

Shisler v Sanfer Sports Cars

9/25

California residents Bryan and Shelley Shisler saw a car they liked on the internet and bought it from the owner of the website, defendant Sanfer. The car was shipped from defendant's place of business in Florida, but on arrival, plaintiffs found it was not what they expected. They sued defendant for fraud and violation of California and Florida consumer protection statutes. The complaint specified the action would be governed by Florida substantive law.

Defendant moved to quash summons for **lack of personal jurisdiction** and the trial court granted the motion. Defendant then **specialy appeared**, and filed a motion seeking attorney fees under the California Consumers Legal Remedies Act. (Civil Code section 1750) Plaintiffs argued that since the trial court lacked jurisdiction over the defendant it had no jurisdiction to rule on defendant's attorney fees motion. The trial court disagreed, granting the motion and awarding \$34,492 in fees leading to this appeal.

Plaintiffs argued that once a motion to quash is granted, the moving party cannot recover fees and costs since the court no longer has jurisdiction to review the merits of the underlying action. The Sixth DCA noted it does not necessarily follow that the lack of power to rule on the merits of the lawsuit deprives the trial court of jurisdiction to rule upon a collateral motion for attorney fees.

The lack of subject matter jurisdiction is a jurisdictional defect of the fundamental type. A trial court lacks jurisdiction in the fundamental sense where there is an entire absence of power to hear or determine the case. (*Abelleira v District Court of Appeal* (1941) 17 Cal.2d 280) **Personal jurisdiction relates to the power to bind a particular party and depends on the party's presence, contacts, or other conduct within the forum state.** (*Donaldson v National Marine, Inc.* (2005) 35 Cal.4th 503)

The sole jurisdictional issue involved the power of the courts in California to make an order or enter a judgment that would be binding upon this Florida defendant. The Justices concluded **a defendant does not forfeit a collateral right to attorney fees by choosing to assert the right to challenge the court's in personam jurisdiction.**

Although the general rule is that once a party is dismissed from an action the court lacks jurisdiction to conduct any further proceedings as to him, courts have carved out a number of exceptions to this rule in order to give meaning and effect to a former party's statutory rights. **Even after a party is dismissed from the action, he may still have collateral statutory rights which the court must determine and enforce.** (*Frank Annino & Sons Construction, Inc. v McArthur Restaurants, Inc.* (1989) 215 Cal.App.3d 353)

There is no question the court had personal jurisdiction over plaintiffs. Since the order awarding attorney fees to defendant did not compel any act or impose any liability upon defendant, the order does not purport to exercise jurisdiction over defendant's person. Instead, it imposes liability on plaintiffs. Since the trial court had jurisdiction of the subject matter and jurisdiction over plaintiffs, there was no jurisdictional impediment to defendant specially appearing to call upon the trial court to enforce its statutory right to attorney fees.

Plaintiffs argue the Florida consumer protection statute (FDUPTA) does not allow a defendant to recover attorney fees unless the defendant obtains a judgment on the merits. The statute specifically refers to the "prevailing party." There is nothing in that law that expressly requires judgment on the merits. In addition, a defendant who prevails in a motion to dismiss based on a lack of standing is a "prevailing party" for purposes of the Florida statute.

In this case the motion to quash was tantamount to a final judgment as between plaintiffs and defendant. (*M.G.B. Homes, Inc. v Ameron Homes, Inc.* (11th Cir. 1994) 30 F.3d 113) Accordingly, defendant was the prevailing party under the Florida statute. The orders of the Superior Court are affirmed.