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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2011

1091781

Ex parte No. 1 Steel Products, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: Garrison Steel Fabricators, Inc.

v.

No. 1 Steel Products, Inc.)

(St. Clair Circuit Court, CV-09-201)

STUART, Justice.

No. 1 Steel Products, Inc., a Massachusetts corporation, petitions this Court for a writ of mandamus directing the St.

Clair Circuit Court to dismiss the action filed against it by Garrison Steel Fabricators, Inc., an Alabama corporation, on the basis that the St. Clair Circuit Court lacked personal jurisdiction over it. We grant the petition and issue the writ.

I.

In 2007, No. 1 Steel was engaged as a subcontractor on a construction project at a health and rehabilitation center in Centerville, Massachusetts, known as the Cape Regency project. While working on the Cape Regency project, No. 1 Steel determined that it needed to hire out some of the steel fabrication for which it was responsible. The president of No. 1 Steel, Arthur Pimental, stated in an affidavit that No. 1 Steel accordingly took the following action:

> "During the project, we were looking for more structural steel fabricators, and it is my recollection that we went through a list of fabricators posted on a website called the Blue Book that is either bluebook.com or thebluebook.com. We sent emails to various companies through the Blue Book website regarding the project, and if a company was interested, it would contact our office. After receiving contact from a company, I would email the company our website, to view drawings on our website, which is www.no1steel.com, with a password. If the company was interested in submitting a proposal, the company would forward one to our offices in Massachusetts. Our file reflects

> Garrison Steel Fabricators, Inc., sent a proposal to our offices in Massachusetts, which we reviewed, and which we accepted in Massachusetts by forwarding a purchase order to Garrison Steel Fabricators, Inc. Our acceptance of their proposal was made in Massachusetts."

The purchase order was sent on October 24, 2007, and according to its terms No. 1 Steel was to pay Garrison Steel $124,200 for the completed product and fabrication services. Garrison Steel thereafter commenced fabrication of the ordered product at its facility in Pell City. The companies apparently communicated via telephone, fax, and e-mail during the negotiation and fabrication process; however, representatives from No. 1 Steel never visited Garrison Steel's facility in Alabama. When the fabrication was complete, Garrison Steel sent the product to No. 1 Steel at its work site in Massachusetts. Although the materials before this Court do not fully explain why, it is apparent that No. 1 Steel was in some way dissatisfied with the delivered product, and No. 1 Steel refused to pay Garrison Steel anything beyond the $64,200 it had previously paid.

In an attempt to collect the remaining $60,000 it claimed No. 1 Steel owed it, Garrison Steel sent No. 1 Steel notice that it intended to file a mechanic's lien unless it was paid

the balance of the agreed-upon price. Attached to this notice was a draft of the lien to be filed if no settlement was reached. Upon receiving the notice, No. 1 Steel filed in a Massachusetts court a motion to discharge and release the not yet filed lien, arguing that Garrison Steel was not registered to do business in Massachusetts and that no written contract of the parties' agreement existed; the Massachusetts court granted the motion without stating a rationale.

On June 17, 2009, Garrison Steel sued No. 1 Steel in the St. Clair Circuit Court, asserting claims of open account, implied contract, and labor and work performed and seeking damages in the amount of $60,000. On July 16, 2009, No. 1 Steel moved the trial court to dismiss the action or, in the alternative, to enter a summary judgment in its favor, arguing, among other things, that the trial court lacked personal jurisdiction over it because No. 1 Steel did not do business in Alabama and lacked the required contacts with Alabama to subject it to personal jurisdiction here. Attached to this motion was the affidavit, quoted earlier, of No. 1 Steel's president, Pimental. Garrison Steel filed a response in opposition to No. 1 Steel's motion, arguing that No. 1

Steel had had sufficient contact with Alabama for an Alabama court to exercise jurisdiction over it. Garrison Steel supported its response with copies of the plans and requirements it alleged No. 1 Steel had sent it and copies of e-mail correspondence between the two companies concerning the project. Garrison Steel also submitted an affidavit from its controller, Keith Cornelius, in which he swore that Garrison Steel's relationship with No. 1 Steel had begun sometime in the latter part of 2007 when "sales representatives with my company were contacted by representatives of [No. 1 Steel] regarding my company constructing various structural steel items for delivery to a project being supplied by [No. 1 Steel]."

No. 1 Steel then filed a reply to Garrison Steel's response, disputing the assertion in Cornelius's affidavit that No. 1 Steel had initiated contact with Garrison Steel in Alabama. Accompanying this reply was an affidavit from David Malone, a former sales representative at Garrison Steel, who stated that, sometime in 2007, he had learned about No. 1 Steel's need for steel-fabrication services in association with the Cape Regency project from his previous employer,

Smith Ironworks, a Georgia company, which was itself too busy to bid on the project. Malone further stated that, upon learning of the opportunity, he contacted No. 1 Steel and was told how to access specific information about the project on No. 1 Steel's Web site, which he did before preparing the bid that was then submitted and ultimately accepted.

In response to Malone's affidavit, Garrison Steel filed a response supported by an affidavit from its president, John Garrison, asserting that Malone was a disgruntled former employee and noting that Malone's affidavit testimony appeared to contradict the affidavit testimony of No. 1 Steel's president, Pimental, who had previously stated that "[w]e [i.e., No. 1 Steel] sent emails to various companies through the Blue Book website regarding the project."

