

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

KEY PERSONNEL SERVICE, INC.,	:	APPEAL NOS. C-090033
		C-090034
Plaintiff-Appellant,	:	TRIAL NOS. 07CV-35274
		07CV-35329
vs.	:	
		<i>JUDGMENT ENTRY.</i>
CORUS PHARMACY & HEALTHCARE	:	
PRODUCTS, INC.,	:	
	:	
VITAL CARE OF CONNECTICUT,	:	
	:	
and	:	
	:	
MIKE SOKEMAN	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

The plaintiff-appellant, Key Personnel Service, Inc. (“Key Personnel”), is an Ohio corporation that assists businesses to locate and ultimately hire appropriate job candidates for open positions within their organizations. In April 2007, defendants-appellees Corus Pharmacy & Healthcare Products, Inc., (“Corus”) and Vital Care of Connecticut (“Vital Care”), in separate agreements, hired Key Personnel to locate appropriate candidates for open positions within their companies (defendant-appellee Mike Sokeman [“Sokeman”] is the president of Corus and the director of Vital Care). Both Corus and Vital Care agreed to pay Key Personnel \$10,000 if an

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

appropriate candidate was eventually hired. Both Corus and Vital Care are Pennsylvania corporations. Sokeman is a resident of Pennsylvania.

A dispute arose between Key Personnel and the defendants as to whether Key Personnel had fulfilled its contractual obligations. Key Personnel filed two lawsuits, one against Corus and the other against Vital Care and Sokeman, in Hamilton County Municipal Court. The defendants filed answers asserting the defense of lack of personal jurisdiction. Later, in March 2008, the defendants filed motions requesting leave to amend their answers to add counterclaims. On June 25, 2008, the defendants filed motions to dismiss due to lack of personal jurisdiction. The following day, on June 26, 2008, the court granted the defendants' motions for leave to amend their answers and to add counterclaims, which were eventually filed on June 30, 2008.

On July 23, 2008, Key Personnel voluntarily dismissed its complaint, filed an answer to the defendants' counterclaims, and filed its own counterclaim. Key Personnel asserted that its counterclaim was, in essence, a refile of its previously dismissed complaint. Key Personnel also filed a memorandum in opposition to the defendants' motions to dismiss. On December 12, 2008, the court granted the defendants' motions to dismiss for lack of personal jurisdiction pursuant to Civ.R. 12(B)(2). This appeal by Key Personnel followed.

In its appeal, Key Personnel argues that the defendants voluntarily submitted themselves to the jurisdiction of the court when they sought leave to amend their answers and to add counterclaims, and when they actually filed their counterclaims. The defendants counter by arguing that they did not voluntarily submit to the jurisdiction of the court, and that even if it is assumed they did voluntarily submit, the court correctly based its decision to dismiss on the lack of long-arm jurisdiction.

We review a trial court's determination on personal jurisdiction under a de novo standard of review.<sup>2</sup> Personal jurisdiction over an out-of-state defendant may ordinarily be obtained either by service of process under Civ.R. 4.3 or by "the voluntary appearance and submission of the defendant or his legal representative."<sup>3</sup> In addition, "[b]y appearance for any other purpose than to object to jurisdiction, a defendant enters his general appearance to the action and voluntarily submits himself to jurisdiction of court, and cannot afterwards claim that the court's jurisdiction of his person has not been properly obtained."<sup>4</sup>

We hold that the defendants actively litigated this case and, therefore, voluntarily submitted themselves to the trial court's jurisdiction. After answering, the defendants sought leave from the court to amend their answers and to file counterclaims. After these motions were granted, and, more notably, after the defendants had filed their motions to dismiss, the defendants filed counterclaims for breach of contract, asking for monetary damages not to exceed \$15,000.

We note that this case is distinguishable from *Natl. City Commercial Capital Corp. v. Page*,<sup>5</sup> a recent case decided by the Twelfth Appellate District. In *Natl. City*, the plaintiff brought suit against the defendant, a resident of Texas, seeking unpaid money on a lease agreement between the parties. The defendant filed an answer asserting the defense of lack of personal jurisdiction and also filed a counterclaim for declaratory judgment alleging that the lease was void and unenforceable. Afterward, the defendant filed a motion to dismiss based on lack of personal jurisdiction.

The trial court granted the defendant's motion to dismiss, and the plaintiff appealed, arguing that the defendant had submitted to the trial court's jurisdiction

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<sup>2</sup> *Natl. City Bank v. Yevu*, 178 Ohio App.3d 382, 2008-Ohio-4715, 898 N.E.2d 52, at ¶6.

<sup>3</sup> *Maryhew v. Yova* (1984), 11 Ohio St.3d 154, 156, 464 N.E.2d 538.

<sup>4</sup> *Michigan Millers Mut. Ins. Co. v. Christian*, 153 Ohio App.3d 299, 2003-Ohio-2455, 794 N.E.2d 68, at ¶10, citing *Long v. Newhouse* (1897), 57 Ohio St. 348, 370, 49 N.E. 79.

<sup>5</sup> 2009-Ohio-1161.

when he filed his counterclaim. After noting that the defendant had not waived the defense of lack of personal jurisdiction by filing an answer asserting that defense before filing his motion to dismiss, the Twelfth Appellate District upheld the dismissal. It held, “We find that appellee properly preserved the defense of lack of personal jurisdiction by asserting the defense in his answer in accordance with Civ.R.12.”<sup>6</sup> However, the court went on to say, “*While the filing of a counterclaim provides an additional consideration in this case, the nature of the counterclaim makes the filing of such less problematic. We find that appellee did not actively litigate the matter, and did not delay in reasserting the defense with his motion to dismiss.*”<sup>7</sup>

Unlike the defendant in *Natl. City*, the defendants in this case *did* actively litigate the matter. As mentioned before, the defendants not only sought leave from the court to amend their answers and to add counterclaims, but they also filed counterclaims once given leave. Notably, the counterclaims were filed *after* the defendants’ motions to dismiss had been filed. In addition, unlike the defendant in *Natl. City* whose counterclaim only sought declaratory judgment, the defendants’ counterclaims were for monetary damages for breach of contract. For all these reasons we conclude that the defendants actively litigated the case and voluntarily submitted themselves to the trial court’s jurisdiction.

Therefore, we reverse the trial court’s judgment and remand the case for further proceedings.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

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<sup>6</sup> Id. at ¶17.

<sup>7</sup> Id. (Emphasis added.)

OHIO FIRST DISTRICT COURT OF APPEALS

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**HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on November 4, 2009

per order of the Court \_\_\_\_\_.

Presiding Judge