

NO. A06-2311

State of Minnesota
In Court of Appeals

Raymond R. Pierce and Linda Pierce,
husband and wife,

Appellants,

vs.

Blume Law Firm, PC,

Respondent.

RESPONDENT'S BRIEF

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STATEMENT OF THE CASE

A complaint was filed in Arizona naming Jason Pierce (JP), Amanda Pierce (AP), Linda Pierce (LP) and Raymond Pierce (RP) June 9, 2005. The complaint was answered by all defendants and LP and RP raised jurisdiction as an affirmative defense. A motion for summary judgement was filed and not answered by the defendants (August 30, 2005). A notice of failure to respond and request for default was filed and the defendants did not respond (September 20, 2005). A judgment was entered in Arizona (September 26, 2005). The appellants have admitted they had complete awareness of the filings. From this moment until an action was filed in Minnesota, LP and RP took no action. They were aware of all the preceding activities and chose not to participate.

No appeal was filed by any defendant and JP and AP filed a motion to vacate the judgment in Arizona under Rule 60 of the Arizona Rules of Civil Procedure. LP and RP bring an action to set aside the judgment in Minnesota. This motion caused the Minnesota Court to vacate the motion brought by LP and RP as premature. The motion was denied in Arizona and LP and RP renewed their action.

The Minnesota Court denied the motion causing this appeal.

ARGUMENT

I. STANDARD OF REVIEW

The examination is on the conduct of the appellants and whether or not they can collaterally attack the personal jurisdiction issue after filing an answer and allowing the litigation to come to final judgment in Arizona without appealing in Arizona. The holding in *Corsica Cheese, Inc. v. Roers Enterprise*, 389 N.W.2d 751 (Minn. App. 1986) is appropriate to this situation, as pointed out by the trial court.

II. DISTRICT COURT DID NOT ERR AND THE JUDGMENT IS VALID IN ARIZONA AND THE DOCKETING OF THE JUDGMENT IN MINNESOTA IS PROPER

Participation in Arizona by Appellants

The Pierces, by their own admission, answered the complaint, were aware of the motion for summary judgment and of the notice of no response to the motion for summary judgment and the final judgment awarded to Plaintiff. A valid judgment was docketed first in Maricopa County and then in Hennepin County January 12, 2006 and no appeal of the judgment was timely made. At each step of the way RP and LP were aware of the pleadings. RP and LP understood the proceedings and determined to trust that their son would “deal” with the matter and only when the result was not in their favor did they bring a motion to vacate a valid

judgment.

In addition to these facts, the Pierces chose not to participate with their son in the Rule 60 motion to set aside the judgment in Arizona. The Arizona court did have jurisdiction over the defendants and properly ruled against Jason Pierce and his wife. Despite having counsel, being aware of the actions and the time limits on setting aside a judgment, RP and LP, again, did nothing and now come to the Court to ask that a valid judgment be set aside.

Defendants were validly served, filed an answer, aware of the Motion for Summary Judgment and chose to do nothing, and were aware of the Notice of Failure to Respond to Summary Judgment and chose to do nothing. The judgment was docketed in Minnesota and nothing was done in Arizona, no appeal, no motion to set aside the judgment, nor was anything done in Minnesota. Defendant purchased and titled the motorcycle in Arizona, using an Arizona address and acknowledging the transfer by signing the back page of the title. The motorcycle loan was taken in the name of RP and to this day he continues to make payments. They further did nothing as of this day to change the title of the motorcycle, change the note on the motorcycle or take any action to set aside the judgment in Arizona. These facts are uncontroverted.

III. THE ARIZONA JUDGMENT SHOULD NOT BE VACATED

The appellants actively participated in the litigation process in Arizona and were aware of all pleadings from the inception of the case. The appellants had the opportunity to participate and chose not to. All issues do not have to be litigated to completion in order to have a valid judgment. Appellants are arguing because the court did not rule specifically on the issue of jurisdiction they now have the ability to collaterally attack the judgment in a foreign jurisdiction. (*Corsica Cheese, Inc. v. Roers Enter., Inc.*, 389 N.W.2d 751, (Minn. Ct. App. 1986) (*Corsica*) provided, when discussing the factual background of the case:

“Neither Roers nor a representative appeared at the South Dakota trial. Corsica Cheese was represented by its attorney, and its president testified. The South Dakota court concluded that it had jurisdiction over the parties. Judgment for \$21,484.35 plus attorney fees and costs was entered for Corsica Cheese.”

This is the situation in the case at bar. In order to rule on the summary judgment, the Arizona Court concluded it had jurisdiction over the parties due to the filing of the answer of the defendants. The *Corsica* situation was not briefed and argued, the Court only “concluded” it had jurisdiction.

