Case Number: BC664530
CHRISTINA GARNER VS SHANA RAYWOOD ET AL

Filing Date: 06/08/2017
Case Type: Defamation (Slander/Libel)

01/25/2018
Motion to Quash Service of Summons & Complaint
NOTICE OF TENTATIVE RULING AND PROCEDURE
FOR SUBMISSION WITHOUT HEARING

The parties may submit to the tentative ruling without appearing for the hearing if you follow these instructions: (1) If ALL PARTIES (except if no other parties have appeared, only Plaintiff) have read the tentative ruling and ALL PARTIES agree and submit to the tentative ruling, then court appearances may be waived. The matter will remain on calendar and the tentative ruling will be adopted as the FINAL RULING and entered on the date of the hearing; (2) If ALL PARTIES SUBMIT, the Court directs ONE PARTY REPRESENTATIVE to send an email to smcdept46@lacourt.org, at least one day prior to the hearing date, to advise the Court that ALL PARTIES SUBMIT, also STATING WHICH PARTY WILL GIVE NOTICE, or if NOTICE IS WAIVED; (3) Please refrain from sending individual emails to smcdept46@lacourt.org with a request to modify the tentative ruling or indicate one party submits but waiting to hear from the other side, as these emails will not be considered. ALL PARTIES must appear in Court. Needless to say, if parties do not submit, there is NO NEED to contact the Court. The Court expects to see you on the date of the hearing; (4) If there is a signed Order or Judgment, and you have provided an extra copy to be conformed and an attorney service return slip, this will be available for pick up in Dept. 46 attorney service pick-up box the next business day.

TENTATIVE RULING

Motion is GRANTED. The court does not have jurisdiction over Cross-Defendants and California is an inconvenient forum for Cross-Defendants. Pursuant to CCP §418.10(1)(a) and (b) Cross-Defendants Elizabeth Ann West and Wayne Stinnett are dismissed from the Cross-Complaint. See discussion.

DISCUSSION

On 10/25/17, Plaintiff ("P") filed her First Amended Complaint ("FAC") for (1) Breach of Written Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Fraud; (4) Unjust Enrichment; (5) Libel Per Se; and (6) Defamation against Ds Shana Raywood dba Rebecca Hamilton (hereinafter, "Raywood"); QBW Services, LLC (hereinafter, "QBW"); and DOES 1-20.

On 11/28/17, Raywood and QBW filed their Answer. On the same date, Ds Raywood and QBW filed their Cross-Complaint for (1) Defamation Per Se; (2) Defamation Per Quod; (3) Intentional Infliction of Emotional Distress; (4) False Light; (5) Public Disclosure of Private Facts; (6) Intentional Interference with Prospective Economic Relations; (7) Negligent Interference with Prospective Economic Relations; and (8) Unfair Business Practices against Cross-Defendants ("X-C") Garner, Elizabeth Ann West (hereinafter "West); Susan Stec (hereinafter "Stec"); Wayne Stinnett (hereinafter "Stinnett"); Percival Pollard (hereinafter "Pollard"); Jeni Decker (hereinafter "Decker"); William Hiatt (hereinafter "Hiatt"); and ROES 1-20.

X-Ds West and Stinnett now move the court per CCP §418.10(a) for an order quashing service of the summons and complaint on the grounds that the court lacks personal jurisdiction over them. X-Ds move in the alternative, per CCP §418.10(a)(2) and 410.30(a), for an order staying or dismissing the case for inconvenient forum.

CCP § 418.10 reads in relevant part:

> "(a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes:
> (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her.
> (2) To stay or dismiss the action on the ground of inconvenient forum.
> …
> (b) The notice shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice. The notice shall be served in the same manner, and at the same times, prescribed by subdivision (b) of Section 1005. The service and filing of the notice shall extend the

> defendant's time to plead until 15 days after service upon him or her of a written notice of entry of an order denying his or her motion, except that for good cause shown the court may extend the defendant's time to plead for an additional period not exceeding 20 days."

CCP § 410.30 states:

> "(a) When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.
> (b) The provisions of Section 418.10 do not apply to a motion to stay or dismiss the action by a defendant who has made a general appearance."

"If a nonresident defendant's activities may be described as "extensive or wide-ranging" (Buckeye Boiler Co. v. Superior Court (1969) 71 Cal.2d 893, 898-899 [80 Cal.Rptr. 113, 458 P.2d 57]) or "substantial ... continuous and systematic" (Perkins v. Benguet Mining Co., *supra*, 342 U.S. 437, 447-448 [96 L.Ed. 485, 493-494]), there is a constitutionally sufficient relationship to warrant jurisdiction for all causes of action asserted against him… If, however, the defendant's activities in the forum are not so pervasive as to justify the exercise of general jurisdiction over him, then jurisdiction depends upon the quality and nature of his activity in the forum in relation to the particular cause of action. In such a situation, the cause of action must arise out of an act done or transaction consummated in the forum, or defendant must perform some other 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. Thus, as the relationship of the defendant with the state seeking to exercise jurisdiction over him grows more tenuous, the scope of jurisdiction also retracts, and

fairness is assured by limiting the circumstances under which the plaintiff can compel him to appear and defend. The crucial inquiry concerns the character of defendant's activity in the forum, whether the cause of action arises out of or has a substantial connection with that activity, and upon the balancing of the convenience of the parties and the interests of the state in assuming jurisdiction. (Hanson v. Denckla, *supra*, 357 U.S. 235, 250-253 [2 L.Ed.2d 1283, 1295-1298]; McGee v. International Life Ins. Co., *supra*, 355 U.S. 220, 223 [2 L.Ed.2d 223, 226]." Cornelison v. Chaney (1976) 16 C.3d 143, 147-148.

