1)

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======== Start of Answer #1 (1178 words) ========

1. How should the Nevada Superior Court have ruled on the challenge by Dave to the court's jurisdiction?

Personal jurisdiction (PJ) is the power of a court to engage in binding adjudication over a person or thing. The traditional test for personal jurisdiction was established in 1848 when the United States Supreme Court (Court) decided the case of Pennoyer v. Neff. The Court held that courts of the forum shall have exclusive jurisdiction over persons and property within their territorial boundaries.

Modernly, the basis for PJ can be establsihed in several other ways. First, if a person is served in the forum state (Burnham v. Superior Court). Second, if a person is domiciled within the forum state (residence with an intent to remain). Third, if a person has consented to jurisdiction (either through contract [i.e., a forum-selection clause] or general appearance). And fourth, if minimum contacts can be established. The minimum contacts test was established by the Court in 1945 in the landmark case of International Shoe v. Washington. The Court held that in order for an absent, non-resident defendnat to be subject to PJ within the forum state, there must be sufficient contacts or ties not to offend the traditional notions of fair play and substantial justice.

good!

Minimum contacts cannot be discussed without a mention of general and specific jurisdiction. General jurisdiction is said to exist when the defendants presence in the state is systematic and continuos (Perkins). Casual presence or an isolated incident is generally not enough. Less contacts are usually needed when general jurisdiction is present. Specific jurisdiction exists when the suit arises out of an incident directly related to the defendants activities. Specific jurisdiction generally requires more contacts. Specific jurisdiction

True!

can be identified in a couple of ways. First, if the defendant has purposefully availed themselves of the benefits and protections of the forum state (Hanson v. Denckla). And second, if the defendants activities were purposefully directed toward the forum state (J. McIntyre v. Nicastro). Merely placing a product into the stream of commerce is not enough to expect to be haled into court (World Wide Volkswagon).

Here, Paula filed suit in Nevada Superior Court. The forum state, therefore, is Nevada. Dave is a domiciliary of Nevada (US citizen and Nevada resident). On this basis alone, PJ would be appropriate. Dave can also be subject to PJ because he was served in Reno (Burnham, supra). General jurisdiction can be established because the facts tell us that Dave runs his business out of Nevada. His presence would be deemed systematic and continuous in that state. Specific jurisdiction can also be established. By conducting business in the State of Nevada, he has purposefully availed himself of the protections and benefits of the state.

The court was correct to reject Dave's PJ challenge.

2. Does the Nevada Superior Court have jurisdiction over Paula and Titan?

PJ Paula: See PJ, Supra. It could be argued that Paula has consented to jurisdiction since she filed a prior suit in the Nevada Superior Court (Although that will likely fail because she has not specifically consented to this suit). General jurisdiction cannot be established with regard to Paula. She was only in Nevada on vacation. Specific jurisdiction would not be fair and just either. By purchasing a vehicle, she is not seeking the protection or benefits of the state, nor has she performed an activity directed at the state.

The forum would not have PJ over Paula.

It is also worth mentioning that service of process was improper on Paula. The facts only tell us that summons was served. If the complaint was missing, service would be inadequate. Also, leaving it with someone that does not resdie therein is improper.

PJ Titan: See PJ, supra. Since Titan was served in the forum, PJ would be established (Burnham, supra). In looking at the contacts that Titan has to the forum, if Titan was a Nevada corporation (which the facts don't tell us, but we can infer since the President was served there) general jursidction could be present. Specific jurisdiction might be found if Titan was a Nevada corporation because it is easier to argue that they have purposefully availed themselves of the benefits and protections of the forum state. (However, merely making the part of the car that failed, and placing it into the stream of commerce would NOT be a basis for PJ.)

The forum would have PJ over Titan.

3. Will Paula prevail in her efforts to have Dave's affirmative defense stricken•

Rule 12(h) of the Federal Rules of Civil Procedure (FRCP) states that if a 12 (b) motion is asserted, motions 12(b)(2) through (5) must be asserted at that time, or else they are waived. Rule 12(b)(1) (subject matter jurisdiction is not waivable and may be asserted at any time or brought up sua sponte by the court). Rules 12(b)(6) and (7) may be asserted by motion, in an answer or at trial. Here, Dave filed a 12(b)(5) motion when he challenged service of process. If he wanted to assert improper venue (Rule 12(b)(3)), he must have joined it at that time with his original 12(b)(5) motion. Since he did not, the defense was waived.

