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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DELILAH HARGRAVE, ET AL., Plaintiffs and Appellants, v. JUAN MEJIA, et al., Defendants and Respondents.	B143714 (Los Angeles County Super. Ct. No. BC207422)

Appeal from an order of the Superior Court of Los Angeles County. Owen Lee Kwong, Judge. Affirmed.

Law Offices of Manuel H. Miller and Steve Larkin for Plaintiffs and Appellants.

Friedenthal, Cox & Herskovitz, LLP, Daniel R. Friedenthal and Mark H. Herskovitz for Choate Machine and Tool, Inc., Defendant and Respondent.

Delilah and Mark Hargrave (plaintiffs) appeal the order of the trial court quashing service of the summons and complaint in their wrongful death action on the defendant and respondent, Choate Machine and Tool, Inc., an Arkansas corporation (Choate). The court made its ruling on the ground of a lack of personal jurisdiction.

The trial court determined that the plaintiffs failed to provide sufficient evidence to demonstrate a basis for imposing jurisdiction upon Choate. Because we conclude that substantial evidence supports the trial court's decision, we will affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

On or about March 21, 1998, one Juan Mejia shot and killed plaintiffs' decedent with a shotgun designed, manufactured, marketed and sold by Maverick Arms, Inc. (hereafter, Maverick).[2] Plaintiffs alleged, in the first cause of action of their complaint filed on March 19, 1999, that the acts of the defendant Mejia were intentional and constituted a battery against plaintiffs' decedent.

In their second cause of action, plaintiffs alleged a claim for wrongful death against Maverick based upon products liability. They alleged that Maverick was the manufacturer of the shotgun used by Mejia and that it was defective in its design and/or

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[1] The relevant facts upon which this appeal turns are not in significant dispute. To the extent that there are conflicts, we recite the facts, in accordance with the usual rules on appeal, that favor and support the order made by the trial court.

[2] Both Juan Mejia and Maverick were named as defendants in plaintiffs' complaint. Subsequently, on or about October 30, 2000, Maverick was voluntarily dismissed from the action. At about the same time, plaintiffs caused a default to be entered against the defendant Mejia.

manufacture and/or marketing because of an unreasonably light trigger pull, and that such defect was a substantial factor in the death of plaintiffs' decedent, as the shooting could not have occurred had the shotgun been designed with a reasonably safe trigger pull resistance.

Shortly after the plaintiffs' complaint was filed, Juan Mejia was convicted of murder and received a sentence of 40 years to life in state prison. His conviction was later affirmed on appeal.

On or about March 28, 2000, Choate was named as a DOE defendant and served with a copy of the summons in Arkansas on April 13, 2000, a date which as about 45 days prior to the scheduled trial date of May 31, 2000.

Choate responded, on May 15, 2000, with a motion to quash service of the summons and complaint on the ground that the court did not have personal jurisdiction over it. Choate asserted that it did not have sufficient contacts with the State of California to warrant the assertion of *either* general *or* specific jurisdiction.

Choate supported this motion with declarations and exhibits demonstrating the following relevant facts:

(1) Choate is, and at all times was, an Arkansas corporation with its corporate headquarters and principal place of business in Bald Knob, Arkansas;

(2) All of Choate's business transactions related to the manufacture of fire arms were, at all relevant times, *initiated* in Arkansas;

(3) Choate (a) was not qualified to do business in the State of California, (b) had not applied to the Secretary of State or any other governmental agency to do business in the State of California; and (c) had not been involved in any business transactions in the State of California.

(4) While Choate sold materials to various manufacturers including, Marlin Gun Company, Thompson Center, New England Fire Arms and Mossberg (all of which, to Choate's understanding, were *not* California companies), it did not do any business with defendant Maverick nor did it manufacture or advertise that it manufactured any parts for Maverick's products.

(5) Choate did not do any business with any firearm manufacturer outside the State of Arkansas, and those firearm manufacturers with which it did do business were not California corporations.

