

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

FRANK SNOWNEY et al.,

Plaintiffs and Appellants,

v.

HARRAH'S ENTERTAINMENT, INC.
et al.,

Defendants and Respondents.

B164118

(Los Angeles County
Super. Ct. No. BC267575)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Peter D. Lichtman, Judge. Affirmed in part; reversed in part.

Schreiber & Schreiber, Edwin C. Schreiber and Eric A. Schreiber for Plaintiffs
and Appellants.

Fulbright & Jaworski, Robert W. Fischer, Jr., and Alisha M. Lee for Defendants
and Respondents.

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part 7 of the Discussion.

Frank Snowney appeals the dismissal of his complaint after the superior court granted the defendants' motion to quash service of summons based on lack of personal jurisdiction. Snowney contends the defendants, some of whom own or operate hotels in the State of Nevada, have sufficient contacts with the State of California to justify the exercise of personal jurisdiction. We conclude that the defendants who own and operate the Nevada hotels have sufficient contacts with California to justify the exercise of personal jurisdiction based on their advertising in California, interactive Internet site, toll-free telephone number for hotel reservations, and other activities purposefully directed at California residents. We conclude further that the defendants who do not own or operate the hotels have insufficient contacts with California to justify the exercise of personal jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

Defendants Harrah's Las Vegas, Inc., Harrah's Laughlin, Inc., Harrah's Operating Company, Inc., Rio Properties, Inc., and Harveys Tahoe Management Company, Inc. (collectively Hotel Defendants), own and operate hotels in Nevada. Defendants Harrah's Entertainment, Inc., Rio Hotel & Casino, Inc., and Harveys Casino Resorts are holding companies each of which owns a Hotel Defendant but does not own or operate a hotel in Nevada. Defendants Harrah's Reno Holding Company, Inc., Rio Vegas Hotel & Casino, Inc., Harrah's Management Company, and Harveys P.C., Inc., neither own a Hotel Defendant nor own or operate a hotel in Nevada.

Snowney sued Harrah's Entertainment, Inc., and others in February 2002 alleging counts for violation of the unfair competition law, breach of contract, unjust enrichment,

and false advertising.¹ He filed the complaint as both a representative action and a class action.

The defendants jointly moved to quash service of summons based on lack of personal jurisdiction. They argued that they do business only in Nevada and have no significant contacts with California to justify either general or specific jurisdiction. A declaration by Brad L. Kerby, corporate secretary of Harrah's Entertainment, Inc., stated that none of the defendants has a principal place of business in California, operates a hotel in California, conducts business in California, or has bank accounts or employees in California. He also acknowledged that Harrah's Marketing Services Corporation, a subsidiary of defendant Harrah's Operating Company, Inc., maintains offices in California that "assist customers who contact those offices" and "attempt to attract a limited number of high-end gaming patrons to Harrah's properties."

Snowney opposed the motion to quash, submitting a transcript of the deposition of the defendants' declarant together with his own declaration and declarations by his attorney. Snowney argued that the evidence showed that a substantial portion of the hotels' patrons were California residents; that the defendants advertised to California residents through billboards in California, print advertisements in California newspapers, and radio and television advertisements on California stations; that they accepted reservations from California residents via the Internet and telephone; that an Internet site provided driving directions to the hotels from California locations; that two of the defendants were qualified to do business in California; and that a related marketing

¹ The other defendants named in the complaint are Harrah's Las Vegas, Inc., Harrah's Laughlin, Inc., Harrah's Reno Holding Company, Inc., Rio Hotel & Casino, Inc., Rio Vegas Hotel & Casino, Inc., Harrah's Operating Company, Inc., Harrah's Management Company, and Harveys P.C., Inc. Snowney later named Harveys Casino Resorts, Harveys Tahoe Management Company, Inc., and Rio Properties, Inc., as additional defendants.

company maintained offices in California. Snowney argued that these activities supported the exercise of specific jurisdiction.

