

2003

Dr. Lakhi Sakhrani, M.D., An individual v. Alpha Funding Group Trust, a business entity : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS STATE OF UTAH

DR. LAKHI SAKHRANI, M.D.,)
An individual,) Appeal No. 2003 0101-CA
)
)
Plaintiff/Appellee,) Third District Court
) Case No. 026907222 FJ
vs.)
)
ALPHA FUNDING GROUP TRUST,)
a business entity,)
)
Defendant/Appellant.) (Honorable Anthony B. Quinn
) Presiding District Court Judge)
)

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TABLE OF CONTENTS

SUMMARY OF REPLY ARGUMENT.....Pg 1

REPLY ARGUMENT.....Pg 1

I CALIFORNIA COURT CAN NOT JUSTIFY SPECIFIC JURISDICTION.Pg 1

 A. Defendant Did Not Avail Itself Of Forum Benefits..Pg 1

 B. The Complaint Does Not Allege That Defendant Had
 Contacts With California.....Pg 2

 C. California Exercise Of Jurisdiction Does Not Comply
 With Fair Play and Substantial Justice.....Pg 3

 1. No Minimum ContactsPg 3

 2. No Fair Play And Substantial Justice in
 California Jurisdiction.....Pg 4

II DEFENDANT HAS SHOWN THAT CALIFORNIA COURT
 EXERCISE OF JURISDICTION WAS UNREASONABLE.....Pg 5

CONCLUSION.....Pg 7

CERTIFICATION OF MAILING.....Pg 8

TABLE OF AUTHORITIES

Federal Cases

Burger King Corp. V. Rudewicz, 471 U.S. 462 (1985).....pg 10, 12
Hughes, berg and Weis v Immanuel Foundation and
Fraternity of Preparation.....Pg
International Shoe Co. v. Washington, 326 U.S. 310.....pg 3

UTAH CASES

Hughes, Berg and Weis v Immanuel Foundation and Fraternity
of Preparation, 1966 U.S. App.LEXIS 16188 No. 96-4042..pg 5
Midvale City v. Halton 2003 Ut 26 (Utah 2003).....pg 6
Mitchell v. King 537 F.2d 385(10th Circuit 1976).....pg 5

STATE CASES

DVI, Inc., 104 Cal.App.4th 1090pg 1
Sklar v. Princess Properties International, Ltd.
(1987) 194 Cal.App.3d 1202.....Pg 4
Titus v. Superior court, 23 Cal. App. 3d 792 (1972).....pg 7
Vons Companies Inc. v Seabest Foods, 926 P.2d 1085Pg 1

FEDERAL CONSTITUTION & STATUTES

U.S. Const. Article IV, Section 1.....
U.S. Const. XIV Amendment.....

STATE CONSTITUTION & STATUTES

Utah Const., Art. 1 Sec. 6
Utah Code Annotated Section 78-2-2.....
Utah Code Ann. Section 78-22a-2.....
Utah Code Ann. Section 78-22a-3(3)(j)
Utah Rules of Appellate Procedure, Rule 3 and 4.....

CONSTITUTIONAL PROVISIONS AND STATUTES, ETC.

- I. U.S. Const. Article IV, Section 1
- II. Utah Const. Art 1 Sec 6
- III Utah Code Ann. Section 78-22a-3(3), 78-22a-2

SUMMARY OF REPLY ARGUMENT

The Plaintiff/Appellee failed to marshal the evidence to support the allegation of jurisdiction contained in its Complaint and Motion for Default Judgment. The Defendant/Appellant does not qualify for jurisdiction in the California Court under either the General or Specific Jurisdiction.

REPLY ARGUMENT

I. CALIFORNIA COURT CAN NOT JUSTIFY SPECIFIC JURISDICTION

Contrary to Plaintiff/Appellee's allegation, there is nothing in Plaintiff's Complaint which satisfies Specific Jurisdiction under California Law. There are no allegations contained in the Complaint which allege that Defendant/Appellant (1) purposefully availed itself of forum benefits with respect to the matter in controversy; (2) The controversy is related to or arises out of the Defendant's contacts with the forum; and (3) the exercise of jurisdiction would comport with fair plan and substantial justice as set forth in *DVI, Inc.*, 104 Cal.App.4th 1090.

