



## Pham v. Capital Holdings

2010 | Cited 0 times | S.D. California | October 20, 2010

### ORDER DENYING MOTION TO DISMISS AND MOTION TO TRANSFER

#### I. Background

Pending before the Court is defendants' motion to dismiss on the ground venue is improper, or in the alternative to transfer this case to the Central District of California. There are five individual defendants - Cornelio Sison, Jet Sison, Jo Cui, Ken Cunningham, and Nilda Paligar - and two corporate defendants - Capital Holdings, Inc. and Season's Land Corp.

According to the complaint, Capital Holdings, a real estate company, solicited the plaintiffs by telephone in May or June 2005, as part of a marketing plan aimed at Asian immigrants. (Compl. ¶¶ 3 & 47, Doc. No. 6-2, Pham Declaration, ¶¶ 2-3.) Based on these solicitations, the plaintiffs met with defendants in San Bernardino, CA and purchased property there for \$55,000. (Doc. No. 6-2, ¶ 3.) From August 2005 until February 2009, plaintiffs paid \$502.06 every month to the defendants, resulting in \$27,111.24 in payments.<sup>1</sup> (Id. at ¶ 7.) On September 4, 2009, defendants mailed a "Release and Cancellation Agreement" to the plaintiffs which absolved them of any further obligation to pay, and required them to acknowledge that all monies paid to Capital Holdings were to be retained by the company. (Doc. No. 6-1, Ex. 4, p. 2.) The plaintiffs believe the Release and Cancellation Agreement was fraudulent because it falsely claimed that the Plaintiffs had requested the document and because it impliedly threatened their credit rating if they refused to sign it. (Compl. ¶ 7.) In the end, the plaintiffs lost all money they invested in the property and have no claim to the property itself.

#### II. Legal Standard

Venue is governed 28 U.S.C. § 1391. When subject matter jurisdiction is based on a federal question, as it is in this case, venue is appropriate in: "(1) a judicial district where any defendant resides, if all defendants reside in the same State; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b)(1)-(3).

The burden is on the plaintiffs to show that venue is proper. *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979). The Court need not accept the pleadings as true and may rely on extrinsic evidence, *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996), but must "draw all reasonable inferences in favor of the non-moving party." *Murphy v. Schneider Nat'l*



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Inc., 362 F.3d 1133, 1138 (9th Cir. 2004).

### III. Discussion

Plaintiffs allege that venue is proper in the Southern District of California because a substantial portion of the events giving rise to the lawsuit took place here. (Compl. ¶ 15.) In addition, they argue venue is proper because two of the individual defendants - Mr. Cornelio Sison and Ms. Jet Sison - live in Oceanside, CA, in the Southern District. (Id.) In their motion, the defendants point out that the Sisons live in San Bernardino County, in the Central District. (Doc. No. 3-1, p. 1.) They also argue that only a small portion of the events giving rise to the lawsuit took place in the Southern District. (Id. at 3-5.)

Although the briefs focus on the propriety of venue under 28 U.S.C. § 1391(b)(2), the Court believes it is wiser to focus on § 1391(b)(1). Plaintiffs allege that all defendants reside in California (Compl. ¶¶ 15, 18-19, 21), and the defendants do not dispute this fact (Doc. No. 3-1, p. 3). Venue is therefore proper in this District if any one defendant resides here.

All of the individual defendants reside outside the Southern District; this isn't in dispute. But there are also two corporate defendants in this case - Capital Holdings, Inc. and Season's Land Corp. For venue purposes, a corporation is deemed to reside in any District in which it is subject to personal jurisdiction. 28 U.S.C. § 1391(c). Therefore, if the Southern District Court has personal jurisdiction over either of the corporate defendants, then it is a proper venue for this case.

Because there is no federal statute governing personal jurisdiction, the Court applies California's long-arm statute. *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1484 (9th Cir. 1993). California's long-arm statute permits jurisdiction to the extent permitted by principles of due process. Cal. Code Civ. Pro. § 410.10 ("A court in this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.")

Personal jurisdiction may be either "general" or "specific." A forum has general personal jurisdiction over a defendant when that defendant has "substantial" or "continuous and systematic contact" with the forum, "even if the cause of action is unrelated to the defendant's forum activities." *Cubbage v. Merchant*, 744 F.2d 665, 667 (9th Cir. 1984). Specific personal jurisdiction obtains, on the other hand, when a defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 31, 316 (1945) (internal quotes omitted). The Ninth Circuit applies a three prong test to determine if specific personal jurisdiction exists. First, "the non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privileges of conducting activities in the forum, thereby invoking the benefits and protections of the its law." *Harris Rutsky & Co. Ins. Serv., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). Second, "the claim must be one



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which arises out of or relates to the defendant's forum-related activities." Id. Third, "the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable." Id.

It is clear that Capital Holdings, Inc. has had sufficient contacts with the Southern District of California to be subject to specific personal jurisdiction in this District. As to the first prong of the analysis prescribed by Harris Rutsky, Capital Holdings directed its activities toward the forum by telephonically soliciting plaintiffs who reside in the Southern District. (Doc. No. 6, p. 4) This constitutes purposeful availment. See *L.D. Reeder Contractors of Ariz. v. Higgins Indus. Inc.*, 265 F.2d 768, 773 (9th Cir. 1959) (holding that "a single act or transaction may be the basis for jurisdiction over a nonresident defendant" if the act has a substantial and direct connection with the cause of action); see also *SSM Industries v. Fairchild Apparel Group, Inc.*, 2004 WL 1109547, \*6 (E.D. Tenn. Jan. 16, 2004) ("Even a single act by a defendant deliberately directed toward a Tennessee resident that gives rise to cause of action can support a finding of purposeful availment and meet the due process requirement of minimum contacts.") As to the second prong, these phone calls prompted plaintiffs to meet with the individual defendants, and eventually purchase property from them which gave rise to the claims at hand. Finally, the defendants cannot claim it would be unreasonable to be sued in the Southern District of California. They marketed their services toward San Diego residents and could "reasonably anticipate being haled" into the Southern District based on those marketing efforts. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Further, the distance between the Southern and Central Districts is not so great as to create an undue burden on the defendants, bolstering the conclusion that the Southern District's claim of personal jurisdiction over Capital Holdings is reasonable.

The Court finds that venue is proper under 28 U.S.C. § 1391(b)(1). All defendants are residents of California, and Capital Holdings, Inc. is deemed a resident of the Southern District of California by virtue of the fact that the Southern District has specific personal jurisdiction over it. The defendants' motion to dismiss, or in the alternative to transfer venue, is therefore DENIED.

IT IS SO ORDERED.

1. The plaintiffs' arithmetic is puzzling. There are 43 months from August 2005 through February 2009, inclusive. Forty-three months at \$502.06 a month equals \$21,588.58, not \$27,111.24.

