UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1584

September Term, 2014

LORI A. WENTWORTH

v.

NEVADA PROPERTY 1, LLC

Krauser, C.J.,
Nazarian,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: August 29, 2016

While attending a national convention for travel agents in Las Vegas, Nevada, Lori A. Wentworth, appellant, slipped and fell in the lobby of the Cosmopolitan Hotel and Casino ("Cosmopolitan Hotel"), the site of the convention, which was owned by Nevada Property 1, LLC ("Nevada LLC"), appellee. Ms. Wentworth, a Maryland resident, subsequently brought a negligence action against Nevada LLC, in the Circuit Court for St. Mary's County, Maryland. In response, Nevada LLC, a Delaware corporation, filed a motion to dismiss that suit, contending that it did not have sufficient contacts with Maryland for personal jurisdiction to attach. The St. Mary's circuit court agreed and granted that motion, whereupon Ms. Wentworth noted this appeal, claiming that the circuit court was incorrect in so ruling. For the reasons that follow, we shall affirm.

The Accident

From November 3rd through November 6th, 2011, Ms. Wentworth, a travel agent, attended a "Travel Leaders National Convention" in Las Vegas, Nevada. During that convention, she stayed, as a guest, at the site of the convention, the Cosmopolitan Hotel, which was "owned and operated" by Nevada LLC. While walking through the lobby of the Cosmopolitan Hotel, on the evening of November 4th, she slipped and fell on the hotel's purportedly wet floor, injuring, according to her complaint, "her left leg and butt."

Legal Proceedings

In late October of 2013, nearly two years after the date of her fall in the Cosmopolitan Hotel, Ms. Wentworth filed a suit, in a St. Mary's County circuit court, against the owner and operator of the Cosmopolitan Hotel, Nevada LLC, alleging a single

count of negligence. Specifically, she claimed that the hotel was negligent in failing to warn her, and other patrons, that the lobby floor was wet and in failing to "take proper remedial action to address" that condition. Nevada LLC responded to that complaint with a motion to dismiss, asserting, among other things,[1] that the Maryland circuit court had no personal jurisdiction over it.

Affidavits of Nevada LLC's "Director of Regulatory Affairs" and "Vice President of Advertising," which accompanied its motion to dismiss, stated that Nevada LLC was a Delaware corporation; that its principal place of business was in Las Vegas, Nevada; that it had no charter or license to do business in the State of Maryland; that it was not registered under any Maryland statutory scheme for any purpose; that it had no employees or offices in Maryland; that it had not placed any product into Maryland's stream of commerce which had caused injury in the State; that it did not have an agent to receive service of process in Maryland; that it did not maintain any phone listings or bank accounts in Maryland; and that it did not pay taxes to the State of Maryland.

While the affidavits acknowledged that Nevada LLC engages in "national television, and print advertising which covers the United States generally, and advertising

[1] Also, in its motion to dismiss the action, Nevada LLC, invoking the doctrine of forum non convienens, claimed that a Maryland circuit court was an "inconvenient forum" and requested that the circuit court "dismiss [the] action so that it may be transferred to a Court in the State of Nevada for the convenience of the parties and the interests of justice." But, because the circuit court ultimately granted Nevada LLC's motion to dismiss, on the grounds that Maryland did not have personal jurisdiction over Nevada LLC, the court did not address Nevada LLC's claim of forum non convienens. Ms. Wentworth, on appeal, attempts to use this doctrine as another basis for keeping her claim in the Maryland courts, but we need not address that issue given our holding that Maryland does not have personal jurisdiction over Nevada LLC.

in the Washington D.C. demographic area" and "that residents of Maryland may choose to visit its hotel," the affidavits stated that Nevada LLC "does not target any of its advertising specifically to Maryland nor does it regularly or actively solicit business specifically in Maryland, except for direct marketing intended for specific individuals."[2] And, other than "direct marketing intended for specific individual(s)," the affidavits noted that Nevada LLC "does not devote energy or financial resources to the marketing of Maryland and allocates no part of its advertising budget to Maryland."

Ms. Wentworth's response to Nevada's motion to dismiss did not take issue with any of the foregoing assertions, other than to state that the Cosmopolitan Hotel had "sent promotional emails to [her] in an attempt to incentivize travel to their destination hotel and casino"; that the Cosmopolitan had "utilized promotional booths and advertising when the Travel leaders convention has been held in other cities"; that she had "received Cosmopolitan cross promotional advertising materials from secondary vendors including airlines, rental car companies, and travel sites"; and that she had "personally observed, on network television in [her] area, television commercials for the Cosmopolitan."

