Filed 2/7/13 Iscandari v. Kallon CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

M. ALIEU ISCANDARI, Plaintiff and Appellant, v. SHEKU KALLON et al., Defendants and Respondents.	A133328 (Alameda County Super. Ct. No. HG09449195)

Appellant M. Alieu Iscandari appeals the order granting respondents'[1] motion to quash service of summons for lack of personal jurisdiction. We agree with the trial court that Iscandari failed to fulfill the "effects test" laid down in *Calder v. Jones* (1984) 465 U.S. 783, 789 (*Calder*), and therefore California courts could not properly exercise jurisdiction over respondents. Accordingly we affirm the order.

I. FACTUAL BACKGROUND

Iscandari is an attorney licensed to practice in California; he maintains a law practice in Alameda County. In June 2004, he accepted a one-year contract to serve as a war crimes prosecutor for the Special Court for Sierra Leone. In August 2005, Iscandari assisted in prosecuting a wrongful death case in Arizona on behalf of a woman from Sierra Leone.

[1] Respondents are New People Newspaper, Sheku Kallon, Patrick Muana, Marda Mustapha and John Mannah.

New People Newspaper currently[2] is a Georgia corporation that operates an online newspaper accessible throughout the world over the Internet. (<http://www.thenewpeople.com>). The Web site provides news on events and politics relating to Sierra Leone and the worldwide Sierra Leonean diaspora and is considered in Sierra Leone to be in opposition to the government. The Web site is a passive Web site available worldwide. Readers cannot log on to the Web site and do not pay a subscription. There is no avenue for readers to comment on news articles.

Respondent Kallon, a Georgia resident, is the chief executive officer and majority shareholder of New People Newspaper. Dr. Patrick Muana, a Texas resident and professor at Texas A & M University, periodically reviews articles for the New People Newspaper. Dr. Marda Mustapha and John Mannah live in New York. Mustapha is a professor of comparative politics.

In May 2008, New People Newspaper published a series of articles that discussed Iscandari's handling of the Arizona wrongful death case, including his management of settlement money and expenditures he incurred while in Sierra Leone. The articles were critical of Iscandari's professional ethics. In response to the first article, Iscandari contacted the editor through the link to the e-mail address featured on the Web site, and requested a retraction. New People Newspaper reported on the letter to the editor and in the article put out a call for Iscandari's documents or statements that would disprove the authenticity of the initial report. In a later news story appearing in a November 2008 column titled "Ariogbo Speaks," the writer stated: "Ariogbo wants the whole world to avoid the lawyer turned 419 scam artist like a plague."

Apparently, prior to filing suit, Iscandari threatened to sue. An e-mail response from the editor included the following: "We have waited for a very long time to

[2] In 2008, at the time the articles in question were posted on the Web site, New People Newspaper was operated by a corporation organized under the laws of Sierra Leone. After 2008, because of the perceived hostility of the Sierra Leonean government, a Georgia corporation assumed operation of the Web site.

countersue the last underwear off your sorry backside and get you disbarred, but we have been held back by wise counsel from our elders."

Iscandari lodged his complaint in April 2009, alleging causes of action for libel, false light, and intentional and negligent infliction of emotional distress against New People Newspaper, Kallon, Mustapha, Mauna, and others. Respondents moved to quash service of summons for lack of personal jurisdiction. Following a December 2009 hearing, the court continued the motion to give Iscandari time to conduct discovery. Following the continued hearing which occurred more than 18 months later, the trial court concluded that while Iscandari presented evidence that respondents "were motivated to cause injury to his professional reputation by actively discouraging readers of New People Newspaper from doing business with him," he adduced no evidence that anyone in California other than himself read the articles or that Iscandari suffered any effects in California. The court quashed service of summons, and thereafter Iscandari moved unsuccessfully for reconsideration. This appeal followed.

II. DISCUSSION

A. *Standard of Review*

When a defendant moves to quash service of process with a challenge to personal jurisdiction, the plaintiff bears the initial burden of demonstrating the factual basis justifying the exercise of jurisdiction. If the plaintiff satisfies this burden, it is up to the defendant to show that the exercise of jurisdiction would be unreasonable. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 273 (*Pavlovich*).)

