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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ROLF HANSEN,

Plaintiff and Appellant,

v.

PFL MANAGEMENT, INC. et al.,

Defendants and Respondents.

2d Civil No. B234936  
(Super. Ct. No. 56-2010-00372541-  
CU-MC-SIM)  
(Ventura County)

Rolf Hansen appeals a judgment of dismissal after the trial court granted a motion to quash service of process filed by defendants PFL Management, Inc., James Coover and Kathy Coover -- out-of-state defendants served in Arizona. Hansen filed an action for damages stemming from a "fraudulent conveyance." He alleges various defendants diverted assets to inhibit his ability to recover funds stolen by his financial advisor. The trial court dismissed his action because Hansen did not present evidence to establish minimum contacts with California to support general or specific personal jurisdiction over three out-of-state defendants. We affirm.

**FACTS**

In 2001, Hansen retained accountant Robert Sandlin to prepare his taxes and provide tax planning advice. Sandlin worked at United Revenue Services in Newport Beach, California.

On Sandlin's advice, Hansen opened a "SEP-IRA account" at Charles Schwab & Company, Inc. Sandlin forged a power of attorney that purported to give him access to Hansen's funds.

On August 14, 2001, Sandlin used the forged document to withdraw \$81,000 from the Charles Schwab account and deposit it into a Washington Mutual checking account under the name of Platinum Planning Group, Inc. (Platinum). Between August 2001 and July 2005, Sandlin withdrew a total of \$301,000 from Hansen's account without his knowledge. Sandlin deposited Hansen's funds into Platinum accounts.

Sandlin was subsequently arrested and prosecuted for stealing funds from Hansen and other clients.

Hansen filed an action for "fraudulent conveyance" seeking monetary damages, but Sandlin and Platinum were not named as defendants. Hansen alleged that "within the past eight years," Platinum had transferred its assets to various defendant corporations and individuals to make Platinum "judgment proof." Hansen named three out-of-state defendants -- James Coover, Kathy Coover and their investment company PFL Management, Inc., who he alleged were "playing a 'shell game' with the assets in an effort to prevent or at least delay [Hansen's] collection efforts."

The Coovers and PFL Management filed motions to quash service of process claiming lack of general or specific personal jurisdiction. In their declarations, the Coovers stated they reside in Arizona. They are not California residents, they have no California real estate or assets, and they conducted no business in California. James Coover declared that PFL Management was a "Belize corporation," which did not do business in California, and had no real estate or assets in California.

In his opposition, Hansen noted that in a deposition taken in Arizona, James Coover testified that he transferred \$375,000 to Platinum and that sum was to be deposited in a PFL Management account. The Coovers owned PFL Management and Sandlin assisted them "to create" that entity.

The Coovers replied that Sandlin was their financial advisor. At his direction, James Coover sent \$375,000 to Platinum to be deposited in their PFL Management account. But Sandlin took their money and they were "victims" of Sandlin's fraud. When they asked Sandlin what happened to their money, he said "he was having trouble transferring it." Sandlin promised he would use that money to pay their federal and state taxes. But he did not keep his promise. They never received the money back, and it was never deposited in the PFL Management account. They claimed Hansen's opposition evidence did not show that the \$375,000 transfer had a substantial connection to his cause of action. They said Hansen "does not identify a single transaction from [Platinum] to [them] or PFL [Management] to contradict [their] victim status."<sup>1</sup>

The trial court granted the motion. It found: 1) Hansen presented "no evidence" that PFL Management ever received "any monies from Platinum," 2) there was no evidence that the Coovers "conducted any forum-related activities related to [Hansen's] fraudulent transfer claim," and 3) Hansen did not "demonstrate a sufficient connection between [PFL Management's] very limited forum activities and the alleged fraudulent transfer . . . ." It entered judgment dismissing the action against these defendants for "lack of personal jurisdiction." It also ruled PFL Management was not validly served with process in Arizona.

## DISCUSSION

### *Jurisdiction*

Hansen argues he proved the three defendants he served in Arizona had sufficient minimum contacts with California to establish jurisdiction.

"Personal jurisdiction over a nonresident defendant served with process outside the state satisfies constitutional due process requirements if the defendant has

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<sup>1</sup> Respondents request that we take judicial notice of a transcript involving the criminal prosecution of Sandlin. We deny the request because the transcript was not part of the record before the trial court. (*Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 910, fn. 5.)

such minimum contacts with the state that the assertion of jurisdiction does not violate traditional notions of fair play and substantial justice." (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 216-217.)

"[W]hen jurisdiction is challenged by a nonresident defendant, the burden of proof is upon the plaintiff to demonstrate that 'minimum contacts' exist between defendant and the forum state to justify imposition of personal jurisdiction." (*Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710.)