The circuit court subsequently found that it lacked personal jurisdiction over Nevada LLC and dismissed this case.

[2] It is unclear what exactly "direct marketing intended for specific individuals" means, as that description was given, by an official from Nevada LLC, in an affidavit submitted below, without any further clarification.

Discussion

I.

The issue in this appeal is whether the trial court erred in granting Nevada LLC's motion to dismiss for lack of personal jurisdiction, or, to be more precise, "whether the trial court was legally correct" in rendering that ruling. *Bond v. Messerman*, 391 Md. 706, 718 (2006).

Typically, such an issue invokes a two-part test: "First, we consider whether the exercise of jurisdiction [would be] authorized under Maryland's long arm statute," which is set forth in Section 6-103 (b)(4) of the Courts and Judicial Proceedings Article of the Maryland Code. *MaryCLE, LLC v. First Choice Internet, Inc.*, 166 Md. App. 481, 497-98 (2006) (internal quotations and citations omitted). That provision provides, in relevant part, that a Maryland court may exercise personal jurisdiction over a defendant who

> [c]auses tortious injury in the State or outside of the State by an act or omission outside the State if [that defendant] regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State.

Md. Code Ann., Cts. & Jud. Proc. § 6-103(b).

And, second, we "determine whether the exercise of jurisdiction comports with due process requirements of the Fourteenth Amendment [to] the Federal Constitution." *MaryCLE, LLC*, 166 Md. App. at 498 (internal quotations and citations omitted). However, because Maryland courts, "[w]ith respect to this two-part test," have "consistently held that the purview of the long arm statute is coextensive with the limits

of personal jurisdiction set by the due process clause of the Federal Constitution. . . . [O]ur statutory inquiry merges with our constitutional examination.*" MaryCLE, LLC*, 166 Md. App. at 498 (internal quotations and citations omitted).

We now begin that inquiry and examination by noting that "[t]o comply with the Due Process Clause of the Fourteenth Amendment, the exercise of personal jurisdiction over an out-of-state defendant requires that the defendant have established minimum contacts with the forum state and that to hale him or her into court in the forum state would comport with traditional notions of fair play and substantial justice." *CSR, Ltd. v. Taylor*, 411 Md. 457, 476 (2009) (internal citations and quotations omitted). This test for personal jurisdiction involves two separate, albeit related, inquiries: the 'minimum contacts' inquiry and the 'reasonableness' inquiry. *CSR, Ltd.*, 411 Md. at 493; *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 113-14 (2000).

The "minimum contacts" inquiry requires us to determine whether defendant has sufficient "minimum contacts" with Maryland so as to justify the court's exercise of personal jurisdiction. *CSR, Ltd.*, 411 Md. at 478. For the purposes of this inquiry, "cases may be divided into the categories of specific or general jurisdiction, with each category requiring a different quantum of contacts to confer jurisdiction. *Id.* at 476–77 (citing *Presbyterian Univ. Hosp. v. Wilson,* 337 Md. 541, 551 n.2 (1995)).

Specific personal jurisdiction arises where "the defendant's contacts with the forum state form the basis for the suit," *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 479 (2012) (internal citations and brackets omitted), that is to say, where those contacts "are related to the operative facts of the controversy." *MaryCLE, LLC*, 166 Md.

App. at 504. On the other hand, general personal jurisdiction may be found when those contacts are "continuous and systematic," *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 22 (2005) (internal citations omitted), even though "the plaintiff's cause of action [did] not arise out of the defendant's contacts in the forum." *Presbyterian Univ. Hosp.*, 337 Md. at 550. In sum, "[c]ases based upon general jurisdiction require a defendant to have stronger contacts with the forum state than those required in cases based upon specific jurisdiction." *Cappel v. Riaso, LLC*, 197 Md. App. 347, 358 (2011) (internal citations omitted).

The Court of Appeals has cautioned, however, that the "concept of specific and general jurisdiction" should not be rigidly applied. In *Camelback Ski Corp. v. Behning*, 312 Md. 330 (1988), it explained:

> [t]he concept of specific and general jurisdiction is a useful tool in the sometimes difficult task of detecting how much contact is enough, and most cases will fit nicely into one category or the other. If, however, the facts of a given case do not naturally place it at either end of the spectrum, there is no need to jettison the concept, or to force-fit the case. In that instance, the proper approach is to identify the approximate position of the case on the continuum that exists between the two extremes, and apply the corresponding standard, recognizing that the quantum of required contacts increases as the nexus between the contacts and the cause of action decreases.

Camelback, 312 Md. at 339.

