Sweeney v. D-Rock Tech., Inc.

Court of Appeal of California, First Appellate District, Division One

August 21, 2018, Opinion Filed

A149498

Reporter
2018 Cal. App. Unpub. LEXIS 5665 *; 2018 WL 3989230

CHARLES P. SWEENEY et al., Cross-complainants and Appellants, v. D-ROCK TECHNOLOGY, INC., et al., Cross-defendants and Respondents.

Prior History: [*1] Alameda County Super. Ct. No. RG-14-750838.

Judges: Banke, J.; Humes, P. J., Dondero, J. concurred.

Opinion by: Banke, J.

Opinion

Cross-complainants Charles P. Sweeney and his company Axxis Financial, LLC appeal from orders quashing service of summons for lack of personal jurisdiction as to cross-defendants D-Rock Technology Holdings, LLC and Wendall Brown. Sweeney and Axxis claim specific jurisdiction exists over D-Rock Holdings and Brown because their cross-claims arise from actions by D-Rock Holdings and Brown "purposefully directed at" California. We affirm as to D-Rock Holdings and reverse as to Brown.

BACKGROUND[1]

Sweeney is the managing member of Axxis Financial, LLC (Axxis). He resides in, and Axxis is located in, California.

Brown resides in Bermuda. He is the sole owner of D-Rock Technology Holdings, LLC (D-Rock Holdings) which, in turn, is the sole owner of D-Rock Technology, Inc. (D-Rock, Inc.). The two D-Rock entities are organized under the laws of Delaware.

[1] We summarize here only the general background facts. We discuss the allegations specifically pertaining to jurisdiction in the next section of this opinion.

Brown initiated a business venture with George Gonzalez, who resides in Virginia (and who also is a cross-defendant but not a party to this appeal), to exploit new technology for reliably delivering on-demand video via satellite. To this end, Brown and [*2] Gonzalez formed various business entities, including D-Rock Holdings, D-Rock, Inc., BluTether Technology, Inc., and others. Gonzalez is the CEO of both D-Rock entities and BluTether.

In 2013, the parties began a long-distance collaboration to further the satellite TV venture, communicating primarily by e-mail, phone calls, and text messages.

D-Rock, Inc. eventually entered into a "Contractor Agreement" with Sweeney and his company, whereby the latter would endeavor to procure a contract for D-Rock, Inc. to provide its video service to Indovision, an Indonesian pay-TV provider. Pursuant to the agreement, Sweeney became D-Rock, Inc.'s interim CFO and head of business development. He was eventually successful in procuring the desired contract between D-Rock, Inc. and Indovision.

The parties' relationship subsequently soured, and D-Rock, Inc. terminated the agreement, removing Sweeney from the company. D-Rock, Inc. also sued Sweeney and Axxis in California for breach of contract and related causes of action to collect alleged overpayments.

Sweeney and Axxis filed a cross-complaint alleging two causes of action—breach of contract and promissory fraud—against Brown, Gonzalez, and their D-Rock [*3] related business entities. D-Rock, Inc. and Gonzalez filed demurrers, each of which the court sustained with leave to amend. In the meantime, Sweeney and Axxis obtained an entry of default against Brown.

Brown moved for relief from the entry of default and to quash the cross-complaint for lack of personal jurisdiction. D-Rock Holdings, which also had not yet filed an answer, also moved to quash.

Concluding there was no basis for specific jurisdiction over Brown or D-Rock Holdings, the trial court granted the motions to quash, and dismissed the cross-complaint as to both. The court subsequently denied a motion to reconsider as to D-Rock Holdings.

DISCUSSION

Standard of Review

"When the evidence of jurisdictional facts is not in dispute, the issue whether the defendant is subject to personal jurisdiction is a legal question subject to de novo review." (*Burdick v. Superior Court* (2015) 233 Cal.App.4th 8, 17, 183 Cal. Rptr. 3d 1.)

"[I]f there is conflicting evidence presented by the parties, we are called upon to determine whether the trial court's decision is supported by substantial evidence [citations], and, in doing so, we resolve all conflicts in the relevant evidence 'against the appellant and in support of the order.'" (*Paneno v. Centres for Academic Programmes Abroad Ltd.* (2004) 118 Cal.App.4th 1447, 1454, 13 Cal. Rptr. 3d 759, quoting *Wolfe v. City of Alexandria* (1990) 217 Cal.App.3d 541, 546, 265 Cal. Rptr. 881.)

Personal Jurisdiction

California [*4] courts may exercise personal jurisdiction on any basis consistent with the federal and state constitutions. (Code Civ. Proc., § 410.10.) "The exercise of jurisdiction over a nonresident defendant comports with these Constitutions 'if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate "'traditional notions of fair play and substantial justice.'"'" (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268, 127 Cal. Rptr. 2d 329, 58 P.3d 2 (*Pavlovich*).) "'[T]he minimum contacts test asks 'whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and "fair" to require him to conduct his defense in that State.' [Citations.] The test 'is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present.'" (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1061, 29 Cal. Rptr. 3d 33, 112 P.3d 28 (*Snowney*).)

Personal jurisdiction may be either general or specific. (*Snowney, supra*, 35 Cal.4th at p. 1062.) Sweeney and Axxis make no claim that Brown and D-Rock Holdings are subject to general jurisdiction. Rather, they maintain both cross-defendants are subject to specific jurisdiction.

"When determining whether specific jurisdiction exists, courts consider the '"relationship among the defendant, the forum, and the litigation."' [Citations.] A court may [*5] exercise specific jurisdiction over a nonresident defendant only if: (1) 'the defendant has purposefully availed himself or herself of forum benefits' [citation]; (2) 'the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum"' [citations]; and (3) '"the assertion of personal jurisdiction would comport with 'fair play and substantial justice"' [citations]." (*Pavlovich, supra*, 29 Cal.4th at p. 269.) "'Each defendant's contacts with the forum State must be assessed individually.'" (*Anglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969, 978, 81 Cal. Rptr. 3d 535 (*Anglo Irish*), quoting *Calder v. Jones* (1984) 465 U.S. 783, 790, 104 S. Ct. 1482, 79 L. Ed. 2d 804.)

"'When a defendant moves to quash service of process' for lack of specific jurisdiction, 'the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction.'" (*Snowney, supra*, 35 Cal.4th at p. 1062.) "The plaintiff must provide affidavits and other authenticated documents in order to demonstrate *competent evidence* of jurisdictional facts. Allegations in an unverified complaint are insufficient to satisfy this burden of proof. Declarations cannot be mere vague assertions of ultimate facts, but must offer specific evidentiary facts permitting a court to form an independent conclusion on the issue of jurisdiction." (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110, 37 Cal. Rptr. 3d 258, italics added.)