#### *General Jurisdiction*

"Personal jurisdiction may be either general or specific." (*Doe v. Roman Catholic Archbishop of Cashel & Emly, supra*, 177 Cal.App.4th at p. 217.) "General jurisdiction exists when a nonresident defendant's contacts in the forum state are substantial, continuous, and systemic." (*Ibid.*) This may be shown by evidence that "the defendant's contacts are so wide ranging that they take the place of physical presence in the forum as a basis for jurisdiction." (*Ibid.*)

The trial court found insufficient evidence to support a finding of general jurisdiction. The declarations of James and Kathy Coover reflect that: 1) they do not live in California, 2) they are residents of Arizona, 3) they do not have a California "telephone listing" or a California mailing address, 4) they own no assets or real property in California, and 5) they do not conduct any business in California.

The declaration submitted by PFL Management reflects that it does not have an office in California and it "conducts no business" in California. It has no employees in California and it owns no real property in California. It is not registered to do business in California and it has no assets in California. PFL Management was incorporated as "a Belize corporation" with its "principal place of business" in Belize City, Belize. It does not have an agent for accepting service of process in California. It does not have "a telephone listing or mailing address" in California.

Hansen claims there are sufficient California minimum contacts. He notes that Sandlin drafted the paperwork for the establishment of the Coovers' investment

company -- PFL Management. The Coovers were the exclusive owners and shareholders of that company. Sandlin performed the work to form PFL Management at his office at United Revenue Service in Newport Beach, California. He was the Coovers' tax accountant and he provided tax planning advice to them. United Revenue Service sent the Coovers invoices from its Newport Beach office.

These facts show significant contacts Sandlin and United Revenue Service had in California, but do not show significant contacts the Coovers had in California. In his deposition, James Coover testified he corresponded with Sandlin "[a]lmost exclusively by phone." To Hansen's counsel's question, "Have you done any business in California over the last 10 years," Coover responded, "No." Moreover, PFL Management was not a California company.

Hansen notes that on June 25, 2003, the Coovers went to a Los Angeles branch office of Bank Leumi to open a "PFL Management checking account." But the trial court could reasonably find this was not a California account. At his deposition, James Coover testified, "The paperwork was signed in Los Angeles, but it was documented *for Bank Leumi Luxembourg*." (Italics added.) The Coovers and PFL Management declared they have *no assets* in California. Hansen did not present evidence to contest these claims. Moreover, the Coovers' one-day visit to Los Angeles to open a foreign account does not constitute contacts "so wide ranging that they take the place of physical presence in the forum" state. (*Doe v. Roman Catholic Archbishop of Cashel & Emly, supra*, 177 Cal.App.4th at p. 217.)

The trial court could reasonably infer that the defendants' contacts with California were not substantial, continuous and systematic.

#### *Specific Jurisdiction*

Hansen claims the trial court erred by finding he did not present sufficient facts to support specific personal jurisdiction over the out-of-state defendants.

"If sufficient contacts for general jurisdiction do not exist, a nonresident defendant may be subject to a forum state's specific jurisdiction when the defendant has

purposefully availed himself of that state's benefits and *the cause of action is related to or arises out of the defendant's contacts with the state.*" (*Doe v. Roman Catholic Archbishop of Cashel & Emly, supra*, 177 Cal.App.4th at p. 217, italics added.)

Here the trial court noted that Hansen was basing specific jurisdiction over the Coovers and PFL Management on his claim that Platinum "fraudulent[ly] transferred funds" to PFL Management to obstruct Hansen's "collection activities." But it found Hansen presented "no evidence" that PFL Management ever received "any monies from Platinum." It found the defendants' contacts with California were not sufficiently related to Hansen's cause of action.

Hansen argues that Sandlin "caused Platinum . . . to make several fraudulent transfers *including \$255,000.00 to the account of respondent PFL Management, Inc.* . . . which is owned and controlled by respondents James and Kathy Coover." (Italics added.)

Respondents object to this statement in Hansen's opening brief because: 1) Hansen failed to cite to the record to support this claim, and 2) he presented no evidence in the trial court on such a transfer of funds to PFL Management. Their objections are well taken.

Hansen's failure to cite to the record undermines his argument, and speculation is not a substitute for evidence in the record. (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364.) We presume "if it is not in the record, it did not happen." (*Ibid.*) Hansen filed a declaration stating that Sandlin fraudulently transferred \$301,000 out of his accounts to Platinum. But he made no statement in that document about any connection between Sandlin's embezzlement and any transfer of funds from Platinum to either PFL Management or the Coovers. In fact, in his declaration he does not even mention the Coovers or PFL Management. His complaint does not mention Sandlin or his embezzlement. The facts alleged in that pleading refer to Platinum's actions.

Hansen suggests that James Coover's deposition supports his claim that the Coovers and PFL Management received money from Platinum. He notes Coover said he received "instructions from . . . Sandlin to wire transfer" \$375,000 to Platinum in 2004, and that Sandlin was supposed to transfer the money to "PFL in Luxembourg."

