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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JAPAN INVESTMENTS, LLC et al., Plaintiffs and Appellants, v. TOKYO KYODO ACCOUNTING OFFICE et al., Defendants and Respondents.	B287031 (Los Angeles County Super. Ct. No. BC641246)

APPEAL from an order of the Superior Court of Los Angeles County, Richard L. Fruin, Jr., Judge. Affirmed.

Chassman & Seelig, Mark B. Chassman; Meister Seelig & Fein, Jeffrey Schrieber and Samantha L. Frenchman for Plaintiffs and Appellants.

Buchalter, Mark T. Cramer and Efrat M. Cogan for Defendants and Respondents.

INTRODUCTION

Appellants contend Respondents (a Japanese accounting firm and an independent contractor who works with the firm) breached their fiduciary duty by falsely representing facts during a meeting in Tokyo, Japan, causing Appellants to lose their ownership interest in a property located in California. Appellants filed a complaint alleging breach of fiduciary duty. Respondents specially appeared and moved to quash service of the summons and the complaint based on lack of personal jurisdiction, which the trial court granted. We exercise an independent review of the record and find the California court should not exercise specific jurisdiction. We therefore affirm the trial court's ruling.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Events Leading Up to the Complaint*

Tokyo Kyodo Accounting Office (hereinafter TKAO) is an accounting business with one office, located in Tokyo, Japan. It was founded by Ryutaro Uchiyama (hereinafter Uchiyama), a Japanese citizen residing in Japan. TKAO provides Japanese tax-related services to its clients, and identifies investments in California that would provide tax benefits favorable to Japanese residents. TKAO does not provide tax advice under California law. TKAO has no designated agent for service of process in California, is not licensed to do business in California, has no office or employee in California, and does not advertise in California.

Keigo Hirano (hereinafter Hirano), an individual residing in Tokyo, Japan, has worked for Uchiyama and TKAO in various capacities since 2003 as an independent contractor. Hirano has held various position titles while working for TKAO, including

"partner" in 2009,[1] and, more recently, "senior advisor." Although Hirano holds a California certified public accountant license that has been inactive for almost 10 years, he has never charged any fees under it.

TKAO and Hirano (hereinafter Respondents) were engaged by Lexington Corporation (hereinafter Lexington Corp.), a Japanese corporation that structures investments providing tax-advantageous benefits[2] to wealthy Japanese residents, to give financial and tax-related advice to Lexington Corp. and to assist in structuring real estate investments. TKAO last provided tax-related services to Lexington Corp. in 2004.

Years later, Respondents helped Lexington Corp. and four Nevada limited companies[3] (hereinafter Appellants) to identify property in Lakeview Terrace, California (hereinafter California Property) to serve as an investment for Japanese residents seeking to obtain favorable tax benefits. Appellants and a few of TKAO's own clients invested in the California Property.

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[1] Although Hirano was identified as a "partner" on TKAO's website in 2009, TKAO has never been a partnership or formal business entity, but rather, was the business name used by Uchiyama in connection with business in Japan.

[2] Said tax-advantageous benefits include providing Japanese taxpayers a means to deduct depreciation on an accelerated basis under the Japanese tax code.

[3] The four Nevada limited liability companies are Lexington USA, LLC, Japan Investments, LLC, Japan Owner, LLC, and Japan Operator, LLC.

In 2012, a dispute arose between certain guarantors of debt (hereinafter Guarantors) associated with the California Property and Japan Mountainback Investment General Partnership (hereinafter JMI Partnership)[4], a partnership in which Appellants and other investors held an interest. This dispute resulted in arbitration that took place in 2012 in California. Hirano had participated in the California arbitration as the proxy and/or "authorized representative" of the individual investor Shigeru Tanioka only. Hirano did not participate as a representative of any of the Appellants. In fact, until July 23, 2014—the date before a mediation between the Guarantors and JMI Partnership took place in Maui, Hawaii—Hirano's "only association with anything to do with the California arbitration was as the proxy or authorized representative of Mr. Tanioka."

