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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

RANJIT BEDI et al.,

Plaintiffs and Appellants,

v.

WILLIAM P. NESKE et al.,

Defendants and Respondents.

B248692

(Los Angeles County
Super. Ct. No. BC481833)

APPEAL from an order of the Superior Court of Los Angeles County,

James R. Dunn, Judge. Affirmed.

Brentwood Legal Services and Steven L. Zelig for Plaintiffs and Appellants.

Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg, Joel E. Boxer and

Dorothy Wolpert for Defendants and Respondents.

Plaintiffs Ranjit Bedi, Lori Bedi, and Vera Williams appeal the order granting defendants Gust Rosenfeld P.L.C., Dean C. Robertson and Christopher B. Ingle's¹ motion to quash service of summons for lack of personal jurisdiction. We affirm on the grounds that the plaintiffs failed to meet their burden of proving facts justifying the exercise of jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiffs are residents of California. The individual defendants are residents of Arizona, and the corporate defendant is organized in Arizona. In 2004, the plaintiff Vera Williams listed a property for sale in Arizona. Williams' daughter and son-in-law, Lori and Ranjit Bedi, handled the real estate transaction for her.

The property was sold and, in 2007, the purchasers retained the defendants to represent them in an action against Williams based on the allegation that the purchased home was infested with mold as a result of undisclosed water damage. The action was filed in Arizona, and the Bedis were added as defendants (Arizona Action). The Bedis and Williams prevailed at trial.

In 2012, the Bedis and Williams filed the underlying action for malicious prosecution and abuse of process on the grounds that the Arizona Action was without merit. The defendants moved to quash service of summons, arguing that the trial court lacked personal jurisdiction over them because they did not have the requisite minimum contacts with California. In support of the motion, the defendants submitted evidence

¹ The plaintiffs dismissed the defendants William P. Neske and Donald R. Hidlebaugh from the case.

that their representation of the plaintiffs in the Arizona Action was carried out entirely in Arizona except for one trip to California to depose the Bedis.

In opposition, the plaintiffs conceded that there was no basis for general jurisdiction, but argued that specific jurisdiction was proper because (1) the defendants had threatened to sue the Bedis in a telephone call, (2) the defendants had hired a process server to serve the Bedis in California, and (3) the defendants had traveled to California to take the Bedis' depositions. The plaintiffs' supporting evidence consisted only of declarations by Lori and Ranjit Bedi. The defendants asserted evidentiary objections to the entirety of both declarations.

On June 27, 2012, the trial court struck the plaintiffs' declarations for failure to comply with Code of Civil Procedure section 2015.5's requirement that declarations be signed "under penalty of perjury."² The court also sustained the defendants' evidentiary objections to those declarations.³ The motion to quash was granted on the grounds that the plaintiffs had not met their burden of presenting admissible evidence establishing personal jurisdiction. The court also noted that, "[e]ven if the court

² Code of Civil Procedure section 2015.5 provides that a written declaration may be considered as evidence by the court when the writing "recites that it is certified or declared . . . to be true under penalty of perjury"

³ The minute order states that the court signed a separate order sustaining evidentiary objections. The plaintiffs have not provided us with a copy of the order sustaining the defendants' evidentiary objections or with a transcript of the hearing. It is the appellant's burden to provide an adequate record on appeal. (*Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794.) To the extent the record is inadequate, we make all reasonable inferences in favor of the judgment. (*Ibid.*) Without a hearing transcript documenting how the trial court ruled on each evidentiary objection or a copy of the court's separate order, we must assume that the trial court sustained all of the evidentiary objections before it.

considered [the declarations] . . . the asserted basis of jurisdiction does not establish that 1) defendants purposefully availed themselves of forum benefits; 2) the controversy is related to or arises out of defendants' contacts with the forum; or, that 3) the assertion of personal jurisdiction would comport with fair play and substantial justice.”

