze-Miller remained Dixon's contact person at Shurwest and she and a team of Shurwest employees continued to answer questions and provide assistance to Dixon and his staff related to Plaintiffs' participation in the IRA Reboot Program. (Compl. ¶ 13). Plaintiffs ultimately participated in the IRA Reboot Program and claim that they have suffered harm as a result. (*See*, generally Compl.)

From the facts before the Court, it appears clear that Shurwest directed activities related to the "IRA Reboot" program to South Carolina, that Shurwest was aware that is agents and employees were recommending FIP as a funding mechanism for the IUL policies, that the use of FIP as a funding mechanism was, in part, to purchase and fund IUL policies at higher levels, and that Shurwest received commissions from the sale of IUL policies and thus benefitted from the sales of IULs and the increased funding levels provided by FIP.

The evidence and argument by Shurwest that Melanie Shulze-Miller was a rogue employee operating without Shurwest's knowledge or permission is not credible in light of the overwhelming evidence that Shurwest was aware of the use of FIP to fund higher levels of IUL, that Shulze-Miller and other employees did so as part of her employment

with Shurwest while using Shurwest e-mail and with Shurwest training and resources at its offices in Arizona, and that Shurwest ultimately profited from the increased IUL amounts via commissions. The characterization of this as the activity of that of a single rogue employee is further undercut by the volume of correspondence and the fact that much of it involves other Shurwest employees.

Finally, the Court is mindful that Plaintiffs are simply required to make a *prima facie* showing of jurisdiction when challenged by a Motion to Dismiss under Rule 12(b)(2). *Sullivan v. Hawker Beechcraft Corp.* 397 S.C. 143, 723 S.E.2d 835, (Ct. App. 2012). At times, Shurwest argues that many of Plaintiffs' allegations are not accurate and offers up alternative allegations of its own. These arguments are unavailing, as the Court must take the allegations and available evidence relating to personal jurisdiction in the light most favorable to the plaintiff. Moreover, they are unpersuasive in the face of substantial evidence offered by Plaintiffs in support of their jurisdictional allegations and the allegations in the Complaint.

For these reasons, the Court finds that Shurwest has purposefully availed itself of forum benefits in South Carolina, and that its contacts in doing so are sufficient to subject Shurwest to suit in South Carolina. The contacts considered by the Court relate to Shurwest's enduring relationships with South Carolina, its marketing and sales of the "IRA Reboot" program to agents in South Carolina, and to these Plaintiffs and other South Carolinians. This controversy arises out of those contacts with South Carolina. Finally, the assertion of personal jurisdiction over Shurwest in this matter comports with the concepts of fair play and substantial justice. South Carolina has an interest in protecting

its citizens and residents from predatory insurance practices such as the ones alleged in Plaintiffs' Complaint, and providing them a redress for their injuries.

RLM Nothing contained in this ORDER is intended to be a finding of fact and shall NOT be considered a finding of fact in any subsequent hearing nor at trial except that the motion to dismiss for lack of personal Jurisdiction was denied.

CONCLUSION

For these reasons, Defendant's Motion to Dismiss for Lack of Personal Jurisdiction is **DENIED**.

July 24, 2020

s/ ~~The Hon~~. R. Lawton McIntosh

Anderson, SC