

A Bid For Jurisdiction

You Can't Sue Them From Here

As this issue has illustrated, auctions can be an effective – and exciting – way to buy or sell a collector car. Like most things nowadays, collector car auctions can be conducted not just in traditional “brick-and-mortar” settings, but in virtual environments as well.

Such was the case in his month's offering, *Boschetto v. Hansing*, decided on August 20, 2008 by the United States Court of Appeals for the Ninth Circuit.

According to the Court, the case involved the sale of an old car via the eBay Internet auction site. The issue was whether the courts in the home state of the buyer, who was allegedly disappointed in the vehicle received, had “personal jurisdiction” over the seller (based in another state) necessary for the lawsuit to be maintained in the buyer's state.

“Personal jurisdiction” refers to a court having the power to render judgments involving a person.

Paul Boschetto was the winning bidder for a 1964 Ford Galaxie sold on eBay by Jeffrey Hansing for \$34,106. Boschetto alleged that the listing stated the Galaxie was a “500 XL 427/425 hp ‘R Code’ in awesome condition, not restored, rust free chrome in excellent condition, recently rebuilt and ready to be driven . . .” Boschetto arranged for the car to be shipped from Hansing's state of Wisconsin to Boschetto's state of California. Upon delivery, Boschetto allegedly discovered that the car was not an “R Code,” and noted a variety of other problems, including a motor that would not turn over, rust, and extensive dents on the body of the vehicle. Boschetto contacted eBay and Hansing in an attempt to rescind the purchase, but those efforts failed.

Boschetto sued in federal court in California, alleging four causes of action: violation of the California Consumer Protection Act, breach of contract, misrepresentation, and fraud. Hansing made a motion to dismiss Boschetto's complaint for lack of personal jurisdiction. The District Court granted that motion.

On appeal, the Ninth Circuit Court of Appeals affirmed the dismissal of the case. (Note that the courts did not address the substantive merits of Boschetto's claims, just the question of whether the court in California had jurisdiction.)

“This appeal presents a question that remains surprisingly unanswered by the circuit courts: Does the sale of an item via the eBay Internet auction site provide sufficient ‘minimum contacts’ to support personal jurisdiction over a nonresident defendant in the buyer's forum state?” Under the facts alleged, both the District Court and the Court of Appeals ruled the answer was “No.”

The Court of Appeals noted that, [i]n opposition to a defendant's motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that jurisdiction is proper.”

Under established constitutional analysis, “[f]or a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’”

“We apply a three-part test to determine whether the exercise of . . . jurisdiction over a nonresident defendant is appropriate:

“(1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;

“(2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and

“(3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.”

“Here, Boschetto fails at step one of the test for . . . jurisdiction, as the lone transaction for the sale of one item does not establish that the Defendants purposefully availed themselves of the privilege of doing business in California. The arrangement between Boschetto and Hansing which is, at bottom, a contract for the sale of a good, is insufficient to have created a substantial connection with California.”

“[T]he fact that eBay was used as the conduit for this sale does not affect the jurisdictional outcome, at least not on the particular facts presented here. . . . Here, the eBay listing was not part of broader e-commerce activity; the listing temporarily advertised a good for sale and that listing closed once the item was sold, thereby extinguishing the Internet contact for this transaction within the forum state (and every other forum).”

“[O]ur affirmance of the district court's dismissal is in-line with a number of state court decisions that have addressed whether personal jurisdiction can be established by way of a single eBay transaction with a forum plaintiff.” 

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This case illustrates the continuing challenge for courts and litigants to apply traditional (and evolving) legal principles and analyses to technological developments.

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