Long-Arm Statute Reaches International Corporation - Duple Motor Bodies, Ltd. v. Hollingsworth

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Maui Island Tours ordered tour buses from Haleakala Motors in Hawaii. Haleakala transmitted this order to Vauxhall of England, which manufactured the chassis and sent them to another British corporation, Duple Motor Bodies, Ltd. Duple constructed coach bodies on the chassis and returned the buses to Vauxhall, which shipped them to Hawaii. While in operation by Maui Island Tours, one of the buses skidded off the highway and overturned, injuring the plaintiff, who was a passenger. Plaintiff alleged that Duple Motor Bodies was negligent in certain aspects of the design and manufacture of the coach and that this negligence contributed to his injury. Duple moved for dismissal for lack of jurisdiction. The federal district court in Hawaii held that Hawaii's "long-arm" statute[1] gave that state jurisdiction over Duple, and Duple took an interlocutory appeal. *Held, affirmed*: Although the facts which establish liability, when disputed, are not sufficient to establish jurisdiction, the intended presence of the product in the forum state is sufficient contact to meet the requirements of due process. *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir. 1969).

I. Due Process and In Personam Jurisdiction

Since the late nineteenth century, the Supreme Court of the United States has recognized constitutional limitations to a state's jurisdiction over non-residents under the due process clause of the fourteenth amendment. The evolution of extra-territorial jurisdictional rules began with what has been called the "power theory,"[2] under which a state had no jurisdiction over an individual unless he was physically present within that state.[3] This jurisdictional power was later expanded to non-residents who "consented" to the state's jurisdiction by doing business, or conducting continuous and systematic activities, within the state. These activities were defined as "minimum contacts."[4]

The Court further expanded the ability of a state to obtain personal jurisdiction over non-resident defendants in *McGee v. International Life Insurance Co.*,[5] a case involving a claim for life insurance proceeds. The

[1] Hawaii Rev. Stat. § 634-71 (1968):
Acts submitting to jurisdiction. (a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits his person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of the acts:
(1) The transaction of any business within this State;
(2) The commission of a tortious act within this State;
(3) The ownership, use, or possession of any real estate situated in this State;
(4) Contracting to insure any person, property, or risk located within this State at the time of contracting.

[2] *See* Ehrenzweig, *The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens*, 65 Yale L.J. 289 (1956).

[3] Pennoyer v. Neff, 95 U.S. 714 (1877).

[4] International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

[5] 355 U.S. 220 (1957).

decedent, a resident of California, had purchased a life insurance policy from an Arizona corporation. The defendant, a Texas company, assumed the obligations of the Arizona corporation, and the decedent accepted an invitation to continue his policy with the Texas company. The jurisdictional question, raised in an action by a beneficiary of the policy, involved the validity of a California statute granting jurisdiction in such a situation.[6] The Court, noting that modern transportation and communications have greatly decreased the burden of defending a lawsuit in a foreign state, and recognizing the special interest of the state in insurance contracts, held that "[i]t is sufficient for the purposes of due process that the suit was based on *a* contract which had *substantial connection* with that state."[7]

The following year the Court reconsidered the *McGee* concept of "substantial connection" in *Hanson v. Denckla*.[8] There, a woman domiciled in Pennsylvania executed a revocable deed of trust to a Delaware trust company. The woman subsequently moved to Florida, and before her death she executed certain powers of appointment concerning the trust. The issue presented was whether Florida had jurisdiction over the Delaware trust company in order to invalidate the Delaware trust under Florida law. Noting that due process is more than a protection against inconvenient litigation, the Court stated that it is "essential in each case that there be some act by which the defendant *purposely* avails itself of the privileges of conducting activities with the forum State, thus *invoking the benefits and protection of its laws*."[9] The Florida court was found to be without jurisdiction, as the only contact between the decedent and the Delaware corporation was correspondence to and from Florida. The Court carefully distinguished on the facts its earlier holding in *McGee*.[10]

II. Legislative and Judicial Developments

Based upon the Supreme Court's interpretations of "due process" in connection with the exercise of jurisdiction over non-residents, state legislatures have enacted a variety of long-arm statutes.[11] The Fifth Circuit has

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[6] Cal. Ins. Code §§ 1610-20 (West 1955) subjects foreign insurance companies to suit in California on insurance contracts with residents of that state.