On September 9, 2010, the trial court, treating No. 1 Steel's motion seeking a dismissal of the case on the basis of a lack of personal jurisdiction as a summary-judgment motion, denied the motion. On September 24, 2010, No. 1 Steel petitioned this Court, seeking mandamus review of the trial court's decision. We subsequently ordered Garrison Steel to file a response to No. 1 Steel's petition, which it timely

submitted, and, on June 28, 2011, we heard oral arguments from the parties concerning the personal-jurisdiction issue.

II.

A petition for a writ of mandamus is the appropriate manner in which to challenge a trial court's order deciding the question of personal jurisdiction. Ex parte Lowengart, 59 So. 3d 673, 677-78 (Ala. 2010). We review such a petition pursuant to the following standard of review:

> "'"The writ of mandamus is a drastic and extraordinary writ, to be 'issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.' Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993); see also Ex parte Ziglar, 669 So. 2d 133, 134 (Ala. 1995)." Ex parte Carter, [807 So. 2d 534,] 536 [(Ala. 2001)].'
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> "Ex parte McWilliams, 812 So. 2d 318, 321 (Ala. 2001). 'An appellate court considers de novo a trial court's judgment on a party's motion to dismiss for lack of personal jurisdiction.' Elliott v. Van Kleef, 830 So. 2d 726, 729 (Ala. 2002)."

Ex parte Bufkin, 936 So. 2d 1042, 1044-45 (Ala. 2006).

III.

In Ex parte Excelsior Financial, Inc., 42 So. 3d 96 (Ala. 2010), we reviewed the due-process concerns that govern a court's decision whether to exercise personal jurisdiction over an out-of-state party, stating:

> "'The extent of an Alabama court's personal jurisdiction over a person or corporation is governed by Rule 4.2, Ala. R. Civ. P., Alabama's "long-arm rule," bounded by the limits of due process under the federal and state constitutions. Sieber v. Campbell, 810 So. 2d 641 (Ala. 2001). Rule 4.2(b), as amended in 2004, states:
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> > "'"(b) Basis for Out-of-State Service. An appropriate basis exists for service of process outside of this state upon a person or entity in any action in this state when the person or entity has such contacts with this state that the prosecution of the action against the person or entity in this state is not inconsistent with the constitution of this state or the Constitution of the United States...."
>
> "'In accordance with the plain language of Rule 4.2, both before and after the 2004 amendment, Alabama's long-arm rule consistently has been interpreted by this Court to extend the jurisdiction of Alabama courts to the permissible limits of due process. Duke v. Young, 496 So. 2d 37 (Ala. 1986); DeSotacho, Inc. v. Valnit

Indus., Inc., 350 So. 2d 447 (Ala. 1977). As this Court reiterated in Ex parte McInnis, 820 So. 2d 795, 802 (Ala. 2001) (quoting Sudduth v. Howard, 646 So. 2d 664, 667 (Ala. 1994)), and even more recently in Hiller Investments Inc. v. Insultech Group, Inc., 957 So. 2d 1111, 1115 (Ala. 2006): "Rule 4.2, Ala. R. Civ. P., extends the personal jurisdiction of the Alabama courts to the limit of due process under the federal and state constitutions." (Emphasis added.)

"'This Court discussed the extent of the personal jurisdiction of Alabama courts in Elliott v. Van Kleef, 830 So. 2d 726, 730 (Ala. 2002):

> "'"This Court has interpreted the due process guaranteed under the Alabama Constitution to be coextensive with the due process guaranteed under the United States Constitution. See Alabama Waterproofing Co. v. Hanby, 431 So. 2d 141, 145 (Ala. 1983), and DeSotacho, Inc. v. Valnit Indus., Inc., 350 So. 2d 447, 449 (Ala. 1977). See also Rule 4.2, Ala. R. Civ. P., Committee Comments on 1977 Complete Revision following Rule 4.4, under the heading 'ARCP 4.2.' ('Subparagraph (I) was included by the Committee to insure that a basis of jurisdiction was included in Alabama procedure that was coextensive with the scope of the federal due process clause....').

> "'"The Due Process Clause of the Fourteenth Amendment permits a forum state to subject a nonresident defendant to its courts only when that defendant has sufficient 'minimum contacts' with the forum state. International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). The critical question with regard to the nonresident defendant's contacts is whether the contacts are such that the nonresident defendant '"should reasonably anticipate being haled into court"' in the forum state. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985), quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980)."'

"Ex parte DBI, Inc., 23 So. 3d 635, 643-44 (Ala. 2009)(footnote omitted).

"'Furthermore, this Court has explained:

> "'"... The sufficiency of a party's contacts are assessed as follows:
>
> > "'"'Two types of contacts can form a basis for personal jurisdiction: general contacts and specific contacts. General contacts, which give rise to general

> personal jurisdiction, consist of the defendant's contacts with the forum state that are unrelated to the cause of action and that are both "continuous and systematic." Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n. 9, 415, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984); [citations omitted]. Specific contacts, which give rise to specific jurisdiction, consist of the defendant's contacts with the forum state that are related to the cause of action. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-75, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). Although the related contacts need not be continuous and systematic, they must rise to such a level as to cause the defendant to anticipate being haled into court in the forum state. Id.'