(6) Choate did *not* (a) do any business with Maverick, the alleged manufacturer of the subject firearm; (b) make any equipment or stock which were *intended* to be adaptable to Maverick's products; or (c) advertise that its equipment, including, but not limited to stocks, were adaptable to Maverick's products.

In opposition to Choate's motion, plaintiffs presented evidence that in March 2000 (nearly two years *after* the murder of plaintiffs' decedent) one of the employee's of plaintiffs' attorney had requested a copy of a Choate catalogue and had sent a $2 check to Choate to cover the cost of the same. The requested catalogue was sent to the employee

and included a mail order form. Information regarding the catalogue was obtained from Choate's internet website.[3]

Based on these facts, plaintiffs requested that the trial court continue the hearing on Choate's motion for a reasonable period of time in order to permit plaintiffs to conduct discovery on the question of personal jurisdiction. Plaintiffs noted that Choate's catalogue and website described it as "the leader in firearm accessories around the world." Plaintiff argued that it was "patently unreasonable" that such a manufacturer would not make some efforts to "ensure that its products were marketed within the most populous state in the United States." As plaintiffs summarized their request in their opposition to Choate's motion, they sought discovery of information regarding direct retail mail order sales to California residents, sales to California based wholesale distributors of their products, and sales to regional distributors based in other states which include California within the states served by such regional distributors, as well as any other bases for personal jurisdiction.

In further support of its opposition to Choate's motion, plaintiffs argued that Choate had, in fact, manufactured the stock and grip that had been attached to the Maverick shotgun used to kill decedent. Plaintiffs did not discover this fact until March 13, 2000, when an employee of plaintiffs' attorney attended an inspection and testing of the shotgun conducted by the then defendant Maverick. During the inspection and

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[3] The record reflects that Choate did not establish its internet website until approximately June of 1998, about three months *after* the murder of plaintiffs' decedent.

testing, the experts retained by Maverick disassembled the weapon. During the disassembly of the weapon, one of the experts retained by Maverick mentioned that the pistol grip and folding stock were not originally on the weapon and showed how the aftermarket item had been installed on the weapon. Plaintiffs' attorney's employee was able to look at the weapon and was able to see that the folding stock and pistol grip bore clear markings indicating they had been manufactured by Choate Machine and Tool. The representative, or expert retained by Maverick, also identified the pistol grip and folding stock as a Choate product.[4]

Hearings were conducted on Choate's motion on June 5 and l6, 2001. The court concluded that plaintiffs had not met their burden of proof to establish sufficient minimum contacts with California to demonstrate a basis for personal jurisdiction over Choate. The purchase by plaintiff's attorney of a catalogue two years *after the fact* and the identification of a website created by Choate *after the fact* were either outright irrelevant or entitled to no weight.

With respect to plaintiffs' request for additional time to conduct discovery, the trial court observed that the case had been pending for over a year and plaintiffs had made no effort to identify Choate or conduct any relevant discovery until less than two months before the assigned trial date. In addition, the trial court noted that plaintiffs had

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[4] What plaintiffs' opposition does not explain is why plaintiffs' attorneys were not able to discover these facts prior to March 13, 2000. As plaintiffs' own photograph exhibits clearly show, Choate's name was plainly marked on both the stock and grip that had been affixed to the shotgun.

not even articulated a theory under which Choate could be held liable.[5] Without the articulation of some national preliminary basis on which to hold Choate liable, the trial court saw no point in permitting plaintiffs to conduct any further discovery. It therefore denied plaintiffs' request for a continuance and granted Choate's motion. Plaintiffs filed a timely appeal.

CONTENTIONS

Plaintiffs argue that the trial court abused its discretion in denying their request to conduct some discovery into the possible contacts of Choate with the State of California. They also contend that their evidence relating to Choate's mail order catalogue and its internet website demonstrated sufficient contacts to warrant an opportunity for further discovery, if not outright denial of Choate's motion.

