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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

C & C IMPORTS, INC., a California Corporation, dba NANCY CORZINE,  
  
Plaintiff,  
  
vs.  
  
KEVIN CROSBY, an individual, BRINKLEY, MORGAN, SOLOMON, TATUM, STANLEY, LUNNY, & CROSBY, LLP, and DOES 1-10,  
  
Defendants.

Case No. CV 08-5976 ODW (MANx)

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I. INTRODUCTION

This case involves claims for professional negligence and breach of contract filed by Plaintiff C & C Imports, Inc. ("Plaintiff") against the Fort Lauderdale, Florida law firm of Brinkley, Morgan, Solomon, Tatum, Stanley, Lunny & Crosby, LLP and one of its partners, Kevin P. Crosby (collectively "Defendants"). Plaintiff alleges this Court has jurisdiction due to diversity of citizenship under 28 U.S.C. § 1332.

Presently before the Court is Defendants' Motion to Dismiss for Lack of Personal Jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2). Alternatively, Defendants request that this action be transferred to the Southern District of Florida pursuant to 28 U.S.C. § 1404(a). For the reasons stated below, Defendants' Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED.

1 II. BACKGROUND

2 In approximately 2000, Plaintiff, a California furniture company, entered into a  
3 contract with the predecessor of Defendant Law Firm to perform legal services as  
4 necessary to obtain a copyright on several pieces of furniture, including a piece commonly  
5 known as the Thysson armoire. (Compl. ¶ 4.)

6 In approximately 2006, Plaintiff became aware that the copyright to the Thysson  
7 armoire has been infringed by a North Carolina furniture company, Century Furniture  
8 Industries, Inc. (“Century”). (Compl. ¶ 6.) Plaintiff hired a Los Angeles based law firm  
9 to represent it in a copyright infringement action against Century in the United States  
10 District Court for the Central District of California. (Id.) In July 2007, Defendants were  
11 engaged by Plaintiff as co-counsel pro hac vice in the Century copyright matter. (Compl.  
12 ¶ 7.) In March 2008, Century filed a Motion for Summary Judgment on the ground that  
13 there was no copyright issued on the Thysson armoire. (Compl. ¶ 8.) Plaintiff then  
14 dismissed the lawsuit after being informed by its attorneys that there was a great likelihood  
15 of losing. (Id.)

16 Plaintiff believes that Defendants never obtained a copyright on the Thysson  
17 armoire. (Compl. ¶ 10.) Plaintiff argues that the failure to discover a filing error in  
18 connection with the original copyright filing was due to the negligence of Defendants. (Id.)  
19 As a proximate result of Defendants’ alleged negligence, Plaintiff argues it incurred  
20 unnecessary costs and legal fees in prosecuting the Century lawsuit. (Compl. ¶ 13.)

21 Defendants argue that they have no connection to and cannot be subject to personal  
22 jurisdiction in California. Defendants have allegedly never purposely availed themselves  
23 of the privilege of conducting activities in California. Further, Defendants argue that  
24 Plaintiff’s instant lawsuit *arises* from Defendants’ alleged negligence in connection with  
25 their work performed in Florida in 2000 and not the California lawsuit involving Century.  
26 The Court will address each of these arguments in turn.

1 III. DISCUSSION

2 A. Legal Standard: Personal Jurisdiction

3 Under Fed. R. Civ. P. 12(b)(2), when a defendant moves to dismiss for lack of  
4 personal jurisdiction, the plaintiff bears the burden of establishing jurisdiction exists.  
5 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). However,  
6 when a district court rules on such a motion without an evidentiary hearing, as here, “the  
7 plaintiff need make only a prima facie showing of jurisdictional facts in order to withstand  
8 the motion to dismiss.” *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). In other  
9 words, the plaintiff “need only demonstrate facts that if true would support jurisdiction  
10 over the defendant.” *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995).

11 Where there is no applicable federal statute governing personal jurisdiction, a court  
12 applies the law of the state in which the district court sits. *See Schwarzenegger*, 374 F.3d  
13 at 800. “Because California’s long-arm jurisdictional statute is coextensive with federal  
14 due process requirements, the jurisdictional analyses under state law and federal due  
15 process are the same.” *Id.* at 800-801.

16 The constitutional requirement is satisfied if personal jurisdiction arises from  
17 traditional circumstances, or if it is established that the nonresident defendant has sufficient  
18 “minimum contacts” with the forum state, “such that exercise of jurisdiction does not  
19 offend traditional notions of fair play and substantial justice.” *In re Marriage of Fitzgerald*  
20 *v. King*, 39 Cal.App.4th 1419, 1425-26 (Cal. Ct. App. 1995); *International Shoe Co. v.*  
21 *Washington*, 326 U.S. 310 (1945). There are two types of jurisdiction to consider under  
22 the minimum contacts doctrine: (1) general jurisdiction and (2) specific jurisdiction. *Vons*  
23 *Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434, 445 (Cal. 1996); *Sher v. Johnson*,  
24 911 F.2d 1357, 1361 (9th Cir. 1990).

