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Conflict of Laws--Jurisdiction Over Nonresident Defendants by Extraterritorial Service of Process

Peter Uriah Hook

West Virginia University College of Law

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CASE COMMENTS

Conflict of Laws — Jurisdiction Over Nonresident Defendants by Extraterritorial Service of Process

P, an Illinois corporation, instituted this action to enforce a judgment entered against *D*, a West Virginia corporation, in an Illinois court. The Illinois judgment is based upon breach of a conditional sales contract, executed by *D*'s president at *P*'s place of business in Illinois. *D*'s president was served with process in accordance with an Illinois statute providing for extraterritorial service of process on nonresident defendants in actions arising out of the "transaction of any business" in Illinois. Judgment by default was rendered against *D* in the Illinois court. The West Virginia trial court upheld the validity of the Illinois judgment. *Held*, affirmed. The Illinois court, by virtue of the statute authorizing extraterritorial service, acquired jurisdiction over *D*. Neither federal nor state due process requirements are violated by the Illinois statute, as *D* had "minimal contacts" with the state asserting jurisdiction, along with actual and reasonable notice of the action. Hence, the judgment entered by the Illinois court is entitled to full faith and credit in this state. *Gavenda Bros. v. Elkins Limestone Co.*, 116 S.E.2d 910 (W. Va. 1960).

The result in the instant case is in line with the trend toward expanded jurisdiction over nonresident defendants. While there is apparently no question as to the constitutionality of statutes authorizing assertion of jurisdiction over nonresidents, there is a problem in determining when the due process requirement of "minimal contacts" has been satisfied.

Historically, a court could not acquire personal jurisdiction over a person where service of process was made beyond its territorial limits. *Pennoyer v. Neff*, 95 U.S. 714 (1877). However, the trend toward the expansion of jurisdiction over nonresidents received much of its original impetus from the decision in *Hess v. Pawloski*, 274 U.S. 352 (1927), and similar cases upholding the validity of nonresident motorist statutes. See EHRENZWEIG, CONFLICT OF LAWS § 28, at 96 (1959). In the *Hess* case the Court upheld a Massachusetts statute authorizing state courts to render a personal judgment against a nonresident motorist involved in an accident while operating a vehicle within the state.

Another giant step in the expansion of jurisdiction resulted from the decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). By its holding in this case "the Supreme Court discarded the doctrine of *Pennoyer v. Neff* and established a completely new concept of the due process limitations on jurisdiction over non-resident" defendants. O'Connor & Goff, *Expanded Concepts of State Jurisdiction Over Non-Residents: The Illinois Revised Practice Act*, 31 NOTRE DAME LAW. 223, 227-28 (1956). In the *International Shoe* case, the appellant employed several salesmen who solicited orders in Washington and sent them to the firm's principal office in St. Louis for acceptance or rejection. The salesmen did not have authority to enter into any contracts, nor could they make collections. The appellant had no office in Washington. Suit was brought to recover payments due the state unemployment compensation fund, process being served upon a salesman within the state, and by mail on the corporation in St. Louis. The Court, in holding that the shoe company was amenable to suit in Washington, stated that due process required only that a nonresident defendant have certain "minimal contacts" with the state asserting jurisdiction so that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" The Court found that the "systematic and continuous" operations of the company were "sufficient contacts . . . with the state of the forum to make it reasonable and just . . . to permit the state to enforce the obligations . . . incurred here." 326 U. S. at 320.

While the *International Shoe* case involved continuous activity, a more recent case, *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957), involved only a single act. Here, a Texas corporation was held to be amenable to an action brought in a California court to enforce a claim under a contract of insurance. Not only did the insurance company have no agents in California, but also it appeared from the record that this was the only policy it had issued in California. However, the decision in the *McGee* case was tempered somewhat by a later decision intimating that there must be a substantial connection between the state and the contract giving rise to the cause of action. See *Hanson v. Denckla*, 357 U.S. 235, 252 (1958). Thus, while a single act may be sufficient "minimal contact" there are other factors which may have to be considered.

The Illinois statute with which the instant case is involved provides in effect that, any person who, in person or through an

agent, transacts any business within the state thereby submits to the jurisdiction of the courts of the state as to any cause of action arising from the transaction of such business. ILL. REV. STAT. ch. 110, § 17(1) (a) (1959).

While recognizing the constitutionality of the statute, several cases have held that the defendant's activities did not constitute the transaction of any business in Illinois. *Insull v. New York World-Telegram Corp.*, 273 F.2d 166 (7th Cir. 1959); *Trippe Mfg. Co. v. Spencer Gifts, Inc.*, 270 F.2d 821 (7th Cir. 1959); *Orton v. Woods Oil & Gas Co.*, 249 F.2d 198 (7th Cir. 1957). In the *Orton* case, an engineer and lawyer, following their employment relating to the incorporation of the oil and gas company, brought an action to recover for services rendered. Even though most of the actual work—the drafting of a corporate charter and similar documents—was done in Chicago, it was held that there was not any business transacted in Illinois in the furtherance of corporate purposes, thus there were not the “minimal contacts” necessary to make the defendant answerable to suit in Illinois. The *Insull* case held that the mailing of newspapers to subscribers and independent contractors in Illinois did not amount to the transaction of any business within the state. The court held in the *Trippe* case that a New Jersey corporation engaged in the mail order business did not, by sending catalogs to and accepting orders from Illinois residents, have the “minimal contacts” essential to constitute the transaction of business within the state.