The superior court concluded that the defendants had insufficient contacts with California to justify the exercise of general or specific personal jurisdiction in California. The order granting the motion to quash states, “the fact that a defendant advertises in the forum state, induces readers of its advertisements to patronize its business, and profits substantially from this foreseeable economic reality does not automatically confer specific jurisdiction. [Citations.]” (Emphasis omitted.) The order further states, “the defendants herein are doing business with California residents but are not doing business in California.” The court dismissed the action.

CONTENTIONS

Snowney’s principal contention is that the defendants have sufficient contacts with California to justify the exercise of specific personal jurisdiction. We address his other contention in the unpublished portion of this opinion.

DISCUSSION

1. Standard of Review

If there is no conflict in the evidence, the question whether a defendant’s contacts with California are sufficient to justify the exercise of personal jurisdiction in California is a question of law that we review de novo. If there is a conflict in the evidence underlying that determination, we review the superior court’s express or implied factual findings under the substantial evidence standard. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 (*Vons*).

2. Constitutional Limits to the Exercise of Personal Jurisdiction

A plaintiff opposing a motion to quash service of process has the initial burden to demonstrate facts justifying the exercise of jurisdiction. (*Vons, supra*, 14 Cal.4th at p. 449.) If the plaintiff satisfies that burden, the burden shifts to the defendant to “present a compelling case” that the exercise of jurisdiction would be unreasonable. (*Burger King*

Corp. v. Rudzewicz (1985) 471 U.S. 462, 477 [85 L.Ed.2d 528] (*Burger King*); accord, *Vons*, at p. 476.)

A California court may exercise personal jurisdiction over a foreign defendant to the extent allowed under the state and federal Constitutions. (Code Civ. Proc., § 410.10.) The exercise of personal jurisdiction is constitutionally permissible only if the defendant has sufficient “minimum contacts” with the state so that the exercise of jurisdiction “does not offend ‘traditional notions of fair play and substantial justice.’ [Citations.]” (*Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 [90 L.Ed. 95]; accord, *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268 (*Pavlovich*)). In other words, the defendant’s contacts with the forum state must be such that the defendant had “fair warning” that its activities may subject it to personal jurisdiction in the state. (*Burger King, supra*, 471 U.S. at p. 472; accord, *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297 [62 L.Ed.2d 490].)

“[T]his ‘fair warning’ requirement is satisfied if the defendant has ‘purposefully directed’ his activities at residents of the forum [citation], and the litigation results from alleged injuries that ‘arise out of or relate to’ those activities [citation].” (*Burger King, supra*, 471 U.S. at p. 472.)

A defendant who has substantial, continuous, and systematic contacts with the forum state is subject to general jurisdiction in the state, meaning jurisdiction on any cause of action. (*Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445-446 [96 L.Ed. 485]; see *Vons, supra*, 14 Cal.4th at p. 445.) Snowney does not contend the defendants are subject to general jurisdiction. Instead, he contends the defendants are subject to specific jurisdiction, meaning jurisdiction on a cause of action arising out of or related to the defendants’ contacts with the forum state. (*Helicopteros Nacionales de Columbia v. Hall* (1984) 466 U.S. 408, 414, fn. 8 [80 L.Ed.2d 404]; *Vons*, at p. 446.)

A defendant is subject to specific jurisdiction only if three requirements are satisfied. First, the defendant must have either “ ‘purposefully directed’ ” its activities at forum residents; created a “ ‘substantial connection’ ” with the forum state by

deliberately engaging in significant activities in the forum or creating continuing obligations between itself and residents of the forum state; “ ‘purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws;’ ” or “ ‘purposefully derive[d] benefit’ ” from its interstate activities. (*Burger King, supra*, 471 U.S. at pp. 472-476; accord, *Vons, supra*, 14 Cal.4th at p. 446.) Second, the dispute must “ ‘arise out of or relate to’ ” the defendant’s contacts with the forum state. (*Burger King*, at p. 472; accord, *Vons*, at p. 446.) Third, the exercise of jurisdiction must be fair and reasonable. (*Burger King*, at pp. 476-478; *Vons*, at pp. 447-448.) In evaluating minimum contacts, a court must focus on “ ‘the relationship among the defendant, the forum, and the litigation.’ ” (*Calder v. Jones* (1984) 465 U.S. 783, 788 [79 L.Ed.2d 804].)

