



Nwp Services Corporation v. Aegis Mail Services

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OPINION

Reversed and remanded with directions.

INTRODUCTION

NWP Services Corporation (NWP) sued Aegis Mail Services, Inc. (Aegis), for breach of contract and fraud, among other causes of action. Aegis filed a motion to dismiss for lack of personal jurisdiction on the ground it did not have sufficient minimum contacts with California. The trial court denied the motion, and Aegis appealed.

We reverse. Aegis did not have sufficient minimum contacts with California to justify the exercise of personal jurisdiction over it by the California courts. Aegis did not purposefully avail itself of the benefits of doing business in California with respect to the matter in controversy, the dispute between NWP and Aegis is not related to nor does it arise out of Aegis's contacts with California, and the exercise of jurisdiction over Aegis in this case would not comport with fair play and substantial justice.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In March 2009, Aegis entered into a contract with Conservation Billing Services, Inc., doing business as Vertex Business Services (Vertex), under the terms of which Aegis would print and mail utility billing invoices for Vertex. In May 2010, NWP acquired Vertex's assets, and became a party to the contract between Vertex and Aegis. In July 2010, NWP sued Aegis for breach of contract, interference with business relations, fraud, negligent misrepresentation, unfair and fraudulent



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business practices, conversion, and negligence.

Aegis filed a motion to dismiss for lack of personal jurisdiction. The trial court denied the motion. "Although no general personal jurisdiction is shown, there is specific personal jurisdiction for the California Court to assert under the ruling of *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062. [¶] . . . [¶] . . . Plaintiff has met [its] burden of showing by a preponderance of the evidence that the necessary jurisdictional criteria have been met. Per the Vaughn Chase declaration specifically Paragraph[s] 2, 3, 4, 6, 7, 8, and 9, establishes the participation and continued performance under a contract in the billing cycle of NWP and it is not unreasonable for the court to exercise its jurisdiction." (Italics added.)

Aegis failed to respond to the complaint, and default was entered against it. The court entered default judgment against Aegis, and Aegis filed a timely notice of appeal.

DISCUSSION

I.

LEGAL STANDARDS

California courts may exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) Code of Civil Procedure section 410.10 "manifests an intent to exercise the broadest possible jurisdiction, limited only by constitutional considerations." (*Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445.)

The federal Constitution permits a state to exercise jurisdiction over a nonresident defendant if the defendant has sufficient "minimum contacts" with the forum such that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' [Citations.]" (*Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) "The 'substantial connection,' [citations], between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State. [Citations.]" (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 112.)

Personal jurisdiction may be either general or specific. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445 (Vons).) A nonresident defendant is subject to the forum's general jurisdiction where the defendant's contacts are "'substantial . . . continuous and systematic.'" (*Ibid.*, quoting *Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445, 446.) If the nonresident defendant does not have substantial and systematic contacts with the forum state, the defendant may be subject to specific jurisdiction if (1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy, (2) the controversy is related to or arises out of the defendant's contacts with the forum, and (3) the exercise of jurisdiction would comport with fair play and



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substantial justice. (Vons, supra, 14 Cal.4th at pp. 446, 447; see also Burger King Corp. v. Rudzewicz (1985) 471 U.S. 462, 472, 476.) In determining whether specific jurisdiction exists, courts consider the relationship among the defendant, the forum, and the litigation. (Pavlovich v. Superior Court (2002) 29 Cal.4th 262, 269.)

NWP does not contend Aegis is subject to general jurisdiction in California: The issue is whether Aegis is subject to specific jurisdiction.

"When a nonresident defendant challenges personal jurisdiction, the plaintiff bears the burden of proof by a preponderance of the evidence to demonstrate the defendant has sufficient minimum contacts with the forum state to justify jurisdiction." (DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 1080, 1090; see also Vons, supra, 14 Cal.4th at p. 449.) The plaintiff must "present facts demonstrating that the conduct of defendants related to the pleaded causes is such as to constitute constitutionally cognizable "minimum contacts." [Citation.]" (DVI, Inc. v. Superior Court, supra, 104 Cal.App.4th at pp. 1090-1091.)

When the evidence of jurisdictional facts is not in dispute, the issue whether the defendant is subject to personal jurisdiction is a legal question we review de novo. (Vons, supra, 14 Cal.4th at p. 449.) "The ultimate question whether jurisdiction is fair and reasonable under all of the circumstances, based on the facts which are undisputed and those resolved by the court in favor of the prevailing party, is a legal determination warranting our independent review." (Integral Development Corp. v. Weissenbach (2002) 99 Cal.App.4th 576, 585.)

II.

Facts Relevant to Determination of Jurisdiction

The evidence before the trial court relevant to the motion to dismiss establishes the following:

Aegis is a Florida corporation.

On March 20, 2009, Aegis entered into a contract with Vertex to print and mail utility billing invoices on behalf of Vertex. This contract was entered into in Florida, and was to be wholly performed in Florida.

NWP acquired the rights and obligations of Vertex under the Vertex/Aegis contract when it acquired substantially all of Vertex's assets on May 24, 2010.

