

183 F.Supp.2d 1301
(Cite as: 183 F.Supp.2d 1301)

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United States District Court,
D. Kansas.
CALDWELL-BAKER COMPANY, Plaintiff,
v.
SOUTHERN ILLINOIS RAILCAR COMPANY,
Defendant.
No. CIV. A. 00-2380-CM.

Sept. 28, 2001.

Railcar lessor brought action to recover lease payments allegedly owed to it by lessee. On lessee's motion to dismiss for lack of personal jurisdiction, the District Court, [Murguia](#), J., held that lessee transacted business in Kansas.

Motion denied.

West Headnotes

[1] Federal Civil Procedure 170A 1825

[170A](#) Federal Civil Procedure
[170AXI](#) Dismissal
[170AXI\(B\)](#) Involuntary Dismissal
[170AXI\(B\)5](#) Proceedings
[170Ak1825](#) k. Motion and Proceedings

Thereon. [Most Cited Cases](#)

Plaintiff opposing motion to dismiss for lack of personal jurisdiction bears burden of establishing that exercise of personal jurisdiction over defendant is proper.

[2] Federal Civil Procedure 170A 1825

[170A](#) Federal Civil Procedure
[170AXI](#) Dismissal
[170AXI\(B\)](#) Involuntary Dismissal
[170AXI\(B\)5](#) Proceedings
[170Ak1825](#) k. Motion and Proceedings

Thereon. [Most Cited Cases](#)

If motion to dismiss for lack of personal jurisdiction is submitted prior to trial on basis of affidavits and other written materials, plaintiff need only make prima facie showing to avoid dismissal.

[3] Federal Civil Procedure 170A 1835

[170A](#) Federal Civil Procedure
[170AXI](#) Dismissal
[170AXI\(B\)](#) Involuntary Dismissal
[170AXI\(B\)5](#) Proceedings
[170Ak1827](#) Determination
[170Ak1835](#) k. Matters Deemed Admitted; Acceptance as True of Allegations in Complaint. [Most Cited Cases](#)

Although plaintiff will be required to prove factual basis for jurisdiction by preponderance of evidence at trial, on pretrial motion to dismiss for lack of personal jurisdiction, all factual disputes are resolved in favor of plaintiff.

[4] Federal Courts 170B 417

[170B](#) Federal Courts
[170BVI](#) State Laws as Rules of Decision
[170BVI\(C\)](#) Application to Particular Matters
[170Bk417](#) k. Federal Jurisdiction. [Most Cited Cases](#)

In diversity actions, personal jurisdiction over nonresident defendant is determined by law of forum state.

[5] Constitutional Law 92 3964

[92](#) Constitutional Law
[92XXVII](#) Due Process
[92XXVII\(E\)](#) Civil Actions and Proceedings
[92k3961](#) Jurisdiction and Venue
[92k3964](#) k. Non-Residents in General.

[Most Cited Cases](#)

(Formerly 92k305(5))

Nonresident defendant's contacts with forum state are sufficient to meet due process standards if: (1) defendant purposefully availed himself of benefits of conducting activities in forum state, (2) claim arose from defendant's forum-related activities, and (3) quality and nature of defendant's contacts are such that it is reasonable to require him to appear in forum state. [U.S.C.A. Const.Amend. 14](#).

[6] Federal Courts 170B 76.10

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[170B](#) Federal Courts

[170BII](#) Venue

[170BII\(A\)](#) In General

[170Bk76](#) Actions Against Non-Residents;

“Long-Arm” Jurisdiction in General

[170Bk76.10](#) k. Defendant's Activities in Forum State; Cause of Action Arising Therefrom.

[Most Cited Cases](#)

“Specific jurisdiction” permits court to exercise personal jurisdiction over non-resident defendant only for purposes of claims arising out of that defendant's contacts with forum.

