



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



JIMMY D. HOLLAND v. MICHAEL and JANE DOE HURLEY
CV-09-0193-PR
2 CA-CV 07-6472 (Opinion) 2009 WL 1383809

PARTIES AND COUNSEL:

Petitioner: Jimmy Holland is represented by Brick P. Storts, Barton & Storts.

Respondent: The Hurleys are represented by Robert Ferrier, Khalidi & Ferrier.

Amici Curiae: Amici, Association for Justice and Arizona Trial Lawyers Association, are represented by David L. Abney.

FACTS:

This case involves an issue of first impression regarding whether an Arizona court has jurisdiction under Arizona's long-arm statute and the Due Process Clause over a suit involving a nonresident selling goods to an Arizona resident via eBay, an Internet site. This is a recurring question nationwide, and courts do not agree with regard to how to resolve the question.

Holland bought a used 1976 Cadillac from Hurley, a Michigan resident, through eBay's online auction. Hurley's e-Bay ad claimed that the vehicle, a 1976 Cadillac sedan, was in "original," "like new," and "pristine" condition and had 23,000 actual miles. Holland asserts he relied on eBay's designation of Hurley as a "PowerSeller with a 100% approval rating," and he emailed Hurley and spoke with him on the phone numerous times regarding the car. He then placed his bid. He was the successful bidder. The parties engaged in a series of emails and phone calls to discuss contract terms. Holland wired \$15,100 to Hurley for the car.

At an additional cost, Holland arranged to have the car transported to Tucson from Michigan. When the car arrived in Arizona, it required repairs. Holland alleges that the vehicle was "shot through with rust and other damage, had engine and transmission leakage, and showed wear and tear consistent with an actual odometer reading of 50,000 to 60,000 miles."

Holland sued Hurley for damages, alleging the car did not match Hurley's description and representations in his online listing. ISP provider eBay is not a defendant in these proceedings. In his answer, Hurley asserted the court lacked personal jurisdiction over him because he had not "had sufficient contact with the State of Arizona to subject [him] to jurisdiction." Several months later, Hurley moved to dismiss on that basis under Rule 12(b)(2), Arizona Rules of Civil Procedure.

Superior Court Judge Chon-Lopez dismissed the action for lack of personal jurisdiction. The judge denied Holland's motion for reconsideration of that ruling.

Holland appealed, contending in relevant part that the superior court erred by dismissing his action for lack of personal jurisdiction. The court of appeals noted that a determination of whether minimum contacts exist with Arizona involves a qualitative, rather than a quantitative analysis. *Meyers v. Hamilton Corp.*, 143 Ariz. 249, 253, 693 P.2d 904, 908 (1984). However, a defendant’s “isolated or sporadic contacts with this state will not suffice” to confer personal jurisdiction. *Id.* at 252, 693 P.2d at 907.

General jurisdiction applies only when a defendant “has ‘substantial’ or ‘continuous and systematic’ contacts with Arizona.” *Austin v. CrystalTech Web Hosting*, 211 Ariz. 569, ¶17, 125 P.3d 389, 394 (App.2005) (discussed below); *Helicopteros Nacionales v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). The court noted Holland apparently concedes that Hurley “has no agents, no physical presence, no offices, and no property within Arizona.” *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 569, 892 P.2d 1354, 1358 (1995). Therefore, Hurley is not subject to Arizona’s general jurisdiction. *Williams v. Lakeview Co.*, 199 Ariz. 1, ¶6, 13 P.3d 280, 282 (2000) (“The level of contact required to show general jurisdiction is quite high.”).

Turning to the next step in the analysis, the opinion addresses whether the court had specific personal jurisdiction over Hurley. Just as in the case of general jurisdiction, the touchstone remains whether a defendant purposefully established “minimum contacts” in the forum state. When a defendant’s activities in the forum state are not so pervasive as to subject the defendant to general jurisdiction, the court may still find specific jurisdiction if: (1) the defendant purposefully avails himself of the privilege of conducting business in the forum; (2) the claim arises out of or relates to the defendant’s contact with the forum; and (3) the exercise of jurisdiction is reasonable. *Williams* ¶7; *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 416 (9th Cir.1997).

As in *Williams*, courts speak of “purposeful availment” as the first prerequisite for specific jurisdiction. *Williams*, at ¶7 & n. 2, 13 P.3d at 282 & 283-84 n. 2. However, both federal and Arizona courts “have refined this [element] to mean whether [the defendant] has either (1) ‘purposefully availed’ himself of the privilege of conducting activities in the forum, or (2) ‘purposefully directed’ his activities toward the forum.” *A. Uberti*, 181 Ariz. at 570, 892 P.2d at 1359 (“The ‘substantial connection,’ between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State.”), quoting *Asahi Metal Indus. v. Superior Court*, 480 U.S. 102, 112, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987) (O’Connor, J.) (plurality opinion). See also *Cohen v. Barnard, Vogler & Co.*, 199 Ariz. 16, ¶9, 13 P.3d 758, 760 (App. 2000) (recognizing a defendant’s purposeful direction of activities at Arizona residents as a way of establishing specific jurisdiction).

The court of appeals affirmed the dismissal of Holland’s complaint based on a ruling that Hurley did not avail himself of the privilege of conducting business in Arizona. Specially concurring, Judge Espinosa wanted to emphasize that:

[i]n this age of increasingly widespread Internet commerce, the court’s decision does not foreclose the possibility that Arizona could exercise jurisdiction over an eBay seller under appropriate circumstances. A seller who markets his wares with an ‘intent to sell across America’ by utilizing a nationally promoted and nationally

available forum such as eBay may well be explicitly directing a purposeful activity into all fifty states.

Opinion ¶33; *see A. Uberti*, 181 Ariz. at 573, 892 P.2d at 1362.

Judge Espinosa elaborated, “Indeed, that would appear to be the whole point of utilizing the boundless eBay cyber marketplace. But that conclusion cannot be definitively reached from the bare record presented here and thus cannot support a determination that the trial court erred.” *Id.* Thus, Judge Espinosa agreed that, given the skeletal facts Holland provided, he did not meet his burden of establishing a *prima facie* case for the existence of personal jurisdiction. *Opinion* ¶34.

Holland filed a motion for reconsideration which the court of appeals denied. Holland seeks review in this Court.

ISSUE:

“Whether Hurley’s actions invoked Arizona’s specific personal jurisdiction.”

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