Then, in refining the concept of a jurisdictional "continuum" several years later, the Court, in *Presbyterian Univ. Hosp. v. Wilson*, 337 Md. 541 (1995), cautioned:

> We did not mean to suggest that there is some form of jurisdiction in between general and specific jurisdiction. We merely indicated that . . . where a defendant may not have sufficient contacts to support general jurisdiction, a trial judge need not segregate factors tending to support

> general jurisdiction from those supporting specific jurisdiction. Rather, the court may utilize factors relevant to general jurisdiction in making a determination regarding the propriety of the forum's exercise of specific personal jurisdiction over a defendant.

Presbyterian Univ. Hosp., 337 Md. at 551 n.2.

In any event, "[n]otwithstanding the distinctions between general and specific personal jurisdiction," the Court has stressed that "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. Thus, the absence of any purposeful availment by the defendant stands as an obstacle to whether the defendant's contacts with the forum state amount to the sufficient minimum contacts necessary to confer jurisdiction in either a specific or general jurisdiction context." *CSR, Ltd.*, 411 Md. at 479 (internal citations omitted).

"This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activity of another party or a third person.'" *Cappel, LLC*, 197 Md. App. at 357 (citing *Burger King v. Rudzewicz,* 471 U.S. 462, 475–76 (1985)) (internal brackets omitted). And "[t]o satisfy the purposeful availment requirement in Maryland . . . the defendant must create a substantial connection with Maryland such that having to defend a lawsuit in the State would be foreseeable." *CSR, Ltd.*, 411 Md. at 485 (internal citations and quotations omitted). Such a "connection is forged where the defendant either engages in significant activities in the State or creates continuing

obligations with the State's residents, thus taking advantage of the benefits and protections of Maryland law." *Id.* (internal citations omitted).

If we find that the defendant's contacts with Maryland meet the "minimum contacts" requirement of either specific or general personal jurisdiction, the "threshold" standard for personal jurisdiction, we then turn to question of "whether the exercise of personal jurisdiction would be constitutionally reasonable," that is, whether the exercise of personal jurisdiction "would comport with 'fair play and substantial justice.'"[3] *Id.* at 478 ("Because we conclude in the foregoing analysis that [the defendant, now appellant,] has not, in the course of any of its contacts with Maryland, satisfied the purposeful availment requirement, thus attaining sufficient minimum contacts with the State, we need not consider whether the exercise of personal jurisdiction would be constitutionally reasonable as required by our tests for either specific or general jurisdiction"); *Lieberman v. Mayavision, Inc.*, 195 Md. App. 263, 281 (2010); *Burger King Corp.*, 471 U.S. at 476 (citing *International Shoe Co. v. Washington,* 326 U.S., at 320). And, in making that

[3] The Court of Appeals, in *Camelback Ski Corp. v. Behning*, 312 Md. 330, 341 (1988), suggested that a court need not first engage in the minimum contacts inquiry of the due process test for personal jurisdiction ("although it is convenient to speak of the two analyses as separate steps, the 'threshold' step is not considered in a vacuum, nor must it invariably be the first step"). But, years later, the Court, in *CSR, Ltd. v. Taylor*, 411 Md. 457 (2009), described the due process test as we have done so in this opinion. This ambiguity was recently recognized and addressed in *Cappel v. Riaso, LLC*, 197 Md. App. 347, 363 (2011), where the Court stated: "The Court of Appeals noted in *Camelback II* that, although it is convenient to speak of the two analyses as separate steps, the 'threshold' step is not considered in a vacuum, nor must it invariably be the first step. Nevertheless, in [*CSR, Ltd. v. Taylor*, 411 Md. 457 (2009)], the Court of Appeals clarified that it is unnecessary to discuss the fairness factors where the threshold step is unmet if there are insufficient contacts with the forum."

determination, we consider: (1) the burden on the defendant, (2) the interests of the forum State, (3) the plaintiff's interest in obtaining relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several States in furthering fundamental substantive social policies. *CSR, Ltd.*, 411 Md. at 482.

After a court has determined that the defendant has sufficient minimum contacts with the forum, the reasonableness inquiry may bolster a plaintiff's claim of personal jurisdiction. That is to say, it may "serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required." *Burger King Corp.*, 471 U.S. at 477 (internal citations omitted). But it may not. In fact, it may thwart the exercise of personal jurisdiction if, in the court's consideration of the aforementioned factors, the imposition of personal jurisdiction, based on the defendant's contacts with the forum, would be "fair and reasonable." *Cappel LLC*, 197 Md. App. at 363 ("after a court makes the threshold finding that the required minimum contacts exist, it will proceed to determine whether it would be fair and reasonable to extend personal jurisdiction based on those contacts); see also *Burger King Corp.*, 471 U.S. at 478.

