

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JESSICA FEATHERSTON,

Plaintiff,

v.

TRANS-SIBERIAN ORCHESTRA,
INC., *et al.*

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 3:25-cv-697

JURY TRIAL DEMANDED

**PLAINTIFF JESSICA FEATHERSTON'S RESPONSE
TO DEFENDANT TRANS-SIBERIAN ORCHESTRA, INC.'S
RULE 12(b)(2) MOTION TO DISMISS**

Featherston alleges that three related entities—Defendants Trans-Siberian Orchestra, Inc. (TSO), Wild Child Touring, Inc., and Night Castle Management, Inc. (collectively, the TSO Defendants)—mishandled a workplace conflict between Featherston and a colleague during a Trans-Siberian Orchestra music concert tour, violating state and federal anti-discrimination laws. *See generally* Orig. Pet. (Doc. 1-4). Though Wild Child Touring and Night Castle Management filed answers, *see* Docs. 12, 13, TSO has instead moved to dismiss the claims against it for lack of personal jurisdiction, *see* MTD (Doc. 10). Relying on an affidavit from its sole director, TSO argues that it is not responsible for the band's concert tours and thus cannot be sued in Texas for employment discrimination against Featherston. *See id.* at 14–15; *see also generally* O'Neill Decl. (Doc. 11-1). Featherston opposes TSO's motion because (1) personal jurisdiction exists under a joint-employer theory and (2) personal jurisdiction exists under an alter-ego theory.

STANDARD OF REVIEW¹

At the motion-to-dismiss stage, a plaintiff need only present a prima facie case for her assertion that the court may exercise personal jurisdiction. *Frank v. P N K (Lake Charles) L.L.C.*, 947 F.3d 331, 336 (5th Cir. 2020). A court must “accept as true the uncontroverted allegations in the complaint and resolve in favor of the plaintiff any factual conflicts.” *Stripling v. Jordan Prod. Co., LLC*, 234 F.3d 863, 869 (5th Cir. 2000). And a court “may consider the contents of the record at the time of the motion.” *Sangha v. Navig8 ShipManagement Priv. Ltd.*, 882 F.3d 96, 101 (5th Cir. 2018).

ARGUMENT

A “federal court may assert personal jurisdiction if the state long-arm statute permits jurisdiction and the exercise of such jurisdiction would not violate due process.” *Conn Appliances, Inc. v. Williams*, 936 F.3d 345, 347 (5th Cir. 2019). Here, those two criteria merge because the Texas long-arm statute reaches “as far as the federal constitutional requirements of due process will allow.” *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575 (Tex. 2007). To afford constitutional due process when serving an out-of-state defendant, a plaintiff must show that the defendant “had minimum contacts” with the forum state—meaning that he “purposely availed himself of” the forum state’s “benefits and protections”—“and that

¹ Unless otherwise indicated, this motion adds all emphasis and omits all internal citations and quotation marks in quoted materials.

exercising jurisdiction will not offend traditional notions of fair play and substantial justice.” *Conn Appliances*, 936 F.3d at 347 (cleaned up).

“There are two types of ‘minimum contacts’: those that give rise to specific personal jurisdiction and those that give rise to general personal jurisdiction.” *Johnston v. Multidata Sys. Int’l Corp.*, 523 F.3d 602, 609 (5th Cir. 2008). General personal jurisdiction arises when a “non-resident defendant’s contacts with the forum state are substantial, continuous, and systematic.” *Id.* Because Featherston does not allege systematic and continuous contacts between TSO and Texas, *see generally* Orig. Pet. (Doc. 1-4), this motion focuses on specific jurisdiction.

