

## Comedians in Cars Getting ... Long Arm Jurisdiction?

If you ever watched “Comedians in Cars Getting Coffee,” you know that Jerry Seinfeld is an avid aficionado of rare cars, particularly Porsches. *Fica Frio, Ltd. v. Jerry Seinfeld v. European Collectibles, Inc.*, shows how his passion for cars, which developed into a business, has introduced Seinfeld to the vagaries of litigation and New York’s Long Arm Statute.

European Collectibles (EC) is a California automobile dealer specializing in the restoration and sale of rare automobiles, which regularly transports vehicles throughout the United States and overseas. In February 2013, EC emailed Sam Cabiglio, proposing to sell a “1958 Porsche 356A T2 1500 GT Carrera Speedster” (the vehicle). Cabiglio was a California resident who Seinfeld employed to purchase and sell cars on his behalf. Four telephone conversations took place between Cabiglio and EC’s sales manager, and a personal inspection of the vehicle was conducted by Cabiglio at EC’s Costa Mesa, Calif., headquarters. It was alleged that a Porsche Certificate of Authenticity was provided and that EC represented it used all original parts to restore the vehicle. On February 14, 2013, EC executed a purchase order for the sale of the vehicle that identified Seinfeld as the buyer and provided his New York address. Seinfeld purchased the vehicle on the same day via wire transfer from his New York account for \$1.2 million. EC was directed by Cabiglio to deliver the vehicle to a hangar in California but was never apprised of the vehicle’s ultimate destination.

Seinfeld later sold the vehicle to plaintiff Fica Frio, Ltd. On February 1, 2019, Frio filed suit against Seinfeld, alleging that the vehicle was inauthentic in that non-original parts were used in its restoration. In response, Seinfeld filed a third-party complaint against EC, arguing that he had no idea whether the vehicle was authentic, but that he purchased the vehicle based on EC’s representations concerning the vehicle’s authenticity. In effect, Seinfeld took the position that any issue concerning the vehicle’s authenticity should be answered solely by EC.

In April 2019, EC moved to dismiss the third-party complaint for lack of personal jurisdiction under Rule 12(b)(2) of the Fed. R. Civ. Pro. On January 21, 2020, Judge Victor Marrero of the U.S. District Court for the Southern District of New York denied EC’s motion to dismiss, based on an in-depth analysis of the New York Long Arm Statute, in particular Sections 302(a)(1) and 302(a)(3)(ii). In analyzing these provisions, the court reviewed the legislative history and text of the New York Long Arm Statute, New York Appellate Division decisions, and federal district court decisions within the Second Circuit and concluded both grounds provided Seinfeld a basis for jurisdiction over EC.

Under Section 302(a)(1), the statute permits:

personal jurisdiction over any non-domiciliary ... who in person or through an agent ... transacts any business within the state or contracts anywhere to supply goods or services in the state ... .”

Relying upon this section, Seinfeld argued that EC contracted in California to supply goods in New York. In response, EC claimed that it did not actually ship the vehicle to New York but merely delivered it to a location within California. The court ultimately rejected this argument and concluded that a nonresident defendant who has knowledge that the goods are destined for New York is subject to personal jurisdiction, regardless of whether the seller itself actually ships the goods to New York. The court appeared to be persuaded in this case by the fact that the purchase order identified Seinfeld as the buyer and contained his New York address, and that someone at EC included a handwritten note on the purchase order that read “Out of State Sale,” suggesting that EC paid attention to Seinfeld’s New York address.

The court also focused on 302(a)(3)(ii) that provides personal jurisdiction over any nonresident who:



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commits a tortious act without the state causing injury to person or property within the state ... if he ... expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce ...

In this part of its analysis, there were five factors considered by the court to determine whether there was personal jurisdiction: (1) whether the defendant committed a tortious act outside of New York — Seinfeld alleged that representations about the authenticity of the vehicle were intentionally or negligently fraudulent, so the court readily concluded this criterion was met; (2) the cause of action arose out of that tortious act — Seinfeld’s third-party complaint was based upon EC’s misrepresentations about the vehicle, so the court found that this criterion was also met; (3) the act caused injury to person or property within New York — the court found that the wiring of funds from Seinfeld’s New York account constituted an economic injury within the state; (4) defendant expected or reasonably expected the act to have consequences in New York — referring to its earlier analysis under 302(a)(1), the court again observed that the purchase order contained Seinfeld’s name and New York address, and that the handwritten note characterizing the purchase as an “Out of State Sale” sufficiently indicated that the vehicle was ultimately destined for New York, so the seller should have expected “New York jurisdiction consequences”; and (5) defendant derives substantial revenue from interstate or international commerce — the court found that the size of this sale (\$1.2 million) and the advertising on EC’s website that it “restores cars for Domestic and International clients” and has “over 30 years of experience in shipping vehicles Nationally and Internationally” were sufficient to meet this criterion.

From the court’s perspective, the above facts were sufficient to allow the court to conclude that Seinfeld met his burden of establishing a *prima facie* case for personal jurisdiction over EC.

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