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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

RONNIE CLAYTON et al., Plaintiffs and Appellants, v. RONALD FISHER et al., Defendants and Respondents.	B179134 (Los Angeles County Super. Ct. No. BC253169)

APPEAL from judgments and orders of the Superior Court of Los Angeles County, Charles W. McCoy, Judge. Affirmed in part, dismissed in part, reversed in part and remanded.

Barton, Klugman & Oetting, Thomas E. McCurnin and Mark A. Newton for Plaintiffs and Appellants.

Booth, Mitchel & Strange and Thomas T. Johnson for Defendants and Respondents Stuart Allan Incorporated and Safeco Insurance Company of American, Inc.

Procopio, Cory, Hargreaves & Savitch, Maureen F. Hallahan, Lillian H. Brown; Sheppard, Mullin, Richter & Hampton, John D. Berchild, Jr., John R. Pennington, Karin Dougan Vogel, J. Barrett Marum, Fred R. Puglisi; Cox, Castle & Nicholson, Robert G. Campbell, Susan S. Davis; Severson & Werson, Scott J.

Hyman, Jan T. Chilton and Rhonda Louise Nelson for Defendants and Respondents General Electric Capital Corporation, Netbank, Lakeland Bank and Footbridge Limited Trust.

Squire, Sanders & Dempsey, James H. Broderick, Jr., and Xianchun J. Vendler for Defendants and Respondents The Huntington National Bank and Sky Bank.

Gascou Hopkins, Ronald W. Hopkins and Christian J. Gascou for Defendant and Respondent American Motorists Insurance Company.

Morison-Knox Holden & Prough, William C. Morison-Knox, Michael D. Prough and Robert C. Christensen for Defendant and Respondent RLI Insurance Company.

Charlston, Revich & Chamberlin and Stephen P. Soskin for Defendant and Respondent Epic Funding Corporation.

Cooley Godward, Michelle C. Doolin; Harrison, Patterson & O'Connor and James R. Patterson for Defendant and Respondent Royal and Sun Alliance USA.

Gilchrest & Rutter, Jonathan David Rapore; Cobeago Tomlinson, Jay T. Hopkins; Simpson Thacher & Bartlett, Christopher A. Sant, Rose E. Viselman, George S. Wang; Murchinson & Cumming, B. Casey Yim; Jory, Peterson, Watkins, Ross & Woolman, John E. Peterson and Jason C. Parkin for Defendants and Respondents Atlantic Coast Federal, Texas State Bank, Norstates Bank, Citibank, Guardian Capital, and United Security Bank.

Franzdel Robins Bloom & Csato, Andrew K. Alper and Thomas M. Robbins for Defendant and Respondent Ameriana Bank and Trust.

Mitchell, Silberberg & Knupp, Thomas P. Lambert and Paul Guelpa for Defendant and Respondent Illinois Union Insurance Company.

Beck, De Corso, Daly, Kreindler & Harris, Mark E. Beck, Anthony A. De Corso; Orrick, Herrington & Sutcliffe; Orrick, Herrington & Sutcliffe, Eric A.

Gressler; Patton Boggs and Mitchell Berger for Defendant and Respondent Bluebonnet Savings Bank.

Law Office of W. Jeffery Fulton and W. Jeffery Fulton for Defendants and Respondents U.S. Bancorp and Cash Recovery.

Schwartz, Semerdjian Haile Ballard & Cauley, James R. Ballard; Ham Galliher and Jeffrey L. Galliher for Defendants and Respondents Norstates Bank and Texas State Bank.

INTRODUCTION

Named plaintiffs, as the representatives of unnamed plaintiffs, appeal from judgments of dismissal of some defendants from a cause of action for unfair competition, after demurrers were sustained. Appellants' standing to prosecute the action and this appeal on behalf of unnamed plaintiffs was eliminated by Proposition 64. (See Bus. & Prof. Code, §§ 17203, 17204; *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 232 (*CDR*) ["section 17203, as amended, withdraws the standing of persons who have not been harmed to represent those who have"].) Because appellants had standing when the action was commenced and when the appeal was filed, we must vacate the judgments of dismissal, and remand to the Superior Court to give appellants an opportunity to move to amend their complaint to add a qualified plaintiff. (See *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 242-243 (*Branick*).)

No judgments of dismissal were entered in favor of defendants who were alleged to have caused injury to both the named plaintiffs and to unnamed plaintiffs. As the representatives of unnamed plaintiffs, appellants purport to appeal from orders sustaining these defendants' demurrers without leave to amend, and striking the representative allegations. As no judgments of dismissal have

been entered in favor of such defendants, we dismiss this part of the appeal as taken from nonappealable orders.

