

Circuit Court for Baltimore County
Case No. C-03-CV-20-001164

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 218

September Term, 2023

MICHAEL C. WORSHAM

v.

ORIENTAL TRADING COMPANY, INC.

Berger,
Nazarian,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 5, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Michael Worsham, appellant, filed, in the Circuit Court for Baltimore County, a civil complaint against Oriental Trading Company, Incorporated (“OTCI”), alleging violations of Maryland’s anti-spam laws. OTCI thereafter filed a motion to dismiss for lack of personal jurisdiction and failure to state a claim. After the circuit court granted OTCI’s motion on both grounds, Worsham noted an appeal to this Court. In an unreported opinion, we held that the court had erred in failing to consider certain factual admissions OTCI had made regarding personal jurisdiction. *Worsham v. Oriental Trading Co., Inc.*, No. 729, Sept. Term, 2020 (filed June 28, 2022) (“*Worsham I*”). We also held that, because the court had dismissed the action for lack of jurisdiction, the court lacked the power to dismiss the action for failure to state a claim. Accordingly, we reversed the court’s judgment of dismissal for lack of personal jurisdiction, vacated the court’s judgment of dismissal for failure to state a claim, and remanded the case so that the court could reconsider its decision on personal jurisdiction in light of OTCI’s factual admissions. Otherwise, we affirmed.

Following the issuance of this Court’s mandate, Worsham filed an amended complaint, which incorporated OTCI’s factual admissions. Shortly thereafter, OTCI renewed its motion to dismiss for lack of personal jurisdiction and failure to state a claim. Ultimately, the court granted OTCI’s motion. In so doing, the court declined to consider Worsham’s amended complaint, choosing instead to rely on Worsham’s original complaint and OTCI’s admissions. The court then found that, even with the admissions, Worsham had failed to establish how the court had personal jurisdiction over OTCI. The court did

not reach the issue of whether Worsham had stated a claim upon which relief could be granted.

After the court issued its ruling dismissing Worsham’s action, Worsham filed a motion to alter or amend the court’s judgment and an accompanying motion to amend his complaint. The court denied both motions. This timely appeal followed.

In this appeal, Worsham presents four questions for our review. For clarity, we have rephrased those questions as:

1. Should OTCI’s original motion to dismiss, which was filed prior to the first appeal, be deemed “deficient” under the Maryland Rules and therefore not properly before the circuit court?
2. Did the circuit court err in not considering Worsham’s amended complaint and in denying Worsham’s subsequent request to amend his complaint?
3. Were OTCI’s unsigned answers to interrogatories properly before the circuit court and, if so, should the court have considered them in reaching its decision?
4. Did the circuit court err in dismissing Worsham’s action for lack of personal jurisdiction?

For reasons to follow, we hold that the circuit court erred in dismissing Worsham’s complaint for lack of personal jurisdiction. We therefore reverse the court’s decision and remand the case for further proceedings consistent with this opinion. Otherwise, we affirm.

BACKGROUND

OTCI is a Nebraska corporation and is headquartered in Omaha. On November 23, 2019, Worsham, a Maryland resident, placed an online order through OTCI’s website. In so doing, Worsham provided his Maryland mailing address and his email address. That

same day, OTCI sent an order confirmation to Worsham’s email address. Six days later, Worsham’s order was delivered to his Maryland mailing address.

Beginning on December 1, 2019, and ending on March 12, 2020, OTCI sent thirty-four emails to Worsham’s email address. According to Worsham, each of those emails included a subject line that contained “false and misleading information” about deals that were purportedly being offered by OTCI. By way of example, an email sent on January 14, 2020, included the subject line: “Last Day for FREE Shipping on Any Order!” A second email was sent the following day and included the subject line: “FREE Shipping, Any Order + Up to 60% off Wedding Supplies.” According to Worsham, those emails, and others like it, misled consumers into believing that a particular deal, *i.e.*, free shipping, would expire, thereby creating a false sense of urgency about the offer.

On March 16, 2020, Worsham filed, in the circuit court, a civil complaint against OTCI alleging that OTCI’s emails violated §§ 14-3001 to 14-3003 of the Commercial Law Article (“CL”) of the Maryland Code. Under that statutory scheme, “[a] person may not initiate the transmission, conspire with another person to initiate the transmission, or assist in the transmission of commercial electronic mail that . . . [c]ontains false or misleading information in the subject line that has the capacity, tendency, or effect of deceiving the recipient.” CL § 14-3002(b)(2)(iii). Worsham’s complaint included the following factual allegations regarding OTCI’s business activities in Maryland: that OTCI regularly advertises into Maryland; that OTCI regularly transacts business in Maryland; that OTCI regularly contracts to supply goods or services in Maryland; and that OTCI causes tortious injury in Maryland.