According to Appellants, on February 5, 2014, Respondents breached their fiduciary duty during a meeting in Tokyo, Japan, by knowingly providing false information that undermined Appellants' ownership interest in the California Property. Appellants alleged that Hirano's false representations caused Appellants to lose their own investment interest in the California Property. Hirano participated in the February 5, 2014 meeting as the "authorized representative" of the individual Shigeru Tanioka; Hirano did not participate in the meeting as a representative of any of the Appellants.

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[4] JMI Partnership is not a party to this appeal.

Hirano thereafter acquired an indirect minority ownership interest in the California Property, as he owns 99 percent of Tokyo Wealth Management Advisors, LLC, a Japanese company, that acquired approximately 3.8 percent interest in the JMI Partnership, which owns the California Property.[5]

On July 24, 2014, Hirano participated in mediation in Maui, Hawaii, as the authorized representative of the individual Tanioka and for the JMI Partnership;[6] however, Hirano was not the only authorized representative of JMI Partnership. Settlement was reached during mediation and, as part of their settlement agreement, Appellants agreed to voluntarily divest their own ownership interest in the California Property; Appellants claim they agreed to these terms based on Hirano's knowingly false representation of facts during the February 5, 2014 meeting in Tokyo, Japan. Hirano signed the settlement agreement as the authorized representative of JMI Partnership.

B. *Appellants' Complaint, Respondents' Motion to Quash, and the Trial Court Proceedings*

Appellants filed the summons and complaint on December 7, 2016 and served Respondents in Japan thereafter. The complaint sets forth a cause of action for breach of fiduciary duty against Respondents—Hirano, individually, and TKAO, through Hirano—for having made knowingly false representations about

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[5] The other respondent, TKAO, never held any interest in JMI Partnership or the California Property.

[6] Hirano did not become an authorized representative of JMI Partnership until July 23, 2014, a day before mediation took place in Maui.

Appellants to third party investors in the California Property, which caused Appellants to lose their investment in the California Property. Appellants sought relief in the form of compensatory damages, punitive damages, interest, costs, and disgorgement of all wrongfully obtained monies or ownership in property acquired by Respondents.

On April 11, 2017, Respondents filed a motion to quash the summons and complaint for lack of personal jurisdiction under Code of Civil Procedure section 418.10(a)(1). In support of their motion to quash, Respondents included the declarations of Hirano and Uchiyama.

In support of Appellants' opposition to Respondents' motion to quash, Appellants submitted the declarations of 1) Eric Clauson (hereinafter Clauson), the representative director of Lexington Corp. and the nonmember manager of the Nevada limited liability companies; 2) Miwa Shoda, an attorney with Jenner & Block, LLP in Los Angeles, who represented JMI Partnership and a few of its investors in a dispute with Clauson, Appellant Japan Investments, LLC, and others; and 3) Shunsuke Saito, the managing partner of Hotta Leisenberg Saito, LLP, who worked on matters related to JMI Partnership.

The parties engaged in discovery regarding the narrow issue of whether California has personal jurisdiction over Respondents.[7] Respondents submitted evidentiary objections to various parts of the Clauson declaration.

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[7] The parties served and responded to interrogatories, requests for the production of documentations, and requests for admission.