[171](#) Federal Courts [170B](#) [76.30](#)

[170B](#) Federal Courts

[170BII](#) Venue

[170BII\(A\)](#) In General

[170Bk76](#) Actions Against Non-Residents;

“Long-Arm” Jurisdiction in General

[170Bk76.30](#) k. Contract Cases. [Most](#)

[Cited Cases](#)

Under Kansas law, lessee of railcars “transacted business” in Kansas, and thus was subject to specific personal jurisdiction in Kansas in lessor's action to recover lease payments, even though lessee did not physically enter into Kansas when negotiating and executing agreement, where lessee initiated telephone call to lessor in Kansas to inquire about leasing railcars, negotiations regarding lease agreement took place via telephone, facsimile, and mail, lessee's agent later went to Kansas to amend lease agreement, railcars were delivered to lessee's sublessees in Kansas, and contract provided that it would be governed by Kansas law. [K.S.A. 60-308\(b\)\(1\)](#).

*[1302](#) [Linus L. Baker](#), The Baker Group, L.L.C., Prairie Village, KS, for Plaintiff.

[Philip R. Dupont](#), [Rick E. Frawley](#), Blackwell Sanders Peper Martin LLP, Kansas City, MO, [Gregory J. Minana](#), Blackwell Sanders Peper Martin LLP, St. Louis, MO, [Mark D. Hinderks](#), Stinson, Mag & Fizzell, P.C., Leawood, KS, [Lee M. Smithyman](#), [Smithyman & Zakoura, Chtd.](#), Overland Park, KS, for Defendant.

MEMORANDUM AND ORDER

[MURGUIA](#), District Judge.

This is a diversity action wherein plaintiff Caldwell-Baker Company seeks to recover lease payments allegedly owed to them by defendant **Southern Illinois Railcar** Company under a **railcar** lease agreement executed by the parties in 1997. Pending before the court is defendant's motion to dismiss for lack of personal jurisdiction (Doc. 7). Defendant seeks the court to dismiss the pending action, contending the court lacks personal jurisdiction over defendant. For the reasons set forth below, defendant's motion is denied.

• [Facts](#)^{FNI}

[FNI](#). Pursuant to [Fed.R.Civ.P. 12\(b\)\(2\)](#), the allegations in plaintiff's complaint are taken as true to the extent they are uncontroverted by the defendant's affidavits. Where the parties have presented conflicting affidavits, all factual disputes have been resolved in the plaintiff's favor.

This action arises out of a commercial **railcar** lease agreement executed by the parties in 1997. Plaintiff is a Delaware corporation with its principal place of business in Kansas. Defendant is an **Illinois** corporation, qualified to do business in **Illinois** with its principal place of business in Troy, **Illinois**. Defendant is not authorized to conduct business in Kansas and has no employees, facilities or bank accounts located in Kansas. Plaintiff is part owner of a fleet of grain transporting **railcars**. Defendant is a leasing company that leases *[1303](#) **railcars** from owners, then brokers these **railcars** to railroads and other industries throughout the country. Defendant generally seeks to sublease the leased **railcars** at a higher monthly income rate than paid to a **railcar** owner for use of the **railcars**.

• [Terms of Lease Agreement](#)

Under the terms of the parties' agreement, plaintiff agreed to lease up to four hundred twenty **railcars** to defendant in exchange for monthly rental payments of \$400.00 per **railcar**. The agreement permitted defendant to sublease the **railcars** to railroads and other industries at a higher monthly rate than defendant paid to plaintiff under the agreement, on the condition precedent that defendant notify and provide the terms

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of the sublease to plaintiff before subleasing. The agreement required the railcars be used only for grain products, not chemical or fertilizer service which is corrosive.

• Formation of Lease Agreement

In August 1997, defendant telephoned plaintiff, located in Kansas, to inquire whether plaintiff would be interested in leasing out their railcars to defendant. In reply, Carle Baker, Jr., president of plaintiff's company requested that defendant provide information detailing the terms of the proposed lease agreement. Accordingly, an employee of defendant telephoned plaintiff's offices in Kansas and sent the proposed lease via facsimile to plaintiff's offices.

