

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MARK KUNTZE,

Cross-Complainant and  
Appellant,

v.

CLOUD NINE BVBA et al.,

Cross-Defendants and  
Respondents.

2d Civ. No. B279446  
(Super. Ct. No. 56-2016-  
00480390-CU-NP-VTA)  
(Ventura County)

Appellant Mark Kuntze was an executive officer of Cloud Nine Group America, Inc. (Cloud Nine America), a California corporation. Following an employment dispute, Cloud Nine America sued Kuntze for breach of fiduciary duty and declaratory relief. Kuntze, appearing in propria persona, filed a cross-complaint against Cloud Nine America alleging numerous causes of action, including several intentional torts. Kuntze subsequently amended his cross-complaint to include, as Doe cross-defendants, respondents Cloud Nine BVBA, Progreddi BVBA

(Progredi), Cloud Nine Customer Management Services BVBA (Cloud Nine Customer Management), C9 International GMBH (C9 International), Tim Belon and Thomas Richard Schmidt. Respondents are located in either Belgium or Germany.

Each respondent moved to quash service of the summons and cross-complaint. The trial court granted the motions, finding that Kuntze had failed (1) to show effective service of process in compliance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague Service Convention), (2) to produce evidence establishing that either general or specific jurisdiction exists and (3) to demonstrate how respondents have minimum contacts with California. Kuntze challenges these findings.

We agree with Kuntze that the four Belgium-based respondents were properly served with the summons and cross-complaint, but uphold the trial court's finding that California courts lack personal jurisdiction over all respondents. We affirm.<sup>1</sup>

## FACTS AND PROCEDURAL HISTORY

After adding respondents to his cross-complaint, Kuntze "personally served" the summons and cross-complaint on their California counsel, Thomas J. Stolp, at his office in Fountain Valley. Kuntz also mailed copies of the documents by certified mail to respondents' respective addresses in Belgium and Germany.

In moving to quash service of the summons and cross-complaint, respondents provided evidence that Belon resides in Antwerp, Belgium and that Schmidt resides in Augsburg,

---

<sup>1</sup> Cloud Nine America has answered the cross-complaint and is not a party to this appeal.

Germany. Neither of them lives in California or the United States, and they have not authorized Stolp to accept service of process on their behalf.

Schmidt is the managing director of C9 International, which is a German corporation with its principal place of business in Augsburg, Germany. Belon is the president of Progredi, which is a Belgium corporation with its principal place of business in Lokeren, Belgium.

Joke Cocquyt is the managing director of Cloud Nine BVBA and Cloud Nine Customer Management. Both are Belgium corporations with their principal place of business in Lokeren, Belgium.

None of the corporate respondents conduct business in California or the United States. Their business is only conducted in Europe and they have no connection to California or any entity or person in California. Because the corporate respondents do not conduct business in California or the United States, they have no designated agent for service of process. Stolp confirmed that he is not authorized to accept service on their behalf.

Kuntze opposed the motions to quash. He submitted his own declarations stating that each respondent “has substantial ties, contacts and relations to the State of California,” and that effective service had been completed. Rejecting this evidence, the trial court granted the motions. It concluded that respondents had not been served in compliance with the Hague Service Convention and that “[t]he only admissible evidence [of personal jurisdiction] provided by [Kuntze] are his declarations containing conclusory language, and no supporting facts, that each [respondent] ‘has substantial ties, contacts and relations to the State of California.’ In other words, no real facts have been

offered let alone facts which would carry the burden of proof.”  
Kuntze appeals.

## DISCUSSION

### *A. Service of Process*

The trial court does not acquire jurisdiction over a defendant unless the summons and complaint are validly served. (See Code Civ. Proc., § 418.10, subd. (a)(1).) “When a defendant challenges the court’s personal jurisdiction on the ground of improper service of process ‘the burden is on the plaintiff to prove the existence of jurisdiction by proving, inter alia, the facts requisite to an effective service.’” (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413, fn. omitted.) We conclude that Kuntze met that burden as to all respondents except Schmidt and C9 International.

Belgium and Germany are signatories to the Hague Service Convention, which “provides a mechanism for signatory nations to serve process abroad. It applies when the forum state’s internal law requires transmittal of documents abroad as a necessary part of service of process. [Citation.]” (*Denlinger v. Chinadotcom Corp.* (2003) 110 Cal.App.4th 1396, 1398-1399 (*Denlinger*).) Article 10(a) of the Hague Service Convention states: “Provided the State of destination does not object, the present Convention shall not interfere with -- [¶] (a) the freedom to send judicial documents, *by postal channels*, directly to persons abroad.” (Italics added; see *Denlinger*, at p. 1399.) Thus, in the absence of a specific objection by the adhering country, the Hague Service Convention allows service of process by mail. (*Denlinger*, at pp. 1400-1405.)