"'If the plaintiff meets [its] initial burden, then the defendant [*6] has the burden of demonstrating "that the exercise of jurisdiction would be unreasonable."'" (*Snowney, supra*, 35 Cal.4th at p. 1062.)

Alleged Jurisdictional Facts

General Allegations in Second Amended Cross-complaint

Sweeney and Axxis name as cross-defendants Brown, Gonzalez, and the following "corporate cross-defendants": Cabow, Ltd., iTech, Ltd., D-Rock, Inc., D-Rock Holdings, D-Rock International, Ltd., D-Rock Holdings, Ltd., and BluTether, Ltd. They allege Brown, Gonzalez, and the corporate cross-defendants are "jointly and severally liable . . . for the breaches of contract and fraud committed by Brown and Gonzalez against Sweeney and Axxis." The corporate cross-defendants allegedly disregard corporate formalities and are "mere shells used by Gonzalez and Brown" to manipulate assets and avoid personal liability.

Sweeney and Axxis entered the picture in early 2013, when Sweeney received an e-mail from a former colleague, who worked with Gonzalez, telling him about the overall D-Rock enterprise and asking whether he would help it "attract investors and introduce potential [direct-to-home television] operators in Asia." "Sweeney then had phone conversations with Gonzalez," during which Gonzalez "asked Sweeney to become [*7] a co-venturer with him by making introductions to [direct-to-home television] operators in Asia and trying to deliver a contract with one of them." After Sweeney met with Gonzalez in Virginia, he sent Gonzalez an e-mail on March 28, 2013, proposing his compensation terms, including a monthly "interim consulting wage," expense reimbursement, and "commencement of negotiation of the terms of Sweeney's full-time position as CFO/Director of Business Development, including equity participation and an employment contract." Gonzalez responded by e-mail with a counter-proposal reducing the monthly consulting wage and requesting that "Sweeney's full-time position . . . be guaranteed only once '[direct-to-home video operator] Indovision was secured at least on a non-binding [memorandum of understanding (MOU)] basis or some expressed interest to establish a business relationship."

Sweeney and Axxis allege this late-March 2013 exchange of e-mails with Gonzalez resulted in an agreement as to the following terms of Sweeney's compensation: (1) $20,000 per month interim consulting wage; (2) expense reimbursement; and (3) "[u]pon the signing of a memorandum of understanding ('MOU') by Indovision, guarantee [*8] to Sweeney of a permanent full-time position as CFO/Director of Business Development, including equity participation and an employment contract[.]"

In April 2013, Sweeney and Gonzalez traveled to Indonesia to meet with Indovision executives. The trip resulted in a signed MOU between D-Rock, Inc. and Indovision estimated to generate at least $50 million in profits to D-Rock, Inc. over its first five years.

Three months later, in July, "Sweeney and Gonzalez executed a Contractor Agreement . . . that reiterated the terms to which Sweeney and Gonzalez had agreed" in late March. The Agreement specified it was "by and between" D-Rock, Inc. and "Charles P. Sweeney, Jr. Managing Director at Axxis Financial Group[.]" Sweeney and Axxis were to provide services to "D-ROCK and its affiliated companies. . . ." (Boldface & italics omitted.) The parties were also obligated to "negotiate in good faith a permanent position for Charles Sweeney within D-ROCK." Any notices from Sweeney and Axxis to D-Rock, Inc. were to be sent to Gonzalez's attention in Virginia. The only signatories were Sweeney and Gonzalez, the latter signing on behalf of D-Rock, Inc.

Sweeney and Axxis allege that, "[d]espite the fact that Gonzalez [*9] repeatedly promised Sweeney a permanent position at D-Rock as his primary compensation . . . , Brown and Gonzalez at the same time were repeatedly stating to others at D-Rock . . . that they had no intention whatsoever of giving Sweeney a permanent position." Instead, Brown and Gonzalez allegedly planned to "'get rid of'" Sweeney upon verifying that doing so would not negatively impact their relationship with Indovision. Unaware of this, Sweeney sought to move forward on the Indovision MOU.

In July, after he had signed the contractor agreement, Sweeney flew to Bermuda to meet with Brown, who allegedly told Sweeney "that he should trust him."

In December, Gonzalez sent Sweeney an e-mail reiterating, "[Brown] and I have committed to compensate you for the introduction to Indovision which was called out in your contract[.]" (Boldface & italics omitted.) However, less than one week later, Gonzalez sent Sweeney an e-mail "purporting to 'terminate' his contractor agreement." One week after that, "Gonzalez pretended as if he was re-embracing Sweeney and the terms of

the July 2013 Contractor Agreement[.]" To that end, "Gonzalez instructed Sweeney to contact Brown to negotiate his compensation [*10] package for [the] permanent position" with D-Rock, Inc.

On December 21, 2013, Sweeney sent Brown an e-mail proposing compensation terms, including cash, stock options, and medical benefits. The proposed five-year agreement included termination provisions requiring D-Rock, Inc. to pay the cash value of any remaining payments, continue to pay Sweeney's medical benefits for the balance of the five-year period, and to repurchase the stock options.

Sweeney, Brown, and Gonzalez held a conference call on January 10, 2014, to discuss Sweeney's proposal. Sweeney and Axxis claim the parties agreed to Sweeney's proposal in all respects, save the amount of stock options Sweeney would receive. Two weeks later, Sweeney sent Brown an e-mail memorializing the parties' agreement to certain terms during the conference call and revising his request for stock-option compensation. The e-mail also stated the following as to the termination provisions: (1) D-Rock, Inc. would immediately pay out the cash value of future payments; (2) D-Rock, Inc. would continue to pay medical benefits until end of the 60-month term; and (3) D-Rock, Inc. would buy out the stock options at the current market value.

Five months [*11] later, on June 12, "Gonzalez sent an e[-]mail informing Sweeney that he was terminated as of June 30, 2014."

Allegations as to Specific Causes of Action

Breach of Contract

Sweeney and Axxis's breach of contract claim is asserted against all cross-defendants.

They allege that the March 2013, July 2013, and January 2014 discussions and agreements, collectively, amounted to a promise of a "'permanent position' for Sweeney 'within' D-Rock and its affiliates in return for delivering [a] MOU with Indovision." They further allege that "[e]ach of the three agreements detailed or emphasized different aspects of this basic agreement" and that they "can be viewed as different stages of a single overarching contract, or as three separate contracts that each simultaneously serve as parole [*sic*] evidence for the other two contracts."