The Arizona judgment was valid and should not be set aside.

IV. THE TIME FOR APPEAL AND RECONSIDERATION HAS LAPSED AND

APPELLANTS PARTICIPATED IN THE LITIGATION IN ARIZONA

Personal Jurisdiction v. Appropriateness of the Ruling

Appellant contends and argues the jurisdiction issue relating to the minimum contacts is what the Court should review. We do not get this far and should examine the ruling of the court regarding collateral attack of the judgment and whether the Court should rule on the jurisdiction itself and not examine the contacts with the forum.

The issue was litigated in *Corsica* was whether or not the party had the ability to litigate the jurisdiction issue, not whether or not it actually was litigated. If the appellants argument is successful, each defendant should include an affirmative defense of lack of personal jurisdiction, lay in wait, adjudicate the case, and if the result was not to their liking, bring and litigate jurisdiction issue. This is the attempt that is being made here. As held in *L&W Air Conditioning, Inc. v. Varsity Inn of Rochester, Inc.*, 82 Misc.2d 937, 371 N.Y.S.2d 997 (N.Y. Sup. Ct. 1975) and quoted in *Corsica*:

“If unsuccessfully arguing a motion in a sister state court precludes a collateral attack upon the judgment of that court, it is only fair and logical that raising the issue of jurisdiction in that court by way of answer should also preclude a collateral attack upon the judgment. In both cases, the

defendant has submitted the issue to jurisdiction to the foreign court for its decision. After submitting the question to that court, defendant should not later be heard to complain that he did not proceed to be heard.”

This is exactly what is being done here. The issue was raised and then not specifically heard, while the defendants did nothing during the process of the summary judgment and ultimate judgment. Other affirmative defenses were raised by the defendants in the Arizona litigation, why do they not wish to litigate those issues? It would seem if after participation and a final adjudication through summary judgment, issues can still be raised, why not all issues that were not specifically discussed by the Court?

The opinion continued:

“In most of the cases holding that the defendant is precluded from relitigating the issue of jurisdiction of the sister State court, the defendant had, in the sister State court, either argued a motion to dismiss for lack of jurisdiction, or argued the motion to set aside the judgment. I have found no case where the defendant raised the issue of lack of jurisdiction, in the sister State court, by way of answer and then defaulted on the trial. The fact of such default, however, should make no difference since the doctrine of res judicata applies to default judgments as well as judgments rendered after

contest (9 Carmody-Wait 2d, § 63:225).”

The answer was filed and the case completely adjudicated resulting in an inability of the appellants to bring the personal jurisdiction argument at this time. This must be considered in light of the refusal of the appellants to participate in an appeal or in the motion to set aside the judgment under Rule 60 as their son and his wife did. Appellants have done nothing to help themselves.

In *United Bank of Skyline v. Fales*, 395 N.W.2d 131 (Minn.App. 1986) an Arizona case is quoted: *Jones v. Roach*, 118 Ariz. 146, 575 P.2d 345 (Ariz. App. 1977). As stated: “in that case, a judgment was entered in Colorado against defendant, an Arizona resident. He did not pursue any post-judgment remedies and the judgment was filed in Arizona under the Uniform Enforcement of Foreign Judgments Act, A.R.S. §12-1702. The court refused to vacate the judgment under Ariz.R.Civ.P. 60(c), which is similar to Minn.R.Civ.P. 60.02, and held: [P]rocedurally a foreign judgment is subject to the same procedures as a *final* judgment of this state. (Emphasis in original)”

CONCLUSION

The Pierces, by their own admission, answered the complaint, were aware of the motion for summary judgment and of the notice of no response to the motion for summary judgment and the final judgment awarded to Plaintiff. More

importantly, they raised the issue of personal jurisdiction and did nothing while a summary judgment was being brought. They continued to do nothing while their son and his wife brought a timely Rule 60 motion that was denied.

A valid judgment was docketed in Hennepin County January 12, 2006 and no appeal of the judgment was timely made. Raymond Pierce and his wife understood the proceedings and determined to trust that their son would “deal” with the matter and only when the result was not in their favor do they bring this motion to vacate a valid judgment. The Arizona court did have jurisdiction over the defendants.

Should the Court determine to examine the contacts and jurisdiction the following alternative information is provided.

Alternative Argument Discussing Purposeful Availment and Contacts

The title to the motorcycle was recorded in Arizona, the purchase of the motorcycle was done in Arizona, and the address given by the Pierces on the title to the motorcycle was in Arizona. The title had the Arizona address as the one the Pierces used to obtain the financing and to title the motorcycle in their names. They either had sufficient contacts in Arizona to enter into a valid loan, or they perpetrated a fraud on the lender and seller in entering the sale contract claiming to

be Arizona residents, purchasing an Arizona bike, to keep in Arizona.