With these principles in mind, we turn to Ms. Wentworth's contention that Nevada LLC's contacts, with Maryland, are sufficient to warrant the imposition of either specific or general personal jurisdiction. Specifically, Ms. Wentworth cites Nevada LLC's advertising and "direct marketing" efforts, claiming that, "as a consequence" of Nevada LLC's national advertising campaign, including the "direct marketing" to select Maryland residents, "it has purposefully availed itself of the economic benefits of

attracting Maryland consumers" and thus it should have expected "to be haled into a Maryland court when [it] wrong[s] one of those residents."

A.

Because the negligence action at issue is based on a slip and fall that occurred in Las Vegas, Nevada, not in Maryland, that cause of action does not "arise from" nor is it "directly related to" Nevada LLC's contacts with Maryland, and thus the imposition of specific personal jurisdiction would be unwarranted. *Dynacorp Ltd.*, 208 Md. App. at 479 (internal citations and brackets omitted).

In *MaryCLE, LLC v. First Choice Internet, Inc.*, 166 Md. App. 481, 504-05 (2006), we explained that "an action will be deemed to have arisen from [the defendant's contacts with the forum]," where those contacts "are related the operative facts of the controversy." *MaryCLE, LLC*, 166 Md. App. at 504. In that case, MaryCLE, a Maryland[4] consumer protection firm, filed suit, in the Circuit Court for Montgomery County, against First Choice,[5] an "Internet marketing company based in New York,"

[4] We noted, in that case, that MaryCLE, LLC, "an acronym for 'Maryland Consumer Legal Equity,'" was "registered in Maryland and [had] a Maryland mailing address," but "the complaint and MaryCLE's own website and letterhead list[ed] its principal place of business as Washington, D.C."*MaryCLE*, 166 Md. App. at 489.

[5] There were actually four parties to this case. MaryCLE filed the complaint along with "NEIT Solutions, LLC, an interactive computer service provider," located in Frederick, Maryland. That complaint named two defendants: First Choice and its "President, Joseph Frevola, who [lived] in New York. *Id.* at 489. But because our decision in *MaryCLE* focused on the actions of MaryCLE and First choice, our discussion in this opinion will also be limited to those two parties.

The suit was brought against First Choice, an Internet marketing company based in New York, Also, there was an additional plaintiff, that provides internet (continued…)

claiming that First Choice had sent them dozens of "unsolicited false and misleading commercial emails," in violation of "the Maryland Commercial Electronic Mail Act (MCEMA), Md.Code (1975, 2005 Repl.Vol.), § 14–3001 *et seq.* of the Commercial Law Article (CL)." Id. at 492. The circuit court, however, dismissed that claim, finding, among other things, that Maryland lacked personal jurisdiction over First Choice. *Id*.

When this Court addressed that issue, in the appeal that followed, we applied a "but for" test to determine whether the defendant's contacts with Maryland were "related to the operative facts of the controversy." *Id*. at 505. We found that "[the defendant's] alleged contacts with Maryland [were] related to the operative facts of [that] case" because "but for [the defendant's] alleged transmission of [these emails], [the plaintiff] would not have suffered an injury." *Id*. (internal citations and brackets omitted).

Ms. Wentworth's complaint alleged that Nevada LLC was liable for its failure to "provide a safe environment" for its guests and for failing to give "proper warning of hazardous floor conditions." But it provided no facts indicating or even suggesting that the Nevada LLC's advertising contacts were "related to the operative facts" of the slip and fall that occurred in Las, Vegas. The contacts that Ms. Wentworth cites merely assert that Nevada LLC advertised generally in "the Washington D.C. demographic area," with limited "direct marketing" of select Maryland residents. Moreover, there is, understandably, no suggestion that such advertising and marketing induced or even

(…continued) services, including the hosting of web space and use of email addresses, to MaryCLE. NEIT is a registered Maryland limited liability company that is located in Frederick, Maryland, although its computer servers are located in Colorado." *Id*. at 489.

encouraged Ms. Wentworth to attend or stay at the Cosmopolitan Hotel. In fact, it appears that Wentworth's decision to stay at the Cosmopolitan Hotel was the result of "convention packaging prominently encouraged participants to stay at the Cosmopolitan for the convention weekend," which was given to travel agents attending the convention.

Thus we find that Nevada LLC's advertising and marketing contacts with Maryland are not "related to the operative facts of the controversy," because there is no evidence that "but for" Nevada LLC's minimal contacts with Maryland, Ms. Wentworth would not have fallen on the lobby floor of the Cosmopolitan Hotel. As Nevada LLC's contacts with Maryland do not "form the basis of the" negligence action, and therefore cannot provide the basis for a finding of specific personal jurisdiction, we turn to general personal jurisdiction.