“Specific jurisdiction applies when a non-resident defendant has purposefully directed his activities at the forum state and the litigation results from alleged injuries that arise out of or relate to those activities.” *Conn Appliances*, 936 F.3d at 347 (cleaned up). The Supreme Court recently interpreted the phrase “or relate to” to mean that a causal connection between the activities in the forum state and the alleged injury is unnecessary. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 362 (2021). So, for example, if Ford Motor Company sells a type of car in Texas, it is subject to specific jurisdiction in Texas if the same type of car malfunctions there—even if the plaintiff happened to buy her specific car in Oklahoma. *See id.* at 363.

Next, a court must conclude “that exercising jurisdiction will not offend traditional notions of fair play and substantial justice.” *Conn Appliances*, 936 F.3d at 347 (cleaned up). But once “a plaintiff has established minimum contacts, the

burden shifts to the defendant to show the assertion of jurisdiction would be unfair.” *Wien Air Alaska, Inc. v. Brandt*, 195 F.3d 208, 215 (5th Cir. 1999). A defendant may appeal to several factors to make this showing, including “the burden on the defendant, the forum State’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, 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.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

I. The Court has personal jurisdiction because the TSO Defendants are joint employers.

When “[t]he critical issue” for establishing personal jurisdiction in an employment discrimination case is “which entity made the final decision regarding the employment matters at issue,” a plaintiff must be permitted “to attempt to prove joint employer status.” *Willshire v. HK Mgmt.*, 2004 WL 2974082, at *3 (N.D. Tex. Dec. 16, 2004). Under a joint-employer theory, a court may find that “superficially distinct entities” actually “represent a single, integrated enterprise.” *Skidmore v. Precision Printing & Pkg., Inc.*, 188 F.3d 606, 616 (5th Cir. 1999). “Factors considered in determining whether distinct entities constitute an integrated enterprise are (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control.” *Id.* at 616–17.

Specific jurisdiction is satisfied if the defendant is “a joint employer and played an integral role in” the facts underlying an employment discrimination lawsuit. *Bishop v. Consol. Nat. Gas, Inc.*, 2000 WL 6263, at *3 (E.D. La. Jan. 5, 2000).

But joint-employer status is a “fact intensive determination” that a court “cannot make” on a “limited record.” *Willshire*, 2004 WL 2974082, at *3. Therefore, if “no discovery [has] been conducted at the time [the plaintiff] was required to file a response to [a] Motion to Dismiss,” the court should deny the motion to dismiss and allow the parties to “revisit this issue on summary judgment and/or trial, if appropriate.” *Id.*

TSO moves to dismiss for lack of personal jurisdiction because it allegedly “played no role in hiring, firing or disciplining any person who participated in” Trans-Siberian Orchestra music concert tours. MTD at 14. In support, TSO submits a declaration from Ireland O’Neill, TSO’s sole director, claiming that the TSO Defendants “are three separate and distinct entities which each do separate things related to” the Trans-Siberian Orchestra band. *See* O’Neill Decl. ¶¶ 3–4. According to O’Neill, TSO “is in no way involved with the live musical production of the band Trans-Siberian Orchestra and, therefore, there is no joint employer relationship here.” *Id.* ¶ 9. Still, TSO implies that the other TSO Defendants—Wild Child Touring and Night Castle Management—are subject to this Court’s jurisdiction. *See* MTD at 15 (“[I]t would be unfair and unreasonable to exert jurisdiction over TSO, Inc., particularly when Plaintiff brought the same claims against other named Defendants over which this Court has jurisdiction.”).

Both Featherston’s uncontroverted allegations and the limited evidence available weigh in favor of finding all TSO Defendants are joint employers. First, Featherston has made a *prima facie* showing of interrelated operations. TSO

dismisses Featherston's allegation that the TSO Defendants are "interrelated" as "conclusory." *See* MTD at 10–11 (citing Orig. Pet. ¶ 9). Yet O'Neill's declaration itself admits that the three entities "each do separate things related to the band" and are each "associated with the band." O'Neill Decl. ¶¶ 3–4. The uncontroverted fact that "Night Castle Management responded to the charge filed against TSO and interviewed Brian Wong, a Wild Child Touring employee," Orig. Pet. ¶ 155, supports the notion that the three TSO Defendants "shared employees, services, [or] records"—one of the hallmarks of "interrelated operations." *Lusk v. Foxmeyer Health Corp.*, 129 F.3d 773, 778 (5th Cir. 1997). Further, at least one Wild Child supervisor held himself out as "an employee of 'Trans-Siberian Orchestra,'" suggesting a lack of meaningful distinction between the three organizations. Orig. Pet. ¶ 156.

