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Conflict of Laws - Jurisdiction - Minimum Contacts

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Such a reappraisal may portend difficulties for at least some manufacturers. A small manufacturer may find it difficult to obtain reliable and responsible resellers when he is in competition with more powerful suppliers or vertically integrated firms. Potential dealers may be reluctant to risk their own capital without such guarantees as are now prohibited by the *Schwinn* decision.[36] Such dealers may be willing to sacrifice some of their independence to protect their investments and thus be inclined to accept an agency relationship. However, establishing an agency relation requires a capital outlay which could well be beyond the resources of many small manufacturers. A potential market entrant will find it necessary to absorb the costs of setting up a distribution system which is permitted by *Schwinn*.[37] It would appear, therefore, that while the Court recognizes the problem, the attempted solution is inadequate. Their solution both tends to decrease the ability of small firms to effectively compete and increases market entry barriers. It is submitted that a reexamination is necessary and this should include reconsideration of the use of the rule of reason.

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CONFLICT OF LAWS—JURISDICTION—Minimum Contacts—The outer limits of constitutionally valid jurisdiction are not exceeded by asserting jurisdiction over a service corporation doing business solely in a foreign state, if such corporation does a negligent act in the foreign state which causes injury in the state of the forum.

Roche v. Floral Rental Corporation, 95 N.J. Super. 555, 232 A.2d 162 (1967), *appeal docketed*, No. —, N.J. Sup. Ct. (1967).

The third party defendant, J.C. Truck Equipment Company (hereinafter referred to as J.C.), respondent on appeal, had moved to set aside the service of the lower court on the ground that the court lacked in personam jurisdiction over J.C. This appeal was taken from the granting of that motion.

On May 6, 1963, plaintiff's decedent was killed when his car collided

Corp., note 25 *supra*; Susser v. Carvel Corp., 206 F. Supp. 636 (S.D.N.Y. 1962), *aff'd*, 332 F.2d 505 (2d Cir. 1964), *cert. dismissed as improvidently granted*, 381 U.S. 125 (1965) (Treble damage action by franchisees against the franchisor of trademarked ice cream outlets in which the practices of exclusive dealing, tying arrangements, and restricted supplier provisions were examined.).

36. See, Jordan, *Exclusive and Restricted Sales Areas Under the Antitrust Laws*, 9 U.C.L.A. L. REV. 111 (1962); Note, *Restricted Channels of Distribution Under the Sherman Act*, 75 HARV. L. REV. 795 (1962).

37. It is not clear the extent to which the *Schwinn* decision continues the exemption for new market entrants from the *per se* rule. 388 U.S. at 375, 87 S. Ct. at 1863. *Compare*, White Motor Co. v. United States, 372 U.S. 253, 263 (1963).

with a truck driven by one Burzo, while in the employ of the U.S.W. Meat Packing Corporation. The truck had been leased to the U.S.W. Meat Packing Corporation by the Floral Rental Corporation. Floral had purchased the vehicle, an International Harvester truck with a refrigerated body from Gartrell Motors, Inc. Gartrell Motors had purchased the chassis from International Harvester and hired J.C. to install a refrigerator body on the chassis. The refrigerator body was supplied by the U.S. Refrigeration Corp. Gartrell Motors, Inc., International Harvester Truck Company, J. C. Truck Equipment Company, Floral Rental Corporation, U.S.W. Meat Packing Corporation, and U.S. Refrigeration Corp. were joined as defendants in a wrongful death action brought by the plaintiff. Plaintiff alleged that the U.S. Refrigeration Corp. and J.C. were negligent in installing the refrigerator body on the chassis and in repairing the refrigerator body. As a result the drive shaft of the refrigerator unit loosened and broke, causing the driver to lose control of the steering of the truck.

J. C., a New York corporation, contended that the New Jersey court had no in personam jurisdiction over it since it had no New Jersey office, salesmen, or any other contact with the state, nor did it advertise or solicit there. In fact, it appears that J.C. had consciously attempted to remain intrastate. The New Jersey Superior Court concluded however, "although there is no direct proof thereof, we think it an inescapable conclusion that a great many J.C. built trucks did enter New Jersey and that J.C. could not help but expect them to do so."[1] The court held that this conclusion provided the necessary minimal contacts for asserting in personam jurisdiction over J.C.

The assertion of jurisdiction is normally a two-step process as reflected by the cases.[2] The court must first examine the local jurisdictional statute to see if the case comes within the statutory norm. Second, the assertion of jurisdiction must be within the constitutional limitations as prescribed by due process of law. Given a broadly worded statute the courts of a state may or may not exercise the jurisdiction to the full extent permitted by the Federal Constitution.[3]

New Jersey has no long arm statute, but has decided to exercise in personam jurisdiction to the limit of due process of law. *Roland v. Modell's Shopper's World of Bergen County Inc.*[4] In the *Roland* case

1. 232 A.2d at 167.

2. Adam N. Saenger, 303 U.S. 59 (1938). If the court does not have local jurisdiction its judgment will not be entitled to full faith and credit.

3. The court goes on to illustrate that the proximity of New Jersey to New York may be the reason for its determination that in personam jurisdiction could be asserted over the defendant J.C., see n.21 *infra*, and accompanying text.

4. "[W]e must bear in mind that our R.R. 4:4-4(d) permits extraterritorial service subject only to 'due process of law'—that is, to the outermost limitations permitted by the

there was a direct shipment of flammable leotards by the defendant distributor into New Jersey.[5]

The court in *Roland* cited *Hanson v. Denkla*[6] as authority for its finding of jurisdiction. In *Hanson* the Supreme Court elaborated on the "minimum contacts" doctrine of *International Shoe Co. v. Washington.*[7] *International Shoe* involved the assertion by the state of Washington of in personam jurisdiction over International Shoe Co., despite the fact that the shoe company had no offices or warehouses in the state and was not incorporated there. However, the shoe company had maintained salesmen in the state, and the salesmen's acts of soliciting and order-taking were deemed sufficient by the court to establish the minimum contacts (the due process requirement) necessary to confer in personam jurisdiction.

In the *Hanson* case the Supreme Court ruled that the attempted assertion of jurisdiction by a Florida probate court over a Delaware trustee was invalid. The Delaware trustee had received its authority to act as trustee before the settlor had moved to Florida and became a Florida domiciliary; therefore, the administrator of the settlor's estate could not get jurisdiction over the Delaware company since it had never initiated contact with Florida.[8] To appreciate the significance of *Hanson* it should be read in conjunction with *McGee v. International Life Insurance Co.*,[9] where the California courts were permitted jurisdiction over an insurer by the Supreme Court because the insurer had mailed a single insurance contract into the state and thus had initiated contact with the forum state. Had the trustee in *Hanson* initiated contact it is probable that the Supreme Court would have allowed Florida to maintain in personam jurisdiction over the trustee.

Hanson has been interpreted as holding that there must be some contact by the nonresident with the state by actions within the state, that the nonresident should be receiving the benefits and protection of the state's laws before in personam jurisdiction over him can be deemed constitutional.[10]

Federal Constitution. Our rule contains no definitions, limitations or exceptions . . ." 92 N.J. Super. 1,10, 222 A.2d 110, 113 (1966).

5. However, in the instant case there was no direct shipment into New Jersey by J.C. as noted earlier.

6. 357 U.S. 235 (1958).

7. 326 U.S. 310 (1945).

8. In *Hanson*, at 357 U.S. 235, 253 (1958), the Supreme Court states: "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws."

9. 355 U.S. 220 (1957).

10. See Comment, *Contacts and Fairness: A Dual Test for Personal Jurisdiction*, 11 STAN. L. REV. 344 (1959).

The court in the instant case stated that it was an inescapable conclusion that J.C. had shipped into New Jersey. There was, however, no showing that J.C. had ever caused any item to be sent into New Jersey. Neither soliciting, advertising, nor distribution of products had ever been pursued by J.C. outside of New York. No product had ever entered into the stream of commerce at J.C.'s initiation with J.C.'s knowledge. J.C. had no control of the product when it left its establishment. J.C. returned the product to Gartrell Motors, another New York firm having no knowledge of the destination or control over the product after that. These differences would distinguish *Roche* from the *Roland*, *Hanson*, and *McGee* cases.