Choate disputes these arguments and contends that the trial court properly disregarded plaintiffs' evidentiary response as either inadequate or irrelevant and that no justifiable basis existed to permit plaintiffs to go on what amounted to a "fishing expedition" disguised as legitimate discovery. Choate contends that the record clearly demonstrates that no basis for the exercise of personal jurisdiction existed and that its motion for an order quashing service was properly granted.

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[5] Plaintiffs' theory (since abandoned) against Maverick rested upon the claim that the shotgun had had a defectively easy trigger pull. Obviously, such a theory would have no relevance against Choate, the manufacturer of a grip and stock that had apparently been attached to the shotgun by someone other than Maverick.

DISCUSSION

1. *Standard of Review*

When a nonresident defendant challenges personal jurisdiction, the burden shifts to the plaintiff to demonstrate, by a preponderance of the evidence, that all necessary jurisdictional criteria have been met. The plaintiff can meet this burden only by the presentation of competent evidence in affidavits or declarations and authenticated documentary evidence. (*Jewish Defense Organization v. Superior Court (Ramgam)* (1999) 72 Cal.App.4th 1045, 1054-1055). Affidavits or declarations consisting primarily of vague assertions of ultimate fact rather than *specific* evidentiary facts are not sufficient. (*Id.* at p. 1055.)

Thus, the process is essentially an evidentiary one and the applicable standard of appellate review is the familiar substantial evidence rule. Therefore, we are called upon to determine whether the trial court's decision is supported by substantial evidence (*Serafini v. Superior Court* (1998) 68 Cal.App.4th 70, 77; *Wolfe v. City of Alexandria* (1990) 217 Cal.App.3d 541, 546, and, in doing so, we resolve all conflicts in the relevant evidence "against the appellant and in support of the order" (*Wolfe v. City of Alexandria, supra,* 217 Cal.App.3d at p. 546). If there is no conflict in the relevant evidence, the question is one of law as to which we exercise our independent judgment. (*Serafini v. Superior Court, supra,* 68 Cal.App.4th at p. 77.)

2. *General Principles Applicable To The Question of Personal Jurisdiction*

Code of Civil Procedure section 410.10 permits California courts to exercise jurisdiction on any basis not inconsistent with state or federal constitutional principles. The federal constitutional principles governing jurisdiction, represented by the legal shorthand references *minimum contacts, International Shoe*, and *World-Wide Volkswagen* familiar to every law student, are simple to state but difficult to apply. The overarching general rule is that a court may assume jurisdiction over a nonresident defendant where the defendant's "minimum contacts" with the forum state are sufficient to make the maintenance of the action inoffensive to traditional concepts of fair play and substantial justice. (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 320 [66 S.Ct. 154, 160, 90 L.Ed. 95, 161 A.L.R. 1057].) Thus, minimum contacts exist where the defendant's conduct in or connection with the forum state is such that the defendant should reasonably anticipate being subject to suit in the state (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297 [100 S.Ct. 559, 567, 62 L.Ed.2d 490]); that is, the defendant's contacts with the forum state are substantial, continuous and systematic (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445). When the defendant is a foreign corporation, the question whether "jurisdiction may be constitutionally exercised depends upon the circumstances of each individual case. . . . [T]he analysis is concerned with weighing the various relevant 'contacts' by the foreign corporation within the state attempting to exercise jurisdiction." (*Empire Steel Corp. v. Superior Court* (1961) 56 Cal.2d 823, 831.)