A court should not apply these guidelines mechanically. Instead, a court must weigh the facts in each case to determine whether the contacts are sufficient. (*Kulko v. California Superior Court* (1978) 436 U.S. 84, 92 [56 L.Ed.2d 132]; *Pavlovich, supra*, 29 Cal.4th at p. 268.) The decision ultimately turns on the question of fairness, that is, “ ‘fair play and substantial justice.’ ” (*Burger King, supra*, 471 U.S. at pp. 485-486; accord, *Vons, supra*, 14 Cal.4th at p. 475.) Such an inquiry “preclude[s] clear-cut jurisdictional rules.” (*Burger King*, at p. 486, fn. 29; accord, *Vons*, at p. 475.)

The California Supreme Court has held that a cause of action arises out of or relates to the defendant’s contacts with the forum state if there is a “substantial connection” between the plaintiff’s cause of action and the defendant’s forum contacts. (*Vons, supra*, 14 Cal.4th at p. 452; *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 149.) The forum contacts need not be the proximate cause or “but for” cause of the alleged injuries. (*Vons*, at pp. 462-467.) The forum contacts also need not be “substantively relevant” to the cause of action, meaning those contacts need not establish or support an element of the cause of action. (*Vons*, at pp. 469-475.) For purposes of determining whether the defendant’s forum contacts are substantially connected to the cause of action, the intensity of the defendant’s forum contacts and the required degree of connection

between the cause of action and those contacts are inversely related. (*Vons*, at p. 452.) “ “[A]s the relationship of the defendant with the state seeking to exercise jurisdiction over him grows more tenuous, the scope of jurisdiction also retracts, and fairness is assured by limiting the circumstances under which the plaintiff can compel him to appear and defend. . . .’ ” (*Ibid.*)

Moreover, a defendant’s conduct need not cause an injury in the forum state to justify the exercise of personal jurisdiction. Rather, a defendant who has “purposefully directed” its activities at forum residents or otherwise established a substantial connection with the forum is subject to personal jurisdiction if the alleged injury arises out of or relates to those contacts, regardless of where the injury occurred. (See *Burger King*, *supra*, 471 U.S. at p. 472.) Thus, the California Supreme Court in *Cornelison v. Chaney*, *supra*, 16 Cal.3d 143 held that a trucker had sufficient minimum contacts with California and that the plaintiff’s wrongful death cause of action “arises out of or has a substantial connection with” those contacts, despite the fact that both the tortious conduct and the plaintiff’s injury occurred in Nevada. (*Id.* at pp. 146, 149.)

3. *The Hotel Defendants Have Sufficient Contacts With California to Justify the Exercise of Specific Jurisdiction*

All of the Hotel Defendants have directed advertising at California residents, including billboards in this state, print advertisements in the Los Angeles Times and Orange County Register or in Northern California newspapers, and radio and television advertisements on California stations. Advertising in the forum is a means of purposefully directing activities at forum residents, and depending on the circumstances may support the exercise of personal jurisdiction. (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 112 [94 L.Ed.2d 92] (lead opn. of O’Connor, J.).)

Harrah’s Marketing Services Corporation markets the Hotel Defendants’ gaming and hotel services to select “high-end” California residents through offices located in this state. Although limited in number, the high-end patrons may have significant value for the defendants’ business. Through these marketing activities, the Hotel Defendants

solicit business from California residents. Even though the defendants conduct marketing activities through a separate company, by engaging the marketing services the Hotel Defendants direct their activities at California residents.

