

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0599

September Term, 2016

RAMEZ A. GHAZZAOUI

v.

CAROLINA CHELLE ET AL.

Eyler, Deborah S.,
Wright,
Zarnoch, Robert. A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 1, 2017

Ramez Ghazzaoui, the appellant, appeals from an order entered by the Circuit Court for Anne Arundel County denying his request for an order of default against IDB IIC Federal Credit Union (“the Credit Union”), the appellee, and his motions to alter or amend that order, in a garnishment action filed within his divorce case. He presents one question, which we have rephrased slightly: Did the circuit court err by ruling that it lacked personal jurisdiction over the Credit Union? We answer that question in the negative and shall affirm the orders of the circuit court.

FACTS AND PROCEEDINGS

On March 10, 2011, Ghazzaoui was divorced from his wife, Carolina Chelle, in the Circuit Court for Anne Arundel County. Chelle was ordered to contribute \$81,164.14 towards Ghazzaoui’s attorneys’ fees and a judgment was entered against her in that amount. In September 2011, the judgment was modified to \$48,164.14 to reflect partial satisfaction.

On July 8, 2013, Ghazzaoui filed in the divorce case three requests for writs of garnishment against financial institutions in which he alleged that Chelle held accounts, including one against the Credit Union. The Credit Union is federally chartered by the United States Congress and has one office, located at 1300 New York Avenue, NW, Washington, D.C. The Clerk’s office issued a “WRIT OF GARNISHMENT OF PROPERTY” and a summons that same day. The writ of garnishment instructed the Credit Union that it was “hereby directed to hold the property of [Chelle] subject to further proceedings in [the circuit court]”; that it was required to “FILE A WRITTEN

ANSWER within 30 days after service of the Writ on [it]”; that failure to answer could result “in judgment of default being entered against [it]”; and that the Credit Union also could “assert any defense that [it] may have to the garnishment, as well as any defense that [Chelle] could assert.”

On July 15, 2013, Bruce Cameron, the CEO of the Credit Union, received a copy of the writ of garnishment and a cover letter from Ghazzaoui at his office at the Credit Union. Cameron signed an “Affidavit of Service” acknowledging his receipt of those documents and agreeing to deliver the writ of garnishment “to the Credit Union’s attorney for review.”¹ Ghazzaoui filed the affidavit in the circuit court on August 1, 2013.

On July 31, 2013, Ghazzaoui filed a request to register a foreign judgment in the Superior Court for the District of Columbia (“the DC Court”), Case No. 2013-CA-005255.² On August 15, 2013, a writ of garnishment was issued in that case and, on August 22, 2013, the Credit Union filed an answer stating that Chelle had \$253.26 on deposit with it. In March 2014, Ghazzaoui served interrogatories on the Credit Union relative to the DC Court case seeking records of Chelle’s accounts. In response to that

¹ Cameron altered the affidavit, which had been drafted by Ghazzaoui, by interlineation. He crossed out language stating that he had “accepted service of process upon [the Credit Union],” changing it to “received on behalf of [the Credit Union].” He also crossed out language stating that he would deliver the writ of garnishment to “the appropriate persons within my organization for compliance,” changing it to say that he would deliver it to counsel for review.

² We take judicial notice of the docket entries in this case, which are publicly available.

request, the Credit Union provided Ghazzaoui with copies of account statements for three accounts in Chelle's name for the period between January 2013, and March 2014. The bank statements revealed that as of July 16, 2013, Chelle had \$53,667.23 on deposit in an account at the Credit Union. On July 17, 2013, she withdrew \$53,617.23 from that account.

Meanwhile, in the Maryland case, the Credit Union did not file an answer. On May 29, 2015, Ghazzaoui filed a motion for "a judgment of disbursement of funds" against the Credit Union. On July 29, 2015, the court entered an order directing Ghazzaoui to instead file a request for an order of default. Ghazzaoui filed a request for order of default that same day.

On September 16, 2015, the Credit Union filed an "Opposition To the . . . garnishment," asserting lack of personal jurisdiction. It argued that the court lacked specific personal jurisdiction over the Credit Union because it had no relationship with Ghazzaoui and because the garnishment action did not arise from any activities conducted by it in Maryland. It maintained, moreover, that the court lacked general personal jurisdiction over the Credit Union because it did not engage in "continuous and systematic" conduct within Maryland. The Credit Union supported its opposition with an affidavit made by Cameron averring that it conducted all of its business from its one

office in Washington, D.C.; it had two ATM machines located in Washington, D.C.³; that it had 9,500 members residing all over the United States and throughout the western hemisphere, all of whom were employees of the Inter-American Development Bank, the Inter-American Investment Corporation, or their family members⁴; that it had no employees who worked in Maryland; that it did not own any property in Maryland; that it marketed its services, which included consumer loans and home mortgages, to its members via a publicly available website; and that it did not perform any marketing in Maryland. Cameron further averred that Credit Union's only contact with Maryland arose from its home mortgage lending business. It issued mortgage loans for members who were purchasing properties around the country, including properties located in Maryland. It had not foreclosed on a property in Maryland in more than twenty years, however.

