

DISTRICT COURT CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: December 1, 2015 8:48 AM CASE NUMBER: 2015CV32019
Plaintiffs, JOHN SCOTT MAGILL, SUZANNA MAGILL v. Defendant, FORD MOTOR COMPANY; MARK POLUNCI; AND DOES 1 THROUGH 20, INCLUSIVE	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 2015CV32019 Courtroom: 409
ORDER	

This matter is before this Court on Defendant Ford Motor Company’s C.R.C.P. 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction or, in the Alternative, to Transfer Venue Pursuant to C.R.C.P. 98(e) filed on July 6, 2015. Plaintiffs filed a response on July 27, 2015; Defendant Ford Motor Company (“Ford”) replied on August 10, 2015. On October 7, 2015, this Court granted Ford’s request to submit supplemental authority. After reviewing the motion, response, reply, exhibits, relevant portions of the Court’s file, and applicable law, this Court finds and orders as follows:

I. Background

On September 25, 2013, a rear end collision occurred between Plaintiff John Scott Magill's ("Magill") 2007 Ford Fusion and Defendant Mark Polunci's ("Polunci") vehicle in Douglas County. Compl. ¶1.

Ford is incorporated in the State of Delaware and has its principle place of business in Dearborn, Michigan. Compl. ¶6.

On June 5, 2015, Plaintiffs initiated this products liability action against Ford in Denver County.

Ford filed an Answer and simultaneously moves to dismiss this matter under C.R.C.P. 12(b)(2) for want of personal jurisdiction. In opposition, Plaintiffs argued that Ford waived its jurisdictional challenge and that it is subject to the general and specific jurisdiction of the court. In the alternative, Ford suggests that venue should be transferred to Douglas County or El Paso County.

II. Analysis

A. Waiver

This Court rejects Plaintiffs' contention that Ford waived their challenge to personal jurisdiction by filing an Answer. Here, Ford raised the defense of lack of personal jurisdiction in its Answer.

B. Personal Jurisdiction

A trial court may decide a motion to dismiss under C.R.C.P. 12(b)(2) solely on documentary evidence, including allegations in the complaint, which must be taken as true unless contradicted by other evidence, affidavits, and other written submittals from the parties. *Goettman V. N. Fork Valley Rest.*, 176 P.3d 60, 65-66 (Colo. 2007); *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1193 (Colo. 2005).

A court's role in addressing a Rule 12(b)(2) motion on documentary evidence is one of "data collector" and "not a fact-finder." *Id.* at 1192. When a trial court decides the motion on documentary evidence alone, the plaintiff need only make a prima facie showing of personal jurisdiction by raising a reasonable inference that the court has jurisdiction over the defendant. Conflicts in the evidence must be resolved in favor of the plaintiff. *Goettman*, 176 P.3d at 66; *Archangel*, 123 P.3d at 1193.

If, alternatively, a court elects to resolve the question of personal jurisdiction by holding an evidentiary hearing, the plaintiff must establish that jurisdiction exists by a preponderance of the evidence. *Id.* If a court holds a hearing, it becomes the fact-finder and may weigh and resolve any factual disputes pertaining to jurisdiction. *Id.* To decide whether a hearing is required, the court determines if the circumstances of a particular case indicate that it is:

unfair to force an out-of-state defendant to incur the expense and burden of a trial on the merits in the local forum without first requiring more of the plaintiff than a prima facie showing of facts essential to *in personam* jurisdiction. A court may so determine, for example when the proffered evidence is conflicting and the record is rife with contradictions, or when a plaintiff's affidavits are patently incredible.

Id. at 1193.

i. Requirements of the Long-Arm Statute

Before a nonresident defendant may be subjected to the Colorado court's jurisdiction, the plaintiff must comply with the requirements of Colorado's long-arm statute, section 13-1-124, C.R.S. 2015, and constitutional due process. *Id.* at 1193-94. Colorado's long-arm statute confers the maximum jurisdiction permitted by the Due Process of the United States and Colorado Constitutions; therefore, if a plaintiff satisfies the constitutional requirements, Colorado's long-arm requirements are also satisfied. *Id.*

To meet the requirements of due process, a defendant must have "certain minimum contacts with the forum state so that he may foresee being answerable in court there." *Id.* at 1194.

