



JUNE 2021

Appellate Reports

U.S. Supreme Court affirms state jurisdiction over alleged defective vehicles

BY JEFFREY I. EHRLICH

Personal jurisdiction; specific jurisdiction: *Ford Motor Company v. Montana Eighth Judicial District Court* (2021) 141 S.Ct. 1017 (U.S. Supreme Court)

In two cases, a state court exercised jurisdiction over Ford Motor Company in products-liability actions stemming from car accidents that injured a resident in the State. The first suit alleged that a 1996 Ford Explorer had malfunctioned, killing Markkaya Gullett near her home in Montana. In the second suit, Adam Bandemer claimed that he was injured in a collision on a Minnesota road involving a defective 1994 Crown Victoria. Ford moved to dismiss both suits for lack of personal jurisdiction. It argued that each state court had jurisdiction only if the company's conduct in the State had given rise to the plaintiff's claims. And that causal link existed, according to Ford, only if the company had designed, manufactured, or sold in the State the particular vehicle involved in the accident. In neither suit could the plaintiff make that showing. The vehicles were designed and manufactured elsewhere, and the company had originally sold the cars at issue outside the forum States. Only later resales and relocations by consumers had brought the vehicles to Montana and Minnesota. Both States' supreme courts rejected Ford's argument. Each held that the company's activities in the State had the needed connection to the plaintiff's allegations that a defective Ford caused in-state injury.

The U.S. Supreme Court affirmed, finding that the connection between the plaintiffs' claims and Ford's activities in the forum States was close enough to support specific jurisdiction. The Court held that Ford's causation-only approach finds no support in the Court's requirement

of a "connection" between a plaintiff's suit and a defendant's activities. (*Bristol-Myers*, 582 U. S., at —, 137 S.Ct., at 1776.) The most common formulation of that rule demands that the suit "arise out of or relate to the defendant's contacts with the forum." The second half of that formulation, following the word "or," extends beyond causality. So the inquiry is not over if a causal test would put jurisdiction elsewhere. Another State's courts may yet have jurisdiction, because of a non-causal "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence involving the defendant that takes place within the State's borders." (*Ibid.*)

The Court's opinions have stated that specific jurisdiction attaches in cases identical to this one – when a company cultivates a market for a product in the forum State and the product malfunctions there. (See *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 100 S.Ct. 580, 62 L.Ed.2d 490.) Here, Ford advertises and markets its vehicles in Montana and Minnesota, including the two models that allegedly malfunctioned in those States. Apart from sales, the company works hard to foster ongoing connections to its cars' owners. All this Montana- and Minnesota-based conduct relates to the claims in these cases, brought by state residents in the States' courts. Put slightly differently, because Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States, there is a strong "relationship among the defendant, the forum, and the litigation" – the "essential foundation" of specific jurisdiction. (*Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S. 408, 414.) Allowing jurisdiction in these circumstances both treats Ford fairly and

serves principles of "interstate federalism."

Bristol-Myers and *Walden v. Fiore*, 571 U.S. 277, 134 S.Ct. 1115, reinforces all that the Court has said about why Montana's and Minnesota's courts may decide these cases. In *Bristol-Myers*, the Court found jurisdiction improper because the forum State, and the defendant's activities there, lacked any connection to the plaintiffs' claims. That is not true of these cases, where the plaintiffs are residents of the forum States, used the allegedly defective products in the forum States, and suffered injuries when those products malfunctioned there. And *Walden* does not show, as Ford claimed, that a plaintiff's residence and place of injury can never support jurisdiction. The defendant in *Walden* had never formed any contact with the forum State. Ford, by contrast, has a host of forum connections. The place of a plaintiff's injury and residence may be relevant in assessing the link between those connections and the plaintiff's suit.

Shorter Takes

Liability for recording cell-phone call: *Smith v. LoanMe, Inc.* (2021) 11 Cal.5th 183 (Cal.Supreme)

Penal Code section 632.7, subdivision (a) makes it a crime when a person "without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between" a cellular or cordless telephone and another telephone." A violation of section 632.7 also can be pursued civilly and lead to the assessment of damages and other appropriate relief. The issue presented in this case is



whether section 632.7 applies to the parties to a communication, prohibiting them from recording a covered communication without the consent of all participants, or whether the section is concerned only with recording by persons other than parties (nonparties) to the communication, such as an individual who covertly intercepts a phone call and eavesdrops upon it.

