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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

ANDREW JEE et al.,

Petitioners,

v.

THE SUPERIOR COURT OF CITY AND  
COUNTY OF SAN FRANCISCO,

Respondent;

MICHAEL V. PETRAS,

Real Party in Interest.

A140360

(San Francisco City & County  
Super. Ct. No. CGC13533451)

**INTRODUCTION**

Andrew Jee, a Texas resident registered to practice law in Texas, and his Texas law firm of Jee Law, PLLC (jointly, petitioners), filed a timely petition for writ of mandate pursuant to Code of Civil Procedure, section 418.10, seeking reversal of the trial court's order denying petitioners' motion to quash service of summons and complaint. The complaint in question was filed in San Francisco Superior Court by real party in interest Michael V. Petras, alleging professional misconduct and other causes of action not only against petitioners but also against Ropers Majeski Kohn Bentley PC (Ropers Majeski), Fox Rothschild, LLP (Fox Rothschild), both law firms with offices in San Francisco, as well as Fox Rothschild partner Jeffrey Polsky and Fox Rothschild partner Curtis Smolar, formerly of Ropers Majeski. Petitioners assert the superior court lacks

specific personal jurisdiction over them on the grounds they have not purposefully availed themselves of the privileges or protections of the forum state. For the reasons explained below, we shall grant the petition.

### **BACKGROUND**

According to the allegations in the complaint, between 2003 and 2010, real party in interest Petras, assisted by his counsel at that time, Charles Kaplan, was involved in a business venture with an individual named Gary Mole. Petras, Kaplan and Mole collaborated on Petras's idea that Petras and Mole establish a Retail Electric Provider (REP) in Texas, New York and other markets; the REP would purchase electric power on the open market and resell it to businesses and consumers in deregulated markets throughout the U.S. Mole promised to invest \$5-10 million in the new company, called Franklin Power Company (FPC), in return for a 60% share. Petras held a 20% share, as did Roger McAulay, CEO of FPC. Mole never made the promised investment, and refused to let others invest in the venture. Instead, Mole schemed to cause FPC to fail and to divert its assets and business to Glacier Energy Holdings, owned solely by Mole; this was accomplished clandestinely by Mole, assisted by Kaplan.

The complaint further alleges that in June 2011, Petras filed an action in the United States District Court for the Northern District of Texas against Kaplan and Mole for conspiracy and breach of fiduciary duty in connection with the formation and operation of the Glacier company. At all relevant times, Smolar and Ropers Majeski were primarily responsible for all aspects of Petras's legal representation in the federal court action. In July 2011, based on Smolar's advice and recommendation, Petras retained petitioners as local counsel. Sometime in January 2012, Smolar moved from Ropers Majeski to Fox Rothschild and, from that point on, Smolar and Fox Rothschild were primarily responsible for all aspects of Petras's legal representation in the federal court action. On September 10 and 11, 2012, Petras attended a series of strategy meetings at Fox Rothschild's San Francisco office with Jee, Smolar, Polsky, and other

Fox Rothschild personnel. In January 2013, five weeks before the scheduled trial date, Smolar and Fox Rothschild filed a motion to withdraw as counsel. Jee was trial counsel during trial in federal court between February 11 through 15, 2013. Following the trial, the jury awarded Petras a total of \$30,000 in damages on all his claims.

The complaint alleges, in essence, that defendants bungled the federal case from start to finish by failing to conduct an adequate factual investigation, meet discovery deadlines, issue subpoenas to key witnesses, develop evidence of plaintiff's damages in a form admissible at trial, retain expert witnesses or obtain testimony from Mole, resulting in a paltry verdict worth far less than the true value of the claims. The complaint specifically alleges petitioners' principal place of business is located in Dallas, Texas, and that Andrew Jee is a solo practitioner who owns and controls Jee Law, PLLC as its sole partner.