"'"Ex parte Phase III Constr., Inc., 723 So. 2d 1263, 1266 (Ala. 1998) (Lyons, J., concurring in the result)....

> "'"In the case of either general in personam jurisdiction or specific in personam jurisdiction, '[t]he "substantial connection" between the defendant and the forum state necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State.' Asahi Metal Indus. Co. v. Superior Court of California, 480 U.S. 102, 112, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987)."
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> "'Elliott [v. Van Kleef], 830 So. 2d [726,] 730-31 [(Ala. 2002)] (emphasis added).'
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> "Sverdrup Tech., Inc. v. Robinson, 36 So. 3d 34, 42-43 (Ala. 2009)."

42 So. 3d at 100-02 (some emphasis omitted). There is no allegation that in personam jurisdiction based on general contacts would be appropriate in this case; we must accordingly determine whether No. 1 Steel's contacts with Alabama in connection with its transaction with Garrison Steel, i.e., the specific contacts, were sufficient such that No. 1 Steel should have anticipated being haled into court here. For the reasons that follow, we hold that they were not.

No. 1 Steel's contacts with Alabama appear to consist entirely of telephone, fax, and e-mail correspondence between

it and Garrison Steel concerning the negotiation of an agreement between the parties and the subsequent fabrication and delivery of the ordered pieces. The parties hotly dispute which party initiated contact, because this Court has stated that that fact is "of particular relevance" in determining whether an out-of-state defendant has purposefully availed itself of the privilege of conducting business activities within Alabama such that it reasonably should anticipate being haled into court in this State. Ex parte Troncalli Chrysler Plymouth Dodge, Inc., 876 So. 2d 459, 465 (Ala. 2003). The evidence on that disputed point is ultimately unclear. Even if we were to conclude that the initial contact was made by No. 1 Steel, however, that fact is not controlling, Vista Land & Equip., L.L.C. v. Computer Programs & Sys., Inc., 953 So. 2d 1170, 1176 n. 3 (Ala. 2006), and Garrison Steel concedes that "it really doesn't matter." (Garrison Steel's brief, p. 4.)

We have also held that the mere fact that an out-of-state party initiates telephone calls to Alabama or otherwise makes use of interstate forms of communication is not controlling, stating "'[t]he use of interstate facilities (telephone, the mail) ... [is a] secondary or ancillary factor[] and cannot

alone provide the "minimum contacts" required by due process.'" Steel Processors, Inc. v. Sue's Pumps, Inc. Rentals, 622 So. 2d 910, 913 (Ala. 1993)(quoting Scullin Steel Co. v. National Ry. Utilization Corp., 676 F.2d 309, 314 (8th Cir. 1982)). What is controlling is the nature and extent of the relationship between the out-of-state defendant and the Alabama resident with which it engaged. In Vista Land & Equipment, we considered a dispute between an out-of-state company, Vista Land and Equipment ("VLE"), and Computer Programs & Systems, Inc. ("CPSI"), a Mobile company from which VLE had purchased equipment, software, and maintenance services. In concluding that VLE was subject to the jurisdiction of the Alabama courts, this Court focused on the fact that VLE had entered into an ongoing business relationship with CPSI rather than being merely a one-time purchaser of goods, stating: "'What appears to be determinative is the fact that [the nonresident defendant] was involved in an ongoing business transaction with [the plaintiff].'" 953 So. 2d at 1175 (quoting Andalusia Distrib. Co. v. Singer Hardware Co., 822 So. 2d 1180, 1184 (Ala. 2001)). We further explained:

"As with the revolving-credit account in Andalusia Distributing Co., the promissory note in Ex parte AmSouth Bank, N.A., 675 So. 2d 1305 (Ala. 1996), and the services contract in Corporate Waste Alternatives, Inc. v. McLane Cumberland, Inc., 896 So. 2d 410 (Ala. 2004), all cases in which this Court authorized an Alabama court to exercise jurisdiction over a nonresident defendant, the contract between VLE and CPSI created an ongoing relationship between the two parties. It was not a one-time contract for the purchase of goods as was the contract in Steel Processors, in which this Court held that the Alabama court had no jurisdiction over the nonresident defendant. Rather, the contract between VLE and CPSI was ongoing; it was to renew automatically each year unless one of the parties gave advance notice under the terms of the contract. This contractual relationship, when combined with the additional contacts incidental to that relationship, should have put VLE on notice that it might be haled into an Alabama court in connection with that contract.

"This Court's decision in Corporate Waste Alternatives is particularly instructive. In that case, Corporate Waste Alternatives, Inc. ('CWA'), an Alabama corporation, entered into a contract with McLane Cumberland, Inc. ('Cumberland'), a Kentucky-based company, to help Cumberland reduce its waste-management expenses at a Kentucky distribution center. In return, Cumberland agreed that CWA would be entitled to 50% of its resultant savings. The contract had an initial 5-year term; however, under the terms of the contract the relationship could be extended to 10 years under certain circumstances. CWA performed most of the work under the contract on-site in Kentucky, but Cumberland officials made multiple telephone calls to CWA in Alabama to discuss the work. They also sent multiple payments to CWA in Alabama.