The court heard argument from both sides on October 26 and 27, 2017. Appellant argued there was a "plethora of forum contacts anchoring this controversy in California" which supported the court's exercise of specific jurisdiction over Respondents. The property in dispute is located in California; arbitration of the dispute between Appellants and Guarantors took place in California; and California is the only forum convenient to Appellants for adjudication of their claims. Appellants also raise the fact that Hirano had exchanged many emails with the law firm Jenner & Block, LLP (hereinafter Law Firm), which represented JMI Partnership in connection with the dispute.[8]

Respondents argued that Appellants' breach of fiduciary duty cause of action was based on alleged conduct that occurred, if at all, outside California. Respondents contend Appellants presented no evidence of specific conduct linking their breach of fiduciary duty claim to either of the Respondents in California. Respondents cited the recent decision in *Bristol-Myers Squibb v. Superior Ct of CA* (2017) 137 S.Ct. 1773 (*Bristol-Myers*), and stated that Appellants failed to satisfy the legal standard set forth therein. Appellants had the burden to prove that each of the Respondents had "case-linked" jurisdictional contacts with California, and that said contacts gave rise to Appellants' breach of fiduciary duty cause of action. Because Appellants did not

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[8] The record refers to the fact that emails were exchanged between Hirano and the Law Firm; however, there is no reference to the substance of these emails, as Hirano's communications as the authorized representative of the individual investor Tanioka, a member of the JMI Partnership, fell within the protection of the attorney-client privilege.

prove the requisite connection between their cause of action and Respondents' alleged conduct with the California state forum, Respondents argued the trial court should grant their motion to quash.

Additionally, Respondents objected to various assertions and statements in the Clauson declaration on the grounds it lacked foundation, was not based upon personal knowledge, and constituted improper opinion and conclusions.

C. *The Trial Court's Ruling*

The court sustained Respondents' objections to the Clauson declaration and found his declaration "largely conclusory" because it did "not provide competent evidence to establish facts necessary to support jurisdiction." The court received into evidence the declarations, "except the parts of the Clauson declaration to which the [c]ourt sustained objections . . . ."

The court found that TKAO and Hirano are not subject to general jurisdiction. The court further found that "the effects in California of the conduct attributed to TKAO and, separately, to Hirano do not establish a basis for case-linked California jurisdiction," and thus, granted the motion to quash service of the summons and complaint. Hirano was "not shown to have availed himself of California contacts with respect to the claims alleged by [P]laintiffs; [P]laintiffs' claims do not arise from or out of Hirano's contacts (nor TKAO's contacts) with California; and the assertion of California's jurisdiction over the Japanese-resident [D]efendants does not comport with traditional notions of fair play and substantial justice."

Plaintiffs timely appealed.

DISCUSSION

We affirm the trial court's order granting the motion to quash service of summons and the complaint.

A. *Appellants' Failure to Provide Cogent Legal Argument or Citation to Authority Resulted in a Waiver of Their Contention Regarding the Trial Court's Ruling on Evidentiary Objections.*

Respondents contend Appellants failed to offer "reasoned analysis of the issue" in their opening brief and thus, effectively waived any argument that the trial court erred in sustaining evidentiary objections to the Clauson declaration. Respondents contend Appellants' "entire argument concerning error in sustaining objections to the Clauson declaration takes up a paragraph in the Appellants' Opening Brief." Respondents cite *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, for the proposition that the reviewing court must treat an issue and/or argument as waived " ' "[w]hen an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority . . . ." ' " (*Id.*, at p. 956.) Respondents argue that Appellants did not address Respondents' objections to the Clauson declaration with any law or analysis and, as a result, waived their right to challenge the evidentiary objections that the trial court had sustained.

We agree. Although Appellants raised a challenge to the trial court's ruling on the evidentiary objections in their opening brief by identifying their challenge in a "separate argument heading" (*Roe v. McDonald's Corp.* (2005) 129 Cal.App.4th 1107, 1114), "[t]he absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th

814, 830; see also Cal. Rules of Court, rule 8.204(a)(1)(B) ["support each point [in a brief] by argument and, if possible, by citation of authority"].). An issue that is merely raised by the party without any argument or authority is deemed to be " 'without foundation and requires no discussion.' " (*Roe v. McDonald's Corp.*, at p. 1114; see *Golden Day Schools, Inc. v. Department of Education* (1999) 69 Cal.App.4th 681, 695, fn.9.)