[7] 355 U.S. at 223.

[8] 357 U.S. 235 (1958).

[9] *Id.* at 253 (emphasis added).

[10] The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee* . . . [where] the Court upheld jurisdiction because the suit 'was based on a contract that had substantial connection with that State.' In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State. . . . [T]he record discloses no instance in which the *trustee* performed any acts in Florida that bear the same relationship to the agreement as the solicitation in *McGee*. Consequently, this suit cannot be said to be one to enforce an obligation that arose from a privilege the defendant exercised in Florida. . . . This case is also different from *McGee* in that there the State had enacted special legislation . . . to exercise . . . its 'manifest interest' in providing effective redress for citizens who had been injured by . . . an activity that the State treats as exceptional . . . .

Id. at 251-52.

[11] After *McGee*, the states produced statutes attempting to establish broad jurisdiction over foreign corporations without denying the defendant his rights established by the Court. Typical of these is the Illinois statute, Ill. Rev. Stat. ch. 110, § 17 (Smith-Hurd 1968), which was copied

thus explained the procedure for testing a state's exercise of such jurisdiction: "The first inquiry is whether state law provides for the exercise of jurisdiction under the circumstances of the case presented. Conditioned on an affirmative answer to this is the question whether the exercise of jurisdiction pursuant to state law violates the Federal Constitution."[12] The major controversies concern whether the requirements of due process are satisfied.

Some courts have held that *Hanson* generally restricted the reach of long-arm jurisdiction allowed in *McGee*. To emphasize this restriction, definite tests have been established in some cases. One such test was initiated in *Tyee Construction Co. v. Dulien Steel Products, Inc.*,[13] which held that the execution of a single contract was not a sufficient basis for jurisdiction. The court emphasized that the defendant must "purposely" do the act, that the cause of action must arise from the act, and that the exercise of jurisdiction must not offend traditional notions of fair play and substantial justice.[14] In *Hearn v. Dow-Bodische Chemical Co.*[15] a federal district court in Texas applied a test very similar to that used in *Tyee Construction Co.*, but with the additional requirement that the forum state have some special interest in granting relief in order to maintain jurisdiction.

At least one court has seen *Hanson* as tightening the *McGee* requirements where the non-resident defendant committed only a single act. In *O'Brien v. Comstock Foods, Inc.*[16] the court held that a non-resident corporation was not subject to jurisdiction in Vermont for injury to the plaintiff caused by broken glass in a can of beans. The court, noting that the defendant only placed the article in the stream of commerce, stated that the "vital factor is the intentional and affirmative action on the part of the non-resident . . . within this jurisdiction."[17] In addition, some courts have

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by Hawaii. *See* note 1 *supra*. These statutes usually consider the commission of a tort to be sufficient to invoke jurisdiction. *See* TEX. REV. CIV. STAT. ANN. art. 2031b (1964).

The North Carolina long-arm statute seems to be the most far-reaching. It provides for jurisdiction whenever an injury arises out of the "production, manufacture, or distribution of goods . . . with the reasonable expectation . . . to be used or consumed in this State." N.C. GEN. STAT. § 55-145(3) (1960).

The Illinois, Maryland, Wisconsin, and New York statutes likewise are concerned with contacts, but they also emphasize the commission or locus of a tortious act. Illinois extends its jurisdiction to include "[T]he commission of a tortious act within the state." ILL. REV. STAT. ch. 110, § 17 (Smith-Hurd 1968). Maryland, Wisconsin, and New York draw a distinction between action wholly committed within the state, which immediately establishes jurisdiction, and an action or omission occurring outside the state but causing injury within the state. In the latter situation, the statutes establish prerequisites, such as doing or soliciting business within the state, MD. ANN. CODE art. 75, § 96 (1969); the use of defendant's products within the state "in the ordinary course of trade," WIS. STAT. § 262.05(4)(b) (Supp. 1969); or expecting the act to "have consequences in the state and derive substantial revenue from interstate commerce." N.Y. CIV. PRAC. LAW § 302(a)(3)(ii) (McKinney 1963).

