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FORD MOTOR CO. v. ARGUELLO,
FOREIGN CORPORATIONS and MINIMUM CONTACTS

In personam jurisdiction of state courts over foreign corporations has been a difficult and much litigated problem.

Historically, the famous case of *Pennoyer v. Neff*,¹ restricted the state's jurisdiction to its boundaries, and no personal jurisdiction could be acquired by a state over a resident of another state. A generation later Justice Holmes stated the rule, "The foundation of jurisdiction is physical power".²

The appearance of the corporation on the national scene pointed out the shortcomings of this common law concept, and the courts began employing their time-honored circumventions and fictions. In a continuing process of evolution the courts accepted, then rejected the fictional theories of "consent"³ and "presence".⁴ The courts apparently employed either the "consent" thesis or the "presence" thesis depending upon which would support jurisdiction over the non-resident corporation. Both theories were equally adept at presenting the vexatious problem of determining whether a corporation was "doing business" so their "consent" could be implied, or their "presence" found. Thus, the doctrines of "consent" and "presence" merged into the equally awkward doctrine of "doing business". The cases made little sense and inconsistency was rampant. Judge Learned Hand summed it up in *Hutchinson v. Chase and Gilbert*, "It is quite impossible to establish any rule from the decided cases, we must step from tuft to tuft and across the morass".⁵

At this stage of development the Wyoming legislature passed Wyo. Stat. § 17-44 (1957) which provided that a non-qualified foreign corporation shall be amenable to lawful process issuing out of a state court "in any action or proceedings against said foreign corporation growing out of the transaction of any business in this state". The statute did not help much; the courts still had to struggle with the question of what were the criteria necessary to establish the "transaction of . . . business" for purposes of the statute. The states' pursuit of personal jurisdiction over foreign corporations seemed to have become entangled in its own uncertainty. But the Supreme Court found a chance to disentangle the law in *International Shoe Co. v. Washington*.⁶

The rigid fictional determinants of "consent", "presence", and "doing business" were discarded for the broad rule that "due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he has certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of

1. 97 U.S. 714 (1877)

2. *McDonald v. Mabee*, 243 U.S. 90, 91 (1917)

3. *Lafayette Insurance Co. v. French*, 59 U.S. (18 How.) 404 (1855)

4. *Philadelphia and Reading R.R. v. McKibbin*, 243 U.S. 264 (1917)

5. 45 F. 2d 139 (2d Cir. 1930)

6. 326 U.S. 310 (1945)

fair play and substantial justice'.⁷ The only positive limitation was the flexible standard of fair play and substantial justice required by the due process clause of the fourteenth amendment.

The doctrine of "minimum contacts", however, became almost as confusing as its forerunners. *International Shoe* laid down no precise test of what constituted "minimum contacts". The two-fold approach of minimum contacts, and fairness and convenience seems to indicate that the court would look for any degree of activity at all, and then ask if the process would be fair, just, and convenient.⁸ The test would then be qualitative rather than quantitative. This is the type of rule that could be squeezed hard enough to do away with jurisdictional limitations altogether. Then in *McGee v. International Life Ins. Co.*⁹ the Supreme Court apparently did just that. The "minimum contacts" here were minimal: an insurance contract was delivered in the forum state, the premiums were mailed from that state, and the insured was a resident of that state when he died. The insurance company had never had an office or agent in the state.¹⁰ Never before had the Supreme Court sustained jurisdiction over a non-resident defendant on so tenuous a connection between the lawsuit and the forum state. But, lest we ". . . assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of the state courts",¹¹ the Court in that same term, in an opinion also by Justice Black said, "However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him."¹² And they failed to find such contacts in that case. The concept of territorial limitations on state jurisdiction still had vitality although the concept was still as nebulous as ever.

Assuming that a state court has jurisdiction over non-resident corporations for causes of action arising out of the corporation's transactions in that state, the question arises whether the court will have jurisdiction over those corporations for causes of action not arising out of their transactions in that state. This question became more apparent in 1961 when Wyoming enacted the Business Corporation Act and repealed Wyo. Stat. §17-44 (1957).¹³ The new statute does not limit jurisdiction to those causes of action arising out of business within the state. Wyoming is given jurisdiction over all foreign corporations doing business in this state for all causes of action.¹⁴ Does this type of statute violate due process? This question was answered in the negative by the U.S. Supreme Court in *Perkins v. Benquent Consolidated Mining Co.*¹⁵ After discussing the *International Shoe* tests, Justice Burton stated,

7. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)

8. 12 Kan. L. Rev 83 (1963)

9. 355 U.S. 220 (1957)

10. *Id.* at 221 and 222

11. *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)

12. *Ibid.*

13. 17 Wyo L.J. 68 (1962)

14. Wyo. Stat. §17-36.104 (1963 Supp)

15. 342 U.S. 437 (1952)

The instant case takes us one step further to a proceeding in personam to enforce a cause of action not arising out of the corporation's activities in the state of the forum. Using the tests mentioned above we find no requirement of federal due process that either *prohibits* Ohio from opening its courts to the cause of action here presented or *compels* Ohio to do so. This conforms to the realistic reasoning in *International Shoe Co. v. Washington*.¹⁶

In view of the *Perkins* decision, the only open question remaining is, how minimal may be the "minimum contacts" be in Wyoming and still give our courts jurisdiction over foreign corporations doing business in Wyoming for causes of action arising in Wyoming?

