

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JARED KRUGER,

Case No. 20-CV-629 (NEB/DTS)

Plaintiff,

v.

ORDER ON MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION

LELY NORTH AMERICA, INC., LELY
INDUSTRIES N.V., LELY
INTERNATIONAL N.V., LELY
HOLDING B.V., and MAASLAND N.V.,

Defendants.

Plaintiff Jared Kruger purchased a Lely Astronaut A4 robotic milking system which he alleges contained latent defects that ruined his milk and caused infections in his cows. (ECF No. 47 (“Am. Compl.”) ¶¶ 183, 193–95, 198–202.) Kruger, on behalf of himself and a putative class, sued several Lely entities: Lely Holding B.V. (“Lely Holding”), Maasland N.V. (“Maasland”), Lely International N.V. (“Lely International”), Lely Industries N.V. (“Lely Industries”), and Lely North America, Inc. (“Lely N.A.”). (Am. Compl.) All Defendants except Lely N.A.¹ now move the Court to dismiss them from the case for lack of personal jurisdiction. (ECF No. 55.) For the following reasons, the Court denies the motion without prejudice and grants limited jurisdictional discovery.

¹ The parties refer to these defendants as the “Dutch Defendants,” and so the Court will as well.

BACKGROUND

Lely Holding is a Dutch company that wholly owns Lely International, Lely Industries, and Maasland. (Am. Compl. ¶ 42.) Maasland, in turn, wholly owns Lely N.A., an Iowa-based Lely subsidiary. (*Id.* ¶¶ 41–42.) Together, Lely² designs and manufactures automated systems for dairy farms, including the Lely Astronaut A4 robotic milking system. (*Id.* ¶ 3; ECF No. 69-7 at 4.)

Kruger is a dairy farmer who lives in Wabasha, Minnesota. (Am. Compl. ¶ 40.) In March 2015, he contracted with Dairyland Equipment Services (“Dairyland”) to purchase an Astronaut A4 milking system.³ (*Id.*) In November 2015, Kruger began using the A4 to milk his cows. (*Id.* ¶ 192.) In spring 2016, Kruger began to notice a heightened somatic cell count⁴ in his cows’ milk, which, by August, was high enough that the milk could no

² The Court uses “Lely” as a collective term to refer to all Lely entities.

³ There is a factual dispute regarding which Lely entity manufactured the A4 system that Kruger purchased. (*Compare* Am. Compl. ¶ 60 *and* ECF No. 68 at 23 *with* ECF No. 57 at 10 *and* ECF No. 58 ¶¶ 16–18.) For purposes of background it is sufficient to note that one of the Lely entities manufactured the A4.

⁴ Somatic cell count is an indicator of the quality of milk. Michael Looper, *Reducing Somatic Cell Count in Dairy Cattle*, <https://www.uaex.edu/publications/pdf/FSA-4002.pdf> (last accessed Dec. 2, 2020). Milk processors prefer milk with low somatic cell counts, as this milk will generally keep better and is better for cheesemaking. *Id.* at 1. High somatic cell counts may be indicative of mastitis, a condition in which the cow’s mammary gland is inflamed. *Id.*

longer be certified as Grade A.⁵ (*Id.* ¶ 193.) Kruger claims this spike in somatic cell count is due to infection of the cows' udders caused by defects in the A4 system. (*Id.*)

Kruger then contacted Dairyland⁶ and told it that the A4 system was not performing as warranted. (*Id.* ¶ 196.) Specifically, the system was not detecting mastitis, properly examining milk quality, or separating contaminated milk. (*Id.*) Dairyland sent personnel to examine the A4. (*Id.* ¶ 197.) Despite their efforts, the A4 continued to malfunction. (*Id.*) Due to the continued defects, in December 2016, Kruger ceased using the A4 and reverted to his old milking system. (*Id.* ¶¶ 198, 202.)

