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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MARGARITA CARDOZA et al.,

Plaintiffs and Appellants,

v.

PAT CLARK PONTIAC, INC.,

Defendant and Respondent.

E054120

(Super.Ct.No. CIVSS703130)

OPINION

APPEAL from the Superior Court of San Bernardino County. Donald R. Alvarez,
Judge. Affirmed.

Sico, White, Hoelscher & Braugh, Jane M. Braugh; Esner, Chang & Boyer and
Andrew N. Chang for Plaintiffs and Appellants.

Ford, Walker, Haggerty & Behar, Jeffrey S. Behar and James O. Miller for
Defendant and Respondent.

INTRODUCTION

Plaintiffs are Nevada residents who purchased a vehicle from a Nevada car dealer, Pat Clark Pontiac, Inc. (“Pat Clark”). Plaintiffs were injured while driving in Mexico. Nevertheless, plaintiffs seek to sue the car dealer for personal injury and wrongful death in the County of San Bernardino. Pat Clark made a motion to quash based on lack of personal jurisdiction.

We conclude, as did the trial court, that plaintiffs did not meet their burden to establish personal jurisdiction over Pat Clark, either general or specific. In our analysis, we are strongly persuaded by the trial judge’s thoughtful, comprehensive statement of decision¹ in which he reasoned that plaintiffs had not shown that Pat Clark’s contacts were so pervasive as to constitute a presence in California. Furthermore, the statement of decision concluded that Pat Clark also was not subject to specific jurisdiction because plaintiffs had not shown that Pat Clark had purposely availed itself of the benefits of California. As set forth more fully by the trial court:

“[Plaintiffs] failed to present evidence supporting a finding that Pat Clark Pontiac purposely directed its activities to California residents. Additionally, the court sees no compelling reason to hale the Las Vegas dealership into California since California’s

¹ “He looked not only at the bare statement of facts which each side agreed were undisputed, but also at the underlying evidence supporting those facts, and made appropriate record references. . . . [W]e will not attempt to improve on the trial judge’s work. . . . This was no phoned-in minute order.” (*Reichert v. State Farm General Insurance Company* (2012) 212 Cal.App.4th 1543, 1545.)

interest in this matter is negligible at best—plaintiffs bought the subject vehicle in Las Vegas where they resided and the accident occurred in Mexico.

“Significantly, there is no showing that Pat Clark Pontiac was ever licensed to sell vehicles in California, or that it engaged in any ‘extensive and wide-ranging’ or ‘substantial, continuous and systematic activities’ in this state.”

We affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

The underlying facts concerning the accident are generally undisputed. In June 2004, plaintiffs purchased a 2004 GMC Savana from Pat Clark in Las Vegas. On December 17, 2006, plaintiff Gerardo Gutierrez was driving in Mexico when a rear tire suffered a belt separation and rolled over. Gutierrez, his passenger, Margarita Cardoza, and their son, Gerardo, Junior, were severely injured. Their daughter, Chantal, was seriously injured and died.

In June 2007, plaintiffs filed their original complaint for strict products liability and other causes of action against Falken Tire Corporation,² a Fontana business doing business in San Bernardino county; General Motors Corporation; and other nonresident defendants. After being in business since 1942, Pat Clark ceased operations in May 2009 during the economic recession of that year. In November 2009, plaintiffs amended their

² Falken Tire has settled.

complaint to add Pat Clark as a Doe defendant. After being served on February 3, 2010, Pat Clark filed its motion to quash on April 5, 2010.

Plaintiffs submitted many volumes of documentary evidence and authorities in opposition to the motion to quash. The material facts on which plaintiffs relied to establish personal jurisdiction over defendant are that, in 1997 and 1998, Pat Clark was the exclusive authorized Pontiac/General Motors dealer for Inyo County in California—although it never operated a dealership in Inyo County. Between 2003 and 2008, Pat Clark sold at least 84 vehicles to California residents (about 12 per year) and provided ongoing maintenance to California customers. Plaintiffs extrapolated from that figure to argue that, over the years, Pat Clark had sold over 700 cars to California residents. In connection with its sales to California residents, Pat Clark communicated with the California Department of Motor Vehicles (DMV) and the Nevada DMV. In 2007, Pat Clark’s Nevada dealership had used a Pasadena advertising agency to advertise on the radio—although the invoices for radio advertising do not show it was directed at California listeners. Pat Clark’s technicians received training in Burbank, California. Pat Clark also maintained business relationships with California vendors and auto dealers.³

Pat Clark countered that the only time Pat Clark was an authorized dealer for Inyo County was for 15 months between December 31, 1996, and April 6, 1998, but it never operated an Inyo dealership. Pat Clark disputed that it ever targeted California residents

³ We agree with defendant that it is not relevant that Pat Clark, Jr., an individual, owns vacation property in California.

in radio or print advertising. In fact, the invoices for the radio advertising indicate the broadcasts were directed at the markets in Las Vegas and Henderson.