On behalf of themselves and as the representatives of unnamed plaintiffs, the named plaintiffs also appeal from orders quashing service of summons on other defendants -- Huntington National Bank, Sky Bank, Metropolitan Bank & Trust Co. and the Second National Bank of Warren (collectively, the Ohio banks.) We do not dismiss or vacate and remand the orders quashing service of summons entered in favor of the Ohio banks, because we conclude that due to the Huntington and Second National's mergers with Sky Bank and Metropolitan Bank, as to which the named plaintiffs had standing, plaintiffs did not lose standing pursuant to Proposition 64. Thus, we review the motions on the merits. We reject appellants' contentions, and affirm the orders in favor of the Ohio banks.

BACKGROUND

This action was commenced in 2001, by more than 40 named plaintiffs on behalf of themselves and 600 unnamed plaintiffs, against Commercial Money Center, Inc. (CMC), Commercial Servicing Center, Inc. (CSC) and others. After CMC and CSC filed voluntary petitions in bankruptcy, the action was removed to federal bankruptcy court, which remanded the action to state court after the bankruptcy debtors were dismissed. Once the action was remanded, appellants filed a second amended complaint (SAC).[1]

The SAC alleged that the plaintiffs entered into contracts with CMC, CSC and related companies, to finance the acquisition of equipment and provide working capital. It alleged that although the contracts were called leases, they

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[1] The SAC referred to the named plaintiffs simply as plaintiffs, and to unnamed plaintiffs as "all the other CMC California Customers." For convenience, we refer to them as named plaintiffs and unnamed plaintiffs.

were disguised loans secured by the equipment and plaintiffs' accounts receivable, and that as a result of CMC's failure to be licensed under California law, it was not entitled to charge interest in excess of the rates set forth in the California Constitution, article XV, section 1.

The nine counts of the SAC were based upon "General Facts" which set forth categories of facts and groups of named plaintiffs, later incorporated into each count. There was no category of general facts relating to unnamed plaintiffs. The first count alleged that usurious interest rates were charged under the contracts executed by the named plaintiffs. The second count alleged that the named plaintiffs' contracts were consumer loans, made in violation of several provisions of the California Finance Lenders Law, Financial Code section 22000 et seq. The third count named certain defendants and sought declaratory relief and reformation of the named plaintiffs' contracts which had been assigned to such defendants. The fourth count alleged a common count for money had and received by certain defendants from all named plaintiffs. The fifth count sought cancellation or reformation of the named plaintiffs' contracts which had been assigned to the defendants named in that count. In the sixth, seventh and eighth counts, the named plaintiffs sought the remedies of accounting, constructive trust and injunctive relief, respectively, for the acts alleged in previous counts.

The ninth count, at issue in this appeal, incorporated all prior allegations, adding that unnamed plaintiffs were "similarly situated victims of [the] unfair and unlawful business practices" of all the defendants, and that because the named and unnamed plaintiffs were all affected by the previously alleged unlawful or usurious contracts, all defendants had violated the California Unfair Practices Act.[2] On behalf of themselves and unnamed plaintiffs, the named plaintiffs sought

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[2] See Business and Professions Code section 17000 et seq.

restitution of principal "and/or" interest, disgorgement of profits, injunctive relief and attorney fees.

Certain defendants were alleged to have caused harm only to unnamed plaintiffs. The SAC identified the following respondents as financial institutions that funded *unnamed* plaintiffs' contracts, and either took assignments of them or purchased them: Guardian Capital V, LLC, Guardian Capital VIII, LLC, Guardian Capital IX, LLC, Guardian Capital XIV, LLC, Guardian Capital XVIII, LLC, Guardian Financial Inc., Diversity Capital II, LLC, Citibank, N.A., Ameriana Bank & Trust of Indiana, Atlantic Coast Federal, Bank of Waukegan, Riverway Bank, Bluebonnet Savings Bank, FSB, United Security Bank, Huntington National Bank and Second National Bank of Warren. Respondents American Motorists Insurance Company and RLI Insurance Co. were alleged to be sureties that had underwritten and issued "credit enhancement bonds" or insurance policies relating to contracts with unnamed plaintiffs.[3] All of the above respondents interposed general demurrers or joined in those filed by others.