On September 23, 2015, the court held a hearing and heard argument on Ghazzaoui's request for an order of default. Counsel for the Credit Union argued that it had "virtually no contact" with Maryland and that it didn't send agents into Maryland to transact business or to seek out business. Ghazzaoui responded that the Credit Union had an interest in real property in Maryland because it was the holder of deeds of trust on those properties and that that was all that was required under the Maryland long-arm

³ It also participated in the COOP Network, a credit union owned ATM network, however, which permitted members to access their Credit Union accounts from credit union ATM machines nationwide.

⁴ Chelle was an employee of the Inter-American Development Bank.

statute, Md. Code (1974, 2013 Repl. Vol.), section 6-103 of the Courts and Judicial Proceedings Article (“CJP”).⁵

By order entered on October 30, 2015, the court denied Ghazzaoui’s request and directed him to “file an appropriate garnishment action against [the Credit Union] in the District of Columbia[.]” In a lengthy footnote to its order, the court reasoned that the

⁵ The long-arm statute provides, in pertinent part:

(a) If jurisdiction over a person is based solely upon this section, *he may be sued only on a cause of action arising from any act enumerated in this section.*

(b) *A court may exercise personal jurisdiction over a person, who 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.

CJP § 6-103 (emphasis added).

Credit Union did not “have the necessary continuous and systematic activities within Maryland necessary to confer general jurisdiction” and that the fact that it acted as a mortgage lender for members purchasing properties in Maryland was “unrelated to [Ghazzaoui]’s cause of action” and, thus, did not confer specific jurisdiction. The court relied upon two cases, *Cappel v. Riaso, LLC*, 197 Md. App. 347 (2011), and *Mull v. Alliance Morg. Banking Corp.*, 219 F.Supp.2d 895 (W.D. Tn. 2002), both of which we shall discuss *infra*.

On November 9, 2015, Ghazzaoui filed a motion to alter or amend the October 30, 2015 Order. He attached to his motion a printout from the Office of Land Records for Montgomery County (“Exhibit 4”) showing that in the more than twenty-year period between August 6, 1993, and October 26, 2015, the Credit Union had recorded deeds of trust securing liens on just over 100 properties in Montgomery County (as well as releases, promissory notes, requests for notices of sale, and subordination agreements). The vast majority of the deeds of trust were recorded in the 1990s and early 2000s, however.

On February 24, 2016, the court held a hearing on the motion to alter or amend and, by order entered on April 4, 2016, denied it. In a footnote to that order, the court rejected Ghazzaoui’s argument that the long-arm statute conferred jurisdiction over the Credit Union based upon its interest in real property in Maryland, explaining that because the garnishment action did not arise from or relate to the Credit Union’s mortgage lending business, the long-arm statute did not apply.

On April 13, 2016, Ghazzaoui moved to alter or amend the April 4, 2016 Order. The Credit Union moved to strike that motion and opposed it.

By order entered May 31, 2016, the court denied the second motion to alter or amend. This timely appeal followed.

DISCUSSION

“The existence of personal jurisdiction is a question of law,” and the plaintiff “bears ‘the burden to establish the propriety of [the exercise of] personal jurisdiction.’” *Cappel*, 197 Md. App. at 355 (quoting *CSR v. Taylor*, 411 Md. 457, 467 n.2 (2009)). As the Court of Appeals has explained,

[w]hether a court may exert personal jurisdiction over a foreign defendant entails dual considerations. First, we consider whether the exercise of jurisdiction is authorized under Maryland’s long arm statute Our second task is to determine whether the exercise of jurisdiction comports with due process requirements of the Fourteenth Amendment. We 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.

Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC, 388 Md. 1, 14-15 (2005) (citations omitted).

