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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THOMAS C. BENNIGSON,

Plaintiff and Appellant,

v.

MARILYNN ALSDORF,

Defendant and Respondent.

B168200

(Los Angeles County
Super. Ct. No. BC287294)

APPEAL from an order of the Los Angeles County Superior Court, Victor H. Person, Judge. Affirmed in part; dismissed in part.

Burris & Schoenberg, LLP, E. Randol Schoenberg, Donald S. Burris and Jessica A. Moskovitz, for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, LLP, Polly Towill and Karin Dougan Vogel; FagelHaber LLC, Richard H. Chapman, David M. Rownd and Beth L. Hansher, for Defendant and Respondent.

A California resident appeals from an order granting a defendant's motion to quash service of summons and complaint based for lack of personal jurisdiction over the defendant, an Illinois resident. We find the defendant's contacts with California too attenuated to justify the assertion of specific personal jurisdiction, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This action involves a dispute over the ownership of "*Femme en Blanc*," a painting by Pablo Picasso which was allegedly looted by the Nazis during World War II. The painting is alleged to be worth over \$10 million.

Plaintiff and appellant Thomas Bennigson is the grandson and heir of Robert and Carlota Landsberg, who are now deceased. Bennigson, who lives in Oakland, California, alleges his grandparents owned the painting. Before Robert Landsberg's death in 1932, the Landsbergs lived in Berlin. After the Nazis took over Germany in 1933, Carlota Landsberg, who was Jewish, feared persecution. She sent the painting to an art dealer in France for safekeeping. The painting was stolen from the art dealer by the Nazis, after the invasion of France in 1940. Efforts by the art dealer and Bennigson's grandmother to locate the painting after the war were unsuccessful, and it remained "lost" to Bennigson until 2002, when he learned it was at an art gallery in Los Angeles, owned by David Tunkl.¹

Defendant and respondent Marilyn Alsdorf is an art collector and an Illinois resident. Alsdorf and her late husband bought the painting for \$357,000 from an art dealer in New York.

Bennigson initiated this action for replevin and injunctive relief on December 19, 2002. On December 20, 2002, the trial court issued a temporary restraining order (TRO). Alsdorf was enjoined from removing the painting from Tunkl's gallery pending a hearing on Bennigson's request for a preliminary injunction or ordered to return the painting to the gallery if it had already been removed.

¹ Tunkl was a defendant in this action but is not a party to this appeal.

Alsdorf's motion to quash:

The summons and complaint were served on Alsdorf December 27, 2002. Shortly thereafter, Alsdorf moved to quash service for lack of personal jurisdiction. In her declaration in support of that motion, Alsdorf, who was 77 years old at the time, said she did no business in California, and had never lived in or owned any property in this state. No business entity or charitable organization of which Alsdorf is a principal conducts business or owns property in California.

Alsdorf and her late husband bought the painting in 1975 from an art gallery in New York City. The Alsdorfs understood the dealer had purchased the painting in France. With two brief exceptions, the painting has hung in Alsdorf's home since 1975.

In Fall 2001, Alsdorf allowed Tunkl to display the painting at his gallery in Los Angeles for about one month. At that time, the painting was not for sale.

In early 2002, Tunkl told Alsdorf he knew of a potential buyer for the painting in France. Alsdorf shipped the painting to Switzerland, where Tunkl attempted to sell it.²

While the painting was still in Switzerland, Alsdorf learned that the Art Loss Register (ALR), an international organization which assists in identifying, locating and recovering Nazi-looted art for Holocaust victims, had evaluated the painting's history and believed it had been stolen by the Nazis during World War II. At the time, The ALR claimed the Silva Casa Foundation, a Swiss foundation, was the sole heir to the painting. The ALR also claimed it had authority to negotiate a settlement of the Silva Casa Foundation's claim to the painting. Tunkl did not believe the issues raised by the ALR would prevent the painting from being sold. Alsdorf retained Tunkl's Los Angeles-based attorney, Stephen Bernard, and authorized him to resolve the matter with the ALR.

