



ATTORNEYS FOR APPELLANT

James P. Buchholz
Tourkow, Crell, Rosenblatt & Johnston
Fort Wayne, Indiana

Margaret E. Krawiec
Michael A. McIntosh
Skadden, Arps, Slate, Meagher & Flom,
LLP
Washington, DC

ATTORNEYS FOR NON-PARTY
APPELLEE

L. JEAN CAMP:

Ann O'Connor McCready
Vivek R. Hadley
Donald E. Morgan
Taft Stettinius & Hollister LLP
Indianapolis, Indiana

Mark A. Lemley
Aditya V. Kamdar
Durie Tangri LLP
San Francisco, California

ATTORNEYS FOR FRIEND OF
THE COURT

ELECTRONIC FRONTIER
FOUNDATION:

D. Michael Allen
Colleen M. Newbill
Joseph A. Tomain
Mallor Grodner LLP
Bloomington, Indiana

IN THE
COURT OF APPEALS OF INDIANA

AO Alfa-Bank,
Appellant-Plaintiff,

v.

John Doe, et al.
Appellees-Defendants,
and
L. Jean Camp,
Non-Party Appellee.

May 19, 2021

Court of Appeals Case No.
20A-MI-2352

Appeal from the Monroe Circuit
Court

The Honorable Frank M. Nardi,
Special Judge

Trial Court Cause No.
53C04-2009-MI-1613

Tavitas, Judge.

Case Summary

[1] AO Alfa-Bank (“Bank”) appeals the trial court’s grant of a motion to quash a subpoena duces tecum issued to a non-party, L. Jean Camp (“Camp”), by a Florida trial court. Without following the procedures outlined in the Uniform Interstate Depositions and Discovery Act, *see* Indiana Code Chapter 34-44.5-1 (“the Act”), the Bank issued a Florida non-party subpoena duces tecum to Camp related to litigation filed in a Florida trial court (“Florida Subpoena”). Camp filed a motion to quash the Florida Subpoena in the Monroe Circuit Court. The Monroe Circuit Court considered the merits of the issue and granted Camp’s motion. The Bank appeals, arguing that the trial court erred by granting the motion to quash. We conclude, however, that the trial court lacked subject matter jurisdiction to address the motion to quash. Accordingly, we vacate the trial court’s order and dismiss this appeal.

Issues

- [2] The Bank raises two issues¹, but we sua sponte address one dispositive issue, which we restate as whether the Indiana trial court had subject matter jurisdiction to consider the motion to quash the Florida Subpoena.

Facts

- [3] The Bank is “one of Russia’s largest privately owned commercial banks.” Appellant’s App. Vol. II p. 33. Camp is a security researcher and professor at Indiana University, Bloomington Campus, where she is the director of the Center for Security and Privacy in Informatics, Computing, and Engineering.
- [4] In response to June 2016 reports that Russian hackers infiltrated the Democratic National Committee’s servers, a group of anonymous researchers (“Anonymous Researchers”) “worked together to uncover evidence of other network intrusions related to the upcoming U.S. Presidential election.” *Id.* at 48. The Anonymous Researchers discovered that Domain Name System (“DNS”)² records showed repeated interactions between the Trump Organization and the Bank. Camp spoke with media organizations about the DNS data and posted the DNS logs to her website.

¹ The Bank argues that: (1) the trial court erred by granting the motion to quash because Camp did not have standing to assert the rights of absent third parties; and (2) the trial court erred by granting the motion to quash because the subpoena was overly broad, unreasonable, and unduly burdensome.

² According to Camp, “DNS records show the history of computer communications between servers on the Internet.” Appellee’s Br. p. 11 n.1.

[5] In June 2020, the Bank filed a complaint in a Florida trial court against John Doe Defendants. The Bank alleges that the John Doe Defendants conspired to commit cyberattacks against the Bank in 2016 and 2017 in order to create DNS records that would “create the illusion of secret communications” between the Bank and the Trump Organization. *Id.* at 35. The Bank does not allege that Camp or the Anonymous Researchers participated in these alleged cyberattacks. The complaint theorized that the John Doe Defendants “pointed” the Anonymous Researchers “in the direction of the planted [DNS] evidence.” *Id.* at 50.

[6] In June 2020, the Bank unsuccessfully attempted service of the Florida Subpoena, which was issued by a Florida trial court under a Florida cause number, to Camp in Indiana through the Monroe County Sheriff’s Department.³ The Bank then emailed the Florida Subpoena to Camp’s attorney and asked if the attorney “would be willing to accept service of the subpoena.” *Id.* at 187. Camp’s attorney agreed to accept service on Camp’s behalf “in exchange for an extension of time to respond to the subpoena.” *Id.* at 227. The Bank then agreed to an extension of time to respond to the Florida Subpoena until September 7, 2020, which was a holiday. There is no indication in the record provided to us that the Bank submitted the Florida Subpoena to the

³ The return of service noted that Camp was “[n]ot expected to return to I.U. Bloomington until Aug/Sept 2020.” Appellant’s App. Vol. II p. 66.