"After approximately 18 months, Cumberland terminated the contract and refused to make further payments to CWA. CWA then sued Cumberland in the Baldwin Circuit Court, alleging breach of contract, and the personal-jurisdiction issue ultimately arrived in this Court. After reviewing Cumberland's contacts with Alabama, this Court ultimately concluded that Cumberland could be haled into an Alabama court, holding:

> "'Because Cumberland was involved in an ongoing business relationship with CWA, an Alabama corporation, and because of the activities undertaken by Cumberland as part of that relationship -- including telephoning CWA in Alabama and mailing payments to CWA in Alabama -- we conclude that "it is fair and reasonable to require [Cumberland] to come to this state to defend an action." Rule 4.2(a)(2), Ala. R. Civ. P.'

"896 So. 2d at 416. The instant case is almost identical; VLE and CPSI were involved in a similar ongoing business relationship that was supported by multiple telephone calls from VLE to CPSI in Alabama, as well as by multiple payments mailed to CPSI in Alabama. The facts that VLE representatives traveled to Alabama to learn about CPSI's products and that it was VLE that reinitiated contact with CPSI in Alabama before entering into the contract further bolster a finding that VLE should be subject to the jurisdiction of Alabama courts.

"VLE attempts to distinguish Corporate Waste Alternatives in two ways. First, it argues that the Supreme Court of the United States in Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985), specifically refuted the proposition that a party subjects itself to a foreign court's jurisdiction simply by entering into a contract with a party within that jurisdiction:

> "'At the outset, we note a continued division among lower courts respecting whether and to what extent a contract can constitute a "contact" for purposes of due process analysis. If the question is whether an individual's contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot.'

"(Footnote omitted.) Neither Corporate Waste Alternatives nor our holding today conflicts in any way with Rudzewicz. This Court has never held that a party may be subject to jurisdiction in the courts of this State simply because that party contracted with an Alabama party. To the contrary, in Steel Processors, we explicitly recognized that a one-time contract for the purchase of goods was an insufficient basis for jurisdiction.

"VLE's argument fails to recognize that our caselaw does not authorize the exercise of personal jurisdiction over a nonresident defendant solely on the basis of contracts it may have entered into with Alabama parties; rather, such jurisdiction is authorized when there is an ongoing contractual relationship supported by the additional contacts that are incidental to such a relationship. See Andalusia Distrib. Co., 822 So. 2d at 1184 ('What appears to be determinative is the fact that [the nonresident defendant] was involved in an ongoing business transaction with [the plaintiff]....'); Rudzewicz, 471 U.S. at 475-76, 105 S.Ct. 2174 ('Thus where the defendant "deliberately" has engaged in significant activities within a State, or has created "continuing obligations" between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there ....' (emphasis added; citations omitted)). Even 'Steel Processors expressly acknowledges that a contractual relationship will justify the exercise

> of personal jurisdiction where that relationship has a "'substantial connection[]'" to the forum state.' Ex parte AmSouth Bank, 675 So. 2d at 1308."

953 So. 2d at 1175-77 (footnote omitted).

It is undisputed that No. 1 Steel's relationship with Garrison Steel was limited to a one-time purchase of goods. It is true that No. 1 Steel purchased a customized product as opposed to off-the-shelf goods. This fact alone, however, does not merit a deviation from our established caselaw. We have in previous cases "explicitly recognized that a one-time contract for the purchase of goods is an insufficient basis for jurisdiction," 953 So. 2d at 1177, and we reaffirm that principle today and hold that there was no basis for the trial court to exercise personal jurisdiction over No. 1 Steel. Id.

IV.

The trial court treated No. 1 Steel's motion to dismiss Garrison Steel's action against it on the basis of a lack of personal jurisdiction as a motion for a summary judgment and denied it. However, because No. 1 Steel's contacts with the State of Alabama in connection with its transaction with Garrison Steel did not rise to such a level that No. 1 Steel should have anticipated being haled into court here, that

denial was erroneous. Accordingly, No. 1 Steel's petition for a writ of mandamus is granted, and the trial court is hereby directed to enter an order dismissing the action filed by Garrison Steel against No. 1 Steel because the court lacked personal jurisdiction over No. 1 Steel.

PETITION GRANTED; WRIT ISSUED.

Woodall, Bolin, Shaw, Main, and Wise, JJ., concur.

Cobb, C.J., and Parker and Murdock, JJ., dissent.

COBB, Chief Justice (dissenting).

I respectfully dissent. Although this Court reviews the instant petition for a writ of mandamus under the long-settled "clear legal right" standard of review for such petitions, see, e.g., Ex parte Bufkin, 936 So. 2d 1042, 1044-45 (Ala. 2006), I believe that it is appropriate to review the trial court's findings of fact that are implicit in its judgment on a party's motion to dismiss for lack of personal jurisdiction under the same standard this Court uses when it reviews a trial court's ruling on a motion for a summary judgment, i.e., that we review any evidence in a light most favorable to the nonmovant. Jerkins v. Lincoln Elec. Co., [Ms. 1091533, June 30, 2011] ___ So. 3d ___ (Ala. 2011); Nationwide Mut. Ins. Co. v. J-Mar Mach. & Pump, Inc., [Ms. 1090685, June 17, 2011] ___ So. 3d ___ (Ala. 2011). It follows that it is appropriate in reviewing this petition to infer that No. 1 Steel Products, Inc., initiated the contact that led to the contract in dispute in light of the fact that the materials submitted with the petition contain the affidavit of Arthur Pimental, the president and general manager of No. 1 Steel, who testified that No. 1 Steel sent e-mails to various businesses through a

