

QUESTION 1

Paul, a citizen of Mexico, was attending college in San Diego on a student visa. He drove to San Francisco to attend a music festival. While there, he bought and ate a bag of snacks from Valerie, a resident of San Francisco. The snacks had been manufactured in Germany by Meyer Corp., a German company with its sole place of business in Germany. The snacks contained a toxic substance and sickened Paul, who incurred medical expenses in the amount of \$50,000.

Paul filed an action pro se against Valerie and Meyer Corp. in the Superior Court of California in San Diego. In his complaint, he alleged that Valerie and Meyer Corp. should have known the snacks were contaminated and demanded \$50,000 in compensatory damages.

Paul drove to San Francisco where he personally handed Valerie a summons and copy of the complaint. He sent a summons and copy of the complaint to Meyer Corp. by ordinary mail to the company in Germany.

1. Did Paul validly serve the summons on:
 - a. Valerie? Discuss.
 - b. Meyer Corp.? Discuss.
2. Does the Superior Court of California in San Diego have personal jurisdiction over:
 - a. Valerie? Discuss.
 - b. Meyer Corp.? Discuss.
3. Does venue properly lie in the Superior Court of California in San Diego? Discuss.
4. Is Paul's action properly removable to federal court? Discuss.

1)

1. P Service on V

Applicable Law

The matter at hand is being litigated in California state court, so the applicable law is California Civil Procedure.

Service of Process Requirements

At issue is whether Paul (P) validly served Valerie (V) with the summons. CA law requires service of summons to be conducted by an individual over the age of 18 who is not a party to the action at the recipient's residence or primary place of business. The server must submit to the court a sworn affidavit describing the facts of the service's execution. For service of summons within the court county jurisdiction, the service must be conducted at least 30 days prior to the date of trial. For service of summons outside of the court's county jurisdiction, the service must be conducted at least 60 days prior to the trial date. For service of summons outside of CA, service must be conducted in compliance with international laws governing service of process. Service directly upon the recipient must be attempted before resorting to substitute service.

Waiver

Before the court reaches the issue of whether service of the summons on V was valid, V's potential to waive the requirements must be considered. A defendant can waive invalid service of summons by filing an answer without a prior/concurrent motion to quash or demurrer, or appearing in court. Here it is unclear whether V has or will raise invalid service as an affirmative defense, leaving open the possibility that V might waive that defense by her actions.

Process Server

The court can consider whether the individual conducting the service of summons meets the requirements set out by CA law. CA requires service to be

conducted by an individual who is at least 18 years of age and not a party to the action. It is unclear whether P is at least 18, but in any case P is the plaintiff in this matter, and cannot conduct service upon V by himself. If V raises this issue as an affirmative defense, or simply does not answer or appear to the matter, the court is likely to quash this service based solely on P's impermissible self-help service.

Proof of Service

P does not appear to have complied with the CA requirement of submitting a proof of service to the court including the sworn-to facts of this purported service, but service cannot be conducted by a litigating party regardless.

Out of County Service

Another factor in determining the validity of service will be the time constraints upon which service can validly be performed. For personal service outside of the jurisdiction of San Diego (SD), service must be conducted at least 60 days before the trial date. Here, V appears to be a citizen of San Francisco (SF), which is outside SD. In any case it is unclear when the service occurred, when the trial is scheduled, and the amount of time between those events.

P Service on M

Waiver

Before the court reaches the issue of whether service of the summons on Meyer Corp (M) was valid, M's potential to waive the requirements must be considered. A defendant can waive invalid service of summons by filing an answer without a prior/concurrent motion to quash or demurrer, or appearing in court. Here it is unclear whether M has or will raise invalid service as an affirmative defense, leaving open the possibility that M might waive that defense by its actions.

Process Server

The court can consider whether the individual conducting the service of summons meets the requirements set out by CA law. CA requires service to be conducted by an individual who is at least 18 years of age and not a party to the action. It is unclear whether P is at least 18, but in any case P is the plaintiff in this matter, and cannot conduct service upon M by himself. If M raises this issue as an affirmative defense, or simply does not answer or appear to the matter, the court is likely to quash this service based solely on P's impermissible self-help service.