A. Defendant Did Not Avail Itself Of Forum Benefits

Plaintiff has attempted to use *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434 (1996) to support its proposition that the Court had Specific Jurisdiction over the Defendant. The Vons case is not in point as it arose out of a franchisee and the fact that the franchisee had agreed under contract to use California as the proper jurisdiction for any

action under the franchise. The court found sufficient jurisdiction because of the relationship between the franchiser who was a California resident, and the franchise who had offices in California but whose franchise was outside of the state. The Vons Court found that the franchisee had sufficient contacts because of the franchise agreement for the California Court to have jurisdiction even though the nexus of the case was different. That is not the case here. There were no allegations in the Complaint which supported that there was any relationship between the Defendant Alpha and the Plaintiff. The only allegation contained in the Complaint was that the Plaintiff was a California Citizen and that the Promissory Note could be paid in California or anywhere else the Plaintiff wished. There were no allegations that the note was signed in California, that the Money was sent from California, that the contract was entered into in California, or that negotiations were held in California. The only statement that the Plaintiff makes is that the Defendant/Appellant did business in California but no actions were alleged which support that bland allegation.

B. The Complaint Does Not Allege That Defendant Had Contacts With California.

The Plaintiff/Appellee does not allege in his complaint that the controversy arose from Defendant's contacts in California. There is no allegation of solicitation in the State of California and the mere fact of acceptance of funds from a California Citizen is not sufficient to give Specific Jurisdiction under Vons

Companies Inc. with out allegations of where the action took place or allegations of sufficient contacts within the state to give jurisdiction. In the Vons Companies Inc. their was considerable activity of the Defendant in that action in the State of California with the Franchiser which qualified specific jurisdiction. We do not have an allegation of that quality of contacts for the Defendant contained in the Complaint or affidavits which were before the Court.

C. California Exercise Of Jurisdiction Does Not Comply With Fair Play and Substantial Justice

In the present action there were no contacts alleged that would satisfy the minimum contacts sufficient to not violate traditional notions of fair play and substantial justice as set forth under International Shoe Co. v. Washington, 326 U.S. 310 (1945).

1. No Minimum Contacts

The Plaintiff/Appellee failed to allege that the funds were solicited in or came from California or that the contract was consummated in California. The mere fact that a California Citizen loans money does not qualify for minimum contacts absent some activity of the Defendant in the forum state or that the loan was consummated in the forum state.

The type of continuous contractual relationship which the Defendant and the Plaintiff have is that under one contract the Defendant may owe money to the Plaintiff. That is not the continuous type of relationship contemplated in Vons Companies Inc.

which was a franchisee type of arrangement with continuing obligations contained under the franchise agreement. Not a single Promissory Note with payment due some where but not specifically in California.

The Plaintiff simply failed to marshal the evidence in their complaint sufficient to support either general or specific jurisdiction in California.

2. No Fair Play And Substantial Justice in California Jurisdiction.

There is no reason which justifies bringing Defendant/Appellant to California to for its day in court. A California case similar to the theory in the present case is Sklar v. Princess Properties International, Ltd. (1987) 194 Cal.App.3d 1202. In that case Plaintiff contacted the Defendant's agent to rent a room in Bermuda. The court found that the mere fact that the agent was located in California did not give the California Court jurisdiction over the Bermuda Hotel. The Vons Companies Inc. court found that case distinguishable where there was a franchise agreement but the case is similar to the one before us.

The mere negotiating with a California resident does not give California jurisdiction without allegations of minimum contacts or at least the fact that the transaction was completed in California. That was not alleged by the Plaintiff.

The only allegation of minimum contact by the Plaintiff was an allegation that Defendant did business in California. That allegation by itself is insufficient. What acts constituted doing

business? That was never alleged by the Plaintiff.

II DEFENDANT HAS SHOWN THAT CALIFORNIA COURT EXERCISE OF JURISDICTION WAS UNREASONABLE.