Kruger, along with three other dairy farmers who had purchased A4 systems, sued Lely in a purported class action. (ECF No. 1.) The other dairy farmers later voluntarily dismissed their claims (ECF Nos. 44–46), leaving Kruger as the sole plaintiff. Kruger then filed the Amended Class Action Complaint adding Maasland as a Defendant, dropping state law claims that were specific to the dismissed dairy farmer plaintiffs, and slightly altering the causes of action. (Am. Compl.) The Amended Class Complaint includes claims for breach of contract, breach of warranty, and torts, among others. (Am. Compl. ¶¶ 257–358.) The Dutch Defendants now move the Court to dismiss Kruger's claims

⁵ In Minnesota, milk with a somatic cell count of more than 750,000 cells per milliliter cannot be certified as Grade A. Minn. Stat. § 32D.13, subd. 8(a).

⁶ Dairyland had, by this point, renamed itself Leedstone, Inc. (Am. Compl. ¶ 196.) For simplicity, the Court will continue to refer to the company as "Dairyland."

against them for lack of personal jurisdiction.⁷ (ECF No. 55.) Although the Court concludes that it lacks general jurisdiction and specific jurisdiction over the Dutch Defendants, the Court is persuaded that Kruger can pursue jurisdictional discovery based on an alter ego theory for both Maasland and Lely Holdings. As such, the Court orders limited jurisdictional discovery into this issue.

ANALYSIS

The Dutch Defendants claim that the Court lacks personal jurisdiction over them because they are not “at home” in Minnesota, there is no “substantial and continuing” relationship between Kruger and the Dutch Defendants, and Lely N.A. is not the alter ego of any of the Dutch Defendants. (ECF No. 57 at 6–22.)

The Court will not dismiss Kruger’s claims for lack of personal jurisdiction so long as the pleadings, viewed in the light most favorable to him, are sufficient to support the exercise of jurisdiction over the Dutch Defendants. *Creative Calling Solutions, Inc. v. LF Beauty Ltd.*, 799 F.3d 975, 979 (8th Cir. 2015). The Court is not limited to the pleadings, and it may “inquire . . . into the facts as they exist.” *Stevens v. Redwing*, 146 F.3d 538, 543 (8th Cir. 1998). “A federal court in a diversity action may assume jurisdiction over nonresident defendants only to the extent permitted by the long-arm statute of the forum state and by the Due Process Clause.” *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1073

⁷ A motion to dismiss for failure to state a claim is also pending before the Court. (ECF No. 61.) That motion will be addressed in a separate order.

(8th Cir. 2004) (quotation omitted). Because Minnesota’s long-arm statute permits the Court to exercise personal jurisdiction to the full extent of due process, the two prongs of the analysis collapse into a single inquiry: whether exercising personal jurisdiction over the Dutch Defendants offends due process. *Pederson v. Frost*, 951 F.3d 977, 980 (8th Cir. 2020). To comport with due process, a non-resident defendant must have “minimum contacts” with the forum state such that exercising jurisdiction over him or her does not offend traditional notions of fair play and substantial justice. *Wells Dairy, Inc. v. Food Movers Int’l, Inc.*, 607 F.3d 515, 518 (8th Cir. 2010).

There are two types of personal jurisdiction: general and specific. *Bristol-Myers Squibb Co. v. Sup. Ct. of Cal., San Francisco Cnty.*, 137 S. Ct. 1773, 1779–80 (2017). For a corporation, general jurisdiction exists where the corporation is at home—usually where it is incorporated and where it has its principal place of business. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). Kruger does not argue that the Court has general jurisdiction over the Dutch Defendants, nor could he, since the Dutch Defendants cannot be “fairly regarded as at home” in Minnesota. (Am. Compl. ¶ 42 (alleging that Dutch Defendants are all incorporated and headquartered in The Netherlands)); *Goodyear*, 564 U.S. at 924.

If the Court has jurisdiction over defendants, it can only be based on a finding of specific jurisdiction or an imputation of Lely N.A.’s contacts with the state to the Dutch Defendants—the alter ego theory. Specific jurisdiction may only be exercised where the

suit arises out of or relates to the defendant's contacts with the forum. *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780; *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 912 (8th Cir. 2012) (“Specific personal jurisdiction, unlike general jurisdiction, requires a relationship between the forum, the cause of action, and the defendant.”).

