

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-3569-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

WILDECK, INC., A WISCONSIN CORPORATION,

PLAINTIFF-APPELLANT,

V.

**THOMAS J. COUSAR AND COUSAR PAINTING COMPANY,
INC., A FOREIGN CORPORATION,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Waukesha County:
KATHRYN W. FOSTER, Judge. *Affirmed.*

Before Nettesheim, Anderson and Snyder, JJ.

¶1 PER CURIAM. Wildeck, Inc. appeals from a judgment dismissing its complaint for lack of personal jurisdiction over Thomas J. Cousar and Cousar Painting Company, Inc. (collectively, Cousar). The issue on appeal is whether the

exercise of personal jurisdiction over Cousar would offend due process. We conclude that the exercise of personal jurisdiction would offend due process because of Cousar's lack of contacts with the forum state. Therefore, we affirm the judgment.

¶2 Wildeck is a Wisconsin corporation with its principal place of business in Waukesha, Wisconsin. The corporation manufactures various products, including a security ceiling called "Wilsecure." This security ceiling is made for use in prisons and other institutional settings. Cousar includes Thomas Cousar, individually, as the president and sole shareholder of Cousar Painting Company, Inc., a Pennsylvania corporation with its sole place of business in McKeesport, Pennsylvania. Thomas Cousar resides in Pennsylvania.

¶3 Cousar entered into a contract with Baltimore Contractors, Inc. (BCI), general contractor for a construction project for the Western Correctional Institute, located in the State of Maryland. One of the tasks for which Cousar served as subcontractor was to fabricate and install an acoustic security ceiling. Cousar eventually decided to subcontract the fabrication of the security ceiling to the bidder who met its requirements.

¶4 Vince George, an authorized sales representative of Wildeck, approached Cousar expressing Wildeck's interest in bidding for the security-ceiling contract. George is the president of the V.O. George Corporation located in Pittsburgh, Pennsylvania. George eventually provided a bid to Cousar on Wildeck's behalf, which was rejected. Thereafter, Cousar sent all bidders a facsimile request for additional information and Wildeck sent a reply. Cousar and George, each in Pennsylvania, continued to communicate about Wildeck's possible role until a contract was entered into March 10, 1998, consisting of

Wildeck's final proposal to Cousar and Cousar's letter to George with a carbon copy to Wildeck, accepting Wildeck's bid.

¶5 Wildeck submitted drawings of its custom fabricated security ceiling to Cousar, which, in turn, provided them to BCI to initiate its part in the project. Thereafter, in July 1998, Wildeck began shipping the product to the project site in Maryland. Wildeck paid the shipping charges. Cousar received the invoices for the materials sent to the Maryland project. Additionally, communication continued thereafter as changes were made to the project plans and a disagreement over payment ensued. Other than its contact with Wildeck, Cousar has no other contacts with the forum state. Cousar has conducted no business of any kind in Wisconsin except the Wildeck contract. No one from Cousar has ever traveled to Wisconsin on business and Thomas Cousar has never been to Wisconsin for any reason. Cousar did not seek out Wildeck as the subcontractor to fabricate the security ceiling. Rather, Wildeck, through George, sought out Cousar. Wildeck was not the only bidder and, in fact, Wildeck was rejected at least once for the contract. George, from his Pennsylvania office, negotiated the contract.

¶6 Further, Cousar has no registered agent in Wisconsin. It has not appointed anyone to accept service of process in Wisconsin. Cousar owns no property or assets in Wisconsin. In sum, Cousar has no contacts of any kind in Wisconsin save this single contract with Wildeck. The question is whether this single contact provides a Wisconsin court with personal jurisdiction over Cousar.

The existence of personal jurisdiction is a question of law which this court reviews de novo. The burden of proof is on [the plaintiff] to establish personal jurisdiction.