The *Roche* court cites various cases to support the evolution of the expansion of in personam juridiction after the landmark cases of *International Shoe* and *Hanson*. The court was trying to break from the traditional views of *Hanson*, *i.e.*, affirmative acts and minimum contacts. The *Roche* court's reliance on proximity suggests that foreseeability of the defendant's act may be the sole criterion used in lieu of traditional views. An act done in one state with knowledge of a probable result in another state will render the actor liable to in personam jurisdiction in such other state for any harmful consequences. An example of an act where foreseeability alone will serve as grounds for jurisdiction would be the maintenance of airplanes. It is foreseeable that faulty maintenance of an airplane could lead to harmful effects in any number of states. At the other end of the spectrum are instances where foreseeability alone will not suffice, such as a mechanic installing tires on a car with out-of-state license plates.[11] Neither of the two extreme cases present difficulty, the difficulties arise in deciding the middle ground cases. The *Roche* case involved a truck, possibly intended for local use, serviced by a local firm, and sold to a local trucking firm. That J.C. could be held to be on the polar side adjacent to airplanes is not immediately apparent.

Two cases which were cited by the *Roche* court as support for its position are *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*,[12] and *Feathers v. McLucas*;[13] these two cases reflect the trend of states other than New Jersey in relaxing or expanding the standards of *International Shoe* and *Hanson*. In the *Longines-Wittnauer* case the suit was for breach of warranty with regard to machinery shipped to New York by the

11. In Erlanger Mills v. Cahoes Fibre Mills, 239 F.2d 502, 507 (4th Cir. 1956), the court states: "let us consider the hesitancy a California dealer might feel if asked to sell a set of tires to a tourist with Pennsylvania license plates, knowing that he might be required to defend in the courts of Pennsylvania a suit . . . for heavy damages in case of accident attributed to a defect in the tires."

12. 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965), *cert. denied*, 382 U.S. 905 (1965).

13. 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965).

Illinois seller after contract negotiations in both states, execution in New York of a supplementary contract, and rendering of services in New York in installing and testing the machine. The New York court upheld jurisdiction because of the recorded contract in the forum state.

It is difficult to see the reliance by the *Roche* court upon *Longines-Wittnauer*, for there it was clear that the defendant had done something other than an act merely foreseeable in its end result. The *Longines* case was not a difficult case, the acts of the defendant in shipping a product into New York clearly gave New York jurisdiction over the defendant. In the instant case there were *no* acts of the defendant to join with the foreseeability test to give the New Jersey court jurisdiction.

In the *Feathers* case the Court of Appeals of New York was given an opportunity to make a liberal application of in personam jurisdiction as the court in the instant case does.[14] In *Feathers* the assertion of in personam jurisdiction was dependent upon the interpretation of a New York long-arm statute.[15] Plaintiffs had sued for personal and property damages resulting from the explosion in New York of a tractor-drawn propane tank manufactured in Kansas by the defendant. The tank was mounted on wheels and sold in Pennsylvania to a Pennsylvania interstate truck carrier. Defendant who had not sold any product in New York was not amenable to process on the ground that he had transacted business within the state. The statute was interpreted to read that only tortious acts committed within the state were sufficient to subject a foreign corporation to in personam jurisdiction in New York. The act, which was alleged to have been the proximate cause of the plaintiff's injury, had occurred outside New York, was conceded to be negligent, and caused injury within New York. These facts of the *Feathers* case seem quite parallel to the instant case, *i.e.*, an act done outside the forum state to a truck which causes injury in the forum state. The New York Court of Appeals declined to extend jurisdiction and reversed the lower court which had held that the jurisdiction was valid, avoiding the constitutional question.[16] The statute was construed as not giving the court jurisdiction over the foreign defendant. The court in *Roche* looks upon the narrow statute as

14. Note, *Personal Jurisdiction Over A Products Libility Tortfeasor*, 60 N.W.U.L. REV. 730 (1966).

15. Since the *Feathers* decision the statute (N.Y. CIV. PRAC. § 302(a)) has been amended, see n.17 *infra*, and accompanying text. At the time of the decision it read as follows:

> A court may exercise personal jurisdiction over any non-domiciliary . . . as to a cause of action arising from any of the acts enumerated in this section, in the same manner as if he were domiciliary of the state, if, in person or through an agent, he:
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> 1. transacts any business within the state; or
>
> 2. commits a *tortious act* within the state . . . . (Emphasis added.)

