



FENWICK & WEST LLP

Litigation Alert

Northern District of California Rules Online Auction Buyer Must Sue in Seller's Forum

AUGUST 18, 2006

Recently, Chief Judge Vaughn Walker of the Northern District of California ruled in *Boschetto v. Hansing* (Case No. C-06-1390, order issued July 13, 2006) that a Wisconsin resident's sale of a vehicle on eBay to a California resident did not give rise to personal jurisdiction in California. In so doing, the Northern District joins several other jurisdictions in finding that a single online auction sale does not constitute the requisite "purposeful availment" with the forum state for the exercise of specific jurisdiction.

Implications

This ruling clarifies that a single sale or perhaps even occasional sales to California buyers will not alone create specific jurisdiction, much less give rise to general jurisdiction. While the opinion recognized the chilling effect that "too easy a test of personal jurisdiction could do to Internet commerce," it does not indicate whether the result necessarily would have been different had the defendant been a commercial or repeat seller and/or shipped the vehicle to the forum. Thus, what constitutes "purposeful availment" of California in the context of Internet commerce undoubtedly will continue to unfold.

Background

Defendant Jeffrey Hansing, a Wisconsin resident, allegedly posted for sale on eBay a 1964 Ford Galaxie. Plaintiff Paul Boschetto, a California resident, submitted the winning bid. Hansing subsequently sent Boschetto an email advising him that he could pick up the car from the Wisconsin car dealership where Hansing worked. Boschetto instead hired a delivery company to transport the car to California. Boschetto thereafter filed suit in the Northern District of California, alleging that the car he received was defective and not as advertised, naming Hansing, the auto dealership, and two related auto dealerships as defendants on the theory that the dealerships' operation of a website accessible in California, and Hansing's relationship with one of the dealerships, brought them all within the purview of California's jurisdiction. All defendants moved to dismiss for lack of personal jurisdiction.

Holding

The court easily concluded that Boschetto had failed to satisfy his "fairly high burden" of establishing general jurisdiction over the

defendants because he had failed to adduce any evidence that Hansing or the auto dealerships had continuing or systematic contacts with California.

The court then examined whether it could exercise specific jurisdiction over any of the defendants, which the Ninth Circuit has held requires a showing that: (1) the non-resident defendant purposefully directed his activities toward the forum or resident thereof; (2) the claim relates to such activities, and (3) the exercise of jurisdiction comports with "fair play and substantial justice."

Under this standard, the court also concluded Boschetto had also failed to satisfy his burden because the evidence showed that the defendants had not purposefully directed their activities toward California. Specifically, the negotiations between Boschetto and Hansing took place only over the Internet and never physically occurred in California, there was only one transaction between Boschetto and Hansing, Boschetto made his own arrangements to pick up the car, and there was no evidence that Hansing had deliberately chosen to do business with a California resident. The court noted that several other jurisdictions have reached the same conclusion in disputes between eBay users, reasoning that sales on eBay are "random," "attenuated," and "the choice of the [the] highest bidder is... beyond the control of the seller." While the court noted two divergent opinions, it did not find them persuasive. The court concluded by noting the significant harm to Internet commerce that could result from creating "too easy a test" for personal jurisdiction, observing that due process is not offended by requiring a buyer who deliberately chose to purchase an item from an out-of-state seller without inspecting it first to have to travel to that state to assert his claim.

For further information, please contact:

Jennifer Lloyd Kelly, Litigation Associate
jkelly@fenwick.com, 415.875.2426

J. Carlos Orellana, Litigation Associate
corellana@fenwick.com, 650.335.7234