The agreement proposed by defendant provided that Illinois law would govern the agreement. However, per plaintiff's request, the final agreement provides "the terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Kansas without regard to Kansas' choice of law doctrine." On August 29, 1997, defendant signed the lease agreement in Illinois and mailed the agreement to plaintiff's offices in Kansas. Upon receipt, plaintiff signed the agreement on September 2, 1997 and returned a duplicate to defendant's office in Illinois. Other than specified herein, defendant did not enter into Kansas to negotiate the agreement. Instead, the negotiations took place via telephone, letters, and faxes.

• Obligations Under the Agreement

Plaintiff's obligation under the agreement was to deliver the leased railcars at delivery points provided by defendant. The delivery points were not specified in the agreement. Instead, the agreement provided, "Delivery". Each Car shall be deemed delivered to [defendant] on the date (the "Delivery Date") it arrives at [defendant's] delivery point. Defendant specified the delivery points. Defendant asserts by verified affidavit that, in fact, it was defendant's sublessors who dictated the delivery points that defendant communicated to plaintiff. The agreement did not explicitly state that delivery points would include sites in the State of Kansas. However, during the course of the agreement defendant specified delivery of approximately 183 **railcars** to Kansas. Defendant, through its sublessors,

accepted delivery of these cars in Kansas and began paying rent based on those Kansas delivery dates.^{FN2} Plaintiff also delivered **railcars** to Idaho, **Illinois**, Indiana, Iowa, Missouri, Michigan, Nebraska, Ohio, Texas, Washington, Mexico and Canada, as specified by defendant.

^{FN2}. The agreement provided "[R]ent shall become due for each Car upon the applicable Delivery Date unless such Car is reasonably rejected by Lessee ..."

Pursuant to the agreement, defendant made monthly rental payments to plaintiff by delivering the payments to plaintiff's offices in Kansas. The agreement provides "Lessee shall pay to Lessor as ***1304** monthly rent for each Car during the term, the sum of Four Hundred Dollars (\$400.00)." The agreement did not specify that payments must be made in Kansas.

After the agreement was signed, on February 26, 1998 two of defendant's employees came to Kansas to introduce themselves to Mr. Baker, president of plaintiff's company. Mr. Baker did not know in advance that these two employees had planned to come to Kansas to introduce themselves to him. At the February 26 meeting, the parties discussed delivery of the rail cars and the meeting culminated in an amendment to the agreement.

During the course of the agreement, one of defendant's representatives contacted plaintiff's offices in Kansas requesting an additional 100 grain covered **railcars** to lease for a one year term. As a result, the agreement was again amended and 83 **railcars** were added to the **railcar** lease agreement. Subsequently, defendant's representative again contacted plaintiff's office requesting an additional 50 cars to lease for fertilizer services. No amendment was reached based upon this request.

Plaintiff has now filed this suit seeking payment of funds allegedly due and owing to it pursuant to the agreement. Defendant seeks the court to dismiss the action arguing the court lacks personal jurisdiction over defendant.

• Personal Jurisdiction Standards

[\[1\]](#)[\[2\]](#)[\[3\]](#) A plaintiff opposing a motion to dismiss for

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lack of personal jurisdiction bears the burden of establishing that the exercise of personal jurisdiction over the defendant is proper. See Kuenzle v. HTM Sport-Und Freizeitgerate AG, 102 F.3d 453, 456 (10th Cir.1996). If the motion to dismiss is submitted prior to trial on the basis of affidavits and other written materials, the plaintiff need only make a prima facie showing to avoid dismissal for lack of personal jurisdiction. *Id.* Although the plaintiff will be required to prove the factual basis for jurisdiction by a preponderance of the evidence at trial, on a pretrial motion to dismiss, all factual disputes are resolved in favor of the plaintiff. *Id.* If the plaintiff makes the required prima facie showing that personal jurisdiction exists,

“a defendant must present a compelling case demonstrating ‘that the presence of some other considerations would render jurisdiction unreasonable.’ ” OMI Holdings, Inc. v. Royal Ins. Co. of Canada, 149 F.3d 1086, 1091 (10th Cir.1998) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)).