The trial court dismissed the action without prejudice, after which, the plaintiffs re-filed the Bedis' declarations with the phrase “under penalty of perjury” inserted. The plaintiffs thereafter moved for a new trial. The trial court denied the motion on the grounds that the plaintiffs had “presented no evidence to support the four potential grounds for the grant of such a motion.”⁴ The plaintiffs appealed.

⁴ We note that a motion for new trial was not the proper procedure for challenging the order granting a motion to quash service of summons. “[Code of Civil Procedure] [s]ection 656 defines a ‘new trial’ as ‘ . . . a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referee’; and a ‘trial’ has been defined by the decisions as the examination before a competent tribunal, according to the law of the land, of questions of fact or law put in issue by pleadings, for the purpose of determining the rights of the parties. [Citations.] Accordingly, in order that there be a proper foundation for a new trial, a trial must necessarily involve the determination of some issue of fact or law raised by the pleadings or directly connected therewith. [Citation.]” (*Fannin Corp. v. Superior Court* (1974) 36 Cal.App.3d 745, 754.) Here, the trial court’s determination of the proper exercise of personal jurisdiction did not involve a determination of any issue of fact or law addressed by the pleadings, and therefore, the motion for new trial was improper.

CONTENTIONS

The plaintiffs contend that the trial court abused its discretion in denying them an opportunity to correct the Bedis' declarations, and that the evidence established that specific jurisdiction was proper.⁵

DISCUSSION

1. *Standard of Review*

“When a nonresident defendant challenges personal jurisdiction, the burden shifts to the plaintiff to demonstrate, by a preponderance of the evidence, that all necessary jurisdictional criteria have been met. The plaintiff can meet this burden only by the presentation of competent evidence in affidavits or declarations and authenticated documentary evidence. [Citation.] Affidavits or declarations consisting primarily of vague assertions of ultimate fact rather than specific evidentiary facts are not sufficient. [Citation.] Once the plaintiff has met the burden of demonstrating facts justifying the exercise of jurisdiction, the burden shifts to the defendant to demonstrate that the exercise of jurisdiction would be unreasonable. [Citations.] [¶] Thus, the process is essentially an evidentiary one and the applicable standard of appellate review is the familiar substantial evidence rule. . . . [However,] [i]f there is no conflict in the relevant evidence, the question is one of law as to which we exercise our independent judgment. [Citation.]” (*Paneno v. Centres for Academic Programmes Abroad Ltd.* (2004) 118 Cal.App.4th 1447, 1454 (*Paneno*).

⁵ On our own motion, we also raised certain procedural issues with respect to the appeal. However, since we conclude that the trial court's order was substantively correct, we have no need not reach or discuss those issues.

2. *Applicable Law*

“Pursuant to California’s long-arm statute, California courts may exercise jurisdiction on any basis not inconsistent with the California or United States Constitution. (Code Civ. Proc., § 410.10.) ‘A state court’s assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal Constitution 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.] In other words, the exercise of jurisdiction must be reasonable. [Citations.]” (*Paneno, supra*, 118 Cal.App.4th at pp.1454-1455.)

“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” ’ [citation]; and (3) ‘ “the assertion of personal jurisdiction would comport with ‘fair play and substantial justice’ ” ’ [citations.]” (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269.) Sufficient minimum contacts for specific jurisdiction exist where a nonresident “ ‘deliberately’ has engaged in significant activities within a [s]tate [citation] or has created ‘continuing obligations’ between himself and residents of the forum. [Citation.]” (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 475-476 (*Burger King*)).

3. *The Trial Court Properly Granted the Motion to Quash*

The trial court struck the Bedis' declarations submitted in support of their opposition to the motion to quash because of the Bedis' failure to certify the writings under penalty of perjury. In the alternative, the trial court sustained the defendants' evidentiary objections to the entirety of those declarations. The plaintiffs now contend that the trial court abused its discretion in denying the plaintiffs an opportunity to amend their declarations in order to comply with Code of Civil Procedure section 2015.5.