On May 22, 2020, OTCI filed a motion to dismiss for lack of personal jurisdiction and, in the alternative, for failure to state a claim for which relief could be granted. One week later, Worsham served on OTCI two discovery requests: written interrogatories and a request for the admission of certain facts. On August 9, 2020, Worsham received two documents in response: a document containing answers to his written interrogatories, and a separate document containing responses to his request for admission. Each document was signed only by OTCI’s attorney. Both documents included the following relevant admissions regarding OTCI’s business activities over the prior two years: 1) OTCI had sent 10,000 emails to customers who had purchased items that were shipped or billed to Maryland; 2) over 160,000 orders had been sent to customers who had purchased items that were billed to a Maryland address; and 3) that OTCI had mailed 4.5 million print catalogs, some of which were delivered to Maryland addresses. Worsham thereafter filed an opposition to OTCI’s motion to dismiss that included OTCI’s answers to interrogatories and request for admissions.

On August 20, 2020, the circuit court held a hearing on OTCI’s motion to dismiss. At that hearing, the court explained that it would consider the motion only on the facts as set forth in Worsham’s complaint, and that it would not consider the supplemental information contained in OTCI’s discovery documents, because Worsham, in submitting those documents, had failed to file an affidavit in accordance with Maryland Rule 2-

311(d).¹ The court ultimately concluded that Worsham had failed to plead sufficient facts to establish personal jurisdiction. The court also concluded that Worsham had failed to state a claim for which relief could be granted.

On August 31, 2020, after the circuit court entered its order granting OTCI’s motion to dismiss, Worsham filed a “Motion to Alter or Amend Order Dismissing Complaint with Prejudice and Motion for Leave to Amend the Complaint and Request for Hearing” (the “Post-Dismissal Motion”). The following day, the court clerk entered into the docket a notice indicating that Worsham’s Post-Dismissal Motion was deficient under Maryland Rule 20-201(e).² Worsham subsequently asked the court to withdraw the deficiency notice, but the court denied the request. The court explained that “motions addressing different legal principles or issues should be separately filed, pursuant to MDEC rule[s] and guidance issued by the State Court Administrator.”

First Appeal

Worsham thereafter noted an appeal to this Court, raising four issues: 1) whether the circuit court erred in issuing a deficiency notice for his Post-Dismissal Motion; 2) whether the court erred in denying his motion for leave to amend; 3) whether the court

¹ That Rule provides: “A motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.” Md. Rule 2-311(d).

² That Rule provides: “All submissions related to a particular MDEC action that are filed together at one time shall be included in a single electronic folder, sometimes referred to as an envelope.” Md. Rule 20-201(e).

erred in granting OTCI’s motion to dismiss for lack of personal jurisdiction; and 4) whether the court erred in granting OTCI’s motion to dismiss for failure to state a claim.

In an unreported opinion, we affirmed in part, reversed in part, and vacated in part the court’s judgment.³ *Worsham I*, slip op. at 19. As to Worsham’s first two issues, we found no error. *Id.* at 13-14. We explained that, because Worsham’s Post-Dismissal Motion included a motion to alter or amend the court’s order and a motion to amend his complaint, each of which involved distinct legal principles and issues, the filing did not comply with Maryland Rule 20-201(e) and was properly struck. *Id.* We did not reach the merits of Worsham’s second issue – whether the court erred in denying his motion to amend his complaint – because that motion was struck and was therefore never before the court for its consideration. *Id.* at 14.

As to the court’s dismissal for lack of personal jurisdiction, we held that the court erred in not considering OTCI’s admissions in reaching its decision on personal jurisdiction. *Id.* at 17. We noted that, while answers to interrogatories needed to be signed by the party making them, admissions could be signed by the party or the party’s attorney. *Id.* We concluded that, although the court was correct in refusing to consider the answers to interrogatories in the absence of an affidavit pursuant to Maryland Rule 2-311(d), the court was incorrect in refusing to consider the admissions, which did not require an affidavit before being accepted. *Id.* We held that the court’s failure to consider the admissions in its personal jurisdiction analysis was erroneous. *Id.* Accordingly, we

³ We initially issued an opinion affirming the court’s judgment, but after Worsham filed a motion for reconsideration, we withdrew that opinion and issued a new one.

reversed and remanded the case back to the circuit court so that the court could reconsider its ruling on personal jurisdiction in light of OTCI’s admissions. *Id.*

Lastly, as to the court’s dismissal for failure to state a claim, we vacated that portion of the court’s judgment. *Id.* at 18. We explained that the court’s dismissal for lack of personal jurisdiction essentially nullified the court’s power to render a decision on OTCI’s alternate claim. *Id.* We explained that if, on remand, the court were to conclude that it had personal jurisdiction over OTCI, it could consider OTCI’s motion to dismiss for failure to state a claim. *Id.* at 18-19.

