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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BARBARA BREM, Plaintiff and Appellant, v. THE WEINSTEIN COMPANY et al., Defendants and Respondents.	B227245 (Los Angeles County Super. Ct. No. EC048594)

APPEAL from an order of the Superior Court of Los Angeles County. David S. Milton, Judge. Affirmed.

Thon Beck Vanni Callahan & Powell, Daniel P. Powel; Esner, Chang & Boyer, Stuart B. Esner and Andrew N. Chang for Plaintiff and Appellant.

Squire, Sanders & Dempsey (US), Adam R. Fox, Helen H. Yang and Adrienne R. Salerno for Defendants and Respondents.

In this proceeding, the trial court concluded it lacked personal jurisdiction over foreign nonresident defendant Bridgestone Cycle Co., Ltd. (Bridgestone Japan) and on two successive occasions granted defendant's motions to quash service of summons. Plaintiff appeals from the second order. In that order, the trial court found Bridgestone Japan (1) had not been served with the summons and (2) lacked minimum contacts with California. Plaintiff disputes only the second finding. Although plaintiff's failure to dispute the first finding dooms her appeal, we nevertheless reach the minimum contacts issue, concluding plaintiff failed to show that Bridgestone Japan's contacts with California subject it to jurisdiction. We thus affirm the trial court's order.

BACKGROUND

Bridgestone Japan manufactures bicycles in Ageo, a city in the Saitama prefecture, Japan.[1] Plaintiff Barbara Brem alleges she was severely injured in 2007 when she was thrown from a Bridgestone bicycle manufactured by Bridgestone Japan. In 2008, plaintiff filed a form complaint against several defendants, alleging negligence and product liability. The complaint alleged no facts other than that defendants designed, manufactured and sold the bicycle to the public and breached implied warranties. In 2009, plaintiff substituted Bridgestone Japan for defendant Doe 2.

Plaintiff initially attempted indirect service on Bridgestone Japan by serving two U.S. Bridgestone entities on the theory that they were defendant's agents or general managers. (See *Yamaha Motor Co. v. Superior Court* (2009) 174 Cal.App.4th 264.) Bridgestone Japan specially appeared by motion to quash service of process pursuant to Code of Civil Procedure section 418.10, contending it lacked minimum contacts with the forum state and service was defective because the U.S. Bridgestone entities were not its agents or managers.[2] Yoshitaka Tamura, the manager of Bridgestone Japan's quality assurance division and an employee since 1973, declared Bridgestone Japan, a wholly

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[1] Because plaintiff expressly abandons her appeal as to respondent Bridgestone Corporation, we focus our discussion on Bridgestone Japan.

[2] Undesignated statutory references will be to the Code of Civil Procedure.

owned subsidiary of Bridgestone Corporation, "has" no offices, business, property interests or agent for service of process in California, "is" not licensed to do business and does no business of any kind in California, and "has not" designed, manufactured or sold any good or product in California. Bridgestone Japan never sold a bicycle in California. If it made plaintiff's bicycle at all, it would have been made and sold exclusively in Japan, and defendant would have had no involvement in any subsequent sale or redistribution in the United States.

Plaintiff opposed the motion, contending Bridgestone Japan sold the bicycle in California in 1992 through its wholly owned subsidiary, Bridgestone Cycle (USA) (Bridgestone USA), a California-based bicycle distributor. Plaintiff argued that because the Tamura declaration was phrased in the present tense, it offered no proof that Bridgestone Japan lacked minimum contacts with California in 1992.

Plaintiff's opposition was supported by a photograph of a bicycle that bore a Bridgestone sticker on the frame. It was also supported by documents purporting to be: (1) a 1992 Bridgestone bicycle catalog; (2) a page from a 1993 catalog; (3) the last page of a 1994 catalog; and (4) Bridgestone Japan's corporate profile, all of which plaintiff's counsel declared he had retrieved from the Internet. The 1994 catalog listed both Bridgestone USA and Bridgestone Japan on the last page, which plaintiff argued was evidence of a joint enterprise. Bridgestone Japan did not object to plaintiff's evidence other than to note in its reply brief that the documents were of "dubious authenticity and relevance."

