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Jurisdiction—Service of Process on Foreign Corporation

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ALASKA CASE LAW 1964-1965

JURISDICTION

Service of Process on Foreign Corporation. Alaska statutory provisions for service of process on foreign corporations have been given long-arm effect. The purchaser of a road scraper sued his vendor, the distributor, for breach of warranty as to the condition of the scraper. The distributor filed a third party complaint against a non-resident manufacturer from which it had ordered and received equipment over the course of several years under an exclusive distribution sales and service agreement for the state of Alaska. Because the manufacturer had no agent in Alaska on whom process could be served, copies of the complaint and summons were delivered by the retailer to the State Commissioner of Commerce, pursuant to statutory provisions for serving foreign corporations transacting business in Alaska. This service was quashed by the superior court, and the retailer appealed. *Held,* the "transaction of business" required by statute for state court jurisdiction over foreign corporations is equivalent to the "minimum contacts" required by the due process clause of the federal constitution. *Northern Supply, Inc. v. Curtiss-Wright Corp.*, 397 P.2d 1013 (Alaska 1965).

In 1960 the Alaska statute providing for service of process on the Commissioner of Commerce as "agent" of a foreign corporation, section 10.05.642, was amended to reach not only those corporations "authorized to transact business in the state" but also those corporations "not authorized to transact business in the state but doing so."[1] The legislative intent in enacting this amendment formed the issue in the principal case.

Prior to amendment, service on a foreign corporation was possible under section 10.05.642 only when the corporation was authorized to transact business under Alaska's corporation law, section 10.05.597.[2]

[1] ALASKA STAT. § 10.05.642 (1962). "When a foreign corporation authorized to transact business in the state, *or not authorized to transact business in the state but doing so,* fails to appoint or maintain a registered agent in the state, or when a registered agent cannot with reasonable diligence be found at the registered office, or when the certificate of authority of a foreign corporation is suspended or revoked, the commissioner is an agent upon whom process, notice, or demand may be served...." (Emphasis added to identify the portion included through amendment by Alaska Sess. Laws 1960, ch. 25, § 3.)

[2] "No foreign corporation may transact business in the state until it has procured a certificate of authority from the commissioner...." (1962).

The court reasoned that the legislature intended, by the amendment, to extend Alaska jurisdiction to include foreign corporations which transact business in a manner too insubstantial to require authorization under the state corporation law. Transaction of business, stated the court, encompasses "all those activities which would subject a foreign corporation to the jurisdiction of our courts when measured by the outer limits of the due process clause of the federal constitution."[3]

The court then made a somewhat cursory examination of the local activities of the foreign corporation in the principal case, and concluded that these activities were sufficient to bring the manufacturer within the ambit of due process. The court adopted the criteria formulated in the United States Supreme Court opinions of *Hanson v. Denckla*,[4] *McGee v. International Life Ins. Co.*,[5] and *International Shoe Co. v. Washington*.[6] In particular the court found that the manufacturer had "purposefully availed itself of the privilege of conducting activities within the state, thus invoking the benefits and protection of its laws;" that witnesses and evidence could more conveniently be produced for trial in Alaska; and that the "transaction out of which the claim ... arose had such a substantial connection with the state that it would not be unfair and in violation of due process" to require the manufacturer to defend in Alaska.[7] The court's failure to consider the facts with particularity seems to detract from the clarity and force of its decision.

In *Cannon Mfg. Co. v. Cudahy Packing Co.*,[8] the United States Supreme Court held that local distribution, by an independent retailer, of products manufactured by a foreign corporation is by itself an insufficient basis for exercise of jurisdiction over the manufacturer. *Cannon*, however, must be qualified by the subsequent decisions in *Hanson*, *McGee*, and *International Shoe*. Two of the most recent federal cases which involved distributorship situations somewhat analogous to the facts in the principal case came to the same decision as in *Cannon*.[9] These cases might be distinguished in that one preceded both *Hanson* and *McGee*, and the other involved a consumer who was himself not a resident of the state asserting jurisdiction. The underly-

[3] 397 P.2d at 1016-17.
[4] 357 U.S. 235 (1958).
[5] 355 U.S. 220 (1957).
[6] 326 U.S. 310 (1945).
[7] 397 P.2d at 1017.
[8] 267 U.S. 333 (1925).
[9] L. D. Reeder Contractors v. Higgins Indus., Inc., 265 F.2d 768 (9th Cir. 1959); LeVecke v. Griesedieck W. Brewery Co., 233 F.2d 722 (9th Cir. 1956).

ing theme in both these cases, however, was that jurisdiction over a foreign corporation could not constitutionally be predicated solely upon the location of its products within the forum state, nor upon the use of normal distribution channels within the state.

The latest federal decision involving state jurisdiction based on local distribution by a foreign manufacturer is *Sanders Associates, Inc. v. Galion Iron Works & Mfg. Co.*[10] The manufacturer in *Sanders* supervised the local distributor's sale of its product to the government, limited the territorial franchise of the distributor, and supervised the distributor's advertising, pricing, and servicing practices. The court in *Sanders* found these incidents to be sufficient to satisfy the constitutional requirement of due process, and thus the state's jurisdiction was established.

Insofar as the facts in the principal case are given in the opinion, they coincide with the facts in *Sanders*. The factual setting is reported only briefly, however, and the court merely characterized the manufacturer's contacts with Alaska in language borrowed directly from the *Hanson, McGee,* and *International Shoe* opinions. It may well be that this lack of judicial objectivity is unavoidable, as the opinion in the leading case of *International Shoe* could only define the jurisdictional test as "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'."[11] Assuming that there exists a point at which it seems necessary and consonant with due process to assert jurisdiction over a foreign manufacturer engaging in the local distribution of its product, that point will be determined by the scope and nature of the manufacturer's local activities. Because the court in the principal case fails to describe those local activities sufficiently, the Alaska practitioner can only discern from this decision that jurisdiction will be exercised up to "the outer limits of the due process clause of the federal constitution."

EDITOR'S NOTE: The court's failure in the principal case to describe the manufacturer's local activities with sufficient particularity was resolved by the lengthy opinion written four months later by Chief Justice Nesbett in *Stephenson v. