Cohen v. Bank Leumi Le-Israel

2005 | Cited 0 times | California Court of Appeal | July 28, 2005

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Eve Sternlight Cohen, co-special administrator of the Estate of Sara Sternlight and co-trustee of the Sternlight Family Trust, sued Bank Leumi le-Israel (Switzerland) (Bank Leumi) for damages allegedly caused by Bank Leumi's negligent administration of bank accounts holding assets of Sara Sternlight and the trust. The trial court granted Bank Leumi's motion to quash service of summons and to dismiss the action for lack of personal jurisdiction. Cohen appeals, contending Bank Leumi had sufficient contact with California to warrant the exercise of specific jurisdiction in this case. We agree and reverse the order dismissing the action for lack of jurisdiction. On remand, however, the trial court is to address Bank Leumi's alternative argument the complaint should be dismissed based on the forum selection clauses in the agreements establishing the bank accounts at issue in this case.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Parties

Sara Sternlight and her husband Morris Sternlight, affluent residents of Los Angeles County, California, established the Sternlight Family Trust in 1986 to benefit the surviving spouse when one of them died and then to benefit their three adult children, Eve Sternlight Cohen, Joseph Sternlight and Helen Fabe. Morris Sternlight died in November 1993. Sara Sternlight died in April 2000. Cohen and Joseph Sternlight are the co-special administrators of Sara Sternlight's estate and co-trustees of the Sternlight Family Trust, including the three subtrusts created on the death of both Sara and Morris Sternlight.

Bank Leumi is a Swiss banking corporation with offices only in Geneva and Zurich, Switzerland. Its banking business is subject to the regulation and control of Swiss Law. Bank Leumi le-Israel (Switzerland) is one of a number of subsidiaries of Bank Leumi le-Israel, B.M., an Israeli corporation; Bank Leumi USA, which has a branch in Beverly Hills, California, is another subsidiary of the Israeli parent corporation. Bank Leumi does not advertise for business in California. Bank Leumi owns no property or assets in California.

2. Creation of the 1993 Account in Sara Sternlight's Name

On January 27, 1993 Sara Sternlight and her daughter Helen Fabe traveled from California to Zurich, Switzerland, and opened an individual account at Bank Leumi in Sara Sternlight's name, account 10.014 (1993 account). According to the allegations of the complaint, the sole assets deposited in the account were approximately $1.7 million in high-interest, tax-free government bonds that belonged to the Sternlight Family Trust and that stated on their face they had been issued to the trust or to Morris and Sara Sternlight. Sara Sternlight apparently signed the bonds; Helen Fabe signed for Morris Sternlight as his conservator, although the complaint alleges the limited conservatorship did not authorize Fabe to control the finances of her father, either individually or on behalf of the trust.

The account documentation executed by Sara Sternlight contained, as one of its "general banking conditions," a provision requiring all lawsuits by the customer against Bank Leumi to be filed in Zurich: "Applicable Law and Jurisdiction. All legal relationships between customer and Bank shall be governed by Swiss law. Place of performance, place for collection proceedings against customers domiciled abroad and exclusive place of jurisdiction for legal proceedings of any kind shall be the domicile of the Bank in Zurich. The Bank, however, is also entitled to sue the customer in any competent court in his domicile or any other court having jurisdiction." The documentation also included a power of attorney authorizing Helen Fabe to act on behalf of her mother.

3. Creation of the 1995 Joint Account

On March 21, 1995 Fabe again traveled with Sara Sternlight to Switzerland, this time to open a joint account at Bank Leumi in both their names, account 10.398 (1995 account). Fabe then directed Bank Leumi to transfer all funds from the 1993 account to the 1995 account and to close the 1993 account. The 1995 account documentation contains the identical provision as the 1993 documentation limiting jurisdiction for legal proceedings against Bank Leumi to Zurich.

According to the complaint, prior to opening the 1995 joint account, Fabe had improperly withdrawn funds from the 1993 account for her own personal benefit. Upon returning home to California following the creation of the 1995 account, Fabe, communicating with Bank Leumi via telephone, facsimile transmission and mail, used funds in the 1995 account for her own benefit without her mother's knowledge. Specifically, between 1996 and 1998, at Fabe's request, Bank Leumi made at least 30 wire transfers from the 1995 account to Fabe's personal bank in California.