[4] In diversity actions such as the instant action, personal jurisdiction over a nonresident defendant is determined by the law of the forum state. Federated Rural Elec. Ins. Corp. v. Kootenai Elec. Coop., 17 F.3d 1302, 1304 (10th Cir.1994). To exercise personal jurisdiction over a non-resident defendant, the court must ensure that “the exercise of jurisdiction is sanctioned by the long-arm statute of the forum state” and that the due process requirements of the Constitution are satisfied. *Id.* at 1304-05. The Kansas long arm statute has been interpreted by Kansas courts “to allow jurisdiction to the full extent permitted by due process,” such that these inquires are, for all practical purposes, duplicative. *Id.* at 1305.

[5] A non-resident submits to the jurisdiction of the State of Kansas as to any cause of action arising from the performance of any of the acts enumerated in the Kansas long arm statute. Kan. Stat. Ann. § 60-308(b). And the Tenth Circuit has endorsed a three-part test to determine whether a nonresident defendant's contacts with the forum state are sufficient to meet due process standards. *1305 Rambo v. American Southern Ins. Co., 839 F.2d 1415, 1419 n. 6 (10th Cir.1988); Marcus Food Co. v. Family Foods of Tallahassee, Inc., 729 F.Supp. 753, 757-58 (D.Kan.1990). First, the defendant must have purposefully availed himself of the

benefits of conducting activities in the forum state. Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958). However, “[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state.” *Id.* at 253, 78 S.Ct. 1228. Jurisdiction is proper when “the contacts proximately result from actions by the defendant *himself* that create a ‘substantial connection’ with the forum State.” Burger King Corp., 471 U.S. at 475, 105 S.Ct. 2174 (emphasis in original).

Second, the claim must arise from the defendant's forum-related activities. There must be sufficient contacts with the forum state that the exercise of personal jurisdiction will not offend traditional notions of fair play and substantial justice. World-Wide Volkswagen v. Woodson, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); Int'l Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

Finally, the quality and nature of the defendant's contacts must be such that it is reasonable to require him to appear in the forum state. *Id.* at 476, 105 S.Ct. 2174; International Shoe, 326 U.S. at 317, 66 S.Ct. 154. The court must consider the burden on the defendant, the interests of the forum, and the plaintiff's interest in obtaining relief. Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102, 113, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987).

• Discussion

Plaintiff asserts that jurisdiction over defendant is proper pursuant to Kan. Stat. Ann. §§ 60-308(b)(1), (2), and (5), referred to as the “transaction of business,” “commission of a tortious act” and the “express or implied contract” provisions of the Kansas long-arm statute, respectively. Defendant disagrees, and argues that even if its contacts within the State of Kansas fall within the ambit of the Kansas long-arm statute, the exercise of personal jurisdiction over defendant in this case violates defendant's due process rights.

[6] Neither party contends that the court may exercise general jurisdiction over defendant. Instead, the parties contest whether the court may exercise specific personal jurisdiction over defendant. Specific jurisdiction permits a court to exercise personal jurisdiction

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tion over a non-resident defendant only for purposes of claims arising out of that defendant's contacts with the forum. [Helicopteros Nacionales de Colombia, S.A. v. Hall](#), 466 U.S. 408, 414 n. 8, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984) (noting court's exercise of personal jurisdiction over a party must comply with the requirements of the Due Process Clause of the Constitution, which contemplates two types of jurisdiction over the person and a party may be subject to either general or specific jurisdiction).