The motion was heard on November 6, 2009. Before the hearing, the trial court announced a tentative ruling finding service was defective and Bridgestone Japan's contacts with California were insufficient to subject it to personal jurisdiction. At oral argument, plaintiff's counsel stated he had "conducted no discovery. You can't conduct discovery against a Japanese Company." He admitted the jurisdictional issues were "a matter of discovery and proof" but did not request a continuance to conduct discovery. After oral argument, the trial court adopted its tentative ruling and granted the motion.

Plaintiff then noticed and took the deposition of Grant Peterson, a former employee of Bridgestone USA, a six-person operation in California that sold bicycles in the United States. Peterson described himself as Bridgestone USA's "bike guy," its technical expert on Bridgestone road bicycles, whose role was to make bicycle design recommendations to Bridgestone Japan's engineers. He identified a bicycle in an unidentified photograph (presumably the photograph plaintiff submitted in opposition to Bridgestone Japan's motion to quash) as a Bridgestone "RB-1" or "RB-2," model year 1988, 1989 or 1990, though he did not recognize some of the parts. ("RB" is short for road bicycle.) He testified RB bicycles were sold in Japan and the United States and that Bridgestone USA distributed Bridgestone Japan bicycles to dealers in the United States until 1994, when Bridgestone Japan closed the operation. Bridgestone USA occasionally hosted employees of Bridgestone Japan who came to California to "see the operation" and "talk[] . . . about business." He was not present at or involved in the business discussions.

Armed with Peterson's testimony, plaintiff again served Bridgestone Japan, this time by mailing the summons and complaint to Bridgestone Corporation in Tokyo.

Bridgestone Japan again specially appeared and moved to quash service, contending (1) service was defective because the Bridgestone Corporation was not its manager or agent and (2) plaintiff was estopped by the trial court's November 9, 2009 order from relitigating the issue of personal jurisdiction.

In opposition, plaintiff conceded Bridgestone Japan had not been served but represented she was in the process of re-serving it at its address in Ageo. She contended the doctrine of estoppel did not apply because the trial court did not rule on the minimum contacts issue in its November 9, 2009 order, granting the first motion to quash only on the ground that Bridgestone Japan had not been properly served. (This was an incorrect recitation of the record.) Plaintiff argued personnel from Bridgestone Japan collaborated with Bridgestone USA on the design of her bicycle, sometimes visiting California for this purpose, and Bridgestone USA was Bridgestone Japan's office in the United States. Plaintiff supported the opposition with excerpts from Peterson's deposition testimony.

The motion was heard on July 23, 2010. The trial court again issued a written tentative ruling before the hearing, finding plaintiff was estopped from relitigating the jurisdiction issue and in any event failed to establish Bridgestone Japan's minimum contacts with California.

Despite its tentative ruling finding estoppel precluded reconsideration of the minimum contacts issue, at the hearing the trial court reconsidered the issue and read the transcript of Peterson's testimony. The court found the testimony lacked foundation and was vague and unpersuasive. In a minute order issued after the hearing, the court found service on Bridgestone Japan was again defective and plaintiff failed to establish defendant's contacts with California supported personal jurisdiction. The minute order was silent on the issue of estoppel.

In the meantime, plaintiff's third attempt to serve Bridgestone Japan was completed, and on September 22, 2010, Bridgestone Japan filed its third motion to quash. Plaintiff did not oppose the motion, representing that service had been inadvertent. The trial court granted the motion, finding plaintiff was estopped from relitigating jurisdiction. Plaintiff does not appeal from this order.

Plaintiff timely appealed from the second order quashing service.

DISCUSSION

The sole issue on appeal is whether the trial court acquired personal jurisdiction over Bridgestone Japan. "Personal jurisdiction over a nonresident defendant depends upon the existence of essentially two criteria: first, a *basis* for jurisdiction must exist due to defendant's minimum contacts with the forum state; second, given that basis for jurisdiction, jurisdiction must be *acquired* by service of process in strict compliance with the requirements of our service statutes." (*Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1229 (*Ziller*).) "Upon challenge by a specially appearing nonresident defendant pursuant to section 418.10, a plaintiff must establish that both criteria are met." (*Ibid.*)

We conclude plaintiff failed to establish either a basis for, or acquisition of, jurisdiction over Bridgestone Japan.