4. Creation of the 1998 Account in Helen Fabe's Name Alone

In June 1998 Fabe requested and received from Bank Leumi at her home in Beverly Hills the material needed to open a new bank account. Using those forms, Fabe opened, via mail from California, a third account with Bank Leumi, account 10.902 (1998 account). This account was in Fabe's name only. [1] Once it had been opened, Fabe directed Bank Leumi to transfer all but $100,000 from the 1995

account to the 1998 account. Subsequently, at Fabe's request Bank Leumi wired funds from the 1998 account to Fabe's personal bank in California.

5. Discovery of the Accounts and Criminal Proceedings Against Fabe

After Sara Sternlight's death in 2000, Fabe's brother and sister, Eve Sternlight Cohen and Joseph Sternlight, discovered the Bank Leumi accounts. Acting at their request as trustees of the Sternlight Family Trust, a Swiss court froze the accounts and ordered the return of the remaining money, about $900,000, to the trust. Fabe was charged with several crimes, including grand theft and elder abuse, relating to the misappropriation of funds belonging to her mother and was ultimately convicted, based on her plea of no contest, to one count of felony elder abuse.

6. Cohen's Lawsuit and Bank Leumi's Motion to Quash Summons and to Dismiss

On January 24, 2003 Cohen filed suit against Bank Leumi in her capacity as co-special administrator of the Estate of Sara Sternlight with respect to misconduct that allegedly injured Sara Sternlight, and as co-trustee of the Sternlight Family Trust to the extent the bank's alleged misconduct injured Morris Sternlight or the Sternlight Family Trust directly. The complaint alleges Bank Leumi had a duty to exercise reasonable care to protect the assets of Sara Sternlight and the Sternlight Family Trust that had been placed in its custody and control and Bank Leumi breached that duty by failing to take reasonable measures to determine whether Sara Sternlight had the legal capacity to enter into any contractual relationship with the bank, failing to investigate the limited nature of the conservatorship of the person of Morris Sternlight that Fabe had obtained and negligently permitting the transfer of assets from the 1993 account into the 1995 account and from there to the 1998 account and facilitating the transfer of funds belonging to Sara Sternlight and the Sternlight Family Trust from the accounts at Bank Leumi to Fabe's personal bank accounts in California without Sara Sternlight's knowledge or approval.

After an initial default judgment was set aside, Bank Leumi filed a motion to quash service of summons based on lack of personal jurisdiction (Code Civ. Proc., § 418.10) and, alternatively, to dismiss the action on the ground the forum selection clauses in the account agreements that are the subject matter of Cohen's complaint identify Switzerland as the appropriate and exclusive forum in which the action can be litigated. (Code Civ. Proc., § 410.30.)

On January 22, 2004 the trial court granted Bank Leumi's motion, concluding "Defendant does not have sufficient minimum contacts with California to support the exercise of personal jurisdiction." Although at the outset of the hearing on the motion the court stated, "I think the forum selection clauses are not controlling here," the minute order does not address the enforceability of the forum selection clauses in the account documentation.

DISCUSSION

1. The Trial Court Erred in Dismissing the Complaint for Lack of Personal Jurisdiction

a. Standard of Review and Burden of Proof

When, as in this case, there is no conflict in the evidence,[2] the question of personal jurisdiction is purely one of law subject to independent review on appeal. (Snowney v. Harrah's Entertainment, Inc. (2005) 35 Cal.4th 1054 (Snowney)[3] ; Vons Companies, Inc. v. Seabest Foods, Inc. (1996) 14 Cal.4th 434, 449 (Vons).)

On a motion to quash service of process for lack of specific jurisdiction,[4] the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. (Snowney, supra, 35 Cal.4th at p. 1062; Vons, supra, 14 Cal.4th at p. 449.) Once the plaintiff meets that initial burden, the defendant may still prevail on its motion by demonstrating that the exercise of jurisdiction would be unreasonable. (Snowney, at p. 1062; Vons, at p. 449.)

b. California Courts May Exercise Personal Jurisdiction on any Basis Consistent with Due Process

Under California's long-arm statute California courts may exercise personal jurisdiction over a nonresident defendant "on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) The exercise of jurisdiction is appropriate "`if the defendant has such minimum contacts with [California] that the assertion of jurisdiction does not violate "`traditional notions of fair play and substantial justice.'" [Citations.]" (Pavlovich v. Superior Court (2002) 29 Cal.4th 262, 268; Snowney, supra, 35 Cal.4th at p. 1061.)