Paula should prevail in her motion to strike.

4. How should the district court rule on Dave's motion to dismiss Paula's complaint?

Federal courts are courts of limited jurisdiction. In order to hear a case, they must have subject matter jurisdiction, which is specifically conferred to them through the Constitution or statutes. Suits that are heard in federal court are either there because of the issue at hand, or because of the parties involved. 28 USC 1331 provides that federal district courts shall have original jurisdiction over all claims arising under the laws, treaties or Constitution of the United States (federal question). The plaintiff must allege the federal question in their well-pleaded complaint (Mottley). Anticipating a defense based on a federal law will not create federal question jurisdcition. 28 USC 1332 provides that federal district courts shall have original jurisdiction over all claim in excess of the sum or value of $75,000 (exclusive of costs and interest) and the parties must be from different states (diversity of citizenship). Complete diversity is required (Strawbridge v. Curtis).

28 USC 1441 allows for removal of a suit from state court to the federal district court encompassing the area where the state court is pending, provided that the court would have original jurisdciton over the claim.

Here, the suit arose out of breach of contract, so federal question would not apply. Additionally, although the parties are of diverse citizenship, the amount in controversy is insufficient (less than $75,000).

Dave would be correct objecting to SMJ pursuant to Rule 12(b)(1). Since that defense is not waivable, he would not lose the ability to do so sonce he did not include it in his prior motion.

The court could decide to sanction Dave and his counsel pursuant to Rule 11, since the motion was asserted several months after the case was removed for waste of judical resources and the court's time.

V. good answer!

======== End of Answer #1 ========

2)

======== Start of Answer #2 (1402 words) ======== (88)

1. Can the defendant's get some or all of the case dismissed?

Federal courts are courts of limited jurisdiction. In order to hear a case, they must have subject matter jurisdiction (SMJ), which is specifically conferred to them through the US Constitution or federal statutes. Suits that are heard in federal court are either there because of the issue at hand, or because of the parties involved. 28 USC 1331 provides that federal district courts shall have original jurisdiction over all claims arising under the laws, treaties or Constitution of the United States (federal question). The plaintiff must allege the federal question in their well-pleaded complaint (Mottley). Anticipating a defense based on a federal law will not create federal question jurisdcition. 28 USC 1332 provides that federal district courts shall have original jurisdiction over all claim in excess of the sum or value of $75,000 (exclusive of costs and interest) and the parties must be from different states (diversity of citizenship). Complete diversity is required (Strawbridge v. Curtis).

Here, the suit arose out of violation of the Federal Fair Financing Act, and was properly pleaded in her complaint, so federal question SMJ would apply. The amount in controversy and citizenship of the parties are immaterial for this cause of action.

28 USC 1367 provides that federal courts shall have supplemental

jurisdcition over all claims that are part of the same case or controversy (or common nucleus of operative fact as set forth in Gibbs). Paula's breach of contract claim would satisfy this requirement because it arose out of a breach of contract for the earthmovers she purchased and was charged too much interest for. Supplemental jurisdiction is granted more broadly when the original claim falls under federal question, as a way of influencing litigants to bring state court claims in state court.

In this case, SMJ is proper and the cases should not get dismissed.

2. Will the court change venue of the case based on Dan's motion?

28 USC 1391 provides that venue is proper either (1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) where a substantial part of the event occurred, or where the property is dispute is located, or (3) if neither (1) and (2) apply, where a defendant is subject to personal jursidiction. Since David and Dan are domicilaries of different state (Nevada and California), venue where either one of them resides would be improper. The facts then tell us that the contract was signed in Sacramento. If that is the case, Dan's Federal Rule of Civil Procedure (FRCP) 12(b)(3) motion to change venue to the US District Court of Sacramento would be proper and should be granted.

3. How should the court rule on the defendnat's motion to force the plaintiff to identify her witnesses and the plaintiff's motion to strike the answer?