Remand

On remand, Worsham filed an amended complaint that incorporated OTCI’s admissions. Shortly thereafter, OTCI renewed its motion to dismiss and filed a supplemental memorandum of law that addressed the admissions. On November 4, 2022, the circuit court held a hearing on OTCI’s renewed motion to dismiss.

On January 3, 2023, the court issued a written opinion granting OTCI’s motion to dismiss for lack of personal jurisdiction. In so doing, the court made several determinations.

First, the court determined that Worsham’s amended complaint was not properly before the court on remand. The court noted that Worsham had filed the amended complaint without requesting and being granted leave to amend. The court also noted that this Court had affirmed in part, reversed in part, and vacated in part the court’s prior decision and remanded the case for “limited reconsideration of [OTCI’s] Motion to Dismiss taking into its consideration [OTCI’s] Admissions.”

Second, the court determined that it lacked personal jurisdiction over OTCI. The court, after a lengthy discussion of the relevant law, found that the allegations in Worsham’s complaint and OTCI’s admissions were insufficient to establish either general personal jurisdiction or specific personal jurisdiction.

Finally, the court refused to consider OTCI’s alternate claim that Worsham failed to state a claim for which relief could be granted. The court found that, because it did not have personal jurisdiction over OTCI, it lacked the power to consider OTCI’s alternate claim.

On January 13, 2023, Worsham filed a motion to alter or amend the court’s order dismissing his complaint and a motion to amend his complaint. The court ultimately denied both motions. This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

I.

Parties’ Contentions

Worsham first claims that OTCI’s motion to dismiss was deficient and not properly before the circuit court. He claims that the filing was deficient because, like his August 2020 motion to alter or amend and motion for leave to amend, which was struck by the court for lack of compliance with Maryland Rule 20-201(e), OTCI’s motion to dismiss raised “different legal principles and issues” and therefore should have been struck.

OTCI contends that Worsham’s claim is barred by the “law of the case doctrine” because the claim could have been raised during Worsham’s first appeal. OTCI contends

further that, even if not barred, Worsham’s claim is without merit because OTCI’s motion to dismiss complied with all applicable Maryland Rules.

Analysis

We hold that Worsham’s claim is unpreserved. It does not appear from the record that Worsham ever asked the circuit court to strike OTCI’s filing or otherwise take any action with respect to OTCI’s compliance with Maryland Rule 20-201(e). Thus, any claim that OTCI’s filing was deficient under the Maryland Rules is not preserved for our review. Md. Rule 8-131(a); *see also Shunk v. Walker*, 87 Md. App. 389, 404 (1991) (holding that court’s failure to abide by the time requirements set forth in Maryland Rule 2-311(b) was unpreserved, where the appellant did not object or request further relief).

II.

Parties’ Contentions

Worsham next claims that the circuit court erred in not considering his amended complaint and in denying his request to amend his complaint. He contends that his amended complaint was properly before the court because leave to amend was not required given the procedural posture of the case. He also contends that the amended complaint contained “important new jurisdictional allegations” that the court should have considered. He argues that, even if leave to amend were required, the court should have permitted him to amend his complaint.

OTCI argues that the court did not abuse its discretion in refusing to consider Worsham’s amended complaint or in denying his subsequent request to amend his original complaint. OTCI contends that the court’s review was limited by this Court’s opinion from

the first appeal, in which we remanded the case so that the court could reconsider its decision with respect to personal jurisdiction in light of OTCI’s admissions. OTCI contends that this Court’s express instructions did not include consideration of Worsham’s amended complaint. OTCI asserts that, regardless, any error the court may have made in declining to consider Worsham’s amended complaint was harmless.

Standard of Review

“The decision whether ‘to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge,’ and the decision in that regard will be reversed only on a showing of ‘a clear abuse of discretion.’” *Norino Props., LLC v. Balsamo*, 253 Md. App. 226, 260-61 (2021) (quoting *Schmerling v. Injured Workers’ Ins. Fund*, 368 Md. 434, 443-44 (2002)).