A. Alter Ego Theory

Kruger argues that the Court has personal jurisdiction over the Dutch Defendants because Lely N.A. is the alter ego of the Dutch Defendants. (ECF No. 68 at 7–19.) The Dutch Defendants maintain that Lely N.A. is not the alter ego of any of the Dutch Defendants. (ECF No. 57 at 14–22; ECF No. 73 at 3–10.) Based on the current record, the Court cannot conclude whether Lely N.A. is the alter ego of any of the Dutch Defendants, so the Court orders limited jurisdictional discovery.

A court may exercise personal jurisdiction over a parent corporation when it “so controlled and dominated the affairs of the subsidiary that the latter's corporate existence was disregarded so as to cause the residential corporation to act as the nonresidential corporate defendant's alter ego.” *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 648–49 (8th Cir. 2003) (citations omitted). Mere ownership of a subsidiary is insufficient to justify personal jurisdiction over a non-resident parent. *Id.* at 649. Courts look to state law to determine whether a subsidiary is the alter ego of a parent. *Id.* In Minnesota, courts consider several factors, such as the extent to which the entities’ management, operations, and finances overlap; the existence of common officers and directors; the issuance of

consolidated financial statements and joint tax returns; the sharing of offices; the subsidiary's general lack of corporate formalities; the parent's funding of the subsidiary; and the parent's control of the subsidiary's operations. *JL Schwieters Constr., Inc. v. Goldridge Constr., Inc.*, 788 N.W.2d 529, 536 (Minn. Ct. App. 2010) (citing *Scott v. Mego Int'l, Inc.*, 519 F. Supp. 1118, 1126 (D. Minn. 1981)).

As a threshold matter, although Kruger treats the Dutch Defendants as a monolith in pressing his alter ego theory, it is necessary to distinguish amongst the Dutch Defendants for purposes of assessing alter ego status. Specifically, since neither Lely Industries nor Lely International owns Lely N.A., it is unlikely that either "so controlled and dominated the affairs" of Lely N.A. to find that Lely N.A. is the alter ego of either of these companies. (Am. Compl. ¶ 42); *Epps*, 327 F.3d at 648–49. On the other hand, Maasland wholly owns Lely N.A. and Lely Holding wholly owns Maasland, meaning that it is possible that Lely N.A. could be the alter ego of these two entities. (Am. Compl. ¶ 42.)

On the current record, some factors weigh somewhat in favor of finding that Lely N.A. is an alter ego. For instance, there appears to be substantial overlap in Board of Director membership. Two of Lely N.A.'s board members also serve on the boards of both Maasland and Lely Holding. (ECF No. 32 ¶ 7; ECF No. 58 ¶ 8; ECF No. 31 ¶ 6.) The third and final member of Lely N.A.'s board also serves on Lely Holding's board. (ECF No. 32 ¶ 7; ECF No. 31 ¶ 6.)

Additionally, some of its public statements indicate that the members of the family of companies, however formally organized, do not view themselves separate from each other. There is at least a question about whether one executive team controls all of the entities. The website “Lely.com” does not differentiate between the companies or the executive team.⁸ It names one CEO, who claims that he and the rest of the Executive Board “determine the course of [Lely].” (ECF No. 69-1 at 2.) He also says that Lely’s products have “changed the sector *worldwide*.” (*Id.* (emphasis added).) Similarly, it names one Chief Technology Officer for Lely, who claims that Lely’s products make “farmers['] lives around the world enjoyable.” (*Id.* at 4.) And it names one Chief Services Officer, who explains that she is in charge of “support[ing] our dairy farmers worldwide with a wide variety of services for managing their business and maintaining their machines.” (*Id.* at 6.) Although these statements certainly do not conclusively establish that Lely has substantial control over Lely N.A., they raise the possibility that Lely may have such control, further buttressing the need for jurisdictional discovery.