25 General jurisdiction applies where a defendant’s activities in the state are  
26 “substantial” or “continuous and systematic,” even if the cause of action is unrelated to  
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1 those activities. *Sher*, 911 F.2d at 1361 (citing *Data Disc, Inc. v. Systems Tech. Assoc.*, 557  
2 F.2d 1280, 1287 (9th Cir 1977)). “Where general jurisdiction is inappropriate, a court may  
3 still exercise specific jurisdiction if the defendant has sufficient contacts with the forum  
4 state in relation to the cause of action.” *Id.*

5 B. Analysis

6 Here, Plaintiff alleges specific jurisdiction. The Ninth Circuit uses a three-part test  
7 to evaluate the nature and quality of Defendants’ contacts for purposes of specific  
8 jurisdiction: (1) some action must be taken whereby defendant purposefully avails himself  
9 or herself of the privilege of conducting activities in the forum, thereby invoking the  
10 benefits and protections of the forum’s laws; (2) the claim must arise out of or result from  
11 Defendants’ forum-related activities; and (3) exercise of jurisdiction must be reasonable.  
12 *Sher*, 911 F.2d at 1361 (citing *Cabbage v. Merchant*, 744 F.2d 665, 668 (9th Cir 1984));  
13 *see also Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007). “The plaintiff bears the  
14 burden of satisfying the first two prongs of the test.” *Menken*, 503 F.3d at 1057. (citations  
15 omitted). “If the plaintiff fails to satisfy either of these prongs, personal jurisdiction is not  
16 established in the forum state.” *Id.* “On the other hand, if the plaintiff succeeds in  
17 satisfying both of the first two prongs, the burden then shifts to the defendant to present a  
18 compelling case that the exercise of jurisdiction would not be reasonable.” *Id.* (internal  
19 quotation marks and citations omitted).

20 As for the first element of the test, “‘purposeful availment’ requires that the  
21 defendant ‘have performed some type of affirmative conduct which allows or promotes the  
22 transaction of business within the forum state.’” *Sher*, 911 F.2d at 1362 (quoting *Sinatra*  
23 *v. National Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir.1988)). There is no evidence that  
24 indicates Defendants purposefully availed themselves of the privilege of conducting  
25 activities in the forum prior to the Century action in this district. Defendants were solicited  
26 in Florida to perform legal work for Plaintiff, that is to obtain copyrights for Plaintiff’s  
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1 furniture pieces. When fulfilling their 2000 representation, Defendants' only out-of-state  
2 interactions were allegedly with the U.S. Copyright Office in Washington D.C. Defendants  
3 concede that they corresponded a few times with Plaintiff when Plaintiff was in California.  
4 Without more, however, a few phone calls and letters directed toward the forum state do  
5 not establish purposeful availment. *See id.* at 1362-63.

6 Conversely, in addition to Defendants' 2000 representation of Plaintiff, Defendants  
7 appeared pro hac vice in the California action involving Century. Defendants argue their  
8 involvement in the Century action required them to perform only minimal work in  
9 California, namely one court appearance. Still, Defendants agreed to represent Plaintiff  
10 and applied for pro hac vice status knowing they would seek payment for their work in a  
11 California case involving a California corporation. Thus, by agreeing to represent Plaintiff  
12 in a California action, Defendants purposefully availed themselves of the privilege of  
13 conducting activities in the forum. Accordingly, the first element of the specific  
14 jurisdiction test has been met.

15 The second prong requires Plaintiff's claim(s) to arise out of or result from  
16 Defendants' forum-related activities. "The second prong of the specific jurisdiction test  
17 is met if 'but for' the contacts between the defendant and the forum state, the cause of  
18 action would not have arisen." *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 561 (9th Cir.  
19 1995) (citing *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385-86 (9th Cir.1990)); *see*  
20 *also Myers v. Bennett Law Offices*, 238 F.3d 1068, 1075 (9th Cir. 2001). Here, it cannot  
21 be said that "but for" Defendants involvement in the Century case (Defendants' only  
22 forum-related activity), Plaintiff's claims would not have arisen. Plaintiff's claims relate  
23 to Defendant's alleged failure to register certain copyrights in 2000 and not Defendants'  
24 pro hac vice representation in the Century action. Therefore, Defendants' forum-related  
25 activities are wholly unrelated to Plaintiff's claims.

26 Nonetheless, Plaintiff argues that Defendants are tied to the forum by the allegation  
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1 in Plaintiff's Complaint that states, "[a]s a proximate result of defendant's negligence,  
2 plaintiff incurred unnecessary costs and legal fees in prosecuting the [Century] lawsuit."  
3 (Compl. ¶ 13.) While the Court is required to accept this allegation as true, it does not help  
4 Plaintiff in establishing personal jurisdiction. The fact remains that even if Plaintiff had  
5 hired attorneys other than Defendants in the Century action, Plaintiff would have the same  
6 claims seeking reimbursement for legal fees due to Defendants' alleged negligence in 2000.

7 This is essentially the reverse of what is required under the above "but for" test.  
8 Accordingly, because Plaintiff's claims for professional negligence and breach of contract  
9 do not arise out of or result from Defendants' forum-related activities, this Court is  
10 restricted from exercising personal jurisdiction over Defendants.

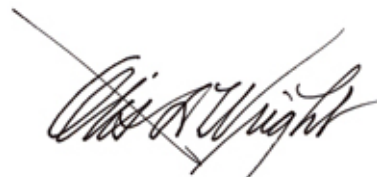
11 Because the second prong negates personal jurisdiction over Defendants, the Court  
12 need not examine the reasonableness prong. In addition, because this Court lacks personal  
13 jurisdiction over Defendants, the request to transfer venue is DENIED as moot.

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15 IV. CONCLUSION

16 For the foregoing reasons, the Court GRANTS the Defendants' Motion to Dismiss  
17 under Federal Rule of Civil Procedure 12(b)(2) and DENIES as moot the Request for  
18 Change of Venue.

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20 IT IS SO ORDERED.

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22 DATED: October 21, 2008



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26 OTIS D. WRIGHT II  
27 UNITED STATES DISTRICT JUDGE  
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