



Robinson v. Greenville Chrysler Dodge Jeep & Ram et al

2022 | Cited 0 times | D. Arizona | October 25, 2022

WO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Lowell Robinson, Jr.,

Plaintiff, v. Greenville Chrysler Dodge Jeep & Ram, et al.,

Defendants.

No. CV-22-00867-PHX-DGC

ORDER

Plaintiff Lowell Robinson, Jr. filed a pro se complaint against Defendant Greenville Chrysler Dodge Jeep & Ram and Defendant Santander Consumer USA Inc., erroneously named in the complaint as Chrysler Capital . Docs. 5, 7. Defendants filed a motion to dismiss for lack of personal jurisdiction, lack of standing, and failure to state a claim. Doc. 12. The motion is fully briefed and no party requests oral argument. Docs. 21, 22, 23. For reasons set forth below, the Court will grant the motion.

1

I. Background. Plaintiff, an Arizona resident, asserts claims under 42 U.S.C. § 1983 and the Americans with Disabilities Act on behalf of his deceased brother, Charles. Doc. 5. Defendant Greenville is a car dealership located in Texas that sold vehicles to

1 Plaintiff filed a second response Doc. 23. Because Plaintiff is proceeding pro se, however, the Court has considered the arguments made in his second response.

Charles. Id. Defendant Santander provided financing for one of these sales. The following

Charles was a veteran who resided in Texas. Id. He suffered from schizophrenia, bipolar disorder, and a neurological impairment that caused him to walk with a cane and slur his speech. Id. Charles was assigned a disability rating of 100% by the U.S. Department of Veterans Affairs and did not



Robinson v. Greenville Chrysler Dodge Jeep & Ram et al

2022 | Cited 0 times | D. Arizona | October 25, 2022

possess a d Id. Plaintiff alleges that Defendants preyed on Charles and exploited his disabilities by selling him three used cars. Id.

In June 2019, Defendant Greenville sold Charles two vehicles. Id. Charles paid cash. Id. After a parking violation less than a month later, one of the vehicles was towed and later impounded. Id. In January 2020, Defendant Greenville sold Charles a third car. Id. Charles sought to finance the vehicle, but his low credit score deterred ten would-be lenders that Greenville solicited. Id. The eleventh lender, Defendant Santander, financed a six-year loan that carried an 18% interest rate. Id.

Charles died shortly after purchasing the third vehicle. Id. Plaintiff alleges that Defendants improperly manipulated Charles into purchasing the vehicles. Id. II. Personal Jurisdiction Over Defendant Greenville.

Plaintiff bears the burden of establishing personal jurisdiction over Greenville. *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995). Because the Court will resolve motion to dismiss without an evidentiary hearing, Plaintiff make only a prima facie showing of jurisdictional facts to *Wi Ballard v. Savage* Id.

ounds of their *Walden v. Fiore*, 571 U.S. 277, 283 (2014). Arizona has authorized its courts to exercise personal jurisdiction to the maximum extent permitted by the Due Process Clause of the U.S. Constitution. See *Ariz. R. Civ. P. 4.2(a)*. Courts in the District of Arizona therefore may exercise personal jurisdiction over a defendant who is

not physically present in Arizona if the defendant has minimum contacts with the State, such that the suit can be maintained without offense, 326 U.S. 310, 316 (1945).

A. General Personal Jurisdiction.

The Court may assert general jurisdiction over Defendant Greenville if its [Greenville] *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting 326 U.S. at 317). Plaintiff provides no evidence that Greenville is subject to general jurisdiction in Arizona. Plaintiff instead relies on the Case or Controversy Clause of the Constitution (art. III, § 2, cl. 1), but that clause addresses standing, not personal jurisdiction.

There is no evidence that Greenville engages in continuous and systematic business in Arizona. Indeed, Greenville submits a declaration that it is not registered to do business in Arizona and does not maintain a service agent, own real property, maintain an office, or advertise here. Doc. 12-1. There is no general jurisdiction over Greenville in Arizona.

B. Specific Personal Jurisdiction. The Ninth Circuit employs a three-prong test to determine whether



Robinson v. Greenville Chrysler Dodge Jeep & Ram et al

2022 | Cited 0 times | D. Arizona | October 25, 2022

courts may exercise specific personal -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 privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the -related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (citations omitted). Plaintiff bears the burden of satisfying the first two prongs of the test. *Id.* If Plaintiff fails to satisfy either prong, personal jurisdiction is lacking. *Id.*

Plaintiff fails to satisfy the first prong. He makes no showing that Greenville, a Texas car dealership, purposefully availed itself of the privilege of doing business in Arizona or directed conduct toward Arizona. Charles purchased each of the three vehicles in Texas. Doc. 5. Plaintiff pleads no facts suggesting any connection to Arizona other than his own residence, but it is conduct not P that must provide the basis for personal jurisdiction. *Walden*, 571 U.S. at 284.

C. Personal Jurisdiction Conclusion. Because Plaintiff cannot establish either general or specific personal jurisdiction over Greenville, the Court will grant the motion to dismiss. Although a pro se litigant must ordinarily does not err in *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009). Because there appears to be no basis for exercising personal jurisdiction over Greenville in Arizona, amendment would be futile. This ruling does not, however, preclude a suit against Greenville in a State that can exercise personal jurisdiction. III. Arguments.