² In the past, Tunkl had helped Alsdorf sell other paintings, none of which was sold in California. With respect to the Picasso painting at issue here, Alsdorf did not have a written agreement with Tunkl and he did not have authority to accept an offer to purchase the painting.

Sometime during Spring or Summer 2002, Tunkl told Alsdorf he knew of another potential buyer for the painting, and arranged for it to be shipped from Switzerland to Los Angeles while negotiations with the ALR continued.

Alsdorf met with Tunkl in Chicago on Friday, December 13, 2002. During that meeting, Alsdorf learned for the first time that the ALR had changed its position regarding the history of the painting, and that someone other than the Silva Casa Foundation was now asserting an ownership claim to the painting. At the time, Alsdorf knew nothing about the identity of the new claimant. Alsdorf, uncomfortable with the conflicting positions the ALR had taken regarding the painting's history, and believing no sale was imminent, instructed Tunkl to return the painting to her in Chicago. She told Tunkl she was leaving town on December 19, and wanted it returned before then. That same day, Alsdorf also called Tunkl's assistant in Los Angeles and asked her to have the painting immediately sent to Chicago.

When she instructed Tunkl and his assistant to return the painting, Alsdorf did not know it was a California resident who had asserted a claim of ownership to the painting, nor did she know a lawsuit was about to be filed in connection with that claim.

The painting was picked up from Tunkl's gallery by a shipper on December 18, 2002. On December 20, at 6:36 a.m., the painting left Los Angeles on a cargo plane bound for Chicago.

Later that morning, the court issued the TRO ordering that the painting remain in Los Angeles.³

Bennigson's opposition to the motion to quash:

Bennigson argued the court had personal jurisdiction over Alsdorf because Alsdorf had purposefully availed herself of California's benefits and protections, and because the painting was still in Los Angeles the day the complaint was filed. Bennigson also argued

³ The TRO was later modified to allow Alsdorf to keep the painting in her Chicago apartment, where it remains.

Alsdorf had attempted to evade jurisdiction by having the painting sent back to Chicago after this lawsuit was filed. In support of his position, Bennigson offered the following:

Bennigson's attorney, Randol Schoenberg contacted Bernard December 10, 2002. Bernard told Schoenberg he represented Alsdorf and Tunkl, and was engaged in settlement negotiations with the ALR. Bernard, who was out of town at the time, agreed to meet with Schoenberg during the week of December 16, after Bernard returned to Los Angeles.

On December 16, 2002, Schoenberg sent Bernard an e-mail message requesting to set up a meeting. Bernard did not respond.

On December 18, 2002, Schoenberg called Bernard. Bernard told him that all settlement offers were "off the table," and that the painting was "on its way to Chicago." Bernard did not know if the painting was still en route to Chicago, or if it had already arrived. Bernard also said he believed Illinois law was more favorable to his clients than California law.

Believing the painting might still be in Los Angeles, Schoenberg filed the complaint and an ex parte application for a TRO on the morning of December 19, but chose not to notify Bernard or Alsdorf. Later that day Schoenberg did notify Bernard of the TRO hearing on December 20, after the court refused to entertain Bennigson's ex parte application without notice to the other side. The TRO issued mid-morning December 20. However, by that time, the painting was already on its way to Chicago.

The motion is granted:

The motion to quash was heard on March 13, 2003, and the court took the matter under submission. While the matter was under submission, the parties filed additional briefs. In addition, Bennigson filed a motion for leave to amend, a motion to conduct jurisdictional discovery, and a motion to have the judge presiding over the matter disqualified for cause. All the motions were stayed pending a decision on the disqualification motion and were eventually denied.

The trial court issued its minute order June 16, 2003. It found that California lacked personal jurisdiction over Alsdorf, and granted the motion to quash. Bennigson appeals.⁴

DISCUSSION

Bennigson contends the trial court erred in concluding it lacked grounds to exercise specific personal jurisdiction over Alsdorf, a nonresident defendant. He is mistaken.

