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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

MARIANNE NESTOR CASSINI etc., Plaintiff and Appellant, v. CHRISTINA TIERNEY CASSINI GRANATA BELMONT, Defendant and Respondent.	B230315 (Los Angeles County Super. Ct. No. BC431871)

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

Sedgwick, Michael R. Davisson and Douglas J. Collodel for Plaintiff and Appellant.

Orrick, Herrington & Sutcliffe, Karen G. Johnson-McKewan, Valerie M. Goo and Carolyn M. Trinh for Defendant and Respondent.

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INTRODUCTION

This is an appeal from an order of dismissal entered after the trial court granted a motion to quash and dismiss for lack of personal jurisdiction over an indispensable party. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Parties*

Plaintiff Marianne Nestor Cassini (Marianne[1]) is the widow of Oleg Cassini (Oleg) and the named executor under Oleg's last will and testament. Marianne resides in New York.

Marianne brought this action for declaratory relief against defendants Christina Tierney Cassini Granata Belmont[2] (Christina) and Daria Tierney Cassini (Daria), who are Oleg's daughters with his former wife, actress Gene Tierney (Gene). Christina lives in Paris, France. Daria, who resided in New Jersey, passed away on September 11, 2010 during the pendency of this action.[3]

B. *The Marriage and Divorce of Oleg and Gene*

Oleg and Gene were married in June 1941. Years later, Gene filed for divorce in the Los Angeles Superior Court (Los Angeles Sup. Ct. Case No. S. M. D-9136) The interlocutory judgment of divorce entered on March 3, 1952 identifies Christina, born on November 19, 1948, and Daria, born on October 15, 1943, as children of the marriage.

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1 We use first names for ease of reference. No disrespect is intended.

2 According to Christina, her legal name is Christina Loiewski Cassini, and she was erroneously sued as Christina Tierney Cassini Granata Belmont.

3 Daria had been adjudicated an incapacitated person by the state of New Jersey. Richard Rowe was Daria's legally appointed guardian.

Oleg and Gene's property settlement agreement and amendments thereto were incorporated into and made a part of the interlocutory judgment. Paragraph 12 provided in part, "In consideration of this agreement, each party hereto releases and forever discharges the other party, her or his heirs, executors, administrators, assigns, property and estate, from any and all rights, claims, demands, and obligation of every kind and nature . . . ."

Paragraph 13 provides that "[i]t is agreed that the property of said parties now in the possession or under the control of each, whether the same be real, personal or mixed, is and shall be his or her separate property respectively. From and after the date hereof, all of the earnings and accumulations of either of the parties shall be and remain the sole and separate property of the party earning or accumulating the same."

In paragraph 17, "Husband agrees that he will by testamentary disposition leave not less than one-half of his net estate, after payment of debts and taxes, to Daria and Christina in equal proportions.

Paragraph 19 specified that "[t]his agreement shall be deemed to have been entered into in the State of California, and shall be construed and interpreted under and in accordance with the laws of the State of California."

On April 7, 1953, the final judgment of divorce ending Oleg and Gene's marriage was entered. In pertinent part it provided: "It is further ordered and adjudged that wherein said interlocutory judgment makes any provision for alimony or the custody and support of children, said provision be and the same is hereby made binding on the parties affected thereby the same as if herein set forth in full, and that wherein said interlocutory judgment relates to the property of the parties hereto, said property be and the same is hereby assigned in accordance with the terms thereof to the parties therein declared to be entitled thereto, and wherein said interlocutory judgment makes provision for restoration of plaintiff's maiden name, the said plaintiff's maiden name is hereby restored as therein provided."

At no time during their lifetimes did Oleg or Gene attempt to change or challenge their final or interlocutory divorce judgments. Gene died in 1991.

C. *Oleg Remarries and Dies*

In 1972, Oleg and Marianne were married. On March 17, 2006, after more than 34 years of marriage, Oleg died. At the time, Oleg was a resident of Nassau County, New York.

D. *New York Probate Proceedings*

Oleg left a last will and testament (will), which he had executed on November 3, 1992. Therein, Oleg appointed Marianne as executor and trustee of his estate. With regard to the estate assets, Oleg's will provided for their distribution in part as follows: $500,000 in trust for Daria; $1 million to Christina; and the remainder, including any tangible personal property and real property, to Marianne should she survive him. Oleg's estate was estimated to be $52 million at the time of his death.