Web site and that Garrison Steel Fabricators, Inc., was one of the businesses that responded to those e-mails.[1] Further, it is undisputed that No. 1 Steel solicited the instant contract from Garrison with a purchase order seeking approximately $124,000 worth of specially fabricated steel, that the fabrication took place in Alabama at Garrison's plant, and that No. 1 Steel actively participated in the fabrication by instructional e-mails and telephone communications.[2]

The cases relied upon by the majority, e.g., Steel Processors, Inc. v. Sue's Pumps, Inc. Rentals, 622 So. 2d 910, 913 (Ala. 1993), resolve to a single point -- that because the

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[1]After Pimental's affidavit was filed, and presumably when its lawyers realized that a factor in determining personal jurisdiction in Alabama was which company had initiated the business contact, No. 1 Steel presented affidavits from a terminated Garrison employee, David Malone, suggesting that Malone had received information from a former employer that No. 1 Steel was seeking work from a Georgia steel corporation and that Garrison subsequently contacted No. 1 Steel with a proposal.

[2]At the oral argument on this case held on June 28, 2011, it became apparent that the factual inferences regarding No. 1 Steel's communications with Garrison and instructions regarding the fabrication process could have been much more extensively documented by Garrison in its attempt to rebut No.1 Steel's claims. Had the extent of the parties' business dealings been more fully incorporated into the materials made available to the Court with this petition, this dissent might have been unnecessary.

transaction between Garrison and No. 1 Steel was a "single," one-time transaction, it does not afford sufficient "minimum contacts" to vest the courts fo this State with in personam jurisdiction. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). Although this case represents a single transaction, it differs from Steel Processors on a number of significant points. First, unlike the instant case, there was no question of fact in Steel Processors as to who initiated the contact: it was the Alabama corporation. Second, although the opinion in Steel Processors speaks of "fabrication" of pumps by the Alabama corporation, it is inferable that this "fabrication" involved the manufacture of pumps the Alabama corporation made in the ordinary course of its business, i.e., "off-the-shelf" products.[3] Thus, the fabrication in Steel Processors was not the same as the fabrication in the instant case, where Garrison followed No. 1 Steel's specifications to create a large and complex steel construction that was a unique, one-of-a-kind product. And third, unlike Steel

[3]The opinion in Steel Processors states only: "Steel Processors fabricated materials in Mobile County for the job, shipped the materials to the job site in Florida, and provided labor and equipment at the job site during the repair work on the barge." 622 So. 2d at 911.

Processors, where the Alabama corporation fabricated the materials in Alabama but then completed the work in Florida, in this case all the work by Garrison was performed in Alabama.

Under these circumstances, I conclude that No. 1 Steel should have reasonably anticipated being haled into an Alabama court in the event that it accepted the fabricated-steel project and then refused to make full payment. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985); and Ex parte DBI, Inc., 23 So. 3d 635 (Ala. 2009). Given that this was a large transaction that involved many thousands of dollars and entailed significant work being performed in Alabama with the active participation of No. 1 Steel in the fabrication process, I would hold that the size and quality of this single transaction are sufficient to establish the requisite "minimum contacts" to establish this State's jurisdiction. I would reject the idea that the fact that this is a single transaction is in itself sufficient to defeat this State's jurisdiction, and I note that many other American

jurisdictions also reject any such simplistic formula for establishing jurisdiction.

> "The United States Supreme Court has rejected any 'talismanic jurisdictional formula' to determine the requisite minimum contact. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 485-86, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). Subjecting a defendant to in personam jurisdiction based on a single, isolated transaction by the nonresident defendant does not necessarily offend due process. Lacy v. Force V Corporation, 403 So. 2d 1050, 1054 (Fla. 1st DCA 1981); see also Godfrey v. Neumann, 373 So. 2d 920 (Fla. 1979)."

Acquadro v. Bergeron, 851 So. 2d 665, 677 (Fla. 2003)(Wells, J., dissenting)(Florida courts had in personam jurisdiction over plaintiff's defamation action against nonresident relatives of her male companion). See also Allerion, Inc. v. Nueva Icacos, S.A. de C.V., 283 Ill. App. 3d 40, 669 N.E.2d 1158, 218 Ill. Dec. 632 (1996); Maglio & Kendro, Inc. v. Superior Enerquip Corp., 233 N.J. Super. 388, 558 A.2d 1371 (1989)(single transaction consisting of purchase of computer equipment was sufficient minimum contact to support jurisdiction); Hammond v. Cummins Engine Co., 287 S.C. 200, 336 S.E. 2d 867 (1985)(purchase of boat engine by South Carolina buyer created sufficient contacts with out-of-state engine manufacturer to establish jurisdiction in South

Carolina); and Nicholstone Book Bindery, Inc. v. Chelsea House Publishers, 621 S.W.2d 560 (Tenn. 1981)(book-binding work by Tennessee book-binding company in single transaction for a New York publishing house established jurisdiction in Tennessee), all cases holding a single transaction sufficient to invoke in personam jurisdiction.