Because the record currently before the Court raises questions about, but does not definitively answer, whether Lely N.A. is the alter ego of Maasland or Lely Holding,

⁸ It is difficult to discern which Lely entity, specifically, the website represents. The website includes only scant references to specific Lely entities; instead, when referring to the company, the website only uses the umbrella term “Lely.” There are references to individual Lely entities scattered across the site, but these mentions are not numerous or consistent enough to say whether the website represents a specific Lely entity. As best the Court can tell, the website represents all Lely entities. This bolsters Kruger’s argument that there are no meaningful distinctions between Lely entities.

limited jurisdictional discovery is appropriate. *See Pudlowski v. St. Louis Rams, LLC*, 829 F.3d 963, 964 (8th Cir. 2016) (noting that jurisdictional discovery is available when there are jurisdictional issue); *Steinbach v. Cutler*, 518 F.3d 580, 589 (8th Cir. 2008) (permitting jurisdictional discovery when a party offered more than speculation or conclusory allegations that the court had personal jurisdiction over the other party). Jurisdictional discovery is especially appropriate where, as here, a case involves a privately-held company, because Kruger has had limited access to information that would support or refute the alter ego theory. *Starbuzz Tobacco, Inc. v. Lorillard, Inc.*, No. 13-411-CJC(ANx), 2013 WL 12131261, at *3 (C.D. Cal. July 10, 2013). The Court may still order jurisdictional discovery even though Kruger did not request the discovery prior to the motion. *See, e.g., Witt v. TFS Surgical (US), Inc.*, No. 16-cv-1042 (JRT/BRT), 2017 WL 3267734, at *6–*7 (D. Minn. July 12, 2017) (allowing five interrogatories even though Plaintiff did not seek discovery before the motion to “come armed with it in response to Defendant’s motion”). The parties may engage in jurisdictional discovery as provided below, and Defendants may renew their motion to dismiss for lack of personal jurisdiction at an appropriate time.

B. Lely Industries and the Customer Agreement

Apart from the alter ego issue, Kruger claims that the Court has personal jurisdiction over Lely Industries based on Kruger’s agreement with Dairyland (“the Customer Agreement”). Specifically, Kruger contends that Lely Industries is a party to the Customer Agreement, agreed to provide support to Kruger, and warrantied the

Astronaut A4. (ECF No. 31-4; ECF No. 68 at 19.) The Dutch Defendants argue that Lely Industries was not a party to the Customer Agreement, did not manufacture the A4 Kruger purchased, and is referenced in the Customer Agreement due to a typographical error. (ECF No. 57 at 8–12.)

Lely Industries is mentioned five times in the Customer Agreement. (ECF No. 31-4 at 8, 9, 28, 34, 40.)⁹ Kruger claims some of these references impose “on-going duties” on Lely Industries. (ECF No. 68 at 21.) For example, under the contract, Lely Industries is to provide “24 hour ongoing support” to Kruger. (ECF No. 31-4 at 8.) Additionally, the Customer Agreement contemplates Lely Industries providing technical support to Dairyland during the initial setup of Kruger’s A4 system. (*Id.* at 9.) Kruger also claims that Lely Industries issued the warranty that Kruger received when he purchased at A4. (ECF No. 68 at 23–24; ECF No. 31-4 at 28–29.)

Even with these references, the Customer Agreement does not confer jurisdiction over Lely Industries. Kruger purchased the A4 system from Dairyland, and only these two parties signed the Customer Agreement. (ECF No. 31-4 at 6, 15, 20, 41.) The record supports the Dutch Defendants’ assertion here—that the reference to Lely Industries as the manufacturer of the A4 is a vestige of the period when Lely Industries manufactured the product. (ECF No. 58 ¶¶ 16–18.) The references in the contract to Lely Industries do

⁹ Citations to the Customer Agreement at ECF No. 31-4 refer to the ECF page numbers.

not indicate any connection between Lely Industries and Minnesota. If discovery proves otherwise, Kruger would be allowed to replead.

CONCLUSION

Based on the foregoing and on all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Defendants' motion to dismiss for lack of personal jurisdiction is DENIED WITHOUT PREJUDICE.
2. Kruger may engage in limited jurisdictional discovery in accordance with the Scheduling Order in this case. The timing and specifications of the discovery shall be addressed by United States Magistrate Judge David T. Schultz and should not exceed ten interrogatories and one deposition.

Dated: December 14, 2020

BY THE COURT:

s/Nancy E. Brasel
Nancy E. Brasel
United States District Judge