

An aerial photograph of the Atlanta skyline, showing a dense cluster of skyscrapers and a multi-lane highway in the foreground. The Benjamins Tower is prominent on the right side of the image.

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# Long-Arm Jurisdiction in Georgia

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Georgia specifically adopted and embraced constitutional principles in its long arm jurisdiction statute. O.C.G.A. §9-10-91; *Roberston v. CRI, Inc.*, 267 Ga. App. 757, 759, 601 S.E.2d 163 (2004). Thus, both the statute and the Constitution prohibit the plaintiff from being the only link between the defendant and the forum; it is the defendant's conduct that must form the necessary connection with Georgia to establish a basis for Georgia courts exercising jurisdiction over him or her. *Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014). And, although the statutory and constitutional arguments overlap, they are two separate concepts that govern jurisdiction in this State and both must be considered whenever a defendant is a non-resident.

For a Georgia court to act, it must first find that the defendant meets one of the enumerated statutory criteria. *Innovative Clinical & Consulting Services, LLC v. First Nat'l. Bank of Ames*, 279 Ga. 672, 674, 620 S.E.2d 352 (2005); *Gee v. Reingold*, 259 Ga. App. 894, 578 S.E.2d 575 (2003); *First United Bank of Mississippi v. First Nat'l. Bank of Atlanta*, 255 Ga. 505, 506, 340 S.E.2d 597 (1986).

A court of this state may exercise personal jurisdiction over any nonresident...as to a cause of action arising from any of the acts...enumerated in this Code section...if...he or she:

1. Transacts any business within this state;
2. Commits a tortious act... within this state, except...defamation...;
3. Commits a tortious injury in this state caused by an act...outside this state if the tort-feasor regularly does or solicits business,

or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

4. Owns...real property...within this state;
5. With respect to proceedings for...domestic relations...maintains a matrimonial domicile in this state...; or
6. Has [a domestics relations] order... if the action involves modification...or... enforcement...of such order....

O.C.G.A. §9-10-91.

In passing on whether the defendant's acts come within the statute, the courts must apply the specific limitations and requirements of O.C.G.A. §9-10-91 literally. *Diamond Crystal Brands, Inc. v. Food Movers Int'l, Inc.*, 593 F.3d 1249, 1263 (11th Cir. 2010).

The real controversy in Georgia involves determining what constitutes transacting business or what "regularly" or "persistent" or "substantial" means. *E.g.*, *Anderson v. Deas*, 632 S.E.2d 682, 279 Ga. App. 892 (2006); *Int'l Capital Realty Inv. Co. v. W.*, 234 Ga. App. 725, 728, 507 S.E.2d 545, 548 (1998) (mere telephone or mail contact with out-of-state defendant, or even defendant's visits to state, insufficient to establish activity required by statute); *Beverage Mgmt. Solutions v. Yankee Spirits*, 218 Ga. App. 95 (1), 460 S.E.2d 564 (1995) (telephone, fax, and mail insufficient to establish jurisdiction). And, even the court decides the defendant "regularly", "persistently", or "substantially" is connected to Georgia, the statute confers specific jurisdiction over a defendant. That is,

the defendant can only be sued in Georgia for the specific acts which bring it within the long-arm statute. *Aero Toy Store, LLC v. Grieves*, 279 Ga. App. 515, 631 S.E.2d 739 (2006).

Deciding whether a defendant committed one of the acts identified in the statute is often the functional equivalent of conducting the required constitutional due process analysis. *Object Technologies v. Marlabs, Inc.*, 246 Ga. App. 202, 202-203 (1), 540 S.E.2d 216 (2000) (phone, internet, mail, or fax doesn't meet statute or constitute minimum contacts); *ETS Payphone v. TK Indus.*, 236 Ga. App. 713, 714-715 (1), 513 S.E.2d 257 (1999) (telephone, mail and fax to Georgia does not establish minimum contacts); *Mayacamas Corp. v. Gulfstream Aerospace Corp.*, 190 Ga. App. 892, 380 S.E.2d 303 (1989)(mere telephone or mail contact with an out-of-state defendant, and even defendant's visits to Georgia, insufficient to establish purposeful activity required by Georgia's long arm statute).