A central Internet site provides information on the six hotels here at issue. The California Supreme Court in *Pavlovich, supra*, 29 Cal.4th at page 274 adopted a sliding scale analysis to determine whether Internet use can justify the exercise of personal jurisdiction. The determination turns on the degree of interactivity of the Internet site and the commercial nature and extent of the exchange of information. (*Ibid.*, citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.* (W.D.Pa. 1997) 952 F.Supp. 1119, 1124.) An interactive Internet site through which a nonresident defendant enters into contracts or conducts other business transactions with forum residents can be a means of purposefully directing activities at forum residents and, depending on the circumstances, may support the exercise of personal jurisdiction. (*Ibid.*) The *Pavlovich* court stated that the defendant's Internet site was passive in that it only posted information and had no interactive features. The site did not target California residents. Finally, there was no evidence that a California resident had ever visited or downloaded information from the site. The court therefore concluded that the defendant's use of the site did not justify the exercise of specific jurisdiction. (*Pavlovich*, at p. 274.) Here, in contrast, the Internet site is interactive. California customers can and do make room reservations online. The site also provides driving directions to the hotels from several California cities. These features constitute an effort to solicit business from California residents.

A central toll-free telephone reservation system in another state accepts reservations from customers nationwide. Although the defendants have not disclosed specific figures, they acknowledge that California as the most populous state in the nation and as a state adjoining Nevada is home to "a significant percentage" of their patrons making telephone reservations.

We conclude that by soliciting and receiving the patronage of California residents through these activities and to this extent, the Hotel Defendants have purposefully

directed their activities at California residents, have purposefully derived benefit from their contacts with California, and have established a substantial connection with this state.

We decline to follow *Circus Circus Hotels, Inc. v. Superior Court* (1981) 120 Cal.App.3d 546, disapproved on another ground in *Vons, supra*, 14 Cal.4th at page 464. The *Circus Circus* court concluded that the nonresident defendant's advertisements in California newspapers and toll-free telephone number for hotel reservations were insufficient to support the exercise of general jurisdiction in California absent additional forum contacts. (*Id.* at p. 567.) The court concluded further that those forum contacts were insufficient to support the exercise of specific jurisdiction. The court quoted *Cornelison v. Chaney, supra*, 16 Cal.3d at page 148, stating that to support the exercise of specific jurisdiction the defendant either must perform some act in the forum or “ ‘defendant must perform some other act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protection of its laws.’ [Citation.]”² (*Circus Circus*, at p. 569.) Adopting a “literal application” of this language, the *Circus Circus* court concluded that the defendant did not avail itself of benefits afforded by California or seek the protection of the state's laws because the advertising in California newspapers was “a service paid for and rendered without any involvement of the forum state's laws or public facilities.” (*Ibid.*)

We believe that this narrow interpretation of the traditional “purposeful availment” requirement is unwarranted. The United States Supreme Court has used various language to describe the forum contacts necessary to support the exercise of specific jurisdiction. (*Vons, supra*, 14 Cal.4th at p. 446.) In addition to quoting the language from *Hanson v. Denckla, supra*, 357 U.S. 235 quoted *ante*, the court in *Burger King* stated that the

² This language originates from *Hanson v. Denckla* (1958) 357 U.S. 235, 253 [2 L.Ed.2d 1283]: “[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”

exercise of personal jurisdiction is proper if the defendant has “ ‘purposefully directed’ ” its activities at forum residents, or “ ‘purposefully derive[s] benefit’ ” from forum activities, or “ ‘deliberately’ has engaged in significant activities within a State [citation] or has created ‘continuing obligations’ between himself and residents of the forum [citation].” (*Burger King, supra*, 471 U.S. at pp. 472, 473, 475-476.) The court in *World-Wide Volkswagen Corp. v. Woodson, supra*, 444 U.S. 286 and a divided court in *Asahi Metal Industry Co. v. Superior Court, supra*, 480 U.S. 102 also spoke in terms of a defendant’s efforts to benefit from the market for its product in the forum state. (*World-Wide Volkswagen*, at p. 297; *Asahi*, at p. 112 (lead opn. of O’Connor, J.); *id.* at p. 117 (conc. opn. of Brennan, J.)) These various formulations derive directly from the fundamental requirement of “fair play and substantial justice” or “fair warning,” discussed *ante*. In deciding the question of personal jurisdiction, courts should carefully consider the facts in each case in light of these guidelines and focus on the ultimate question whether the exercise of jurisdiction would be fair and reasonable.