1. Standard of review.

On a defendant's motion to quash for lack of personal jurisdiction, the plaintiff bears the initial burden of establishing a factual basis for jurisdiction, by a preponderance of the evidence. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 535.) On appeal, evidentiary conflicts are resolved against the appellant and in favor of the order, if the trial court's decision is supported by substantial evidence. (*Ibid.*) However, if there is no conflict in the determinative evidence, the issue is one of law subject to our de novo review. (*Ibid.*)

2. The trial court correctly declined to assert personal jurisdiction.

California's long-arm statute reaches as far as the state and federal constitutions allow. (Code Civ. Proc., § 410.10 ["A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."].) Generally speaking, a state court's exercise of jurisdiction over a nonresident satisfies state and federal due process requirements if the defendant has minimum contacts in or a

⁴ Bennigson's June 18, 2003 notice of appeal is only from the trial court's June 16, 2003 order granting the motion to quash. Although Bennigson asserts error with respect to the court's August 26, 2003 orders denying his motions to amend the complaint and to conduct jurisdictional discovery, he failed to appeal those orders. The time to do so has expired, and we lack jurisdiction to review those decisions. Accordingly, the portion of Bennigson's appeal directed to the latter two orders is dismissed. (*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 624-625 [appeal from a portion of the judgment seeks review of only that portion designated in the notice of appeal].)

relationship with the forum state, so that the assertion of jurisdiction does not violate “ ‘traditional notions of fair play and substantial justice.’ ” (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 (*International Shoe*); *Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700, 716 (*Boaz*)). This jurisdictional inquiry focuses on the relationship among the nonresident defendant, the forum and the litigation.

Personal jurisdiction is either general or specific. If the defendant’s forum-related contacts are extensive and wide-ranging, or substantial, continuous and systematic, the defendant may be subject to the court’s “general” jurisdiction. (*Boaz, supra*, 40 Cal.App.4th at p. 717.) In those circumstances, the specific claims at issue need not be connected with the defendant’s business relationship to the forum. Instead, the defendant is subject to the California court’s jurisdiction for all causes of action raised against it. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446 (*Vons Companies, Inc.*)).

“Specific” personal jurisdiction, on the other hand, exists if the defendant’s forum-related activities are not so pervasive as to justify an exercise of general jurisdiction. The answer as to whether jurisdiction exists turns on the quality and nature of the defendant’s activities in the forum related to a particular cause of action. (*Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147-148 (*Cornelison*)). Specific jurisdiction may be found where (1) the defendant has purposefully availed him or herself of doing business in the state; (2) the controversy at issue arises from or is related to the defendant’s forum-related contact; and (3) assertion of jurisdiction would be reasonable. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477-478 (*Burger King Corp.*); *Vons Companies, Inc., supra*, 14 Cal.4th at p. 446; *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268 (*Pavlovich*)). Factors related to the determination of whether an exercise of specific jurisdiction is “reasonable” include the burden on the defendant to defend herself in California, the interest of the forum state, and the plaintiff’s interest in obtaining relief. (*Cornelison, supra*, 16 Cal.3d at p. 150.)

Only specific jurisdiction is at issue here. Bennigson does not contend Alsdorf’s contacts with California were so pervasive as to justify an exercise of general personal

jurisdiction. Rather, he insists the trial court erred when it found jurisdiction over Alsdorf lacking because (1) she has purposefully availed herself of the benefits and protections of this state, (2) the current action arises out of her contacts with California, and (3) assertion of jurisdiction in this case would be reasonable. We conclude Bennigson failed to carry his burden to establish specific jurisdiction.

a. Alsdorf did not purposefully avail herself of the benefits and protections of this forum.

The record reflects Alsdorf did not purposefully avail herself of forum benefits with respect to the matter at issue, nor is there any evidence this particular controversy arose out of any of Alsdorf's extremely limited contacts with California. On the contrary, the evidence overwhelmingly militates in favor of the opposite conclusion.