Personal jurisdiction may be divided into two, somewhat overlapping categories: general jurisdiction and specific jurisdiction. For either to exist, a defendant “must maintain sufficient minimum contacts with the forum such that the exercise of jurisdiction meets the ‘general test of essential fairness.’” *Republic Props. Corp. v. Mission West Props., LP*, 391 Md. 732, 760 (2006) (quoting *Presbyterian Univ. Hosp. v. Wilson*, 337 Md. 541, 551-52 (1995)). Ordinarily, specific jurisdiction may be

established if a defendant’s “contacts with the forum state form the basis for the suit.” *Beyond Systems*, 388 Md. at 26. Absent a nexus between the suit and the defendant’s contacts, however, a plaintiff must meet the more stringent test for general jurisdiction by showing that the defendant’s “activities in the State . . . have been ‘continuous and systematic.’” *Carefirst of Md., Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 397 (4th Cir. 2003) (quoting *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002)); *see also Camelback Ski Corp. v. Behning*, 312 Md. 330, 338 (1988) (“Generally speaking, when the cause of action does not arise out of, or is not directly related to, the conduct of the defendant within the forum, contacts reflecting continuous and systematic general business conduct will be required to sustain jurisdiction.”).

In the case at bar, Ghazzaoui does not challenge the circuit court’s ruling that it lacked specific personal jurisdiction over the Credit Union. He argues that the court erred, however, by determining that the Credit Union had not engaged in continuous and systematic activities within Maryland giving rise to general jurisdiction. He asserts that the Credit Union “conducts regular business with the State of Maryland by frequently recording new Deeds of Trust, Releasing such Deeds, recording lien subordination agreements, requesting notices of sale, recording promissory notes, and even in six

instances registering as a Trustee for real estate in Maryland” and these activities are substantial enough to give rise to general jurisdiction.⁶

The Credit Union responds that the circuit court correctly ruled that Ghazzaoui did not meet the “stringent standard” for general jurisdiction. It emphasizes that it does not maintain an office in Maryland, does not have any ATMs located within the State, does not employ any persons in Maryland, does not advertise in Maryland (except through its publicly available website), and does not own any property in Maryland. It maintains that its status as a mortgagee for residential real property in the State, standing alone, cannot give rise to general jurisdiction.

The long-arm statute plainly does not confer jurisdiction in this case. It provides, in pertinent part, that “[a] court may exercise personal jurisdiction over a person, who directly or by an agent . . . [h]as an interest in, uses, or possesses real property in the State” *if* the defendant is sued upon a “cause of action arising from [that interest in real property].” CJP § 6-103 (emphasis added). Here, Ghazzaoui’s garnishment action does not relate to or arise from the Credit Union’s interest in real property within Maryland.

The lack of a nexus between Ghazzaoui’s cause of action and the Credit Union’s contacts with Maryland also supported the circuit court’s determination that Maryland could not exercise specific personal jurisdiction over the Credit Union. As mentioned, Ghazzaoui does not challenge that ruling on appeal.

⁶ Ghazzaoui argues, without any citation to the record, that the Credit Union’s mortgage lending business in Maryland amounts to “at least 20% of [its] overall business – probably closer to 40%.” We can find no support for these assertions in the record.

We thus turn to whether Ghazzaoui met his burden of showing that the Credit Union's contacts with Maryland, which arose from its home mortgage lending business, gave rise to general personal jurisdiction. In his affidavit, Cameron averred that the Credit Union serviced all of its home mortgages from its office in Washington, D.C. It transacted with settlement attorneys licensed in Maryland and the deeds of trust securing mortgage loans were recorded in Maryland, in the county where the property was located. The Credit Union had not foreclosed upon a Maryland property in more than twenty years. The Credit Union advertised its mortgage lending business to its members via its website, but did not otherwise market itself in Maryland. Exhibit 4, which was the only evidence adduced by Ghazzaoui relative to the Credit Union's mortgage lending business, showed that in the five years prior to the initiation of the garnishment action, the Credit Union acquired a lien interest in eleven properties in Montgomery County.⁷

In *Cappel*, 197 Md. App. at 347, this Court considered whether ownership of property in Maryland, standing alone, could give rise to general personal jurisdiction. The Cappels, a married couple, were residents of Washington, D.C. and were limited partners in Monroe LP, a District of Columbia limited partnership that held title to an apartment building, also in the District of Columbia. Monroe LP borrowed money from

⁷ The Credit Union also had recorded over 200 releases of indebtedness, six subordination agreements, and one unspecified agreement in that five-year period. Exhibit 4 did not reflect that the Credit Union had acquired a lien interest in any properties in Montgomery County since the filing of the garnishment action. Ghazzaoui did not provide the court with any evidence about the Credit Union's interest in properties in other counties in Maryland.