A. Failure to Serve Bridgestone Japan

Plaintiff admitted at the July 23, 2010 hearing, and the trial court found, that Bridgestone Japan had not been served with the summons and complaint. Plaintiff ignores this finding on appeal.

The court in which an action is pending acquires jurisdiction over a party from the time summons is served as provided by section 413.10 et seq. (§ 410.50, subd. (a).) When the defendant is a corporation, service must be effectuated on the corporation's representative. (See *Dill v. Berquist Construction Co*. (1994) 24 Cal.App.4th 1426, 1435; Judicial Council com., 14B West's Ann. Code Civ. Proc. (2004 ed.) foll. § 416.10, p. 111.) Summons may be served on a corporation by delivery (1) to a person designated as agent for or authorized to receive service of process, (2) to "the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, [or] a general manager," or (3) as provided in Corporations Code section 2110. (§ 416.10.) Corporations Code section 2110 provides that summons may be served on a foreign corporation by delivery to any officer of the corporation or its general manager in California, or to any person designated by the corporation as agent for service of process. Service on a foreign corporation outside the United States may also be effected "as directed by the court in which the action is pending, or, if the court before or after service finds that the service is reasonably calculated to give actual notice, as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory," subject to "the provisions of the Convention on the 'Service Abroad of Judicial and Extrajudicial Documents' in Civil or Commercial Matters (Hague Service Convention).'" (§ 413.10, subd. (c); see *Volkswagenwerk Aktiengesellschaft v. Schlunk* (1988) 486 U.S. 694, 706.)

"In the absence of a voluntary submission to the authority of the court, compliance with the statutes governing service of process is essential to establish that court's personal jurisdiction over a defendant." (*Dill v. Berquist Construction Co*., *supra*, 24 Cal.App.4th at p. 1439.) "When a defendant challenges that jurisdiction by bringing a

motion to quash, the burden is on the plaintiff to prove the existence of jurisdiction by proving, inter alia, the facts requisite to an effective service. (*Id*. at pp. 1439-1440; see Judicial Council, com., 14B West's Ann. Code Civ. Proc. (2004 ed.) foll. § 418.10, p. 181.)

Plaintiff admittedly served the second summons by delivering it to Bridgestone Corporation in Tokyo, not Bridgestone Japan in Ageo. Although Bridgestone Japan admitted it was a wholly owned subsidiary of Bridgestone Corporation, plaintiff has not shown and does not contend anyone at Bridgestone Corporation was Bridgestone Japan's officer, agent, or manager. Because plaintiff failed to serve Bridgestone Japan or any representative with the second summons, the trial court had no jurisdiction over defendant. It thus properly granted Bridgestone Japan's motion to quash.

B. Lack of Minimum Contacts

The second basis for the trial court's order was that Bridgestone Japan had insufficient minimum contacts with California to support jurisdiction. We agree with the trial court that California's long-arm statute does not reach Bridgestone Japan.

California courts may exercise jurisdiction over nonresidents "on any basis consistent with the Constitution of California and the United States." (*Snowney v. Harrah's Entertainment, Inc*. (2005) 35 Cal.4th 1054, 1061; §410.10 [long-arm statute].) These constitutions permit the exercise of jurisdiction over a nonresident defendant "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.]" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444 (*Vons*).) "[E]ach individual has a liberty interest in not being subject to the judgments of a forum with which he or she has established no meaningful minimum 'contacts, ties or relations.' [Citation.] As a matter of fairness, a defendant should not be 'haled into a jurisdiction solely as the result of "random," "fortuitous," or "attenuated" contacts.' [Citation.]" (*Id*. at p. 445.) Nor is the minimum contacts test satisfied by "'[t]he unilateral activity of those who claim some relationship with a nonresident defendant . . . .'" (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 474 [105 S.Ct. 2174, 85 L.Ed.2d 528].)