[12] Atwood Hatcheries v. Heisdorf & Nelson Farms, 357 F.2d 847, 852 (5th Cir. 1966); *see* Lone Star Motor Import, Inc. v. Citroen Cars Corp., 288 F.2d 69, 72 (5th Cir. 1961). This procedure has been referred to as the "two-pronged" test.

[13] 62 Wash. 2d 98, 381 P.2d 245 (1963).

[14] For applications of this rule by other jurisdictions, see Republic-Transcon Indus., Inc. v. Templeton, 253 Miss. 132, 175 So. 2d 185 (1965); Mladinich v. Kohn, 250 Miss. 138, 164 So. 2d 785 (1964); O'Brien v. Lanpar Co., 399 S.W.2d 340 (Tex. 1966); Sun-X Int'l Co. v. Witt, 413 S.W.2d 761 (Tex. Civ. App. 1967), *error ref. n.r.e.*

[15] 224 F. Supp. 90 (S.D. Tex. 1963). *See also* Trinity Steel Co. v. Modern Gas Sales & Serv. Co., 392 S.W.2d 861 (Tex. Civ. App. 1965), *error ref. n.r.e.*

[16] 123 Vt. 461, 194 A.2d 568 (1963).

[17] 194 A.2d at 570. *See also* Dragon Shipping Corp. v. Union Tank Car Co., 361 F.2d 43 (9th

followed the *Hanson* test, feeling that the reasoning in *McGee* is peculiar to the insurance field and should not be given general application.[18]

However, other courts have held that *Hanson* did not restrict the outer limits of long-arm jurisdiction established by *McGee*. The Supreme Court of Arizona has taken the position that *Hanson* "was an unusual situation in which the court achieved substantial justice, but it is of questionable value as a precedent regarding the problem of personal jurisdiction over non-resident defendants."[19] A strong opinion that *Hanson* was not meant to limit the scope of personal jurisdiction over non-residents, as established by *McGee*, was written in chambers by Justice Goldberg. He noted that at least one writer has interpreted *Hanson* as a general requirement "that the defendant must have taken voluntary action calculated to have an effect in the forum state."[20] This "calculated to have an effect" language has been cited by several courts.[21]

The greatest examples of disregarding the allegedly restrictive language of *Hanson* are the cases finding jurisdiction on the commission of a single "tortious act" through a test which might be described as "foreseeability." The leading case in this area is *Gray v. American Radiator & Standard Sanitary Corp.*[22] In *Gray* suit was brought by an Illinois resident for injuries sustained when a water heater, manufactured in Ohio, exploded due to a defective valve. Jurisdiction over the manufacturer of the valve, a Pennsylvania corporation, was upheld. The court, noting that "the commission of a single tort within this state [has been] held sufficient to sustain jurisdiction under the present statute,"[23] concluded: "As a general proposition, if a corporation elects to sell its products for ultimate use in another state, it is not unjust to hold it answerable there for any damage caused by defects in those products."[24] This concept of foreseeability has even been extended to allow personal jurisdiction to be maintained over a non-resident corporation which merely placed an object in interstate commerce. *Metal-Matic, Inc. v. Eighth Judicial District Court*,[25] a Nevada case involving a drowning caused by a defective boat railing manufactured

Cir. 1966); Lone Star Import, Inc. v. Citroen Cars Corp., 288 F.2d 69 (5th Cir. 1961); Pendzimas v. Eastern Metal Prods., 218 F. Supp. 524 (D. Minn. 1961).

[18] Trippe Mfg. Co. v. Spencer Gifts, 270 F.2d 821, 822 (7th Cir. 1959).

[19] Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732, 735 (1966).

[20] Rosenblatt v. American Cyanamid Co., 86 Sup. Ct. 1, 3, *appeal dismissed*, 382 U.S. 110 (1965). Goldberg, J., dissenting from a denial of certiorari, cites Currie, *The Growth of the Long Arm*, 1963 U. ILL. L.F. 515.

[21] *E.g.*, Eyerly Aircraft Co. v. Killian, 414 F.2d 591 (5th Cir. 1969); Etzler v. Dillie & McGuire Mfg. Co., 249 F. Supp. 1 (W.D. Va. 1965).

