

Sweikhart v. Air & Liquid Sys. Corp.

Superior Court of California, County of Los Angeles

October 6, 2022, Decided

19STCV26549

Reporter

2022 Cal. Super. LEXIS 56800 *

GEORGE SWEIKHART, et al. v. AIR & LIQUID
SYSTEMS CORPORATION, et al.

Core Terms

deposition, Brake, products, personal jurisdiction,
contacts

Opinion

[*1] October 6, 2022

9:00 AM

Judge: Honorable Laura A. Seigle

Judicial Assistant: K. Sandoval

Courtroom Assistant: M. Torres

CSR: Irene Kubert/ CSR #10105

ERM: None

Deputy Sheriff: None

Other Appearance Notes: Plaintiff's counsel: Tyler R.
Stock (X); Defense counsel: Karen Goldberg (X);

NATURE OF PROCEEDINGS: Hearing on Motion to
Dismiss For Lack of Personal Jurisdiction of Specially
Appearing Defendant Akebono Brake Industry Co., LTD
(19STCV26549-Sweikhart)

Matter is called for hearing.

The Court provides a Tentative Ruling.

Counsel argue and submit.

The Court places the matter under submission and
LATER adopts the Tentative Ruling as the Final Court
Order as follows:

ORDER RE MOTION TO QUASH

Plaintiffs George Sweikhart and Christina Sweikhart filed this case against Defendant Akebono Brake Industry Co., Ltd. ("Akebono") and Defendant Akebono Brake Corporation ("ABC"), among others, alleging George Sweikhart was injured as a result of exposure to **asbestos**-containing products including brakes and clutches from Akebono.

On November 12, 2021, Akebono filed a motion to dismiss for lack of personal jurisdiction. The hearing on the motion was continued multiple times to allow discovery.

A. Objections

The court **[*2]** did not rely on much of the evidence presented and therefore is not ruling on all of the objections in the 61 pages of unnumbered objections to evidence filed by Akebono.

The objection to Exhibit A is overruled. Exhibit A is a deposition transcript of George Sweikhart taken in this case after Akebono had been served with the complaint and summons. That Akebono chose not to participate does not give it grounds now to object to the deposition. In addition, other defendants in this case, including ABC, were present at the deposition and had the same interest in cross-examining George Sweikhart to establish the lack of exposure to **asbestos** and to identify the products he used.

The objection to Exhibit D is overruled. Exhibit D is a transcript of the deposition of ABC's corporate representative in another case. It is admissible under [Evidence Code section 1291](#). According to the transcript, counsel for both Akebono and ABC were present at the deposition. The deposition covered topics at issue here including jurisdictional issues. Akebono and ABC both had similar interest and motive in that deposition in establishing lack of jurisdiction.

The objection to Exhibit F is overruled. Exhibit F is a transcript of the deposition [*3] of ABC's corporate representative in another case. It is admissible under [Evidence Code section 1291](#). According to the transcript, counsel for Akebono was present at the deposition. The deposition covered topics at issue here including jurisdictional issues. Akebono had similar interest and motive in that deposition in establishing lack of jurisdiction.

The objection to Exhibit O is overruled. Exhibit O originated from Akebono, not ABC, and the document discusses the sale of products to European Parts Exchange in California beginning in 1978, before ABC existed. (Stock Decl., Ex. J at pp. 37-38, 45; Ex. O at p. 6.) Akebono, not ABC, sold parts to European Parts Exchange. (Stock Decl., Ex. F at p. 36, Ex. F at pp. 82-84.) The evidence supports the conclusion that Exhibit O is a business record of Akebono.

The objection to Exhibit HH is overruled. Exhibit HH is the annual report of Akebono for the 2011 fiscal year obtained from Akebono's website. The annual report is a business record of Akebono.

B. Motion

A defendant may move to quash service of summons on the ground of lack of jurisdiction of the court over him or her. ([Code Civ. Proc., § 418.10, subd. \(a\)\(1\)](#).) The court may dismiss without prejudice the complaint in whole, or as to that defendant, [*4] when dismissal is made pursuant to [Section 418.10](#). ([Code Civ. Proc., § 581, subd. \(h\)](#).)

"A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." ([Code Civ. Proc., § 410.10](#).) "The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" ([Burger King Corp. v. Rudzewicz \(1985\) 471 U.S. 462, 471-472](#).) A state court may not exercise personal jurisdiction over a party under circumstances that would offend "traditional notions of fair play and substantial justice." ([Asahi Metal Industry Co., Ltd., v. Superior Court of California, Solano County \(1987\) 480 U.S. 102, 113](#).)

When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. ([Jayone Foods, Inc. v. Aekyung Industrial](#)

[Co. Ltd. \(2019\) 31 Cal.App.5th 543, 553](#).) Once facts showing minimum contacts with the forum state are established, the defendant has the burden to demonstrate that the exercise of jurisdiction would be unreasonable. (Ibid.) "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 [*5] conclusory assertions of ultimate facts. [Citation.]" ([Strasner v. Touchstone Wireless Repair & Logistics, LP \(2016\) 5 Cal.App.5th 215, 222](#).)