B.

"[A] holding that a forum may exert general jurisdiction over a party involves a legal finding that the defendant maintains continuous and systematic contacts with the forum which constitute doing business in the forum." *Presbyterian Univ. Hosp.*, 337 Md. at 552 (internal citations omitted). While general personal jurisdiction "may be obtained over an out-of-state defendant even where the alleged injury has occurred outside Maryland, in such a case due process requires other contacts between the defendant and the state to be fairly extensive before the burden of defending a suit there may be imposed . . . without offending traditional notions of fair play and substantial justice." *Lewron Television, Inc. v. Int'l All. of Theatrical Stage Emp. & Moving Picture*

Mach. Operators of U.S. & Canada, 37 Md. App. 662, 666 (1977) (internal citations and parentheticals omitted).

In determining whether there exists "general personal jurisdiction," we start with the question of whether the defendant, Nevada LLC, "purposefully availed itself of the benefits and protections of the State of Maryland." *Presbyterian Univ. Hosp.*, 337 Md. at 560. As we have noted, "[t]o satisfy the purposeful availment requirement," a "defendant must create a substantial connection with Maryland such that having to defend a lawsuit in the State would be foreseeable," *CSR, Ltd.*, 411 Md. at 485 (internal citations omitted), and a substantial "connection is forged where the defendant either engages in significant activities in the State or creates continuing obligations with the State's residents, thus taking advantage of the benefits and protections of Maryland law." *Id*.

There is little evidence that Nevada LLC's contacts with Maryland meet the requirement of purposeful availment. Nevada LLC was not incorporated here, nor has it ever had a place of business in Maryland or even a phone listing, bank account, or agent for service of process in this State. It did engage in general advertising in the Washington, D.C., area, with some "direct marketing" of a limited number of Maryland residents. But Nevada LLC did not actively or regularly solicit business in the State, nor did it allocate significant "energy or financial resources to marketing of Maryland."

Moreover, we note that, in *Jafarzadeh v. Feisee*, 139 Md. App. 333 (2001), where an out-of-state defendant's contacts with Maryland were far more substantial and business-like than those of Nevada LLC's in this case, this Court held that those contacts did not did not meet the requirements of general personal jurisdiction. In that case, a

patient filed a medical malpractice action in the Prince George's County circuit court, against a Virginia doctor, from whom she had received medical treatment, at the doctor's office in Virginia. *Jafarzadeh*, 139 Md. App. at 334. The circuit court, subsequently dismissed the case for lack of personal jurisdiction over the doctor. *Id*. at 335.

Appealing that ruling, the patient claimed that Maryland had personal jurisdiction because the doctor had "purposefully availed herself of the privilege of conducting business with Maryland." *Id*. at 336. The patient pointed out that the doctor had been "licensed in Maryland"; had pursued her residency at a Maryland hospital; "was licensed by the State as a Medicaid provider," which had resulted in the receipt, by her, of $462.29 in Medicaid payments; and "advertised in the Persian-American Yellow Pages, which served the District of Columbia, Virginia, Maryland, and Pennsylvania." *Id*. at 336-37 (internal quotations and brackets omitted). Such contacts, this Court held, did not establish personal jurisdiction. *Id*. at 338-39.

In explaining why Maryland had no personal jurisdiction over the Virginia doctor, we pointed out that this was a case of general personal jurisdiction, and, consequently, a showing of "continuous and systematic" contacts with Maryland was required before personal jurisdiction could attach. *Id*. at 338. And, the doctor's contacts with Maryland, we held, did not meet this burden. First of all, there was "no evidence to indicate whether appellee purposefully engaged in conduct that resulted in the Medicaid payments or her listing in the Persian American Yellow Pages." *Id*. The doctor, we pointed out, "did not regularly do or solicit business, engage in any persistent course of conduct, or derive substantial revenue from goods, foods, services, or manufactured products used or

consumed in" Maryland. *Id*. Therefore, we concluded, "in no way did [the doctor] purposefully avail herself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Id*. (internal citations, quotations, and brackets omitted).

