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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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Ex parte Mercedes-Benz U.S. International, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: Gregory Nix

v.

Mercedes-Benz U.S. International, Inc.)

(Jefferson Circuit Court, CV-17-903525)

SELLERS, Justice.

Mercedes-Benz U.S. International, Inc. ("MBUSI"), petitions this Court for a writ of mandamus directing the Jefferson Circuit Court ("the trial court") to vacate its

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order denying MBUSI's motion for a change of venue and to enter an order transferring the underlying action to the Tuscaloosa Circuit Court. We grant the petition and issue the writ.

I. Facts and Procedural History

MBUSI is an automobile-manufacturing company that manufactures certain Mercedes-Benz vehicles at its facility in Tuscaloosa County. MBUSI's headquarters and its principal place of business are also in Tuscaloosa County. Although MBUSI does not maintain any corporate offices in Jefferson County, MBUSI purchases parts used in manufacturing automobiles from multiple suppliers located in Jefferson County, one of which is Kamtek, Inc.

Gregory Nix is a resident of Jefferson County; he was employed as an assembly worker at MBUSI's manufacturing facility in Tuscaloosa County until June 23, 2017. Nix alleges that, during his employment with MBUSI, he suffered on-the-job injuries the cumulative effect of which have left him permanently and totally disabled.

On August 22, 2017, Nix sued MBUSI in the trial court seeking worker's compensation benefits for the injuries he

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allegedly suffered during his employment with MBUSI. MBUSI filed a one-sentence answer, stating: "Venue is improper in Jefferson County, Alabama." That same day, MBUSI filed a motion to transfer the case to Tuscaloosa County asserting that venue in Jefferson County was improper or, in the alternative, that the doctrine of forum non conveniens required the transfer of the case to Tuscaloosa County.

In his response to MBUSI's motion for a change of venue, Nix asserted that venue was proper in Jefferson County under § 6-3-7(a) (2) and (3), Ala. Code 1975, and additionally that a transfer of the case was not warranted under the doctrine of forum non conveniens. Nix attached various exhibits to his response, including two news articles highlighting the expansion of Kamtek's facility. MBUSI filed a supplemental motion for a change of venue and attached in support an affidavit of its general counsel, Richard Clementz.

The trial court denied MBUSI's motion for a change of venue. MBUSI filed a petition for a writ of mandamus with the Court of Civil Appeals, which that court denied. Ex parte Mercedes-Benz U.S. Int'l, Inc., [Ms. 2170209, March 23, 2018] ___ So. 3d ___ (Ala. Civ. App. 2018). The Court of Civil

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Appeals, relying on Ex parte Scott Bridge Co., 834 So. 2d 79 (Ala. 2002), held that venue was proper in Jefferson County and that the doctrine of forum non conveniens did not require a transfer of the case to Tuscaloosa County. MBUSI then petitioned this Court seeking the same relief.

II. Standard of Review

"The proper method for obtaining review of a denial of a motion for a change of venue in a civil action is to petition for the writ of mandamus. Lawler Mobile Homes, Inc. v. Tarver, 492 So. 2d 297, 302 (Ala. 1986). "Mandamus is a drastic and extraordinary writ, to be issued only where 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 Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). "When we consider a mandamus petition relating to a venue ruling, our scope of review is to determine if the trial court [exceeded] its discretion, i.e., whether it exercised its discretion in an arbitrary and capricious manner." Id. Our review is further limited to those facts that were before the trial court. Ex parte American Resources Ins. Co., 663 So. 2d 932, 936 (Ala. 1995)."

Ex parte Southeast Alabama Timber Harvesting, LLC, 94 So. 3d 371, 373 (Ala. 2012) (quoting Ex parte National Sec. Ins. Co., 727 So. 2d 788, 789 (Ala. 1998)).

III. Discussion

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In its petition, MBUSI reasserts the two arguments it made to the trial court in its motion for a change of venue: (1) that venue in Jefferson County is improper; and (2) that, even if venue is proper in Jefferson County, the action should be transferred to Tuscaloosa County under the doctrine of forum non conveniens. Based on our resolution of the first argument, we pretermitt discussion of the forum non conveniens argument.