[22] 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

[23] 176 N.E.2d at 765.

[24] *Id.* at 766. *Gray* was thus described in Phillips v. Anchor Hocking Glass, 100 Ariz. 251, 413 P.2d 732, 736 (1966): "Essentially, the court [in *Gray*] held that a non-resident defendant is amenable to personal jurisdiction where his defective product causes injury within the forum though he did not intentionally put his product there, unless he . . . proves that the presence of his product in the forum was an unforeseeable event." *Gray* has been followed by Eyerly Aircraft Co. v. Killion, 414 F.2d 591 (5th Cir. 1969); Sheridan v. Cadet Chem. Corp., 25 Conn. Supp. 17, 195 A.2d 766 (Super Ct. 1963); Anderson v. National Presto Indus., Inc., 257 Iowa 911, 135 N.W.2d 639 (1965); Ehlers v. United States Heating & Cooling Mfg. Corp., 267 Minn. 56, 124 N.W.2d 824 (1963); Roy v. North Am. Newspaper Alliance, Inc., 106 N.H. 92, 205 A.2d 844 (1964).

[25] 82 Nev. 263, 415 P.2d 617 (1966).

by a Wisconsin corporation, illustrates this result. The court cited *Gray* and extended it to hold that "Nevada may acquire jurisdiction over a foreign manufacturer of a product which it reasonably may expect to enter interstate commerce, which does enter interstate commerce, and because of an alleged defect, causes injury . . . to the plaintiff."[26]

III. DUPLE MOTOR BODIES, LTD. v. HOLLINGSWORTH

In *Duple* the Ninth Circuit, applying the two-pronged test,[27] found that the alleged acts were sufficient for jurisdiction under the Hawaii long-arm statute. In so finding, the court relied on *Gray* for the proposition that "the place of a wrong is where the last event takes place which is necessary to render the actor liable,"[28] and concluded that "negligent manufacture outside the state, resulting in injury in Hawaii, constituted commission of a tortious act within Hawaii . . . ."[29]

The court further determined that there were sufficient minimum contacts to meet the requirements of due process, but it declined to hold that the alleged tortious act in itself was sufficient. Noting that it was dealing with products liability in foreign trade, the court stated:

> Here the facts establishing jurisdiction under the Hawaii statute (commission of a tortious act within Hawaii) also establish liability and, where disputed, cannot suffice as contacts with the forum state. What is needed is some additional factor that would render it fair to require the manufacturer to submit these disputed issues to a foreign forum.[30]

This "additional factor" was found in the "knowledge" that the product was "destined for Hawaii."[31] This "knowledge," according to the court, made it "clearly foreseeable" that the product, if defective, could cause injury in Hawaii.[32]

Circuit Judge Ely, dissenting, claimed that Duple did not invoke either the benefits or the protection of the law of Hawaii, as it conducted all its activities in England.[33] He stated that the "purposely avails itself" test of *Hanson*, along with the concept that "fundamental fairness" depends on the facts of each case, led him to the conclusion that the majority's holding was "an implausible denial of due process as well as an unnecessary intrusion into the field of international relations."[34]

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[26] 415 P.2d at 619. *See also* Roche v. Floral Rental Corp., 95 N.J. Super. 555, 232 A.2d 162 (Super. Ct. 1967).

[27] *See* note 12 *supra*, and accompanying text.

[28] 417 F.2d at 233. *See also* South Ariz. York Refrigeration Co. v. Bush Mfg. Co., 331 F.2d 1 (9th Cir. 1964); Waynich v. Chicago's Last Dept. Store, 269 F.2d 322 (7th Cir. 1959); St. Clair v. Righter, 250 F. Supp. 148 (W.D. Va. 1966); Avery v. Peterson, 178 F. Supp. 132 (E.D. Pa. 1959); Anderson v. National Presto Indus., Inc., 257 Iowa 911, 135 N.W.2d 639 (1965); RESTATEMENT OF CONFLICT OF LAWS § 337 (1934); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 146 (Tent. Draft 1968).

[29] 417 F.2d at 234.

[30] *Id.* at 235.

[31] *Id.*

[32] *Id.*

[33] *Id.* at 239.

[34] *Id.* at 236.