NWP's headquarters is located in Irvine, California.

Aegis provided print and mail services to NWP under the contract until July 2010.



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Between March 2009 and July 2010, Aegis printed and mailed over 9,500 utility billing invoices to California residents on behalf of Vertex or NWP.

Between March 2009 and July 2010, Aegis printed and mailed utility billing invoices for Vertex or NWP to six multifamily residential properties in California.

On July 12, 2010, Aegis's vice-president, Craig Goldberg, sent a letter to NWP, notifying NWP's director of accounting and operations that Aegis would print and mail NWP's utility billing invoices through July 16, 2010. The letter itself is not included in the appellate record, and we do not know from or to where the letter was sent.

On July 15, 2010, Goldberg and John Coleman, Aegis's president, spoke by telephone with NWP's president and corporate counsel, during which conversation Coleman promised that Aegis would continue to print and mail invoices for NWP through July 23, 2010. That telephone call was initiated by NWP from its headquarters in California.

III.

ANALYSIS

NWP has failed to show any of the three criteria identified in *Vons*, supra, 14 Cal.4th 434, for determining whether the California court may exercise specific jurisdiction over an out-of-state defendant. The key criterion--which is missing here--is the nexus between Aegis, the State of California, and the litigation. (*Pavlovich v. Superior Court*, supra, 29 Cal.4th at p. 292.) "[F]or the purpose of establishing jurisdiction the intensity of forum contacts and the connection of the claim to those contacts are inversely related. [Citation.]" (*Vons*, supra, 14 Cal.4th at p. 452.) Even if all of Aegis's activity occurred in Florida, we must nevertheless consider the effects in California arising from contacts aimed at this state.

First, the controversy is not related to Aegis's contacts with California. NWP did not allege any of the 9,500 utility billing invoices sent to California residents was incorrect. NWP's complaint alleged Aegis failed to mail utility billing invoices on July 16, 2010, and refused to allow NWP to retrieve any of its print stock, which disrupted NWP's ability to perform its contractual obligations to the property owners for whom it works. The complaint did not allege any of the unmailed invoices would have been directed to California, or that NWP was unable to provide utility billing invoices to anyone in California due to Aegis's refusal to release NWP's print stock. The complaint also alleged Aegis made misrepresentations to NWP in the July 12 letter and the July 15 telephone call, discussed ante. The appellate record does not establish the July 12 letter was directed to California, and NWP acknowledged it initiated the July 15 telephone call from California; Aegis did not place a telephone call to California.



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Second, Aegis did not purposefully avail itself of forum benefits. By printing utility bills in Florida and mailing them to California, Aegis did not obtain any benefit from California. There is no evidence that the recipients of the billing statements sent their payments from California to Aegis directly, nor is there any evidence that Aegis's compensation from Vertex or NWP was tied to the payments by California residents. Although the utility bills were mailed to California, there is no evidence Aegis received any forum benefits as a result of those mailings.

The contract between Aegis and Vertex, to which NWP succeeded, cannot support the exercise of specific jurisdiction over Aegis. In rejecting the notion that a contract with a party in the forum state alone could justify the exercise of jurisdiction over an out-of-state resident, the United States Supreme Court held, "we have emphasized the need for a 'highly realistic' approach that recognizes that a 'contract' is 'ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.' [Citation.] It is these factors--prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing--that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum." (Burger King Corp. v. Rudzewicz, *supra*, 471 U.S. at p. 479.) Here, Aegis and NWP never engaged in any negotiations regarding the contract; Aegis's negotiations, if any, were with Vertex, and the majority of Aegis's course of conduct regarding the contract was with Vertex in Florida.

Third, the exercise of specific jurisdiction by the California courts over Aegis would not comport with notions of fair play and substantial justice. NWP noted that during a 17-month period (from March 2009 to July 2010), Aegis printed and mailed more than 9,500 utility billing invoices to California residents. This provides for an average of 559 mailed pieces per month. Given the fee structure in the parties' agreement, Aegis would have received \$24.60 per month for those mailings. We conclude it would not comport with notions of fair play and substantial justice to hale Aegis into court in California based on two months' worth of revenues totaling approximately \$50.

The facts establishing jurisdiction in *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054 (*Snowney*), on which the trial court relied, are dramatically different from the record here. In that case, the evidence showed the following contacts between the defendant and the State of California: "[D]efendants: (1) advertised extensively to California residents through billboards in California, California newspapers, and California radio and television stations; (2) had a joint marketing agreement with National Airlines, which served Los Angeles and San Francisco, and advertised in the airline's print media; (3) maintained an interactive Web site that accepted reservations from California residents, provided driving directions to their hotels from California, and touted the proximity of their hotels to California; (4) accepted reservations from California residents through their Internet Web site and a toll-free phone number listed on the site and in their advertisements; (5) obtained a significant percentage of their patrons from California through reservations made through the toll-free number and Web site; and (6) regularly sent mailings to those California residents among the four to six million people enrolled in their 'Total Rewards' program. Plaintiff's



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evidence also confirmed that [the defendants] maintained several offices in California to handle reservations and market defendants' hotels." (Id. at p. 1060.) The California Supreme Court held there was sufficient evidence to establish purposeful availment by the defendants based on their "purposeful and successful solicitation of business from California residents." (Id. at p. 1062.)