Under § 25-5-81(a)(1), Ala. Code 1975, a worker's compensation action may be filed in "the circuit court of the county which would have jurisdiction of a civil action in tort between the parties." Venue for a civil action against domestic and foreign corporations is governed by § 6-3-7(a), Ala. Code 1975, which provides:

"(a) All civil actions against corporations may be brought in any of the following counties:

"(1) In the county in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of real property that is the subject of the action is situated; or

"(2) In the county of the corporation's principal office in this state; or

"(3) In the county in which the plaintiff resided, or if the plaintiff is an entity other than an individual, where the plaintiff had its principal office in this state, at the time of the accrual of the cause of action, if such corporation does business by agent in the county of the plaintiff's residence; or

"(4) If subdivisions (1), (2), or (3) do not apply, in any county in which the corporation was doing business by agent at the time of the accrual of the cause of action."

(Emphasis added.)

Nix argues that venue is proper in Jefferson County under § 6-3-7(a)(3) because he was a resident of Jefferson County at the time his cause of action against MBUSI accrued and because, he alleges, MBUSI "does business by agent" there. It is undisputed that Nix was a resident of Jefferson County at the time the cause of action accrued. The parties dispute whether MBUSI "does business by agent" in Jefferson County.

Relying on Ex parte Scott Bridge Co., Nix claims that MBUSI "does business by agent" in Jefferson County because it regularly transacts with suppliers of automotive parts, such as Kamtek, that are located in Jefferson County. Indeed, this Court's opinion in Scott Bridge does support that argument. The Court of Civil Appeals stated as much in its opinion

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denying the petition for a writ of mandamus MBUSI filed in that court. See Ex parte Mercedes-Benz U.S. Int'l, Inc., ___ So. 3d at ___ ("[I]t appears that, under the holding in Scott Bridge, the only inquiry required is whether MBUSI regularly transacted with a supplier in Jefferson County to purchase parts that were used to fulfill a primary business function." (citing Ex parte Elliott, 80 So. 3d 908, 914 (Ala. 2011))).

MBUSI argues that its automotive-parts suppliers are not its "agents" and disputes that its transactions with those suppliers in Jefferson County, such as Kamtek, constitute "doing business by agent" in Jefferson County. MBUSI contends that Scott Bridge was incorrectly decided and should be overruled or not applied to the facts of this case.

The petitioner in Scott Bridge, the employer, sought a writ of mandamus ordering the trial court to vacate its denial of the petitioner's motion for a change of venue. The underlying action had been filed by an employee in the Chambers Circuit Court against his employer, a company in the business of constructing bridges. Evidence indicated that the company's principal office was located in Lee County and that it had never constructed a bridge in Chambers County; however,

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at least one of the company's suppliers, from which it purchased more than \$50,000 in parts and equipment each year, was located in Chambers County. Based on those facts, this Court concluded that the trial court did not exceed its discretion in finding that the company was "doing business by agent" in Chambers County for the purpose of determining if venue was proper there under § 6-3-7(a) (3). See Scott Bridge, 834 So. 2d at 82 (noting that "Scott Bridge's primary business function of building bridges ... immediately and directly depends upon the transactions it has with its Chambers County suppliers").

That holding, however, was not unanimous. Two Justices dissented. Writing in dissent, then Justice Stuart stated that she "[did] not agree that purchasing materials in a county, regardless of the dollar amount of the materials purchased, constitutes 'doing business by agent' in that county for purposes of determining proper venue under § 6-3-7(a) (3), Ala. Code 1975." Scott Bridge, 834 So. 2d at 82-83 (Stuart, J., dissenting). Justice Stuart has since maintained that Scott Bridge was wrongly decided. See Ex parte Greenetrack, Inc., 25 So. 3d 449, 455 (Ala. 2009) (Stuart, J., concurring specially).

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Moreover, other Justices have questioned the underlying premise of the holding in Scott Bridge. See Greenetrack, 25 So. 3d at 456 n. 4 (Shaw, J., concurring specially) ("I question the conclusion reached in Scott Bridge that a corporation's mere purchase of materials necessary to fulfill a principal corporate function actually equates, for purposes of § 6-3-7(a)(3), to the performance of the principal corporate function for which the corporation was created."); and 25 So. 3d at 458 (Murdock, J., dissenting) ("I question whether the fact that Scott Bridge was the purchaser in those transactions meant that it was 'do[ing] business by agent in [Chambers County]' within the meaning of § 6-3-7(a)(3), Ala. Code 1975, intended by the legislature."). See also Ex parte Elliott, 80 So. 3d at 914 (Murdock, J., dissenting); id. at 917 (Shaw, J., dissenting).