Sweeney and Axxis claim "Cross-defendants owe Sweeney the cash value of all remaining future payments under his contract as of June 30, 2014" and "an amount equal to the cash that he would have received on June 30, 2014 in a buy-out of his stock options (equivalent to 2-5% of D-Rock) based on their value on that date."

Specifically as to Brown, Sweeney and Axxis allege "Gonzalez [*12] confirmed this interpretation of the Contractor Agreement in his e[-]mail of December 6, 2013 [on which Brown was copied], in which he wrote: '[Brown] and I have committed to compensate you for the introduction to Indovision which was called out in your contract[.]" In addition, Sweeney and Axxis allege Brown participated in the January 10, 2014 conference call in which Sweeney, Brown and Gonzalez agreed upon certain terms of the five-year proposal. Two weeks later, Sweeney "sent Brown an e[-]mail" memorializing these terms. The only term unresolved at that time was Sweeney's stock-option compensation, which Sweeney and Axxis allege Brown wanted to limit to the "equivalent to 2% of D-Rock with a strike [*sic*] price equivalent to the valuation at the next round of financing[.]"

Promissory Fraud

Sweeney and Axxis's promissory fraud claim is asserted against "Cross-defendants Brown and Gonzalez, as individuals and as the control persons and/or managers of the entity cross-defendants."

They allege Brown and Gonzalez "promised Sweeney a permanent position, including a long-term employment contract and stock options," and "pretended to 'negotiate,'" but "never intended to give him a permanent [*13] position." Specifically as to Brown, Sweeney and Axxis allege he told a third party, "'He [Gonzalez] is gonna go to California and ask [the CEO of Indovision] directly, "Are you with me or are you with Charlie [Sweeney]?"'" Sweeney and Axxis allege "Brown and Gonzalez's cynical manipulation and exploitation of Sweeney was deeply malicious, oppressive and fraudulent."

Motions to Quash

D-Rock Holdings

D-Rock Holdings moved to quash on the ground the evidence, which included the fact it was not a party to the contractor agreement, did not support even specific jurisdiction.

In support, D-Rock Holdings submitted declarations by Gonzalez and John Brown (counsel for D-Rock Holdings, D-Rock, Inc., Gonzalez, and BluTether). Counsel Brown declared that counsel for Sweeney and Axxis had informed him that his clients had sued all of the corporate cross-defendants "because his clients did not know *which* entity entered into the employment agreement" and anticipated the non-liable parties would be dismissed in the course of litigation. (Boldface omitted.)

Gonzalez declared D-Rock Holdings is organized under the laws of Delaware, with its headquarters, principal place of business, and all of its employees [*14] in Virginia. Gonzalez oversees all operations for D-Rock Holdings, including making all managerial decisions and signing all legally binding contracts. Gonzalez also declared D-Rock Holdings has no employees, officers, directors, agents, addresses, telephone numbers, property, bank accounts, offices or any place of business in California. Nor has D-Rock Holdings conducted any business activities, entered into any contracts, paid taxes, or conducted any business in California. Finally, Gonzalez averred: "The only relation [D-Rock Holdings] has to the claims in the instant lawsuit is that I am its C.E.O[.], and I am also the C.E.O. of D-Rock Technology, Inc., the plaintiff and another cross-defendant. Sweeney has never had any involvement at all with [D-Rock Holdings]. The entity was created as a tax efficient structure to own companies and [intellectual property] in both USA and Bermuda entities similar to the structure Gonzalez previous[ly] utilized with past companies."

Sweeney and Axxis did not take issue with any of the facts stated by Gonzalez, but claimed Gonzalez's contacts with California were "to further the common interests of all eight cross-defendants," including D-Rock Holdings. They [*15] asserted that because he was an employee of D-Rock Holdings, all Gonzalez's activities were attributable to it for purposes of personal jurisdiction. They also claimed personal jurisdiction over D-Rock Holdings would be fair given that D-Rock, Inc. was suing Sweeney and Axxis in California and both companies were represented by the same California attorney. In his opposing declaration, Sweeney echoed the allegations of his cross-complaint. He asserted he had frequent telephone and e-mail contact with Gonzalez, Brown, and others "on behalf of themselves and the [corporate cross-defendants]" between March

2013 and June 2014, and during the process, Gonzalez's conduct and statements indicated there was "no distinction" between the corporate cross-defendants.

In reply, D-Rock Holdings maintained Sweeney and Axxis were improperly imputing the "contacts of plaintiff [D-Rock, Inc.] and cross-defendant George Gonzalez" to it. Sweeney's evidence did not show Gonzalez ever acted on behalf of D-Rock Holdings. Thus, while D-Rock Holdings acknowledged the "dispute [between D-Rock, Inc. and Sweeney] is substantially connected to California," it is not connected to any activities by D-Rock Holdings. [*16]

After hearing argument, the trial court granted D-Rock Holdings' motion to quash. The court explained Sweeney and Axxis had "not submitted any evidence establishing a basis for subjecting [D-Rock Holdings] to jurisdiction in California." Sweeney and Axxis moved for reconsideration, again claiming a lack of any distinction between D-Rock Holdings and D-Rock, Inc., highlighting D-Rock Holdings' ownership of D-Rock, Inc., and Gonzalez's role as CEO of both entities. The court denied the motion.

Brown

Brown also moved to quash on the ground the cross-complaint did not allege conduct by him, individually, that was directed at California.[2] Rather, "[a]ll discussions and negotiations he has ever had with cross-complainants have been on behalf of [D-Rock, Inc.]" Further, he claimed to have made none of the alleged misrepresentations upon which the contract and fraud claims were based. Any phone calls he made to Sweeney in California, concerned Sweeney's employment performance and could not have caused the requisite harm. Brown also claimed "Gonzalez, not [he], handled negotiations with Sweeney (except the options discussion) and executed the relevant contract on behalf of [D-Rock, Inc.]" Brown further [*17] maintained Sweeney and Axxis had presented no evidentiary basis for suing him as an alter ego of D-Rock, Inc.