If the doctor's contacts with Maryland, in *Jafarzadeh*, did not meet the requirements of general personal jurisdiction, certainly Nevada LLC's contacts with Maryland fall short of that standard as well. Although advertisements by both Nevada LLC and the defendant doctor potentially reached Maryland residents, the defendant doctor advertised in a directory that specifically circulated in Maryland, while Nevada LLC only advertised in the Washington, D.C., area. Moreover, the doctor's contacts with Maryland, unlike Nevada LLC's, went beyond mere advertising. The doctor had lived in Maryland and pursued her residency at a Maryland hospital, but, more relevant to our analysis, the doctor maintained a medical license to practice in Maryland and held a Medicaid license from this State, from which the doctor obtained a small amount of revenue. As the doctor's contacts, which were far more "substantial," "continuous," "systematic," and indicative of "doing business" in Maryland than Nevada LLC's, did not create general jurisdiction, certainly Nevada LLC's contacts with Maryland did not do so either.

In *Rossetti v. Esselte-Pendeflex Corp.*, 683 F. Supp. 532 (D. Md. 1988), where the facts more closely resemble those of the instant case and where the out-of-state defendant's contacts with Maryland were more extensive than Nevada LLC's, the United States District Court for the District of Maryland declined to find the existence of general

personal jurisdiction. In that case, Mr. and Mrs. Rossetti, the plaintiffs, filed a claim in a Maryland federal district court, against the Esselte-Pendeflex Corporation, an out-of-state business that was incorporated and had its principal place of business in New York, for injuries that Mr. Rossetti had sustained while on one of the corporation's "business premises" in California. *Rossetti*, 683 F. Supp. at 533. Like Nevada LLC's contacts with Maryland, the corporation's Maryland contacts consisted of "general advertising in trade journals, some of which [had] circulation in Maryland," but, unlike Nevada LLC, the defendant corporation in *Rossetti* engaged in "sales to persons in Maryland, predominantly wholesalers and dealers," which exceeded four million dollars over the course of several years. *Id*.

The federal district court, nonetheless, dismissed the case, "for want of personal jurisdiction," noting that "the defendant did not maintain an office, sales personnel, inventory, or a telephone listing in Maryland," did not "conduct any research or development operations in this state, did "not [possess] any real property or bank accounts in Maryland, [had] not filed any Maryland income tax returns," had "not operated under any Maryland license," and had "not qualified as a foreign corporation to do business in Maryland." *Id*. Observing that "when jurisdiction is asserted over a claim which does not arise out of a defendant's contacts with the forum state, the defendant's contacts with that forum must be fairly extensive before the burden of defending a suit there may be imposed upon it without offending traditional notions of fair play and substantial justice." *Id*. at 534 (internal citations and quotations omitted), the federal district court concluded that the "defendant's contacts with Maryland [were] simply not

extensive enough to justify subjecting it to suit here when plaintiffs are not citizens of Maryland, their claim did not arise in this state, and when Maryland itself seemingly has little or no interest in providing a forum for this suit." *Id*. at 534; *see also Smith v. Jefferson Cty. Chamber of Commerce*, 683 F. Supp. 536 (D. Md. 1988) (where the federal district court held that an out-of-state business did not maintain "continuous and systematic general business contacts" with Maryland, even though the company made monthly purchasing trips to Maryland; repeatedly made deliveries to a customer in the State; amassed a large percentage of gross revenues from Maryland customers; and even allowed an agent to advertise on their behalf in the State.).

The federal district court's decision in *Rossetti* shows, as this Court's decision in *Jafarzadeh* did, just how far short Nevada LLC fell in meeting the general jurisdictional requirements of demonstrating purposeful availment and "continuous and systematic" contacts. The corporation in *Rossetti* not only advertised in "trade journals," some of which circulated in Maryland, but, unlike Nevada LLC, the corporation also maintained more formal and substantial business connections with this State. Specifically, it generated significant revenue from its numerous sales to Maryland customers, by continuously sending its product to residents in the State. Yet, the federal court found, general personal jurisdiction was lacking for want of "continuous and systematic" contacts with this State, while suggesting that sufficient contacts with Maryland might have been found to generate general personal jurisdiction, if the defendant had done such things as maintained "an office, sales personnel, inventory, or a telephone listing in

Maryland," or if the defendant had a bank account, real property, or license to conduct professional business in the State.

It is clear that if neither the doctor in *Jafarzadeh* nor the corporation in *Rossetti* had sufficient contacts to generate general jurisdiction, then neither did Nevada LLC. In contrast to those two decisions, Nevada LLC has never had any physical presence in Maryland, was not licensed to do business in Maryland, and, although it generated some revenue from Maryland residents, its advertising campaign did not specifically target Maryland residents. Of the few contacts that Nevada LLC has with this State, none of them suggest that Nevada LLC "purposefully availed itself" of the protections and benefits of Maryland, nor are these contacts sufficient for a "legal finding that the defendant maintains continuous and systematic contacts with the forum which constitute doing business in the forum."