"`When determining whether specific jurisdiction exists, courts consider the "`relationship among the defendant, the forum, and the litigation.'" [Citation.]'" (Pavlovich v. Superior Court, supra, 29 Cal.4th at p. 269.) Specific jurisdiction over a nonresident defendant is properly asserted if (i) the defendant "purposefully availed" itself of the forum state (Snowney, supra, 35 Cal.4th at p. 1062); (ii) there is "a substantial nexus or connection" between the defendant's forum contacts and the plaintiff's cause of action (id. at p. 1062, quoting Vons, supra, 14 Cal.4th at p. 456); and (iii) the assertion of jurisdiction would not be unfair or unreasonable. (Snowney, at p. 1062.)

i. Purposeful Availment

A nonresident defendant purposefully avails itself of forum benefits if the defendant: (1) "`"purposefully direct[s]" [its] activities at residents of the forum' [citation]," (2) "`"purposefully derive[s] benefit" from its activities in the forum' [citation]," or (3) "`has created "continuing obligations" between [itself] and residents of the forum' [citation]." Adherence to this purposeful availment test ensures that a "`defendant will only be subject to personal jurisdiction if "`it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation.'" [Citation.]" (Snowney, supra, 35 Cal.4th at p. 1063.)

ii. Relatedness

After the defendant's forum contacts have been established, "the appropriate inquiry is whether the plaintiff's cause of action `arises out of or has a substantial connection with a business relationship defendant has purposefully established with California.'" (Vons, supra, 14 Cal.4th at p. 448, quoting Cornelison v. Chaney (1976) 16 Cal.3d 143, 149.) The extent of the forum contacts required and the relation of those contacts to the plaintiff's claim are "`inversely related.'" (Snowney, supra, 35 Cal.4th at p. 1068, quoting Vons, supra, 14 Cal.4th at p. 452.) As the defendant's forum contacts "`grow[] more tenuous, the scope of jurisdiction also retracts, and fairness is assured by limiting the circumstances under which the plaintiff can compel'" the defendant to submit to suit in the forum state. (Vons, at p. 452, quoting Cornelison, at p. 148.)

iii. Reasonableness

If both the purposeful availment and relatedness requirements are satisfied, the third and final prong of the test asks whether the assertion of specific jurisdiction is fair and reasonable. (Snowney, supra, 35 Cal.4th at p. 1070.) The determination requires the court to balance several factors, including "the burden on the defendant," "the interests of the forum State," "the plaintiff's interest in obtaining relief," "the interstate judicial system's interest in [the] efficient resolution of controversies" and "the shared interest of the several States in furthering fundamental substantive policies." (Snowney, at p.1070; see Asahi Metal Industry Co. v. Superior Court (1987) 480 U.S. 102, 113.) At this stage, a defendant can defeat jurisdiction only by presenting "`a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" (Snowney, at p. 1070, quoting Burger King Corp. v. Rudzewicz (1985) 471 U.S. 462, 477.)

c. Cohen Demonstrated Sufficient Contact by Bank Leumi with California to Support the Exercise of Specific Jurisdiction

Although Bank Leumi's contacts with California with respect to the 1993, 1995 and 1998 accounts were unquestionably quite limited, they are minimally sufficient to support the exercise of specific jurisdiction in a lawsuit alleging misconduct by the bank relating to those specific accounts.

First, Bank Leumi is simply wrong when it asserts all acts and omissions of which Cohen complains "occurred, if at all, in Switzerland and have no connection to California." Although Fabe, a California resident, unilaterally initiated the relationship with Bank Leumi by traveling to Switzerland with her mother to open the 1993 account, the relationship did not remain unilateral, nor was it confined to Switzerland. Over the course of seven years Bank Leumi maintained an ongoing relationship with Fabe in California, communicating with her by telephone, facsimile transmission and mail, wiring money at her request (from California) from the joint 1995 account to her personal bank accounts in California, sending her the necessary forms and allowing her to open the 1998 account from California, and then transferring money from the 1998 account to her personal account in a

California bank.

In Hall v. LaRonde (1997) 56 Cal.App.4th 1342, purposeful availment was found where Hall, a California resident, initiated a contractual business relationship with LaRonde, a New York resident, and the two collaborated on the development of a computer software application, largely via electronic communications. (Id. at 1347.) The court found LaRonde had purposefully availed himself of California by creating a continuing obligation to Hall, stating, "It is uncontroverted that Hall reached out to New York in a search for business. It is also uncontroverted that LaRonde reached back to California." (Ibid.) Like LeRonde, Bank Leumi may not have initiated the business relationship with Sara Sternlight and Fabe, but it plainly reached back to California to maintain and strengthen that relationship. No more is required to find that Bank Leumi purposefully directed its activities at a forum resident and derived a benefit from forum contacts.