The quantity and nature of these contacts depends on whether the plaintiff alleges general or specific jurisdiction. *Goettman*, 176 P.3rd at 67.

ii. General Jurisdiction

“[B]ecause general jurisdiction is not related to the events giving rise to the suit, courts impose a more stringent minimum contacts test, requiring the plaintiff to demonstrate the defendant's continuous and systematic general business contacts.” *Archangel*, 123 P.3d at 1194 (quoting *Metro. Life Ins. Co. v. Robertson–Ceco Corp.*, 84 F.3d 560, 567 (2d Cir. 1996)).

1. Documentary Evidence

In their Complaint for Damages and Demand for Jury Trial, Plaintiffs John Scott Magill and Suzanna Magill (collectively, the “Magills”) alleged that Ford was subject to personal jurisdiction for the following reasons:

“This action arises out of an automobile collision which occurred on September 25, 2013 in the area of Mile Marker 191.5 of northbound I-25 in the City of Lone Tree, Colorado when a 2007 Ford Fusion (“the Fusion”) operated by Plaintiff JOHN SCOTT MAGILL was struck from the rear by an automobile driven by Defendant MARK POLUNCI, causing the Fusion’s defective seat and restraints systems to fail, and resulting in Plaintiff JOHN SCOTT MAGILL’s severe and permanent injuries.

...

Defendant FORD MOTOR COMPANY is a Delaware corporation having its principal place of business in Dearborn, Michigan and its

designated agent in Denver, Colorado. Defendant FORD MOTOR COMPANY is authorized to conduct business in the State of Colorado.

Venue is proper in Denver County, Colorado pursuant to C.R.C.P. 98 because Defendant FORD MOTOR COMPANY is a nonresident of this State, thus this action may be tried in any county in which the defendant may be found in this State, or in the county designated in the complaint. Here, Defendant FORD MOTOR COMPANY's Registered Agent for service of process is The Corporation Company, 1675 Broadway, Suite 1200, Denver, CO 80202.

Defendant FORD MOTOR COMPANY manufactured and sold the Fusion operated by Plaintiff JOHN SCOTT MAGILL at the time of the collision previously described - 3 - 1259737.2 herein. The Fusion was purchased by Plaintiff JOHN SCOTT MAGILL in the State of Colorado.”

Ford asserts, on the other hand, that it is not subject to the general jurisdiction of this Court as Colorado is neither its place of incorporation, Delaware, nor principle place of business, Michigan. Ford further asserts that general jurisdiction may only be exercised outside of these two places only in an “exceptional case.”

Ford cites and relies on *Daimler AG v. Bauman*, — U.S. —, —, 134 S.Ct. 746, 753, — L.Ed.2d —, — (U.S. 2014). In *Daimler*, plaintiffs from Argentina initiated a federal action in the United States District Court for the Northern District of California against Daimler, a German corporation, alleging that Mercedes-Benz Argentina, Daimler's

subsidiary corporation, collaborated with Argentine state security forces to “kidnap, detain, torture, and kill certain [Mercedes-Benz] Argentina workers” during Argentina's “Dirty War” of 1976–1983. *Daimler AG v. Bauman*, 134 S.Ct. at 751–52.

In their complaint, the Daimler plaintiffs named only Daimler as a defendant; claimed Daimler was vicariously liable for the actions of Mercedes–Benz Argentina; alleged all wrongdoing took place in Argentina and centered on Mercedes-Benz Argentina’s plaint in Gonzalez Catan, Argentina. *Id.* at 751-52.

The U.S. Supreme Court addressed “whether, consistent with the Due Process Clause of the Fourteenth Amendment, Daimler is amenable to suit in California courts for claims involving only foreign plaintiffs and conduct occurring entirely abroad.” *Id.* at 754.

In opposing Daimler’s motion to dismiss for want of personal jurisdiction, the Daimler plaintiffs argued that jurisdiction in California was proper because Mercedes–Benz USA, a Delaware corporation with its principal place of business in New Jersey and an indirect subsidiary of Daimler, was Daimler’s agent and maintained multiple California-based facilities and was the “largest supplier of luxury vehicles to the California

market.” *Id.* at 752-754.