In considering that, courts have distinguished two different types of personal jurisdiction: general (also called dispute-blind or all purpose) and specific. *Sol Melia, SA v. Brown*, 301 Ga. App. 760, 688 S.E.2d 675 (2009). General jurisdiction may be exercised when there are enough contacts by the defendant with the forum that it is neither unfair nor unforeseeable that it be required to defend an action unrelated to those contacts in the forum state. *Catholic Stewardship Consultants, Inc. v. Ruotolo Associates, Inc.*, 270 Ga. App. 751, 608 S.E.2d 1 (2004). Specific jurisdiction is when the controversy relates to or arises out of the defendant's specific contacts with the forum. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

General personal jurisdiction requires 'continuous and systematic' contacts with the forum state, such that a defendant may be sued in that state for any reason, regardless of where the relevant conduct occurred. *Taegeer Enterprises, Inc. v. Herdlein Technologies, Inc.*, 213 Ga. App. 740, 445 S.E.2d 848 (1994). Crucially, the threshold level of minimum contacts to confer general jurisdiction is significantly higher than for specific jurisdiction. *Railcar, Ltd. v. Southern Illinois Railcar Co.*, 42 F. Supp. 2d 1369 (N.D.Ga. 1999).

While there is no hard-and-fast rule for determining when a defendant's contacts with the forum state reach the level necessary to justify a finding of general personal jurisdiction, there are certain indicia to which courts look to in making their decision. *Consolidated Development Corp. v. Sherritt, Inc.*, 216 F.3d 1286 (11th Cir. 2000). These indicia include: sending purchase orders to a Georgia manufacturer, arranging for third parties to pick up in Georgia, promising to pay money into Georgia, being licensed, authorized, or registered to do business in Georgia, maintaining an office or place of business in Georgia, advertising and/or soliciting business from Georgia, and intentionally selling products in Georgia. *Askue v. Aurora Corp. of America*, 2012 U.S. Dist. LEXIS 32626, 2012 WL 843939 (N.D. Ga. 2012). *Accord, U.S. v. Billion Inat'l. Trading, Inc.*, 2012 U.S. Dist. LEXIS 48783, 2012 WL 1156356 (N.D. Ga. 2012). Finding that general jurisdiction exists is the equivalent of finding that the defendant is **not** a non-resident because it is a finding that the defendant is at home in the forum state. *BNSF Railway Co. v. Tyrrell*, \_\_\_ U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, \_\_\_ L.Ed.2d \_\_\_, 2017 U.S. LEXIS 3395, 2017 WL 2322834 (2017); *Daimler AG v. Bauman*, \_\_\_ U.S. \_\_\_, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014); *Pratt & Whitney Canada, Inc. v. Sanders*,

218 Ga. App. 1, 460 S.E.2d 94 (1995).

When a defendant is located and operates outside of the State and therefore Georgia courts do not have general jurisdiction over it, Georgia still may exercise its specific jurisdiction authority over that defendant in disputes which arise out of or result from the defendant's activities in the state. *Goodyear Dunlop, supra*. In contrast to exercise of general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of "issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Goodyear Dunlop, supra*, 131 S.Ct. at 2851, citing von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1136 (1966).

To determine whether specific jurisdiction exists, the court must find the defendant has "minimum contacts" with the state. In deciding this, courts consider the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the state; whether the claims arise out of those activities directed at the state; and whether the exercise of personal jurisdiction would be constitutionally reasonable. *Beasley v. Beasley*, 260 Ga. 419, 396 S.E.2d 222 (1990).