In September 2013, Jee filed a motion to quash service of summons and complaint, asserting the court could not exercise personal jurisdiction over him based on his lack of minimal contacts with California. According to the declaration Jee submitted in support of his motion, he is licensed to practice law in Texas and has resided in Dallas continuously for the past 19 years. Petras travelled to Dallas County, Texas, and asked Jee to take over as local counsel in the federal district court case. The complaint was drafted by Petras's California counsel. Jee's role was to act as local counsel under the direction of Petras's primary counsel, Smolar, who was then with Ropers Majeski. Jee is not licensed to practice law in California and has never solicited business in California. In the course of his representation of Petras, Jee did not undertake any litigation actions in California; he did not appear in any California court or take or defend any depositions in California. The only contact Jee had with California while representing Petras was his attendance at a client meeting hosted by lead counsel Smolar at Fox Rothschild's offices in San Francisco. After Smolar and Fox Rothschild withdrew from the case, Jee decided to assist Petras by staying on as counsel through trial. His entire practice is based in

Dallas and it would be a significant financial and logistical burden on him and his firm to defend this action in San Francisco. Also, all his records regarding his representation of Petras are in Dallas County, as are the court where the trial took place and the witnesses who attended trial, with the exception of one witness in Georgia.

According to Petras's declaration in opposition to Jee's motion to quash, while acting as local counsel in the Texas federal court action, Jee worked under supervision and control of Smolar and his colleagues at Roper Majeski and Fox Rothschild. Most of the material used in the federal court action was maintained or created in California by Petras and his lawyers and furnished to Jee in Texas. Petras and his California attorneys had "thousands of email and telephone communications with Jee while we were in California." Jee sent his bills to Smolar in California, who in turn forwarded them to Petras for payment. In August 2012, a two-day strategy meeting was held at Smolar's office in San Francisco. "Most of the time spent at the meeting was devoted to making a list of people to depose and subpoena," but no one was ever deposed and no subpoenas were served until after the discovery cut-off, and were quashed as a result.

After hearing argument of counsel on a hearing on the motion to quash held on November 4, 2013, the trial court denied the motion. The trial court noted that Jee routinely communicated with Petras about the case, most of the evidence on the case was generated in California, and Jee came to California for a strategy meeting over two days where the case was discussed. The trial court ruled this was sufficient to establish specific jurisdiction under *Brown v. Watson* (1989) 207 Cal.App.3rd 1306 (*Brown*).

## **DISCUSSION**

### ***A. Legal Standards Governing the Exercise of Personal Jurisdiction***

"California courts may exercise personal jurisdiction on any basis consistent with the Constitution of California and the United States. (Code Civ. Proc., § 410.10.) The exercise of jurisdiction over a nonresident defendant comports with these 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.” ’ ” [Citations.]’ . . . [¶] . . . [T]he minimum contacts test asks ‘whether the “quality and nature” of the defendant’s activity is such that it is “reasonable” and “fair” to require him to conduct his defense in that State.’ [Citations.] The test ‘is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite “affiliating circumstances” are present.’ [Citation.] [¶] Under the minimum contacts test, ‘[p]ersonal jurisdiction may be either general or specific.’ [Citation.]” (*Snowney v. Harrah’s Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1061 (*Snowney*)).

Here, Petras does not claim general jurisdiction, so we consider only whether petitioners are subject to specific jurisdiction. “ ‘When determining whether specific jurisdiction exists, courts consider the “ ‘relationship among the defendant, the forum, and the litigation.’ ” [Citations.] A court may exercise specific jurisdiction over a nonresident defendant only if: (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’ ” [citations]; and (3) “ ‘the assertion of personal jurisdiction would comport with “fair play and substantial justice.” ’ ” [Citations.] [Citation.]” (*Snowney, supra*, 35 Cal.4th at p. 1062; see also *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 447 (*Vons*) [same].) “ ‘ “The purposeful availment inquiry . . . focuses on the defendant’s intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs [its] activities toward the forum so that [it] should expect, by virtue of the benefit [it] receives, to be subject to the court’s jurisdiction based on” [its] contacts with the forum.’ [Citations.]” (*Snowney*, at pp. 1062-1063.)

“ ‘When a defendant moves to quash service of process’ for lack of specific jurisdiction, ‘the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction.’ [Citation.] ‘If the plaintiff meets this initial burden, then the

defendant has the burden of demonstrating “that the exercise of jurisdiction would be unreasonable.” ’ [Citation.] . . . [If] ‘ “no conflict in the evidence exists . . . the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record.” ’ [Citation.]” (*Snowney, supra*, 35 Cal.4th at p. 1062; *Vons, supra*, 14 Cal.4th at p. 449.)