16. This would appear to be the normal judicial process, *i.e.*, to avoid the question of the constitutionality of a state statute.

the distinction between the *Feathers* case and its decision in the instant case.

The *Feathers* court avoided the constitutional problem because of the absence of definite activity by the defendant in New York. In *Feathers* the defendant could foresee the eventual arrival of the truck in New York. Still, the lack of a positive act by the defendant within the state led the court to preclude itself from asserting jurisdiction. It is extremely doubtful that even as liberally amended, the New York statute could subject J.C. to personal jurisdiction.[17]

The court in *Roche* proceeded to utilize "fairness" as a basis for asserting jurisdiction.[18] Even though the court felt that J.C. might not foresee the destination of his product, it believed that "fairness" would be served by applying the foreseeability tests of *Phillips v. Anchor Hocking Glass Corp.*[19]

These tests were the nature and size of the manufacturer's business, the economic independence of the plantiff, the foreseeability of the manufacturer's product entering the forum state, the applicable choice of law rule, the convenience of the forum, and the nature of the cause of action.[20]

The court in the instant case mentions the *Phillips* discussion of these factors, but it was not clear to what extent, or in what manner the court applied them. The court in *Roche* fails to mention, once again, that in the *Phillips* case the defendant had voluntarily done acts within the forum which, combined with the foreseeable consequences of his actions, would subject the defendant to the forum's jurisdiction. The *Roche* court, in applying the foreseeability tests of *Phillips*, goes even further than the court in *Phillips* was called upon to go. It is submitted that the precedent cited by the *Roche* court does not establish the principle that foresee-

17. The New York legislature has since amended N.Y. CIV. PRAC. § 302(a) (McKinney Supp. 1967) to subject to personal jurisdiction a non-domiciliary who, in person or by an agent:

> 3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
>
> (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
>
> (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce . . . .

It is apparent that J.C. did not derive substantial revenue from interstate commerce as required by subsection (ii).

18. 232 A.2d at 166.

19. 413 P.2d 732 (1966), noted in 8 ARIZONA L. REV. 356 (1967).

20. Phillips v. Anchor Hocking Glass Corp., 413 P.2d 732, 738 (1966).

ability alone will suffice to permit a court to assert in personam jurisdiction over the defendant in a tort action.

The *Roche* court attempted to limit its holding by stating: "Here the normal usage of the product [truck] almost inevitably would bring it into New Jersey. That is the deciding factor. It is therefore not necessary to speculate upon what our holding would be if J.C.'s plant were further away or in a different relative geographic location, or if J.C. completed fewer trucks."[21]

It is submitted that this case was an unexpected and unwarranted extension of in personam jurisdiction. It is possible that without guidance from the United States Supreme Court the *Roche* case, if followed, could expand the jurisdiction of any state over any foreign corporation if the state feels that the foreign corporation has wronged one of its domiciliaries. Whether this is good or bad is not in question, but it is submitted that to do it under the guise of minimum contacts when none in fact exist is clearly erroneous. It would subject corporations to in personam jurisdiction anywhere without regard to state jurisdictional patterns of power. It is time for the Supreme Court to clarify the jurisdictional guidelines of *International Shoe* and *Hanson.*

Louis P. Vitti

CONTRACTS—PAROL EVIDENCE—Parol evidence rule does not bar testimony concerning procurement of bank financing as an oral condition precedent to the formation of a contract for home improvements that did not mention financing, since the oral agreement did not contradict the main body of the written contract, despite the inclusion of an "integration clause."

Luther Williams, Jr., Inc. v. Johnson, 229 A.2d 163 (D.C. Ct. App. 1967).

Appellant sought to recover liquidated damages under a contract for improvements on appellee's home. The contract in question contained the following "integration clause": "This contract embodies the entire understanding between the parties, and there are no verbal agreements or representations in connection therewith."[1] Appellees testified that the contract never came into existence because of an unfulfilled condition precedent to the formation of the contract. Appellant objected to the introduction of the testimony concerning the parol agreement for financing, and later objected to the jury being instructed to find for the

21. 232 A.2d at 167.

1. Luther Williams, Jr., Inc. v. Johnson, 229 A.2d 163 (D.C. Ct. App. 1967), at 165.