Marianne commenced a probate action in the Surrogate's Court of the State of New York, County of Nassau. The court issued preliminary letters testamentary and thereafter formal letters testamentary to Marianne in accordance with Oleg's will.

In May 2007, Christina served on Marianne and filed in the Surrogate's Court a verified claim seeking 25 percent of Oleg's net estate in accordance with the terms of her parents' final and interlocutory judgments of divorce, particularly paragraph 17. In furtherance of this claim, Christina, who resides in France, retained an attorney from California to provide opinions and testimony to the New York Surrogate's Court about California law and Oleg and Gene's California divorce decree.

In February 2008, Marianne filed a motion to dismiss Christina's petition and claim. In April, Christina filed an amended petition and claim. In November, Marianne filed a motion to dismiss the amended petition and claim. The Surrogate's Court treated Marianne's motion as one for summary judgment. Christina, in turn, filed a cross-motion for summary judgment in August 2009.

On December 4, 2009, the Surrogate's Court granted summary judgment in favor of Christina with regard to the enforceability of paragraph 17. The court concluded that the California divorce judgment was entitled to full, faith and credit in New York because

it was a final judgment, not subject to collateral attack in New York. More specifically, the court reasoned: "A judgment of another state must be given full faith and credit provided the first state had jurisdiction over the parties and the subject matter [citation]. The limitations have been aptly described as 'courts only have the power to issue binding judgments in cases where they have jurisdiction. That means if the controversy is not one that the court is authorized to resolve, the judgment binds no one. . . . This also means a court's judgments bind only parties who are properly before the court' [citation]. The California court had both personal jurisdiction and subject matter jurisdiction so the final judgment cannot be attacked on these grounds." (*In re Cassini* (N.Y.Sur., Dec. 4, 2009, No. 343100) 2009 WL 4756398, 4.) Judgment was entered in favor of Christina on December 4, 2009. With regard to whether the California court lacked power to compel the testamentary disposition, the Surrogate's Court noted this was a question that should have been addressed by the California courts. (*Ibid*.)

Marianne filed a notice of appeal dated December 18, 2009 from the decision of the Surrogate's Court entered on December 4, 2009. Marianne also filed a motion dated December 18, 2009 to reargue and reconsider the Surrogate's Court's December 4, 2009 order. Subsequently, in July 2010, Marianne filed a motion to renew her motion for summary judgment.

On February 18, 2011, the Surrogate's Court granted Marianne's motions. After considering the arguments made in the motions, the Surrogate's Court "adhere[d] to its original Decision and Order in this matter dated December 4, 2009, granting the motion for summary judgment in favor of the Petitioner, Christina Cassini."

E. *Marianne Institutes The Instant Action*

Following her first loss in New York's Surrogate's Court, on February 16, 2010, Marianne instituted this action for declaratory relief. Marianne sought a judicial determination regarding the parties' respective rights and obligations under Oleg and Gene's judgment of divorce. Specifically, she sought a declaration that the judgment of divorce did not incorporate paragraph 17 of the interlocutory judgment of divorce, that if

paragraph 17 were so incorporated, the calculation of Oleg's net estate is limited to the value of his assets at the time the judgment was entered in 1953; that enforcement of paragraph 17 is barred by the statute of limitations and the doctrine of laches, and that paragraph 17 is void as the product of fraud and/or mistake.

On June 24, 2010, Christina, appearing specially, moved to quash and dismiss this action for lack of personal jurisdiction over an indispensable party. Christina maintained that as a beneficiary of her father's will and estate she was a necessary and indispensable party, but her contacts with California did not warrant an exercise of general or specific personal jurisdiction. Accordingly, she argued Marianne's declaratory relief action should be dismissed.

Marianne opposed Christina's motion to quash and dismiss. Marianne argued that the trial court had inherent and continuing jurisdiction over the judgment of divorce, that Christina was subject to specific personal jurisdiction in California, that California was the only proper forum to resolve the instant dispute and that Christina failed to meet her burden of proving California did not have personal jurisdiction over her.

The trial court issued a tentative decision granting Christina's motion to quash. After entertaining counsels' arguments, the court invited the parties to submit supplemental argument on (1) whether the Surrogate's Court of New York has jurisdiction to modify, vacate, and/or void the California divorce judgment and (2) whether the trial court could proceed with this action if Christina was not subject to the personal jurisdiction of the court.

