

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

CYNTHIA HUFFMAN, WILLA BURKE,)
VIRGINIA KING, and EQUAL)
EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiffs,)

vs.)

Case No. 01-3144-CV-S-ODS

NEW PRIME, INC. d/b/a PRIME, INC.,)
ABEL JOSEPH LORMAND, SAMUEL)
TURNER, and KENNETH)
LITTLEJOHN,)

Defendants.)

ORDER DENYING DEFENDANT ABEL LORMAND'S MOTION TO DISMISS

Pending is Defendant Abel Joseph Lormand's ("Lormand") motion to dismiss (Doc. # 68) Plaintiff Cynthia Huffman's ("Huffman") complaint against him. Lormand asserts two grounds for dismissal. The first is that this Court lacks personal jurisdiction over him,¹ and the second is that Huffman failed to obtain adequate service of process.² The Court does have personal jurisdiction over Lormand. His motion to dismiss is denied.

I. BACKGROUND

New Prime, Inc. is a Nebraska corporation that has its principal place of business in Springfield, Missouri. At all relevant times New Prime employed Huffman as a truck driver-trainee. It also employed Lormand as a truck driver-trainer. Lormand entered into

¹Lormand is a Louisiana resident, and Huffman is a Mississippi resident.

²This point is premature because the time to complete effective service of process has not yet expired.

an “Independent Contractor Operator Agreement” with New Prime, leased equipment from New Prime, and agreed to a “Personal Service Agreement” which enabled him to train drivers for New Prime. Each of these contracts specified Missouri as the choice of both forum and law.

Lormand took Huffman on a training trip from February 23, 2000 to March 6, 2000. Their trip originated in Springfield, Missouri. While still in Missouri Lormand allegedly informed Huffman that he would “sleep nude or in [his] underwear on the truck, and sometimes [he] might come out in [his] underwear while [she was] driving to smoke a cigarette.” Huffman claims that Lormand subjected her to numerous other sexually oriented comments and physical touchings that were unwelcome and offensive and which a reasonable person would find unwelcome and offensive. These acts began in Missouri and continued throughout the trip.

On or about March 2nd, 2000, Lormand took Huffman to his home in Louisiana. She was allegedly held there against her will for two days. During that time Lormand tried to physically force Huffman into his home and bed.

II. Personal Jurisdiction

The Court has personal jurisdiction over the defendant. This Court, when sitting in a diversity action, may assume jurisdiction over a nonresident defendant to the extent permitted by Missouri law so long as the exercise is consistent with the Due Process Clause.³ Missouri courts consistently extend the reach of their jurisdiction to the limits permitted by the Constitution. *See Institutional Food Marketing Associates, Ltd. v. Golden State Strawberries, Inc.*, 747 F.2d 448, 453 (8th Cir. 1984).

³In *State ex rel. K-Mart Corp. v. Holliger*, the Missouri Supreme Court rejected the “remarkable assertion that the only means by which jurisdiction may be obtained over a foreign corporation is through the state’s long-arm statute,” 986 S.W.2d 165, 166 (Mo. 1999), and instead held that a corporation’s general business activity in a state could give rise to jurisdiction even if the suit does not arise from those contacts.

The “minimum contacts” analysis required by the Fourteenth Amendment entails consideration of the following factors: “(1) the nature and quality of contacts with the forum state; (2) the quantity of these contacts; (3) the relationship between the contacts and the cause of action; (4) the interest of the forum state; and (5) the convenience of the parties.” *Wines v. Lake Havasu Boat Mfg.*, 846 F.2d 40, 42 (8th Cir. 1988). The first three of these are of primary importance. *E.g., Austad Co. v. Pennie & Edmonds*, 823 F.2d 223, 226 (8th Cir. 1987). “Jurisdiction is proper where there is a substantial and continuing relationship purposefully made with a party in the forum state, *see Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), so long as ‘maintenance of the suit does not offend traditional notions of fair play and substantial justice.’ *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).” *CPC-Rexcell, Inc. v. La Corona Foods, Inc.*, 912 F.2d 241, 243 (8th Cir. 1990).

The nonresident defendant’s conduct and connection with the forum state must be such that he should reasonably anticipate being haled into court there, and it is essential that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. Purposeful availment means that the defendant’s contacts with the forum state must not be random, fortuitous, attenuated, or the result of unilateral activity or a third person or another party.

Guinness Import Co. v. Mark VII Distributors, Inc., 153 F.3d 607, 614 (8th Cir. 1998) (internal citations omitted).

Lormand should have reasonably anticipated being haled into court in Missouri. He purposefully availed himself of the privilege of conducting activities within Missouri by working here and entering into numerous contracts that specify Missouri as the choice of forum and choice of law. Thus, he invoked the benefits and protections of Missouri’s laws. Lormand’s business contacts are closely related to Huffman’s cause of action. The two only met because they worked for the same company, and “The Personal Service Agreement” is the instrument that enabled Lormand to train Huffman. Also, Huffman claims that Lormand committed tortious acts against her in Missouri. The state

has an interest in adjudicating tortious acts that occur within its borders.

In addition, §500.506 RSMo. (Missouri Long Arm Statute) confers jurisdiction of this Court over Defendant Lormand. Any person, whether or not a citizen or resident of Missouri, is subject to the jurisdiction of the courts of this state as to any cause of action arising from transacting business within this state, making contracts within this state, and/or committing a tortious act within this state. Lormand transacted business within this state. In fact, training Huffman was a business transaction. Lormand made several contracts within Missouri, but for which the plaintiff and defendant would not have met. Most importantly, Huffman claims that Lormand committed tortious acts against her in Missouri. Thus, asserting personal jurisdiction over Lormand comports with fair play and substantial justice. The Court denies Lormand's motion to dismiss Huffman's complaint against him.

IT IS SO ORDERED.

/s/ Ortrie D. Smith

ORTRIE D. SMITH, JUDGE

UNITED STATES DISTRICT COURT

DATE: August 9, 2002