The purposeful availment requirement ensures a nonresident defendant will not be brought into court based on her “ ‘random, fortuitous or attenuated’ ” contacts with the forum state. (*Burger King Corp., supra*, 471 U.S. at p. 475.) This requirement is satisfied only if the defendant has taken deliberate action toward the forum state. (*Vons Companies, Inc., supra*, 14 Cal.4th at pp. 457-458 [nexus required to establish specific jurisdiction is not between the defendant and the plaintiff, but between the defendant, the forum and the litigation]; *Helicopteros Nacionales de Colombia, S.A. v. Hall* (1984) 466 U.S. 408, 411.) The defendant need not be physically present in or have physical contact with the forum, so long as her efforts are purposefully directed toward forum residents. This record is devoid of evidence that Alsdorf engaged in any purposeful activities aimed at California or its residents.

Bennigson insists, however, that assertion of specific jurisdiction is appropriate for three reasons. He claims Alsdorf (1) sent the painting into California for exhibition and sale twice within a fifteen month period, once for as long as eight months; (2) specifically authorized Tunkl, a Los Angeles art dealer, to solicit offers for the painting and hired Tunkl's Los Angeles-based attorney to try to settle Bennigson's claim; and (3) directed that the painting be removed from Los Angeles after she knew Bennigson had hired an attorney, and allowed the painting to be transported out of the jurisdiction even though

she knew a complaint had been filed and an application for a TRO was pending. Alsdorf asserted otherwise. The trial court believed Alsdorf and substantial evidence supports its conclusion.

First, Alsdorf permitted Tunkl to display the painting in his gallery for about a month in 2001, but it was not for sale during that time. The painting's lengthier presence in Los Angeles occurred because Tunkl, who had been attempting to facilitate a sale in Switzerland, told Alsdorf he might have another buyer for the painting even though the negotiations with the ALR over the Silva Casa Foundation's claim remained ongoing. No evidence in the record indicates that Tunkl's gallery exhibited the painting during its final period in his possession, that the buyer Tunkl contemplated was a California resident, or that anyone other than a single potential buyer knew the painting was either in California or for sale.

Bennigson's claim of purposeful availment rests primarily on the theory that, by engaging a Los Angeles-based art dealer to help her sell the painting in Europe, and later hiring that dealer's attorney to assist in negotiations with the London-based ALR, Alsdorf purposefully directed her efforts at California or its residents. We do not agree.

Alsdorf's extremely minimal contact with California, all of which appears largely to have been at Tunkl's direction, is simply too passive, isolated and attenuated to constitute deliberate action directed at this state. (See *Burger King Corp.*, *supra*, 471 U.S. at p. 475 ["Single or occasional acts," creating only an "attenuated" affiliation with the forum, will not support exercise of personal jurisdiction]; *Vons Companies, Inc.*, *supra*, 14 Cal.4th at p. 448.) As the authors of one well-respected treatise have said, "[t]he more 'isolated' the act, the less foreseeable it may be that the nonresident would be 'haled into court locally' (the rationale for the 'purposeful' requirement)." (Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2003) ¶3:240, p. 3-57.) Similarly, Alsdorf's retention of Bernard (who happened, fortuitously, to be from Los Angeles), to facilitate negotiations with the ALR in Europe does nothing to advance Bennigson's claim that she purposefully directed her activities at California.

We also reject Bennigson’s claim that Alsdorf purposefully attempted to thwart jurisdiction by sending the painting to Chicago, even though she was aware of this litigation. Again, these facts are disputed. The trial court credited Alsdorf’s explanation, not Bennigson’s, and substantial evidence supports that decision. Specifically, Alsdorf said she directed Tunkl and his assistant to send the painting to Chicago on December 13, a week before her attorney was advised this lawsuit had been filed. Alsdorf also said that, when she requested the painting be returned to her, she knew someone other than the Silva Casa Foundation had recently asserted an ownership claim, but did not know the claimant’s identity or where he lived.⁵

b. Bennigson’s claim did not arise from Alsdorf’s isolated contact with California.

Even if Alsdorf intentionally sent the painting to Tunkl’s gallery in California to attract potential buyers, the act of harm about which Bennigson complains did not occur here, nor was it the result of Alsdorf placing the painting in this state. As the trial court correctly noted, Bennigson’s claim arises not out of Alsdorf’s activities in California, but from the activities of the Nazis in France during World War II, or perhaps from the activities of a New York art gallery that acquired the painting and then sold it to Alsdorf almost 30 years ago. The law does not require that the claim at issue “arise directly from the defendant’s forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction.” (*Vons Companies, Inc.*, *supra*, 14 Cal.4th at p. 452.) Nevertheless, the exercise of specific jurisdiction is not appropriate unless the claim bears a *substantial connection* to the nonresident defendant’s forum-related activities. (*Ibid.*, emphasis added.) Quite simply, Bennigson’s claim for replevin of allegedly Nazi-looted property has no substantial connection to Alsdorf’s forum-related activities.

