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Civil Procedure

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In Personam Jurisdiction

The United States Supreme Court in *Burnham v. Superior Court of California*[1] announced that personal service of process on a nonresident individual who is temporarily in the state subjects the individual to jurisdiction even though the suit is unrelated to the individual's activities in the state.

The California litigation was a divorce action by Mrs. Burnham against her husband. They had married in West Virginia, moved to New Jersey, had two children, and in 1987 decided to separate, agreeing that Mrs. Burnham would move to California and take custody of the children.

Mrs. Burnham brought suit for divorce in California in 1988. Shortly thereafter the husband visited southern California on business and then went north to visit his children, who resided with his wife. After visiting with one child for the weekend, upon returning the child to his home, he was served with a California court summons in Mrs. Burnham's divorce action. The husband returned to New Jersey and later made a special appearance in the California court to quash the service of process on the ground that the court lacked personal jurisdiction over him because of insufficient contacts. The California court upheld jurisdiction and application for certiorari was made to the United States Supreme Court, which accepted the case for review.

The Court pronounced a blunt and simple statement in its conclusion, that an individual personally present in a jurisdiction may be served with process on any matter. (The Court expressly disavowed any statement as to the application of this rule to corporations.[2]) In reaching that conclusion, the opinion, authored by Justice Scalia, examined the concept of personal jurisdiction from the very beginning of time through the current Supreme Court edicts. The Court reaffirmed that the standard set out in *International Shoe v. Washington*[3] is still the dominant ju-

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1. 110 S. Ct. 2105 (1990).
2. Id. at 2110 n.1.
3. 362 U.S. 310, 66 S. Ct. 154 (1945).

risdictional standard: jurisdiction must be consistent with traditional notions of fair play and substantial justice. Having already pointed out that the most fundamental and ancient basis for jurisdiction was the physical presence of the defendant within the power of the court, Justice Scalia observed that under *International Shoe*, "the defendant's litigation-related 'minimum contacts' may take the place of physical presence as the basis for jurisdiction. . . ."[4] The opinion emphasizes that the minimum contacts requirement for jurisdiction over absent defendants has been so prominent in the jurisprudence that attention has waned on the jurisdictional effect of a defendant's physical presence in the forum. The Court thus concluded its theme that the widespread practice of finding jurisdiction on physical presence alone runs from ancient times to the present in an unbroken fashion, so that one must say that literally it is traditional, in the sense of long-standing, and that it must represent fair play because so many jurisdictions follow the rule.

In rebuttal of petitioner's argument that *Shaffer v. Heitner*[5] requires a connection between a defendant's minimum contacts and the litigation, the court said that the distinction lay in the fact that *Shaffer* involved an *absent defendant* and "stands for nothing more than the proposition that when the 'minimum contact' that is a substitute for physical presence consists of property ownership, it must, like other minimum contacts, be related to the litigation."[6]

A very interesting feature of the opinion is Justice Scalia's feisty attack upon the views of Justice Brennan. In the majority opinion itself, Justice Scalia devoted substantial space in a tone approaching derisiveness. He referred to Justice Brennan's proposal as a "seductive standard"[7] without authority to be found in any of the court's personal jurisdiction cases. He further refered to the approach as one of "subjectivity, and hence inadequacy."[8] The tone of the opinion at this point is that the Justice was simply continuing an in-chambers argument with his colleague. His concluding shot was that "[t]he difference between us and Justice Brennan has nothing to do with whether 'further progress [is] to be made' in the 'evolution of our legal system.' It has to do with whether changes are to be adopted as progressive by the American people or decreed as progressive by the Justices of this Court. Nothing we say today prevents individual States from limiting or entirely abandoning the in-state-service basis of jurisdiction."[9]

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4. *Burnam*, 110 S. Ct. at 2114.
5. 433 U.S. 186, 97 S. Ct. 2569 (1977).
6. *Burnham*, 110 S. Ct. at 2115.
7. Id. at 2117.
8. Id.
9. Id. at 2119 (citations omitted).