"Personal jurisdiction may be either general or specific." (*Vons, supra*, 14 Cal.4th at p. 445.) Because plaintiff does not claim general jurisdiction, we only consider whether specific jurisdiction exists here. A nonresident defendant "may be subject to the *specific* jurisdiction of the forum[] if the defendant has purposefully availed himself or herself of forum benefits [citation], and the 'controversy is related to or "arises out of" a defendant's contacts with the forum.' [Citations]" (*Vons, supra*, 14 Cal.4th at p. 446.)

"When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. [Citation.]" (*Vons, supra*, 14 Cal.4th at p. 449.) Plaintiff must meet this burden with competent evidence. (*Nobel Farms, Inc. v. Pasero* (2003) 106 Cal.App.4th 654, 657-658.) The evidence need not be conclusive, nor need plaintiff prove the elements of her causes of action. But she must provide some evidence allowing the trial court to conclude Bridgestone Japan's contacts with California relate to her causes of action. Allegations in an unverified complaint and vague declarations of ultimate facts do not suffice to establish the facts of jurisdiction; a plaintiff must provide declarations and authenticated documents that permit the court to form an independent conclusion. (*Ibid.*; *Ziller, supra*, 206 Cal.App.3d at p 1233.) "A plaintiff is generally entitled to conduct discovery with regard to a jurisdictional issue before the court rules on a motion to quash." (*Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 911.)

Once plaintiff has demonstrated facts establishing minimum contacts with the forum state, it becomes the defendant's burden to demonstrate the exercise of jurisdiction would be unreasonable. (*Vons, supra*, 14 Cal.4th at p. 449.)

We review the trial court's factual determinations for substantial evidence, but the ultimate question whether jurisdiction is fair and reasonable under all the circumstances is a legal determination we review independently. (*Vons, supra*, 14 Cal.4th at p. 449.)

Plaintiff provides scant probative evidence of Bridgestone Japan's contacts with California. The only facts plaintiff alleges in her unverified form complaint about Bridgestone Japan are that it designed, manufactured and sold her bicycle. In opposition to defendants' motions to quash, plaintiff's counsel has *argued* that plaintiff's husband

bought her a Bridgestone RB-1 bicycle from a retailer in Glendale, California; that the bicycle had a quick-release mechanism that permitted the front wheel to be removed quickly; and that this mechanism malfunctioned, causing the front wheel to come off while plaintiff rode the bicycle. Plaintiff has never attempted to support any of these assertions with evidence.

For example, plaintiff's entire showing in opposition to Bridgestone Japan's first motion to quash was an unauthenticated photograph of a Bridgestone bicycle and several unauthenticated pages from various Bridgestone bicycle catalogs, one of which bore Bridgestone Japan's address on the last page. Nothing indicated Bridgestone Japan manufactured her bicycle or that it was sold in California or even that plaintiff owned and rode it. (The only evidence connecting plaintiff to the bicycle was counsel's hearsay declaration.) Plaintiff thus failed utterly to show that Bridgestone Japan had even a single contact with California, much less any contact related to her claim.

In opposition to Bridgestone Japan's second motion to quash, plaintiff relied exclusively on excerpts from Peterson's deposition testimony. Presented with an unidentified photograph of a Bridgestone bicycle, Peterson testified the RB model (which was not a 1992 model, as plaintiff's counsel had claimed, but was "within a year of 1989") was sold in both Japan *and the United States*. He was apparently never asked whether it was ever sold in California.

Peterson identified only three contacts of Bridgestone Japan with California: (1) Bridgestone Japan engineers consulted with Peterson regarding bicycle design; (2) unidentified Bridgestone Japan employees occasionally visited California to observe Bridgestone USA's operations and talk about unspecified business; and (3) Bridgestone Japan closed Bridgestone USA in 1994. The trial court was unimpressed, commenting several times during the hearing that there was no foundation for Peterson's opinion regarding the activities or structure of Bridgestone Japan.