⁵ Alsdorf’s representation is supported by a December 16 e-mail to Bernard in which Bennigson’s identity is apparently revealed for the first time.

c. An assertion of jurisdiction over Alsdorf would not comport with traditional notions of fair play and substantial justice.

Bennigson argues that traditional notions of fair play and substantial justice are defeated by the trial court's refusal to assert jurisdiction over Alsdorf. He insists Alsdorf intentionally acted to thwart jurisdiction by removing the painting from California even after a complaint was filed seeking its return. Alsdorf disputed Bennigson's factual representations. She claimed she directed that the painting be sent to Chicago on December 13, a week before her attorney was advised this action had been filed or that Bennigson sought an injunction.⁶ The trial court clearly believed Alsdorf and substantial evidence supports its conclusion.

Several factors are relevant to the question of whether the assertion of specific personal jurisdiction over a nonresident is reasonable, that is, whether California has a sufficient relationship with the defendant and the litigation to make it reasonable to require her to defend the action in California courts (i.e., an assertion of jurisdiction would comport with traditional notions of " 'fair play and substantial justice.' " (*International Shoe, supra*, 326 U.S. at p. 316; *Burger King Corp., supra*, 471 U.S. at pp. 477-478; *Pavlovich, supra*, 24 Cal.4th at p. 268.) Generally speaking, the factors are the (1) extent to which the litigation relates to the defendant's activities in California, (2) availability of evidence and the location of witnesses, (3) availability of an alternate forum in which the claim may be litigated, (4) relative costs and burdens to the litigants of bringing or defending the action in California rather than elsewhere, and (5) the state's interest in providing a forum for this particular litigation (e.g., the protection of a California resident or assuring the applicability of California law). (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292; *Cornelison, supra*, 16 Cal.3d at p. 151; *Fisher Governor Co. v. Superior Court* (1959) 53 Cal.2d 222, 225-226.)

⁶ Alsdorf's attorneys in Chicago acknowledged service of the summons and complaint on her behalf on December 27, 2002.

There can be no dispute this litigation bears no relationship to Alsdorf's activities in California, or that an alternative forum is not available. The lawsuit seeks only to establish Bennigson's ownership of a painting he claims was stolen in Europe. Undoubtedly other courts, including those in Alsdorf's home state, are available to Bennigson to assert his claim. A consideration of the availability of evidence and witnesses, and the relative costs of bringing or defending the action in California also support the trial court's ruling. Most or all of the evidence and witnesses on which resolution of this ownership dispute turns are in Illinois, New York or Europe, rather than in California. For that reason, the interests of judicial economy and the cost of defending this action, particularly on the elderly Alsdorf, weigh in favor of conducting litigation elsewhere. As for the final factor, California undoubtedly has an interest in providing a forum for litigation in order to protect its residents' ownership interests in artwork stolen by the Nazis. (See Code Civ. Proc., § 354.3, subd. (c) [Extending until December 2010, the statute of limitations for actions to recover Holocaust-era artwork from museums and galleries].) However, Alsdorf is an individual art collector, not one of the specific "entities" against whom the state chose to extend the statute of limitations. (See Code Civ. Proc., § 354.3, subd. (a)(1) [defining "entity" as any museum or gallery that displays, exhibits or sells an article of artistic significance].)

In sum, we conclude sufficient evidence supports the trial court's conclusion that, on these facts, "[t]he assertion of specific jurisdiction over [Alsdorf] under the facts of this case would not . . . comport with traditional notions of fair play and substantial justice."

2. The painting's transient presence in California is insufficient to establish *quasi in rem* jurisdiction.

Bennigson asserts the exercise of *quasi in rem* jurisdiction is proper here because the action centers on a determination of ownership rights to personal property which was physically present in California when this litigation was filed. Again, he is incorrect.

