

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4445

FISHER CONTROLS INTERNATIONAL,
INC.,

Plaintiff-Appellant
Cross-Appellee,

versus

BOLT & NUT SUPPLY, LTD.,

Defendant-Appellee
Cross-Appellant,

KENEBRIDGE CORPORATION,

Defendant-Appellee.

Appeals from the United States District Court
for the Eastern District of Texas
(91-CV-81)

(June 20, 1994)

Before GOLDBERG, KING and WIENER, Circuit Judges.

PER CURIAM:*

Based on our careful attention to arguments advanced by counsel, presented both orally and in their respective briefs to

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

this court, and on our review of the record in this case, we are satisfied that the summary judgment granted by the district court in favor of Defendants-Appellees Bolt & Nut Supply, Ltd. and Kenebridge Corporation, dismissing the complaints of Plaintiff-Appellant Fisher Controls International, Inc., must be affirmed. Although we agree with the results reached by the district court, however, our de novo review of the case leads us to such results for different reasons.

First, while not necessarily disagreeing with the district court's determination that the substance of Fisher Controls' case against Bolt & Nut lacked merit, we find that Bolt & Nut should have been dismissed as a defendant for lack of personal jurisdiction. Under the facts of this case—well known to the parties and well documented in the pleadings and the briefs to this court—Bolt & Nut is simply not subject to the personal jurisdiction of the district court, whether by virtue of the Texas Long Arm Statute or otherwise.

As for Kenebridge, although we sympathize with the district court's pronouncement that—absent record references by counsel for Fisher Controls—the court lacked the time and resources to scour the myriad depositions in search of support for Fisher Controls' contention that genuine issues of material fact exist, we do not agree that Fisher Controls failed totally to comply with Fed. R. Civ. P. 56(e), as explicated by the Supreme Court in its celebrated trilogy of the summary judgment cases. Even when considered in light of the Court's subtle alteration of Rule 56(e) by

pronouncements in Celotex Corp. v. Catrett,¹ in which the Court stated that the non-movant must "go beyond the pleadings and by her own affidavits, or by the `depositions, answers to interrogatories, and admissions on file,' designate `specific facts showing that there is a genuine issue for trial,'"² we note that "designate" is not synonymous with pin-point page and line references to the summary judgment evidence.

True, in Nissho-Iwai Am. Corp. v. Kline,³ we announced our disagreement with the proposition that "the entire record in the case must be searched and found bereft of a genuine issue of material fact before summary judgment may be properly entered."⁴ Nevertheless, we are not willing to go so far as to say that failure of a non-movant to make such exact references to the precise locations in the depositions and affidavits where the designated evidence may be found is tantamount to a license for the trial court to abrogate its responsibility to make a reasonable examination of the summary judgment record.⁵

But our de novo review nonetheless satisfies us that Fisher

¹ 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

² 477 U.S. at 324.

³ 845 F.2d 1300 (5th Cir. 1988).

⁴ Nissho-Iwai Am. Corp., 845 F.2d at 1307.

⁵ Our recent opinion in Skotak v. Tenneco Resins, Inc., 953 F.2d 909, cert. denied, ___ U.S. ___, 113 S.Ct. 98, 121 L.Ed.2d 59 (1992), must not be read to mandate a contrary result, particularly in light of the way that opinion was rendered—Judge Barksdale writing the "majority" opinion, Judge King concurring in the result only, and Judge Wisdom dissenting.

Controls simply cannot here prevail in its attack on the district court's grant of summary judgment, given the contents of the record and the nature and quality of the summary judgment evidence in this case.

For the foregoing reasons, we affirm the judgment of the district court insofar as it relates to Kenebridge; but, insofar as said judgment relates to Bolt & Nut, we modify it so as to constitute a dismissal, without prejudice, of Fisher Controls' action against Bolt & Nut for lack of personal jurisdiction; and as thus modified that aspect of the judgment is affirmed as well. AFFIRMED in part; and MODIFIED in part and, as modified, AFFIRMED.