In 1963 in the case of *Ford Motor Co. v. Arguello*,¹⁷ Mr. Justice Gray speaking for the full Wyoming Supreme Court stated the general rule as being,

that so long as the activities of a foreign corporation are sufficiently qualitative in nature and extent to show 'minimal contacts' with the state and state law on the subject is justly construed and applied to reach those activities for jurisdictional purposes under 'traditional notions of fair play and substantial justice', all demands of due process are satisfied.¹⁸

"Sufficiently qualitative in nature" would seem to indicate that a single contact might be enough under the rule stated above if the effects of that single contact or event are substantial enough to fulfill the tenets of due process requiring "fair play" and "substantial justice". We would then have a "minimum contact" substantial enough to sustain jurisdiction over the non-resident corporation. The courts have long recognized the validity of the non-resident motorist statutes, and the jurisdiction of the states arising out of a single event. This, however, has always been justified by the fact that a dangerous instrumentality was involved.¹⁹ Vermont's Supreme Court has held a single contact was sufficient to give the state jurisdiction over a non-resident corporation under a statute authorizing suits in state courts against foreign corporations whose contract with the state resident is to be performed in the state and against foreign corporations which commit a tort in that state against one of its residents.²⁰ This holding was affirmed in 1963 by the Second Circuit in *Deveny v. Rheem Manufacturing Co.*²¹ Judge Clark stated: "The Vermont statute represents a practical—and we think successful—attempt to assert jurisdiction in cases where the interests of Vermont residents are affected while staying on the constitutional side of the line that divides *McGee* and *Hanson*."²² In Oklahoma a single sale of one machine in the state was enough to sustain that

16. *Id.* at 446

17. 382 P. 2d 886 (Wyo. 1963)

18. *Id.* at 895

19. *Hess v. Pawloski*, 274 U.S. 352 (1927)

20. *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A. 2d 664 (1951)

21. 319 F. 2d 124 (2d Cir. 1963)

22. *Id.* at 127

state's jurisdiction over a foreign corporation;²³ in Oregon, action on a single contract made in Oregon gave state jurisdiction over the foreign corporation;²⁴ and in Michigan the only contact by which jurisdiction was sustained over the non-resident corporation in the state was the delivery for consignment of some tile.²⁵

However, in the *Ford* case, Mr. Justice Gray, while acknowledging that "clearly old concepts were swept away" and that "a new era dawned for permissive reach of 'in personam' jurisdiction by the courts of the state,"²⁶ indicated that the Wyoming Supreme Court was not yet prepared to follow *McGee* to the extent that a single isolated act will be sufficient to comply with the minimum contact test.

It seems apparent from the above that the concept of due process was reflected in personal jurisdiction by a state over non-resident corporations is still in a state of flux in Wyoming. It is also still uncertain whether the Wyoming Court will apply the same standards to actions *ex contractu* as to actions *ex delicto*. A federal court in *Orton v. Woods Oil and Gas Co.*,²⁷ limited the scope of a statute similar to Wyoming's—one conferring jurisdiction on the grounds of "any business" done within the state. The case seemed to indicate that commercial contacts must be more substantial than tort or insurance contacts in order to sustain jurisdiction. If the Wyoming Court does sustain jurisdiction on the basis of a single contact in the state, it will probably be where a tort involves an act dangerous to life or property of Wyoming residents. There is no reason why the Court should not have the same power over foreign corporations as it has over non-resident individuals, under the Non-resident Motorist Statute. In fact, less substantial contacts are usually required of a corporation than of an individual.

While the Court might possibly, under particular facts, sustain jurisdiction over a foreign corporation based on a single contact in the state if the action is one in tort, the *Ford* case signifies that "sporadic and isolated" transactions will not overcome territorial limitations in contract actions, and probably won't be sufficient in tort actions, either.

It is submitted, however, that the Court is turning away from the true rule of both *International Shoe* and *McGee* by ruling that the term "transacts business" cannot embrace a single contact. The *International Shoe—McGee* doctrine requires only some degree of minimum contact, even a single contact, so long as this contact is substantial enough to provide justice and fair play. In determining justice and fair play an "estimate of the inconveniences" of the non-resident in defending an action in another state, should be weighed against

23. *S. Howes Co. v. W. P. Milling Co.*, 277 P. 2d 655 (Okla. 1954)

24. *Enco, Inc. v. F. C. Russell Co.*, 311 P. 2d 737 (Ore. 1957)

25. *H. F. Campbell Const. Co. v. Palombit*, 347 Mich. 340, 79 N.W. 2d 915 (1956)

26. *Ford Motor Co. v. Arguello*, 382 P. 2d 886, 894 (Wyo. 1963)

27. 249 F. 2d 198 (7th Cir. 1957)

the interest a state has in protecting its citizens and their property. If Wyoming's interest in protecting its citizens and their property outweighs the inconvenience to the non-resident, and if the single contact is sufficiently qualitative, jurisdiction should be found.

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