Justice Scalia's final volley is found in footnote five of the opinion, in which he characterized Justice Brennan's view, in one particular aspect, as "imperious."[10]

In summary, the opinion appears to allow a state court the freedom to base personal jurisdiction on any matter over an individual person solely upon service of process within the state's boundaries, the state presumably still having the discretion and power to decline to entertain purely transitory litigation. Corporations were expressly excepted from this opinion.[11]

In *Fox v. Board of Supervisors of Louisiana State University*,[12] the First Circuit Court of Appeal of Louisiana held that Louisiana lacks sufficient contacts to assert in personam jurisdiction over a Minnesota college whose student was injured in a rugby match in Louisiana. The court found that the rugby team was an informal one, not sponsored by the college, so that the conduct or presence of the team was not in any way the conduct or presence of the college itself and could not support personal jurisdiction over the college.

In an interesting concomitant point regarding the insurance company of the college, the court found that while the insurance company did such substantial business in Louisiana that it could be said that Louisiana had jurisdiction over the company as such, the state would nevertheless decline to exercise that jurisdiction under the doctrine of forum non-conveniens. The alleged acts of wrongdoing, said the court, were as to the management and training of the team and had occurred in Minnesota, not in Louisiana.

In *Socorro v. Orleans Levee Board*,[13] Angelina Casualty Company was sued in its capacity as the liability insurer of the City of New Orleans. The name of the company was unknown at time of suit, so plaintiff used the nomenclature "DEF Insurance Company" in naming Angelina as a defendant. Angelina was never served, but plaintiff asserted that Angelina nevertheless submitted itself to the jurisdiction of the court by filing a motion for summary judgment, thus making a general appearance under Louisiana Code of Civil Procedure article 7.

The court properly ruled that since Angelina had never been served, it was not a "party" within the meaning of Louisiana Code of Civil Procedure article 7, and its filing of a motion for summary judgment did not constitute such pleading within the contemplation of Article 7 as is required to constitute a general appearance, because Article 7 applies only to parties.

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10. Id. at n.5.
11. Id. at 2110 n.1.
12. 559 So. 2d 850 (La. App. 1st Cir.), writ granted, 565 So. 2d 930 (1990).
13. 561 So. 2d 739 (La. App. 4th Cir. 1990).

Prescription

Despite the apparent liberality of supreme court jurisprudence[14] as to the "relating back" effect of amended petitions adding parties, whether plaintiff or defendant, the courts of appeal frequently maintain the exception of prescription as to the late-added party on finding that the defendant was not sufficiently on notice during the prescriptive period. Two cases to this effect, as to the defendants, are *Heimann v. General Cinema Corporation of Louisiana*[15] and *Hernandez v. Plaquemines Parish School Board*.[16]

As to the late-added plaintiff, *Farber, M.D. v. United States Fidelity and Guaranty Insurance Company*[17] held that the claim by an injured physician for his loss of income was prescribed because his income had been assigned to a professional corporation and the original, timely-filed suit, was in the name of the individual physician only. When his right to sue for loss of income was questioned, the professional corporation was added as a party plaintiff, but it was after the prescriptive period and the court found that the defendant was not in any way on notice that this plaintiff would come forward; thus the claim was found prescribed.[18]

Pleading As Notice

In *T.L. James & Co., Inc. v. Kenner Landing, Inc.*,[19] the Louisiana Supreme Court refused to allow the plaintiff to collect damages under the rule of Louisiana Code of Civil Procedure article 862, which provides that the court can grant any relief just and proper on the pleadings. The court found that because the principal suit was for injunction, the defendant was not on notice that he was facing and defending a claim for damages, so that his defense was seriously prejudiced.

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14. Giroir v. South La. Medical Ctr., Div. of Hosps., 475 So. 2d 1040 (La. 1985); Ray v. Alexandria Mall, 434 So. 2d 1083 (La. 1983).

15. 559 So. 2d 919 (La. App. 5th Cir. 1990).

16. 563 So. 2d 516 (La. App. 4th Cir. 1990).

17. 561 So. 2d 951 (La. App. 4th Cir. 1990).

18. Compare Farber, id., with Giroir v. South La. Medical Ctr, Div. of Hosps., 475 So. 2d 1040 (La. 1985) on the issue of notice.

19. 562 So. 2d 914 (La. 1990).