

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 10/25/2013

TIME: 10:30:00 AM

DEPT: C-66

JUDICIAL OFFICER PRESIDING: Joel M. Pressman

CLERK: Lori Urie

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: A. Quidilla

CASE NO: **37-2013-00057730-CU-FR-CTL** CASE INIT.DATE: 07/16/2013

CASE TITLE: **George Sharp vs. BluForest Inc [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

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**EVENT TYPE:** Motion to Quash (Civil)

MOVING PARTY: Jim Can, Charles Miller

CAUSAL DOCUMENT/DATE FILED: Motion to Quash Service of Summons, 10/02/2013

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**EVENT TYPE:** Demurrer / Motion to Strike

MOVING PARTY: BluForest Inc

CAUSAL DOCUMENT/DATE FILED: Demurrer, 09/03/2013

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**APPEARANCES**

George Sharp, self represented Plaintiff, present.

DIRK O JULANDER, counsel, present for Defendant(s).

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The Court hears oral argument and confirms the tentative ruling as follows:

Specially Appearing Defendants Jim Can and Charles Miller's Motion to Quash Service of Summons is GRANTED.

"When a nonresident defendant challenges personal jurisdiction the burden shifts to the plaintiff to demonstrate by a preponderance of the evidence that all necessary jurisdictional criteria are met. [Citation.] This burden must be met by competent evidence in affidavits and authenticated documentary evidence. An unverified complaint may not be considered as an affidavit supplying necessary facts. [Citation.]" Ziller Electronics Lab GmbH v. Superior Court (Ct. App. 1988) 206 Cal. App. 3d 1222, 1232-33; emphasis added.)

To satisfy constitutional requirements of jurisdiction, Plaintiff must prove either "general jurisdiction" (i.e. minimal contacts) or "specific jurisdiction" (i.e. "purposeful availment"). Plaintiff is required to show that his cause of action arises out of an act or transaction by the individuals that was completed in California or that the individuals purposefully availed himself of the privileges of conducting activities in California.

Mr. Can

Mr. Can provides a declaration that he is a resident of Belize and is not and has never been a resident of

California. (Declaration of Jim Can, hereinafter "Can Decl.", ¶ 4.) Mr. Can's declaration indicates that he does not own any real property in California, does not have an office or lease any real or personal property here. He has no bank account, mailing address, directory listing, answering services, or personal telephone number in the state of California. He does not pay taxes in the state and has not consented and does not consent to jurisdiction in the State of California. (Can Decl., ¶ 5.) Mr. Can does not have an agent in the State of California, other than his attorney in this matter. (Can Decl., ¶ 6.) He never personally sold any goods directly to or entered into any contract in the State of California. (Can Decl., ¶ 7.) Furthermore, Mr. Can has never asked the State of California to enforce or to protect any of his legal rights or interest, has never filed a lawsuit or appeared as a defendants in a lawsuit in the State of California. (Can Decl., ¶¶ 8 and 9.)

Mr. Can also states that he is not now, nor during the period relevant to this action was, an officer or director of BluForest. His involvement with BluForest during the period relevant to this action and to today has consisted of owning less than 5% of BluForest's shares and acting as an advisor and lender to the company. (Can Decl., ¶ 10.) In his capacity as a small shareholder, advisor, or in his individual capacity, he has not had any control or approval over the public announcements, regulatory filings, and press releases related to BluForest's option contract with Candorado, which are at issue in this lawsuit. Nor did he ever advertise or solicit the sale of, or actually sell, my stocks and/or options in BluForest directly in the state of California. (Can Decl., ¶11.) Mr. Can's only past contacts with the State of California have been primarily for personal and family entertainment. (Can Decl., ¶ 12.)

In response, plaintiff attacks the credibility of Mr. Can. He does not provide any evidence to support either minimal contacts or purposeful availment. Plaintiff has produced unsubstantiated documents and his own conjecture seeking to undermine Mr. Can's testimony and arguing that Mr. Can's residency is in Canada. In a supplemental declaration lodged with the reply, Mr. Can states that he is indeed a recent resident of Belize. (Can Supp. Decl., ¶¶ 3-8.) But even if a resident of Canada, there is no evidence of connection with California.

On the issue of Mr. Can's contacts with California, Plaintiff argues that Mr. Can has contacts through his purported ownership of stock in a company which may have had an office in California and through the ownership of another "associated company" which is a suspended California corporation. (Opp. p. 5.) Plaintiff cites no authority to support the adequacy of this evidence.

Based the declarations provided, he was not the owner nor an officer or director of either of the companies Plaintiff discusses. (Can Decl., ¶ 13; Brooks Decl., ¶¶ 3-4.) Mere ownership of stock is not sufficient to constitute a contact with the forum. In the context of corporate officers, directors, agents, or employees, "acts ... in their official capacities, are acts exclusively of (qua) the corporation, and are thus not material for purposes of establishing minimum contacts as to individuals. [Citations.]... Accordingly, acts performed by individuals in such official capacities may not reasonably be attributed to them as individual acts creating personal jurisdiction. *Mihlon v. Sup. Ct.* (1985) 169 Cal.App.3d 703, 713, see *Calder v. Jones* (1984) 465 U.S. 783, 790.)

#### Mr. Miller

Mr. Miller in his declaration claims he is a resident of the Ecuador and he is not and has never been a resident of California. (Declaration of Charles Miller, hereinafter "Miller Decl.", ¶ 4.) Mr. Miller does not

own any real or personal property in California, does not have an office or lease any real or personal property here. He has no bank account, mailing address, directory listing, answering service, or personal telephone number in the state of California. He does not pay taxes in the state and never personally conducted business in the state. He has not consented and does not consent to jurisdiction in the State of California. (Miller Decl., ¶ 5.) Mr. Miller does not have an agent in the State of California, other than his attorneys in this matter. (Miller Decl., ¶ 6.) He never personally sold any goods directly to or entered into any contract in the State of California. (Miller Decl., ¶ 7.) Furthermore, Mr. Miller has never asked the State of California to enforce or to protect any of his legal rights or interests, has never filed a lawsuit or appeared as a defendant in a lawsuit in the State of California. (Miller Decl., ¶¶ 8 and 9.) Mr. Miller was not the CEO of BluForest until February 2012, months after the alleged public announcements, press releases, and regulatory filings at issue in this lawsuit were disseminated. At no time, whether in his capacity as CEO or as an individual, did Mr. Miller ever participate in the alleged wrongdoing of which Plaintiff alleges. Furthermore, Mr. Miller has never advertised, solicited, or sold BluForest stocks and/or options in California. (Miller Decl., ¶¶ 11 and 12.)

With respect to Mr. Miller, Plaintiff does not provide any evidence or even argument to show contact with California.

Continuance

Plaintiff requests a continuance. "The granting of a continuance for discovery lies in the discretion of the trial court, whose ruling will not be disturbed in the absence of manifest abuse." Beckman v. Thompson (1992) 4 Cal.App.4th 481, 487. The Court has upheld the denial of a continuance where plaintiff has not suggest specific discovery that would likely produce additional information regarding contacts with California. Id.

Here, plaintiff articulates no specific discovery that could overcome what has already been produced. A continuance is not warranted.

The unopposed demurrer to original complaint, filed by defendant is sustained with 15 days leave to amend. By failing to oppose the demurrer, plaintiff impliedly concedes the complaint fails to state a cause of action.

The Court signs the proposed order on evidentiary objection.



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Judge Joel M. Pressman