Second, Cohen's core allegations of misconduct directly arise from Bank Leumi's forum contacts. (See Snowney, supra, 35 Cal.4th at p. 1068 [explaining inverse relationship for purpose of establishing jurisdiction between intensity of forum contacts and connection of the claim to those contacts; the more directly related the claim is to the defendant's forum-related activities, the less extensive those contacts need be]; McGee v. International Life Ins. Co. (1957) 355 U.S. 220, 223 [single insurance contract with a California resident sufficient to subject a Texas insurer to suit in California when that contract was the very basis of the dispute].) In addition to its on-going communications with its customer Fabe when she was in California, Bank Leumi (1) accepted and executed instructions from its California customer to wire money from her Swiss bank accounts to her California accounts, (2) sent the California customer an application to open a new account with the bank from California and (3) wired funds from the new account to her California account. Those acts, considered in light of the inverse relationship standard for purposeful availment and relatedness, are sufficient to support the exercise of specific jurisdiction in this case. (Snowney, at p. 1068.)

d. The Exercise of Specific Jurisdiction Is Not Unreasonable

Having ruled in favor of Bank Leumi on the threshold, minimum-contact requirements for the exercise of specific jurisdiction, the trial court had no reason to consider whether, assuming purposeful availment and relatedness had been established, subjecting Bank Leumi to suit in California would be "fair." (See Vons, supra, 14 Cal.4th at pp. 475-476; Snowney, supra, 35 Cal.4th at p. 1070.) Nonetheless, because the evidence relating to this third prong of the specific jurisdiction test is undisputed, we may independently review the record to determine whether Bank Leumi demonstrated the exercise of specific jurisdiction would be unreasonable. (Snowney, at p. 1062.)

"`Where[, as here,] a defendant who purposefully has directed [its]activities at forum residents seeks to defeat jurisdiction, [it] must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.' (Burger King [Corp. v. Rudzewicz], supra, 417 U.S. at p. 477.)" (Snowney, supra, 35 Cal.4th at p. 1070.) Bank Leumi failed to meet this heavy

burden.

Bank Leumi argued permitting this litigation to proceed in California would be unduly burdensome because the cost of finding experts in Swiss law, which governs the dispute, to participate in the litigation would be "exorbitant" and many potential witnesses are Bank Leumi employees who reside in Switzerland, where most of the relevant documents are also located. Otherwise, Bank Leumi simply reiterated its lack of contacts with California to show it would not have expected to be subject to suit here. Although requiring Bank Leumi to submit to suit in California would no doubt be expensive and inconvenient, none of the burdens it identifies constitutes a compelling reason to conclude that exercise of specific jurisdiction would be unreasonable in this case when weighed against California's strong interest in providing a forum to protect its residents against tortuous conduct affecting them in this state and Cohen's parallel interest in bringing her representative suit in a local forum. (E.g., Vons, supra, 14 Cal.4th at p. 477 [to defeat jurisdiction, burdens on defendant must be such "`as to make litigation "so gravely difficult and inconvenient"' that [the defendants] would be at a `"severe disadvantage"' [citation] in comparison to [the plaintiff]."].)

2. Remand Is Necessary for the Trial Court To Determine Whether Bank Leumi's Motion to Dismiss Should Be Granted Based on the Forum Selection Clauses

a. The Law Governing the Enforceability of Forum Selection Clauses

Forum selection clauses are presumed valid and consistently enforced by California courts: "Both the United States Supreme Court and the California Supreme Court have recognized that `[f]orum selection clauses play an important role in both national and interstate commerce.' [Citations.] Such clauses provide a degree of certainty, both for businesses and their customers, that contractual disputes will be resolved in a particular forum. [Citation.] California courts routinely enforce forum selection clauses even where the chosen forum is far from the plaintiff's residence. (See, e.g., Intershop Communications AG v. Superior Court (2002) 104 Cal.App.4th 191, 196-202 [Hamburg, Germany forum]; CQL Original Products, Inc. v. National Hockey League Players' Assn. (1995) 39 Cal.App.4th 1347, 1355-1356 [Ontario, Canada forum].)" (Net2Phone, Inc. v. Superior Court (2003) 109 Cal.App.4th 583, 587-588 (Net2Phone, Inc.); Schlessinger v. Holland America (2004) 120 Cal.App.4th 552, 558 ["Both California and federal law presume a contractual forum selection clause is valid and place the burden on the party seeking to overturn the forum selection clause."].)

