

Judge Benson – Law & Motion – Wednesday, May 1, 2024 @ 9:00 AM
TENTATIVE RULINGS

1. 22CV02786 TA v. Southern Baptist Convention et al.

EVENT: Specially Appearing Defendant Executive Committee of the Southern Baptist Convention’s Motion to Quash Service of Summons (Continued from January 31, 2024)

Plaintiff’s Request for Judicial Notice is Granted and is Unopposed.

Defendant’s evidentiary objections to the exhibits attached to the declaration of defense counsel are overruled with the exceptions of Exhibits 4,9, and 11 (lack of foundation objection sustained). However, Plaintiff’s Request for Judicial Notice, which is a separately filed document, is unopposed. Plaintiff’s Request for Judicial Notice is Granted. Because the documents included in the Request for Judicial Notice are essentially the same as those attached to defense counsel’s declaration, the matter is largely moot.

Plaintiff Has Failed to Meet Her Burden Demonstrating Purposeful Availment

Most of the evidence presented on the issue of purposeful availment is based on the Southern Baptist Convention’s conduct. Defendant emphasizes that it is a separate legal entity from the Southern Baptist Convention, noting the entities are organized under the laws of different states. The preliminary issue then is whether SBC’s conduct can be imputed to Defendant for purposes of jurisdiction.

While case law on this topic appears to be sparse, the Court found *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523 helpful.

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the case law identifies one situation when the acts of the parent may be found to trespass the boundaries of legitimate ownership and control of the subsidiary and expose the parent to the power of the state in which the subsidiary does business. Thus, where the nature and extent of the control exercised over the subsidiary by the parent is so pervasive and continual that the subsidiary may be considered nothing more than an agent or instrumentality of the parent, notwithstanding the maintenance of separate corporate formalities, jurisdiction over the parent may be grounded in the acts of the subsidiary/agent.

Sonora Diamond Corp., supra at p 541

Based on the limited information available, it appears that Defendant and SBC are nothing more than agents of each other, despite the fact they are organized under the laws of different states. Thus, the Court finds that SBC’s conduct could be imputed to Defendant for jurisdictional purposes.

Plaintiff contends purposeful availment exists by virtue of the multiple seminaries operated by SBC within California. In the reply, Defendant contends the seminaries are separate legal entities.

The Court's review of the evidence indicates that the seminaries are separate legal entities from SBC and Defendant. Unlike SBC and Defendant SBC Executive Committee, which appear to be interchangeable entities, the seminaries appear to be subject to the control of SBC, analogous to a parent-subsidary relationship found with corporations.

Neither ownership nor control of a subsidiary by a foreign parent, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business. (See *Sonora Diamond Corp.*, supra, at p. 540) While there is evidence that the seminaries must comply with guidelines set forth by SBC, the evidence presented does not demonstrate "pervasive and continual control" such that the seminaries would be considered nothing more than an agent or instrument of SBC and Defendant.

Consequently, the forum contacts of the seminaries are not imputed to Defendant for purposes of jurisdiction. For similar reasons, the mere fact SBC lists job openings for separate legal entities in California does not sufficiently demonstrate purposeful availment of the part of Defendant.

Additionally, Plaintiff argues Defendant has purposefully availed itself by virtue of receiving donations from California residents. The question is whether donations made to an out of state non-profit demonstrate purposeful availment. The Court has not found any published case on point that addresses whether accepting donations establishes purposeful availment. However, the critical consideration is the defendant's intentionality. (See *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062).

Thus, as it pertains to donations, it appears the key inquiry is whether the donations are solicited versus voluntarily made without solicitation. The evidence before the Court does not clearly indicate whether Defendant solicited donations from California residents. As a result, the Court finds Plaintiff has failed to meet her burden concerning purposeful availment.

Even if Plaintiff Demonstrated Purposeful Availment, Plaintiff Has Not Presented Evidence Demonstrating Her Claims Arise Out of Defendant's Contacts With California

Plaintiff contends that the California seminaries are connected with the incident. As discussed, the actions of the seminaries as separate legal entities cannot be imputed to the Defendant based on the evidence before the Court. Even if their conduct could be imputed to defendant, the argument is incomplete as there is no evidence demonstrating the seminaries have a direct connection with the specific facts of this case.

Plaintiff also argues Defendant's decision to stay quiet on childhood sexual abuse issues demonstrates a connection between Defendant's contacts with the forum and the underlying allegations of this case. However, Plaintiff cites no authority supporting her argument that the alleged inaction constitutes a "contact" for purposes of the analysis. In reviewing various dictionary definitions of the word, the common thread appears to be

some sort of affirmative conduct. Clearly then, a failure to act would not be considered affirmative conduct.

Absent legal authority to the contrary, the Court finds a defendant's inaction is not a contact for jurisdictional purposes. As a result, the motion is granted.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

2-3. 22CV02996 Western Surety Company v. Newnam, Fredick et al.

EVENT: (1) Platinum Sales Group LLC Motion for Judgment on the Pleadings

(2) Case Management Conference

Platinum Sales Group LLC Motion for Judgment on the Pleadings is DENIED. CCP § 386(b) provides in part that "The applicant or interpleading party may deny liability in whole or in part to any or all of the claimants." [Emphasis Added]

A motion for judgment on the pleadings is similar to a demurrer. (see *Sykora v. State Dept. of State Hospitals* (2014) 225 Cal.App.4th 1530, 1534) Similar to a demurrer we make all reasonable in inferences from the complaint in favor of the non-moving party. (See *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238)

Here, making all reasonable inferences in favor of Plaintiff, the Court finds the Complaint adequately alleges Plaintiff denies liability with respect to Defendant Platinum. Consequently, because CCP § 386(b) permits Plaintiff to deny liability as to any claimant, Plaintiff is legally entitled to deny any claim that Defendant Platinum asserts concerning the bond.

The Court will set the matter for a Court Trial.

Plaintiff shall prepare and submit the form of order consistent with this ruling within 2 weeks.

4. **23CV00217 Nikola, Beatrice et al. v. Foster, Jr., Lionel, MD et al**

EVENT: Defendants' Motion For Judgment on the Pleadings Re: Standing

The Court is in receipt of Defendants' request to withdraw the motion. The hearing is vacated.

5. **23CV02395 Rushing, Scott v. City of Chico**

EVENT: Case Management Conference (Special Set)

The parties are ordered to appear. It is the Court's practice to set Public Record Act requests on the court trial calendar, not the law and motion calendar. The parties should be prepared to select a new date.

6. **23CV02816 PPB Oroville Pads LLC v. Underwood, Jack Lyle**

EVENT: Cross-Complainant Cornish & Carey Commercial dba Newmark Cornish & Carey to the Cross-Complaint of Cross-Complainant Jack Lyle Underwood

Cross-Complainant Cornish & Carey Commercial dba Newmark Cornish & Carey to the Cross-Complaint of Cross-Complainant Jack Lyle Underwood is SUSTAINED WITH LEAVE TO AMEND. It appears that Cross-Complainant has abandoned his indemnity cause of action. The Court finds that the allegations sufficiently allege breach of fiduciary duty, and Cross-Complainant shall amend the indemnity cause of action accordingly. Cross-Complainant shall file the amended cross-complaint within 10 days.

Cross-Complainant shall prepare and submit the form of order.

7. **24CV00730 In re: Thao, Yer**

EVENT: Change of name (Adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

8. **24CV00462 In re: Lavis, Brandon Franklin Augustus**

EVENT: Change of name (Adult) Continued from 4/17)

The Court is in receipt of the proof of publication and will sign the decree provided.