It is well established that "[a] corporation 'does business' in a county for purposes of § 6-3-7 if, with some regularity, it performs there some business functions for which it was created." See Ex parte SouthTrust Bank of Tuscaloosa Cty., N.A., 619 So. 2d 1356, 1358 (Ala. 1993); Ex parte Joiner, 486 So. 2d 402, 403 (Ala. 1986); and Ex parte

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Jim Skinner Ford, Inc., 435 So. 2d 1235, 1237 (Ala. 1983).

This principle is based on a long recognized distinction between the exercise of corporate powers that are "merely a necessary incident" to a corporation's business and "the exercise of functions for which the corporation was created."

Farmers' & Ginners' Cotton Oil Co. v. Baccus, 207 Ala. 75, 77, 92 So. 4, 5 (1921).

In Scott Bridge, this Court noted that distinction. However, it stated that to "fulfill its principal corporate function of building bridges, Scott Bridge must purchase parts, tools, and equipment with which to perform that principal corporate function." 834 So. 2d at 81. Further, it stated that "Scott Bridge could presumably have purchased these materials elsewhere, and thus fulfilled its corporate purpose entirely outside of Chambers County." 834 So. 2d at 82. Therefore, it found that "spending more than \$50,000 per year in Chambers County on materials necessary to bridge construction [was] sufficient to constitute 'doing business' in Chambers County." Id. That conclusion ignores the long recognized distinction noted above and wrongly treats the exercise of a corporate power that is "merely a necessary

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incident" to a corporation's business as the exercise of a function for which the business was created.

The problem with the Court's conclusion in Scott Bridge becomes readily apparent here when its rationale is applied to a manufacturer such as MBUSI, who, in Alabama alone, deals with over 100 different suppliers on a regular basis. Under the Scott Bridge rationale, a court could find that MBUSI "does business by agent" in any county in which one of its many regular suppliers is located. A mere contract with a parts supplier cannot reasonably be anticipated by the purchasing company to have the effect of consenting to venue in the county where the parts supplier is located for a tort action or a worker's compensation action. Such a result would be counter to the plain meaning of the doing-business requirement of § 6-3-7(a)(3) and the principles established before Scott Bridge was decided for determining what corporate actions are sufficient to constitute "doing business by agent" in a county for purposes of establishing proper venue under § 6-3-7(a)(3).

By contracting with its suppliers of automotive parts, such as Kamtek, MBUSI is exercising a corporate power that is

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"merely a necessary incident" to its business of manufacturing automobiles; it is not exercising a business function for which it was created, i.e., manufacturing automobiles. The nature of a company's business may require it to obtain certain parts or materials, but that does not mean that purchasing those parts or materials is the exercise of a business function for which the company was created. MBUSI was created to manufacture automobiles; nothing in the materials before us indicate that any part of its ordinary business of manufacturing automotive vehicles occurs in Jefferson County.¹

Nix additionally argues MBUSI "does business by agent" in Jefferson County because some of the vehicles it manufacturers are eventually sold to the public at dealerships in Jefferson County. We find this argument unpersuasive. There is no evidence indicating that MBUSI is involved in the retail sale

¹Nix argues that based on the relationship between Kamtek and MBUSI we should infer that "officials and engineers of [MBUSI] travel to Jefferson County on occasion to meet with Kamtek officials and inspect the products manufactured at Kamtek." There was, however, no evidence of such meetings before the trial court. Clementz averred in his affidavit that MBUSI takes delivery of all parts at its manufacturing facility in Tuscaloosa County. Nevertheless, we note that the act of entering a county merely to conduct meetings or to obtain parts or supplies would not constitute "doing business" for the purpose of establishing venue for a claim against the purchasing company.

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of any Mercedes-Benz vehicles. In his affidavit before the trial court, Clementz averred that all the vehicles manufactured by MBUSI are sold to Mercedes-Benz USA, LLC ("MBUSA"), a separate legal entity with its principal place of business in Atlanta, Georgia. It is MBUSA who controls the distribution or sale of Mercedes-Benz vehicles. It would be wholly inappropriate to establish some form of attributional nexus that would deem MBUSI to be doing business in Jefferson County solely because another entity using the Mercedes-Benz name sells vehicles there. As this Court has stated previously: "The language of the statute--'does business by agent in the county of plaintiff's residence'--implies more than the undirected arrival in the county of the plaintiff's residence of products produced by the defendant corporation" Ex parte Tyson Chicken, Inc., 72 So. 3d 1, 3 (Ala. 2011).