The trial court thereafter issued a second tentative ruling, again in favor of Christina. On December 2, 2010, the trial court entered an order granting Christina's motion to quash and dismiss for lack of personal jurisdiction of an indispensable party. The court found that Marianne had failed to show by a preponderance of the evidence that Christina has sufficient minimum contacts with California to justify the exercise of special or general jurisdiction over her. The court further concluded that Christina is a necessary and indispensable party to this action such that the litigation could not proceed without her. The court, therefore, dismissed this declaratory relief action in its entirety.

This appeal followed.

F. *Appellate Proceedings in New York*

During the pendency of this appeal, the Appellate Department of the Supreme Court of New York affirmed the February 18, 2011 order of the Surrogate's Court. In a decision and order dated May 30, 2012, the court stated: "As the Surrogate's Court essentially and correctly determined, the petition established, prima facie, that the decedent's obligation under paragraph 17 of the Agreement, which merged with the final judgment of divorce, was enforceable as part of the judgment [citations], and that the final judgment was never modified, vacated, or reversed. Furthermore, as the Surrogate's Court also essentially and correctly determined, the executor failed to raise a triable issue of fact as to the enforceability of that obligation, which the petitioner first sought to enforce after the decedent's death, via the imposition of a constructive trust upon certain assets of the decedent's estate [citations]. The executor's remaining contentions are either not properly before this Court [citations], or without merit. [¶] Accordingly, upon renewal and reargument, the Surrogate's Court properly adhered to its determination granting the petitioner's cross motion for summary judgment on the issue of liability on the amended petition, and denying the executor's converted motion for summary judgment dismissing the amended petition."

CONTENTIONS

Marianne contends that the trial court erred in concluding it lacked jurisdiction to interpret its own judgment, in that it had continuing jurisdiction over the 1953 divorce judgment and Christina was subject to specific personal jurisdiction. Marianne also contends that Christina is not a necessary or indispensable party, but, if we conclude otherwise, the trial court should not have dismissed this action because California is the only forum that can modify and/or vacate the 1953 judgment. For the reasons that follow, we conclude that Marianne's contentions lack merit.

DISCUSSION

A. *Personal Jurisdiction*

1. Divorce Decree

The trial court found "[t]he Interlocutory and Final Judgments entered in 1952 and 1953, in themselves, do not allow this court to exercise personal jurisdiction over defendant Christina Cassini. Nor was Christina Cassini a party to the Interlocutory or Final Judgments."

Marianne contends the trial court's finding is legally incorrect, in that it had "continuing jurisdiction" of the judgment and its res. Characterizing Christina as the res to Oleg and Gene's judgment of divorce, Marianne maintains that the trial court had personal jurisdiction over Christina. We disagree.

Dissolution of marriage is a proceeding in rem in which the marriage is the res that is adjudicated. (*Zaragoza v. Superior Court* (1996) 49 Cal.App.4th 720, 724-725; *In re Marriage of Zierenberg* (1992) 11 Cal.App.4th 1436, 1444.) In such an action, "both parties and the state have an interest in the *res*." (*In re Estate of McNutt* (1940) 36 Cal.App.2d 542, 547.) Children, however, do not constitute the res. Rather, it is the parents' status in relationship to the children that is the res. (*Maloney v. Maloney* (1944) 67 Cal.App.2d 278, 280 [by instituting divorce proceedings, husband submitted himself to the jurisdiction of the court, as well as "the res, that is, his status as husband and as father"].) Moreover, children are not parties to their parents' dissolution proceedings. *(In re Marriage of Lloyd* (1997) 55 Cal.App.4th 216, 223 ["minor children are not parties to dissolution actions"].) Marianne does not contend otherwise.

There is no question but that the Los Angeles County Superior Court had jurisdiction over the judgment in the dissolution action. It did not hold otherwise. Subject matter jurisdiction over the judgment does not translate to personal jurisdiction over Christina, however.

2. Contacts

Pursuant to Code of Civil Procedure section 410.10, a California court may exercise jurisdiction over a nonresident on any basis not inconsistent with the United States or California Constitutions. (*Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445.) Constitutional principles allow the court to exercise jurisdiction so long as the nonresident "has such minimal contacts with the state that '. . . the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" (*Ibid*., quoting from *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 [66 S.Ct. 154, 90 L.Ed. 95].) Thus, the exercise of jurisdiction must be reasonable. (*Sibley*, *supra*, at p. 446.) The determination whether the exercise of jurisdiction is fair and reasonable is based on the facts of each individual case. (*Professional Travel, Inc. v. Kalish & Rice, Inc*. (1988) 199 Cal.App.3d 762, 765.)