In support, Brown submitted his own declaration, plus declarations by Gonzalez and counsel John Brown.[3] Brown declared that all discussions and negotiations he had with Sweeney and Axxis were on behalf of D-Rock, Inc., not himself. Brown did not deny making specified statements about Sweeney's status with D-Rock, Inc. (e.g., telling D-Rock, Inc. employee Mark Gilroy that "'they had no intention whatsoever of giving Sweeney a permanent position'"), but declared he did not make them to anyone in California: "I never made any contacts with any person in California in which I made any statements about Sweeney." Brown reiterated that Gonzalez executed the July 2013 contractor agreement with Sweeney and Axxis, not him, and it was Gonzalez who told Sweeney in July and December 2013 that Sweeney was owed additional compensation.

Brown acknowledged calling Sweeney "perhaps five-six times over the period that he was working for [D-Rock, Inc.]," but that "[m]ost calls regarded [Sweeney's] performance of services for [D-Rock, Inc.]" He denied making any proposals or promises to Sweeney over the [*18] phone, though he recalled having disagreements with Sweeney about Sweeney's stock-option compensation: "As Sweeney's own pleading states,

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[2] Brown moved for relief from entry of default on separate grounds. Sweeney and Axxis do not appeal that aspect of the trial court's ruling.

[3] Sweeney claims that three paragraphs of Gonzalez's declaration were inadmissible hearsay (purporting to testify to what Brown told him about Brown's compensation discussions with Sweeney). However, the record does not reflect that Sweeney made any formal objection to these paragraphs on that, or any other, ground. Nor does the record reflect any evidentiary ruling by the trial court. Accordingly, any such objections were forfeited. (See Evid. Code, § 353, subd. (a); *Faigin v. Signature Group Holdings, Inc.* (2012) 211 Cal.App.4th 726, 749, 150 Cal. Rptr. 3d 123.)

I did not make any promises or commitments to him regarding incentive options, because we disagreed as to how much he should get. Otherwise, Gonzalez handled salary discussions with Sweeney." Brown denied Sweeney and Axxis's alter-ego allegations and explained D-Rock, Inc. could not provide its incorporation documents due to a billing dispute with the law firm that had prepared them.

Gonzalez declared he had negotiated all agreements on behalf of D-Rock, Inc., not Brown. Gonzalez stated "discussions of compensation" between Brown and Sweeney were limited to those regarding stock options, but no agreement was reached or promises made. Gonzalez was unaware of any promise by Brown to Sweeney of a permanent position with D-Rock, Inc. or any other entity. Gonzalez directed all of D-Rock, Inc.'s payments and negotiated its contracts.

In opposition, Sweeney and Axxis argued their allegations targeting Brown in connection with their promissory fraud claim were sufficient to establish specific jurisdiction over him. Sweeney also disputed Brown's claim that [*19] any agreements he had negotiated were solely for the benefit of D-Rock, Inc., and not Brown, himself, arguing that "Brown is the sole director and 100% beneficial owner of [D-Rock, Inc.]"

In his declaration, Sweeney described the same e-mail exchanges with Brown and other communications evidencing Brown's active role in D-Rock, Inc. Sweeney also pointed to Brown's act of wiring the $20,000 to him in April 2013, their subsequent compensation negotiations, the January 2014 e-mail from Brown to set up a conference call to discuss Sweeney's compensation, and Brown's frequent communication with him using text messaging. Sweeney attached documents Brown had provided to him, while Sweeney was in Bermuda, to address Sweeney's doubts about the legitimacy of D-Rock, Inc. "and the lack of due diligence materials[.]" Sweeney also noted that Brown was copied on e-mail exchanges with Gonzalez discussing the "threat to claw back" Sweeney's salary, the initiation of this lawsuit, and the threat to terminate Sweeney's health insurance. Sweeney declared that Brown and Gonzalez assumed the roles of "'good cop'" and "'bad cop,'" respectively, during these discussions, with Brown stringing Sweeney along [*20] with "additional false assurances and promises." Sweeney also declared Brown had "countless other contacts with the State of California": "Mr. Brown's entire D-Rock business depended, among other things, on securing licensing agreements with various film studios in California. He even met with [the CEO of Indovision] in Santa Monica, California in December 2013. Mr. Brown's general counsel for D-Rock, Peter Ruderman, was also . . . a Bay Area resident."

In reply, Brown disputed the assertion that Sweeney and Axxis's allegations of promissory fraud were sufficient to establish jurisdiction, noting the unverified complaint had no evidentiary value in that context. In any event, Brown also claimed his declaration successfully rebutted every jurisdictional allegation in the cross-complaint. The cross-complaint, Brown argued, showed he was not a party to any iteration of the contract with Sweeney and Axxis. Rather, the contracts were between D-Rock, Inc. and Sweeney, meaning that Brown could be liable on the contract claims only if Sweeney and Axxis had shown that he is an alter ego of D-Rock Inc., which Sweeney and Axxis had not shown. Brown also claimed Sweeney and Axxis had presented [*21] no evidence he engaged in any fraudulent conduct; rather, the complaint alleged only "that Gonzalez made all the misrepresentations." Brown noted the complaint alleged no misrepresentation by him in association with the $20,000 wire transfer to Sweeney, the communications to Sweeney he initiated, the January 10, 2014 conference call, or any subsequent communications to Sweeney from Brown. Brown also denied orally promising a permanent position to Sweeney.

Even if Sweeney and Axxis had shown he made fraudulent statements, Brown continued, they had not shown that "he directed the statements at Sweeney in California, as opposed to while they were meeting in Bermuda." Finally, given Brown's status as a Bermuda resident and the complaint's failure "to specify

wrongful activity directed by [Brown] towards California," Brown claimed it did not comport with "'fair play and substantial justice'" that he be sued in California. In his supporting declaration, Brown denied "any contact with any California film studios about licensing agreements," insisting that Gonzalez had made such contacts on behalf of D-Rock, Inc., and denied promising Sweeney a permanent position with D-Rock, Inc., explaining [*22] that, "[i]f anyone said that to Sweeney, it would have been Gonzalez." Brown also denied traveling to California to visit Sweeney, explaining that Sweeney "came to Bermuda to visit me . . . one time."

After hearing, the court granted Brown's motion to quash. The court rejected Sweeney and Axxis's reliance on the sufficiency of the "'allegations by themselves,'" explaining they had not satisfied their "burden to produce evidence demonstrating sufficient minimum contacts between Brown and California."

The court stated the evidence "indicate[d] that Brown's conduct directed toward California (excluding e[-]mails on which he was merely a recipient) [is] limited to (1) making five or six phone calls to Sweeney in California, including the January 10, 2014 conference call; (2) sending an e[-]mail to Sweeney and Gonzalez on January 9, 2014 suggesting that they have [a] conference call; and (3) arranging for $20,000 to be wired to Sweeney in California on March 29, 2013."