Finally, Nix notes that, at the time his complaint was filed, the Alabama Secretary of State's Web site listed MBUSI's principal address as "BIRMINGHAM, AL," although no specific address in Birmingham was provided. If MBUSI's principal office was in fact located in Birmingham at the time

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the complaint was filed, venue would be proper in Jefferson County under both § 6-3-7(a)(2) and § 6-3-7(a)(3). Nix argues that the information provided to the Secretary of State's office by MBUSI serves as a written representation by MBUSI and should be binding upon it. However, Clementz stated in his affidavit before the trial court that the listing on the Secretary of State's Web site was inaccurate and that MBUSI has no corporate offices in Jefferson County. Clementz further indicated that, although an attorney in Birmingham was listed as MBUSI's registered agent for service of process, that attorney is not an employee of MBUSI, and MBUSI maintains no office at the attorney's law firm's Birmingham address. Nix has not rebutted the averment that the listing was inaccurate and did not provide any additional evidence to show that MBUSI does in fact maintain a corporate office in Jefferson County. In light of the evidence to the contrary, the printout from the Secretary of State's Web site that Nix presented to the trial court was not sufficient to establish that MBUSI's principal corporate office was located in Jefferson County at the time Nix filed his complaint.

Based on the foregoing discussion, we hold that there was not sufficient evidence before the trial court to support a conclusion that venue in Jefferson County was proper in this case. The regular purchasing of parts or materials from a supplier located in a certain county, by itself, does not constitute "[doing] business by agent" in that county under § 6-3-7(a)(3). To the extent that this Court's opinion in Scott Bridge held otherwise, it is hereby overruled.

IV. Conclusion

MBUSI has demonstrated a clear legal right to have the underlying action transferred to the Tuscaloosa Circuit Court. We grant the petition and direct the trial court to vacate its order denying the motion for a change of venue and to enter an order transferring the underlying action to the Tuscaloosa Circuit Court.

PETITION GRANTED; WRIT ISSUED.

Stuart, C.J., and Bolin, Main, and Mendheim, JJ., and B. Glenn Murdock, Special Justice,* concur.

Parker, Shaw, and Bryan, JJ., dissent.

Wise, J., recuses herself.

*Retired Associate Justice Murdock was appointed on October 23, 2018, to serve as a Special Justice in regard to this petition. When Justice Murdock was appointed, there was equal division among the eight members of the Court then sitting on this case on a question material to the determination of the case. See § 12-2-14, Ala. Code 1975.

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PARKER, Justice (dissenting).

I respectfully dissent. As explained by Justice Shaw in his dissent, which I join, the facts of this case have not yet been developed to the point of establishing a sufficient evidentiary basis in this case for overruling Ex parte Scott Bridge Co., 834 So. 2d 79 (Ala. 2002).

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SHAW, Justice (dissenting).

I respectfully dissent. I do not believe that Ex parte Scott Bridge Co., 834 So. 2d 79 (Ala. 2002), needs to be overruled in this case.

Scott Bridge held that the phrase "does business by agent" for purposes of determining proper venue under Ala. Code 1975, § 6-3-7(a)(3), can include a corporation's purchasing parts, tools, and equipment the corporation would use to perform its principal corporate function. It held that the trial court would not have exceeded its discretion in determining that purchasing some \$50,000 in equipment per year in a particular county was sufficient to demonstrate that the purchasing corporation "[did] business by agent" in that county. Scott Bridge relied on a prior decision, Ex parte GTE Automatic Electric, Inc., 448 So. 2d 385 (Ala. Civ. App. 1984), in which a corporation spent some \$2,600,000 per year with a parts supplier in a particular county and regularly sent employees there to work with that parts supplier. The Court of Civil Appeals held that the trial court did not err in concluding that the corporation did business in that county.

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I have previously expressed some concern with the conclusion in Scott Bridge, see Ex parte Greenetrack, Inc., 25 So. 3d 449, 456 n.4 (Ala. 2009) (Shaw, J., concurring specially). I do not believe that mere purchases of business-related items or services in a county always constitute "doing business by agent" in that county: "As I read Scott Bridge, ... venue was ... proper in Chambers County because Scott Bridge was 'doing business' there by engaging in an activity (i.e., the purchase of bridge-building supplies and equipment) that was absolutely essential to its ability to perform its principal corporate function (i.e., building bridges)." Greenetrack, 25 So. 3d at 456 (Shaw, J., concurring specially) (footnote omitted; emphasis added). I believe that whether such purchases constitute doing business in a county depends on the context and degree of those purchases.