The following "dual-capacity" defendants were alleged to have caused harm to both named and unnamed plaintiffs: Sky Bank, Metropolitan Bank & Trust, Epic Funding Corporation, Netbank, Footbridge Limited Trust, Lakeland Bank, General Electric Capital Corporation, Guardian Capital VI, Guardian Capital XV, Safeco Surety Company, Illinois Union Insurance Company, Royal and Sun Alliance U.S.A., Stuart Allan, U.S. Bancorp and Cash Recovery.[4] These dual-capacity defendants -- other than Sky Bank and Metropolitan Bank, who brought

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[3] These two respondents were named in the ninth count, alleging unfair business practices, only by unnamed plaintiffs.

[4] Pursuant to stipulation of the interested parties, we have dismissed the appeal as to Stuart Allan, Safeco Surety Company and Illinois Union Insurance Company. Accordingly, we hereafter delete references to them.

motions to quash -- demurred to the ninth cause of action and moved to strike the representative allegations. The court sustained their demurrers and denied leave to amend only as to unnamed plaintiffs. In its statement of decision, incorporated into its minute order, the trial court held that all demurrers were sustained as to all unnamed plaintiffs, and all representative allegations were stricken.

The Ohio banks (Sky Bank, Metropolitan, Huntington and Second National) brought motions to quash service of summons, which were granted by the trial court. The ruling appears in the court's statement of decision, filed March 15, 2004.

A minute order was entered March 15, 2004, incorporating the court's statement of decision filed the same day, and stating that the court's rulings were reflected at pages eight and nine of the statement of decision. Separate judgments of dismissal were entered between March 25, 2004 and June 8, 2004, in favor of the defendants charged in count 9 only by unnamed plaintiffs (the first group described above). The record contains no final judgments in favor of the dual-capacity defendants, and the notice of appeal does not name them specifically, but refers generally to all defendants subject to dismissal under the court's minute order of March 15, 2004.

Appellants' notice of appeal was timely filed on May 13, 2004.[5] As the representatives of unnamed plaintiffs, appellants seek review only of the judgments of dismissal relating to unnamed plaintiffs, as the trial court granted the named plaintiffs leave to amend their complaint. However, appellants appeal both in their

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[5] The notice of appeal included the names of the parties in whose favor appellants expected judgments to be entered. Although the appeal was premature as to those judgments, we treat the notice of appeal as having been filed immediately after the judgment of June 8, 2004 -- the last to be filed -- and thus timely. (See Cal. Rules of Court, rule 8.104(e).)

representative capacity and on behalf of themselves from the orders quashing service of summons entered in favor of the Ohio Banks.

After the instant appeal had been calendared for oral argument, the court received notification that the matter had been removed to federal court by the FDIC, as successor to respondent NetBank, N.A. The matter was taken off calendar pending further order from the district court. In August 2008, this court was notified of the dismissal of NetBank N.A./FDIC, and the federal court's order remanding the instant case. The matter was then recalendared for argument in this court.

DISCUSSION

1. *The Appeal is Dismissed as to the Dual-Capacity Defendants Except the Ohio Banks*

The court entered an unsigned minute order March 15, 2004, stating that its rulings were contained in its statement of decision filed the same day. The demurrers to the ninth cause of action were sustained, and the motions to strike the representative allegations were stricken. The trial court granted the named plaintiffs leave to amend, but denied leave to amend as to the unnamed plaintiffs. Thus, the demurrers of the dual-capacity defendants -- Epic Funding Corporation, Netbank, Footbridge Limited Trust, Lakeland Bank, General Electric Capita Corporation, Guardian Capital VI, Guardian Capital XV, Royal and Sun Alliance U.S.A., U.S. Bancorp and Cash Recovery -- were sustained, in part with leave to amend, and in part without leave to amend.

"Orders sustaining demurrers are not appealable. [Citations.] An appeal can be taken after entry of such an order only after the court enters an order of dismissal." (*Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1695; Code

Civ. Proc., § 904.1, subd. (a)(3).)[6] In general, statements of decision are not judgments, and thus are not appealable; however, the reviewing court may deem them appealable if they are signed and filed, and embody the trial court's final ruling. (*Alan v. American Honda Motor Co., Inc*. (2007) 40 Cal.4th 894, 901.)

Here, no judgments were entered in favor of the dual-capacity defendants, and the unsigned minute order contains no rulings, but instead refers to the statement of decision. The statement of decision does not express the court's final order dismissing the ninth cause of action in favor of any of the defendants or striking the representative allegations. The only judgments entered were those in favor of defendants identified only by unnamed plaintiffs. As no judgment was entered as to any of the dual-capacity defendants, the orders in their favor are interlocutory and not appealable. We thus dismiss the appeal taken from the orders entered in favor of the dual-capacity defendants.

