

The Adverse Advertisement

Can An Old Car Ad Be Too Effective?

Nearly 40 years ago, marketing executive Fairfax Cone told the *Christian Science Monitor*, "Advertising is what you do when you can't go see somebody. That's all it is."

Advertising has certainly expanded the ability of an individual or entity to promote goods and services to millions more potential customers than could have been reached through personal contact. Within the pages of this magazine, persons offering old cars for sale can reach a worldwide audience, dramatically increasing the likelihood that a transaction will be consummated.

But what happens if you have a dispute with a geographically distant seller or other vendor to whose advertisement you responded? If things can't be worked out informally, can you sue where you live or do you have to incur the expense and inconvenience of commencing the lawsuit where the defendant can be found? Such issues were addressed in *Lorenzo vs. Lane*, decided on October 26, 2000, by the Superior Court of Connecticut.

According to the Court, Paul Lane, a Connecticut resident, placed an advertisement in a leading automotive magazine other than *Car Collector* for a "vintage race car." John Lorenzo, a New Mexico resident, read the ad and called Lane about the car. After negotiations, Lorenzo agreed to go to Connecticut to purchase the car for \$6,000 and transport it back to New Mexico. Upon returning home, Lorenzo discovered that the transmission was missing. He subsequently sued Lane in the District Court of New Mexico. Lane failed to appear for trial, and Lorenzo thereby obtained a default judgment of \$8,167.84 against Lane.

Lorenzo sought to have the judgment recognized as binding in the state of Connecticut, allowing him to collect the \$8,167.84, plus interest at the rate of 15% as set by the New Mexico court and costs. Lane filed a motion to dismiss Lorenzo's collection effort on the ground that the New Mexico judgment was void due to a lack of "personal jurisdiction" regarding him and, therefore, could not be recognized by Connecticut under the "full faith and credit" clause of the United States Constitution.

"Personal jurisdiction" is the power of a court, which is required before it can render a judgment against a person. The "full faith and credit" clause requires a state court to give the judgment of another state the same credit, validity, and effect as the state that rendered the judgment would give it.

The Superior Court of Connecticut denied Lane's motion to dismiss Lorenzo's lawsuit. It noted the guidance of the United States Supreme Court which "stated that due process requires only that in order to subject a defendant to a judgment in person, if he be not present within the territory of the


forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

"The Supreme Court has found that it is not the number of contacts that satisfy minimum contacts, rather it is the quality of the contact or contacts.... As a result, a sole contact with a state may satisfy the due process requirement of minimum contacts."

"In the present case, the defendant's contacts may have been a business transaction or that he caused the commission of a tortious act within New Mexico. The main contact is the advertisement he placed in *Hemming's Motor News*. *Hemming's Motor News* has worldwide distribution and its circulation reached New Mexico.... After the plaintiff responded to the advertisement, the defendant's subsequent contacts with New Mexico included at least eight telephone calls he made to the plaintiff negotiating the price of the race car, inquiring about whether the vehicle was complete and discussing whether the windshield was present in the car."

"Telephone calls alone will not constitute sufficient minimum contacts.... Minimum contacts exist when a defendant who 'should reasonably anticipate being haled into court' in the foreign jurisdiction has 'purposefully initiated its activity within the State.'"

"This court is of the opinion that...the defendant had minimum contacts with New Mexico. By placing an advertisement in *Hemming's Motor News*, the defendant purposefully initiated activity within New Mexico. [T]he New Mexico courts would find that Lane had sufficient minimum contacts with New Mexico to establish personal jurisdiction in New Mexico."

"Under federal and New Mexico law, the defendant has established minimum contacts with New Mexico because he solicited business in New Mexico and the allegedly wrongful conduct of plaintiff's lawsuit was based upon those contacts. Accordingly, defendant's motion to dismiss is hereby DENIED." 

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Update: The August 29, 2000, decision by the Nebraska Court of Appeals in *Adams vs. Nebraska*, discussed in last month's column, was affirmed by the Nebraska Supreme Court on April 26, 2001. The Supreme Court agreed with the Court of Appeals that the trial court erred in granting the State summary judgment, because an issue of fact existed as to whether a police pursuit had begun at the time of the accident.

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