Nonetheless, Ms. Wentworth maintains that Maryland has personal jurisdiction in this case because of the economic benefits that Nevada LLC derives from its advertising and "direct marketing" to certain Maryland residents. To find otherwise, would result in a situation, asserts Ms. Wentworth, wherein Nevada LLC reaps the economic benefits from Maryland residents who, prompted by Nevada LLC's advertisements and marketing, travel to Nevada LLC's hotel, without incurring the responsibility of having to defend itself in our State. We believe the Court of Appeals' decision in *Camelback Ski Corp. v. Behning*, 312 Md. 330 (1988) ("Camelback II"),[6] a case discussed at length in

[6] As this Court has done in other decisions that cite this case, we refer to this decision, from the Court of Appeals, as "*Camelback II*" because of the (continued…)

both Ms. Wentworth's and Nevada LLC's briefs, has squarely addressed this very contention, and, in so doing, came to a quite different conclusion.

In *Camelback II,* Behning, a Maryland resident, was injured when he fell while skiing at the Camelback ski resort, located in the Poconos Mountains of Pennsylvania. Following that skiing accident, Behning and his wife brought a negligence action,[7] against the ski resort, in the Circuit for Baltimore County. *Camelback*, 312 Md. at 333. The circuit court, however, granted Camelback's motion to dismiss the case for lack of personal jurisdiction over the ski resort, whereupon an appeal was noted by the Behnings, challenging the grant of that motion. *Id*.

Similar to the circumstances of the case before us, Camelback was an out-of-state corporation, specifically a Pennsylvania company, "with no charter or license to do

(…continued) procedural history of that case. After the plaintiffs brought their negligence suit in the Circuit Court for Baltimore County that court dismissed the action for lack of personal jurisdiction and appeal was taken. Then, this Court reversed the judgment of the circuit court. 61 Md.App. 11. The Court of Appeals then granted review and reversed and remanded. 307 Md. 270. A petition was subsequently filed in the United States Supreme Court for writ of certiorari, which the Supreme Court granted. Subsequently, the Supreme Court vacated and remanded the decision of the Court of Appeals. 107 S.Ct. 1341. Upon remand, the Court of Appeals, in what we refer to as *Camelback II*, held that the "Pennsylvania ski resort's conduct did not amount to purposeful availment of benefits or laws of state that would satisfy threshold test of minimum contacts mandated by due process, and ski resort's conduct was not such that it could have expected to be haled into a court of state to answer personal injury claim brought by skier for injuries suffered in fall at ski resort in Pennsylvania." *Camelback Ski Corp. v. Behning*, 312 Md. 330 (1988).

[7] The complaint specifically claimed damages for alleged negligence of Camelback in the "design, construction, maintenance, and 'grooming' of one of its ski slopes, and in the failure to correct, or give adequate warning of, an unreasonably dangerous condition on the land." *Camelback,* at 330.

business in Maryland, and no agent for service of process in this State. No bank accounts or telephone listings [were] maintained by Camelback in Maryland, and no taxes [were] paid to this State." *Id*. Camelback, moreover, sold "no products here and deriv[ed] its total income from its ski resort in Pennsylvania." *Id*. And finally, "Camelback did not devote its energy or financial resources to the marketing of Maryland. It allocated no part of its advertising budget to Maryland, and following one very brief and unsuccessful attempt to solicit business in this State in [several years prior], it abandoned any attempt to include Maryland in its primary marketing area, or to conduct any active solicitation here." *Id*. at 341.

But, similar to Ms. Wentworth's contention, Behning and his wife claimed that Camelback derived an "economic advantage" from the Maryland residents that travelled to the Pennsylvania ski resort, which created personal jurisdiction. *Camelback,* at 340. In fact, the Court of Appeals noted that, "[c]oncededly, Camelback's involvement with Maryland [was] more than mere awareness that some part of its income is regularly derived from the patronage of citizens of this State." *Id*. at 341. Specifically, "Camelback was aware that others, for their own economic purposes, were publicizing the Camelback resort within the Washington and Baltimore metropolitan areas; that wire services routinely carried information concerning snow conditions on its slopes and that this information was reproduced in Maryland newspapers; that Maryland residents could, and probably were, using a toll-free telephone number to obtain information concerning snow conditions at the resort; and, that a small number of its brochures were occasionally requested by Maryland ski shop owners for distribution to their customers." *Id*.