When a forum selection clause has been "entered into freely and voluntarily by parties who have negotiated at arms' length," the clause will be enforced "in the absence of a showing that enforcement of such a clause would be unreasonable." (Smith, Valentino & Smith, Inc. v. Superior Court (1976) 17 Cal.3d 491, 496.) The party seeking to avoid application of the forum selection clause -- in this case, Cohen -- bears a "substantial burden" to prove unreasonableness. (CQL Original Products, Inc. v. National Hockey League Players' Assn. (1995) 39 Cal.App.4th 1347, 1354; Net2Phone, Inc., supra, 109 Cal.App.4th at p. 588.)

A forum selection clause in a form contract such as the account documentation that is the subject matter of this lawsuit, even though not separately negotiated, is nonetheless enforceable (Carnival Cruise Lines v. Shute (1991) 499 U.S. 585, 593-595); and such clauses may be enforced against non-signatories who are "`closely related to the contractual relationship.'" (Net2Phone, Inc., supra, 109 Cal.App.4th at pp. 587-588; Lu v. Dryclean-U.S.A. of California, Inc. (1992) 11 Cal.App.4th 1490, 1493, citing Manetti-Farrow, Inc. v. Gucci America, Inc. (9th Cir. 1988) 858 F.2d 509, 514, fn. 5 ["`"a range of transaction participants, parties and non-parties, should benefit from and be subject to forum selection clauses"'"].)

b. An Unresolved Factual Dispute Exists Whether Sara Sternlight "Freely and Voluntarily" Agreed to the Forum Selection Clauses

The documentation for each of the three bank accounts opened by Sara Sternlight and Fabe contained a provision specifying in virtually identical language that the exclusive place of jurisdiction for legal proceedings by the customer against Bank Leumi is Switzerland. Cohen maintains, notwithstanding the absence of any reference to Bank Leumi's alternative basis for its motion in the minute order granting the motion to dismiss, the trial court considered and properly refused to enforce the forum selection clauses when hearing Bank Leumi's motion.

In addition to the fact the account documentation was on standard forms, the forum selection clause appeared in inconspicuous type and Sara Sternlight was not even a party to the 1998 account, Cohen argues, based on her own testimony in the trial court, that at the time the 1993 account was opened, Sara Sternlight was 74 year old, legally blind in one eye and lacked the capacity to understand sophisticated financial transactions and legal documents. Accordingly, Cohen asserts the trial court's refusal to enforce the clauses should be affirmed both because the clauses were not freely and voluntarily negotiated by Sara Sternlight and because Ms. Sternlight lacked sufficient notice of the clauses to permit their enforcement.[5]

We disagree at the threshold with Cohen's contention the trial court actually considered and ruled upon the enforceability of the forum selection clauses, Bank Leumi's alternative ground for dismissing the action. At the outset of the hearing the trial court explained its tentative view of the case, "And the issue before me is whether or not this court should take jurisdiction over the claim against Bank Leumi le-Israel Switzerland . . . . And then the other question is whether or not the forum selection clause should be enforced. I can tell you tentatively, based upon all the authorities that I've read, and based upon the declarations of the individuals involved, and having considered the objections thereto, I think that the motion to quash should be granted because I don't believe the defendant has sufficient minimum contacts nor had sufficient minimum contacts with California to support the exercise of personal jurisdiction. There's just not enough there. I think the matter, if it is going to be tried, has to be tried in Zurich. I think the forum selection clauses are not controlling here. I just am of the view that specific jurisdiction is not available here with respect to the Bank Leumi le-Israel Switzerland. Everything happened in Switzerland." The court then invited argument

from counsel for Cohen; and the balance of the hearing focused on the requirements for exercise of specific jurisdiction over Bank Leumi.