"When a nonresident defendant challenges personal jurisdiction, the plaintiff must prove, by a preponderance of the evidence, the factual basis justifying the exercise of jurisdiction. (Pavlovich v. Superior Court (2002) 29 Cal.4th 262, 273, 127 Cal.Rptr.2d 329, 58 P.3d 2 (Pavlovich).) The plaintiff must do more than merely allege jurisdictional facts; plaintiff must provide affidavits and other authenticated documents demonstrating competent evidence of jurisdictional facts. (In re Automobile Antitrust Cases I & II (2005) 135 Cal.App.4th 100, 110, 37 Cal.Rptr.3d 258.) If the plaintiff does so, the burden shifts to the defendant to present a compelling case that the exercise of jurisdiction would be unreasonable. (Pavlovich, *supra*, 29 Cal.4th at p. 273, 127 Cal.Rptr.2d 329, 58 P.3d 2.)." BBA Aviation PLC v. Superior Court (2010) 190 C.A.4th 421, 428-429.

"[D]ue process does not require that petitioners have been physically present in California to be subject to the jurisdiction of the courts of this state." Checker Motors Corp. v. Superior Court (1993) 13 Cal.App.4th 1007, 1017. "[J]urisdiction can be maintained on the basis of a single contract," provided the contract is "made and performed in California." University Financing Consultants, Inc. v. Barouche (1983) 148 Cal.App.3d 1165, 1170; Safe-Lab v. Weinberger (1987) 193 Cal.App.3d 1050, 1054. However, "the mere cause of an effect in California is not necessarily sufficient to afford a constitutional basis for the

extension of jurisdiction." Stanley Consultants, Inc. v. Superior Court (1978) 77 Cal.App.3d 444, 448.

The pertinent contacts supported by evidence submitted by D/X-C are:

1. That X-Ds West and Stinnett have contributed some sum of money towards P/X-Ds' legal fees via crowdfunding web sites. (Declaration of Sara N. Etemadi Exhibits A-D).
2. That X-Ds have created online posts about awaiting service in this lawsuit (Id. Exhibits E-K).
3. That X-D Stinnett has met P/X-D. (Id. Exhibit L).

D/X-C makes certain other arguments regarding contacts, but these are the only ones substantiated by the evidence provided to the court. X-D Stinnett has provided evidence that he met P/X-D at a novelists' conference in Florida, not in California, so the third point may be disposed of as irrelevant. (Declaration of Wayne Stinnett ¶ 4). The question remaining before this court is whether payment of another person's legal fees incurred in California, combined with postings on social media about the case, constitutes purposeful availment.

It has been fairly well established that postings on passive websites are insufficient to establish personal jurisdiction. See Pavlovich v. Superior Court (2002) 29 C. 4th 262; Burdick v. Superior Court (2015) 233 C.A.4th 8; Shisler v. Sanfer Sports Cars, Inc. (2006) 146 C.A.4th 1254. Nor can the fact that the posting was about this case make much difference; if mere commentary on California cases conferred jurisdiction, every news anchor from here to New York would be subject to suit. The more open question is whether publicly paying part of someone else's legal fees places X-Ds under the jurisdiction of this court.

Neither party cites on-point authority. The two cases which come closest to addressing this issue seem to be Southeastern Express Systems v. Southern Guaranty Ins. Co. (1995) 34 C.A.4th 1 and Benefit Assn. Internat., Inc. v. Superior Court (1996) 46 C.A.4th 827. In Southeastern, an insurer offering nationwide liability coverage refused coverage to an insured who was sued in California. Southeastern, *supra*, 34 C.A.4th at 6. So, the insured sued the insurer for bad faith denial of coverage; the Court of Appeal held that an insurer which offers to defend suits against others filed in California cannot well object to being sued here itself. Id. at 6-7 ("respondent agreed to defend appellants against lawsuits in California, and thus should reasonably have anticipated being called into our courts"). In Benefit, by contrast, an insurer offered worldwide medical travel insurance to a vacationer, with the knowledge that California was on the traveler's itinerary. Benefit, *supra*, 46 C.A.4th at 833-834. The Court of Appeal held that because the insurer had not targeted the California market, there was no jurisdiction. Id. Discussing its holding and the holding in Southeastern, the Court of Appeal in Benefit stated that where payments form the basis of jurisdiction, the critical question is whether the actions of the plaintiff or the defendant established the connection with the forum state. Id. at 834.

In this case, there is the added complication of a third "side" to the equation. X-Ds made a donation to a party to a California lawsuit. But the lawsuit would not be in California if this court had not found jurisdiction based on the actions of D/X-C in establishing contact with P/X-D in this state. And P/X-D was the one who filed the lawsuit and created the need for the donation. All three "sides" have established connections with California, but X-Ds West and Stinnett's is easily the most tenuous.

In the court's judgment, it would be unfair for the court to impose jurisdiction on foreign defendants simply because they had made donations to California residents. If X-Ds West and Stinnett had given P/X-D money for groceries

instead of money for legal fees there would obviously be no jurisdiction, yet the result would be the same: P/X-D could take her monthly grocery budget and apply it to her legal fees. If jurisdiction is found on the basis of publicly announced donations alone, any person who publicly donates to any victim's fund could be slapped with a complaint or cross-complaint for defamation.

Whether D/X-Cs claim that they are the real victims is or is not true, this is an issue to be determined at the trial. California has minimal interest in the actions of X-Ds West and Stinnett because they are non-residents. Benefit, *supra*, 46 C.A.4th at 834. There is no jurisdiction here.

X-D West and Stinnett's motion is GRANTED.