Defendant first argues that it did not transact business in the State of Kansas, and thus it is not subject to jurisdiction within the meaning of the Kansas long-arm statute's transacting business provision. Under [§ 60-308\(b\)\(1\)](#), “[b]usiness is transacted within the state when an individual is within or enters this state in person or by an agent and, through dealing with another within the state, effectuates or attempts to effectuate a purpose to improve his economic conditions and satisfy his desires.” [Volt Delta Resources, Inc. v. Devine](#), 241 Kan. 775, 778, 740 P.2d 1089, 1092 (1987). “The transaction of business exists when the nonresident purposefully does some act or consummates some transaction in the forum state.” *1306 [Anderson v. Heartland Oil & Gas, Inc.](#), 249 Kan. 458, 467-68, 819 P.2d 1192, 1199 (1991), cert. denied, 504 U.S. 912, 112 S.Ct. 1946, 118 L.Ed.2d 550 (1992).

Before jurisdiction may be entertained over a nonresident on the basis of transacting business within the state, three basic factors must be met: “(1) the nonresident must purposefully do some act or consummate some transaction in the forum state; (2) the claim for relief must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice.” [White v. Goldthwaite](#), 204 Kan. 83, 88, 460 P.2d 578, 582 (1969).

Determining whether the “transaction of business” took place within the meaning of the long arm statute requires an examination of all of the defendant's activities within Kansas related to the present cause of action. Defendant emphasizes that none of its agents entered into Kansas at any time in connection with the original negotiation and execution of the lease agreement. However, physical presence in the forum is only one factor for the court to consider. [Environ-](#)

[mental Ventures, Inc. v. Alda Servs. Corp.](#), 19 Kan.App.2d 292, 296, 868 P.2d 540, 544 (1994). As noted by the Kansas Court of Appeals, recent Kansas cases “suggest that a defendant need not physically enter the state to transact business within the meaning of the [Kansas long arm] statute.” *Id.*

Defendant also asserts that as a “buyer” of the railcars at issue, it should not be subject to the plaintiff seller's forum. Defendant asserts that under the holdings in [Green Country Crude, Inc. v. Avant Petroleum, Inc.](#) and [Oswalt Industries, Inc. v. Gilmore](#), a seller of merchandise generally is not successful in asserting jurisdiction in his forum state.

“[I]n suits against [a] vendor [on the basis of transacting business]the *seller* is not so successful in invoking his jurisdiction in suits against his customer. In each case in which the customer has been held to the jurisdiction of his vendor's forum, it appears that the buyer had some significant contact with the forum state through personal visits to inspect the merchandise, to take delivery, or by execution of the necessary documents *within the forum*. ... [M]ere contact by mail or phone is not sufficient contact with the forum....”

[Oswalt](#), 297 F.Supp. 307, 312-13 (D.Kan.1969) (citations omitted; emphasis both added and in original), [Green](#), 648 F.Supp. 1443 (D.Kan.1986).

Examining the papers in this case, the court has identified defendant's contacts with the State of Kansas as follows. First, defendant initiated a telephone call to plaintiff in Kansas to inquire about leasing defendant's railcars. Subsequently, negotiations regarding a lease agreement took place via telephone, facsimile and mail. Defendant did not physically enter into the State of Kansas when negotiating and executing the agreement. The agreement was signed by plaintiff in Kansas and by defendant in Illinois. However, during the course of the agreement an agent of defendant did physically enter into the State of Kansas, and upon meeting with plaintiff's agent the lease agreement at issue was amended. Subsequent telephone contacts initiated by defendant were placed to plaintiff's offices in Kansas regarding subsequent amendments to the agreement and performance of the contract.

In addition, the contract contemplated that defendant

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could specify any delivery point for the railcars to plaintiff. At least 183 railcars were delivered to sublessors of defendant in the State of Kansas. Although defendant may not have had a physical presence at these delivery points in Kansas, the railcars were delivered to *1307 Kansas at the request of defendant. Moreover, the agreement contemplated that issues arising under the contract would be governed by Kansas law.