The Court of Appeal had held that section 632.7 applied only to nonparties and does not forbid a party to a phone call transmitted to a cellular or cordless telephone from recording the conversation without the consent of all other parties. The Supreme Court reversed, holding that section 632.7 applies to parties as well as nonparties.

Personal jurisdiction; specific jurisdiction; social-media messages:
Yue v. Yang (2021) 62 Cal.App.5th 539 (First Dist., Div. 5.)

California resident, Yue, sued several defendants, including Canadian resident Yang, for unfair competition and defamation. Yue is a software developer who established and moderated a Chinese language online community website called Zhen Zhu Bay (ZZB). Many of ZZB's bloggers and readers are California residents. Liu is a California resident who owns and operates a competing website, Yeyeclub.com (Yeyeclub). Yang, a Canadian resident, posted on both websites.

Yue's complaint alleged that Yang posted on ZZB and Yeyeclub. Yue removed Yang's "sexually explicit, violent and insulting" posts from ZZB. Liu, however, encouraged Yang to continue posting on Yeyeclub. Thereafter, Yang began making "defamatory attacks" on Yue on Yeyeclub. According to the complaint, Yang and Liu worked together to attack Yue on Yeyeclub and "induced many ZZB bloggers to join Yeyeclub."

On Yeyeclub, Yang threatened to "bully Yue in his backyard in California and openly challenged Yue to sue him in California" so that Yang "could leave

a glorious record in ... American legal history." In another post, Yang announced that he would travel to San Francisco to carry out a meeting "as originally planned." The post contained email communications between Yang and others which referred to Yue by name. Later, Yang posted that he "arrived in California" and urged his "collaborators" to come to "the meeting." Yang also asserted that Yue had "violated [a] court order" and that Yue's "family was nearly driven to the streets." In another post, Yang accused Yue of stealing his information – and committing burglary – using a "Trojan horse virus." Yang also published a fax he sent Yue asserting that Yue had attacked him with an Internet virus.

The complaint alleged that California had personal jurisdiction over Yang because he had sufficient minimum contacts with the forum state. According to the complaint, Yang intentionally directed his defamatory messages at Yue in California, and intended to, and did, cause harm there. Yang moved to quash service of the summons and complaint, arguing that California lacked personal jurisdiction over him because he lived in Canada and lacked minimum contacts with California. Yang also argued the exercise of jurisdiction would be unreasonable because he lived in Canada.

The trial court granted the motion to quash. First, it determined there was no basis for general jurisdiction over Yang, a Canadian resident. Next, and relying on *Burdick v. Superior Court* (2015) 233 Cal.App.4th 8, the court concluded there was no basis for specific jurisdiction over Yang because the interaction between plaintiff and Yang "took place on the Internet" and posting information on websites did not constitute "minimum contacts" with California. Reversed.

As the trial court recognized, mere posting of defamatory comments on the Internet, even with the knowledge that the plaintiff is in the forum state, is not enough to establish specific jurisdiction. (*Burdick, supra*, 233 Cal.App.4th at

p. 20.) But specific jurisdiction may be established under the effects test where a defendant sends "California-focused" social media messages "directly" to California residents "with knowledge the recipients are California residents" for the alleged purpose of causing reputational injury there.

Here, Yue's evidence – his verified complaint and his uncontradicted declaration – established that Yang purposefully availed himself of forum benefits. The evidence showed Yang targeted his conduct at California: He communicated directly with plaintiff and posted on Yeyeclub, a website owned and operated by a California resident that had a California audience. Yue also offered competent evidence that Yang's posts had a California focus: Yang threatened to "bully" Yue in California and communicated his plan to travel to San Francisco. Yang also announced that he had "arrived in California" and urged his "collaborators" to join him.

Additionally, plaintiff provided evidence that Yang's posts were directed to, and received by, a California audience: plaintiff and other California residents "read Yang's defamatory statements" on Yeyeclub. Finally, plaintiff offered evidence that Yang posted on Yeyeclub with the intent to cause harm in California, where Yang knew plaintiff lived. Together, this evidence demonstrated Yang's suit-related conduct created a substantial connection between Yang and California.

Jeffrey I. Ehrlich is the principal of the Ehrlich Law Firm, in Claremont, California. He is a cum laude graduate of the Harvard Law School, a certified appellate specialist by the California Board of Legal Specialization, and a member of the CAALA Board of Governors.

He is the editor-in-chief of Advocate magazine and a two-time recipient of the CAALA Appellate Attorney of the Year award.



Ehrlich