The trial court acknowledged that Article 10(a) of the Hague Service Convention allows service by mail, but noted that

Germany objects to “the use of methods of transmission pursuant to Articles 8 and 10,” requiring instead that service be made on the designated “Central Authority.” (*Dr. Ing H.C. F. Porsche A.G. v. Superior Court* (1981) 123 Cal.App.3d 755, 761-762 & fn. 3.) Because Kuntze served the summons and cross-complaint on respondents, and not on the designated Central Authority, the court found that “service was void as it violated the Hague [Service] Convention,” and concluded that the “court has no personal jurisdiction over [respondents] based on the mailed service.” (See Code Civ. Proc., §§ 415.20, subd. (b), 415.40.)

The flaw in this analysis is that it incorrectly presumes that all respondents are domiciled in Germany. The record confirms that Schmidt resides in Augsburg, Germany, and that C9 International is a German corporation with its principal place of business in Augsburg. The other respondents are located in Belgium, which, unlike Germany, “does not oppose service under Article 10(a)” of the Hague Service Convention. (*Medimmune, LLC v. PDL Biopharma, Inc.* (N.D. Cal. 2010) 2010 WL 2179154, \*2.) Hence, service by mail on those four respondents, i.e., Cloud Nine BVBA, Progredi, Cloud Nine Customer Management and Belon, at their addresses of record in Belgium was permissible under Article 10(a) of the Hague Service Convention. (See *Denlinger, supra*, 110 Cal.App.4th at pp. 1400-1405.)

Kuntze responds that, notwithstanding issues with the Hague Service Convention, he properly served Schmidt and C9 International by personally serving the summons and cross-complaint on their attorney, Stolp. But nothing in the record suggests that Stolp was authorized to accept service of process on either respondent’s behalf.

Kuntze further asserts that service was valid because he mailed the summons and cross-complaint to Schmidt and C9 International at addresses in both Germany and Belgium. In the absence of evidence that either respondent has any connection to Belgium, we conclude that service by mail on these two Germany-based respondents was void under the Hague Service Convention and that the trial court appropriately found that it lacked personal jurisdiction over them. Although the court did err when it found that service by mail was void as to the four Belgium-based respondents, this error was harmless given that they lack sufficient contacts with California to be subjected to the court's personal jurisdiction.

### *B. Personal Jurisdiction*

#### *1. Legal Framework and Standard of Review*

“California has personal jurisdiction over a nonresident defendant who ‘has such minimum contacts with the state that the assertion of jurisdiction does not violate “traditional notions of fair play and substantial justice.”’ [Citation.] The defendant’s minimum contacts with the state must reasonably justify haling it into a California court to conduct a defense. [Citation.] Courts apply the minimum contacts test on a case-by-case basis, focusing on the *nature and quality* of the defendant’s activities in the state or with state residents. [¶] Personal jurisdiction may be general or specific. If the defendant’s contacts are substantial, continuous, and systematic, the defendant may be subject to California’s general jurisdiction. [Citation.] [¶] If general jurisdiction is not established, a nonresident defendant may still be subject to California’s specific jurisdiction if a three-prong test is met. [Citation.] First, the defendant must have purposefully availed itself of the state’s benefits. Second, the controversy must

be related to or arise out of the defendant's contacts with the state. [Citation.] Third, considering the defendant's contacts with the state and other factors, California's exercise of jurisdiction over the defendant must comport with fair play and substantial justice." (*Gilmore Bank v. AsiaTrust New Zealand Ltd.* (2014) 223 Cal.App.4th 1558, 1567-1568 (*Gilmore*), italics omitted.)

"Plaintiffs bear the burden of establishing that the first two requirements for specific jurisdiction have been met. [Citation.] If plaintiffs do so, the burden shifts to [defendants] to show that California's exercise of jurisdiction would be unreasonable." (*Gilmore, supra*, 223 Cal.App.4th at p. 1568.)

"When the evidence of jurisdictional facts is not in dispute, the issue whether the defendant is subject to personal jurisdiction is a legal question subject to de novo review. [Citation.] When evidence of jurisdiction is in dispute, [as it is here,] we accept the trial court's resolution of factual issues, draw all reasonable inferences in support of the trial court's order, and review the trial court's determination of factual issues for substantial evidence. [Citations.] 'The ultimate question whether jurisdiction is fair and reasonable under all of the circumstances, based on the facts which are undisputed and those resolved by the court in favor of the prevailing party, is a legal determination warranting our independent review.'" (*Burdick v. Superior Court* (2015) 233 Cal.App.4th 8, 17.)

## 2. "Minimum Contacts" Analysis

Kuntze summarily asserts that general jurisdiction is present in this case, but provides no evidence that respondents' contacts with California "are substantial, continuous, and systematic." (*Gilmore, supra*, 223 Cal.App.4th at pp. 1567-1568.)

We therefore reject this assertion and focus instead on whether specific jurisdiction exists.