Analysis

Generally, “[a] party may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date.” Md. Rule 2-341(a). If a party wishes to file an amendment to a pleading after those dates, they may do so “only with leave of court.” Md. Rule 2-341(b). In addition, if a court has ordered the dismissal of a complaint for lack of personal jurisdiction, “an amended complaint may be filed only if the court expressly grants leave to amend.” Md. Rule 2-322(c).

Where, as here, a court is faced with an amendment to a pleading following a remand, the court’s discretion to permit such an amendment may be circumscribed by other considerations. Under Maryland Rule 8-604, if this Court has concluded that a trial error

has affected a severable part of an action, we “may reverse or modify the judgment or remand the action to a lower court for further proceedings and, as to the other parts, affirm the judgment.” Md. Rule 8-604(b). If we remand the action to the lower court for further proceedings, “[t]he order of remand and the opinion upon which the order is based are conclusive as to the points decided[,]” and “the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.” Md. Rule 8-604(d)(1). Thus, “[i]f the remand order or opinion specifically limits the proceedings on remand, the agency or remand court must adhere to those limitations.” *In re Homick*, 256 Md. App. 297, 311 (2022) (cleaned up).

Against that backdrop, we hold that the circuit court did not abuse its discretion in refusing to consider Worsham’s amended complaint. As the court correctly noted in its written order, the case was on remand following the issuance of this Court’s decision affirming in part, reversing in part, and vacating in part the court’s previous decision to dismiss Worsham’s complaint. In so doing, we made clear that we were reversing the court’s decision to dismiss for lack of personal jurisdiction because the court had erred in not considering OTCI’s admissions. We then remanded the case with specific instructions that the court should reconsider its decision in light of OTCI’s admissions. Therefore, the court, by declining to consider Worsham’s amended complaint, was simply following this Court’s directive for remand. *See Bacon v. Arey*, 203 Md. App. 606, 670 (2012) (holding that the court did not err in striking the appellant’s amended complaint following a remand). For the same reasons, the court did not abuse its discretion in denying Worsham’s request to amend his complaint after the court ordered dismissal following remand.

III.

Parties' Contentions

Worsham next argues that OTCI's answers to interrogatories, which the court struck from the record prior to Worsham's first appeal because they were unsigned by OTCI, should now be considered "part of this case" because "the parties and the courts at times have considered or referenced these answers." Worsham also argues that the lack of a signature is immaterial in the instant case because "the purpose and intent of having a signing requirement for interrogatory answers is to protect the party against whom they may be offered (Worsham), and not the party offering or serving them (OTCI)."

OTCI contends that Worsham's argument should be rejected because it "has no basis in Maryland law[.]" OTCI contends that Worsham's argument is also barred by the "law of the case doctrine" because this Court already decided this issue in Worsham's first appeal.

Analysis

We agree with OTCI that Worsham's argument is precluded by the law of the case. "The law of the case doctrine, specifically a subset of the doctrine known as 'the mandate rule,' prevents trial courts from dismissing appellate judgment and re-litigating matters already resolved by the appellate court." *Stokes v. Am. Airlines, Inc.*, 142 Md. App. 440, 446 (2002). "Under that doctrine, 'a trial court is bound by the decision of an appellate court in the case before it unless the ruling is changed or modified after reargument, and neither the questions decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal.'" *Andrulonis v. Andrulonis*, 193 Md. App.

601, 614 (2010) (cleaned up) (quoting *Chesley v. Goldstein & Baron*, 145 Md. App. 605, 630 (2002)). The doctrine also applies when we revisit one of our prior decisions involving the same parties and claim. *Stokes*, 142 Md. App. at 446. In those instances, “[w]e normally are bound by our earlier decision and will not contradict it.” *Id.*

That said, the doctrine is not “an inflexible rule of law[,]” but rather “is a judicial creation borne of procedure and convenience[.]” *Andrulonis*, 193 Md. App. at 614 (quotation marks and citations omitted). Thus, while we have the discretion to invoke the doctrine, “we are not precluded from opening up and reconsidering an issue we decided earlier, in the same case, when exceptional circumstances so warrant.” *Id.* (quotation marks and citations omitted). “Accordingly, we will depart from a prior decision if: ‘the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision on the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice.’” *Stokes*, 142 Md. App. at 446-47 (quoting *Turner v. Hous. Auth.*, 364 Md. 24, 34 (2001)).