The U.S. Supreme Court held that in order for a court to exercise general jurisdiction over a foreign corporation its affiliations with the forum must be “‘continuous and systematic’ as to render [it] essentially at home in the forum State.” 564 U.S., at —, 131 S.Ct., at 2851. 19; n. 19 (noting that it would be possible for a corporation to be “at home” in places outside of its place of incorporation or principal place of business).

Ultimately, the U.S. Supreme Court concluded that, even assuming Mercedes-Benz USA was at “home” in California and assuming its contacts are imputable to Daimler, “there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler’s slim contacts with the State hardly render it at home there.” *Id.* at 760.

Here, the Magills have made a prima facie showing that Ford is at “home” in Colorado. First, this Court disagrees with Ford that *Daimler* is dispositive as it is factually and procedurally distinguishable than what is presented here (*e.g.*, all malfeasance complained of occurred in another country; claims involving only foreign plaintiffs, agency theory, etc.). Nevertheless, this Court finds its holding very instructive. Second, unlike in *Daimler*, Ford has more than “slim contacts” with Colorado. As alleged,

Ford aggressively markets and sells its vehicles by and through over thirty Ford dealerships throughout Colorado. In addition, the Magills further allege that Ford maintains several offices and businesses in Colorado including the Ford Motor Company Service School, and Ford Motor Credit Co., LLC. The Magills also contend that Ford is registered with the Colorado Secretary of State and has designated an authorized agent to accept service of process in Colorado; trains and certifies mechanics to specially perform services on behalf of Ford for consumers in Colorado; works directly with dealerships, collision repair centers, and consumers in Colorado on warrant and goodwill claims. Finally, the Magills state that Ford has actively litigated, as both plaintiff and defendant in cases in Colorado.

This Court rejects Ford's insistence to view each alleged contact individually; in considering all the above allegations in total, it is clear to this Court that Ford has more than sufficient continuous and systematic affiliations with Colorado to be considered "at home" in this state. This Court also finds that exercising jurisdiction over Ford does not offend traditional notions of fair play and substantial justice. Given the corporate presence in Colorado, it cannot be said that the burden on Ford is great. Further, the mere suggestion by Ford that Jefferson County is acceptable

as alternative relief demonstrates this. Moreover, to accept Ford's legal contention coupled with similar facts found in this case would essentially provide only two forums, namely Delaware and Michigan, for an injured plaintiff in the future; two forums that are highly advantageous to Ford.

This Court also rejects Ford's supplemental authority, namely, *Pitts v. Ford Motor Co.*, Case No. 1:14CV396-HSO-JCG, an unpublished order from the District Court for the Southern District of Mississippi. This case is not binding precedent on this Court; but even if it were, the holding is not applicable to the facts here. The *Pitts* case involved a products liability claim in which the plaintiffs resided in Texas but filed in Mississippi where the car accident occurred, and the plaintiffs named Ford as the sole Defendant. Here, as explained above, this Court is convinced that when considering all the above allegations, it is clear to this Court that the Magills have met their burden of making a prima facie showing that the Court has personal jurisdiction over Ford.

iii. Specific Jurisdiction

Because this Court has concluded that general jurisdiction is present, this Court finds it unnecessary for it to review Ford's arguments as to whether the Magills have established specific jurisdiction.

C. Change of Venue

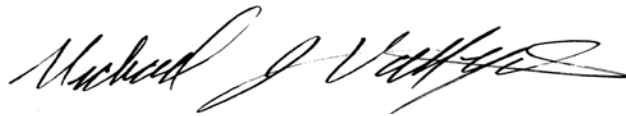
This Court finds that its previous Order of November 9, 2015, which denied this request, sufficiently addresses this issue.

III. Conclusion

For the reasons set forth above, the Court DENIES Ford's request to dismiss for personal jurisdiction as the Magills have sufficiently alleged that Ford has maintained sufficient minimum contacts to subject itself to general jurisdiction in Colorado, and that the exercise of that jurisdiction comports with the traditional notions of fair play and substantial justice.

DATED this 1st day of December, 2015.

SO ORDERED.



MICHAEL J. VALLEJOS
Denver District Court Judge