The concept of minimum contacts embraces two types of jurisdiction -- general and specific. General jurisdiction results where the defendant's contacts with the forum state are so "systematic and so continuous as to make it consistent with traditional notions of fair play and substantial justice to subject the defendant to the jurisdiction of the forum, even where the cause of action is unrelated to the contacts." (*Calvert v. Huckins* (E.D.Cal. 1995) 875 F.Supp. 674, 677; see also *Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414, fn. 9 [104 S.Ct. 1868, 1872, 80 L.Ed.2d 404].) Specific jurisdiction results when the defendant's contacts with the forum state, though not enough to subject the defendant to the general jurisdiction of the forum, are sufficient to subject the defendant to suit in the forum on a cause of action related to or arising out of those contacts. (*AT&T Co. v. Compagnie Bruxelles Lambert* (9th Cir. 1996) 94 F.3d 586, 588 (*AT*&T); *Capizzano v. Walt Disney World Co*. (D.R.I. 1993) 826 F.Supp. 53, 54-55.) Specific jurisdiction exists if: (1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of jurisdiction would comport with fair play and substantial justice. (*Vons Companies, Inc. v. Seabest Foods, Inc., supra*, 14 Cal.4th at pp. 446-447.)

3. *The Record Does Not Disclose Facts Sufficient To Justify Either General or Specific Jurisdiction Over Choate*

a. *There Is No Basis For General Jurisdiction*

As discussed above, the imposition of general jurisdiction requires evidence of "systematic and continuous" contacts with California. (*Sonora Diamond Corp. v.*

Superior Court (2000) 83 Cal.App.4th 523, 536.) This record, however, simply does not provide any evidence of "systematic" or "continuous" contacts sufficient to justify imposition of jurisdiction. Rather, the record reflects, without contradiction, that Choate (1) was not qualified to do business in California, (2) had never applied to do business in California and (3) had not been involved in any business transactions in California.

The showing made by Choate in support of its motion demonstrated that it sold materials to various manufacturers including, Marlin Gun Company, Thompson Center, New England Fire Arms and Mossberg (all of which, to Choate's understanding, were not California companies), but it did not do any business with defendant Maverick, nor did it manufacture or advertise that it manufactured any parts for that company. For that matter, Choate did not do any business with any firearm manufacturer outside the State of Arkansas, and those firearm manufacturers which it did do business with, are not California corporations.

In contrast, none of the offers of proof or purported evidence presented by the plaintiffs could be deemed sufficient to confer jurisdiction over Choate. For example, plaintiffs argue that (a) their counsel was able to procure catalogs from Choate, in Arkansas, and interface with Choate through its internet website, in Arkansas, during the pendency of the action (*which was not at or around the time of the alleged incident*); and (b) their counsel "*believed*" that some local retailers could place orders for respondent's products in Arkansas. This showing was totally insufficient to constitute the necessary minimal contacts. We agree with the trial court that there is a distinction between a defendant's targeting of business in California through advertisement and solicitation of

business (of which there was no evidence in this case) and the activities of plaintiff's attorney including solicitating of a copy of Choate's current catalog, and visiting Choate's internet website, both of which emanated from Arkansas. The latter activities simply are not sufficient.

In *Felix v. Bomoro Kommanditgesellschaft* (1987) 196 Cal.App.3d 106, the court held that where a foreign manufacturer of an automobile door latch had not *advertised* in California, *solicited* any business or otherwise *sought to serve* any particular market in the state, there were not sufficient "contacts" to warrant imposition of jurisdiction. (*Id.* at pp. 116-117.) As here, there was an indication in the *Felix* record that some of the defendant Bomoro's door latch parts could be purchased through certain outlets. However, that fact alone would not be sufficient to justify exercise of jurisdiction in the absence of evidence that the action bore some relationship to those parts.

The *Felix* court concluded that the fact that defendant Bomoro might know that its products might somehow reach California was not determinative of the jurisdiction question. "The appropriate test is not knowledge or awareness of the ultimate destination of the product, but whether the manufacturer has *purposefully engaged in forum activities* so it can reasonably expect to be haled into court there, and, even then, the minimum requirements of 'fair play and substantial justice' may defeat jurisdiction. The contacts in [the Felix] case are simply too fortuitous and tenuous to warrant the exercise of personal jurisdiction over Bomoro." (*Felix v. Bomoro Kommanditgesellschaft, supra,* 196 Cal.App.3d at p. 117.)