The trial judge composed a detailed ruling granting Pat Clark's motion to quash. Citing *Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, the trial court held in its 18-page statement of decision that general jurisdiction is found only if the activities of a nonresident defendant are so "“extensive or wide-ranging,” or “substantial . . . continuous and systematic,”” that they amount to a presence in the state, in which case plaintiffs' claims need not be connected with Pat Clark's business relationship with the forum. If continuous and systematic activity is lacking, then specific jurisdiction may be found only if the quality and nature of Pat Clark's activities in the forum showed that defendant purposely availed itself of the forum's benefits, the dispute is related to defendant's contacts with the forum, and the assertion of personal jurisdiction would comport with fair play and substantial justice. As to general jurisdiction, the trial court reasoned that plaintiffs had not shown that Pat Clark's contacts were so pervasive as to constitute a presence in California. Pat Clark also was not subject to specific jurisdiction because plaintiffs had not shown that Pat Clark had purposely availed itself of the benefits of California.

III

STANDARD OF REVIEW AND BURDEN OF PROOF

We conduct an independent review on the legal issue of whether jurisdiction is fair and reasonable under the circumstances, based on the undisputed facts and those resolved in the favor of the prevailing party. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996)

14 Cal.4th 434, 449; *VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 243-244.)

To the extent there is any material dispute regarding Pat Clark’s conduct in Inyo County, advertising in California, or other evidence, the standard of review is substantial evidence. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 540.) Applying either standard of review, we affirm the judgment.

Although Pat Clark is the moving party on the motion to quash, plaintiffs have the burden of proof: “(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; *Elkman v. National States Ins. Co.*, *supra*, 173 Cal.App.4th at p. 1313.)

IV

PERSONAL JURISDICTION

California has the broadest kind of “long arm” statute, authorizing local courts to exercise jurisdiction over parties “. . . on any basis not inconsistent with the Constitution of this state or of the United States.” (Code Civ. Proc., § 410.10.) California courts can assert power over residents and nonresidents alike to the outer limits of constitutional due process. (*Sanders v. CEG Corp.* (1979) 95 Cal.App.3d 779, 783.)

Personal jurisdiction depends on the facts of each case, the test being whether, under those facts, California has a sufficient relationship with the defendant and the litigation to make it reasonable (“fair play”) to require it to defend the action in California

courts. The factors considered include: the extent to which the lawsuit relates to defendant's activities or contacts with California; the availability of evidence, and the location of witnesses; the availability of an alternative forum (defendant's amenability to suit elsewhere); the relative costs and burdens to the litigants of bringing or defending the action in California rather than elsewhere; and any state policy in providing a forum for this particular litigation, such as protection of a California resident, or assuring applicability of California law. (See *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292.)

There is no requirement that plaintiffs reside in California for local courts to exercise jurisdiction over a nonresident defendant when California retains an interest in securing a remedy for wrongs done here. (See *Keeton v. Hustler Magazine, Inc.* (1984) 465 U.S. 770, 780; *Epic Communications, Inc. v. Richwave Technology, Inc.* (2009) 179 Cal.App.4th 314, 336.)

A. *General Jurisdiction*

Due process permits California courts to exercise general personal jurisdiction over nonresident defendants who have “minimum contacts” with California. “Minimum contacts” means the relationship between the nonresident and California is such that the exercise of jurisdiction does not offend “traditional notions of fair play and substantial justice” under the Fourteenth Amendment. (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316; *Pennsylvania Health & Life Ins. Guaranty Assn. v. Superior Court* (1994) 22 Cal.App.4th 477, 481.) The due process clause must be applied flexibly so as to ensure that commercial actors are not effectively judgment proof for the

consequences of obligations they voluntarily assume in other states. (*West Corp. v. Superior Court* (2004) 116 Cal.App.4th 1167, 1180.) The relevant period during which “minimum contacts” must have existed is when the cause of action arose rather than when the complaint was filed or served. (*Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700, 717.)

Nonresident companies, whose commercial activities impact California on a “substantial, continuous and systematic” basis—what is often referred to as “doing business in the state”—are subject to general jurisdiction and may be sued on causes of action unrelated to their activities within the state. (*Perkins v. Benguet Consolidated Mining Co.* (1952) 342 U.S. 437, 446-447; *Vons Cos., Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at pp. 445-446; *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147; *Elkman v. National States Ins. Co.*, *supra*, 173 Cal.App.4th at p. 1314.) Purchasing goods and services and related trips, in the forum state, even at regular intervals, is not enough, standing alone, for a state to assert jurisdiction over a nonresident. (*Helicopteros Nacionales de Colombia, S.A. v. Hall* (1984) 466 U.S. 408, 416-417.) General jurisdiction was not established over a nonresident car dealer that had no physical presence in California, was not registered to do business here, had never intentionally directed its marketing efforts to California residents, and had only sold 10 cars to California residents over a period of 32 years. (*Shisler v. Sanfer Sports Cars, Inc.* (2006) 146 Cal.App.4th 1254, 1259-1260.)