Appellants make generalized argumentative conclusions (for instance, "The trial court ignored key jurisdictional evidence and blanketly sustained each and every one of Respondents' evidentiary objections without sufficient cause."); however, they failed to provide this court with the "key jurisdictional evidence" that was purportedly ignored by the trial court, and failed to identify the statements to which objections were made and sustained and why each such sustained objection was "without sufficient cause."

There were a total of 22 statements from Clauson's declaration that Respondents specified as "objectionable material" with multiple grounds for objection for each. Instead of affirmatively tackling the court's evidentiary ruling for each of those 22 statements, and providing supporting facts and/or evidence to back their contention(s), Appellants instead simply assert a blanket generalization that "many of the purportedly objectionable statements were directly within Mr. Clauson's personal knowledge and experience" and consequently, were conveyed "properly" in his declaration.

Additionally, although Appellants contend that some of the statements from Clauson's declaration should have been considered by the trial court for limited purposes, even if otherwise objectionable, they waived that contention as well.

Nothing in the record suggests that Appellants requested the trial court to consider portions of Clauson's declaration for a specified and/or limited purpose. The court's duty to do so does not arise until and unless Appellants make such a request, and "unless such request is made[,] the right to complain on appeal is waived." (*Rupp v. Summerfield* (1958) 161 Cal.App.2d 657, 662–663.)

Based on the foregoing, this court is under no obligation and declines to consider Appellants' challenge to the trial court's ruling on evidentiary objections.

B. *The Trial Court's Order Granting Respondents' Motion to Quash is Affirmed.*

1. Standard of Review

Where a nonresident defendant challenges jurisdiction by way of a motion to quash, the plaintiff bears the burden of establishing by a preponderance of the evidence that minimum contacts exist between the defendant and the forum state to justify imposition of personal jurisdiction. The plaintiff must present facts demonstrating that the conduct of defendants related to the pleaded causes [of action] is such as to constitute constitutionally cognizable 'minimum contacts. (*Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, 1312–1313 (*Elkman*).)

Evidence in support of jurisdictional facts or their absence may be in the form of declarations. (*Evangelize China Fellowship, Inc. v. Evangelize China Fellowship* (1983) 146 Cal.App.3d 440, 444 (*Evangelize China Fellowship*).) "[W]here the evidence of jurisdictional facts is *not* conflicting, the question of whether a defendant is subject to personal jurisdiction is one of law." (*Elkman*, *supra*, 173 Cal.App.4th at

p. 1313.) However, when there is a conflict in the evidence and/or declarations, resolution of the conflict by the trial court will not be disturbed on appeal if the determination is supported by substantial evidence. (*Evangelize China Fellowship*, at p. 444; *Edmunds v. Superior Court* (1994) 24 Cal.App.4th 221, 232–233.)

Where, as here, "no conflict in the evidence exists . . . the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record." (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 (*Vons*).) "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposition papers *except that to which objections were made and sustained*." (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65–66, italics added.) As explained above, Appellants failed to affirmatively challenge the trial court's ruling on Respondents' evidentiary objections to Clauson's declaration and waived their argument as a result. We therefore will not consider evidence to which objection was made and sustained.

2. Applicable Law and Analysis

A California court "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) The exercise of jurisdiction over a nonresident defendant "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." ' " (*Vons*, *supra*, 14 Cal.4th at p. 444, quoting *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.)

Courts have identified two ways to establish personal jurisdiction. Personal jurisdiction may be either general or specific. (*Vons*, *supra*, 14 Cal.4th at p. 445.) General jurisdiction is sometimes called "all-purpose" and specific jurisdiction is sometimes called "case-linked." (*Bristol-Myers*, *supra*, 137 S.Ct. at p. 1780). In this case, Appellants do not contend general jurisdiction exists; we therefore only consider whether specific jurisdiction exists.

