



March 31, 2020

FIDRYCH V. MARRIOTT INTERNATIONAL: FOURTH CIRCUIT REJECTS JURISDICTION OVER CLAIM FOR OUT-OF-STATE INJURY

by Frank Cruz-Alvarez and Ashley Hayes

In a recent decision, the Fourth Circuit affirmed the trial court's dismissal of a cause of action against Marriott International Inc., holding that the defendant was not subject to personal jurisdiction in South Carolina because it did not own any hotels or otherwise have any significant business in South Carolina, and the actions giving rise to the dispute did not occur in South Carolina. *Fidrych v. Marriott International, Inc.*, 952 F.3d 124 (4th Cir. 2020). Specifically, the Fourth Circuit affirmed the lower court's decision that Marriott's business contacts with South Carolina were insufficient to render it "at home" in the state to establish general personal jurisdiction, and its case-related contacts were not substantial enough to satisfy the requirements for specific personal jurisdiction. *Id.* at 147.

Bud Fidrych and his wife sued Marriott International Inc., for injuries Mr. Fidrych sustained while staying as a guest at the Boscolo Milano in Milan, Italy. Mr. Fidrych was injured when a glass shower door shattered in his hand, severing a tendon in his thumb and requiring two surgeries. The Boscolo Milano was affiliated with Marriott as one of its "Autograph Collection" hotels, but Marriott neither owned nor operated that property. The plaintiffs were South Carolina residents and brought a personal injury action against Marriott in the United States District Court for the District of South Carolina.

Marriott moved to dismiss the case for lack of personal jurisdiction, arguing that the company is neither a resident of nor incorporated in South Carolina. Further, South Carolina is home to only 90 of the 6,200 hotels that are affiliated with Marriott. Of those 90 South Carolina hotels, Marriott owns none. Rather, 63 of the hotels are franchisees and 27 are simply licensed or managed by Marriott. The particular hotel where the injury occurred was not owned or operated by Marriott, and was not located in South Carolina. The district court granted the motion and the Fourth Circuit affirmed, finding that dismissal for lack of both general and specific personal jurisdiction was appropriate.

General Jurisdiction

The Fourth Circuit first considered the question of general jurisdiction. In general, a corporation is fairly regarded as "at home" where it is incorporated or where it has a principal place of business, and thus subject to general jurisdiction in both forums. To subject a corporation to general jurisdiction *outside* of each of these forums, the corporation must have contacts that are "so substantial and of such a nature as to render the corporation at home in that State." *Fidrych*, 952 F.3d at 133 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 139, n. 19 (2014)). However, only in

"exceptional case[s]" are the contacts with another state so substantial as to subject a corporation to general jurisdiction. *See id.*

The Fidryches argued that Marriott was subject to general personal jurisdiction because it operated hotels within South Carolina, because its website provided an option in its drop down menu for visitors to select "South Carolina," and because Marriott obtained a Certificate of Authority to conduct business in the state of South Carolina. The Fourth Circuit classified Marriott's contacts with South Carolina as "systematic and continuous," but declined to find that Marriott's website, Certificate of Authority to conduct business in South Carolina, and 27 Marriott-licensed or Marriott-managed hotels were sufficient to render Marriott "at home" in South Carolina.

The Fourth Circuit explained that "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 134 (quoting *Daimler*, 571 U.S. at 139). The court noted that Marriott's South Carolina operations were limited in scope and represented a small fraction of the company's overall operations. Under the Fidryches' theory, Marriott would be subject to general jurisdiction in every state where its hotels are located, an argument that was specifically rejected in *Daimler*:

Because there is nothing that would distinguish Marriott's relationship with South Carolina from its relationship with any of the other states where it does business but where it is not incorporated or headquartered, this is not the exceptional case for general jurisdiction contemplated by the *Daimler* Court.

Id. As a result, the court concluded that Marriott's contacts with South Carolina were insufficient to render it "at home" in the state, and thus the requirements for general jurisdiction over Marriott were not met.