Second, Featherston has made a *prima facie* showing of centralized control. Unless the TSO Defendants had centralized control, it is difficult to imagine how Night Castle Management could have (a) received, (b) investigated, and (c) responded to a charge of discrimination against TSO. *See* Orig. Pet. ¶ 155. This is especially true because Night Castle Management's investigation involved interviewing employees of Wild Child Touring. *See id.* Moreover, according to the Florida Secretary of State website, both TSO and Wild Child Touring direct communications to the care of Night Castle Management. *See* Exs. A & B. Together, these facts indicate that the TSO Defendants share centralized control via Night Castle Management, which acts as a corporate nerve center.

The third and fourth factors also favor a joint-employer theory. TSO does not dispute that “Night Castle Management and Wild Child Touring share common ownership [and] management . . . with TSO.” Orig. Pet. ¶ 154. Indeed, O’Neill confirms that he is “the co-trustee for the trust which owns the various entities.” O’Neill Decl. ¶ 3. He also implies shared management by stating that he is “familiar with [TSO] and its business operations” in his capacity as sole director, and is “also familiar with Wild Child Touring, Inc. and Night Castle Management, Inc. and those companies’ business operations.” *Id.* That information accords with the TSO Defendants’ Florida business records, which list O’Neill, Adam Lind, Kenny Kaplan, and Adam Seidel as the officers and directors for all three entities. *See* Exs. A, B, & C.

Thus, Featherston has surpassed the low bar for establishing a *prima facie* case of personal jurisdiction. *See, e.g., Bullion v. Gillespie*, 895 F.2d 213, 217 (5th Cir. 1990) (“Proof by a preponderance of the evidence is not required.”). TSO cannot escape these proceedings by submitting a single, self-serving affidavit. Rather, because “no discovery [has] been conducted at the time [Featherston] was required to file a response to the Motion to Dismiss” despite the “fact-intensive” nature of the joint-employer issue, the Court should allow the case to go forward. *Willshire*, 2004 WL 2974082, at *3.

II. This Court also has personal jurisdiction because the TSO Defendants are alter egos of one another.

Further, a court may “exercise personal jurisdiction over an individual or a corporation that would not ordinarily be subject to personal jurisdiction in that court

when the individual or corporation is an alter ego or successor of a corporation that would be subject to personal jurisdiction in that court.” *Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 (5th Cir. 2002). In federal-question cases, courts ask if a company is subject to personal jurisdiction based on its affiliate’s contacts with the state by evaluating:

(1) [the] amount of stock owned by the parent of the subsidiary; (2) did the two corporations have separate headquarters; (3) did they have common officers and directors; (4) did they observe corporate formalities; (5) did they maintain separate accounting systems; (6) did the parent exercise complete authority over general policy; (7) did the subsidiary exercise complete authority over daily operations.

Dickson Marine Inc. v. Panalpina, Inc., 179 F.3d 331, 339 (5th Cir. 1999). Though these factors are formulated with the parent-subsidiary relationship in mind, the Fifth Circuit has also applied these factors to sibling corporations. *Id.* at 338–39.

Featherston surpasses the low bar to make a prima facie case for alter ego as between TSO and the other TSO Defendants. O’Neill’s declaration states that a single trust “owns various entities associated with the band.” O’Neill Dec. ¶ 3. That statement suggests that most—if not all—of the TSO Defendants’ stock is owned by one entity. Because the alter-ego factors apply to sibling entities as well as parent-subsidiary families, factor one weighs in favor of personal jurisdiction. *Dickson Marine Inc.*, 179 F.3d at 338–39.