[7] Given these contacts, the court finds defendant transacted business within the State of Kansas. Defendant had knowledge that plaintiff was a Kansas company when it initiated contact with plaintiff in Kansas with the intent to conduct business with plaintiff. Further, defendant stood to gain significant economic advantage by transacting with plaintiff to lease railcars that defendant could subsequently sublease at a profit. Through the course of the agreement, defendant subleased at least 183 railcars in the State of Kansas, thereby earning a profit in the state based upon the agreement at issue in this case. See [Volt Delta Resources, Inc., 241 Kan. at 778, 740 P.2d 1089](#) (“[b]usiness is transacted within the state when an individual is within or enters this state in person or by an agent and, through dealing with another within the state, effectuates or attempts to effectuate a purpose to improve his economic conditions and satisfy his desires.”).

Moreover, applying the White factors to determine whether the court can exercise personal jurisdiction over a nonresident on the basis of transacting business within the state, the court finds the exercise of personal jurisdiction here appropriate. First, as set forth above, the court finds defendant purposefully performed acts in the forum state in connection with the agreement at issue in this case. Second, the plaintiff's claims for relief arise from or are connected with the defendant's acts in the State of Kansas. Specifically, plaintiff seeks to recover under the terms of the agreement due to defendant's alleged breach of the agreement. Defendant's contacts in Kansas relate to the agreement. And third, the court finds the assumption of jurisdiction by this court does “not offend traditional notions of fair play and substantial justice.” [White, 204 Kan. at 87, 460 P.2d at 582](#). The court finds it was “reasonably foreseeable” that the defendant could be required to defend an action regarding the agreement in Kansas. Given the Kansas choice of law provision in the agreement and defendant's contacts

with Kansas, as outlined above, defendant could reasonably anticipate being haled into court in Kansas. See [Hanson, 357 U.S. at 253, 78 S.Ct. 1228](#). The Tenth Circuit recently stated that when “specific jurisdiction is based upon a contractual dispute, we must evaluate prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing ... in determining whether the defendants purposefully established minimum contacts with the forum.” [Equifax Servs., Inc. v. Hitz, 905 F.2d 1355, 1357 \(10th Cir.1990\)](#) (quoting [Burger King Corp., 471 U.S. at 479, 105 S.Ct. 2174](#)).

Accordingly, considering Kansas's public policy of construing the long arm statute to the limits of due process, the court concludes that defendant's contacts in the State of Kansas satisfy the minimum contacts necessary to exercise personal jurisdiction over defendant.

Defendant next argues that it did not enter into an express or implied contract to be performed in whole or in part by either party in the State of Kansas, and thus it is not subject to jurisdiction within the meaning of the Kansas Long-arm statute's express or implied contract provision. Plaintiff argues that the “commission of a tortious act” provision of the Kansas long arm statute provides a separate basis for the exercise of personal jurisdiction over defendant. Given the court's analysis under the “transacting business” provision of the Kansas long arm statute, the court *1308 finds it unnecessary to reach these arguments regarding the propriety of the court's exercise of specific personal jurisdiction over defendant. Plaintiff's claims, both those based in contract and in tort, arise out of defendant's alleged nonperformance of the railcar lease agreement. Through its analysis under the “transacting business” provision of the Kansas long arm statute, the court has found that defendant's contacts in Kansas relate to the formation and performance of the agreement and that such contacts are sufficient to allow the court to exercise personal jurisdiction over defendant. Therefore, because the plaintiff's claims relate to the agreement and defendant's contacts in the State of Kansas relate to the agreement, it is proper for the court to exercise specific jurisdiction over defendant in this case wherein plaintiff has alleged both contract and tort claims. See [Helicopteros Nacionales de Colombia, 466 U.S. at 414 n. 8, 104 S.Ct. 1868](#) (noting court's exercise of

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personal jurisdiction over a party must comply with the requirements of the Due Process Clause of the Constitution, which contemplates two types of jurisdiction over the person and a party may be subject to either general or specific jurisdiction).