The Defendant/Appellant moved the Court of Appeals to Overrule the Lower Courts Denial of Defendant's Motion to Vacate and Set Aside the Foreign Judgment filed by Plaintiff against the Defendant in the State of Utah. Plaintiff/Appellee claims that there were sufficient contacts to allow the California Court jurisdiction over the Defendant Utah Trust. But Plaintiff has missed the point. Sufficient allegations were not alleged in Plaintiff's complaint to satisfy jurisdiction.

The Plaintiff/Appellee failed to allege in his complaint or show in his memorandum why it was necessary, the jurisdictional issues which would give the California Court jurisdiction. Plaintiff has assumes that Defendant was in California at the time he sent the funds and at the time he received the promissory note. None of this was alleged in the Complaint. The grounds for jurisdiction must be alleged and not left up in the air.

Under Hughes, Berg and Weis vs Immanuel foundation and Fraternity of Preparation, 1996 U.S. App. LEXIS 16188 No. 96-4042 (10th Circuit), the court found that 'When deciding a question of jurisdiction, a court must construe all relevant allegations in the light most favorable to the plaintiff. See Mitchell v. King 537 F.2d 385 (10th Circuit 1976). A motion to dismiss should be denied, even if the allegation of jurisdiction is insufficient if there are facts pleaded in the complaint from which jurisdiction may be

inferred.' As set forth in *Midvale City vs. Halton* 2003 Ut 26 (Utah 2003) 'It is the burden of the party who seeks the exercise of jurisdiction in his favor (to clearly allege) facts essential to show jurisdiction. If (it) fails to make the necessary allegations, (it has) no standing.'

As set forth in Defendant/Appellant's Brief, the critical issues for jurisdiction are:

1. Where was the transaction was entered into?
2. Where were the funds sent from?
3. Where were the funds to paid?
4. What minimum contacts were made by the Defendant/Appellant with the state of California sufficient to satisfy 'fair play and substantial justice'.
5. Where was the loan solicited?

The evidence of jurisdiction was not marshaled by the Plaintiff/Appellee in his complaint or in his motion for Default Judgment. No allegations were contained in the Complaint stating where the loan was solicited. The lower court did not have any evidence to base a ruling that the loan was solicited in California.

The note does state that the funds are to be sent to California or where ever the note holder desired. That left the place of payment up in the air. No allegations were stated that Plaintiff had requested the note to be paid in California.

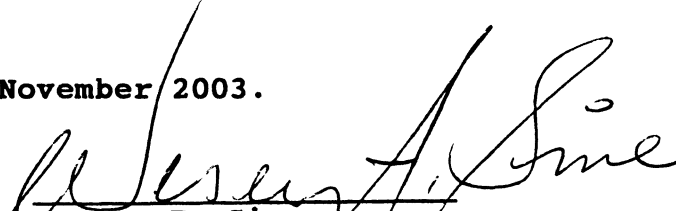
After the loan was consummated and in default there was some evidence of communication between Tal Lally pertaining to an

extension of the loan date and communications with the Defendant's legal counsel as to potential settlement offers but non of this was sufficient to give the California Court jurisdiction under the complaint as filed by the Plaintiff. See Sklar. There is no evidence or allegations as to what capacity Tal Lally had to the Defendant Trust and under Sklar even if an agent, this would not have been sufficient absent some minimum contacts in California by the Defendant/Appellant.

CONCLUSION

The California Court did not have jurisdiction over the Defendant as the Defendant was residing and doing business in the State of Utah and did not have sufficient minimum contacts with California to give jurisdiction to California under either Federal, California or Utah Law. Plaintiff failed to allege or marshal sufficient evidence to support California jurisdiction in his Complaint or in his Motion for Default Judgment. This is a fatal defect and for that reason alone, Plaintiff's judgment should be vacated and the lower overturned. Further under the Long Arm Statute there are insufficient contacts to allow for jurisdiction to satisfy Due Process as either general or specific. Plaintiff has failed to marshal sufficient evidence to satisfy the jurisdiction issue.

Dated this 18th day of November 2003.


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CERTIFICATION OF MAILING

I hereby certify that a true and correct copy of the above APPELLANT'S BRIEF was mailed this 18th day of November 2003 to the following:

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