The second and third factors also weigh in favor of personal jurisdiction. O’Neill admits that all TSO Defendants have headquarters in New York. O’Neill Decl. ¶¶ 5–6. And the Florida Secretary of State website indicates that each is headquartered at the same address—130 Shore Road, Suite 112, Port Washington,

New York 11050. *See* Exs. A, B, & C. Similarly, the Florida Secretary of State website indicates that all TSO Defendants share common officers. *Id.*

Though factors four and five are difficult to assess before discovery, there are indicia that they could favor personal jurisdiction. O'Neill claims that his corporations maintain corporate formalities and separate accounting systems. *See* O'Neill Decl. ¶ 4. But that conclusory assertion is not accompanied by any details that would make it plausible. *See id.* And the division of corporate responsibilities that O'Neill describes supports the inference that the TSO Defendants do not maintain corporate and accounting barriers. Specifically, O'Neill claims that Night Castle Management and Wild Child Touring handle the cost-intensive aspects of the band's business, such as organizing tours, managing the band, and retaining vendor services. *See id.* ¶ 6. On the other hand, TSO handles the most profitable aspects of the business—it "is responsible for managing recordings" and "administering the band's music and merchandising royalties." *Id.* ¶ 5; *see also id.* ¶ 2 (acknowledging that "the band is best known for its recorded music"). Given this lopsided division of responsibilities, it is plausible that TSO's royalties fund Night Castle Management's and Wild Child Touring's expenses.

The sixth and seventh factors also favor personal jurisdiction. Much of the same evidence supporting a joint-employer theory also applies here. To review, Night Castle Management received, investigated, and responded to a charge of discrimination on behalf of TSO. *See* Orig. Pet. ¶ 155. Night Castle Management's activities involved interviewing employees of Wild Child Touring. *See id.* Further,

both TSO and Wild Child Touring direct communications to the care of Night Castle Management. *See* Exs. A & B. At least one Wild Child supervisor held himself out as “an employee of “Trans-Siberian Orchestra.” Orig. Pet. ¶ 156. And the corporations share management. *See* Exs. A, B, & C. Cumulatively, these facts imply that control was intermingled between the three companies.

CONCLUSION AND PRAYER

For these reasons, the Court should deny the motion.²

Respectfully submitted,

MURPHY BALL STRATTON LLP

/s/ Michelle Stratton

Michelle Stratton (SBN 24085606)

Rick Houghton (SBN 24121678)

Conor Harvey (SBN 24120883)

Christian McGuire (SBN 35334)

1001 Fannin Street, Suite 720

Houston, Texas 77002

Phone: (713) 594-9989

mstratton@mbssmartlaw.com

rhoughton@mbssmartlaw.com

charvey@mbssmartlaw.com

cmcguire@mbssmartlaw.com

AMERICA FIRST LEGAL FOUNDATION

Nicholas Barry (admitted *pro hac vice*)

Laura Stell (admitted *pro hac vice*)

611 Pennsylvania Avenue SE #231

Washington, DC 20003

Phone: (202) 964-3721

nicholas.barry@aflegal.org

laura.stell@aflegal.org

² In the alternative, Featherston would ask for leave to amend or to seek personal jurisdiction discovery. Featherston will promptly brief these issues if the Court deems it necessary.

INDEPENDENT WOMEN'S FORUM

Beth Parlato*
1802 Vernon Street NW, Suite 1027
Washington, D.C. 20009
Phone: (202) 807-9986
beth.parlato@iwf.org

ATTORNEYS FOR PLAINTIFF

**Pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I served this memorandum by CM/ECF on all counsel of record on April 21, 2025.

/s/ Christian McGuire
Christian McGuire