2. *As Standing on Appeal Was Revoked by Operation of Proposition 64, Remand Is Required as to the Remaining Defendants, except the Ohio Banks*

At the November 4, 2004 general election, voters approved Proposition 64, which amended Business and Professions Code sections 17203 and 17204 to provide that a private person has standing to sue for relief from unfair competition only if he or she "'has suffered injury in fact and has lost money or property as a result of such unfair competition.'" (*CDR*, *supra*, 39 Cal.4th at p. 227.) Appellants have acknowledged that under the reasoning of the California Supreme Court's opinion in *CDR*, standing to appeal on behalf of unnamed plaintiffs was

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[6] In contrast, orders quashing service of summons are appealable. (Code Civ. Proc., § 904.1, subd. (a)(3).)

revoked by operation of Proposition 64. (See *id*. at pp. 232-233.)[7] The appellate court has no jurisdiction to consider an appeal filed by an appellant with no standing. (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295.) We must ordinarily dismiss an appeal prosecuted by a party who had no standing to appeal when filed. (*In re Marriage of Tushinsky* (1988) 203 Cal.App.3d 136, 144.) However, in *CDR's* companion case, *Branick*, *supra*, 39 Cal.4th 235, the Supreme Court held that where a representative plaintiff had standing at the time the appeal was filed, but standing was eliminated by the subsequent passage of Proposition 64, the plaintiff/appellant must be permitted to seek leave to amend the complaint by substituting named plaintiffs in place of unnamed plaintiffs. (*Id*. at pp. 238-239, 241-244.)[8]

Respondents contend that remanding to permit appellants to file a motion to amend would serve only to delay the inevitable, because the trial court determined that no cause of action was stated against them, and substituting a new plaintiff cannot be allowed if the proposed amendment states a wholly new cause of action. (*Branick*, *supra*, 39 Cal.4th at pp. 243-244; *Klopstock v. Superior Court* (1941) 17 Cal.2d 13, 20 (*Klopstock*).)[9] The superior court is the only court with authority

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[7] Appellants admit that the respondents affected by Proposition 64 did nothing to the named plaintiffs, and that discovery would be needed to determine what they did.

[8] Briefing in the instant appeal preceded the Supreme Court's decision in *CDR* and *Branick*. We therefore invited and received letter briefs discussing the appropriate disposition of this appeal in light of the two decisions.

[9] In oral argument, respondents argued that appellants should not be given a "second bite at the apple." They relied on *Cryoport Systems v. CNA Ins. Cos*. (2007) 149 Cal.App.4th 627, a post-*Branick* case in which the court of appeal rejected the appellant's argument that the case should be remanded for a second motion to amend to add a plaintiff with standing. There, however, standing had

to pass upon those issues. (*Branick*, *supra*, 39 Cal.4th at p. 239; Code Civ. Proc., § 473.) In litigation with potential factual and legal complexity, remand is required even in cases in which a demurrer was sustained on the ground that the complaint failed to state a cause of action. (*Branick*, at p. 244.) Thus, because appellants had standing when they filed their notice of appeal, and have not had the opportunity to make a motion before the superior court for leave to amend, we must reverse the judgments of dismissal and remand to give them that opportunity. (*Id*. at p. 239)

However, we reject appellants' contention that *Branick* requires us to direct the trial court upon remand to allow them time to locate new plaintiffs or to permit discovery to do so. Not only is there no such suggestion in *Branick*, but the court made clear that by enacting Code of Civil Procedure section 473, the Legislature gave the superior court, not the appellate court, the authority to consider a motion to amend. (*Branick*, *supra*, 39 Cal.4th at pp. 242-243.) Further, that authority includes the discretion to condition its order "upon any terms as may be just." (Code Civ. Proc., § 473, subd. (a).) Thus, it is within the superior court's discretion, not ours, to determine whether discovery should be allowed.

The Ohio banks contend that the orders granting the motions to quash service of summons should be treated differently from the judgments of dismissal. They contend that *Branick* has no application to orders quashing service of summons, because amendment to substitute a plaintiff with standing would not result in personal jurisdiction over the banks.

We agree that *Branick* has no application to the orders quashing service of summons in this case. The named plaintiffs appealed from the orders both in their representative capacity and on behalf of themselves. Because Sky Bank and Metropolitan were defendants in causes of action affecting named plaintiffs,

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been eliminated by Proposition 64 before judgment was entered in the trial court and before the notice of appeal was filed. (*Id*. at p. 633.)

appellants continue to have standing to appeal the trial court's order with regard to them. (See *CDR*, *supra*, 39 Cal.4th at pp. 227, 232-233.) By virtue of Huntington's merger with Sky Bank and Metropolitan, Huntington has become a defendant in causes of action brought by named plaintiffs, who thus retain standing to appeal, eliminating any need to reverse and remand.[10] Accordingly, we review the merits of the appeal from the orders granting the motions to quash.

