

Filed 12/4/18 Hebei Quanen High-Tech Piping Co. v. BC Extrusion Holding GMBH
CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

HEBEI QUANEN HIGH-TECH
PIPING CO., LTD.,

Plaintiff and Appellant,

v.

BC EXTRUSION HOLDING
GMBH et al.,

Defendants and
Respondents.

B284451

(Los Angeles County
Super. Ct. No. YC071339)

APPEAL from orders of the Superior Court of Los Angeles
County, Ramona See, Judge. Affirmed.

Jones Day, Brian A. Sun, Frederick D. Friedman, and Erica
L. Reilley for Plaintiff and Appellant.

Weil, Gotshal and Manges, Christopher J. Cox, Hong-An N.
Tran, and Jevetchius Bernardoni for Defendants and
Respondents.

INTRODUCTION

This case concerns a contract partially negotiated in California for the delivery of pipe extrusion equipment to China. The contract for this equipment was between a Chinese corporation (the plaintiff here) and a U.S. corporation (a non-party). When the plaintiff received defective equipment, it sued not the U.S. corporation with which it had contracted, but that corporation's German sister corporation and a holding company over them both. The trial court granted motions to quash for lack of personal jurisdiction over both defendants. Plaintiff appeals and we now affirm.

FACTS AND PROCEDURAL BACKGROUND

1. *Plaintiff's Corporate Structure*

Plaintiff Hebei Quanen High-Tech Piping Co., Ltd. ("Quanen") is a Chinese company in the pipe manufacturing business. It was created in 2012 when a U.S. pipe manufacturer, JM Eagle, wanted to expand this business into China. Walter Wang, the President and CEO of JM Eagle, incorporated Quanen in Hebei Province, China. When Quanen was created, Wang became its chairman.

2. *Defendants' Corporate Structure*

Respondents in this case are BC Extrusion Holding GmbH ("Holding Company") and Battenfeld-Cincinnati Germany GmbH ("BC Germany"). It is important to make clear where respondents Holding Company and BC Germany fit into the overall corporate scheme. BC Germany is a subsidiary of the Battenfeld Group, a corporate family consisting of several companies in the pipe extrusion equipment business. Operating above the Battenfeld Group is respondent Holding Company, which exists to manage all of the companies within the

Battenfeld Group corporate family. Aside from respondents, another subsidiary within the Battenfeld Group is relevant to this case: Battenfeld-Cincinnati United States GmbH (“BC U.S.”), but BC U.S. is not a named party here.

In 2007, Holding Company was created as a shareholding company to work at a level above BC U.S. and BC Germany. Holding Company does not finance BC U.S. or BC Germany, nor does it participate in the day-to-day operations of these companies. Rather, Holding Company is responsible for managing these companies’ financial risks. For instance, one role of Holding Company is to act as debt collector to ensure these companies are in a stable financial position. While Holding Company manages finances for BC U.S. and BC Germany, it has no legal responsibility over them.

3. *The Course of Contract Negotiations*

A. *Pre-Contract Negotiations*

When Wang decided to expand his pipe manufacturing business into China with the formation of Quanen, he began speaking with the Battenfeld Group about purchasing extrusion equipment for his new Chinese company. In January 2012, Holding Company’s CEO at the time, Juergen Arnold, traveled from Germany to Los Angeles to meet with Wang about negotiating the sale of pipe extrusion equipment to China. Although Wang represented the interests of Quanen in these negotiations, Quanen was not officially formed as a Chinese company until July 23, 2012.

After subsequent negotiations outside of California (in China), Arnold wrote to Wang in April 2012 to confirm that Wang and the CEO of BC U.S. had “committed to each other to start the process of manufacturing for the China lines.” Logistically, BC

U.S. had operational responsibility for the Quanen project, while Holding Company had approval power over decisions related to the project.

B. The August 2012 Agreement for Purchase Order

On August 24, 2012, Wang met with Arnold and two employees of BC U.S. in Los Angeles to discuss the Quanen Project. Wang and Arnold shook hands to signal an agreement that Battenfeld Group could provide at least \$75 million in extrusion equipment for a discounted price.