When determining whether specific jurisdiction exists, courts consider the "relationship among the defendant, the forum, and the litigation." (*Shaffer v. Heitner* (1977) 433 U.S. 186, 204.) A court may exercise specific jurisdiction over a nonresident defendant if a three-prong test is met: (1) "the defendant has purposefully availed himself or herself of forum benefits" (*Vons*, *supra*, 14 Cal.4th at p. 446); (2) "the 'controversy is related to or "arises out of" [the] defendant's contacts with the forum' " (*ibid*., quoting *Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414); and (3) "the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 476 (*Burger King*)).

Additionally, in *Bristol-Myers*, the United States Supreme Court rejected the California Supreme Court's " 'sliding scale approach' " in determining whether to exercise specific jurisdiction over a non-state or non-resident defendant, as this approach "resembles a loose and spurious form of general jurisdiction" that violates the defendant's due process rights under the Fourteenth Amendment. (*Bristol-Myers*, *supra*, 137 S.Ct. at p. 1781.) In order to exercise specific jurisdiction over a claim, "there must be an 'affiliation between the forum and

the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.' [Citation.] When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." (*Ibid*.)

Applying these standards to the facts of this case, we conclude that California may not exercise specific jurisdiction over Respondents, and we affirm the trial court's ruling.

a) Did Respondents purposefully avail themselves of forum benefits?

We begin with the "purposeful availment" prong of the test. This prong is satisfied when an out-of-state defendant purposefully directs his activities at residents of the forum and the litigation results from alleged injuries that are out of or relate to those activities. (*Burger King*, *supra*, 471 U.S. at p. 472.) "[T]he underlying rationale of all the purposeful availment tests is that 'it is fair to subject defendants to specific jurisdiction, because their forum activities should put them on notice that they will be subject to litigation in the forum.' " (*Gilmore Bank v. AsiaTrust New Zealand Ltd.* (2014) 223 Cal.App.4th 1558, 1573 (*Gilmore Bank*).)

Here, Appellants argue that Respondent Hirano purposefully availed himself of the forum and its benefits by advising Appellants and individual investors regarding the California Property investment, by taking an "affirmative role" in the arbitration in California, and by obtaining an ownership interest in the California Property, albeit an indirect minority interest. Appellants further contend that Hirano's "purposeful" and "intentional California-related" conduct provided Hirano with "forum benefits", in that he furthered his own interest by

providing tax-advantageous benefits to his clients through TKAO and, ultimately, in obtaining an ownership interest in the California Property himself.

Similarly, Appellants argue that "[v]irtually all of the case-linked contacts that Hirano had with California were conducted on behalf of and for the benefit of TKAO," which consequently availed TKAO of the California forum.

Based on a review of the record, we cannot say Hirano or TKAO purposefully availed themselves of the California state forum. Hirano did not hold an individual ownership interest in the California Property. The partnership meeting on February 5, 2014 where Hirano allegedly falsely misrepresented facts, giving rise to the underlying breach of fiduciary duty cause of action, took place in Tokyo—not California. Additionally, Hirano was not the authorized representative of Appellants or the JMI Partnership at the time the alleged breach of fiduciary duty incident took place. Finally, although Hirano signed the July 24, 2014 settlement agreement in his capacity as the authorized representative of JMI Partnership, the mediation, settlement, and signing of the agreement all took place in Maui—not California.

The record also reflects Hirano was an independent contractor who was never an employee or agent of TKAO; although TKAO's website identified Hirano as a "partner" of TKAO nearly 10 years ago, TKAO has never been a partnership or corporation.

b) Does the controversy relate to or arise out of Respondents' contacts with the forum?

The second prong of the test for specific jurisdiction is whether the current controversy is "related to or arise[s] out of the defendant's contacts with the state." (*Gilmore Bank*, *supra*, 223 Cal.App.4th at p. 1568, italics omitted.) In *Vons*, the Supreme Court explained that this second prong is satisfied if "there is a substantial nexus or connection between the defendant's forum activities and the plaintiff's claim." (*Vons*, *supra*, 14 Cal.4th at p. 456.) "A claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Rather, as long as the claim bears a substantial connection to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate." (*Id*. at p. 452.)