We have typically treated "purposeful availment" somewhat differently in tort and contract cases. In tort cases, we typically inquire whether a defendant "purposefully direct[s] his activities" at the forum state, applying an "effects" test that focuses on the forum in which the defendant's actions were felt, whether or not the actions themselves occurred within the forum. See *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797 (9th Cir. 2004) (citing *Calder v. Jones*, 465 U.S. 783, 789-90, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984)). By contrast, in contract cases, we typically inquire whether a defendant "purposefully avails itself of the privilege of conducting activities" or "consummate[s][a] transaction" in the forum, focusing on activities such as delivering goods or executing a contract. See *Schwarzenegger*, 374 F.3d at 802.

The Pierces availed themselves of the Arizona forum to enter into a commercial transaction and listed their address as that in Arizona. Raymond Pierce even attempted to transfer the title under the terms of the security agreement, as can be seen from his signature on the reverse of the title document. This use of the forum to conduct business is sufficient to provide minimum contacts with the jurisdiction. The subject matter of this litigation is the ownership of the collateral and the Pierces chose to title the motorcycle in the state of Arizona

using an Arizona address.

YAHOO! v. La Ligue Contre Le Racisme, 433 F.3d 1199 (9th Cir. 2006) Is a case that reviewed the question of whether the trial court's exercise of long-arm jurisdiction offended "traditional notions of fair play and substantial justice" embodied in the Due Process Clause of the Fourteenth Amendment. *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). This case is appropriate to this analysis.

Individuals must have "fair warning" that a particular activity may subject them to the jurisdiction of a foreign court. *Shaffer v. Heitner*, 433 U.S. 186, 218, 97 S.Ct. 2569, 2587, 53 L.Ed.2d 683, 706 (1977) (Stevens, J., concurring). This "fair warning" requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984). When the defendant has purposefully directed his activities at the residents of the forum state, he cannot avoid jurisdiction merely because he did not physically enter the state, and he must present a compelling case that the presence of other considerations would render jurisdiction unreasonable. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). From (*Aries v. Palmer Johnson, Inc.*, 153

Ariz. 250 (App. 1987) 735 P.2d 1373 (*YAHOO!*).

The defendants purposefully directed their activities to Arizona by purchasing and titling the motorcycle in this state. As stated in *YAHOO!* a defendant cannot avoid jurisdiction merely because he did not physically enter the state. The defendants in this case do admit to entering the state, albeit infrequently. The defendants have not provided other considerations that would render jurisdiction unreasonable. Because the Defendants participated in the litigation by filing an answer and then failing to act, relying on their son, they cannot now claim no jurisdiction. They have consented to the suit by filing an answer.

The defendants may have a cause of action against their son, but do not have a valid defense to the entry of judgment.

Even examining the standard in *Cybersel, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 416 (9th Cir. 1997) the Defendants still meet the requirements:

1. Defendant must do some act or consummate some transaction with the form or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum (purchase and title the motorcycle in Arizona using an Arizona address);
2. The claim must be one which arises out of or results from the defendant's forum-related activities; (the repossession of the motorcycle, that, on the title was

signed to be transferred by Raymond Pierce); and

3. Exercise of jurisdiction must be reasonable (the defendants actually appeared and defended the action in Arizona).

The factors are met despite the assertions of the defendants. The actual signed title with Raymond using an Arizona address and signing the transfer on the reverse page is a party purposefully availing themselves of the Arizona jurisdiction.

DATED: FEBRUARY 6, 2007.

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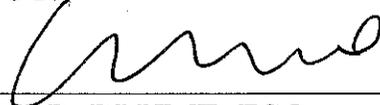
RULE 132.01 CERTIFICATE AS TO WORD COUNT

STATE OF ARIZONA)
)SS:
COUNTY OF MARICOPA)

GARY R. BLUME, being first duly sworn, does upon his oath, herein state and allege as follows:

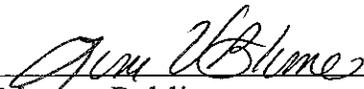
1. Your Affiant submits this Certificate in accordance with Rule 132.01(3) of the Minnesota Civil Appellate Rules.
2. Your Affiant used Word Perfect 9 word processing software in the creation of Appellant Blume Law Firm, PC's Principal Brief in this mater.
3. Appellant Blume Law Firm, PC's Principal Brief complies with the typeface requirement of Rule 132.01(3), and the number of words in the Brief (3,028 words of 14,000 permitted) is within the parameters of the Rule.

FURTHER YOUR AFFIANT SAYETH NOT.



GARY R. BLUME, ESQ.

Subscribed and sworn to before me
this 6 day of February, 2007



Notary Public