C. Executed Contract between Quanen and BC U.S.

In September 2012, while conducting negotiations in China, Quanen and the BC U.S. executed a contract for this deal, which included the supply of extrusion equipment from BC U.S. to Quanen for a price of over \$38 million. While BC U.S. was the legal entity who entered into a contract with Quanen, both BC Germany and Battenfeld-Cincinnati China GmbH (“BC China”) helped to manufacture the parts for the deal. Notably, though, Holding Company did not execute any written contract with Quanen for the sale of extrusion equipment at this meeting or at any point thereafter. Holding Company only approved Battenfeld Group’s decision to supply Quanen with the extrusion equipment.

D. Performance and Breach of Contract

Over the course of early December 2012 and early 2013, engineers from Wang’s U.S.-based pipe manufacturing company, JM Eagle, worked with both BC U.S. and BC Germany on the extrusion pipes order for Quanen. JM Eagle worked on this project in Los Angeles on behalf of Quanen because Quanen had yet to form a complete engineering team. Holding Company’s communication with Quanen included confirmations that the

Battenfeld Group companies could competently design the equipment that Quanen required.

By the spring of 2013, BC U.S. began delivering extrusion equipment to Quanen in China. Quanen found the equipment to be defective, and proceeded to withhold its payments until the issues could be resolved. In September 2013, Arnold wrote to Wang asking for Quanen's overdue payments.

On March 31, 2016, Quanen's new president, Franco An, wrote to the new CEO of Holding Company, Gerold Schley, stating that the defective extrusion equipment had caused over \$150 million in damages for Quanen. In response, Schley denied the damages and requested the overdue payments from Quanen.

4. Plaintiffs Complaint and the Trial Court's Ruling

In May 2016, Quanen filed this lawsuit against Holding Company and BC Germany (but not BC U.S.), alleging design defect, breach of warranty, negligence, intentional misrepresentation, and negligent misrepresentation. Later that month, Holding Company and BC Germany filed motions to quash for lack of personal jurisdiction. After allowing time for jurisdictional discovery to be conducted, the trial court heard argument and granted both motions. The trial court found that Quanen had not put forth any facts showing Holding Company's contacts with California caused Quanen harm. Rather, Quanen had set forth facts showing contacts with JM Eagle, a nonparty. Moreover, the negotiations at issue did not involve any entity based in California. The trial court held that this case concerned "a delivery of goods from a German corporation in Germany to a Chinese corporation in China."¹

¹ This ruling by the trial court is somewhat of an oversimplification in that the Battenfeld Group was responsible

Quanen filed a timely appeal from the trial court's order. Quanen conceded in its reply brief that BC Germany's contacts with California are less than Holding Company's contacts with California, so it chose to pursue only its stronger argument on appeal. The failure to brief the issue of BC Germany's contacts means plaintiff has waived the claim. (*Wurzl v. Holloway* (1996) 46 Cal.App.4th 1740, 1754, fn. 1.) We thus proceed to review only the trial court's order to grant the Holding Company's motion to quash.

DISCUSSION

1. *Principles of Personal Jurisdiction*

California's long-arm statute allows California courts to exercise personal jurisdiction over nonresident defendants on any basis not inconsistent with the Constitution of the United States or the Constitution of California. (Code of Civ. Proc., § 410.10; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444.) Due process requires that a defendant have certain minimum contacts with the forum state such that exercising jurisdiction does not offend "traditional notions of fair play and substantial justice." (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) This ensures that a defendant has "fair warning" of possibly being subjected to jurisdiction in the forum state. (*Anglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969, 977.)

Personal jurisdiction may be either general or specific. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268.) In this case, Quanen does not contend that general jurisdiction exists

for the delivery of goods because BC US, BC Germany, and BC China manufactured the goods; however, the contract was technically between BC U.S. and Quanen.

over Holding Company. We thus need only consider whether specific jurisdiction exists. Specific jurisdiction may be exercised over a nonresident defendant if: (1) the defendant has purposefully availed itself of forum benefits; (2) the claim arises out of the defendant's contacts with the forum; and (3) the assertion of personal jurisdiction would not violate the ideas of "fair play and substantial justice." (*Id.* at p. 269.)

2. Standard of Review

When a defendant moves to quash service of process for lack of personal jurisdiction, the plaintiff bears the initial burden of demonstrating facts that justify exercise of jurisdiction. Once these facts are established, the burden then shifts to the defendant to demonstrate that the exercise of jurisdiction would be unreasonable. (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 449.) Where the issue on appeal turns on a failure of proof at trial, the question for this court becomes whether the evidence compels a finding in favor of plaintiff as a matter of law. (*Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571.) This requires plaintiff's evidence to be "uncontradicted and unimpeached" and "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." (*Id.* at p. 571.) Since the trial court held Quanen did not bear its burden of proof, we now consider whether its evidence compels us to find in its favor.