**B. Analysis**

The Tenth Circuit Court of Appeals recently observed that, in applying the above standards to the question of “whether out-of-state legal work on an out-of-state matter can subject an out-of-state lawyer to personal jurisdiction in the client’s home forum,” the “majority view answers this query in the negative. According to the majority, even though a client may feel the effects of the lawyer’s misdeeds in the client’s home forum, the client cannot sue the lawyer there on that account alone. . . . The majority reasons that representing a client residing in a distant forum is not necessarily a purposeful availment of that distant forum’s laws and privileges.” (*Newsome v. Gallacher* (10th Cir. 2013) 722 F.3d 1257, 1280 (*Newsome*)). The *Newsome* court adopted the majority view, concluding that “an out-of-state attorney working from out-of-state on an out-of-state matter does not purposefully avail himself of the client’s home forum’s laws and privileges, at least not without some evidence that the attorney reached out to the client’s home forum to solicit the client’s business.” (*Id.* at pp. 1280-1281.)

The majority view is reflected in *Sher v. Johnson* (9th Cir. 1990) 911 F.2d 1357 (*Sher*). On facts strikingly analogous to the case at bar, the *Sher* court concluded California lacked specific jurisdiction over a Florida lawyer retained by Seymour Sher, a California resident arrested in Los Angeles in connection with criminal charges brought against him in Florida. Sher retained California counsel to assist in his defense, and California counsel in turn located Florida counsel to try the case. After Sher was convicted by a federal jury in Florida of extortion and several RICO violations, he discovered his Florida counsel was under investigation by the U.S. Attorney’s Office at

time of trial, and his convictions were later reversed on that ground. Sher then sued Florida counsel and his law partnership in federal district court for legal malpractice. (*Id.* at p. 1360.)

As pertinent here, the *Sher* court concluded out-of-state counsel and his law firm did not purposefully avail themselves of the benefits of the forum merely by engaging in the “normal incidents” of legal representation: “Here, it is undisputed that a Florida law firm represented a California client in a criminal proceeding in Florida. As normal incidents of this representation the partnership accepted payment from a California bank, made phone calls and sent letters to California. These contacts, by themselves, do not establish purposeful availment; this is not the deliberate creation of a ‘substantial connection’ with California, [citation], nor is it the promotion of business within California. For one thing, the business that the partnership promoted was legal representation in Florida, not California. Moreover, the partnership did not solicit Sher’s business in California; Sher came to the firm in Florida. There is no ‘substantial connection’ with California because neither the partnership nor any of its partners undertook any affirmative action to promote business within California.” (*Sher, supra*, 911 F.2d at p. 1362.)

Furthermore, the fact that Florida counsel traveled to California on three occasions to meet with Sher in connection with the case, even when added to the normal incidents of legal representation, did not establish purposeful availment. (*Sher, supra*, 911 F.2d at p. 1363.) On the latter point, the appellate court stated, “The trips to California were incident to the Florida representation. It may be said, of course, that by coming to California in connection with the representation, the partnership conducted its business in that state. We do not believe, however, that in the context of the ‘parties’ actual course of dealing,’ [citation], the partnership was availing itself of any significant California privilege by coming into the state to talk to its client. The three trips to California were

discrete events arising out of a case centered entirely in Florida. . . . We find these contacts too attenuated to create a ‘substantial connection’ with California.”<sup>1</sup> (*Ibid.*)