When the facts giving rise to jurisdiction conflict, we review the trial court's factual conclusions for substantial evidence. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996)14 Cal.4th 434, 449.) If no conflict exists, the question of jurisdiction is one of law and we engage in an independent review of the record. (*Ibid.*)

B. *Governing Principles*

California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) Our exercise of jurisdiction over an out-of-state defendant comports with our Constitutions "if

the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate ‘ “traditional notions of fair play and substantial justice.” ’ ” (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 444, quoting *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.)

We are concerned in this case whether specific, not general, personal jurisdiction exists. A California court may exercise specific jurisdiction over nonresident defendants under these conditions: “(1) ‘the defendant has purposefully availed himself or herself of forum benefits’ [citation]; (2) ‘the “controversy is related to or ‘arises out of’ [the] defendant’s contacts with the forum” ’ [citation]; and (3) ‘ “the assertion of personal jurisdiction would comport with ‘fair play and substantial justice’ ” ’ [citation].” (*Pavlovich*, *supra*, 29 Cal.4th at p. 269.)

The United States Supreme Court in *Calder*, *supra*, 465 U.S. 783 applied an “effects test” for determining purposeful availment in the defamation context. There, the purported libelous newspaper story concerned the California activities of a California resident, impugning the plaintiff’s professionalism whose career was centered here. The article drew on California sources, and the brunt of the harm—namely the plaintiff’s emotional distress and injury to professional reputation—was suffered in this state. Under these circumstances, California was “the focal point both of the story and the harm suffered” and jurisdiction was properly exerted over the Florida newspaper persons “based on the ‘effects’ of their Florida conduct in California.” (*Id.* at pp. 788-789.) The defendants’ intentional actions were expressly aimed at California. They knew the article in question would potentially harm the plaintiff in this state where she lived and worked, and in which the newspaper had its largest circulation. (*Id*. at pp. 789-790.)

Under *Calder*, the foreseeability of effects in the forum state is not enough to justify the exercise of long-arm jurisdiction. *Calder* thus requires something more than a finding that the harm caused by the defendant’s intentional conduct is primarily felt within the forum state. (*Pavlovich*, *supra*, 29 Cal.4th at pp. 270-271.) Rather, “the *Calder* effects test requires intentional conduct *expressly aimed at or targeting* the forum

state in addition to the defendant's knowledge that his intentional conduct would cause harm in the forum." (*Pavlovich, supra,* 29 Cal.4th at p. 271, fn. omitted.)

Although nonresident publishers, reporters, and editors may be sued in California for defamatory material published elsewhere, personal jurisdiction always depends on the nature and extent of the particular contacts in the forum state. Thus, contacts have been deemed insufficient to sustain personal jurisdiction where circulation in California is insignificant; reporters are not sent here to develop the story in question; the article is not published to be transmitted to California newspapers; and the story is of national import with no expectation of receiving particular attention here. (*Sipple v. Des Moines Register & Tribune Co*. (1978) 82 Cal.App.3d 143, 151-152.)

When the scope of personal jurisdiction is based on Internet use, we use a sliding scale analysis described as follows: " 'At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. [Citation.] At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction. [Citation.] The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.' " (*Pavlovich, supra,* 29 Cal.4th at p. 274.)

In *Pavlovich*, the defendant's company posted on its Web site the source code of a computer program that would allow a visitor to the site to overcome the copy control technology for all copyrighted motion pictures in the United States. The Web site at issue was a passive site that had no interactive features, and there was no evidence that any California resident visited or downloaded the source code. The defendant was a

Texas resident who had no contacts in California. Notwithstanding that the motion picture, computer, and consumer electronics industries were centered in California, the defendant's knowledge that his tortious conduct could harm these industries was insufficient to satisfy the effects test. (*Pavlovich*, *supra*, 29 Cal.4th at pp. 274-276.) There was no evidence that the defendant expressly aimed his conduct at or intentionally targeted this state; mere knowledge of industry-wide effects in the forum states is not enough to establish express aiming at the forum state under the effects test. (*Id*. at pp. 276-278.) Further, nothing in the record suggested that the defendant encouraged Web site visitors to use the program illegally and thus his mere awareness that they might do so, without more, did not show purposeful availment. (*Id*. at p. 276.)

C. *Analysis*

Here, at the time the articles in question appeared in a newspaper published on the Web site found at (<http://www.thenewpeople.com>), the site was operated by a Sierra Leonean company. The Web site is a passive site available worldwide. Readers do not log on, add content, comment on news postings or pay for a subscription. None of the individual defendants in this case live or work in California.

