

JOHN RUSSELL WALKER and)
 SHARON DENISON WALKER,)
)
 Plaintiffs/Appellees,)
)
 v.)
)
 VLD, INC., d/b/a McDONALD'S,)
 B.F. MYERS FURNITURE and)
 APPLIANCE COMPANY, INC.,)
 SK PRODUCTS CORP., GL FURNITURE)
 (PAHANG) SDN. BHD., GENERAL)
 LUMBER FURNITURE SDN. BHN.,)
 McDONALD'S CORPORATION, EM-CAR)
 ENTERPRISES AND LANG FURNITURE)
 (PAHANG) SDN. BHD.,)
)
 Defendants/Appellants.)

Appeal No.
 01-A-01-9603-CV-00094

Sumner Circuit
 No. 13917-C

<p>FILED</p> <p>July 26, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CIRCUIT COURT FOR SUMNER COUNTY

AT GALLATIN, TENNESSEE

THE HONORABLE THOMAS GOODALL, JUDGE

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 GL FURNITURE (PAHANG) SDN. BHD. AND
 GENERAL LUMBER FURNITURE SDN. BHN.

REVERSED AND REMANDED

O P I N I O N

We granted permission to appeal pursuant to Tennessee Rule of Appellate Procedure 9 to determine whether the trial court correctly held that defendants/appellants, GL Furniture (Pahang) Sdn. Bhd. ("GL Furniture") and General Lumber Furniture Sdn. Bhd. ("GLFSB"), were properly served with process and were properly before the trial court. The facts out of which this case arose are as follows.

On 20 June 1994, appellee John Walker was sitting on a chair while a customer at a McDonald's restaurant in Gallatin, Tennessee. A leg of the chair broke causing him to fall and injure his back. On 1 March 1995, Mr. and Mrs. Walker filed a complaint in the Circuit Court for Gallatin, Tennessee. Appellees alleged multiple theories of negligence. They also alleged that the McDonald's franchisee purchased the chair from a local furniture store, B.F. Myers; that B.F. Myers purchased the chair from a wholesaler, SK Products Corporation ("SK"); and that SK purchased the chair from the manufacturer, GL Furniture.

The undisputed facts show that appellants are Malaysian corporations. They are completely separate corporations, but are wholly owned subsidiaries of Land & General Berhad, another Malaysian corporation. Appellants manufacture unassembled, wooden furniture which they sell to purchasers who later assemble the furniture. Appellants do not have any office employees or bank accounts in Tennessee or in any other state in the United States. Moreover, they do not do any business in Tennessee and do not have any subsidiaries in the United States.

GL Furniture manufactured the chair and sold it unassembled

to SK. The chair was among many chairs shipped by GL Furniture to SK in three different batches. GL Furniture shipped the chairs from Malaysia to a port in Charleston, South Carolina. From there, it delivered them to SK in Atlanta, Georgia. Although GL Furniture has sold other shipments of unassembled furniture to SK, the corporations are separate, unrelated, and do not share any common owners or offices. GL Furniture does not hold SK out as its agent and there is no distributorship agreement existing between the two companies. Appellants do not have any control over SK's sales activities. There is no proof in the record that appellants directed SK to sell the chairs in Tennessee or that they participated in any decision made by any entity to sell the chairs in Tennessee.

Appellees contend that because some of the fifty chairs manufactured by GL Furniture "for some reason ended up in Tennessee" there were a sufficient number of contracts to justify hailing appellants into Tennessee's courts. In other words, appellees argue that Tennessee's courts have jurisdiction because appellants put the wooden chair parts into the stream of commerce and because the parts ultimately ended up in Tennessee.

Appellants' first contention is that the trial court erred in holding that it was justified in exercising in personam jurisdiction over appellants. In support of their contention, they argue that the exercise of in personam jurisdiction over them does not comport with the due process clause of the Fourteenth Amendment. It is their insistence that they do not have sufficient minimum contact with the State of Tennessee necessary to subject them to the in personam jurisdiction of Tennessee's courts. Appellants correctly argue that the only basis set forth by the plaintiffs to justify the exercise of jurisdiction is that a chair manufactured by GL Furniture was placed into the stream of commerce

and, through no direction of appellants, ended up in Tennessee.