Here, this Court already determined in Worsham’s first appeal that the court had not erred in striking OTCI’s answers to interrogatories on the grounds that they lacked an appropriate signature. The court therefore did not err in refusing to consider them on remand, and we have no cause to revisit the issue in the instant appeal.

IV.

Parties’ Contentions

Worsham’s final claim is that the court erred in dismissing his complaint for lack of personal jurisdiction. Worsham contends that OTCI’s act of sending thirty-four email

solicitations to him in Maryland, when considered in conjunction with OTCI’s admissions regarding their other contacts with consumers in Maryland, was sufficient to establish that Maryland had personal jurisdiction over OTCI. Worsham relies heavily on *MaryCLE, LLC v. First Choice Internet, Inc.*, 166 Md. App. 481 (2006), a case in which we held that an internet marketing company based in New York was subject to personal jurisdiction in Maryland when it sent eighty-three promotional emails to a consumer protection firm located in Maryland.

OTCI argues Maryland lacked personal jurisdiction because OTCI has no office, agent, or continuous presence in Maryland; OTCI never specifically targeted Maryland as a primary marketing area; Worsham “invited” the promotional emails that served as the basis for his lawsuit; and those emails were not OTCI’s product. OTCI claims that Worsham’s reliance on *MaryCLE* is misplaced and that a more analogous case is *Camelback Ski Corp. v. Behning*, 312 Md. 330 (1988) (“*Camelback II*”), wherein the Supreme Court of Maryland held that a ski resort located in Pennsylvania was not subject to personal jurisdiction in Maryland for injuries suffered by a Maryland resident at the Pennsylvania resort. OTCI also argues, in the alternative, that even if this Court finds that personal jurisdiction was established, we should nevertheless affirm on the grounds that Worsham has failed to state a claim upon which relief could be granted.

Standard of Review

The question of whether a Maryland court has personal jurisdiction over a defendant is an issue of law that we review *de novo*. *Pinner v. Pinner*, 467 Md. 463, 477 (2020).

Analysis

Under Maryland’s “long-arm statute,” a Maryland court may exercise personal jurisdiction over an out-of-state defendant if that defendant, either directly or by an agent:

- (1) Transacts any business or performs any character of work or service in the State;
- (2) Contracts to supply goods, food, services, or manufactured products in the State;
- (3) Causes tortious injury in the State by an act or omission in the State;
- (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he 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;
- (5) Has an interest in, uses, or possesses real property in the State; or
- (6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation, or agreement located, executed, or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

Md. Code, Courts & Judicial Proceedings § 6-103(b).

“In deciding whether a Maryland court may exercise personal jurisdiction over an out-of-state defendant, the court must examine whether jurisdiction is established under Maryland’s long-arm statute and whether the exercise of jurisdiction comports with the Due Process Clause of the Fourteenth Amendment.” *Stisser v. SP Bancorp, Inc.*, 234 Md. App. 593, 615 (2017). Those dual inquiries are not mutually exclusive; rather, “the reach of the long[-]arm statute is coextensive with the limit of personal jurisdiction delineated under the Due Process Clause of the Federal Constitution[.]” *Pinner*, 467 Md. at 479

(quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 22 (2005)). Thus, it is “necessary to interpret the statute within the confines of the constitutional limitations, rendering an interpretation consistent with those limitations.” *Id.* Moreover, “it is worth noting that this coextensive constitutional and statutory analysis is a fact-intensive inquiry and there is no ‘one-size fits all’ answer to these jurisdictional issues.” *Id.* at 481.

“Personal jurisdiction satisfies the Fourteenth Amendment’s due process requirements ‘if the defendant has minimum contacts with the forum state, so that requiring the defendant to defend its interests in the forum state does not offend traditional notions of fair play and substantial justice.’” *Id.* at 480 (further quotation marks and citation omitted) (quoting *Beyond Sys.*, 388 Md. at 22). When deciding whether the exercise of personal jurisdiction is constitutionally reasonable, we consider: “‘the burden on the defendant, the forum state’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.’” *Stisser*, 234 Md. App. at 617 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)).