However, the plaintiffs have not shown that the trial court did deny them an opportunity to amend their declarations. The plaintiffs have not included a copy of the hearing transcript with the record, and the written record does not show that the plaintiffs asked for leave to amend or that the trial court refused to grant such a request. Absent a record affirmatively demonstrating trial court error, we will not assume the trial court abused its discretion. (*Amato v. Mercury Casualty Co., supra*, 18 Cal.App.4th at p. 1794.)

In addition, the plaintiffs do not challenge the trial court's alternate basis for disregarding the declarations: that the defendants' evidentiary objections were valid. We deem the plaintiffs to have waived this challenge. (See *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 [“ ‘ “Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived.” ’ ”]) As the court struck all of the evidence submitted by the plaintiffs in support of their opposition to the motion to quash, the plaintiffs did not meet their burden of proving personal jurisdiction over the defendants.

Even if the plaintiffs' declarations were admissible, the evidence still did not establish that personal jurisdiction over the defendants was proper. The plaintiffs argue that (1) the defendants' "telephonic threat" and trip to California to take the Bedis' depositions constitute sufficient minimum contacts to justify the exercise of personal jurisdiction over the defendants, and (2) equity requires that the defendants be subjected to personal jurisdiction in California.

The plaintiffs rely on *Hall v. LaRonde* (1997) 56 Cal.App.4th 1342 to support their argument that one phone call alone is sufficient to establish jurisdiction over the defendants. However, *Hall* is distinguishable. In *Hall*, the defendant, a New York resident, purchased a software module from the plaintiff, a California resident, and thereafter worked with the plaintiff to integrate the module into the defendant's software package. (*Id.* at p. 1347.) Even after the initial purchase and modification of the module, the parties continued to work together to modify the module for new software. (*Ibid.*) In addition, the parties' contract contemplated that the defendant would make continuing royalty payments to the plaintiff. (*Ibid.*)

Based on this evidence, the *Hall* court found that the defendant had created a "continuing obligation" between himself and a California resident and had "purposefully derived a benefit from interstate activities" such that minimum contacts were established. (*Ibid.* citing *Burger King, supra*, 471 U.S. at pp. 475-476.) By contrast, here, the evidence showed only that there was one communication by telephone between the parties regarding a lawsuit that was subsequently filed and

litigated in Arizona. This does not show that the defendants “purposefully availed” themselves of forum benefits here.

Although the plaintiffs also point to the Bedis’ depositions that took place in California, the defendants had requested that the Bedis travel to Arizona to be deposed and only came to California at the Bedis’ request. The sole telephone call and single trip to California with regards to a lawsuit filed in Arizona do not show that the defendants “ ‘deliberately’ [] engaged in significant activities within [California], (citation) or [] created ‘continuing obligations’ between [themselves] and residents of the forum” such that specific jurisdiction was proper. (*Burger King, supra*, 471 U.S. at pp. 475-476.)

The plaintiffs also argue that equity requires that the defendants be subjected to personal jurisdiction in California because the defendants “engaged in bad acts” here, namely, they “threaten[ed] California residents, abuse[d] process and maliciously prosecute[d] a case against California residents” However, the abuse of process and malicious prosecution claims were based entirely on the defendants’ alleged meritless lawsuit filed *in Arizona*. The alleged phone call in which the defendants threatened to sue the Bedis was not a basis for their causes of action, nor could it have been: a telephone call is not a legal procedure which can form the basis for abuse of process or malicious prosecution claims. (*Spellens v. Spellens* (1957) 49 Cal.2d 210, 231.) As the alleged “bad acts” took place entirely in Arizona, the plaintiffs have not shown that it would be fair to subject the defendants to a lawsuit in California arising from those acts.

DISPOSITION

The order is affirmed. The defendants are awarded their costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.