

This Time, It's Personal

FOCUS COLUMN

By Daniel Lee Jacobson

In the 2½ weeks beginning on Feb. 23, and ending on March 13, three of the 19 divisions of the California Court of Appeal published opinions about specific personal jurisdiction and its contrast with general personal jurisdiction. The legal reasoning of each case conformed with the legal reasoning of the other two cases, but the differing facts required some different applications of that reasoning. When over a sixth of the Court of Appeal's divisions say something about a not-often discussed subject, and they say it at the same time, it's probably worth listening.

Division 3 of the 4th District Court of Appeal started this cavalcade of specific jurisdiction rulings on Feb. 23, with the publication of *Luberski Inc. v. Oleificio F.LL1 Amato S.R.L.*, 171 Cal.App.4th 409 (2009). In that case, the plaintiff, Luberski, appealed from the trial court's grant of a motion to quash service of process on the defendant, Amato. Amato, an Italian olive oil company, had claimed that its contacts with California were too limited to allow California's courts jurisdiction over it. The trial court agreed.

Amato is an Italian corporation that operates mostly in Italy. It had sold a limited amount of olive oil to Californians, mostly to two companies that were not Luberski. Most of the California sales activity consisted of accepting purchase orders, preparing an invoice, and shipping the products to either Long Beach or Oakland. The \$406,000 contract at issue in *Luberski* required the oil to be shipped to Long Beach, and required Amato to pay for the cost of shipping, insurance and freight.

The Court of Appeal explained that California's long-arm statute allows the state's courts that jurisdiction, which is compliant with constitutional due process. To find out what is so compliant, the Court of Appeal looked to *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), where the Supreme Court explained, "Whether due process is satisfied must depend ... upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process to insure."

The *Luberski* court explained that personal jurisdiction may be either general or specific. The existence and defining characteristics of those two different types of personal jurisdiction were key to the court's finding that while California's courts lacked general personal jurisdiction over Amato, they did have specific personal jurisdiction over the Italian company.

As to general jurisdiction, the court quoted *Vons Companies v. Seabest Foods Inc.*, 14 Cal.4th 445 (1996). "A nonresident defendant may be subject to the general jurisdiction of forum if his or her contacts with the forum are substantial ... continuous and systematic. In such a case, it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum. Such a defendant's contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction." As to specific jurisdiction, the court continued to quote *Vons*: "If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she may still be subject to the *specific* jurisdiction of the forum." For limitations on specific jurisdiction, the court turned to *Pavlovich v. Superior Court*, 29 Cal.4th 262 (2002), "A court may exercise specific jurisdiction over a nonresident defendant only if: (1) the defendant has purposefully availed himself or herself of forum benefits; (2) the controversy is related to or arises out of the defendant's contacts with the forum." With this understanding of general jurisdiction and

specific jurisdiction, the court found that there was no general jurisdiction over this Italian company with few California contacts. But there was specific jurisdiction, given that the very contract at issue called for the delivery of the oil to Long Beach, where the oil would presumably be under the protection of California authorities and law, and that contract called for Amato to pay for the cost of shipping, insurance and freight involved in that delivery to Long Beach. Purposeful availment of forum benefits plus a controversy arising out of the very contact with California that involved that purposeful availment equaled specific personal jurisdiction.

Two weeks after *Luberski*, Division 3 of the 2nd District Court of Appeal published *Healthmarkets v. Superior Court*, 2009 DJDAR 3491. The outcome in *Healthmarkets* was the reverse of that in *Luberski*, in that no personal jurisdiction was found; however, the logic utilized was the same.

Healthmarkets Inc. was found to be a nonresident holding company with no contacts with California. But a subsidiary of Healthmarkets was found to have contacts with California. The question was whether the contacts of the subsidiary could be attributed to the parent company.