• **Order**

IT IS THEREFORE ORDERED that defendant's motion to dismiss for lack of personal jurisdiction (Doc. 7) is denied. Defendant shall answer the pending complaint within 20 days following entry of this order.

IT IS SO ORDERED.

D.Kan.,2001.
Caldwell-Baker Co. v. Southern Illinois Railcar Co.
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United States District Court,
D. Kansas.
CALDWELL-BAKER CO., et al., Plaintiffs,
v.
SOUTHERN ILLINOIS RAILCAR CO., et al.,
Defendants.
Civil Action No. 00-2380-CM.

Oct. 4, 2002.

On plaintiffs' motion to certify order in multiple party case, the District Court, [Murguia, J.](#), held that certification for appeal of order granting motions to dismiss claims against all but one defendant in multi-defendant case was not appropriate, even though order constituted a "final judgment" as to those defendants.

Motion denied.

West Headnotes

Federal Courts 170B  **660.10**

[170B](#) Federal Courts

[170BVIII](#) Courts of Appeals

[170BVIII\(E\)](#) Proceedings for Transfer of Case

[170Bk660](#) Certification and Leave to Appeal

[170Bk660.10](#) k. Multiple Parties. [Most](#)

[Cited Cases](#)

Certification for appeal of order granting motions to dismiss claims against all but one defendant in multi-defendant case was not appropriate, even though order constituted a "final judgment" as to those defendants, where there existed a just reason to delay the appeal of the individual final judgments in that there was a significant factual overlap between plaintiffs' claims against remaining defendant and against the other defendants, and legal issues were intertwined, raising strong probability of duplicative litigation. [Fed.Rules Civ.Proc.Rule 54\(b\)](#), 28 U.S.C.A.

***649** [Linus L. Baker](#), The Baker Group, L.L.C., Prairie Village, KS, for Plaintiffs.

[Philip R. Dupont](#), Blackwell Sanders Peper Martin, LLP, [Rick E. Frawley](#), Kutak Rock LLP, Kansas City, MO, [Gregory J. Minana](#), Blackwell Sanders Peper Martin, LLP, St. Louis, MO, [Mark D. Hinderks](#), Stinson Morrison Hecker LLP, Overland Park, KS, [Lee M. Smithyman](#), **Smithyman & Zakoura, Chtd.**, Overland Park, KS, for Defendants.

MEMORANDUM AND ORDER

[MURGUIA](#), District Judge.

Pending before the court is plaintiffs' Motion to Certify Order in Multiple Party Case (Doc. 493). As set forth below, plaintiffs' motion is denied.

• Background

On June 18, 2002, the court issued a Memorandum and Order which granted defendants De Bruce Grain, Inc., General Mills, Michelle Seiberlich, **Southern Illinois Railcar** LLC (SIRC LLC), Fred L. Parsons, Kurt E. Johnson, and Gary J. Goodman (hereinafter "the remaining defendants")'s motions to dismiss. [Caldwell-Baker Co. v. S. Ill. Railcar Co., No. 00-2380, 2002 WL 1467588 \(June 18, 2002\)](#) (hereinafter "the June 18 order"). The court also found that defendant **Southern Illinois Railcar** Co. (SIRC)'s previous filing of a bankruptcy petition operated as an automatic stay of the continuation of judicial action against it. *Id.* at n. 2 (citing [11 U.S.C. § 362](#)). The court therefore denied as moot and without prejudice plaintiffs' motion for partial summary judgment against defendant SIRC, and permitted the motion to be reasserted if and when the bankruptcy court permitted plaintiffs to pursue their claims against defendant SIRC. *Id.*

The court's dismissal without prejudice of plaintiffs' motion for partial summary judgment against defendant SIRC was not an appealable final judgment. See [United States v. Martin, 16 Fed.Appx. 943, 945, 2001 WL 909022, at *2 \(10th Cir.2001\)](#) (citation omitted). Because any order which adjudicates fewer than all of the claims brought in the action does not terminate the

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action as to any of the parties, *see* [Fed.R.Civ.P. 54\(b\)](#), the court's June 18 order was not an appealable final judgment. Given this procedural backdrop, plaintiffs move the court, pursuant to [Fed.R.Civ.P. 54\(b\)](#), to amend its June 18 order to direct the clerk to enter final judgment against the remaining defendants, so that plaintiffs may appeal as to those defendants.