3. *Appellants Failed to Establish Personal Jurisdiction*

a. *Facts Supporting Motion to Quash Service*

Huntington, Sky Bank and Metropolitan, brought one joint motion to quash service of summons due to lack of personal jurisdiction, and Second National brought a separate motion to quash. However, the two motions present similar facts. As the Ohio banks represent that they are now all one bank, and appellants have not made separate contentions or arguments, but refer instead to the Ohio banks and their motions collectively, we discuss the merits of the motions together.

In support of its motion, Sky Bank submitted the declarations of Mark Maiberger, Stephen H. Kurkul, Charles Edwards and John R. Bruch. Maiberger, executive vice-president of Sky Bank, stated that Sky Bank -- a regional bank doing business in Ohio, Michigan, Pennsylvania, West Virginia and Indiana -- had been incorporated under Ohio law and was headquartered in Ohio. He stated that Sky Bank had never been licensed to do business in California, did not conduct business here or maintain any branches, offices, post office boxes, telephone listings or bank accounts in California, and had no employees or sales representatives here. Maiberger claimed that Sky Bank did not conduct any marketing or solicitation in California, never owned real or personal property here and did not incur or pay taxes in California.

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[10] Huntington had previously merged with Second National, and is now the successor to all the Ohio banks.

Kurkul, a vice-president of Sky Bank, stated that in 2000 and 2001, Sky Bank made four loans relating to this case, including a loan of $5 million to Guardian Capital VI, a Delaware limited liability company with its principal place of business in Ohio. All four loans were negotiated in Ohio by Blaine Tanner, an Ohio resident and owner of the Guardian entities. The loan agreements were drafted, executed and performed in Ohio, and were expressly to be governed by Ohio law.

Kurkul stated that the Guardian entities entered into agreements to purchase certain pools of equipment leases from CMC, a Nevada corporation with operations in California. The lessees resided in various states, including California. CMC assigned to the Guardian entities its security interests in the leases and payment bonds, and the Guardian entities assigned them to Sky Bank as collateral for the four loans. Sky Bank perfected its security interest by filing UCC-1 financing statements with the California Secretary of State.[11] Otherwise, Kurkul claimed, "Sky Bank never solicited, negotiated, executed or performed any of these four loan agreements in California."

Edwards declared that he was a vice-president of Metropolitan prior to its merger with Sky Bank in 2003. He stated that prior to the merger, Metropolitan was an Ohio corporation, engaged in residential and construction lending in Ohio, was never licensed to do business in California, and did not maintain branches, offices, post office boxes or telephone listings in California. In 2001, Metropolitan lent $5 million to Guardian Capital XV, a Delaware limited liability company with its principal place of business in Ohio. The loan was negotiated in Ohio by Blaine Tanner, an Ohio resident and owner of Guardian XV, and the loan agreement was executed and performed in Ohio.

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[11] See California Uniform Commercial Code section 9301 et seq.

Edwards stated that Guardian XV used the loan proceeds to purchase certain pools of equipment leases from CMC, a Nevada corporation with operations in California. The lessees resided in various states, including California. CMC assigned to Guardian XV its security interests in the leases and payment bonds, and Guardian XV assigned them to Metropolitan as collateral for the loan. Metropolitan was not involved in the solicitation, negotiation or execution of the security agreements or payment bonds, but it did perfect its security interest by filing financing statements with the California Secretary of State.

The motion to quash with respect to Huntington was supported by two declarations of John R. Bruch, its vice-president. In his first declaration, Bruch stated that Huntington had never been licensed to do business in California, and did not maintain any branches, places of business, offices, post office boxes, telephone listings, employees or sales representatives here. Nor did Huntington conduct any marketing, advertising, solicitation or other promotional activities in California. In his second declaration, Bruch stated that Huntington entered into two loan transactions with Blaine Tanner, an Ohio resident and principal of Guardian Capital XIV, and a third with Guardian Capital XVI. Both loan agreements were negotiated, executed and performed in Ohio. Bruch believed that the Guardian entities purchased leases and security agreements related to equipment in California, but Huntington was not involved in those dealings or in any payment bonds relating to the leases. Huntington took assignment of the Guardian entities' right to payment under their security interests in the leases, and filed financing statements in California.

Second National submitted the declaration of Chris Smerglia, its vice-president and regional commercial manager. He stated that Second National had never been licensed or authorized to do business in California, had no officers, agents or employees conducting business here, did not maintain any branches,

offices, mailing addresses, telephone listings or bank accounts in California, did not solicit business or advertise in California, never owned real or personal property in California and did not incur or pay taxes in California.