Generally speaking, personal jurisdiction is divided into one of two categories: general and specific jurisdiction. *Id.* at 616. “To justify the exercise of general jurisdiction, the defendant’s contacts with the forum state must be continuous and systematic.” *CSR, Ltd. v. Taylor*, 411 Md. 457, 477 (2009). “A state court may exercise general jurisdiction only when a defendant is ‘essentially at home’ in the State.” *Ford Motor Co. v. Montana*

Eighth Jud. Dist. Ct., 592 U.S. 351, 358 (2021) (citation omitted). When the defendant is a corporation, the defendant is considered “at home” in its place of incorporation and principal place of business. *Stisser*, 234 Md. App. at 616. Beyond those forums, a State may exercise general jurisdiction over a corporation only when the “corporation’s affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014) (quotation marks and citation omitted). “This means that continuous activity of only ‘some sorts’ within a state ‘is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.’” *Stisser*, 234 Md. App. at 618 (quoting *Bristol-Myers Squibb Co. v. Super. Ct. of California*, 582 U.S. 255, 264 (2017)). Once established, general jurisdiction permits a court to hear any claim against a company, “even if all of the activity that gave rise to the claim occurred in a different state.” *Id.* at 616-17.

Specific jurisdiction, on the other hand, comes into play only when “‘the cause of action arises from, or is directly related to, the defendant’s contacts with the forum state[.]’” *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 479 (2012) (quoting *CSR*, 411 Md. at 477). “In other words, ‘the defendant’s contacts with the forum state form the basis for the suit[.]’” *Pinner*, 467 Md. at 480 (quoting *Beyond Sys.*, 388 Md. at 26). In assessing whether a corporate defendant meets that standard in a particular case, we look at: “(1) the extent to which the defendant has purposefully availed [itself] of the privilege of conducting activities within the State; (2) whether the plaintiff’s claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” *Id.* at 481 (quotation marks and citations omitted).

In *Camelback II*, a Maryland resident, Ralph Behning, was injured when he fell while skiing at Camelback, a ski resort located in Pennsylvania. 312 Md. at 333. Behning subsequently sued Camelback in the Circuit Court for Baltimore County, claiming damages for negligence. *Id.* The court later dismissed the complaint for lack of jurisdiction, and the Supreme Court of Maryland ultimately affirmed. *Id.* at 333-43. In so doing, the Court noted that Camelback sold no products in Maryland, that it derived its total income from its ski resort, and that, while it did periodically send brochures to Maryland ski shops upon request, “it did not generally or systematically distribute its brochures in this State.” *Id.* at 333-34. The Court further noted that, although Camelback was aware that some of its customers came from Maryland, Camelback did not devote any resource to the marketing of Maryland, and Behning’s trip to Camelback and subsequent injury was not the result of any solicitation by Camelback in Maryland. *Id.* at 334. The Court concluded, therefore, that “the contacts required to support jurisdiction more nearly resemble those of a general jurisdiction case.” *Id.* at 339. Within that framework, the Court found that “a significant difference exists between regularly placing goods into a stream of commerce with knowledge [that] they will be sold in another state on the one hand, and knowingly accepting the economic benefits brought by interstate customers on the other hand.” *Id.* at 340. The Court explained that “one who purposefully sends a product into another jurisdiction for purposes of sale may reasonably expect to be haled into court in that State if the product proves to be defective and causes injury there[.]” but “[t]he same cannot be said of the fixed-site merchant who is simply aware that a portion of his income regularly is derived from the patronage of customers coming from other states.” *Id.*

(footnote omitted). After analyzing the factors associated with whether the exercise of jurisdiction would be constitutionally reasonable, the Court determined that Camelback did not have the requisite “minimum contacts” to justify the exercise of jurisdiction in Maryland. *Id.* at 341-43.

In *MaryCLE, LLC v. First Choice Internet, Inc.*, MaryCLE, a consumer protection firm located in Maryland, filed suit in Maryland against First Choice, an internet marketing company based in New York, after First Choice had allegedly sent eighty-three “false and misleading” promotional emails to MaryCLE in violation of Maryland’s Commercial Electronic Mail Act. 166 Md. App. at 487-92. The circuit court later concluded that it lacked personal jurisdiction, and, after MaryCLE noted an appeal to this Court, we reversed. *Id.* at 487-88. We first noted that, because First Choice’s email contacts with Maryland formed the basis of MaryCLE’s suit, the proper analysis would be whether Maryland could exercise specific jurisdiction over First Choice. *Id.* at 499. In concluding that Maryland could exercise such jurisdiction, we held that First Choice had purposefully availed itself of conducting activities in Maryland, that MaryCLE’s claims arose out of those contacts, and that exercising jurisdiction would be constitutionally reasonable. *Id.* at 504-15. As to the first factor, we explained that First Choice’s emails did not merely “find their way” into Maryland; rather, First Choice “directly caused the emails to be sent to Maryland,” which meant that First Choice could reasonably be expected to answer for those emails in Maryland. *Id.* at 506 (cleaned up). And, we explained, because those contacts were directly related to the operative facts of the controversy, the second factor had been satisfied. *Id.* at 504-05. Finally, as to the last factor, we concluded that Maryland

had a compelling interest in enforcing the law at issue, that MaryCLE had an interest in obtaining relief, that Maryland was the appropriate forum for obtaining a resolution to the controversy, and that the burden on First Choice in defending the action in Maryland would be insignificant. *Id.* at 510-14.