At one time, mere presence of property in the state was sufficient to permit the state court to adjudicate title without regard to the residency of the property's owner.

(*Goodwine v. Superior Court* (1965) 63 Cal.2d 481, 483.) That rule no longer obtains. The fact that property is located within the state is, by itself, an insufficient basis for the assertion of jurisdiction over a nonresident. (*Shaffer v. Heitner* (1977) 433 U.S. 186, 207 (*Shaffer*)).) Since the landmark decision in *Shaffer*, “all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny.”⁷ (*Id.* at p. 212, emphasis added.) As discussed above, a state court’s exercise of jurisdiction over a nonresident satisfies due process requirements only if the defendant has minimum contacts in or a relationship with the forum state, so that the court’s assertion of jurisdiction does not violate “ ‘traditional notions of fair play and substantial justice.’ ” (*International Shoe, supra*, 326 U.S. at p. 316; *Boaz, supra*, 40 Cal.App.4th at p. 716.)

Whether the question is the ability to exercise jurisdiction over Alsdorf herself (*in personam*), or to adjudicate title to the painting (*quasi in rem*), the court must first find Alsdorf has sufficient minimum contacts with the forum state according to the test articulated in *International Shoe*. To justify every exercise of jurisdiction, the requirements of either general or specific jurisdiction must be shown. (*Shaffer, supra*, 433 U.S. at pp. 207-208.) In *Shaffer*, the Supreme Court abolished the approach Bennigson advances here, *viz.*, the painting’s physical presence in California on the day the case was filed was, by itself, sufficient to establish jurisdiction. The Supreme Court did not, however, entirely disregard the role property may play in determining jurisdiction over the property’s owner. Indeed, the Court expressly recognized that “the presence of property in a State may bear on the existence of jurisdiction by providing

⁷ In *Shaffer*, the Supreme Court formally abandoned its century-old rule of *Pennoyer v. Neff* (1878) 95 U.S. 714, which held the mere presence of a nonresident defendant’s property in the forum was sufficient to establish *in rem* jurisdiction and to permit a state to adjudicate rights to the property, regardless of the relationship of the underlying dispute and the property owner to the forum. (*Shaffer, supra*, 433 U.S. at p. 206 [“It is clear . . . that the law of state court jurisdiction no longer stands securely on the foundation established in *Pennoyer*.”].)

contacts among the forum State, the defendant, and the litigation.” (*Id.* at p. 207.) The fact that a person owns or possesses chattel physically present within the forum is a factor in establishing specific personal jurisdiction. That such a fact is relevant, however, does not also make it determinative. As one court observed, “[m]ere ownership of a chattel within the state . . . is insufficient [to establish jurisdiction]. If it were a sufficient basis for personal jurisdiction every *in rem* or *quasi in rem* action could be transposed into an *in personam* action. In addition to ownership, possession, or use of chattel within the forum state at least two other factors must be present: the chattel must give rise to the cause of action, and defendant must be responsible for the chattel’s presence in the state.” (*Marra v. Shea* (N.D. Cal. 1971) 321 F.Supp. 1140, 1146-1147, emphasis added, fns. omitted.)

As set forth above, Bennigson has not demonstrated a basis for the assertion of jurisdiction. Although the painting is the subject of Bennigson’s claim of replevin, it did not itself give rise to that claim. The cause of action and Bennigson’s assertion of an ownership interest superior to Alsdorf’s arose from actions which occurred either during World War II or in New York in 1975. The painting’s fleeting but fortuitous presence in Los Angeles in December 2002 is insufficient to establish the requisite minimum contacts between this State, the nonresident defendant and this litigation.

DISPOSITION

The June 16, 2003 order granting the motion to quash service for lack of personal jurisdiction is affirmed. The appeal from the August 26, 2003 order denying Bennigson’s

motions for leave to amend the complaint and to conduct jurisdictional discovery is dismissed. Alsdorf is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BOLAND, J.

We concur:

COOPER, P.J.

FLIER, J.