The focus of the articles had absolutely nothing to do with California and everything to do with Iscandari's handling of a wrongful death case brought on behalf of a Sierra Leonean woman, in Arizona. The articles also discussed Iscandari's expenditures and certain of his activities in Sierra Leone. The newspaper itself concerns matters relating to Sierra Leone, and the people of Sierra Leone who have left their native land in diaspora. It operates in opposition to the current government.

Iscandari makes much of the fact that he e-mailed the editor, suggesting that this circumstance renders the Web site interactive. *E-mailing* a note to the editor does little to render the *Web site* itself interactive. No one can change the posted information that is passively made available to anyone who wants to access the Web site. A passive Web site that does little more than make information available to those who are interested in it does not supply grounds for the exercise of personal jurisdiction. (*Pavlovich*, *supra*, 29 Cal.4th at p. 274.)

Iscandari also makes much of the assertions that the individual respondents knew he lived in California and was licensed to practice law here, and wanted to get him disbarred. Such knowledge, he argues, infuses the tortious publications with purposeful availment because it satisfies the element of expressly targeting the forum state. First, the evidence was conflicting, the record does not contain all the evidence that was before the trial court, and the court did not make a specific finding on this point.[3] Moreover, Iscandari relies heavily on an e-mail sent by Ishmaelsowa—a purported pseudonym for respondent Muana—in which Ishmaelsowa expressed the wish to "get you debarred." This e-mail was sent months *after* the articles were posted and *after* it became apparent that Iscandari was threatening legal action. Additionally, it is not at all apparent that the e-mail was sent to anyone in California other than Iscandari, and it is abundantly clear that it was not sent to any entity or functionary that could act, initiate, or pursue a California attorney disciplinary matter. To the extent it qualifies—if at all—as a forum-related activity, its relevance to ascertaining specific jurisdiction in relation to the specific causes of action alleged in the complaint is nil. (See *Jewish Defense Organization, Inc. v. Superior Court* (1999) 72 Cal.App.4th 1045, 1058.)

So, too, an e-mail from Iscandari to Kallon explaining the California Bar Association procedure for disciplining attorneys and continuing to plead for retraction of certain statements was sent *after* the posting and threat of litigation. Therefore, its relevance to establishing respondents' knowledge that he was licensed to practice law in California is also nil. In any event, the effects test is not satisfied by merely asserting that the defendant was aware that the plaintiff's principal place of business was located in the forum. (*Jewish Defense Organization Inc. v. Superior Court*, *supra*, 72 Cal.App.4th at p. 1059 & fn. 3.)

---

[3] Of interest, the record contains a pleading from respondents that references a deposition submitted in the case in which respondent Muana apparently testified: " 'I did not have knowledge that you were a lawyer in California in 2008. . . . I was not aware that you are a California attorney at that time [March 3, 2009, the date of the e-mail].' " The deposition in question is not part of the record.

As the trial court mentioned, testimony was presented that the individual respondents were motivated to injure Iscandari's professional reputation to discouraging readers of New People Newspaper from doing business with him. However, there was no evidence presented that anyone other than Iscandari read the articles in California, or that the articles damaged his law practice in California. The articles did not target California or California residents. California is not mentioned in the body of the articles,[4] nor do the articles mention that Iscandari is licensed to practice law in California. In sum, California was not the focal point of the articles. (See *Revell v. Lidov* (5th Cir. 2002) 317 F.3d 467, 473.)

And more to the point, Iscandari, by his own acknowledgment, is primarily an immigration attorney who practices law throughout this country, with a client base consisting of Sierra Leoneans and persons from West Africa. This underscores that there were no particular effects suffered in California as distinct from any effects potentially suffered elsewhere. Moreover, it is in keeping with the target audience and purpose of the New People Newspaper that the articles report on an attorney such as Iscandari, whose client base dovetails with the Sierra Leonean diaspora. The reporting about Iscandari's representation of a Sierra Leonean client never involved any particular targeting of California.

[4] The only reference to California appears in a breakdown of expert witness expenses purportedly incurred by Iscandari in the Arizona case that includes a few expense itemizations incurred in California.

III. DISPOSITION

For all these reasons, we conclude that the trial court correctly determined no defendant was subject to personal jurisdiction in California, and service of summons was properly quashed. We affirm the order granting respondents' motion to quash.

_____
Reardon, Acting P.J.

We concur:

_____
Rivera, J.

_____
Baskin, J.*

* Judge of the Contra Costa Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.