In this case Garrison advanced significant expenditures of time and materials in reliance on payment according to No. 1 Steel's purchase order, and No. 1 Steel received the product and refused to make full payment. It is truly regrettable[4] that, under the facts of this case, Garrison may be deprived of any remedy to seek redress for No. 1 Steel's breach, particularly because I believe that the requisite "minimum

[4]Even though I disagree with the majority's decision to issue this writ to the trial court in this case, I acknowledge that the majority's opinion has significant support. It is unfortunate that many of the factual points that were presented at the oral argument of this case, e.g., that the fabricated material from Garrison comprised nine tractor-trailer loads for shipment to No. 1 Steel, were not included as part of the materials before this Court. Had they been, the trial court's decision finding jurisdiction would have been more strongly supported. It is well settled, however, that this Court's review is limited to the facts in the materials submitted to it. Moody v. State ex rel. Payne, 295 Ala. 299, 329 So.2d 73 (1976); Bateh v. Brown, 289 Ala. 699, 271 So. 2d 833 (1972).

contacts" have been established. It is also regrettable that the effect of this decision will likely diminish the willingness of businesses in this State to contract with businesses from other jurisdictions on a good-faith basis. Accordingly, I respectfully dissent.

MURDOCK, Justice (dissenting).

I respectfully dissent. Although my vote is consistent with the outcome achieved by the trial court, I find it necessary first to address briefly my disagreement with the trial court as to a procedural matter. I thereafter address the merits of the personal-jurisdiction issue.

A. The Trial Court's Treatment of No. 1 Steel's Motion as Summary-Judgment Motion

I cannot agree with the trial court's treatment of the motion filed by No. 1 Steel Products, Inc., as a motion for a summary judgment. The motion was one for dismissal for lack of personal jurisdiction over the defendant, a ground cognizable under Rule 12(b)(2), Ala. R. Civ. P. Rule 12(b) makes it proper to treat a motion filed under Rule 12(b)(6) ("for failure to state a claim" cognizable under Alabama law) as a motion for a summary judgment if matters outside the pleadings are presented to and are not excluded by the court; this treatment does not apply to motions seeking dismissal of an action for lack of personal jurisdiction.

In evaluating a motion for a summary judgment, it is not the trial court's task to decide facts, but instead merely to determine whether any genuine issue of material fact remains

for decision in a trial. In contrast, the task of the trial court in evaluating a motion to dismiss for lack of personal jurisdiction is to make actual findings of fact regarding "contacts" and other matters as necessary to a pretrial disposition by the court of the question whether the defendant is properly before that court.[5]

B. Personal Jurisdiction

> "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. St. Louis S.W.R. Co. v. Alexander, ... 227 U.S. [218,] 228 [(1913)]; International Harvestor Co. v. Kentucky, ... 234 U.S. [579,] 587 [(1914)]. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure."

[5]Except to the extent we must take into consideration a trial court's factual findings based on evidence received ore tenus, which is not the case here, our appellate review of a trial court's ruling on a motion to dismiss for lack of in personam jurisdiction is de novo. See generally Elliott v. Van Kleef, 830 So.2d 726, 729 (Ala. 2002).

International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) (emphasis added).

Consistent with these principles, I agree with the main opinion that the "mechanical" issue of who contacted whom first should not be dispositive, especially in the context of facts such as those presented here.

These same principles, however, bring into question the notion, admittedly found in cases relied upon in the main opinion, that a one-time contractual purchase of goods by an out-of-state purchaser from an Alabama manufacturer cannot be an appropriate basis for the exercise of in personam jurisdiction over the out-of-state purchaser, whereas the occurrence of such a purchase more than once can be. Logically, if a given transaction is not possessed of the intrinsic qualities necessary to justify the exercise of in personam jurisdiction over the out-of-state party, why would it matter that the same type of transaction is repeated? Does not such an approach implicate the "quantitative" or "little-more-or-little-less" criteria eschewed by the United States Supreme Court in International Shoe?[6]

[6]See Southern Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 385 (6th Cir. 1968) (holding that the "interest of the

The Court in International Shoe stated that what matters is "the quality and nature of the activity." 326 U.S. at 319. As the Supreme Court has further explained as to contract disputes in particular (as opposed to products-liability cases, in which the jurisprudence has of necessity focused largely on preventing the exercise of jurisdiction based on merely "fortuitous" contacts):

> "If the question is whether an individual's contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. ... Instead, we have emphasized the need for a 'highly realistic' approach that recognizes that a 'contract' is 'ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.' ... It is these factors -- prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing -- that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum."

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478-79 (1985) (final emphasis added).

State cannot be measured by 'a little more or a little less,' International Shoe Co. v. State of Washington, 326 U.S. 310, 319, 66 S. Ct. 154, 159, 90 L. Ed. 95 (1945); it is not diminished simply because only one contract is relied upon as the basis of jurisdiction").