Applying these principles does not compel a finding of general jurisdiction under the circumstances of this case. The relevant factors do not show Pat Clark had minimum

contacts with California justifying jurisdiction. As explained in the statement of decision, “a review of plaintiffs’ voluminous evidence does not support the claim that [defendant] purposely availed itself of this forum, i.e., plaintiffs have not shown [defendant’s] activities in this forum ‘are so “continuous and systematic” that the corporation may in fact be said already to be “present” here, so that the assertion of personal jurisdiction would comport with fair play and substantial justice.[’] Specifically, plaintiffs contend that the dealership sold hundreds of cars to California residents and offered warranty plans and provided service and repair work as incentives to facilitate repeat business with California customers; that it routinely sent flyers and mailers to target California residents; that it had the right to (and so likely) advertised to residents of Inyo County, California as required by the GM Dealer Agreement, which prohibited other GM dealers from contacting those same residents. Plaintiffs fail to provide sufficient support for these asserted facts.”

Beginning with the issue of the dealer agreement involving Inyo County, it is undisputed that the GMC authorization for Pat Clark to do business in Inyo existed for less than two years in 1997 and 1998, many years before plaintiffs had any contact with Pat Clark. Therefore, there were no minimum contacts based on the Inyo authorization before or after plaintiffs’ cause of action arose. (*Boaz v. Boyle & Co., supra*, 40 Cal.App.4th at p. 717.)

Plaintiffs strenuously assert that Pat Clark probably earned “several millions of dollars in revenue” by selling 12 cars a year to California residents for 66 years from 1942 to 2008. Plaintiffs have no basis on which to speculate that Pat Clark sold the same

average number of cars to California residents for 66 years when the state population was much smaller—especially Inyo County with a population of about 20,000 now and fewer than 12,000 in 1950.⁴ Instead, the only credible evidence in the trial court was that Pat Clark sold 84 cars in six years to California residents—hardly generating “millions of dollars in revenue.” Nor is there any evidence comparing these 84 sales with the total revenue of Pat Clark over any period of time. The sale of a few cars does not constitute substantial evidence of minimum contacts. (*Shisler v. Sanfer Sports Cars, Inc., supra*, 146 Cal.App.4th at pp. 1259-1260.)

Plaintiffs also contend that Pat Clark advertised on the radio to California residents and solicited California residents using printed mailings. As to the latter, plaintiffs depend on the equivocal testimony of Linda Proffitt, Pat Clark’s former business manager. Proffitt did not testify that the printed mailings were targeted at California residents in general. Instead, she said it was not the dealer’s practice to send mailings to California customers although she acknowledged that some material may have been mailed unintentionally to California customers. Furthermore, any radio advertising occurred in Nevada markets, not in California. Pat Clark’s dealership agreement prohibited it from marketing or advertising in other dealers’ territories. Therefore, no substantial evidence of advertising or solicitation established minimum contacts in California to support jurisdiction over an out-of-state dealership. (*Shisler v. Sanfer Sports Cars, Inc., supra*, 146 Cal.App.4th at pp. 1259-1260.)

⁴ <http://www.census.gov/population/cencounts/ca190090.txt> (as of June 7, 2013).

Nor is evidence of minimum contacts apparent because Pat Clark corresponded with the California and the Nevada DMV's in connection with its sales to California residents and subsequently provided automobile maintenance at its Las Vegas dealership for some cars. The California residents may have travelled to Nevada to purchase their vehicles and to obtain maintenance services. But the trial court properly found no showing that Pat Clark solicited California residents or purposely availed itself of a California forum by maintaining continuous and systematic contact with California customers or residents.

Furthermore, even if Pat Clark sent its technicians for training in Burbank and maintained business relationships with California vendors, its activities did not subject a Nevada company to California jurisdiction for claims made by a Nevada resident for a tort occurring in Mexico. (*Helicopteros Nacionales de Colombia, S.A. v. Hall, supra*, 466 U.S. at p. 416; *World-Wide Volkswagen Corp. v. Woodson, supra*, 444 U.S. at p. 292; *Keeton v. Hustler Magazine, Inc., supra*, 465 U.S. at p. 780; *Epic Communications, Inc. v. Richwave Technology, Inc., supra*, 179 Cal.App.4th at p. 336.) There is no basis for general jurisdiction, either based on substantial evidence or an independent review.