The court also found Sweeney had not alleged he was harmed by the wire transfer or established that Brown made any statements or misrepresentations during the January 10, 2014 conference call. As to Sweeney and Axxis's allegations that Brown [*23] made oral promises of a permanent position, the court found them devoid of information "about where and when these vague promises took place[.]" The court also concluded Sweeney had presented no evidence to contradict Brown's and Gonzalez's denials that Brown was an alter ego of D-Rock, Inc. and that, absent that showing, Sweeney had failed "to make the required showing that his claims bear a substantial connection to Brown's contacts with California."

The court therefore concluded Sweeney had "not demonstrated that his causes of action bear a 'substantial connection' to those forum contacts by Brown" and dismissed Brown from the action.

Analysis

D-Rock Holdings

The trial court concluded Sweeney and Axxis failed to demonstrate that D-Rock Holdings purposefully directed its activities towards California, which is the first prong of the specific jurisdiction analysis.

"'The purposeful availment inquiry . . . focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on' [*24] his contacts with the forum." (*Pavlovich, supra*, 29 Cal.4th at p. 269.) Thus, the "'"purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts [citations], or of the "unilateral activity of another party or a third person."'" (*Ibid.*)

Sweeney and Axxis claim they made a sufficient showing of purposeful availment by D-Rock Holdings, characterizing the company as a "beneficiary" of the contractor agreement. That agreement, as we have discussed above, called for Sweeney to serve as D-Rock, Inc.'s interim CFO and head of business

development. His primary responsibility was to help secure capital to finance that company's contract with Indovision, and in return, he was to receive $20,000 per month, plus reasonable travel expenses and stock options.

Sweeney and Axxis point out that under the agreement, they were to provide specified services "to D-Rock and its affiliated companies (the 'Affiliated Companies')." They claim D-Rock Holdings is "by definition" an "affiliated company" because it is owns and "control[s]" D-Rock, Inc. This, they say, makes D-Rock Holdings a "beneficiary" of the agreement, and an agreement with substantial [*25] connections to California can be sufficient to establish specific jurisdiction.

Sweeney and Axxis have reached too far to hale D-Rock Holdings into a California courtroom in this case. D-Rock Holdings is organized under the laws of Delaware, and has its principal place of business in Virginia. All of D-Rock Holdings' employees, including Gonzalez, are located in Virginia. The company has no California employees, agents, officers, directors, mailing address, property offices, marketing activities, lawsuits, leases, litigation, or any other California contacts.

While a contract with an out-of-state party may give rise to specific jurisdiction, such a contract, alone, does not automatically establish sufficient minimum contacts to support specific jurisdiction. (See *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 478, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (*Burger King*).) Rather, courts must consider the parties' prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing to determine whether a foreign defendant purposefully established minimum contacts within the forum. (*Id.* at p. 479.)

Here, there is no evidence of any contract with D-Rock Holdings at all. The contractor agreement expressly states it was "by and [*26] between" D-Rock, Inc. and Sweeney and Axxis. Sweeney and his company presented no evidence it was D-Rock Holdings that actually engaged them, or that they ever provided services to D-Rock Holdings. The agreement does not identify D-Rock Holdings as a signatory, beneficiary, or affiliated company. While Sweeney and Axxis point to the agreement's reference to "affiliated companies," this single, undefined phrase, alone, is not sufficient to show either a contract with or purposeful availment of California by D-Rock Holdings.

D-Rock Holdings' ownership of D-Rock, Inc. does not alter our conclusion. Indeed, "[o]wnership or control of a subsidiary by a parent corporation, without more, is insufficient to subject the parent to jurisdiction in the state where the subsidiary does business." (*F. Hoffman-La Roche, LTD. v. Superior Court* (2005) 130 Cal.App.4th 782, 802, 30 Cal. Rptr. 3d 407 (*F. Hoffman-La Roche*).) "Thus, for purposes of acquiring jurisdiction over the foreign parent company based on agency, that company must exercise a degree of control over the local entity that is more pervasive than" the common characteristics of control, which include "'interlocking directors and officers, consolidated reporting, and shared professional services,'" as well as a financial connection and a "'certain [*27] degree of direction and management exercised by the'" parent over the subsidiary. (*F. Hoffman-La Roche*, at p. 797.) Where the evidence establishes nothing more than that the business of the foreign holding company is mere passive investment, the exercise of jurisdiction based on a theory of agency is improper. (*Id.* at p. 802.)

D-Rock Holdings presented unrebutted evidence it was "created as a tax efficient structure to own companies and [intellectual property]"—in other words, D-Rock Holdings was formed to be a typical holding company. Sweeney and Axxis presented no evidence D-Rock Holdings is anything else.

That Gonzalez served as CEO of both D-Rock Holdings and D-Rock, Inc. reflects the "'common characteristics'" of control of a parent company over a subsidiary. (*F. Hoffman-La Roche, supra*, 130 Cal.App.4th at p. 797.) It does not establish the "pervasive" control of the subsidiary by the holding company required for specific jurisdiction. Likewise, that Gonzalez's activities as CEO of D-Rock Holdings would be attributable to the holding company for purposes of personal jurisdiction is immaterial in the absence of any evidence that Gonzalez, *as an officer of D-Rock Holdings*, purposefully engaged in activities directed at California on its behalf. (See *Anglo Irish, supra*, 165 Cal.App.4th at p. 983 ["The proper jurisdictional [*28] question is not whether the defendant can be liable for the acts of another person or entity under state substantive law, but whether the defendant has purposefully directed its activities at the forum state by causing a separate person or entity to engage in forum contacts. That constitutional question does not turn on the specific state law requirements of alter ego or agency[.]"].)

Since Sweeney and Axxis failed to make a sufficient showing of purposeful availment by D-Rock Holdings, we need not, and do not, consider any other issue bearing on the propriety of subjecting D-Rock Holdings to the court's jurisdiction. (See *Schwarzenegger v. Fred Martin Motor Co.* (9th Cir. 2004) 374 F.3d 797, 802 [if plaintiff fails to satisfy either of the first two prongs of minimum contacts test, personal jurisdiction is not established in the forum state].) The trial court properly granted D-Rock Holdings' motion to quash.

Brown

In his respondent's brief, Brown addresses only the second and third prongs of the minimum contacts analysis. We therefore do not address purposeful availment as to Brown—including Sweeney and Axxis's theory that their tort allegations alone are sufficient to satisfy this prong. Rather, we proceed to the second and third prongs.