However, in *National Gas Appliance Corp. v. AB Electrolux*, 270 F.2d 472 (7th Cir. 1959), the court held that where a substantial part of the negotiations pursuant to the execution of a contract took place in Illinois, the “minimal contacts” essential to the maintenance of an action against a nonresident defendant were satisfied. The same result was reached in *Berlemann v. Superior Distrib. Co.*, 17 Ill. App.2d 522, 151 N.E.2d 116 (1958). Here, the defendant, a Colorado corporation, through its agent in Illinois, secured orders for vending machines and agreed to execute “initial location contracts” in addition to sending a representative to train the Illinois buyer in the maintenance of the machines.

In the only case decided by the Illinois Supreme Court thus far, the activities of the defendant were held not to constitute the transaction of business in Illinois. *Grobark v. Addo Mach. Co.*, 16

Ill.2d 426, 158 N.E.2d 73 (1959). This case involved a New York manufacturer who sold adding machines to an Illinois distributor. Subsequent to negotiations held in Chicago between plaintiff and defendant's president, they entered into a contract whereby plaintiff became the exclusive distributor for such machines in the Chicago area. This action was brought for alleged breach of contract, the defendant being served with process in accordance with the Illinois statute. The court held that while the statute satisfies the due process requirements, there were not sufficient minimum contacts between the defendant and the state so that jurisdiction could be asserted over the defendant. This result was reached on the theory that the plaintiffs were not doing business in Illinois as the defendant's agent, but were independent businessmen selling their own merchandise, that is, they were not transacting business for the defendant, but were transacting business for themselves. The Illinois court seems to interpret the phrase, "transaction of any business," as meaning "engaged in business." At least the court implies that something more than mere negotiations pursuant to the execution of a contract, or even the execution of a contract, would be required to constitute the "transaction of any business."

Considering the decision in *Grobark*, it seems plausible that had the instant case been before the Illinois court it would have found that the Elkins Limestone Company did not transact any business in Illinois. Seemingly, a broader construction was applied to the phrase by the Seventh Circuit Court of Appeals in the *National Gas* case, *supra*. If this case were determinative it could be concluded that the single act of the defendant in the instant case did amount to the "transaction of any business." The only conclusion that can be drawn from the several cases cited above is that the result in each case will be determined by the particular fact situation which it presents. The federal circuit court indicated in the *Orton* case, *supra*, that the same test will be used to determine if the cause of action arose out of the defendant's transaction of business within the state as is used to determine whether due process is satisfied, that is, the vague test of "fair play and substantial justice."

Although Illinois was the first state to enact such a comprehensive statute dealing with jurisdiction over nonresidents, such statutes may be common in a few years. At the present time the Commissioners on Uniform State Laws have a special committee working on a "Uniform Extra-Territorial Process Act." HANDBOOK

OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 19 (1960). It is expected that a final draft of this act, which is based on the Illinois statute, will be approved this year.

As the West Virginia court states in the instant case, while the public policy of this state is not as comprehensive in scope, it "is in harmony with the public policy evidenced by the Illinois statute." *Gavenda Bros. v. Elkins Limestone Co.*, *supra* at 916. The public policy of this state is indicated by the statute permitting actions to be brought against a foreign corporation where such corporation commits a tort within the state, or where such corporation enters into a contract to be performed within the state. W. VA. CODE ch. 31, art. 1, § 71 (Michie Supp. 1959). Since the court has indicated by its decision in the instant case that it will act favorably toward jurisdictional expansion, it might be well for the legislature to consider the enactment of a more comprehensive statute. The underlying policy considerations for such jurisdictional expansion stem from the nationalization of commerce and the technological advancements in transportation and communications with the resultant increase in interstate transactions. *O'Connor & Goff, supra* at 247-49.

Statutes authorizing expanded jurisdiction over nonresidents should not meet any constitutional obstacles if they satisfy the two due process requirements. These are: (1) that there be a method of service designed to give the defendant actual notice of the proceedings, and an opportunity to be heard; and (2) that the defendant have such "minimal contacts" with the state so that maintenance of the action does not offend "traditional notions of fair play and substantial justice." Undoubtedly the second requirement presents the more perplexing problem. The cases cited in this comment point up the fact that the courts have not been able to establish a precise test for determining when the defendant has had the requisite "minimal contacts." Until a more precise test is established it is unlikely that courts will uniformly apply statutes authorizing extraterritorial service on nonresidents.

Peter Uriah Hook