Monroe County Clerk or that the Monroe County Clerk issued an Indiana subpoena for service.

[7] On September 8, 2020, in the Monroe Circuit Court, Camp filed a motion to quash the Florida Subpoena.⁴ The Bank filed an objection to Camp’s motion to quash, and after a hearing, the trial court entered an order on the merits granting Camp’s motion to quash the Florida Subpoena. Neither the parties nor the trial court substantively addressed the Uniform Interstate Depositions and Discovery Act, *see* Indiana Code Chapter 34-44.5-1, or raised the Bank’s failure to comply with the Act. Regarding the Act, the trial court’s order merely provides:

1. On or about June 17, 2020, the plaintiff issued a Subpoena Duces Tecum Without Deposition to L. Jean Camp, School of Informatics & Computing, Office #300, 901 E. 10th St., Indiana University, Bloomington, IN 47405 in cause number 50-2020-CA-006304-XXX-MB in the Circuit Court of the Fifteenth Judicial Circuit In and For Palm Beach, Florida, Circuit Civil Division, which cause is entitled AO Alfa-Bank, Plaintiff, vs. John Doe, et al, Defendants. L. Jean Camp is not a party to the described cause of action.

2. Under the Uniform Interstate Depositions And Discovery Act, I.C. 34-44.5-1-1 et seq. compliance with this subpoena shall be determined by Indiana law.

⁴ Amicus curiae Electronic Frontier Foundation, Inc., (“EFF”) filed a brief in support of Camp with the trial court and in this appeal. EFF describes itself as “a member-supported, nonprofit organization that works to protect civil liberties and human rights in the digital world.” Appellant’s App. Vol. II p. 81.

Appellant's App. Vol. II p. 9. The Bank now appeals.⁵

Analysis

- [8] The Bank appeals the trial court's grant of Camp's motion to quash the Florida Subpoena. We sua sponte, however, consider whether the trial court had subject matter jurisdiction to address the Florida Subpoena and the motion to quash. Our Supreme Court has clarified that subject matter jurisdiction involves a "determination of whether a court has jurisdiction over the general class of actions to which a particular case belongs." *K.S. v. State*, 849 N.E.2d 538, 542 (Ind. 2006). "[I]n determining whether a court has subject-matter jurisdiction, the only relevant inquiry is whether the petitioner's claim 'falls within the general scope of the authority conferred upon such court by the constitution or by statute.'" *State v. Reinhart*, 112 N.E.3d 705, 711-12 (Ind. 2018) (quoting *State ex rel. Young v. Noble Cir. Ct.*, 263 Ind. 353, 356, 332 N.E.2d 99, 101 (1975)); *Blanck v. Ind. Dep't of Corr.*, 829 N.E.2d 505, 508 (Ind. 2005) ("Resolution of the subject matter jurisdiction issue involves determining whether the claim advanced falls within the general scope of authority conferred upon the court by constitution or statute.").
- [9] "If a court does not have subject matter jurisdiction, any judgment it renders is void." *Vic's Antiques & Uniques, Inc. v. J. Elra Holdingz, LLC*, 143 N.E.3d 300,

⁵ There was disagreement regarding whether the trial court's November 20, 2020 order was an interlocutory order or a final judgment. On February 12, 2021, this Court held that the trial court's order is a final judgment under Indiana Appellate Rule 2(H).

308-09 (Ind. Ct. App. 2020) (quoting *Hoang v. Jamestown Homes, Inc.*, 768 N.E.2d 1029, 1032 (Ind. Ct. App. 2002), *trans. denied*), *trans. denied*. “Because void judgments may be attacked directly or collaterally at any time, the issue of subject matter jurisdiction cannot be waived and may be raised at any point by a party or by the court sua sponte.” *Id.*; see also *Whiting v. State*, 969 N.E.2d 24, 32 n.8 (Ind. 2012) (holding that the lack of subject-matter jurisdiction “can be raised at any point during the proceeding and by the court sua sponte”). “Because the authority granted by a statute is a question of law, we review the question of subject matter jurisdiction de novo.” *Id.*

[10] Foreign subpoenas⁶ are governed by the Uniform Interstate Depositions and Discovery Act, see Indiana Code Chapter 34-44.5-1. Indiana Code Section 34-44.5-1-6 provides:

(a) To request issuance of a subpoena under this chapter that is based on a foreign subpoena, a party must submit the foreign subpoena to the clerk of the court in the county in which discovery is sought to be conducted in Indiana. A request for the issuance of a

⁶ The Act defines “foreign subpoena” as “a subpoena issued under authority of a court of record of a foreign jurisdiction.” Ind. Code § 34-44.5-1-2. A “foreign jurisdiction” is “a state other than Indiana.” I.C. § 34-44.5-1-1. Further, a “state” is defined as:

- (1) A state of the United States.
- (2) The District of Columbia.
- (3) Puerto Rico.
- (4) The United States Virgin Islands.
- (5) A federally recognized Indian tribe.
- (6) Any territory or insular possession subject to the jurisdiction of the United States.