Plaintiffs' showing in this case that a catalogue could be obtained from Arkansas or that some of Choate's products might be found in some gun store located in California present no stronger basis for jurisdiction than that offered and rejected in *Felix*. The same thing can be said for the impact of Choate's internet website. Quite apart from the fact that the website did not exist until *after* the murder of plaintiffs' decedent (and thus is entirely irrelevant to the issue of jurisdiction), the use of a passive website such as that reflected in plaintiffs' showing provides no basis for imposing jurisdiction. (See *Cybersell, Inc. (Ariz.) v. Cybersell, Inc. (Fla.)* (9th Cir. 1997) 130 F.3d 414, 419-420; *Zippo Manufacturing Company v. Zippo Dot Com, Inc.* (W.D. Pa. 1997) 952 F.Supp. 1119, 1124.)

Although several federal district courts "have found personal jurisdiction based solely on the maintenance of a web site accessible in the forum state (see *Superguide Corp. v. Kegan* (W.D.N.C. 1997) 987 F.Supp. 481, 486-487 [holding owner subject to personal jurisdiction in North Carolina based on owner's maintenance of Internet site offering commercial services even though there was no evidence that a single North Carolina resident had visited the site]; *Inset Sys. Inc. v. Instruction Set* (D.Conn. 1996) 937 F.Supp. 161, 165 [holding that merely furnishing a toll free number on an Internet site constituted the purposeful doing of business in the state and provided a basis for personal jurisdiction because of the continuous presence of the web site]), *these cases are in the minority*. The nature of the Internet is such that it is accessible anywhere a laptop or computer can be hooked up to a telephone or modem line. A finding of jurisdiction based on the fact that the web page is accessible in the forum means that there would be

nationwide jurisdiction over anyone who posts a web page. Consequently, this court finds these decisions wholly unpersuasive. To hold otherwise would be to subject defendants 'to jurisdiction on a worldwide basis and would eviscerate personal jurisdiction requirements as they currently exist.' [Citation.]" (*ESAB Group Inc. v. Centricut, LLC* (D.S.C. 1999) 34 F.Supp. 2d 323, 330, fn. 4, italics added.)

In the *Zippo Manufacturing* case, the court reviewed the cases relating to the internet and the imposition of jurisdiction and concluded that "the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. This sliding scale is consistent with well developed personal jurisdiction principles. At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site." (*Zippo Manufacturing Company v. Zippo Dot Com, Inc. supra,* 952 F.Supp. at p. 1124.)

Applying the foregoing principles to this case, we see no basis whatever to justify the conclusion that Choate's passive website (even assuming it was in existence at a relevant time) could justify imposition of jurisdiction.

b. *There Is No Basis For The Imposition of Specific Jurisdiction*

To recapitulate our earlier discussion, "[s]pecific jurisdiction results when the defendant's contacts with the forum state, though not enough to subject the defendant to the general jurisdiction of the forum, are sufficient to subject the defendant to suit in the forum on a cause of action related to or arising out of those contacts. [Citations.] *Specific* jurisdiction exists if: (1) the defendant has *purposefully availed* itself of forum benefits with respect to the matter in controversy; (2) the controversy is related to or *arises out of the defendant's contacts with the forum*; and (3) the assertion of jurisdiction would comport with fair play and substantial justice. [Citations.]" (*Sonora Diamond Corp. v. Superior Court, supra,* 83 Cal.App.4th at p. 536, initial italics in original, subsequent italics added.)

This record clearly reflects that Choate has *not* purposefully availed itself of forum benefits with respect to the matter at issue; nor is there any evidence that this particular controversy arose out of any contact by Choate with California. Indeed, the evidence before the trial court overwhelmingly pointed to the opposite conclusion.

Plaintiffs' decedent was *intentionally* murdered, not accidentally killed because of some defect in the shotgun used to perpetrate the crime. Plaintiffs concede that there is no evidence that the shotgun discharged by "accident" and any suggestion to the contrary is based on conjecture and is directly contrary to the finding in the criminal trial. In

addition, plaintiffs, in their complaint, alleged that the murder weapon was a shotgun and the claimed product defect was related to the trigger mechanism, not the grip or shoulder extension manufactured by Choate. There is no evidence or suggestion that Choate manufactured the trigger mechanism.