I have no such concerns in this case: the petitioner, Mercedes-Benz U.S. International, Inc. ("Mercedes"), presented a far less compelling case that it does not do business in the subject county than did the movant in Scott Bridge. Specifically, Mercedes provided no evidence of what it

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purchased from businesses in Jefferson County.² It did acknowledge in its supplemental motion for a change of venue that it purchased parts from Kamtek, Inc. ("Kamtek"), and from other suppliers located in Jefferson County. In an affidavit, Mercedes's representative stated only that Kamtek "provides some parts" to Mercedes. From this, it is impossible to determine the nature and extent of Mercedes's activities in Jefferson County. There are no facts indicating the amount Mercedes spends in Jefferson County each year, the regularity with which it purchases parts and materials from businesses located in Jefferson County, or whether Mercedes agents visit Kamtek or other businesses located in Jefferson County for any purpose or on a regular basis. For all we know, Mercedes purchases either an overwhelming number of parts from Kamtek and other suppliers in Jefferson County or minuscule amounts. But we do know that what it purchases is absolutely essential to its business and must be purchased from Kamtek. In its

²Mercedes's contentions also focused on numerous other issues, including addressing the mistaken listing on the Secretary of State's Web site of its "principal address" as being located in Jefferson County, the significance--or insignificance--of the fact that its registered agent was located in Jefferson County, and the fact that other entities located in Jefferson County with variations of the name "Mercedes" were not related to it.

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petition, Mercedes indicates that it cannot purchase the parts manufactured by Kamtek from other suppliers: "Unlike the material obtained by the defendant in Scott Bridge, the material supplied by Kamtek to [Mercedes] is not fungible. [Mercedes] cannot purchase the same materials elsewhere...." Petition, at 18.

If this is so, then Mercedes cannot perform its business function of manufacturing vehicles without purchasing components exclusively from at least one business in Jefferson County. With that being the case, I cannot consider those purchases in Jefferson County to be "incidental"; they instead are essential. Mercedes, by its own admission, cannot do its job without those purchases. Again, perhaps those purchases are minuscule and mundane, but we do not know that because Mercedes has presented no evidence regarding the nature of those purchases.

"This Court's review of the denial of [Mercedes's] motion [for change of venue] 'is limited to those facts that were before the trial court.'" Ex parte Advanced Disposal Servs. South, LLC, [Ms. 1170320, Sept. 28, 2018] ___ So. 3d ___, ___ (Ala. 2018) (opinion on original submission) (Shaw, J.,

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dissenting) (quoting Ex parte Pike Fabrication, Inc., 859 So. 2d 1089, 1091 (Ala. 2002)). With no evidence presented to the trial court demonstrating Mercedes's activities in Jefferson County or the lack thereof, I do not believe that we can conclude that the trial court exceeded its discretion in denying Mercedes's motion for a change of venue. Contrary to any implication in the main opinion, it was Mercedes's burden to prove that venue was improper in Jefferson County. Ex parte McKenzie, 37 So. 3d 128, 131 (Ala. 2009). I am not convinced that Mercedes met its burden and that the trial court thus exceeded its discretion in denying its motion.

With no evidence indicating the quantity of Mercedes's Jefferson County purchases, but in light of the admission that Mercedes cannot manufacture vehicles without those specific purchases, the main opinion can be read to hold only that purchasing materials in one county that are required to fulfill a corporate function, no matter how great and necessary those purchases, can never be "doing business" in the county in which it made the purchases. This is too extreme for me.

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The phrase "does business by agent" in § 6-3-7(a)(3) is inherently broad. By relying on a petition that has provided no evidentiary foundation to establish that Mercedes's purchases from Jefferson County could be considered "incidental," this Court is, in essence, changing the law in an evidentiary vacuum by significantly narrowing the scope of the Code section. Given the wary acknowledgment and use of Scott Bridge over the last 16 years, I am inclined at this point to allow the legislature to clarify its intent by amending § 6-3-7(a)(3) if it deems our application of that Code section to be erroneous. To me, the doctrines of separation of powers and stare decisis demand no less. I respectfully dissent.

Parker, J., concurs.