The majority view was also adopted by the Fourth District Court of Appeal in *Edmunds v. Superior Court* (1994) 24 Cal.App.4th 221 (*Edmunds*). There, Manchester Hawaii Properties, Ltd., (MHP) a California limited partnership, and Len Ronson, a MHP limited partner (jointly, plaintiffs), sued Edmunds and his Hawaii law partnership, as well as Douglas Manchester, MHP’s general partner and Manchester’s California attorneys for professional negligence, breach of fiduciary duty, legal malpractice, fraud and interference with prospective economic advantage. MHP owned the leasehold interest in certain property; plaintiffs alleged Manchester sought to purchase the freehold after buying out the other MHP partners but without first disclosing the favorable purchase terms he’d already negotiated. (*Id.* at pp. 224-225.) Plaintiffs sued Edmunds and his Hawaii law firm on the grounds that in the course of representing MHP in a suit against it by a subtenant on the lease, Edmunds travelled to California to represent Manchester in his deposition; at the deposition, the issue of whether Manchester adequately disclosed to the other partners that MPH that had the sole opportunity to buy the property was discussed. (*Id.* at pp. 225-226.) Edmunds filed a motion to quash on the grounds he and his law firm lacked sufficient minimum contacts with California. The trial court denied the motion on the grounds Edmunds had caused an effect in California through acts or omissions which occurred elsewhere because the evidence suggested that Edmunds knew Manchester had possibly breached a fiduciary duty of disclosure towards Ronson. Edmunds then petitioned the court of appeal for a writ of mandate. (*Id.* at pp. 227-228.)

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<sup>1</sup> Despite this, the *Sher* court ultimately concluded the partnership was subject to specific jurisdiction because it purposefully availed itself of the benefit of California law when it took a deed of trust on Sher’s home in order to secure payment for legal services. (*Sher*, 911 F.2d at p. 1363.)

In assessing the merits of the writ petition, the appellate court stated “we should keep in mind that Edmunds is an attorney licensed to practice in the State of Hawaii, who came to California in the context of representing his California client, the partnership and the general partner, in deposition in a Hawaii action. The mere facts that to do so, he came to California, made phone calls and wrote letters to and from this state, and accepted payment from a California client, do not establish purposeful availment of the benefits and protections of California law.” (*Sher v. Johnson* (9th Cir.1990) 911 F.2d 1357, 1362–1363.)” (*Edmunds, supra*, 24 Cal.App.4th at 234.)

Parsing the facts before it, the *Edmunds* court concluded that “by traveling to California to represent his client in deposition, and by carrying out representation of a California client in Hawaii litigation, Edmunds was essentially promoting the economic well-being of his Hawaii law partnership, along with the Hawaii interests of the partnership and its constituents, based on their interest in Hawaii real property. Any promotion of their California financial interests was incidental. Everything Edmunds did was done in his capacity as a Hawaii attorney, and he thus lacks the necessary close relationship to the State of California in these matters to justify the assertion of personal jurisdiction over him.” (*Edmunds, supra*, 24 Cal.App.4th at p. 236.)

The *Edmunds* court also stated that “[s]ubstantial public policy concerns support our conclusion. Allowing an exercise of California jurisdiction over an out-of-state attorney who represents California clients in an out-of-state action, and who has had the limited degree of contact with California as has Edmunds, would effectively be to penalize out-of-state attorneys by subjecting them to suit here on a highly attenuated theory. [Citation.] Out-of-state attorneys would likely be discouraged from representing California residents in actions in the attorney’s home state if malpractice and other actions could readily be pursued in California, based largely on the client’s residence here. [Citation.] In all, Ronson has simply failed to ‘present facts demonstrating that the conduct of defendants related to the pleaded causes is such as to constitute

constitutionally cognizable “minimum contacts.” [Citation.]’ [Citation.]” (*Edmunds, supra*, 24 Cal.App.4th at p. 236.)

Similarly, the record in this case cannot support a finding that petitioners, as residents of Texas, should expect to be subject to California jurisdiction because they represented a California resident in a lawsuit prosecuted in Texas court. In this regard, we adopt the majority view that the normal incidents of legal representation, including emails, telephone communications, and a visit to the forum state in connection with the out-of-state lawsuit do not constitute sufficient minimum contacts to warrant the forum’s assumption of specific jurisdiction. (See *Edmunds, supra*, 24 Cal.App.4th at p. 236; *Sher, supra*, 911 F.2d at p. 1362.) Moreover, we also share the substantial public policy concerns expressed by the *Edmunds* court that “[o]ut-of-state attorneys would likely be discouraged from representing California residents in actions in the attorney’s home state if malpractice and other actions could readily be pursued in California, based largely on the client’s residence here.” (*Edmunds, supra*, 24 Cal.App.4th at p. 236.) In sum, when a California resident travels out of state and solicits legal representation from an out-of-state attorney in a matter prosecuted in the attorney’s home state, as Petras did here, it cannot be said the out-of-state attorney “has purposefully availed himself or herself of forum benefits” or that “ ‘the assertion of personal jurisdiction would comport with “fair play and substantial justice.” ’ ” (*Snowney, supra*, 35 Cal.4th at p. 1062.)