What appears to matter then is not that the parties are engaged in a contractual transaction that might not be repeated, but the nature and quality of that transaction, including the nature and location of the obligations assumed, the performance induced thereby, and the contemplated nature and location of the consequences of any default thereunder. This has been the reasoning of a number of decisions where courts have exercised personal jurisdiction over out-of-state defendants based on a one-time purchase of goods or materials or other one-time contract. See, e.g., Ex parte Lord & Son Constr., Inc., 548 So. 2d 456 (Ala. 1989) (affirming a trial court's exercise of personal jurisdiction over a Florida defendant on the basis of the Florida defendant's commitment to send payments to an Alabama supplier for materials purchased for a construction project in Florida).[7]

[7]See also, e.g., Capital Assocs. Dev. Corp. v. James E. Roberts-Ohbayashi Corp., 138 Ill. App. 3d 1031, 1037, 487 N.E.2d 7, 12, 93 Ill. Dec. 563, 568 (1985) (where, among other things, th defendant "initiated negotiations with an entity it knew to be an Illinois resident," it voluntarily entered into a contract with an Illinois resident, and it was aware that performance would flow from Illinois); Empress Int'l, Ltd. v. Riverside Seafoods, Inc., 112 Ill. App. 3d 149, 154, 445 N.E.2d 371, 374, 67 Ill. Dec. 891, 894 (1983) (to like effect); Acquadro v. Bergeron 851 So. 2d 665, 677 (Fla. 2003) (Wells, J., dissenting) (citing authority for the proposition that the assertion of "in personam jurisdiction based on a

The present case involves the alleged breach by No. 1 Steel of a contractual undertaking by it to make a substantial payment to Garrison Steel Fabricators, Inc., an Alabama corporation with its principal place of business in this

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single, isolated transaction by the nonresident defendant does not necessarily offend due process" and that "[t]he analysis must focus on the nature of the act": "When dealing with isolated acts of a defendant, rather than centering on continuous economic activity within the state, a key focus is the quality and nature of the interstate transaction." (some emphasis added)).

In the seminal Sixth Circuit case regarding the exercise of personal jurisdiction consistent with due-process requirements, Southern Machine Co. v. Mohasco Industries, Inc., 401 F.2d 374, 381 (6th Cir. 1968), the court synthesized the rules announced in International Shoe and subsequent Supreme Court decisions into a "three-part test" as to the presence of "minimum contacts" based on a "single act":

> "[T]hree criteria emerge for determining the present outer limits of in personam jurisdiction based on a single act. First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable."

(Emphasis added.) Cf. Andalusia Distrib. Co. v. Singer Hardware Co., 822 So. 2d 1180, 1184 (Ala. 2001) (identifying as a factor in an ongoing relationship the fact that "any default in [the nonresident's] payment to [the Alabama corporation] would create hardship [for the Alabama corporation]").

State. The contract is one by which No. 1 Steel caused Garrison to exert considerable time and effort specially fabricating steel product of substantial value at Garrison's plant in Alabama, the fabrication of which was accomplished pursuant to significant interaction with and instruction by No. 1 Steel over the course of a working relationship that lasted almost a year.[8] Given this set of facts, I find particularly helpful the review of cases from various jurisdictions conducted by the Supreme Court of Tennessee in Nicholstone Book Bindery, Inc. v. Chelsea House Publishers, 621 S.W.2d 560 (Tenn. 1981):

> "[Darby v. Superior Supply Co., 458 S.W.2d 423 (Tenn. 1970),] involved the purchase of mahogany lumber by an Alabama individual, from the plaintiff, a Tennessee supply firm in Chattanooga. The order was placed by telephone and the plaintiff filled the order from available stock. ... Darby later refused to pay for the lumber and Superior sued for payment due. The Darby majority seemed to be impressed by the following factors in finding a failure of jurisdiction: (1) that the defendant, an individual, entered the forum state only through his servant, the driver of the truck which hauled the lumber away; (2) that the transaction was a retail purchase

[8]Compare Corporate Waste Alts., Inc. v. Cumberland, Inc., 896 So. 2d 410 (Ala. 2004) (upholding jurisdiction over a nonresident defendant based on 18 months of communications and payments to a plaintiff in Alabama, nothwithstanding the fact that the location of the work performed by the plaintiff was outside Alabama).

by an individual involving only the 'modest amount' of $3,639.48; and (3) that filling defendant's order required 'no special manufacturing operations in Tennessee.' Id. at 426.

"....

"It should be noted that one of the ingredients of jurisdiction missing in Darby, the presence of a 'special manufacturing operation,' is found in this case. These custom-made bindings and casings were not simply taken from stock, as was the lumber in Darby. This point is considered in Gardner Engineering Corp. v. Page Engineering Co., 484 F.2d 27 (8th Cir. 1973), where jurisdiction was permitted to reach into Illinois from Arkansas. Involved was defendant's contract to fabricate certain customized items for the construction of a bridge in Arkansas by plaintiffs. The court found an important 'contact' in that the forum state was the place of performance of a customized contract. Id. at 32

"....

"It is an understatement to say that there are numerous cases discussing in personam jurisdiction in the setting of a single business transaction. In Lakeside Bridge & Steel v. Mountain State Const. Co., 597 F.2d 596 cert. denied 445 U.S. 907 ... (1980), Justice White, dissenting from the denial of a writ of certiorari, noted that 'the question of personal jurisdiction over a non-resident corporate defendant based on contractual dealings with a resident plaintiff has deeply divided the federal and state courts.' He regrets that the Supreme Court refused to offer any clear guidance on this important problem.

