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Iowa Bankruptcy Court Exercises Personal Jurisdiction over Canadian Law Firm Based on Firm's Representation of Canadian Client with Iowa Subsidiary

EIGHTH CIRCUIT BANKRUPTCY MONITOR

In *Veroblue Farms USA, Inc. v. Cassels Brock & Blackwell, LLP (In re Veroblue Farms USA, Inc.)*, the Bankruptcy Court for the Northern District of Iowa (Judge Collins) held the Court could properly exercise personal jurisdiction over a Canadian law firm in an adversary complaint for turnover. The law firm argued exercise of jurisdiction was improper because it had no pertinent contacts with Iowa; rather, the firm had represented a Canadian company from the firm's offices in Canada. The firm further argued that it did not give legal advice in Iowa or related to Iowa law.

The Plaintiffs/Debtors-in-Possession argued that the Canadian entity the firm represented was merely a holding company for the operating company in Iowa; that the work performed by the firm "touched on almost all aspects of [the Debtors'] operations in Iowa; that the work performed by the firm "was unquestionably work for [the Debtors] and [affected] Iowa operations." The Plaintiff further argued a law firm partner had represented the Debtors and never terminated his representation; that the law firm consented to exercise of personal jurisdiction by filing proofs of claim in the bankruptcy cases; and waived its objection to personal jurisdiction by participating actively in the litigation before bringing the personal jurisdiction issue to a head.

As noted, the Court found it could exercise personal jurisdiction over the firm. The most interesting part of the decision is the implication that the firm's representation

of a Canadian company created sufficient contacts with Iowa to permit exercise of jurisdiction. The firm admitted "it did substantial pre-bankruptcy work for" the corporate enterprise but claimed "that its work was only for" the Canadian company. (Emphasis in original). The Debtors pointed out that the work the firm performed included reorganizing "stock ownership, company division of responsibilities, and the operational aspects of the whole company—particularly the Iowa based operational core." The Debtors further argued that the firm "knew or should have known its work profoundly affected the Iowa operation and thus constituted work in and for an Iowa-based company." Finally, the Debtors noted that the firm submitted its bills "to the Iowa operation" and characterized same as "a full acknowledgement of this Iowa oriented work."

It is unclear the extent to which the Court adopted the parties' respective fact arguments on this issue. The Court did find that the firm had sufficient contacts with Iowa to permit exercise of personal jurisdiction even if no member of the firm ever set foot in Iowa, but at least some of that finding rested not on pre-bankruptcy forum contacts but with the firm's acts "during the bankruptcy, and during [the] adversary."

The Plaintiff's arguments have some potential weaknesses that should be considered. For one thing, the fact that the firm undertook acts outside of Iowa knowing that the effects would be felt within Iowa is *not* a sufficient basis to exercise personal jurisdiction. *See, e.g.*, *Walden v. Fiore*, 571 U.S. 277, 288-89 (2014). For another, except to the extent that the firm's participation in the adversary proceeding might speak to waiver, post-filing forum contacts are usually irrelevant to the personal jurisdiction analysis. *See, e.g.*, *Pecoraro v. Sky Ranch for Boys, Inc.*, 340 F.3d 558, 562 (8th Cir. 2003) ("Minimum contacts must exist either at the time the cause of action arose, the time the suit is filed, or within a reasonable period of time immediately prior to the filing of the lawsuit."). Those items aside, if the Court determined that the law firm *actually* represented the Iowa-based affiliates – as the Debtors argued – it is evident that sufficient suit-related contacts exist. Similarly, the law firm sent its bills to Iowa offices and, because the turnover action was for fees and legal files, one reasonably could argue that the submission of those bills to Iowa is a forum contact of sufficiently high quality to permit the exercise of personal jurisdiction. Even so, practitioners and the companies we represent should

remember to guard against attempts to impute forum contacts of client subsidiaries to our clients (or to us).

Otherwise, the opinion is largely unremarkable – the bases for finding a consent to personal jurisdiction or a waiver of the defense are widely accepted. Like many courts, the Court found that the submission of proofs of claim served as a consent to jurisdiction. The law firm objected that it withdrew its proofs of claim, but it did so long after they were filed and months after the adversary proceeding began. Likewise, the Court agreed that the law firm waived its objection to lack of personal jurisdiction. Although the firm timely presented the defense, it waited over a year to file its motion to dismiss based on lack of jurisdiction and, in the meanwhile, it actively engaged in discovery disputes and otherwise participated in the proceeding. The Court found that while the firm's submissions "contained various generic recitations of the personal jurisdiction defense," the firm's conduct "violated the 'spirit' of Rule 12, thereby waiving [the] personal jurisdiction defense." While one may be surprised to learn that expressly restating a personal jurisdiction defense is insufficient to preserve it after timely asserting it, the outcome here seems easily avoided by bringing the issue to the forefront faster than the law firm did here; as noted, the firm waited a year to move to dismiss for lack of personal jurisdiction.

One final note. The law firm evidently moved to dismiss under Fed. R. Civ. P. 12(b)(2) after filing its answer. Although common, this was procedurally improper because motions under Rule 12(b) must be filed "before pleading if a responsive pleading is allowed." The proper vehicle would have been a motion for hearing before trial under Rule 12(i). However, the vehicle by which personal jurisdiction was brought to hearing was not material to the outcome.

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