Tennessee's long-arm statute provides, in pertinent part, as follows:

(a) Persons who are nonresidents of Tennessee . . . are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from:

. . . .
(2) Any tortious act or omission within this state;

. . . .
(6) Any basis not inconsistent with the constitution of this state or of the United States.

Tenn. Code Ann. § 20-2-214(a)(2) & (6)(1994). As can be readily seen, courts of Tennessee may exercise in personam jurisdiction over non-residents only if the exercise of such jurisdiction is not inconsistent with due process. Summarizing previous decisions of the United States Supreme Court, the Tennessee Supreme Court defined the boundaries of due process as follows:

In determining whether or not a state can assert long arm jurisdiction, due process requires that a non-resident defendant be subjected to a judgment in personam only if he has minimum contacts with the forum such that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (citation omitted). . . . The absence of physical contacts will not defeat in personam jurisdiction where a commercial actor purposefully directs his activities towards citizens of the forum state and litigation results from injuries arising out of or relating to those activities. (citation omitted). In such a case, the defendant's conduct and connection with the forum state are such that he would reasonably anticipate being hailed into court there.

Masada Inv. Co. v. Allen, 697 S.W.2d 332, 334 (Tenn. 1985)(citations omitted).

The facts of an often quoted United States Supreme Court opinion are very similar to the instant case. **Asahi Metal Indus. Co. Ltd. v. Superior Court of California Solano County**, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987). Asahi was a Japanese corporation which manufactured tire valve assemblies in

Japan. The company sold the valves to a Taiwanese corporation. The Taiwanese corporation incorporated the valves into tire tubes and sold the tire tubes all over the world. *Id.* at 1029. One of these tubes became the subject of a products liability suit in California. The case eventually made it to the United States Supreme Court. In its decision, the Court stated:

The "substantial connection" between the defendant and the forum State necessary for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State*. The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State . . . [b]ut a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.

Id. at 1032 (citations omitted).

Because Asahi did not do business in California; had no offices, agents, employees, or property in California; did not advertise or otherwise solicit business in California; and did not create, control, or employ the distribution system that brought its valves to California, there was no showing that it purposefully availed itself to the California market. Therefore, the courts of California could not exercise personal jurisdiction over Asahi without exceeding the limits of due process.

We are of the opinion that appellants did not have the necessary minimum contacts with Tennessee to constitutionally justify the exercise of in personam jurisdiction by Tennessee's courts. Under Tennessee law, the minimum contacts test consists of two parts. First, the court must identify the nature and extent of the contacts between the defendant and the State of Tennessee. Second, the court must "determine whether exercising personal

jurisdiction based on these contacts is consistent with traditional notions of fair play and substantial justice." *Davis Kidd Booksellers, Inc. v. Day-Impex, Ltd.*, 832 S.W.2d 572, 575 (Tenn. App. 1992). The plaintiff has the burden of making out a prima facie case that exercising personal jurisdiction under the long arm statute over the defendants is proper. *Id.* at 577. Appellants contend that appellees failed to carry their burden of proof and that the trial court erred in overruling the motion to dismiss. We agree. Because of our holding as to this issue, we do not determine whether appellees properly served appellants.

Therefore, it results that the judgment of the trial court overruling the defendants' motion to dismiss is reversed. The cause is remanded to the trial court for the entry of an order sustaining defendants motion to dismiss and for any further necessary proceedings. Costs on appeal are taxed to the plaintiffs/appellees, John Russell Walker and Sharon Denison Walker, and their sureties.

SAMUEL L. LEWIS, JUDGE

CONCUR:

BEN H. CANTRELL, JUDGE

WILLIAM C. KOCH, JR., JUDGE