The Court held a case management conference with the parties on August 3, 2022. Doc. 18. Defense counsel stated during the conference that he intended the arguments in the motion to dismiss to be made on behalf of both Defendants Greenville and Santander. *Id.* As a result, the Court instructed Plaintiff, who had not yet responded to the motion, to address the arguments with respect to both Defendants. *Id.* Plaintiff did so, addressing personal jurisdiction, standing, and failure to state a claim. Doc. 21. As a result, the Court will address Santander . 2

2 Santander filed an answer before its motion to dismiss was filed (Doc. 7), precluding a typical Rule 12(b)(6) motion. Fed. R. Civ. P. 12(b). *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010), and challenges to subject matter jurisdiction And although a Rule 12(b)(6) motion for failure to state a claim would be precluded by answer, the same arguments could be made by Santander in a post-answer motion for judgment on the pleadings. Fed. R. Civ. P. 12(h)(2)(B). In the interest of efficiency, the Court directed the parties to address otion, and they did so.

A. § 1983 Standing. § 1983 claim against Defendant. 42 U.S.C. § 1988; *Wheeler v. City of Santa Clara*, 894

F.3d 1046, 1052-54 (9th Cir. 2018). Under Arizona law, a claim under the survival statute 3110; *Gandy v. United States*, 437 F. Supp. 2d 1085, 1087 (D. Ariz. 2006) he claim passes from the decedent to the



Robinson v. Greenville Chrysler Dodge Jeep & Ram et al

2022 | Cited 0 times | D. Arizona | October 25, 2022

personal representative, and becomes an asset of the estate. .

Plaintiff does not claim to be the personal representative of estate. Rather, Plaintiff claims to possess delegated authority from personal representative, another brother named Jarvis Ray Robinson. Doc. 21. As support, Plaintiff submits a Department of Veterans Affairs form naming Jarvis as medical power of attorney (id. at 8-14), and a notarized letter from Jarvis purporting to authorize Plaintiff to speak on action (id. at 15). Defendant argues that neither document grants Plaintiff the authority to initiate this suit. Doc. 22. The Court agrees.

Plaintiff must be duly appointed as personal representative in accordance with Arizona law to assert a § 1983 claim on behalf. *Andrich v. Kostas*, 470 F.

3 claim). The power of attorney relied on by Plaintiff concerns health care; it does not purport to appoint Jarvis as the personal representative of is an official document where you can write down your preferences for your health care. . 3

Even if the power of attorney could somehow be construed more broadly, Plaintiff cites no authority to show

3 Plaintiff argues in his second response that Charles granted more than a health care power of attorney to Jarvis, but Plaintiff refers only to his own actions when deployed as a marine do not alter the limited health care power of attorney granted by Charles to Jarvis.

that a letter from Jarvis suffices to make Plaintiff the personal representative of estate. 4

B. Failure to State a Claim Under § 1983. As Defendant Santander correctly notes, to state a claim under § 1983 a plaintiff must allege that a person acting under color of law deprived him of a federal constitutional right. 42 U.S.C. § 1983; *Stein v. Ryan*, 662 F.3d 1114, 1118 (9th Cir. 2011). When determining whether a private party acted under color of law, a court starts with the presumption that private conduct does not constitute state action. *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999). Action by private entities like Santander may be state action if there is significant state involvement, *Howerton v. Gabica*, 708 F.2d 380, 382 (9th Cir. 1983), but Plaintiff does not allege that any state or governmental entity had any involvement in the car sale transactions with Charles. Because Plaintiff has not shown that Defendant Santander acted under color of law, he fails to state a claim under § 1983.

C. ADA Standing. A uniform federal rule of survivorship applies to the ADA claim Plaintiff asserts on behalf. *Wheeler*, 894 F.3d at 1056. Undisputed estate representatives and individuals in parent-child relationships may bring claims under this rule of survivorship. *Id.* at 1057 (collecting cases); see, e.g., *Guenther v. Griffin Constr. Co.*, 846 F.3d 979, 986 (8th Cir. 2017) We join other courts that have allowed the individual s estate to bring and maintain a suit for compensatory damages



Robinson v. Greenville Chrysler Dodge Jeep & Ram et al

2022 | Cited 0 times | D. Arizona | October 25, 2022

under the ADA in place of the aggrieved party. *Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 864 (11th Cir. 1986) (claim brought plaintiff in his capacity as the representative of her estate *Est. of Jackson v. City of Modesto*, No. 1:21-CV-0415 AWI EPG, 2021 WL 4819604, at *11 (E.D. Cal. Oct. 14, 2021) the ADA and RA claims are survival claims brought by the Estate that survived

4 If Texas law somehow applies to this issue (Plaintiff does not argue that it does), Defendant notes that a Texas court may appoint a personal representative by issuing letters testamentary or letters of administration to persons who qualify. See Tex. Est. Code Ann. § 304.001. Plaintiff does not claim to have been appointed personal representative of estate by a court in Texas or elsewhere.

Jackson's death. As already noted, however, Plaintiff is not the personal representative of estate, and the Court has found no instance where a sibling not appointed as a personal representative was permitted to bring a claim. The Court

Wheeler, 894 F.3d at 1056 (citing *Washington v. Glucksberg*, 521 U.S. 702, 720 cited for lack of standing.

D. Amendment as to Santander. Because Plaintiff has already supplemented the record with documentation to support his claim of standing, the Court concludes that amending the complaint would be futile. *Doc. 21; Gardner*, 563 F.3d at 990; , No. 18-CV-00148-DKW- nom. *Terrado v. U.S. Bank N.A.* upon finding pro se plaintiff lacked standing). And because there is no basis for believing

that Plaintiff could accurately plead that Santander acted under color of law in the vehicle transaction with Charles, further attempts to amend the § 1983 claim would also be futile.

IT IS ORDERED that granted. The Clerk of Court shall terminate this action.

Dated this 25th day of October, 2022.