But, as respondents note, the \$375,000 was not Hansen's money and it was not an asset belonging to Platinum. Coover testified he wired this sum, but Sandlin, who was also the Coovers' financial advisor, did not transfer it to the PFL Management account in Luxembourg. The trial court found "there is no evidence that PFL [Management] *ever received any monies from Platinum at all.*" (Italics added.) Where there is conflicting evidence, we defer to the trial court's findings. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449.) We also draw all reasonable inferences from the record to support the judgment. As respondents note, Coover's deposition testimony supports a reasonable finding that the Coovers were the victims of Sandlin's embezzlement, just as Hansen had been a victim of the same accountant's fraud.

Where "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." (*Vons Companies, Inc. v. Seabest Foods, Inc., supra*, 14 Cal.4th at p. 448.) Consequently, the defendant's contacts with the state must have "a substantial connection" to the cause of action. (*Ibid.*)

Hansen relies on the *Vons* case. That action involved food poisoning from contaminated meat that caused illness and death. The plaintiffs sued the companies they alleged had negligently processed the meat that was sold to the public. Our Supreme Court held there were sufficient minimum contacts with the state of California to exercise specific jurisdiction over two out-of-state companies that had allegedly processed the meat improperly and in violation of their contractual duties. The defendants had sufficient California contacts related to the cause of action because: 1)

they had "an ongoing commercial relationship in" California, 2) they "purposefully availed themselves of benefits in the forum by reaching out to forum residents to create an ongoing franchise relationship," 3) their franchise agreement provided that "any disputes arising out of the contract" would be governed by California law, 4) they also agreed the disputes would be litigated in California, 5) their California contacts were "comprehensive and profitable," 6) a violation of the franchise agreement that set "uniform standards for cooking" meat "was a source of injury to Vons," and 7) it was also a "contributing cause" of the illness and death of the customers. (*Vons Companies, Inc. v. Seabest Foods, Inc., supra*, 14 Cal.4th at pp. 449, 450, 451, 456, 457.)

Similar contacts are not present here. The trial court found there was no evidence of any ongoing California business, and consequently the Coovers' act of hiring a California accounting firm was insufficient, by itself, to establish minimum contacts for personal jurisdiction. (*Far West Capital, Inc. v. Towne* (10 Cir. 1995) 46 F.3d 1071, 1076; *Edmunds v. Superior Court* (1994) 24 Cal.App.4th 221, 234 [fact that out-of-state attorney "came to California, made phone calls and wrote letters to and from this state, and accepted payment from a California client" was insufficient for personal jurisdiction].) The Coovers' long distance personal client relationship with a California accountant who stole their funds and a single wire transfer were tenuous connections to a cause of action based on Platinum's diversion of assets. Platinum's actions were independent from the Coovers' limited activity in this state, and the wire transfer had no connection to Hansen because it did not involve his funds. There is no evidence that Hansen's money was received by the Coovers or PFL Management or that their California contacts had substantial connection to his loss of funds.

Hansen made no evidentiary showing that the Coovers were assisting Sandlin in any criminal activity in California or elsewhere, that they engaged in an asset "shell game," or that they held money in California that did not belong to them. He did not present evidence that PFL Management held any Platinum assets, or any other assets, in California. There was no showing that these defendants had a California

business or contractual relationship with Platinum, that they were able to influence Platinum's actions from out of state, or that they were assisting Platinum in California or in Arizona. Nor was there any showing that while in California, or in Arizona, the Coovers requested Platinum to transfer funds that did not belong to them. (*Taylor-Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 114 [no jurisdiction over defendants because there was "no evidence that they participated in or directed any tortious act or omission either within or without California"].) In his deposition, James Coover testified that other than the wire transfer Sandlin directed him to make to Platinum, Sandlin never "discussed" Platinum "or what it does."

Moreover, Hansen's complaint does not support a claim of personal jurisdiction. It does not contain an allegation that any alleged receipt of Platinum assets by these defendants *occurred in California* or that any other alleged activity on their part *took place in this state*. There is also no allegation that these defendants ever resided or did business in California.

At the hearing on the defendants' motions, Hansen presented no evidence to contest the defendants' declarations, and no evidence about Platinum's and PFL Management's business operations or how they were connected. His counsel made allegations during argument. But arguments of counsel are not evidence, and "[t]he plaintiff must do more than merely allege jurisdictional facts." (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110.) Hansen has not shown that the trial court's findings are unsupported by the record. He did not demonstrate a substantial connection between his causes of action and the out-of-state defendants' contacts with this state.

Hansen suggests the trial court erred by deciding facts involving the merits of his case. But the court had to decide if there was a factual nexus between the California contacts and the causes of action. "[W]hen personal jurisdiction is asserted on the basis of a nonresident defendant's alleged activities in this state, facts relevant to

jurisdiction may also bear on the merits of the complaint." (*In re Automobile Antitrust Cases I & II, supra*, 135 Cal.App.4th at p. 110.)

We have reviewed the parties' remaining contentions, but they do not change the result.

The judgment is affirmed. Costs on appeal are awarded to respondents.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

David R. Worley, Judge  
Superior Court County of Ventura

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