Riaso, LLC, a District of Columbia limited liability company, to pay off an existing mortgage on the apartment building. The promissory note evidencing the loan was signed in Virginia. It included a confessed judgment provision and the Cappels each signed personal guaranty agreements consenting to the entry of a confessed judgment against them in the event that Monroe LP defaulted. When that eventuality came to pass, Riaso sought a confessed judgment against Monroe LP in a Washington, D.C. court. After Monroe LP filed for bankruptcy, however, Riaso sought a confessed judgment action against the Cappels in the Circuit Court for Montgomery County. That court entered judgment against the Cappels and they subsequently moved to vacate that judgment for lack of personal jurisdiction.

Riaso argued that the Maryland court had personal jurisdiction over the Cappels arising from their ownership of a parcel of undeveloped property in Burtonsville, in Montgomery County. The circuit court agreed, concluding that the Cappels' ownership of property in Maryland amounted to transacting business in the State and was sufficient to meet the "minimum contacts" test and to submit the Cappels to the jurisdiction of the court.

On appeal, this Court reversed. We reasoned that under the long-arm statute, ownership of property within Maryland only conferred jurisdiction over the Cappels if Riaso's cause of action was "connected with the property interest," which it was not. *Id.* at 356. We determined, moreover, that the Cappels' ownership of property in Maryland and their payment of taxes on that property was not the type of systematic contacts giving

rise to general jurisdiction. We were persuaded by the reasoning of the Fourth Circuit Court of Appeals in *Base Metal Trading v. OJSC Novokuznetsky Aluminum*, 283 F.3d 208, 213 (4th Cir. 2002), holding that “when the property which serves as the basis for jurisdiction is completely unrelated to the plaintiff’s cause of action, the presence of property alone will not support jurisdiction.”

In *Mull*, 219 F.Supp.2d at 895, a federal district court dismissed claims against certain defendants in a putative class action brought by consumers in Tennessee against numerous financial institutions alleging violations of Tennessee law relative to interest, origination fees, loan brokerage commissions, and other fees charges in connection with mortgage loans. The named plaintiffs alleged that they obtained second mortgage loans on their properties, located in Tennessee, through a non-party mortgage lender and that the fees and interest charged on those loans exceeded those allowed under Tennessee law. The defendants were alleged to be the current “holder[s] of certain of the second mortgage loan notes made to class members.” *Id.* at 899. Ten of the defendants moved to dismiss, arguing, *inter alia*, that the Tennessee federal district court lacked personal jurisdiction over them. None of the ten defendants maintained offices in Tennessee or had employees or agents located there. The plaintiffs argued that the court could exercise personal jurisdiction over the defendants because they had purchased “at least seventy-four second mortgage loans secured by property held by Tennessee residents”; earned income on those mortgages; and were the holders of notes secured by mortgages in Tennessee. *Id.* at 904. The district court rejected this argument, ruling that when a

“defendant’s forum activities consist solely of holding mortgages secured by property in the forum state, the contacts cannot be characterized as continuous or systematic such that an exercise of general personal jurisdiction would be permissible.” *Id.* at 905.⁸

We return to the case at bar. In light of our holding in *Cappel*, we conclude that the Credit Union’s interest as the holder of deeds of trusts secured by properties in Maryland does not amount to the type of continuous and systematic contacts sufficient to give rise to general personal jurisdiction. As we reasoned in *Cappel*, ordinarily, ownership of property in the forum state completely unrelated to the cause of action does not suffice to establish general personal jurisdiction. Here, the Credit Union was not the owner of the properties, but was the mortgagee and there was no dispute that its interest as a mortgagee had no relation to the garnishment action. Moreover, like in *Mull*, the evidence before the circuit court did not show that the Credit Union’s interest in real property within Maryland was of such a magnitude to amount to a “purposeful[] avail[ment] . . . of the privilege of conducting activities within [the State],” especially given that it did not otherwise maintain any presence in the State or transact any business here. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Having determined that the

⁸ The *Mull* Court was persuaded by the reasoning of the United States District Court for the District of Rhode Island, which considered in *Barry v. Mortgage Servicing Acquisition Corp.*, 909 F.Supp. 65 (D.R.I. 1995), whether an assignee of mortgage loans secured by property within Rhode Island was subject to the state’s general personal jurisdiction. That court reasoned that given that the defendant had no banking operations, owned no property, had no employees, and solicited no business in Rhode Island, the fact that it held 138 mortgage loans secured by property in Rhode Island, standing alone, did not give rise to general personal jurisdiction.

requisite contacts are not present, we need not determine whether it would otherwise be “fair and reasonable to extend personal jurisdiction based on those contacts.” *Cappel*, 197 Md. App. at 363.

**ORDERS OF THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY AFFIRMED.
COSTS TO BE PAID BY THE
APPELLANT.**