When federal district courts are adjudicating cases based on federal question, they apply both federal substantive law and federal procedural law. However, in diversity cases or in supplemental jurisdiction cases hearing a state law claim (as we have here), according to the landmark case of Erie

Railroad v. Tompkins, the US Supreme Court (Court) held that state substantive law and federal procedural law should be applied. This would in theory, prevent forum shopping and inequitable administration of the laws (Twin AIms of Erie). The Court went on to decide a few subsequent cases to help with the analysis. In Guaranty Trust v. York, the Outcome Determinative Test was created. That is to say, that if a law affects the outcome, then it should be deemd substantive and should be applied. Next, in Byrd v. Blue Ridge, the Court went a step further in creating the Definite Outcome Determinative Test, so that if a law were to definitely affect the outcome of the case then is should be deemed substantive and should be applied. The Court also stated in Byrd that the interests of both the state court and the federal courts should be weighed. If one strongly prevails over theother, then it should be applied. Finally, in Hanna v. Plumer, the Court came back full circle and said that Erie was never meant to be a talisman for voiding federal law. If there is a federal directive on point, it should trump state law. In addition, the Twin Aims of Erie should be kept in mind (avoid forum shopping and inequitable administration of the laws).

David seeks to have Paula list her witnesses and documents immediately (required by state): In starting with the Twin Aims of Erie, it could be argued that having to present your witnesses and documents immediately in state court, but not in federal court, would likely promote forum shopping because having to do so, forces a plaintiff to put all of their cards on the table upfront and thus allow the opposing party to build a stronger defense against them. Turning to York, this could also be argued would lead to a different outcome in the case if the opposing party has time to build a stronger defense against you. In applying Byrd, this couldn't be said that it would definitely affect the outcome of the case, or, that the states interest in requiring this are so important that it must be applied. But, in coming back full circle to Hanna, it lends to the conclusion that the law is substantive, and should be applied, so as to avoid forum shopping.

Paula seeks to strike Dan's answer since he did not file a statement of Interested Parties (required by federal): As stated above, In starting with the Twin Aims of Erie, it it does not seem that having to provide a Statement of Interested Parties as required in federal court, but not in state court, would promote forum shopping. A Statement of Interested Parties seems fairly inconsequential and likely obvious to the litigants already. Turning to York, this would not lead to a different outcome in the case. And, in applying Byrd, this couldn't be said that it would definitely affect the outcome of the case, or, that the federal governments interest in requiring this are so important that it must be applied. So, ending with Hanna, it lends to the conclusion that the law is procedural, and should not be applied.

Fed Rule always applies

4. How should the court rule on the challenge to the service of Dan?

FRCP Rule 4(c) states that service must be made by delivering a copy of the summons and complaint by a person who is at least 18 years of age and not a party to the suit. FRCP 4(e) provides that service may be made on an individial by handing them a copy of the summons and complaint, making service upon the individuals residence or place of abode by delivering a copy of the summons and complaint to a person of suitable age and discretion who resides therein, or delivering a copy of the summons and complaint to a person appointed by law to receive service of process.

Rule 12(h) of the Federal Rules of Civil Procedure (FRCP) states that if a 12 (b) motion is asserted, motions 12(b)(2) through (5) must be asserted at that time or they are waived. Rule 12(b)(1) (subject matter jurisdiction is not waivable and may be asserted at any time or brought up sua sponte by the court). Rules 12(b)(6) and (7) may be asserted by motion, in an answer or at trial. Here, since Dan filed his 12(b)(5) motion challenging his service of process at the same time he filed his 12(b)(3) motion challenging venue,

the defense is proper and is not waived.

Looking to the merits behind the motion, the facts tell us that Paula's process server could not find Dan and simply taped the summons and complaint to his door. Under these circumstances, service of process was insufficient under both personal and abode service, and therefore, his motion should be granted. Paula's counsel should try to argue the precedent from Mullane v. Central Hanover Bank & Trust, which held that notice must be sufficient to apprise interested parties of the pendency of the action. If they could prove that Dan found the notice when he got hom, but chose to ignore it, service could be deemed to be sufficient after all. However, since there is a federal rule directly on point (FRCP Rule 4(e), this argument will fail.

======== End of Answer #2 ========
END OF EXAM

good work