Despite these contacts, the Court of Appeals held that Maryland did not have general personal jurisdiction over the defendant ski-resort, stating that "the conduct of Camelback does not mount up to the purposeful availment of the benefits or laws of this State that will satisfy the threshold test of minimum contacts mandated by the Due Process Clause." *Id*. at 342-43. In so finding, the Court compared the Pennsylvania ski resort to what it called a "fixed-site merchant," which, according to the Court, is one "who is simply aware that a portion of his income regularly is derived from the patronage of customers coming from other states." *Id*. at 340. Expounding on this "fixed-site merchant" concept, the Court further explained:

> The owner of a South Carolina motel located near Interstate Route 95, for example, may know that a significant portion of his income is derived from residents of New York traveling to and from Florida, but that fact alone should not require that he be forced to litigate in New York a suit brought by a patron who claims injury as a result of a fall in the South Carolina motel. Although he may cause an indirect impact on the forum State by injuring one of its residents, he causes no direct injury in the State, and does not avail himself of the protection or assistance of its laws.

Id.

Like the ski resort in *Camelback II*, and the fictional South Carolina motel that the Court of Appeals used as an analogy in that decision, Nevada LLC is akin to the "fixed-site merchant." Although some of Nevada LLC's advertising and limited "direct marketing" efforts, like those of the Camelback ski resort, may have reached Maryland residents, prompting them to travel to the Las Vegas hotel, Nevada LLC did nothing to "purposefully [avail] itself of the privilege of conducting activities within [Maryland],

thus invoking the benefits and protections of its laws." *CSR, Ltd.*, 411 Md. at 479 (internal citations omitted).

Indeed, Nevada LLC has no property in or connection to Maryland that would promote its business interests here, nor does Nevada LLC have any license or special relationship with the State that would enhance its "direct marketing" and advertising efforts. In short, mere awareness that the advertisements for the Cosmopolitan Hotel might reach Maryland citizens and that Maryland residents may ultimately visit the Las Vegas hotel is insufficient to establish purposeful availment, which due process requires for there to be personal jurisdiction.

C.

Because Nevada LLC does not have sufficient minimum contacts with Maryland to justify the exercise of personal jurisdiction over it, we need not "consider the several factors the Supreme Court has identified in connection with the second stage test of overall fairness." *Id*. at 493; see also *Camelback*, 312 Md. at 336 (these factors "cannot alone serve as the foundation for assumption of jurisdiction").

But, even if we were to consider these factors, that review would be of no help to Ms. Wentworth's claim. These "fairness factors," as the Court of Appeals has described them, include: (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies. *Camelback*, 312 Md. at 341-

42 (citing *Asahi Metal Indus. Co. v. Superior Court of California, Solano Cty.*, 480 U.S. 102, 115 (1987)). And, in weighing these factors, we bear in mind that "any apparent unfairness to [Nevada LLC] in this case must be considered in light of the fact that [t]he law of personal jurisdiction . . . is asymmetrical." *CSR, Ltd.*, 411 Md. at 493-94. That is, "[t] he primary concern is for the burden on a defendant. If the burdens of trial are too great for a plaintiff, the plaintiff can decide not to sue or, perhaps, to sue elsewhere. A defendant has no such luxury. The burdens on a defendant are of particular significance if . . . the defendant has done little to reach out to the forum state." *Id*.

In accordance with this asymmetry, we find that these factors weigh in favor of Nevada LLC, as the burden of having to defend itself in Maryland, for an injury that occurred in Nevada, would be significant. The incident that was alleged in the complaint occurred in Las Vegas, Nevada, and was investigated there. Many of the witnesses that Nevada LLC would call, at trial, would likely reside and work in Nevada as well. While Maryland generally does have an interest in protecting its citizens against harm inflicted by negligence from out-of-state defendants, that interest is less relevant here as the injury occurred outside of the State, and, as discussed above, Nevada LLC has done nothing to avail itself of the privileges of conducting business in Maryland.

Furthermore, we believe it is worth pointing out, as Nevada LLC does in its brief, that were we to hold that such general advertising and direct marketing efforts, by themselves, were sufficient for a finding of personal jurisdiction, such a holding could, if accepted by like-minded courts in other jurisdictions, subject Nevada LLC to personal jurisdiction in "any state in the country simply because they receive vacationing

customers from all states who may or may not be responding to general advertising aimed at the nation as a whole."

Ms. Wentworth responds, in part, that while "the burden for either side to travel is great, the difference is that Nevada LLC is in a much better position to bear the costs of that burden," citing the fact that Nevada LLC's "gross revenue for 2014 was in excess of $700 million according to its March 2015 Annual Report Financial Statements." But we have never found, nor does Ms. Wentworth cite any authority for the proposition, that the relative economic disparity between the parties is sufficient to exercise personal jurisdiction over an out-of-state defendant, that has otherwise not availed itself of the benefits and protections of the State of Maryland. And we decline to do so here.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.