B. Specific Jurisdiction

Although the statement of decision expressly addressed principles of specific jurisdiction, Pat Clark argues plaintiffs have waived any argument based on that issue. Even if the issue was not waived, we agree with the trial court there is no basis for specific jurisdiction.

If a nonresident defendant's contacts with California are not sufficiently "continuous and systematic" for general jurisdiction, it may still be subject to specific jurisdiction on claims related to its activities here. Specific personal jurisdiction requires a showing that the out-of-state defendant purposefully established contacts with the forum state; plaintiffs' claims "arise out of" or are "related to" defendant's contacts with the forum state; and the forum's exercise of personal jurisdiction in the particular case comports with "fair play and substantial justice." (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477-478; *Vons Cos., Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 446.)

As we have already discussed, there is little evidence that Pat Clark purposefully directed its activities at California residents or purposefully availed itself of the privilege of conducting activities within California, thus invoking the benefits and protections of California law. (*Hanson v. Denckla* (1958) 357 U.S. 235, 253; *Vons Cos., Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 446.) Pat Clark's California-related activities were minimal. Pat Clark did not operate a dealership in California. Pat Clark made occasional sales to California residents but Pat Clark did not solicit business in California. Pat Clark's limited contacts with California—handling DMV and insurance matters and obtaining training for its repairmen—involved activity that was tangential to Pat Clark's primary business selling cars. Plaintiffs' claims did not "arise out of" or were not "related to" Pat Clark's forum activities because no sufficient nexus was shown between plaintiffs' claims and defendant's limited California activities. (*Cornelison v. Chaney*, *supra*, 16 Cal.3d at pp. 149-150.) In a products liability case, specific personal

jurisdiction cannot be established where the allegedly defective good was sold outside the forum and caused injury outside the forum, and the supplier has no other “contacts” with the forum. (*Boaz v. Boyle & Co., Inc.*, *supra*, 40 Cal.App.4th at p. 717.)

The present case differs significantly from *Secrest Machine Corp. v. Superior Court* (1983) 33 Cal.3d 664, 671, in which a California employer purchased a machine from a manufacturer in Virginia and the machine caused injury to an employee in California, making the manufacturer subject to California jurisdiction because it knew the machine was being sold for use in California. The present case also differs from *As You Sow v. Crawford Laboratories, Inc.* (1996) 50 Cal.App.4th 1859, 1869-1870, involving the sale of paint to California distributors and an injury occurring in California. The trial court found jurisdiction to be unfair, based on comparing defendant’s sales in California with its worldwide market. The appellate court reversed, commenting “states would be unable to provide their injured citizens with redress against large companies because the sales in any one state would represent a small fraction of the company’s total revenue.” (*Ibid.*) In both *Secrest* and *As You Sow*, the courts were concerned with providing California citizens with a remedy for injuries occurring in California.

Considerations of justice and fair play, however, favor Pat Clark, not plaintiffs. Here there was no fair notice to Pat Clark that it was subject to suit locally and should “act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.” (*World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S. at p. 297; *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269.) It has been recognized that

“California has a strong interest in providing an effective means of redress for its residents [Citations.]” (*Fields v. Sedgwick Associated Risks, Ltd.* (9th Cir. 1986) 796 F.2d 299, 302.) But California has no strong interest in providing redress to a Nevada resident injured in Mexico and suing another Nevada resident. (*Id.* at pp. 302-303.) It seems unjust and unfair for a California court to exercise jurisdiction over a Nevada defendant for a claim sustained in Mexico by Nevada residents. As stated in *Burger King Corp. v. Rudzewicz, supra*, 471 U.S. at pages 477-478 and cited by the trial court: “[M]inimum requirements inherent in the concept of ‘fair play and substantial justice’ may defeat the reasonableness of jurisdiction even if the defendant has purposely engaged in forum activities.”

We agree with the reasoning in the statement of decision that the fact other defendants may not have challenged jurisdiction is not relevant to a jurisdictional analysis of fair play and substantial justice and “whether defendant ‘purposely established’” contacts in California. Similarly, Pat Clark should not suffer a jurisdictional disadvantage if plaintiffs’ action is time-barred in Nevada because plaintiffs failed to file their case in the home state of both plaintiffs and defendant.

Here Nevada residents purchased a vehicle in Nevada and were injured in Mexico. No California citizen was injured and no connections to California justify making Pat Clark, a Nevada resident, subject to specific jurisdiction in California.

V

DISPOSITION

California may not assert personal jurisdiction, whether general or specific, over Pat Clark. The trial court properly granted the motion to quash. We affirm the judgment.

In the interests of justice, all parties shall bear their own costs on appeal.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

KING
J.