If the court determines that the nonresident defendant has such minimum contacts, then it must next determine whether the exercise of jurisdiction offends "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945), quoting, *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940). This fairness consideration is determined by balancing several factors, including the burden on the defendant; the forum state's interest

in adjudicating the dispute; the plaintiff's interest in obtaining 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. *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 113, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987); *World-Wide Volkswagen*, 444 U.S. 286, 292, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

Under this framework, the question asked is whether the complained of conduct is sufficiently connected to the forum to justify the exercise of jurisdiction over that defendant. It means that a court "may subject a defendant to judgment only when the defendant has sufficient contacts with the sovereign such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *J. McIntyre Machinery, LTD v. Nicastro*, 574 U.S. 873, 131 S.Ct. 2780, 2787, 180 L.Ed.2d 765 (2011), quoting, *International Shoe, supra*, 326 U.S. at 316. Those notions are not offended only when the defendant acted in such a way as to "purposefully avail[] itself of the privilege of conducting activities within [Georgia], thus invoking the benefits and protections of its laws...." *J. McIntyre Machinery, Ltd., supra*, quoting, *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

In other words, due process requires that individuals have fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign. *Sol Melia, SA, supra*. Consequently, the question is whether a defendant could reasonably expect to be called into court in a particular forum based on his contacts with the state. *Sol Melia, SA, supra*. The inquiry in Georgia consists of a three-part test:

“(1) The nonresident must purposefully avail himself of the privilege of doing some act or consummating some transaction with or in the forum. . . . (2) The plaintiff must have a legal cause of action against the nonresident, *which arises out of, or results from, the activity or activities of the defendant within the forum*; and (3) If (and only if) the requirements of Rules 1 and 2 are established, a ‘minimum contact’ between the nonresident and the forum exists; the assumption of jurisdiction must be found to be consonant with the due process notions of “fair play” and “substantial justice.”” *State of South Carolina v. Reeves*, 205 Ga. App. 656, 657 (423 S.E.2d 32) (1992). . . . “The rule that controls is our statute, which requires that an out-of-state defendant must do certain acts within the State of Georgia before he can be subjected to personal jurisdiction.”

*Pratt & Whitney Can.*, *supra* at 3-4 (emphasis in original), *quoting Gust v. Flint*, 257 Ga. 129, 130, 356 S.E.2d 513, 514 (1987) and *Shellenberger v. Tanner*, 138 Ga. App. 399, 227 S.E.2d 266 (1976).

In order to invoke the protection of long-arm jurisdictional law, a non-resident defendant would move to dismiss the action under O.C.G.A. §9-11-12(b)(2) or Fed.R.Civ Pro. 12(b)(6). The movant under that statute has the burden of proof in Georgia state courts, but may raise matters not contained in the pleadings to meet that burden. *Meyn Am., LLC v. Tarheel Distributors, Inc.*, 36 F. Supp. 3d 1395, 1401 (M.D. Ga. 2014); *ATCO Sign & Lighting Co., LLC v. Stamm Mfg., Inc.*, 298 Ga. App. 528, 529, 680 S.E.2d 571 (2009), *quoting Yukon Partners v. Lodge Keeper Group*, 258 Ga. App. 1, 2, 572 S.E.2d 647 (2002).

Once the defendant has produced such evidence, the plaintiff cannot “rely on mere allegations, but must also submit supporting affidavits or documentary evidence” showing that the court does have jurisdiction. *ATCO Sign & Lighting Co., LLC*.

In a federal court in Georgia, once a defendant challenges personal jurisdiction, the plaintiff bears the burden of producing facts that support the existence of jurisdiction. *National Egg Co. v. Bank Leumi le-Israel B. M.*, 504 F. Supp. 305 (N.D.Ga. 1980). *Accord, Carefirst of Md., Inc. v. Carefirst Pregnancy Crisis Ctrs., Inc.*, 334 F.3d 390, 396 (4th Cir. 2003). Ultimately, a plaintiff must establish personal jurisdiction by a preponderance of the evidence, but at motions stage, a plaintiff only must establish a prima facie case for the exercise of personal jurisdiction. *New Wellington Fin. Corp. v. Flagship Resort Dev. Corp.*, 416 F.3d 290, 294 (4th Cir. 2005); *Gerber Garment Technology, Inc. v. Lectra Systems, Inc.*, 699 F. Supp. 1576 (N.D.Ga. 1988).



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