The Instant Case

Here, Worsham claims that OTCI is subject to both general jurisdiction and specific jurisdiction based, for the most part, on the following allegations, which OTCI does not dispute:

- In the two years leading up to August 2020, OTCI sent over 10,000 emails to customers who had purchased items that were shipped or billed to Maryland.
- In the two years leading up to August 2020, OTCI mailed over 4.5 million print catalogs, some of which were shipped to Maryland.
- In the two years leading up to August 2020, OTCI mailed over 160,000 orders that were billed to a Maryland address.
- From December 2019 to March 2020, after Worsham had placed an order through OTCI’s website and identified himself as a Maryland resident, OTCI sent thirty-four email advertisements to Worsham’s email address.

As discussed in greater detail below, we hold that OTCI is subject to personal jurisdiction in Maryland under the principles of specific jurisdiction. As such, we need not decide whether OTCI is also subject to general personal jurisdiction.

A. Purposeful Availment

For a defendant to have purposefully availed himself of the privilege of conducting activities within the forum State, he “must have ‘purposefully directed’ activities ‘at residents of the forum,’ and the litigation at issue must ‘result from alleged injuries that arise out of or relate to those activities.’” *Stisser*, 234 Md. App. at 628-29 (cleaned up) (quoting *Burger King*, 471 U.S. at 472). “The contacts must be the defendant’s own choice and not random, isolated, or fortuitous.” *Ford*, 592 U.S. at 359 (quotation marks and citation omitted). In addition, the contacts “must show that the defendant deliberately reached out beyond its home – by, for example, exploiting a market in the forum State or entering a contractual relationship centered there.” *Id.* (cleaned up). “The ‘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 the unilateral activity of another party or a third person.’” *Stisser*, 234 Md. App. at 629 (further quotation marks omitted) (quoting *Burger King*, 471 U.S. at 475-76).

We hold that Worsham alleged sufficient facts to establish that OTCI purposefully availed itself of the privilege of conducting activities in Maryland. According to those facts, in the two years leading up to the filing of Worsham’s complaint, OTCI, an online retailer, sent over 10,000 emails and mailed over 160,000 orders to customers who had a Maryland billing address. In addition, in the three months leading up to the filing of Worsham’s complaint, OTCI sent thirty-four email advertisements to Worsham’s email address after Worsham placed an order through OTCI’s website. Those email advertisements were directed at Worsham and sent with the intent to solicit further business

from Worsham, a Maryland resident. Clearly, those contacts were not random, isolated, or fortuitous, but rather were purposely directed at Maryland residents in an attempt to exploit a market in Maryland. This was not, as was the case in *Camelback II*, a situation in which a “fixed-site merchant” derived business from someone who happened to be a Maryland resident. Rather, as was the case in *MaryCLE*, OTCI directly caused their products to be sent into Maryland and directly caused their emails to be sent to a customer in Maryland. OTCI could therefore reasonably be expected to be haled into court in Maryland for those actions.

OTCI claims that *MaryCLE* is distinguishable because, in that case, the emails at issue were the defendant’s product, whereas the emails in the instant case were not OTCI’s product but were only for marketing. Citing *Camelback II*, OTCI claims that “[o]ut-of-state promotional materials sent by an out-of-state company into Maryland can only lay a foundation for a Maryland court to exercise specific jurisdiction when the company made the state a ‘primary marketing area.’” OTCI also claims that, under *Camelback II*, the promotional emails cannot serve as the basis for personal jurisdiction because Worsham, by providing his email address, “invited the emails” from OTCI.

OTCI is mistaken. First, at no point in *Camelback II* did the Supreme Court of Maryland state, or even suggest, that a State must be among an out-of-state company’s “primary marketing area” for the company’s promotional materials to lay the foundation for the exercise of specific personal jurisdiction. Likewise, at no point did the Court suggest that the power of a Maryland court to exercise personal jurisdiction over an out-

of-state defendant is somehow neutralized when the promotional materials that serve as the basis for the exercise of that jurisdiction are “invited” by a Maryland resident.