A defendant is subject to a state's general jurisdiction if its contacts "are so continuance and systematic as to render [it] essentially at home in the forum State." ([Saimler AG v. Bauman \(2014\) 571 U.S. 117, 127](#).) A nonresident defendant may be subject to the specific jurisdiction of the forum "if the defendant has purposefully 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.]" ([Vons Companies, Inc. v. Seabest Foods, Inc. \(1996\) 14 Cal.4th 434, 446](#).) This test does not require a "causal relationship between the defendant's in-state activity and the litigation." ([Ford Motor Co. v. Montana Eighth Judicial District Court \(2021\) 141 S.Ct. 1017, 1026](#).) The "arise out" of standard "asks about causation," but "relate to" does not. (Ibid.) "[W]hen a corporation has 'continuously and deliberately exploited [a State's] market, it must reasonably anticipate being haled into [that State's] court[s]' to defendant actions 'based on' products causing injury there." ([Id. at p. 1027](#).)

Plaintiffs do not contest that there is no general jurisdiction over Akebono.

Akebono argues California lacks specific jurisdiction over it because there is "no evidence to establish that [Akebono] ever 'purposefully caused' or 'deliberately directed' its Japanese [*6] (ABI) or United States (ABC) subsidiaries to engage in contacts with California." (Supp. Reply at p. 2.) "In the products liability context, merely placing a product into the stream of commerce, even with knowledge that the product might enter the forum state, is not a sufficient basis for personal jurisdiction over a nonresident defendant. [Citations.] On the other hand, 'if the sale of a product of a manufacturer or distributor ... is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not

unreasonable to subject it to suit in one of those State if its allegedly defective merchandise has there been the source of injury to its owner or to others.' [Citation.]" (*Jayone, supra, 31 Cal.App.5th at pp. 558-559.*)

George Sweikhart testified he used Akebono parts on brake and clutch jobs when he worked for a Datsun/Nissan dealership from 1969 through 1985 in San Diego. (Stock Decl., Ex. A at pp. 72-72, 76-77, 84-85, 528.) He then moved to other Nissan dealerships from 1986 to about 1997 and from 1998 to 2000 and probably used Akebono parts there. (Id. at pp. 278, 528-529, 772-773.)

Akebono sold Japan-made [*7] brakes in the United States in the 1980s, including to a company in California called European Parts Exchange. (Stock Decl., Ex. F at p. 36, Ex. F at pp. 82-84.) Documents from Akebono's files show Akebono's relationship with European Parts Exchange began in 1978 with 40,000 brake shoes, and thereafter increased in numbers. (Stock Decl., Ex. O at p. 6.) In 1980-81, Akebono shipped 300,000 brake shoes, 150,000 facings, and other products for sales of over 100 million yen to European Parts Exchange. (Id.)

ABC was incorporated in 1980. (Stock Decl., Ex. D at p. 36.) Akebono had to register its brakes with AMECA and used ABC to do that. (Stock Decl., Ex. D at p. 344.) ABC registered Akebono's brake pads and lines with the state of California to comply with California regulations. (Ex. F at pp. 81-82, 84-85.) For those products to be sold in California, they needed to be registered with the state. (Id. at p. 82.) Also, Akebono responded to California regulations on the use of copper in friction materials by "developing friction materials free of copper." (See, e.g., Stock Decl., Ex. HH at p. 17.)

This evidence shows Akebono's efforts to sell its products in California, both by selling significant [*8] numbers of parts directly to California-based European Parts Exchange in the early 1980s, and by registering its products in California and designing products to satisfy California regulations. Thus, Plaintiffs produced sufficient evidence that Akebono purposefully availed itself of forum benefits in California at the time George Sweikhart testified he was using Akebono parts in California.

Akebono also argues that Plaintiffs "do not make any connection to any product associated with decedent George Sweikhart by any entity." (Supp. Reply at pp. 2-3.) That is not correct. The evidence summarized above shows George Sweikhart claims he was using Akebono parts when Akebono was selling those parts directly to

California. Plaintiffs allege his use of those parts exposed him to asbestos and caused his illness. This is sufficient to establish Plaintiffs' claims arise out of or relate to Akebono's activities in California.

The motion is DENIED as follows:

The Hearing on Motion to Dismiss For Lack of Personal Jurisdiction of Specially Appearing Defendant Akebono Brake Industry Co., LTD (19STCV26549-Sweikhart) scheduled for 10/06/2022 is 'Held - Motion Denied' for case 19STCV26549.

Akebono is to [*9] file an answer within ten days.

The moving party is electronically advised to give notice to all via File & Serve forthwith.

A copy of this minute order will append to the following coordinated case under JCCP4674: 19STCV26549.

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