As observed in *Jewish Defense Organization, Inc. v. Superior Court* (1999) 72 Cal.App.4th 1045, "'[p]ersonal jurisdiction may be either general or specific. A nonresident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are "substantial . . . continuous and systematic." [Citations.] In such a case, "it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum." [Citations.]' [Citation.]" (*Id*. at p. 1054.)

If the nonresident defendant does not have sufficient contacts with the forum state to subject him or her to its general jurisdiction, "'he or she still may be subject to the specific jurisdiction of the forum, if the defendant has purposely 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.]'" (*Jewish Defense Organization, Inc. v. Superior Court*, *supra*, 72 Cal.App.4th at p. 1054, italics omitted.) If the defendant has sufficient contacts with the forum state for it to exercise its specific jurisdiction, the court must consider these contacts in conjunction with other factors "to determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice." (*Ibid*., internal quotation marks omitted.) Such factors include the burden on the

defendant of litigating the matter in the forum state, "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." (*Ibid*., internal quotation marks omitted.)

Based on the foregoing, a three-part test has been developed for determining whether a defendant is subject to the forum state's specific jurisdiction: "'(1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or results from the defendant's forum-related activities; and (3) exercise of jurisdiction must be reasonable.' [Citation.]" (*Jewish Defense Organization, Inc. v. Superior Court*, *supra*, 72 Cal.App.4th at p. 1054.)

As a general rule, when a nonresident defendant challenges personal jurisdiction, the burden of proof is on the plaintiff to demonstrate sufficient contact with the state to justify the exercise of jurisdiction over the defendant. (*Ziller Electronics Lab GmbH* v. *Superior Court* (1988) 206 Cal.App.3d 1222, 1232-1233; *Mihlon* v. *Superior Court* (1985) 169 Cal.App.3d 703, 710.)

Marianne does not contend that Christina was subject to the general personal jurisdiction of the trial court. In fact, she conceded otherwise below. The question to be decided therefore is whether Christina was subject to specific personal jurisdiction. The trial court properly concluded she was not.

Marianne unconvincingly argues that "Christina is subject to specific jurisdiction in California because she purposefully established contacts with California, the dispute 'arises out of' or is 'related to' Christina's contacts with California, and because it is not unfair to subject Christina to jurisdiction in California."

The record discloses that Christina has had some limited contacts with California. Christina lived in California for a time when she was a young child and visited with her mother in or around 1981. Over the past 15 years, while domiciled in France, Christina had four discrete transactions relating to her mother which touched upon California only

remotely.[4] In addition, when Marianne instituted probate proceedings in New York, Christina hired an attorney from California to prepare an expert declaration which she used to support her claim for 25 percent of her father's estate.

Even if we were to assume for the sake of argument that Christina purposefully availed herself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws, Marianne's claim against Christina is not "'one which arises out of or results from the [Christina's] forum-related activities.'" (*Jewish Defense Organization, Inc. v. Superior Court*, *supra*, 72 Cal.App.4th at p. 1054.)

California relies on a "substantial connection" test to determine whether a particular claim relates to or arises out of form-related activities. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 292; *Roman v. Liberty University, Inc.* (2008) 162 Cal.App.4th 670, 679.) "'"The crucial inquiry concerns the character of [the] defendant's activity in the form [and] whether the cause of action arises out of or has a substantial connection with that activity . . . ."' [Citation.]" (*Pavlovich*, *supra*, at p. 292.)

Marianne's claim against Christina does not arise out of or have any connection, let alone a substantial one, with the time Christina lived in California as a child or visited her mother. Nor does it arise out of or have any connection with transactions relating to her mother. Although Christina did retain an attorney in California to provide legal support for her claim in New York, Marianne's claim against Christina was not instituted because of this contractual relationship. Rather, it was brought because Christina successfully asserted her right to 25 percent of her father's estate in New York's probate