OTCI’s focus on the nature of its emails is also misguided. To be sure, in *MaryCLE*, we discussed *Camelback II* and, in so doing, distinguished that case by noting that, unlike Camelback, which made its money via a ski resort located in Pennsylvania, First Choice was an internet marketing firm that made its money by procuring email addresses and sending emails to those addresses. *MaryCLE*, 166 Md. App. at 508. But, in drawing that distinction, we were not suggesting that an out-of-state company had to be in the business of advertising in order for its advertisements to trigger Maryland’s long-arm statute. Instead, we were merely pointing out that the pull of Maryland’s long-arm statute becomes stronger when the relationship between a corporation’s connections to Maryland and the underlying claim become less attenuated. *See Camelback II*, 312 Md. at 339 (noting that “the quantum of required contacts increases as the nexus between the contacts and the cause of action decreases”).

In any event, to say that OTCI’s promotional emails were not its “product” and thus could not, under *Camelback II*, serve as the basis for the exercise of personal jurisdiction in Maryland is splitting jurisdictional hairs. An out-of-state, fixed-site ski resort like Camelback can hardly be expected to be haled into court in Maryland for sending a few brochures to ski shops in Maryland, even if those brochures are sent with the understanding that they may cause Maryland residents to visit the ski resort. On the other hand, an online retailer like OTCI that sends 160,000 products to Maryland residents over a two-year period should reasonably be expected to answer in that State when that very same retailer

directly and purposefully sends thirty-four emails to a Maryland resident in an attempt to solicit more business. Again, the issue is not whether Worsham “invited” the promotional emails, whether OTCI made Maryland its “primary marketing area,” or whether the promotional emails were OTCI’s product. The issue is whether OTCI purposely directed activities at Maryland’s residents and whether the litigation at issue resulted from alleged injuries that arose out of or related to those contacts, such that OTCI could reasonably be expected to be haled into court in Maryland. We are persuaded that OTCI’s mailing of 160,000 products to Maryland residents and its thirty-four emails to Worsham established a significant connection to Maryland, and we are also persuaded that the alleged injuries suffered by Worsham arose out of or were related to those contacts. Thus, OTCI “purposefully availed” itself of the privilege of conducting activities within Maryland.

B. Relation of Claim to Forum Activities

The second factor – that the plaintiff’s claims arise out of the activities directed at the State – is satisfied “[i]f a defendant’s contacts with the forum state are related to the operative facts of the controversy[.]” *MaryCLE*, 166 Md. App. at 504 (quotation marks and citation omitted). As discussed in Part A, OTCI’s contacts with Maryland, which included the thirty-four emails sent to Worsham, were clearly related to the operative facts of the controversy, which was based on those very same emails. That requirement for personal jurisdiction was therefore satisfied.

C. Constitutional Reasonableness

“[O]nce purposeful availment has been established, a defendant must make a ‘compelling case’ that it is unreasonable or unfair to require it to defend a suit out of State.”

MaryCLE, 166 Md. App. at 510 (citation omitted). As noted, when deciding whether the exercise of personal jurisdiction is constitutionally reasonable, we consider: “the burden on the defendant, the forum state’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.” *Stisser*, 234 Md. App. at 617 (citations omitted).

We hold that the exercise of personal jurisdiction in the instant case was constitutionally reasonable. As we explained in *MaryCLE*, which involved the enforcement of the same statutory scheme at issue in the instant case, both the State of Maryland and its residents have a strong interest in enforcing the statute, and, given that Worsham suffered the alleged injury in this State, Maryland is the most appropriate forum. Moreover, OTCI has presented no evidence or argument to show that enforcing Maryland’s long-arm statute in the instant case would burden OTCI or have any effect on the shared interest of the several States in furthering fundamental substantive social policies.

In sum, we conclude that all three factors of specific personal jurisdiction were met in this case. Thus, the circuit court erred in dismissing Worsham’s complaint for lack of personal jurisdiction.

OTCI’s Alternate Claim

OTCI asks us to affirm the circuit court’s decision on the alternate grounds that Worsham failed to state a claim upon which relief could be granted. We note, however, that the court did not reach that issue, having determined that, because it lacked jurisdiction,

it also lacked the power to decide that claim. We see no reason to decide that claim without giving the court the opportunity to settle the claim first.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED IN PART AND AFFIRMED IN PART; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY 1/2 BY APPELLANT AND 1/2 BY APPELLEE.