International Service

The court will likely consider whether service upon M was in compliance with CA's requirements to serve in accordance with international regulations. M does not seem to have made any attempts to conduct service in compliance with international law.

Substituted Service

The court can consider whether a valid substituted service has been conducted before hearing the matter. The rule for substituted service on a business requires the non-party server to make three unsuccessful service attempts at the defendant's place of business to leave the summons and complaint with a reasonably competent person before leaving a copy at the place of business and sending by certified mail a copy to the business. In this case, P does not seem to have made any attempt to comply with international laws for service. In any case, mailing M on his own is still impermissible. The court is likely to find that service upon M was invalid.

Out of County Service

Another factor in determining the validity of service will be the time constraints upon which service can validly be performed. For personal service outside of the jurisdiction of SD, service must be conducted at least 60 days before the trial date. Here, M is a German company with its sole place of business in Germany.

It is unclear when the service occurred, when the trial is scheduled, and the amount of time between those events.

2. SD PX over V

The court may consider whether it has personal jurisdiction over V. CA courts have jurisdiction over matters where the cause of action arose in the county or where the defendant resides or does business in the county.

Cause of Action

The transaction between V and P occurred in SF, not SD. Even if P was ill or became ill in SD, the cause of action remains exclusively in SF.

V's Residence or Place of Business

V does not appear to reside or conduct any business in SD. Even if P claims that V engages in business with numerous out-of-county citizens and therefore can foreseeably expect litigation outside of the county, operating a store in SF will not give rise to SD's PX over V.

Waiver

Before the court reaches the issue of PX, V's potential to waive the requirements must be considered. A defendant can waive lack of PX by filing an answer without a prior/concurrent motion to quash or demurrer, or appearing in court. Here it is unclear whether V has or will raise lack of PX as an affirmative defense, leaving open the possibility that V might waive that defense by her actions.

Citizenship

V may attempt to raise P's alienage as a barrier to PX over P's claim. But a plaintiff's national or state citizenship are irrelevant to PX, and such claims will not succeed.

SD PX over M

The court may consider whether it has personal jurisdiction over M. CA courts have jurisdiction over matters where the cause of action arose in the county or where the defendant resides or does business in the county. Although M's snacks seem to have made their way to CA, M's sole place of business is in Germany. This seems to suggest that M is not inviting CA vendors or citizens to purchase its products.

Cause of Action

P may attempt to raise the issue that PX extended to M because M allegedly manufactured the toxic snacks in Germany, and P became ill in CA. This argument is invalid.

3. Venue

Subject Matter Jurisdiction

CA courts have jurisdiction over claims arising under state law. P has filed an action for medical expenses alleging V and M "should have known the snacks were contaminated," which seems to be a facially valid negligence claim.

Standing

In order for P to have standing to properly bring this action, he must demonstrate that he suffered an injury arising from a breach of law in SD jurisdiction. P's only apparent argument for SD as proper venue is his current SD residence, which is invalid. Venue for P's action against V properly lies in SF where the transaction purportedly giving rise to P's injury occurred.

4. Federal Jurisdiction

An action filed in CA is properly removed to federal court where federal court has PX and SMJ over the claim. The Federal Rules of Civil Procedure will determine whether federal court has jurisdiction.

Complete Diversity

The federal court has PX over cases where each of the defendants is in a different state jurisdiction than the plaintiff. The fact that P is in a different county than V will not be applicable here. P cannot show complete diversity.

Minimum Contacts

The minimum contacts test is used to establish whether a defendant's conduct created a foreseeable expectation of being litigated against in that jurisdiction. Neither defendant seems to have engaged in business or activity outside of their respective places of business. Accordingly, the minimum contacts test cannot be satisfied here.

Long-Arm Statute

SMJ

The federal court has jurisdiction to hear matters involving federal claims or amounting to damages in excess of \$75,000. P has not pleaded any claims under federal statutory law. If he wishes to file a negligence claim under federal common law, he must reasonably expect an outcome of damages for over \$75,000. In the case at hand he has only incurred medical expenses of \$50,000. The federal court has no SMJ over P's claims.

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