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[4] Christina sold jewelry from her mother's estate at a Christie's Auction in Beverly Hills in 1996. Christina also contracted with, and was paid by, a Los Angeles film company, Van Ness Films, for her participation in a documentary for A&E Biography. She further contracted with E! Entertainment Television, Inc., granting it a license to use photographs she owned. In July 2005, Christina entered into a representation agreement with CMG Worldwide, Inc. under the terms of which she appointed the agency as her sole licensing agent for Christina's "exclusive and worldwide rights to the name, image, voice, facsimile signature and likeness" of her mother "and associated trademarks and copyrights."

court. That this right originated in paragraph 17 of the divorce judgment is not an activity that can be attributed to Christina, who simply was a third party beneficiary of her parents' property settlement agreement and divorce decree. Inasmuch as Marianne failed to establish that her claim relates to or arises out of Christina's forum-related activities, she failed to establish a crucial element of special personal jurisdiction. Also unassailable is the trial court's determination that the exercise of personal jurisdiction over Christina would not comport with notions of fair play and substantial justice. We therefore conclude that the trial court properly determined that Christina was not subject to specific personal jurisdiction.

B. ***Necessary and Indispensable Party***

Marianne challenges the trial court's determination that Christina was a necessary and indispensable party without whom this action could not proceed. We review the trial court's determination utilizing the abuse of discretion standard. (*Hayes v. State Dept. of Developmental Services* (2006) 138 Cal.App.4th 1523, 1529; *Silver v. Los Angeles County Metropolitan Transportation Authority* (2000) 79 Cal.App.4th 338, 348.)

In *City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69, the court set forth the legal principles governing indispensable parties: "Under Code of Civil Procedure section 389, subdivision (a) a person is a 'necessary' party to a proceeding if '(1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.'

"If a person is determined to qualify as a 'necessary' party under one of the standards outlined above, courts then determine if the party is also 'indispensable.' Under this analysis 'the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without

prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.' (Code Civ. Proc., § 389, subd. (b).)

"None of these factors is determinative or necessarily more important that another. [Citations.] Further, the court's consideration of these factors largely depends on the facts and circumstances of each case. [Citation.] 'Whether a party is necessary and/or indispensable is a matter of trial court discretion in which the court weighs "factors of practical realities and other considerations."' [Citation.] 'A court has the power to proceed with a case even if indispensable parties are not joined. Courts must be careful to avoid converting a discretionary power or rule of fairness into an arbitrary and burdensome requirement that may thwart rather than further justice.' [Citation.]" (*City of San Diego v. San Diego City Employees' Retirement System*, *supra*, 186 Cal.App.4th at p. 84.)

As previously noted, in paragraph 17, Oleg agreed to leave Christina and Daria at least one-half of his net estate in equal shares by testamentary disposition. Christina, therefore, had an interest in 25 percent of her father's estate, which at the time of death was estimated to be $52 million.

Marianne instituted this action with an eye toward obtaining from the trial court a declaration that paragraph 17 was unenforceable or, if enforceable, the calculation of Oleg's net estate was limited to its value in 1953. Inasmuch as Marianne sought to divest Christina of her claim to millions of dollars, adjudication of this action in Christina's absence would "as a practical matter impair or impede [her] ability to protect that interest." (Code Civ. Proc., § 389, subd. (a).) To be sure, a declaration of unenforceability or limitation would directly and adversely impact Christina by divesting

her of her right to receive millions of dollars from her father's estate. As such, the trial court did not abuse its discretion in finding Christina to be a necessary party. (Cf. *Toomey v. Toomey* (1939) 13 Cal.2d 317, 319 ["Minor children are necessary parties to an action to terminate a trust established in their favor by a property settlement."].)

Having found Christina to be a necessary party, the trial court then appropriately considered the factors set forth in subdivision (b) of Code of Civil Procedure section 389 and determined that Christina also was an indispensable party without whom this action could not in equity and good conscience proceed. (See, e.g., *Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1297-1298.) No abuse of discretion has been established in this regard either.

There is no question but that a ruling adverse to Christina in this action made in her absence would prejudice her right to an interest in her father's estate. In addition, the prejudice to Christina cannot be lessened without joining her, in that no other party represents her interest and relief cannot be shaped to eliminate prejudice to Christina's rights. Also, Marianne has adequate remedies in New York's Surrogate's Court which is responsible for resolving issues relating to the distribution of assets of Oleg's estate. These factors support the trial court's determination that equity and good conscience favored the dismissal of this action.

DISPOSITION

The order is affirmed.

JACKSON, J.

We concur:

WOODS, Acting P. J. ZELON, J.