4. *The Alleged Causes of Action Arise from or Are Substantially Connected to the Hotel Defendants’ California Contacts*

Snowney’s alleged causes of action for violation of the unfair competition law, breach of contract, unjust enrichment, and false advertising all arise from or are substantially connected to the Hotel Defendants’ efforts to solicit California patrons. The false advertising count arises directly from the defendants’ local advertising in California in that the complaint, liberally construed (Code Civ. Proc., § 452), alleges that the advertising was false or misleading.

The counts for violation of the unfair competition law also arise directly from the Hotel Defendants’ forum contacts to the extent the counts are based on a violation of the false advertising law (see *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 950). To the extent those counts are based on alleged unfair or fraudulent business practices apart from false advertising in California, we conclude that the counts are substantially connected to the defendants’ California contacts. Many of the California residents who visited the hotels

presumably did so as a result of the defendants' advertising in California, or made their reservations via electronic or telephonic communications that were purposefully directed at California residents. We conclude that those California contacts are substantially connected to causes of action that challenge an alleged mandatory surcharge imposed on all hotel guests. We need not detect a causal connection between the defendants' California contacts and the alleged charging of a nightly energy surcharge without prior notice. (*Vons, supra*, 14 Cal.4th at pp. 462-467.) Rather, we conclude, in light of the nature and intensity of the contacts, that the contacts are sufficiently related to the alleged causes of action to justify the exercise of personal jurisdiction. Our conclusion also applies to the breach of contract and unjust enrichment counts, which are based on essentially the same alleged wrongdoing.

5. *The Exercise of Jurisdiction Would Be Fair and Reasonable*

In determining whether the exercise of jurisdiction would be fair and reasonable, a court must consider (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) judicial economy; and (5) the states' shared interest " 'in furthering fundamental substantive social policies.' " (*Asahi Metal Industry Co. v. Superior Court, supra*, 480 U.S. at p. 113, citing *World-Wide Volkswagen Corp. v. Woodson, supra*, 444 U.S. at p. 292.) When minimum contacts are established, the interests of the plaintiff and the forum often outweigh the serious burdens imposed on a foreign defendant. (*Asahi*, at p. 114.) A defendant who has purposefully directed its activities at forum residents "must present a compelling case" that the exercise of jurisdiction would be unreasonable. (*Burger King, supra*, 471 U.S. at p. 477; accord, *Vons, supra*, 14 Cal.4th at p. 476.)

The defendants have made no effort to show that the exercise of jurisdiction would be unreasonable, either in the superior court or on appeal. Accordingly, our discussion of this requirement is brief. Based on this record, we discern no extenuating circumstances indicating that it would be unreasonable to require the Hotel Defendants to defend this action in California.

6. *There Is No Basis for Personal Jurisdiction Over the Other Defendants*

There is no evidence that the defendants other than the Hotel Defendants have purposefully directed their activities at California residents or have significant contacts with California. Those defendants therefore are not subject to personal jurisdiction in California. Although Harveys P.C., Inc., is qualified to do business in California, it is a Nevada corporation with its principal place of business in Nevada, it operates no hotel or casino in California or Nevada, and it does not advertise or solicit business in California. Harveys P.C., Inc., therefore is not subject to personal jurisdiction in California, despite its qualification to do business here. (*DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1095.)

Those defendants whose only relationship with the alleged causes of action is that they own one of the Hotel Defendants are not subject to personal jurisdiction based solely on that ownership. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 540, 546.)