Substantial Connection *[*29]*

We start with whether Sweeney and Axxis's cross-claims are substantially connected to Brown's California contacts. The trial court concluded Sweeney and Axxis failed to clear this hurdle.[4]

"In order for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.'" (*Bristol-Myers Squibb Co. v. Superior Court of California* (2017) ___ U.S. ___, ___, 137 S.Ct. 1773, 1781, 198 L. Ed. 2d 395, quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796.) "What is needed . . . is a connection between the forum and the specific claims at issue." (*Bristol-Myers*, at p. 1781.) Thus, "[f]or a State to exercise jurisdiction consistent with due process, the defendant's *suit-related conduct* must create a substantial connection with the forum State." (*Walden v. Fiore* (2014) 571 U.S. 277, 284, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (*Walden*), italics added; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 452, 58 Cal. Rptr. 2d 899, 926 P.2d 1085 (*Vons*).)

However, "[t]he forum contacts need not be the proximate cause or 'but for' cause of the alleged injuries." (*Anglo Irish, supra*, 165 Cal.App.4th at p. 979.) "The forum contacts also need not be 'substantively related' to

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[4] In reviewing this issue, we exercise independent review and do not, as Brown asserts, apply the abuse-of-discretion standard. (*Burdick v. Superior Court, supra*, 233 Cal.App.4th at p. 17.)

the cause of action, meaning those contacts need not establish or support an element of the cause of action." (*Ibid.*) "'A claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Rather, as [*30] long as the claim bears a *substantial connection* to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate.'" (*Ibid.*, italics added, quoting *Vons, supra*, 14 Cal.4th at p. 452.) "Accordingly, in evaluating the quality and nature of the defendant's forum contacts, we consider not only the conduct directly affecting the plaintiff, but also the broader course of conduct of which it is a part." (*Anglo Irish*, at p. 979.)

Sweeney and Axxis allege claims for both breach of contract and promissory fraud against Brown. With respect to the contract claim, they assert Brown breached a promise to provide "a 'permanent position' for Sweeney 'within' D-Rock and its affiliates in return for delivering [the contract] with Indovision." Sweeney and Axxis's promissory fraud claim relies upon the same promise, which they allege Brown made but never intended to keep.

In support of jurisdiction, Sweeney and Axxis point to Brown's long-distance contacts with them between March 2013 and January 2014. In considering these contacts, the trial court found "Brown's conduct directed toward California (excluding e[-]mails on which he was merely a recipient) [is] limited to (1) making five or six phone calls to Sweeney in California, including [*31] the January 10, 2014 conference call; (2) sending an e[-]mail to Sweeney and Gonzalez on January 9, 2014 suggesting that they have [a] conference call; and (3) arranging for $20,000 to be wired to Sweeney in California on March 29, 2013."

None of the parties disputes these findings by the trial court. Nor, as we have discussed above, does Brown, in his respondent's brief, claim these contacts are insufficient to establish purposeful availment. Rather, we consider these facts in connection with the second and third prongs of the analysis.

We agree with Sweeney and Axxis that the trial court took too narrow a view of the substantial connection requirement. The court noted Sweeney and Axxis did not contend they were injured by any specific statements Brown made to Sweeney during any of their direct communications or by the $20,000 wire transfer. The court's reasoning thus implies it required Sweeney and Axxis to establish a *direct connection* between Brown's California contacts and their claims. But that is not what is required. Rather, the court should have considered the broader course of Brown's conduct (i.e., his collective conduct) and whether Sweeney and Axxis's claims bear a substantial [*32] connection to that conduct.

Brown acknowledges having negotiated at least a portion of the contractor agreement with Sweeney. He does not deny that he "discuss[ed] incentive options on the phone with Sweeney," or that he participated in the January 10, 2014 conference call during which Sweeney's compensation was discussed, or that Sweeney thereafter sent an e-mail addressed to him memorializing the substance of that call. Indeed, Brown avers "[a]ll discussions and negotiations I have ever had with cross-complainants have been on behalf of D-Rock." Gonzalez's declaration also confirms Brown and Sweeney discussed Sweeney's stock-option compensation under the D-Rock, Inc. contract.

These undisputed facts belie Brown's assertion elsewhere that he "never negotiated an agreement on behalf of [D-Rock, Inc.]" and Gonzalez's assertion that he, not Brown, "negotiated all agreements on behalf of D-Rock [Inc.]" Instead, the evidence shows that Brown actively participated in the contract negotiations with Sweeney and Axxis. His role was not that of just a passive investor (through his sole ownership of D-Rock Holdings).

Rather, he appears to have held himself out as a representative of D-Rock, Inc. This is enough [*33] of a connection with Sweeney and Axxis's claims to support specific jurisdiction over Brown individually.[5]

Brown's assertions to the contrary are misdirected. His claim that "the trial court's determination that [he] lacked minimum contacts based on the absence of a connection between his contacts and the claims supports the conclusion that there was no 'substantial connection' between the contacts and [the] claims" is circular. Indeed, it fails to distinguish between the first prong of the jurisdictional inquiry (purposeful availment) and the second (substantial connection).

His citation to *Roman v. Liberty* is also unavailing. In *Roman v. Liberty University Inc.* (2008) 162 Cal.App.4th 670, 681, 75 Cal. Rptr. 3d 828, the Court of Appeal agreed with the trial court that a university's contacts with California were insufficient to establish personal jurisdiction. In that case, a student who had been recruited to play football at Liberty University in Virginia was allegedly assaulted by his roommate before falling and suffering brain injuries. (*Id.* at p. 674.) The plaintiff contended the university had purposely availed itself of the privilege of conducting business in California. (*Id.* at p. 680.) The appellate court rejected that contention, stating: "[T]he only conduct plaintiff has established [*34] was that Liberty's recruiting coordinator visited plaintiff in California to recruit him to play football for Liberty, and thereafter, Liberty mailed plaintiff a scholarship agreement and amended scholarship agreement that plaintiff executed in California. That conduct does not establish 'purposeful availment.'" (*Ibid.*) In examining the second prong of the test for specific jurisdiction—the substantial connection requirement—the *Roman* court concluded the controversy was "unrelated to and does not arise from Liberty's contacts with California. Plaintiff's claims are for personal injuries based on alleged activities that took place entirely within Virginia." (*Ibid.*) Here, in contrast, the controversy between the parties arises from the very negotiations in which Brown participated.