As an alternative, the Fidryches argued that even if Marriott's contacts were insufficient for the Court to exercise general jurisdiction, Marriott actually consented to such jurisdiction in South Carolina by obtaining a Certificate of Authority to conduct business in the state. They pointed to South Carolina law, which states that a foreign corporation that obtains a Certificate of Authority has the same rights, privileges, duties, restrictions, penalties, and liabilities as a domestic corporation, in arguing that Marriott consented to the same general jurisdiction to which a domestic corporation would be subject. The Fourth Circuit rejected this argument, looking to the statutory language to determine whether South Carolina law specifically provided that obtaining a certificate of authority operated as consent to general jurisdiction. Because the comments to the South Carolina law stated that a foreign corporation could be licensed to do business in South Carolina but *still not have sufficient contacts* to be subject to personal jurisdiction, the Fidryches' argument failed.

The Fourth Circuit also rejected this argument because forcing a corporation to consent to general jurisdiction in every state where the corporation registers to conduct business would have an overly broad and unintended result. "Given the number of states that subject foreign corporations to domestication requirements, foreign corporations would likely be subject to general jurisdiction in every state where they operate—a result directly at odds with the views expressed by the Court in *Daimler*." *Id.* at 136. This view is consistent with the Fourth Circuit's analysis that Marriott could not be subject to general jurisdiction simply by virtue of franchising or operating a limited number of hotels in the state. "It is one thing to hold a corporation answerable for operations in the forum State, quite another to expose it to suit on claims having no connection whatever to the forum State." *Id.* at 133 (quoting *Daimler*, 571 U.S. at 139). The Fourth Circuit thus found that Marriott did not consent to general personal jurisdiction in South Carolina.

Specific Jurisdiction

Turning next to the question of specific jurisdiction, the Fourth Circuit also concluded that Marriott was not subject to specific personal jurisdiction.

The Due Process clause permits the exercise of specific personal jurisdiction over a defendant if 'the defendant [has] purposefully established minimum contacts in the forum State such that it should reasonably anticipate being hauled into court there.' *Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 189 (4th Cir. 2016) (internal quotation marks and alteration omitted). These requirements are met, and specific jurisdiction may be exercised, if 'the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities.' *Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985).

Id. at 138. Although the court agreed that Marriott's hotel operations in South Carolina were significant enough to be classified as systematic and continuous, the injuries that Mr. Fidrych sustained at the Boscolo Milano clearly did not arise out of any of Marriott's hotel-related connections to South Carolina. None of the actions or omissions that formed the basis of the claims occurred in South Carolina or were purposefully directed at South Carolina residents. Further, Marriott's business in South Carolina was completely unrelated to the Fidryches' claims and thus not relevant for specific jurisdiction.

Marriott's website was the only connection to the state that could arguably be considered activity directed at South Carolina residents. The website was accessible in South Carolina and allowed visitors to select "South Carolina" as an option for their place of residence on a drop-down menu. Visitors can also use the website to input personal information and book rooms online. In support of this point, Mr. Fidrych stated that he accessed Marriott's website in South Carolina to review the Boscolo Milano prior to his stay.

The Fourth Circuit found the website to be insufficient to establish specific jurisdiction because "the mere fact that the website is accessible in a given state does not mean that Marriott is targeting activities in that state." *Fidrych*, 952 F.3d at 141. The Fourth Circuit noted that the drop-down menu for visitors to input their place of residency provided South Carolina as an option, but also provided every other state in the country and every other country in the world. Marriott's inclusion of South Carolina among every other possible place of residence confirmed that the website was accessible to anyone in the world and was not specifically directed to the residents of any particular forum. Further, the interactivity of the website was limited, and was not used to create a "continuing, back-and-forth relationship" with a user. The court thus found that the website was not a sufficient basis to support the exercise of specific jurisdiction, comparing the website to a toll-free telephone number that provided a simple way for customers to contact the Marriott. *Id.* at 142. The Fourth Circuit therefore concluded that Marriott's connections with South Carolina were "too tenuous and too insubstantial" for Marriott to be subject to specific jurisdiction.

Conclusion

The Fourth Circuit made it clear that personal jurisdiction for a corporation is truly connected to the corporation's constant and pervasive business conducted within the subject forum. Plaintiffs attempting to sue within a forum need more than just a hollow paper trail and business licenses to obtain jurisdiction—due process requires more *intentional* business activity within the forum, purposefully directed at its residents. The Fourth Circuit's opinion follows the U.S. Supreme Court's decisions in *Daimler* and *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915 (2017),

in providing protection to corporations from being sued in a forum simply for registering to do business there and for providing a website accessible in the forum. In a day and age where the reach of technology has no limit, it is important for due process rights to still be recognized.