"One, however, finds support for our current position in a vast array of sources. In Colony Press Inc. v. Fleeman, 17 Ill. App. 3d 14, 308 N.E.2d 78 (1974) an Ohio corporate defendant, by placing a

single interstate telephone order, satisfied the 'minimum contact' requirements of the due process clause because the defendant voluntarily entered into a business transaction with an Illinois plaintiff. In Product Promoters, Inc. v. Cousteau, 495 F.2d 483, 494-499 (5th Cir. 1974), a breach of contract suit in which the court held that minimum contacts were sufficient, the court reasoned that neither the defendant nor the defendant's agents need be physically present within the state so long as the defendant's contact with the forum was deliberate and not fortuitous. See also, Good Hope Industries v. Ryder Scott Co., [398 N.E.2d 76 (Mass. 1979)]; cf. World-Wide Volkswagen [Corp. v. Woodson, 440 U.S. 286 (1980)] .... The Wisconsin Supreme Court in Zerbel v. H.L. Federman & Co., 48 Wis. 2d 54, 179 N.W.2d 872 (1970) held that when a non-resident defendant contracted for services, i.e. the preparation of a financial report, which would be performed in part in Wisconsin, the defendant purposefully availed himself of the privilege of conducting activities in Wisconsin.

"Proctor & Schwartz, Inc. v. Cleveland Lumber Co., 228 Pa. Super. 12, 323 A.2d 11 (1974) seems closely analogous to the instant case. A Pennsylvania corporate seller brought suit against a Georgia corporate buyer to recover the balance due on the purchase price of specially ordered lumber drying equipment and related materials. Alleging certain defects in the manufacture of the goods purchased, the defendant refused to make further payments. ... In examining the nature of defendant's conduct, the court noted that it was not a passive purchaser which blandly submitted to the mandates of a foreign seller. Rather the defendant conducted extensive and active negotiations with the plaintiff. Relying upon In-Flight Devices Corp. v. Van Dusen Air, Inc., 466 F.2d 220, 233 (6th Cir. 1972) the court stated that '(t)o the extent the buyer vigorously negotiates ... and ... departs from

> the passive buyer role it would seem that any unfairness which would normally be associated with the exercise of long-arm jurisdiction over him disappears.' The defendant should reasonably have anticipated that a failure to make the installment payments on its obligation would have consequences within the forum state and could result in its being called to defend itself in the state whose laws governed the contract.
>
> "William W. Bond, Jr. & A., Inc. v. Montego Bay Dev. Corp., [405 F. Supp. 256 (W.D. Tenn. 1975)], is persuasive on the facts. In Bond, the plaintiff, a Tennessee corporation, entered into a contract with a Maryland corporation to prepare architectural, mechanical, electrical, and structural plans for a Holiday Inn to be built in Maryland. Defendant solicited the job. The contract was executed in Maryland. Applying the Mohasco[9] test, the court found that defendant had purposely availed itself of the privilege of doing business in Tennessee because it was 'necessarily foreseeable to the parties that at least a substantial part of the services plaintiff was to provide would be performed ... in Tennessee.' Id., 405 F.Supp. at 259. Citing Mohasco, the court noted that it was not controlling that no representative of defendant ever came to Tennessee in connection with the deal. Id. It summarized:
>
> > "'Here, a business transaction set in motion by defendants had a realistic, foreseeable and considerable impact on commerce in Tennessee. Id.'
>
> "... [F]inally, the court found that it would be reasonable to require [the] defendant to defend in Tennessee:

[9]Southern Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 385 (6th Cir. 1968); see supra note 6.

> "'The interest of Tennessee here is to resolve a contract dispute brought by a resident to recover the alleged benefit of his bargain. Even a one-shot contract, if substantial enough in its effect on Tennessee commerce, appears to be a potentially sufficient contact with the forum state under Sixth Circuit standards.' 405 F.Supp. 260."

621 S.W.2d at 562-66.

The United States Supreme Court stated in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980):

> "The protection against inconvenient litigation is typically described in terms of 'reasonableness' or 'fairness.' We have said that the defendant's contacts with the forum State must be such that maintenance of the suit 'does not offend "traditional notions of fair play and substantial justice."' International Shoe Co. v. Washington, [326 U.S. 310,] at 316 [(1945)], quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940). The relationship between the defendant and the forum must be such that it is 'reasonable ... to require the corporation to defend the particular suit which is brought there.' 326 U.S., at 317. Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957); the plaintiff's interest in obtaining convenient and effective relief, see Kulko v. California Superior Court, ... 436 U.S. [84], at 92 [(1978)]; 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, see Kulko v. California Superior Court, supra, 436 U.S., at 93, 98."

444 U.S. at 292 (emphasis added).

> "The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.' International Shoe Co. v. Washington, 326 U.S. [310], at 319 [(1945)]. By requiring that individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,' Shaffer v. Heitner, 433 U.S. 186, 218 (1977)(Stevens, J., concurring in judgment), the Due Process Clause 'gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit,' World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)."

Burger King Corp., 471 U.S. at 471-72 (footnote omitted).

Given the nature and quality of the transaction in this case, I cannot conclude that it "offends traditional notions of fair play and substantial justice" to require No. 1 Steel to defend the present action in Alabama.

Parker, J., concurs.