Fair Play and Substantial Justice

The third prong of the jurisdictional analysis is whether """the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'"" (*Pavlovich, supra*, 29 Cal.4th at p. 269.) Brown has the burden of demonstrating that the exercise of jurisdiction would be unreasonable. (*Snowney, supra*, 35 Cal.4th at p. 1062.)

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[5] We recognize the mere fact that California has jurisdiction over a nonresident corporation, as it does over D-Rock, Inc., does not mean that the state also has jurisdiction over the corporation's nonresident officers and directors. (*Calder, supra*, 465 U.S. at p. 790; see *Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 904, 73 Cal. Rptr. 2d 105.) Although Brown was neither, but rather, was the sole owner of the holding company, the law pertaining to nonresident officers and directors reflects that individuals involved in corporate transactions can, under certain situations, be subject to the state's jurisdiction. Personal jurisdiction can exist when an officer or director personally directed or actively participated in the allegedly tortious conduct, and that conduct must have been purposefully directed toward the forum state. (*Seagate Technology v. A.J. Kogyo Co.* (1990) 219 Cal.App.3d 696, 701-704, 268 Cal. Rptr. 586; *Taylor—Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 112-114, 265 Cal. Rptr. 672.) Simply ratifying an action taken by the corporation or by another corporate officer or director is not enough. (*Seagate*, at pp. 704-705.) The act must be one for which the officer would be personally liable and the act must in fact create contact between the officer and the forum state. (*Id.* at pp. 703-704.) If both these requirements are met, the act may be considered in determining whether (1) the defendant "'has engaged in activity of the requisite quality and nature in the forum state and that the cause of action is sufficiently connected with this activity'" *and* (2) whether "'a balancing of the inconvenience to the defendant in having to defend itself in the forum state against both the interest of the plaintiff in suing locally and the interrelated interest of the state in assuming jurisdiction'" justifies subjecting the foreign resident to the process of the forum's courts. (*Id.* at p. 704, quoting *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, 898-899, 80 Cal. Rptr. 113, 458 P.2d 57.) The evidence here is that Brown personally participated in some of the negotiations on behalf of D-Rock, Inc., and, as we have discussed, he has not claimed on appeal that his contacts with California were insufficient to establish purposeful availment.

This is the prong to which Brown primarily devotes his attention. As we understand it, he contends the merits of the [*35] cross-claims should be considered in connection with this prong, and if it is clear the claims lack merit, it would not be "fair" or "substantially just" to conclude he is subject to the court's jurisdiction. He asserts "[w]hen in personam jurisdiction depends on the validity of the substantive claim against the foreign defendant and that defendant's showing on the motion to quash negatives the existence of that claim and plaintiff does not even support it by a prima facie showing, he cannot demand that we judge the question of jurisdiction in the light of a claim he apparently does not have." He derives this proposition from a footnote in *Regents of University of New Mexico v. Superior Court* (1975) 52 Cal.App.3d 964, 970, footnote 7, 125 Cal. Rptr. 413 (*Regents*), cited, in turn, in *J.M. Sahlein Music Co. v. Nippon Gakki Co., Ltd.* (1987) 197 Cal.App.3d 539, 545, 243 Cal. Rptr. 4 (*Sahlein*).

Brown reads too much into the *Regents* footnote. In *Regents*, the Regents of the University of New Mexico moved to quash service of process, objecting to personal jurisdiction in California. (*Regents, supra*, 52 Cal.App.3d at p. 966.) The underlying lawsuit arose from a dispute between a cinematographer, Terry Sanders, and Tamarind Lithography Workshop, Inc., a California nonprofit corporation, involving credits to a documentary film. (*Ibid.*) There was no evidence the University was directly, or even indirectly, involved in this dispute. (*Ibid.*) Sanders [*36] posited two jurisdictional theories, one of which was based on a claim the Workshop had either merged with or consolidated into the University and, thus, had transferred all of its assets to the University, including "'all right, title and interest'" to the disputed documentary film. (*Id.* at pp. 966, 969.) This alleged transfer of assets, according to Sanders, meant the University had assumed all of the Workshop's liabilities, including liability for his claim. (*Id.* at p. 969.)

In assessing this "merger" theory of jurisdiction, the Court of Appeal examined the jurisdictional evidence that had been submitted in connection with the motion to quash. That evidence showed no merger had, in fact, occurred. And while the Workshop had transferred some of its assets to the University, these did not include the film in dispute. (*Regents, supra*, 52 Cal.App.3d at p. 969.) In short, the undisputed evidentiary showing made in connection with the motion to quash irrefutably established there was no merger and no transfer of the film in dispute, and therefore no assumption of liability by the University. (*Id.* at pp. 969-970.) The court thus summed up, "[t]he relationship between the [University] and the Workshop simply will not fit the pattern of a foreign corporation pulling the strings of [*37] a California puppet." (*Id.* at p. 970.)

At the end of its concluding sentence, the Court of Appeal added the footnote upon which Brown relies. Notably, the court began the footnote by reciting the general rule that "[s]pecial appearances are not proper occasions for testing the legal or factual merits of a complaint." (*Regents, supra*, 52 Cal.App.3d at p. 970, fn. 7.) "Nevertheless," the court continued, "when in personam jurisdiction is claimed on the basis of a foreign defendant's alleged forum-related activities in connection with the cause of action pleaded, facts relevant to the question of jurisdiction often bear upon the merits of the complaint." (*Ibid.*) And so it was in the case before it. Sander's liability claim against the University was grounded on his allegation that, through merger or consolidation, the University had acquired the film in dispute. "However, the record made by [the University] on the motion to quash destroys—incidentally, but effectively—the very basis of Sanders' cause of action against it." (*Ibid.*) The court followed this point with the language on which Brown relies, stating "[w]hen in personam jurisdiction depends on the validity of the substantive claim against the foreign defendant and that defendant's showing on the motion [*38] to quash negatives the existence of the claim and plaintiff does not even support it by a prima facie showing, he cannot demand that we judge the question of jurisdiction in the light of a claim he apparently does not have." (*Ibid.*)

In short, in *Regents*, the basis for the plaintiff's "merger" theory of in personam jurisdiction also happened to be the pivotal allegation of his substantive claim against the defendant. Accordingly, the showing the defendant made in support of its motion to quash also, and "incidentally," demonstrated that the pivotal allegation of the plaintiff's substantive claim was not true. (*Regents, supra*, 52 Cal.App.3d at p. 970, fn. 7.) And in such case, the court would not otherwise assume the plaintiff stated a viable claim.