7. *The Defendants' Violation of Code of Civil Procedure Section 418.10,*

*Subdivision (b), Did Not Divest the Court of Jurisdiction to Rule on the Motion**

Snowney contends the superior court had no jurisdiction to consider the defendants' motion to quash because the defendants scheduled the hearing on the motion for a date more than 30 days after they filed the notice of motion, in violation of Code of Civil Procedure section 418.10, subdivision (b). The defendants' notice of motion designated a hearing date 33 days after the filing of the notice of motion.

Code of Civil Procedure section 418.10, subdivision (b), states that a defendant moving to quash service of summons must schedule a hearing to occur no more than 30 days after the notice of motion is filed. The statute states in relevant part, "The notice shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice." (*Ibid.*)

* See footnote, *ante*, page 1.

Snowney contends this provision is mandatory and a court has no jurisdiction to rule on a motion if the hearing was scheduled for a date more than 30 days after the notice of motion was filed. This contention concerns the court's subject matter jurisdiction.

Mandatory language in a statute does not necessarily indicate that a court has no jurisdiction to act if the statute is not complied with. Particularly where the statute provides a time limitation governing trial court procedure, a party's failure to comply with the provision ordinarily does not deprive the court of jurisdiction to act.

“ ‘A typical misuse of the term “jurisdictional” is to treat it as synonymous with “mandatory.” There are many time provisions, e.g., in procedural rules, which are not directory but mandatory; these are binding, and parties must comply with them to avoid default or other penalty. But failure to comply does not render the proceeding void’ (2 Witkin Cal. Procedure (3d ed. 1985) Jurisdiction, § 3, p. 368.)” (*Poster v. Southern Cal. Rapid Transit Dist.* (1990) 52 Cal.3d 266, 274-275.) The California Supreme Court in *Poster* concluded that the 30-day time limit to respond to a settlement offer under Code of Civil Procedure section 998 is not jurisdictional, and therefore is extended for service by mail (Code Civ. Proc., § 1013, subd. (a)), because “[t]here is nothing in section 998 to support the conclusion that the 30-day limit was intended to be ‘jurisdictional’ in the fundamental sense.” (*Poster*, at p. 275.) Similarly, the court in *Conservatorship of Kevin M.* (1996) 49 Cal.App.4th 79, 88-89, concluded that the statutory five-day time limit for a proposed conservatee to demand a jury trial after a petition for conservatorship is filed (Welf. & Inst. Code, § 5350, subd. (d)) is mandatory but not jurisdictional.

Code of Civil Procedure section 418.10, subdivision (b), does not state that a court loses jurisdiction to rule on a motion to quash service of summons if the hearing was scheduled beyond the 30-day limit, and there is no indication that the Legislature intended to deprive a court of jurisdiction to rule in those circumstances. Moreover, to deprive a court of subject matter jurisdiction to decide whether it can exercise personal

jurisdiction would make no sense. Lack of personal jurisdiction is a fundamental defect. A judgment entered without personal jurisdiction over the defendant is void and can be attacked at any time. (*World-Wide Volkswagen Corp. v. Woodson, supra*, 444 U.S. at p. 291; *Yu v. Signet Bank/Virginia* (1999) 69 Cal.App.4th 1377, 1385; *City of Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 731-732.) A court therefore should consider the question of personal jurisdiction at the earliest opportunity regardless of a party's failure to schedule a hearing within 30 days after filing the notice of motion.

DISPOSITION

The judgment of dismissal is affirmed as to defendants Harrah's Entertainment, Inc., Rio Hotel & Casino, Inc., Harveys Casino Resorts, Harrah's Reno Holding Company, Inc., Rio Vegas Hotel & Casino, Inc., Harrah's Management Company, and Harveys P.C., Inc., and reversed as to defendants Harrah's Las Vegas, Inc., Harrah's Laughlin, Inc., Harrah's Operating Company, Inc., Rio Properties, Inc., and Harveys Tahoe Management Company, Inc. The defendants in the former group are entitled to costs on appeal. Snowney is entitled to costs on appeal against the latter group of defendants only.

CERTIFIED FOR PARTIAL PUBLICATION

KITCHING, J.

We concur:

CROSKEY, Acting P.J.

ALDRICH, J.