Smerglia described the loan agreements that Second National negotiated, executed and funded in Ohio with Guardian Capital V and Diversity Capital II, owned by Ohio resident Blaine Tanner. Guardian Capital V filed UCC-1 financing statements showing that Second National held a security interest, as Guardian Capital V's assignee, in the leases Guardian Capital V had purchased from CMC. The financing statements were filed in Nevada and California.

b. *Appellants Failed to Show Sufficient Contacts in California*

Appellants do not dispute any of the facts set forth in the declarations and did not proffer evidence of any activity in this state by the Ohio banks other than that which is set forth in the banks' declarations. Our review is therefore de novo. (See *Snowney v. Harrah's Entertainment, Inc*. (2005) 35 Cal.4th 1054, 1062 (*Snowney*).)

California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) "A state court's assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal Constitution 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."' [Citations.]" (*Vons Companies, Inc. v. Seabest Foods, Inc*. (1996) 14 Cal.4th 434, 444-445 (*Vons*), quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.)

"Personal jurisdiction may be either general or specific. A nonresident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are 'substantial . . . continuous and systematic.'

[Citations.] In such a case, 'it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum.' [Citations.] Such a defendant's contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction. [Citation.]" (*Vons*, *supra*, 14 Cal.4th at pp. 445-446, italics omitted.)

Appellants conceded that general jurisdiction could not be established, and sought to establish specific jurisdiction. "If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the *specific* jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits [citation], and the 'controversy is related to or "arises out of" a defendant's contacts with the forum.' [Citations.]" (*Vons*, *supra*, 14 Cal.4th at p. 446.) The plaintiff bears the burden to demonstrate such facts. (See *Snowney*, *supra*, 35 Cal.4th at p. 1062; *Vons*, at p. 449.) If that burden is met, the nonresident defendant may defeat jurisdiction by showing that its exercise would be unreasonable. (*Snowney*, *supra*, at p. 1062.)

Minimum contacts necessary to establish specific jurisdiction would be those demonstrating that the Ohio banks "'manifestly . . . availed'" themselves of the "'privilege of conducting business'" in California. (*Vons*, *supra*, 14 Cal.4th at p. 446, quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 476.) The contacts may consist of purposefully directing activities at California residents, purposefully benefiting from activities in this state, purposefully invoking the benefits and protections of California laws in order to conduct activities here, deliberately engaging in significant activities here or deliberately creating continuing obligations in this state. (*Vons*, *supra*, 14 Cal.4th at p. 446; *Burger King Corp. v. Rudzewicz*, *supra*, 471 U.S. at pp. 472-473.)

Appellants admit that the only contact shown was the filing of financing statements with the California Secretary of State.[12] Where the nonresident defendant's only contact with the state is the filing of a financing statement, it is insufficient to establish jurisdiction. (*Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 906-907 (*Goehring*).) Other jurisdictions agree. (See *id*. at p. 908, and cases cited therein.) As one court explained, the filing of a financing statement under the Uniform Commercial Code by a nonresident bank "'is not a "voluntary" effort to do business' and 'due process protections would have little meaning if [a] defendant would be subject to suit in every jurisdiction in which customers resided or used funds obtained from the bank.'" (*Ensign v. Bank of Baker* (N.D. 2004) 676 N.W.2d 786, 792.)

Appellants attempt to distinguish *Goehring* on the ground that the collateral described in the financing statement in that case was at all times located in Texas, whereas here, the equipment is in California. (See *Goehring*, *supra*, 62 Cal.App.4th at p. 907.) In addition, appellants contend that the Ohio banks own the equipment or they have taken a security interest in the equipment itself, not simply in the leases, giving them the right to take possession upon default. However, they expressly base their contention upon an assumption, not the evidence. Citing *Rice Growers Assn. v. First National Bank* (1985) 167 Cal.App.3d 559 (*Rice Growers*), appellants contend that if we were to assume that the nonresident banks' security interest was in the equipment itself or that they

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[12] Filing a financing statement does not create a security interest, but merely allows one secured creditor to claim priority over another. (*Turbinator, Inc. v. Superior Court* (1995) 33 Cal.App.4th 443, 450-451; see Cal. U. Com. Code, § 9301 et seq.)

owned the leased equipment, the financing statements would amount to sufficient contacts with the State of California to justify taking jurisdiction.[13]

We decline to assume the suggested facts, as there was no evidence that the Ohio banks took a security or ownership interest in the equipment itself. Only Second National's financing statements were before the trial court and appear in the record on appeal, and they support Second National's claim that it took security interests in the leases, not in the equipment. As the financing statements of the remaining banks are not in the record, we presume that they would support the declarations of their officers. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 ["All intendments and presumptions are indulged to support [the orders] on matters as to which the record is silent"].) Sky Bank and Second National officers stated in their declarations that the banks did not own property in California, and there was no evidence that the other banks owned property here. Sky Bank's collateral for the loans consisted of the Guardian entities' security interests in the leases and payment bonds. Similarly, Metropolitan's collateral consisted of security interests in the leases and payment bonds. Huntington took assignment of the Guardian entities' right to payment under the leases.