3. The Motion to Quash was Properly Granted

A. Purposeful Availment

A nonresident defendant who directs activities at residents of a forum in hopes of deriving benefit has purposefully availed itself of the privilege of conducting business there. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1063.) This

inquiry focuses on the defendant's intentionality and whether the defendant purposefully directed its activities toward the forum to receive some benefit. (*Anglo Irish Bank Corp., PLC v. Superior Court, supra*, 165 Cal.App.4th at p. 978.)

Plaintiff relies heavily on the pre-contract negotiations that took place in Los Angeles between Holding Company and Wang to establish purposeful availment. The meetings in Los Angeles concerned the sale of pipe extrusion equipment to be built outside of California and shipped to China. The Holding Company sent executives to Los Angeles in order to speak with Wang, who they understood to be the primary decision maker for Quanen. Their intentions in doing so were to gain business in China. In an email to Wang, Arnold wrote that the Holding Company was willing to set up meetings with Wang in either California or China in order to solve issues in person for the Quanen project. Not expecting a benefit from California, the Holding Company sought out the business of a Chinese corporation whose decision maker happened to live in Los Angeles. The Holding Company was not seeking Wang's personal money, but Quanen's money in exchange for the extrusion equipment manufactured outside of California. (Compare *Anglo Irish Bank Corp., PLC v. Superior Court, supra*, 165 Cal.App.4th at p. 984 [court found purposeful availment where a foreign parent corporation and its subsidiary solicited the money of the plaintiffs who were private investors residing in California].)

Quanen's evidence of multiple meetings in Los Angeles is not so weighty as to compel a finding of purposeful availment. These pre-contract negotiations concerned a sale of goods to China from companies within the Battenfeld Group, none of which are based in California. Wang, although a resident of Los

Angeles, was acting in his capacity as future head of the Chinese company Quanen. Moreover, even if Wang's residency could be sufficient to find purposeful availment, it was BC U.S., not the Holding Company, who entered into a contract with Quanen and had operational responsibility for delivering the promised goods.

B. Substantial Connection Between Forum Contacts and Plaintiff's Claim

Exercising specific jurisdiction requires there to be a substantial connection between the forum contacts and the plaintiff's claim. (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 452.) The only contacts Quanen is able to point to between Holding Company and the forum state are those with Wang and JM Eagle, a separate company owned by Wang that produces pipes in California. Neither Wang nor JM Eagle are parties to this lawsuit, nor were they parties to the contract signed between Quanen and BC U.S. Since Quanen's claim arises out of allegedly defective equipment delivered by BC U.S., any connections between Holding Company and Wang and JM Eagle do not concern the issue at hand. The series of meetings that took place in Los Angeles are not so substantial as to compel the conclusion that Holding Company's contacts to Los Angeles gave rise to BC U.S.'s delivery of allegedly faulty equipment. (See *Bristol-Myers Squibb Co. v. Superior Court* (2017) 137 S.Ct. 1773, 1781 [a defendant's connection to a third party in a forum state cannot form the basis for jurisdiction].)

C. Notions of Fair Play and Substantial Justice

When a nonresident defendant's connections with a forum state are the result of random, fortuitous, or attenuated contacts, exercising jurisdiction would not be fair. (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 108.)

Furthermore, when a dispute is between international parties, a court should exercise reserve when extending notions of personal jurisdiction into the international field. (*Asahi Metal Industry Co. v. Superior Court of California* (1987) 480 U.S. 102, 115.)

Here, the contract that gave rise to plaintiff's claims was one executed between Quanen and BC U.S. to be performed in China. While Holding Company oversees financial responsibilities for BC U.S. and all affiliate companies within the Battenfeld Group, it does not control the operations of these companies. The series of communications between Holding Company's executives and Quanen's executives arose from Holding Company's obligations to oversee the financial responsibilities of BC U.S. and the rest of the companies in the Battenfeld Group. Holding Company did not make the allegedly defective pipe extrusion equipment, it was not the seller of the equipment, and it received no money from the sale. Where Holding Company's only connection with California was the financial management of a transaction with a Chinese company whose CEO resided in Los Angeles, asserting jurisdiction would be unfair.

DISPOSITION

The orders granting Holding Company and BC Germany's motions to quash for lack of personal jurisdiction are affirmed. Holding Company and BC Germany to recover costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.