Whether Wisconsin courts have jurisdiction over a nonresident defendant is a two-fold inquiry. First, the nonresident's contacts with the state must be determined pursuant to Wisconsin's long-arm statute, § 801.05, STATS.

Second, if the long-arm statute extends to the defendant, we must determine whether the exercise of jurisdiction comports with due process requirements. While Wisconsin's long-arm statute should be liberally construed in favor of exercising jurisdiction, due process requires that the defendant have certain minimum contacts with the state such that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

Regal Ware, Inc. v. TSCO Corp., 207 Wis. 2d 538, 541-42, 558 N.W.2d 679 (Ct. App. 1996) (citations omitted).

¶7 Wildeck contends that personal jurisdiction over Cousar can be exercised under Wisconsin's long-arm statute, WIS. STAT. § 801.05(5)(a), (b) and (d) (1999-2000).¹ We assume, without deciding, that § 801.05(5)(d) confers personal jurisdiction over Cousar. As noted above, we must also decide whether Cousar's contacts with the State meet the due process requirement such that maintaining the suit does not offend "traditional notions of fair play and substantial justice." This is the second prong of our analysis.

¹ WISCONSIN STAT. § 801.05 (1999-2000) provides in relevant part:

A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 801.11 under any of the following circumstances:

(5) LOCAL SERVICES, GOODS OR CONTRACTS. In any action which:

(a) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff; or

(b) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant; or

....

(d) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the defendant's order or direction[.]

¶8 “A defendant corporation establishes minimum contacts by *purposely availing itself of the privilege of conducting business in the forum state*. The defendant’s activities must be such that it could reasonably anticipate being subject to suit in the forum state.” *Precision Erecting v. M&I Marshall & Ilsley Bank*, 224 Wis. 2d 288, 296-97, 592 N.W.2d 5 (Ct. App. 1998) (citation omitted; emphasis added). “Jurisdiction is proper when the contacts result from actions by the defendant corporation which create a substantial connection to the forum state.” *Regal Ware*, 207 Wis. 2d at 544. If the nature of the relationship between the nonresident and the company is “fortuitous” or “attenuated,” a contractual relationship between the parties will fail to satisfy the purposeful establishment of minimum contacts. *Id.* (citation omitted).

¶9 We cannot conclude that Cousar purposely availed itself of the privilege of conducting business in Wisconsin. It was Wildeck, through its sales representative in Pennsylvania, that approached Cousar to discuss its interest in bidding on the subcontract for the security ceiling. There were other bidders in contention and Wildeck’s bid was rejected at least once. The negotiations leading to the contract occurred between George and Cousar in Pennsylvania. Cousar communicated a negligible amount in the ordinary course of business to facilitate the delivery of the security ceiling to the project in Maryland. The parties negotiated for the fulfillment of a single contract.² There is no evidence of a continuing obligation by Cousar to the Wisconsin-based Wildeck. The contacts between Wildeck and Cousar are fortuitous and attenuated. *Id.*

² See *Jadair Inc. v. Walt Keeler Co.*, 679 F.2d 131 (7th Cir. 1982) (defendant’s sole contact with Wisconsin was ordering a machine from a manufacturer headquartered in Wisconsin; this is not sufficient to establish personal jurisdiction).

¶10 Further, Cousar did not conduct any other business of any kind with Wildeck or in Wisconsin. Neither Thomas Cousar nor any employees of Cousar had ever been to Wisconsin on company business. Thomas Cousar has never been to Wisconsin. Cousar never had contacts with Wisconsin in terms of property, assets, agents, employees, or persons to accept service of process. The contacts with Wisconsin did not result from actions by Cousar which created a substantial connection to the forum state. *Id.* Cousar's activities were not such that it could reasonably anticipate being subject to suit in the forum state. *Precision Erecting*, 224 Wis. 2d at 297. We conclude that the exercise of personal jurisdiction over Cousar would offend due process. We affirm the trial court's dismissal of the action.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