Like the *Luberski* court, the *Healthmarkets* court first explained that California allows personal jurisdiction whenever constitutional due process requirements are met. Those requirements are met when the defendant has sufficient minimum contacts with the forum. The court said that the defendant's contacts with the forum state must be such that the defendant had fair warning that its activities might subject it to personal jurisdiction in the state. It cited *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), and *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980).

"Absent ... [sufficient minimum contacts to allow for general jurisdiction] a defendant may be subject to specific jurisdiction, meaning jurisdiction in an action arising out of or related to the defendant's contacts with the forum state." Some courts have indicated that the principles of alter ego or agency can justify the exercise of general personal jurisdiction, and others have applied the same reasoning to justify the exercise of specific personal jurisdiction. See *Sonora Diamond Corp. v. Superior Court*, 83 Cal.App.4th 523 (2000); *VirtualMagic Asia v. Fil-Cartoons*, 99 Cal.App.4th 228 (2002); *Magnecomp Corp. v. Athene Corp.*, 209 Cal.App. 526 (1989); and *Northern Natural Gas v. Superior Court*, 64 Cal.App.4th 983 (1976).

But, the court hearing *Healthmarkets* had held in *Sonora Diamond* that "reliance on state substantive law of agency and alter ego to determine the constitutional limits of specific personal jurisdiction is unnecessary and is an imprecise substitute for the appropriate jurisdictional question. The proper jurisdictional question is not whether the defendant can be liable for the acts of another person or entity under state substantive law, but whether the defendant has purposefully directed its activities at the forum state by causing a separate person or entity to engage in forum contacts." Thus, the primary question in *Healthmarkets* was whether the parent company had "purposefully directed" its subsidiary at California.

But the *Healthmarkets* court did recognize that the substantive subject of litigation can be important, and the fact that the case before it dealt with insurance, a state-regulated industry, was not irrelevant. "California's strong interest in providing its residents with redress against insurers may help to establish the reasonableness of the exercise of jurisdiction if purposeful availment were shown, [citations] but cannot justify the exercise of personal jurisdiction over a nonresident defendant absent some form of purposeful availment by the defendant." Nonetheless, the court found that the plaintiff had not shown that the parent company had used its subsidiary to purposefully avail the parent of California's protections; thus, the fact that the subject of the litigation was insurance did not come into play.

Four days after the publication of *Healthmarkets*, Division 5 of the 2nd District Court of Appeal published *Szynalski v. Superior Court*, 2009 DJDAR 3915. Like *Luberski* and *Healthmarkets*, *Szynalski* came before the Court of Appeal by way of writ review after a trial court ruling on a

motion to quash service of process. The defendant, Alexander Szynalski, was not a resident of California.

There had been a previous case against Szynalski in which he apparently had not made a traditional general appearance (such as the filing of an answer). That other case settled by way of a written settlement that required the retention of a "settlement administrator." That administrator (a company) was the plaintiff in the case before the Court of Appeal. It was suing for fees.

The settlement agreement in the original case said, "All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the [Los Angeles Superior] Court." But the agreement also said, "The Parties acknowledge that Alex Szynalski ... has specially appeared in this action for sole purpose of contesting the assertion of jurisdiction over him by the Los Angeles County, California, Superior Court." The question was whether the Los Angeles Superior Court had specific personal jurisdiction over Szynalski.

The court said, "by accepting the benefits of a California court-appointed settlement administrator performing services in California as part of a California case, and undertaking to pay the administrator in California, [Szynalski] has 'purposefully avail[ed] [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.' ... The controversy arises out of Szynalski's contracts with California - the settlement agreement and court order [approving the settlement agreement]. Accordingly, ... [Szynalski] has sufficient minimum contacts with California to support specific jurisdiction over him in the administrator's action for payment."

So, in rapid-fire succession, the Court of Appeal has told us that even if a California court does not have general personal jurisdiction over a party, it may have specific personal jurisdiction over that party. We should listen.

Daniel Lee Jacobson is an Orange County attorney and professor at Pacific West College of Law.

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