Viewed in context, the trial court's observation "the forum selection clauses are not controlling here" was simply a statement that, having concluded the lawsuit should be dismissed for lack of jurisdiction and thereafter tried, if at all, in Switzerland, there was no need to reach the question whether the forum selection clauses were enforceable: Resolution of the jurisdictional issue controlled the court's decision to dismiss; not determination of the enforceability of the forum selection clause.[6]

The absence of any reference to the enforceability of the forum selection clause in the minute order granting Bank Leumi's motion confirms this question was not resolved by the trial court. (See Newman v. Overland etc., Co. (1901) 132 Cal. 73, 75 ["The order which is entered in the minutes is the only record of the court's action, and is to be measured by its terms, and not by the reasons which the court may give for it."]; Frost v. Los Angeles Ry. Co. (1913) 165 Cal. 365, 369 ["The judge may and should see that the order made is correctly entered, and it is presumed that he has done so"]; see also People v. Superior Court (1971) 20 Cal.App.3d 684, 686, fn. 3 ["[T]he terms of the minute order control in our examination of the validity of the order of dismissal."].)

Following the discovery by Cohen and Joseph Sternlight of Fabe's defalcations from their mother, they initiated legal proceedings in Zurich against Bank Leumi on behalf of the Sternlight Family Trust and obtained the funds remaining in the 1995 and 1998 accounts. Bank Leumi is correct those actions strongly suggest enforcement of the forum selection clauses in the circumstances of this case would be reasonable. Nonetheless, the enforceability of the clauses may depend on factual findings regarding Sara Sternlight's capacity to understand and voluntarily agree to the terms of the account agreements. Because those facts are in dispute, it would be inappropriate for us, as a reviewing court, to address those issues in the first instance. (Cf. Baines Pickwick Ltd. v. City of Los Angeles (1999) 72 Cal.App.4th 298, 311.) Therefore, we remand to the trial court with directions to consider Bank Leumi's alternative motion to dismiss the action on the ground the forum selection clauses in the account agreements require any litigation against Bank Leumi be maintained in Switzerland. (Code Civ. Proc., § 410.30.)

DISPOSITION

The order granting Bank Leumi's motion to quash service of summons, quashing summons and dismissing the complaint is reversed. The matter is remanded to the trial court with directions to consider Bank Leumi's alternative motion to dismiss the complaint based on the forum selection clauses in the agreements establishing the bank accounts at issue in the case and to conduct further proceedings not inconsistent with this opinion. Cohen is to recover her costs on appeal.

We concur: JOHNSON, J., ZELON, J.

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1. The 1998 account documentation, like that for the 1993 and 1995 accounts, provided exclusive jurisdiction for legal proceedings against Bank Leumi is in Switzerland.

2. Bank Leumi objected to certain evidence submitted by Cohen regarding its purported contacts with California, such as correspondence between a bank officer and Fabe regarding Fabe's divorce proceedings, and disputes the inferences Cohen draws from those items. That disputed evidence is not relevant to our minimum contacts analysis.

3. The Supreme Court's comprehensive review in Snowney, supra, 35 Cal.4th 1054 of the requirements for establishing specific jurisdiction over a nonresident defendant was not available to the trial court at the time of its decision.

4. Although personal jurisdiction may be either general or specific (Snowney, supra, 35 Cal.4th at p. 1062; Vons, supra, 14 Cal.4th at p. 445), because Cohen does not contend general jurisdiction exists, only an examination of the requirements for specific jurisdiction is necessary in this case.

5. There is a split of authority as to the appropriate standard of review of a motion to enforce a forum selection clause. In Schlessinger v. Holland America, supra, 120 Cal.App.4th at page 557, this court followed America Online, Inc. v. Superior Court (2001) 90 Cal.App.4th 1, 9, and Bancomer, S. A. v. Superior Court (1996) 44 Cal.App.4th 1450, 1457, and held a trial court's decision to enforce or decline to enforce a forum selection clause is reviewed for an abuse of discretion. In Cal-State Business Products & Services, Inc. v. Ricoh (1993) 12 Cal.App.4th 1666, 1680- 1681, and CQL Original Products, Inc. v. National Hockey League Players' Assn., supra, 39 Cal.App.4th at page 1354, the Courts of Appeal held the trial court's order denying a motion to stay or dismiss based on a contractual forum selection clause should be reviewed for substantial evidence.

6. As part of his argument that exercise of specific jurisdiction over Bank Leumi would not be unfair or unreasonable -- the third element of the test for assertion of specific jurisdiction -- counsel for Cohen noted that, notwithstanding the general provisions in the forum selection clauses requiring customers to sue Bank Leumi in Switzerland, the bank reserved to itself the right to sue its customers where they lived. In response, and as part of the discussion of jurisdiction, not the forum selection clause, the court stated, "I'm familiar with that whole wording, that whole commentary on those clauses." That statement does not support Cohen's argument that the court considered and refused to enforce the forum selection clause.