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[13] It is unnecessary to speculate as to the contents of financing statements, as they are required to contain a description of the collateral by type or item, and the name of the debtor. (Cal. U. Com. Code, §§ 9502-9504; see *Cassel v. Kolb* (1999) 72 Cal.App.4th 568, 575.) Appellants contend that discovery is needed to obtain the financing statements. We disagree, as they are public records, and any person may obtain a certified copy from the California Secretary of State. (Cal. U. Com. Code, § 9528.) In any event, the bank officers stated in their declarations that the banks' security interests were in the leases. Bruch explained that the assignments gave Huntington a right to payment under the leases. Collateral consisting of a right to payment under a lease is an account. (Cal. U. Com. Code, § 9102, subd. (a)(2); see 4 Witkin, Summary of Cal. Law (10th ed. 2005) Secured Transactions in Personal Property, § 42, p. 599.) Thus, the banks' security interests were in accounts.

Moreover, appellants' reliance on *Rice Growers* is misplaced, as there were many substantial contacts in that case, and jurisdiction was not based solely upon obtaining a security interest in California property or upon the filing of a financing statement in California. In *Rice Growers*, a nonresident bank took a substantial ownership interest in a boat, obtained a boat construction loan from a California bank, sent its senior vice-president to negotiate the terms of the loan -- which was to be repaid in California -- and entered into a trust agreement for the chartering of the boat; in all, the nonresident bank entered into four contracts relating to these activities, and all contracts provided that California law would govern. (*Rice Growers, supra*, 167 Cal.App.3d at pp. 569-570.) The court found the ownership of chattel in the forum to be an important factor, but acknowledged that the existence of jurisdiction may not depend on a single contact. (*Id*. at p. 569.)

A single transaction may justify jurisdiction, such as in *Michigan Nat. Bank v. Superior Court* (1972) 23 Cal.App.3d 1, where a nonresident bank financed the sale of an airplane by a California dealer, the contract was signed in California, the payments were payable in California and the airplane was kept in California. (See *id*. at pp. 3-4.) In the instant case, however, the Ohio banks did none of these things. They were not involved in the negotiation or execution of CMC's agreements, and they were not parties to them. They lent money in Ohio to entities owned by an Ohio resident, to be repaid in Ohio according to Ohio law. The entities, in turn, purchased leases from CMC, with whom the banks had no dealings, and assigned their right to payment under the leases to the banks.

Appellants cite a string of authorities in which courts of other states have found personal jurisdiction based upon ownership or a security interest in collateral located in the forum states. (See *Spungin v. Chinetti International Motors* (E.D.N.Y. 1981) 515 F.Supp. 31, 32 [Connecticut bank subject to New York jurisdiction due to perfected security interest in New York automobile which was

the subject of an action to establish ownership]; *Staley v. Homeland, Inc*. (E.D.N.C. 1974) 368 F.Supp. 1344, 1350 -1351 [action to rescind purchase of mobile home; defendant had interest in 300 vehicles and trailers located in North Carolina securing obligations enforceable in North Carolina]; *Mony Credit Corp. v. Ultra-Funding Corp*. (N.C. Ct.App. 1990) 397 S.E.2d 757 [action to compel repurchase of equipment lease assigned, payable and enforceable in forum state]; *Simmons Oil Corp. v. Holly Corp*. (Mont. 1990) 796 P.2d 189 [action for breach of fiduciary duty and conversion relating to Montana refinery operation financed by California bank which took ownership interest].) All the cited cases involved issues directly affecting the property located in the forum state, thus satisfying both factors that plaintiffs must establish -- the defendants' purposeful availment of forum benefits and a direct relationship between the cause of action and the defendants' contacts with the forum. (See *Vons*, *supra*, 14 Cal.4th at p. 446.)