"[P]urposeful availment exists whenever the defendant purposefully and voluntarily directs its activities toward the forum state in an effort to obtain a benefit from that state." (Snowney, *supra*, 35 Cal.4th at p. 1067.) The record in this case is devoid of any evidence similar to that presented in Snowney, which would show Aegis purposefully directed its activities toward California in an effort to obtain a benefit from California.

NWP cites several cases in which a defendant who had never set foot in California was nevertheless subject to personal jurisdiction in the California courts. These cases, however, are factually distinguishable. In *Haisten v. Grass Valley Medical Reimbursement* (9th Cir. 1986) 784 F.2d 1392, a self-funding indemnity insurance fund established outside the United States was determined to be subject to jurisdiction in California in an action to satisfy a malpractice action judgment. "[A]ctivity by the defendant need not physically take place in the forum state so as to constitute sufficient contact under the due process test. The purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person. [Citation.] The requirement is but a test for determining the more fundamental issue of whether a 'defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there.' [Citation.] Thus, the Supreme Court has consistently rejected the notion that absence of physical contacts with a forum state can defeat personal jurisdiction, '[s]o long as a commercial actor's efforts are 'purposefully directed' toward residents of another State.' [Citations.] [¶] We look toward the economic reality of the Fund's activities and conclude that the Fund 'purposefully directed' its commercial efforts toward California residents. The substance, not form, of the defendant's activities is dispositive. [Citations.] [¶] According to the contract of insurance, funding for reimbursement made by the Fund is generated exclusively from premiums paid by the members of the Grass Valley Medical Quality Association who are insured by the Fund and the earnings from such premiums. The Fund, then, provides a self-contained plan, whereby premiums from California physicians are disbursed to California physicians who suffer loss due to malpractice liability. Moreover, the district court found that the reason for the Fund's existence was 'for the benefit of California residents; to wit, California doctors.' The Fund presents no evidence which challenges this fact. Indeed, the Fund admits that it was created with the purpose of providing a certain type of indemnity insurance sought by a group of physicians at Sierra Nevada Memorial-Miners Hospital. Thus, despite the formal manner in which the transactions between the Fund and its insureds were conducted, as a matter of commercial actuality and of placing substance over form, we find that the Fund's outside activity was 'purposefully directed' toward participation in the California insurance market." (Id. at pp. 1397-1398.) When considering the economic realities of the present case, Aegis did not direct any commercial efforts toward California residents; rather, its commercial efforts were directed toward



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its client, Vertex, and later, for less than two months, toward providing service to Vertex's successor, NWP.

In *Hall v. LaRonde* (1997) 56 Cal.App.4th 1342, 1344, the defendant, a New York resident, entered into a contract with the plaintiff, a California resident. The defendant and the plaintiff communicated via telephone and electronic mail. (Id. at p. 1345.) The appellate court concluded the defendant was subject to jurisdiction in California, although he had never set foot in the state, but not simply because he had participated in telephonic and electronic communication with the plaintiff in California. "It is uncontroverted that [the plaintiff] reached out to New York in a search for business. It is also uncontroverted that [the defendant] reached back to California. The record shows that [the defendant]'s contacts with California consisted of more than simply purchasing a software module from [the plaintiff]. [The defendant] worked with [the plaintiff] to integrate the module into [the defendant]'s software package. Even after the initial adaptation was finished, [the defendant] continued to work with [the plaintiff] to modify the module for new and existing software. In addition, the contract contemplated that [the defendant] would make continuing royalty payments to [the plaintiff]. Thus, [the defendant] created a "'continuing obligation[]" between himself and a resident of California. [Citation.] [¶] [The defendant]'s contacts with California were more than "'random," "fortuitous," or "attenuated.'" [Citation.] Nor were the contacts the "'unilateral activity of another party or third person.'" [Citation.] [The defendant] purposefully derived a benefit from interstate activities. [Citation.] It is fair to require that he account in California for the consequences that arise from such activities. [Citation.]" (Id. at p. 1347.) There is no comparison between the activities directed to California by the defendant in *Hall v. LaRonde* and Aegis's random, fortuitous, and attenuated contacts with California in this case.

Similarly, in *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893 and *As You Sow v. Crawford Laboratories, Inc.* (1996) 50 Cal.App.4th 1859, the out-of-state defendant made substantial, direct sales within California. NWP offers no evidence that Aegis ever met the requirements discussed in those cases.

We conclude NWP failed to establish sufficient minimum contacts between Aegis and California to justify the exercise of specific jurisdiction over Aegis by the California courts. The trial court erred in denying the motion to dismiss.

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court with directions to grant the motion to dismiss the action. Appellant to recover costs on appeal.

WE CONCUR: RYLAARSDAM, ACTING P. J. ARONSON, J.