I.C. § 34-44.5-1-4.

subpoena under this chapter does not constitute an appearance in a court of this state.

(b) *When a party submits a foreign subpoena to the clerk of a court in Indiana, the clerk, in accordance with the court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.*

(c) A subpoena issued under subsection (b) must:

(1) incorporate the terms used in the foreign subpoena; and

(2) contain or be accompanied by the names, addresses, and telephone numbers of the following:

(A) All counsel of record in the proceeding to which the subpoena relates.

(B) Any party not represented by counsel.

(emphasis added). Further, Indiana Code Section 34-44.5-1-7 provides: “A subpoena issued by a clerk of the court under section 6 of this chapter must be served in compliance with all applicable laws concerning service of a subpoena in Indiana.”

[11] The Comments to the Uniform Interstate Depositions and Discovery Act (“Uniform Act”) provide:

Presenting a subpoena to the clerk of court in the discovery state, so that a subpoena is then issued in the name of the discovery state, is *the necessary act that invokes the jurisdiction of the discovery*

state, which in turn makes the newly issued subpoena both enforceable and challengeable in the discovery state.

* * * * *

The act of the clerk of court is *ministerial, yet is sufficient to invoke the jurisdiction* of the discovery state over the deponent.

Comment to UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT § 3,
*Issuance of Subpoena.*⁷

[12] Our Supreme Court has held “[t]he comments to a uniform act are indicative of the Legislature’s intent in enacting a statute based on the uniform act.” *Basileh v. Alghusain*, 912 N.E.2d 814, 821 (Ind. 2009). Given that the Uniform Act is substantially similar to Indiana Code Chapter 34-44.5-1, “we consider the

⁷ The Comments to the Uniform Act also describe the standard procedure as follows:

The committee envisions the standard procedure under this section will become as follows, using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives in Florida (the discovery state): A lawyer of record for a party in the action pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in pending actions). That lawyer will then check with the clerk’s office, in the Florida county or district in which the witness to be deposed lives, to obtain a copy of its subpoena form (the clerk’s office will usually have a Web page explaining its forms and procedures). The lawyer will then prepare a Florida subpoena so that it has the same terms as the Kansas subpoena. The lawyer will then hire a process server (or local counsel) in Florida, who will take the completed and executed Kansas subpoena and the completed but not yet executed Florida subpoena to the clerk’s office in Florida. In addition, the lawyer might prepare a short transmittal letter to accompany the Kansas subpoena, advising the clerk that the Florida subpoena is being sought pursuant to Florida statute ___ (citing the appropriate statute or rule and quoting Sec. 3). The clerk of court, upon being given the Kansas subpoena, will then issue the identical Florida subpoena (“issue” includes signing, stamping, and assigning a case or docket number). The process server (or other agent of the party) will pay any necessary filing fees, and then serve the Florida subpoena on the deponent in accordance with Florida law (which includes any applicable local rules).

Comment to UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT § 3, *Issuance of Subpoena.*

language of the Comment to be a strong indicator of the legislative intent underlying the statute.” *State ex rel. Hill v. Lawson*, 128 N.E.3d 471, 475 (Ind. Ct. App. 2019).

[13] We are faced with the initial issue of whether the claim advanced—the motion to quash the foreign subpoena—falls within the general scope of authority conferred upon the court by the constitution or a statute. *See Blanck*, 829 N.E.2d at 508. There is no indication that the claim falls within the general scope of authority conferred upon the Monroe Circuit Court by the constitution, and likewise, there is no statutory authority giving the Monroe Circuit Court authority to consider a motion to quash a foreign subpoena.

[14] The record provided to us is devoid of any indication that the Bank submitted the Florida Subpoena to the Monroe County Clerk for the issuance of an Indiana subpoena, which is the necessary act to invoke the jurisdiction of the Indiana courts. Indiana courts are not granted general, unqualified jurisdiction and authority to enforce or quash foreign subpoenas. Rather, Indiana courts are granted the authority to address foreign subpoenas only where the foreign subpoena has been domesticated pursuant to Indiana Code Chapter 34-44.5-1. An Indiana trial court has no authority to enforce a subpoena issued by The Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, unless properly domesticated as provided under the Act.

[15] The lack of domestication is a jurisdictional threshold, not a procedural error that can be avoided by waiver or consent of the parties. The parties obviously

waived and/or consented to the trial court's consideration of the motion to quash without following the requisite procedure. While we recognize that parties may consciously waive formalities for convenience purposes, under this Act, the formalities confer subject matter jurisdiction on Indiana courts, and subject matter jurisdiction cannot be waived.

- [16] Because the Bank failed to domesticate the Florida Subpoena, the trial court lacked subject matter jurisdiction to consider Camp's motion to quash. Accordingly, the trial court's order is void, and we dismiss this appeal for lack of subject matter jurisdiction.

Conclusion

- [17] The trial court lacked subject matter jurisdiction to consider the motion to quash the Florida Subpoena. Accordingly, we vacate the trial court's void order and dismiss this appeal.
- [18] Vacated and dismissed.

Najam, J., and Pyle, J., concur.