Appellants argue that a "plethora of forum contacts anchor[ed] this controversy in California." We disagree. Based on a review of the record, we discern the following contacts with California: 1) Hirano's and TKAO's providing financial and/or tax-related advice to Japanese residents with respect to investment opportunities elsewhere and in California; 2) Hirano's attendance at the arbitration in California in 2012, where he acted as the authorized representative of the individual investor Tanioka; 3) Hirano's exchange of unspecified emails with the Law Firm representing JMI Partnership, the former of which has an office location in Los Angeles, California; and 4) Hirano's indirect minority ownership of the California Property.

We find that the underlying controversy, namely, the breach of fiduciary duty claim, does not arise from the above-listed forum contacts. Although Hirano and TKAO provide tax-

advantageous financial advice to its Japanese clients regarding California investment opportunities, there is no "substantial nexus" between this and Appellants' breach of fiduciary duty claim allegedly arising from a meeting in Tokyo in 2014. Similarly, although Hirano attended arbitration in California in 2012, this was two years before the alleged breach of fiduciary duty incident took place; Hirano's attendance at the arbitration was in his capacity as the proxy of an individual investor, and not Appellants. Also, nothing in the record suggests Hirano's exchange of emails with the Los Angeles Law Firm had anything to do with the alleged breach of fiduciary duty incident, as the specific emails are not part of the record. Further, Hirano's emails to and from the Law Firm were in his capacity as the proxy of the individual investor and later, the JMI Partnership. Finally, Hirano's interest in the California Property is not an interest he individually owns, but rather, is an interest he indirectly has via a Japanese company that has a minority interest in the JMI Partnership, which owns the California Property.

Neither Respondents reside in California, have offices in California, or have any employees in California; TKAO's founder and owner is a Japanese citizen residing in Japan. In fact, all of the Appellants are from outside of California as well.[9]

Therefore, we find the underlying breach of fiduciary duty controversy does not arise out of Respondents' contacts with the California forum.

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[9] As previously mentioned, Lexington Corp. was a Japanese company, and the other Appellants were all Nevada limited liability companies.

c) Does the assertion of personal jurisdiction comport with fair play and substantial justice?

"Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " (*Burger King*, *supra*, 471 U.S. at p. 476, quoting *Internat. Shoe*, *supra*, 326 U.S. at p. 320.) In making this determination, courts may "evaluate the burden on the defendant of appearing in the forum, the forum state's interest in adjudicating the claim, the plaintiff's interest in convenient and effective relief within the forum, judicial economy, and 'the "shared interest of the several States in furthering fundamental substantive social policies." ' [Citation.]" (*Vons*, *supra*, 14 Cal.4th at p. 448.)

The burden on Respondents in having to appear in California court would be tremendous, as Hirano and TKAO (and by extension, TKAO's founder and owner) reside in Japan, work and operate in Japan, and safekeep their books and records in Japan. We agree with Respondents' argument in that it is "not reasonable to require [R]espondents to travel more than 5,000 miles overseas to defend [an] action in a forum [where] they have only slight contacts that are unrelated to the [A]ppellants' allegations in this case."

Further, based on our review of the record, California has little to no interest in this dispute, as none of the parties are situated in California, and the alleged conduct that gave rise to the alleged breach of fiduciary duty claim took place during a meeting in Tokyo, Japan.

For the foregoing reasons, we conclude that the relationship between Respondents' contacts with California and the underlying action is not substantial enough to justify California's exercise of specific jurisdiction over Respondents. Accordingly, the trial court's order granting Respondents' motion to quash is affirmed.

DISPOSITION

The trial court's order granting Respondents' motion to quash is affirmed. Appellants to bear costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.