However, the trial court in this case decided specific jurisdiction was warranted under *Brown v. Watson* (1989) 207 Cal.App.3d 1306 (*Brown*). In *Brown*, plaintiffs sued a California law firm and a Texas law firm for legal malpractice arising from a personal injury suit related to an automobile accident in Texas. The California lawyers filed suit on behalf of plaintiffs in Texas federal court on the basis of diversity jurisdiction but the suit was dismissed because some of the defendants were California citizens. Thereafter, the California lawyers associated the Texas firm for the purpose of re-filing an action in Texas state court. However, that suit was subsequently dismissed as to all defendants

because plaintiffs' attorneys failed to file and serve summons and complaint within the two-year period under Texas law. (*Brown, supra*, 207 Cal.App.3d at p. 1310.)

The Texas defendants moved to quash service of summons for lack of personal jurisdiction, asserting they were not members of the California bar, had not solicited business in California, and the main attorney on plaintiffs' case never came to California to meet with plaintiffs and had only occasional contact with them through telephone calls and correspondence. The trial court granted Texas defendants' motion to quash and plaintiffs appealed. (*Id.* at pp. 1310-1311.)

On appeal, the court reversed the trial court, finding specific jurisdiction on the grounds that "[r]espondents' contacts with the California attorneys, and with appellants personally, while not continuous, extended from 1982 to November 1986. Respondents were retained by appellants in California, through their California attorneys, to file and prosecute an action in Texas. Material and information necessary for prosecution of the action (e.g., medical evaluations of appellant Brown and photographs taken in Texas by an investigator) were in California and were furnished to respondents by the California attorneys. Respondents telephoned and corresponded with appellants and the California attorneys regarding the Texas lawsuit. Respondents' fee was to be paid through a fee-splitting arrangement with the California attorneys. . . . [Thus,] respondents purposefully availed themselves of the privilege of conducting activities in California by their decision to represent appellants and their subsequent conduct." (*Brown*, 207 Cal.App.3d at p. 1314.)

To the extent *Brown* holds that the normal incidents of legal representation constitute sufficient minimum contacts to warrant the forum's assumption of specific jurisdiction, we would respectfully disagree with it. (See *Edmunds, supra*, 24 Cal.App.4th at p. 236; see also *Sher, supra*, 911 F.2d at p. 1362.) However, the important fact distinguishing *Brown* from this case is that in *Brown*, the out-of-state attorneys entered into a fee-splitting agreement with their California counterparts, thereby

availing themselves of the benefits and privileges of the forum. (See *Brown*, 207 Cal.App.3d at p. 1314.) Similarly, as noted above (see *ante*, fn. 1), the *Sher* court ultimately concluded the Florida law partnership was subject to California jurisdiction because it took a deed of trust on a California property in order to secure payment for legal services it provided. (See *Sher*, *supra*, 911 F.2d at p. 1363.) Here, by contrast, Petras mailed petitioners' payment for legal services to them in Texas; thus, unlike in *Brown* and *Sher*, petitioners did not purposefully avail themselves of the benefits of the forum in order to secure payment for legal services.

#### **DISPOSITION**

We have previously notified the parties we might issue a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177–180.) No useful purpose would be served by further briefing and oral argument. Accordingly, let a peremptory writ of mandate issue commanding respondent Superior Court of San Francisco County, in its case No. CGC13533451, to vacate its order denying petitioners' motion to quash and to enter a new and different order granting the motion. The temporary stays imposed by this court in these matters shall dissolve upon issuance of

the remittitur. (See Cal. Rules of Court, rules 8.490(c), 8.272.) Petitioners are awarded costs. (Cal. Rules of Court, rule 8.493(a).)

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Dondero, Acting P. J.

We concur:

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Banke, J.

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Becton, J.\*

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