To show specific jurisdiction, plaintiff must establish that her causes of action arose out of or relate to Bridgestone Japan's acts in or connection with this state. (*Jewish Defense Organization, Inc. v. Superior Court* (1999) 72 Cal.App.4th 1045, 1058.) "[T]he

question is whether the quality and nature of petitioners' forum-related activity in relation to [the] complaint is sufficient to permit California to exercise jurisdiction over them. [Citations.] To prevail, [plaintiff] must establish the causes of action arose out of an act committed or transaction consummated in California, or that petitioners performed some other act by which they purposefully availed themselves of the . . . benefits and protections of the state's laws." (*Mansour v. Superior Court* (1995) 38 Cal.App.4th 1750, 1758-1759.) The "'purposeful availment' requirement for specific jurisdiction can be satisfied by the 'effects test,' set out in *Calder v. Jones* (1984) 465 U.S. 783. [Citation omitted.] 'Under *Calder*, personal jurisdiction can be based upon: "(1) intentional actions (2) expressly aimed at the forum state (3) causing harm, the brunt of which is suffered — and which the defendant knows is likely to be suffered — in the forum state."'" (*Jewish Defense Organization, Inc. v. Superior Court, supra*,72 Cal.App.4th at p. 1057.) Minimally, the defendant must engage in some action "purposefully directed toward the forum state." (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 112.) Isolated meetings that are unrelated to the subject matter in dispute do not support a finding of specific jurisdiction. (*DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1101; *Edmunds v. Superior Court* (1994) 24 Cal.App.4th 221, 234.)

Plaintiff failed to establish that Bridgestone Japan directed any relevant activity toward or sold even a single bicycle in California. Plaintiff argues Bridgestone Japan sold tens of thousands of bicycles in the United States, "including California." We can accept that Bridgestone Japan sold bicycles in the United States, but no evidence in the record specifically indicates Bridgestone Japan's bicycles were sold in California.

Plaintiff argues Bridgestone Japan purposely availed itself of the benefits of conducting activities in California by placing its bicycles in a stream of commerce that it knew would flow to California. The argument is without merit. Again, no competent evidence supports plaintiff's contention that Bridgestone Japan sold any bicycle that reached California. Assuming for the sake of argument that Bridgestone Japan bicycles reached California, the mere act of placing a product in the stream of commerce, without more ("such as special state-related design, advertising, advice, marketing, or anything

else") is not enough to constitute purposeful availment. (*J. McIntyre Machinery, Ltd. v. Nicastro* (2011) 564 U.S. ___ [131 S.Ct. 2780, 2792, 180 L.Ed.2d 765] (conc. opn. of Breyer); *Dow Chemical Canada ULC v. Superior Court* (2011) 202 Cal.App.4th 170, 178.)

Plaintiff having presented no evidence of Bridgestone Japan's minimum contacts in California, the burden never shifted to defendant to show lack of minimum contacts. Bridgestone Japan nevertheless presented the declaration of Tamura, one of its division managers, who stated that Bridgestone Japan never sold a bicycle in California. The trial court credited the statement. Although the rest of Tamura's declaration was inapposite in that he described Bridgestone Japan's *present* lack of California activities, it was well within the trial court's discretion to find Bridgestone Japan had not sold any bicycle in or initiated any sale to California.

Plaintiff has not met her burden to show with competent evidence either that Bridgestone Japan was served with the summons or had sufficient minimum contacts with California to justify the exercise of personal jurisdiction. We therefore do not need to consider whether the assertion of personal jurisdiction would comport with fair play and substantial justice.

We feel constrained to address two misrepresentations the parties make concerning the record below. First, Bridgestone Japan argues at length that in granting the second motion to quash the trial court relied on the doctrine of direct estoppel articulated in *Sabek, Inc. v. Engelhard Corp*. (1998) 65 Cal.App.4th 992, 998, which held that issue preclusion may bar a plaintiff from maintaining a further action in the state once an order finding personal jurisdiction to be absent becomes final. The argument is unsupported by the record. True, the trial court's *tentative* ruling relied on *Sabek*, and the court made several references to the case during oral argument, but the final minute order did not incorporate the tentative ruling or make reference to *Sabek* or the doctrine of issue preclusion. Second, plaintiff repeatedly contends the trial court continued the hearing on the first motion to quash to permit plaintiff to conduct jurisdiction discovery and develop further facts concerning the minimum contacts issue. The contention finds no support in

the record and was expressly rejected by the trial court at the hearing on the second motion.

DISPOSITION

The trial court's July 23, 2010 order granting respondents' motions to quash service is affirmed. Respondents are to recover their costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.