

RENDERED: MARCH 21, 2003; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2002-CA-000618-MR

MICHAEL ROSS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN K. MERSHON, JUDGE  
ACTION NO. 00-CI-005789

RTC CONVERTERS, INC.

APPELLEE

OPINION  
REVERSING and REMANDING

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BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND COMBS, JUDGES.

EMBERTON, CHIEF JUDGE. Michael Ross asserts that the state of Ohio lacked personal jurisdiction to enter a default judgment against him in favor of RTC and that the Jefferson Circuit Court erred when it gave the judgment full faith and credit. We reverse and remand.

Mr. Ross is a resident of Jefferson County, Kentucky, and is the owner and manager of Discount Transmission Center located in Jefferson County. On December 24, 1996, he entered into a consignment contract with RTC Converters, an Ohio

corporation. Under the agreement, Discount Transmission placed the converters in its business on a consignment basis, with Ross to make payments as the units were sold.

On May 18, 1998, RTC filed an action in the Franklin Municipal Court, Warren County, Ohio, for amounts allegedly owed by Ross. After Ross did not respond to the complaint, on October 27, 1998, a default judgment was entered against Ross for \$6,049.12, plus interest from February 28, 1998.

A sister state's judgment is entitled to full faith and credit in this Commonwealth if the judgment is valid under the issuing state's laws.<sup>1</sup> Under Kentucky's Uniform Enforcement of Foreign Jurisdiction Act, a judgment is entitled to full faith and credit and "has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a court of this state and may be enforced or satisfied in like manner."

The Ohio long-arm statute states that a court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the persons "transacting any business in this state."<sup>2</sup> In Kentucky Oaks Mall

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<sup>1</sup> Sunrise Turquoise, Inc. v. Chemical Design Company, Inc., Ky. App., 899 S.W.2d 856, 857 (1995).

<sup>2</sup> RC §2307.382(A)(1).

Co. v. Mitchell's Formal Wear, Inc.,<sup>3</sup> the court held that transacting any business included a course of dealing where the person becomes obligated to make payments to an Ohio obligor. The course of dealing in that case consisted of phone calls and mailings between a non-resident lessee and an Ohio lessor.

The difficulty in applying Ohio's long-arm statute to the present case is that RTC has offered no evidence as to the course of dealing between it and Ross. According to Ross, there was no contact in Ohio with RTC. RTC is an itinerant seller who supplied inventory from the back of a truck on Ross's premises. The consignment agreement contained in the record makes no reference as to how or where payments are to be made and does not reveal RTC's address. There is no evidence of a course of dealing between the parties, that would subject Ross to the jurisdiction of the Ohio courts.

Even if jurisdiction could be supported under Ohio's long-arm statute, the question would remain whether Ross had minimum contacts with that state to satisfy constitutional due process. As we stated in Sunrise Turquoise, supra:<sup>4</sup>

The three-pronged test for minimum contacts, as set forth in International

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<sup>3</sup> 53 Oh.St.3d 73, 559 N.E.2d 477 (Ohio 1990), cert. denied, 499 U.S. 975, 111 S.Ct. 1619, 113 L.Ed.2d 717 (1991).

<sup>4</sup> Sunrise Turquoise, supra, at 858.

Shoe, supra, requires that: (1) defendant has purposely availed itself of the privilege of acting within the state; (2) the cause of action must arise from defendant's activities; and (3) enough connections to the state must exist so that jurisdiction would be reasonable. In terms of a due process analysis, the defendant's connection must be such "that he should reasonably anticipate being haled into court there." (Citations omitted).

Although RTC is an Ohio corporation, there is no evidence that Ross "purposely availed himself of acting within the state." Even the trial court noted in its opinion that there were "no explicit facts in the record of any contacts between the jurisdiction of Ohio and the transactions between the parties." Our review of the record confirms this finding and we further find no evidence that Ross was aware that RTC was an Ohio corporation. Without such evidence, Ross's mere dealings with an Ohio corporation are not sufficient to establish that he purposely availed himself of the privilege of acting in Ohio.<sup>5</sup>

The trial court's finding that Ohio had personal jurisdiction over Ross is erroneous and the case is remanded for entry of an order of dismissal consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

James L. Conkin  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Jacqueline M. Caldwell  
Louisville, Kentucky

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<sup>5</sup> See Burger King Corp v. Ruzewicz, 471 U.S. 462, 85 L.Ed.2d 528, 105 S.Ct. 2174 (1985).