Here, in contrast, the nonresident banks have security interests in leases. The bank officers stated in their declarations that the banks took assignments of the right to payment under the leases and payment bonds; they did not state they took ownership of the equipment or a security interest in the equipment itself. There is no evidence, as appellants suggest, that the respondent banks will resort to California courts to enforce their interests. Should there be a default by the lessees, the banks will not be required to foreclose upon or repossess the equipment, but may sue their Ohio debtors directly. (See *Bank of California v. Leone* (1974) 37 Cal.App.3d 444, 446-447.) Thus, they may never avail themselves of forum benefits. Moreover, appellants do not claim that the Ohio banks have made any effort to enforce their security interests.

In sum, appellants did not meet their burden to show that the nonresident banks purposefully availed themselves of forum benefits merely by filing financing statements with the Secretary of State. (See *Goehring*, *supra*, 62 Cal.App.4th at

p. 908.) Appellants submitted no other evidence suggesting a substantial nexus between the alleged injury and any activity by the banks in this state. Accordingly, appellants failed to show that the Ohio banks were subject to the jurisdiction of the California court, and the order quashing service of process was proper. (See *Snowney*, *supra*, 35 Cal.4th at pp. 1066-1068.)

c. *The Denial of Discovery Was Not an Abuse of Discretion*

Appellants claim that the trial court's moratorium on discovery prevented them from learning of other contacts the nonresident banks might have had with California, such as the assertion of their ownership rights in the equipment, the direct collection of payments and interest, and any efforts to enforce their security interests in California. Discovery should be allowed where necessary to enable a plaintiff to sustain his burden to establish minimum contacts. (*Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710.) When the nonresident defendant is a corporation, the court should permit discovery of facts showing it has been doing business in this state, as such facts are ordinarily within the exclusive knowledge of the officers of the corporation. (*1880 Corp. v. Superior Court* (1962) 57 Cal.2d 840, 843.) The trial court may also grant a continuance of the motion to allow the plaintiff to conduct such discovery. (*Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 487.) Whether to allow discovery and whether to grant a continuance for that purpose are both matters within the discretion of the trial court. (*Id*. at pp. 486-487.) Unless the plaintiff seeking discovery demonstrates that discovery is likely to lead to evidence of facts establishing jurisdiction, it is not an abuse of discretion to deny the request. (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 127.)

Appellants' request for discovery was made in a terse discussion in their opposition to the motion to quash, and was not supported by any showing of a likelihood that discovery would lead to facts necessary to defeat the motions, or

that the facts were within the exclusive knowledge of the Ohio banks. Among the facts appellants claimed they needed were the status of the collateral and any efforts on the part of the nonresident banks to "realize upon that collateral." However, no declarations were submitted by persons, such as named plaintiffs who would presumably have knowledge of such facts, at least as to Sky Bank and Metropolitan. Moreover, appellants have admitted that there have been no enforcement efforts directed at any named or unnamed plaintiff.

The only other facts appellants claimed they needed to discover were whether the Guardian loans were in default, whether the nonresident banks had direct discussions with officers of CMC, the location of discussions and negotiations and whether the banks thought they were taking security interests in California collateral. As appellants made no effort to show why such facts were needed, or how they might establish jurisdiction, there was no abuse of discretion in denying the request to discover them. (See *In re Automobile Antitrust Cases I & II*, *supra*, 135 Cal.App.4th at p. 127.)

DISPOSITION

The orders quashing service of process upon the Ohio banks, now Huntington National Bank, are affirmed. Huntington National Bank shall have costs on appeal from appellants.

The judgments in favor of Guardian Capital V, LLC, Guardian Capital VIII, LLC, Guardian Capital IX, LLC, Guardian Capital XIV, LLC, Guardian Capital XVIII, LLC, Guardian Financial Inc., Diversity Capital II, LLC, Citibank, N.A., Ameriana Bank & Trust of Indiana, Atlantic Coast Federal, Bank of Waukegan, Riverway Bank, Bluebonnet Savings Bank, FSB, United Security Bank, American Motorists Insurance Company and RLI Insurance Co., are vacated and remanded to allow a motion to amend to substitute a new plaintiff or plaintiffs with standing,

and for other proceedings consistent with this opinion. As between appellants and these respondents, each party shall bear his/her/its own costs.

The appeal from orders entered in favor of Epic Funding Corporation, Netbank, Footbridge Limited Trust, Lakeland Bank, General Electric Capita Corporation, Guardian Capital VI, Guardian Capital XV, Royal and Sun Alliance U.S.A., U.S. Bancorp and Cash Recovery, is dismissed. These respondents shall have costs on appeal from appellants.

Any motion for leave to amend must be filed in the trial court within 30 days of the filing of the remittitur. If no motion is filed within the allotted time, or if such motions are denied, the court shall enter a judgment dismissing the action as to unnamed plaintiffs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.