

You Can't Sue Them From Here

BY LAWRENCE SAVELL

The world is becoming a shopper's paradise. Through technological innovation embodied in such developments as the Internet and television shopping networks, consumers can choose from a wide range of products offered by manufacturers and resellers around the planet.

But what if, as sometimes happens, your purchase does not live up to expectations (*i.e.*, the seller's representations)? If negotiation fails, you can, of course, sue. But where? Can you sue where you are, or do you have to sue where the seller is (or was)—wherever that may be?

The answer hinges in part on the concept of jurisdiction. "Jurisdiction" is a word with multiple legal meanings. The common definition is a geographic one—meaning a given locality (as in "in this jurisdiction"). But the term also connotes the legal power of a court. A court must have *personal jurisdiction* over an individual or entity in order to render a judgment over that individual or entity.

As the marketplace for collector cars has expanded, cases have addressed whether a collector car purchaser can sue a distant seller in the purchaser's home state, as opposed to having to go where the seller is. A recent example was *Phears v. Doyne*, decided on January 25, 1996 (with reconsideration denied on March 11, 1996) by the Court of Appeals of Georgia.

According to the Court, H. Wayne Phears, a Georgia resident, entered into a contract for the sale and restoration of "a classic car" with Mark Doyne, a Florida resident. Doyne had advertised the car in "a worldwide classic car journal published in Vermont." After seeing Doyne's ad in Georgia, Phears contacted Doyne at Doyne's office in Florida. Phears then visited Florida and inspected the car. Negotiations over the phone (and fax) began, with Phears in Georgia talking long distance to Doyne in Florida. The parties eventually reached an agreement. Phears drafted a contract in Georgia and mailed it to Doyne in Florida, who signed the document in Florida and mailed it back. Phears also wired funds to Doyne in Florida, where the restoration work was to be done.

Problems arose, however, and Phears sued Doyne in Georgia, alleging breach of contract, conversion, fraudulent misrepresentation, and intentional infliction of emotional distress. Doyne made a motion to the trial court to dismiss the case for lack of personal jurisdiction over Doyne, which it did. Phears appealed. The Court of Appeals affirmed the dismissal.

The Court of Appeals examined the Georgia "long-arm" statute—legislation found in many (if not all) states which provides for personal jurisdiction over nonresidents that voluntarily enter or do business in that state, in lawsuits relating to such activities. The Court relied on a prior decision by it involving a similar situation, where it held that Georgia courts could not exercise jurisdiction over the nonresident sellers of a vehicle under the "long-arm" statute because the advertisement in a national publication and subsequent negotiation and contract with a Georgia resident did not constitute the transaction of business in Georgia. "It is well settled that an out-of-state de-

fendant will not be deemed to have engaged in purposeful business activity in this state merely because he has advertised products for sale in national trade magazines circulating in this state and has accepted orders for such products which have been transmitted to him from this state by mail, telephone, or other instrumentality of interstate commerce in response to such advertisements."

The Court noted that, contrary to Phears' suggestion, the fact that he drafted the agreement in Georgia did not affect this result, as Doyne executed the agreement in Florida. It observed that Phears actually traveled to Doyne's home state for the only meeting of the parties. Moreover, the agreement between the parties contemplated further work on the vehicle, all of which was to occur in Doyne's home state.

In a "concurring" opinion, another judge of the Court, although agreeing that the Court's ruling was required in light of the prior decision, expressed his belief that a "liberal interpretation" of the "long-arm" statute would have allowed jurisdiction to have been established. That judge believed that Doyne had had sufficient "contacts" with Georgia such that jurisdiction would have been appropriate: "Defendant invited Georgia residents to do business with him with respect to the sale and restoration of his Jaguar. His communications, directed to Georgia and intended to be acted upon here, were received and action was initiated. The anguish, which plaintiff alleged in conjunction with his claim for intentional infliction of emotional distress, was suffered by plaintiff primarily in Georgia. The injury occasioned by fraud, if any, was also inflicted in Georgia. Defendant's actions prompted the expenditure by plaintiff of substantial funds in Georgia." The judge concluded by suggesting that, although the courts had rejected this interpretation, "it is still open for the legislature to address the issue and assure the maximum recourse to Georgia courts for Georgia citizens to resolve disputes with foreign persons or entities."

The many benefits of the expanding marketplace outweigh the occasional problems that may arise. But bear in mind when considering transactions with those located far away that (unless you get them to expressly consent) you may not be able to sue them in your local court—where it might be most convenient and inexpensive to do so—should things go wrong down the road.

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