All that plaintiffs have offered is some evidence that someone (not the manufacturer, Maverick) attached a Choate pistol grip and shoulder stock extension to the shotgun sometime prior to the time it was used to kill plaintiffs' decedent. There is no evidence that such "after market" attachment was done in California or with Choate parts purchased in California. What is clear, however, is that such attachment was not one intended or advertised by Choate. Given the (1) plaintiffs' theory of their case, as specifically alleged in their complaint (although they now seek to change it), (2) the complete failure by plaintiffs to show how Choate could be liable under such circumstances and (3) in consideration of the absence of any showing of minimal contacts with California, it is clear that plaintiffs have not satisfied any of the requirements for the imposition of specific jurisdiction and have not met their burden of proof.

4. *The Trial Court Did Not Abuse Its Discretion In Denying Plaintiffs Request For Time To Conduct Discovery*

Plaintiffs, apparently recognizing that they had no evidence sufficient to meet their burden of proof, asked the trial court for a continuance of Choate's motion so that they might conduct discovery with respect to the possible existence of the necessary

jurisdictional facts. The trial court denied that request and plaintiffs claim that was error. We disagree.

The trial court properly recognized that plaintiffs had failed to discover that Choate's name was clearly stamped on the shoulder stock and grip attached to the murder weapon. Indeed, plaintiffs apparently did not learn this fact until just before trial when the defendant Maverick pointed it out to them. Plaintiffs provide no excuse for this failure to conduct a more thorough pre-trial investigation. Although the case was pending for over a year, plaintiffs sought, just prior to the scheduled trial date, to change their whole theory of the case, claim a different instrumentality caused decedent's death and abruptly charge a different defendant with responsibility. They made no showing at the trial court, however, as to what facts they hoped to discover; they simply argued that Choate must have had an interest in the California market as it was simply not reasonable to believe otherwise and if given more time they "believed" they could develop the evidence to show this. In the circumstances and procedural of this case at the time, this was not sufficient.

Management of discovery lies within the sound discretion of the trial court. Consequently, appellate review of discovery rulings is governed by the abuse of discretion standard. (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 378, 380.) Where there is a basis for the trial court's ruling and the evidence supports it, a reviewing court will not substitute its opinion for that of the trial court. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612.) The trial court's determination will be set aside only when it has been demonstrated that there was "no legal justification" for

the order granting or denying the discovery in question. (*Ibid.*, citing *Carlson v. Superior Court* (1961) 56 Cal.2d 431, 438.)

We agree with the comments made in *Beckman v. Thompson* (1992) 4 Cal.App.4th 481, where the court affirmed a trial court's refusal to grant additional time for discovery to develop jurisdictional evidence against a defendant that, like Choate in this matter, had moved to quash service of the summons and complaint. The plaintiff seeking additional time did not suggest that discovery was likely to produce any evidence of additional California contacts. Like the plaintiffs here, the plaintiff in *Beckman* expressed "a desire" to find out if the defendant had made such conducts; in short, a "fishing expedition" based on hope and conjecture. "The granting of a continuance for discovery lies in the discretion of the trial court, whose ruling will not be disturbed in the absence of manifest abuse. [Citation.] We find no abuse of discretion. In light of the showings already made, the court could reasonably conclude further discovery would not likely lead to production of evidence establishing jurisdiction." (*Id.* at p. 487.)

When we examine this record in its entirety and consider all of the matters discussed above, including particularly plaintiffs' own lack of diligence and the absence of any basis for imposing liability on Choate in any event, we cannot conclude that there was "no legal justification" for the trial court's ruling denying plaintiffs more time to conduct discovery. The trial court did not abuse its discretion.

DISPOSITION

The trial court's order is affirmed. Choate shall recover its costs on appeal.

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CROSKEY, J.

We Concur:

KLEIN, P.J.

KITCHING, J.