***650 • [Rule 54\(b\)](#)**

[Rule 54\(b\)](#) provides that when multiple claims or parties are involved in an action, “the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” [Fed.R.Civ.P. 54\(b\)](#). Because “sound judicial administration does not require that [Rule 54\(b\)](#) requests be granted routinely,” the power to grant such a request rests with the sole discretion of a district court. [Curtiss-Wright Corp. v. Gen. Elec. Co.](#), 446 U.S. 1, 10, 100 S.Ct. 1460, 64 L.Ed.2d 1 (1980).

In analyzing a [Rule 54\(b\)](#) motion, “a district court must first determine that it is dealing with a ‘final judgment.’ ” *Id.* at 7, 100 S.Ct. 1460. The court's disposition must have been a “ ‘judgment’ in the sense that it is a decision upon a cognizable claim for relief, and it must be ‘final’ in the sense that it is ‘an ultimate disposition of an individual claim entered in the course of a multiple claims action.’ ” *Id.* (citation omitted). The court finds that the part of its June 18, 2002 order that granted motions to dismiss in favor of the remaining defendants constituted a “final judgment” for purposes of [Rule 54\(b\)](#), because it was an ultimate disposition of plaintiff's claims against the remaining defendants.

After determining finality, the court must examine whether there is any just reason for delay. [Fed.R.Civ.P. 54\(b\)](#), [Curtiss-Wright Corp.](#), 446 U.S. at 8, 100 S.Ct. 1460. “In deciding whether there are no just reasons to delay the appeal of individual final judgments ... a district court must take into account judicial administrative interests as well as the equities involved. Consideration of the former is necessary to assure that application of the Rule effectively ‘preserves the historic federal policy against piecemeal appeals.’ ” *Id.* (citation omitted).

Here, the court believes that concerns of effective judicial administration counsel against a [Rule 54\(b\)](#) certification. The court finds that there exists a just reason to delay the appeal of the individual final judgments in this case. First, there is significant factual overlap between plaintiffs' claims against defendant SIRC and against the remaining defendants. Indeed, the entire underlying basis for plaintiffs' claims against all of the defendants was an alleged breach of an agreement between plaintiffs and defendant SIRC. Plaintiffs asserted claims against the remaining defendants due to their status as officers of SIRC, as entities allegedly related to SIRC, or as parties who had purportedly entered into subsequent agreements with SIRC. Clearly, this is not a case in which plaintiffs have asserted a factual basis for the remaining defendants' liabilities that is distinct from the basis of plaintiffs' claims against defendant SIRC.

Second, while the court granted the remaining defendants' motions to dismiss without considering the merits of plaintiffs' claim against defendant SIRC, if a court were to ever consider the merits of plaintiffs' claims against the remaining defendants, those legal issues would be inextricably intertwined with the issues raised by plaintiffs in their claims against defendant SIRC.

The court thus finds that certifying the claims against the remaining defendants under [Rule 54\(b\)](#) would undoubtedly lead to duplicative litigation. Moreover, plaintiffs have asserted no equitable considerations indicating an appeal of the order dismissing the claims against the remaining defendants is appropriate in this case. Because the court finds that there are just reasons to delay the entry of judgment, the court denies plaintiffs' motion for certification pursuant to [Fed.R.Civ.P. 54\(b\)](#).

IT IS THEREFORE ORDERED that plaintiffs' Motion to Certify Order in Multiple Party Case (Doc. 493) is denied.

D.Kan.,2002.
 Caldwell-Baker Co. v. Southern Illinois Railcar Co.
 209 F.R.D. 649

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