Thus, *Regents* does not stand for the broad proposition that a merits analysis is necessarily part of the fair play and substantial justice prong, and that courts can, and should, proceed directly to a merits analysis when considering a motion to quash. Furthermore, even where a plaintiff's jurisdictional theory and substantive claim depend on the same pivotal fact, *Regents* indicates consideration of the merits is appropriate only where the evidence is *irrefutably dispositive* of the claim. [*39]

In *Sahlein*, the other case on which Brown relies, a guitar distributor alleged that a Japanese guitar manufacturer, Nippon, and its California subsidiary, Yamaha, conspired to interfere with his customer relationships by terminating his distributorship. (*Sahlein, supra*, 197 Cal.App.3d at pp. 541-542.) Nippon moved to quash and supported its motion with evidence—that was uncontradicted—that its sole contact with California consisted of two e-mails in which it "expressed *opposition* to Yamaha's plan to eliminate its wholesale distributors." (*Id.* at pp. 544-545, italics added.) The Court of Appeal first addressed, and rejected, the plaintiff's assertion that Nippon's corporate parent status was sufficient to support jurisdiction. (*Id.* at p. 543.) It next considered, and rejected, the plaintiff's assertion that Nippon's mere receipt of electronic communications from Yamaha established a sufficient "connection" between Nippon's conduct and the plaintiff's claim to support jurisdiction. (*Id.* at pp. 544-545.) The court then considered the remaining communications—the two e-mails from Nippon to Yamaha in which it *opposed* Yamaha's planned termination of the distributorship. At this point, the court observed that "[w]hile it is true that the issue on a motion to quash is not whether the ultimate [*40] issues of liability will be resolved in the plaintiff's favor [citation], nevertheless, when the plaintiff seeks to predicate jurisdiction on causing tortious effects in the forum state and when the record tends unequivocally to establish that the defendant's conduct did not cause such effects, the plaintiff 'cannot demand that we judge the question of jurisdiction in the light of a claim he apparently does not have.'" (*Id.* at p. 545, quoting *Regents, supra*, 52 Cal.App.3d at p. 970, fn. 7.) The court additionally observed that """[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field."""" (*Id.* at p. 546, quoting *United States v. First National City Bank* (1965) 379 U.S. 378, 404, 85 S. Ct. 528, 13 L. Ed. 2d 365.) It thus concluded the trial court had correctly found the record before it was insufficient to support jurisdiction. (*Sahlein*, at p. 546.)

We have no quarrel with the basic proposition of *Regents* and *Sahlein*—that where jurisdiction and the plaintiff's substantive claim are predicated on the same pivotal fact, and where the evidentiary showing made in connection with a motion to quash irrefutably and conclusively negates that fact—the court can properly pronounce the claim meritless and refuse to assume that it has any viability. But that proposition is inapposite here, where the record does not unequivocally [*41] and conclusively refute Sweeney's claims.

As to the breach of contract claim, Brown contends the evidence shows there was no contract promising Sweeney a permanent position with D-Rock, Inc. As to the promissory fraud claim, Brown claims the evidence shows he made no misrepresentations to Sweeney, and none upon which Sweeney relied. There is no question the evidence submitted in connection with the motion to quash does not, in and of itself, establish that Sweeney's claims have merit. But that is a different proposition than saying some aspect of the evidence irrefutably and conclusively demonstrates that these claims could never, under any circumstances, be proven. Brown points to no evidence akin to that in *Regents* (demonstrating there was no merger or

consolidation, and no transfer of the film) or *Sahlein* (demonstrating the parent company opposed the termination of the distributorship). Rather, the record in this case is replete with uncertainty as to, *inter alia*, who said what, when, and with what intent, whether Brown held himself out as an agent or representative of D-Rock, Inc., what the agreed-upon terms of the alleged contract were, and whether there was any breach of those [*42] terms. We point out that no discovery has yet been undertaken, so none of the record evidence has been fleshed out and thoroughly explored and tested.

We therefore decline to take a demurrer-like approach to the third prong of the in personam jurisdictional analysis and turn to the traditional considerations that bear on whether the assertion of personal jurisdiction comports with notions of fair play and substantial justice: (1) the burden on the defendant of defending an action in the forum, (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining relief, (4) "'the interstate judicial system's interest in obtaining the most efficient resolution of controversies,'" and (5) the state's or nations' shared interest "'in furthering fundamental substantive social policies.'" (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 113, 107 S. Ct. 1026, 94 L. Ed. 2d 92.) "These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. [Citations.] On the other hand, where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other [*43] considerations would render jurisdiction unreasonable." (*Burger King, supra*, 471 U.S. at p. 477.)

The only *Asahi* factor Brown addresses is the burden on him, as a resident of Bermuda, of defending against the cross-complaint in California. He does so only in conclusory fashion, apparently assuming that his foreign residency, alone, is sufficient to make the exercise of jurisdiction over him unreasonable. However, foreign residency is only one factor in assessing reasonableness, and it is not the obstacle to jurisdiction it once was. (*Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 592, 122 Cal. Rptr. 2d 24 ["'[t]he same technological progress in communication and transportation that has increased the flow of commerce between the states and the need for jurisdiction over nonresidents, has simultaneously decreased the burdens inherent in defending a lawsuit in a foreign tribunal'"], quoting *Rice Growers Assn. v. First National Bank* (1985) 167 Cal.App.3d 559, 580, 214 Cal. Rptr. 468.)

Other *Asahi* factors indicate that it would not be unreasonable to require Brown to defend himself in California. First, the company (D-Rock, Inc.) Brown indirectly owns through his holding company (D-Rock Holdings) has sued Sweeney and Axxis in California on its own claims based on the same agreement. Thus, there are overlapping parties, evidence and claims, and resolution of both cases in California offers the [*44] most efficient resolution of this dispute. Moreover, the evidence—most of which is records of electronic communication—is just as easily accessed in California as in another jurisdiction.

California also has a "'manifest interest'" in providing a convenient forum for Sweeney to seek redress from Brown. (*Burger King, supra*, 471 U.S. at p. 473.) "[W]here individuals 'purposefully derive benefit' from their interstate activities [citation], it may well be unfair to allow them to escape having to account in other states for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed." (*Id.* at pp. 473-474.)

We thus conclude Brown has not made a sufficient showing that subjecting him to jurisdiction in this case would compromise "fair play and substantial justice."

DISPOSITION

The order granting D-Rock Holdings' motion to quash is affirmed. The order granting Brown's motion to quash is reversed. Parties to bear their own costs on appeal.

Banke, J.

We concur:

Humes, P. J.

Dondero, J.