Kuntze contends that he met his burden of establishing the first two requirements for specific jurisdiction. (See *Gilmore*, *supra*, 223 Cal.App.4th at pp. 1567-1568.) We disagree. The record supports the trial court's findings that respondents have not purposely availed themselves of California's benefits and that the controversy is unrelated to respondents' contacts with the state. (See *ibid.*)

Where, as here, "a defendant challenges jurisdiction through a motion to quash, the plaintiff bears the burden to demonstrate facts, as to each nonresident defendant, justifying the exercise of jurisdiction by a preponderance of evidence. [Citation.] The plaintiff must provide specific evidentiary facts, through affidavits and other authenticated documents, sufficient to allow the court to independently conclude whether jurisdiction is appropriate. [Citation.] The plaintiff cannot rely on allegations in an unverified complaint or vague and conclusory assertions of ultimate facts. [Citation.]" (*Strasner v. Touchstone Wireless Repair & Logistics, LP* (2016) 5 Cal.App.5th 215, 221-222 (*Strasner*).)

Kuntze's brief and his oppositions to respondents' motions to quash contain a number of unsubstantiated statements regarding respondents' contacts with California. For example, he claims that Belon and Schmidt are directors of Cloud Nine America and are likely to become witnesses in his case against Cloud Nine America. He further claims that respondents have minimum contacts with California under the doctrine of agency, and that Belon visited the United States several times and conducted business here. But there is no evidence supporting



these and other similar claims. As the trial court pointed out, the only admissible evidence of respondents' contacts with California is the statement in Kuntze's declarations that each respondent "has substantial ties, contacts and relations to the State of California." This conclusory assertion, without any supporting facts, is insufficient to establish specific jurisdiction.<sup>2</sup> (*Strasner, supra*, 5 Cal.App.5th at pp. 221-222; *In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110.)

Kuntze emphasizes that Belon signed his employment agreement with Cloud Nine America, but the document, which is attached to the unverified complaint and unverified cross-complaint, has not been authenticated. Moreover, although it appears that someone named "Belon" signed the agreement on Cloud Nine America's behalf, it is not clear if it was respondent "Tim Belon." The signature is illegible, and Kuntze has not supplied any evidence that it is "Tim Belon's" signature.

In addition, Kuntze relies on *Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576 (*Integral Development*), for the proposition that "even without other contacts with the forum state, the commission of an intentional tort that is directed at a California resident may provide sufficient minimum contacts to support the exercise of personal jurisdiction over the nonresident defendant." (*Id.* at p. 587.) He claims that because his cross-complaint alleges several intentional torts, including conversion, fraud, defamation and intentional infliction of

---

<sup>2</sup> Kuntze contends that he introduced additional evidence regarding respondents' contacts with California at the hearing on the motion to quash. We cannot confirm this contention because Kuntze has not provided us with a reporter's transcript of that hearing.

emotional distress, he has demonstrated sufficient minimal contacts to support the exercise of personal jurisdiction over respondents.

Kuntze's reliance on *Integral Development* is misplaced. In that case, the plaintiff, a California corporation, hired the defendant, a German citizen, to manage its German subsidiary. (*Integral Development, supra*, 99 Cal.App.4th at p. 581.) The defendant traveled to California to sign the contract, and later to attend a business meeting. (*Id.* at p. 586.) The defendant also reported to a supervisor in California and communicated regularly with the plaintiff's employees in California. In addition, the defendant's benefits were governed by California law. (*Ibid.*) The plaintiff brought an action against the defendant for misappropriation of trade secrets, unfair competition, breach of fiduciary duty, intentional interference with economic advantage, conversion, and trade libel. (*Id.* at pp. 582-583.) The court held that the defendant's intentional tortious conduct, which was aimed at a California corporation, provided a reasonable basis for the assertion of jurisdiction. (*Id.* at p. 588.)

In contrast to *Integral Development*, Kuntze has failed to establish minimum contacts by respondents that would justify the exercise of jurisdiction. As previously discussed, Kuntze has provided no admissible evidence of the relationship, if any, between respondents and Cloud Nine America or between respondents and Kuntze. There is no evidence that respondents purposely availed themselves of California benefits. Nor is there any evidence that they purposefully directed their activities at Kuntze as a California resident or committed an act or omission outside California with the intent to cause a tortious effect in California. In the absence of such evidence, Kuntze failed to

meet his threshold burden of showing facts justifying the court's exercise of personal jurisdiction over respondents, and thus the burden never shifted to respondents to prove the exercise of jurisdiction would be unreasonable. We conclude the trial court properly granted respondents' motion to quash for lack of personal jurisdiction.

#### DISPOSITION

The orders quashing service of the summons and cross-complaint on respondents are affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Kevin G. DeNoce, Judge  
Superior Court County of Ventura

---

Mark Kuntze, in pro. per., for Cross-Complainant and  
Appellant.

Rogers, MacLeith & Stolp and Thomas J. Stolp, for Cross-  
Defendants and Respondents.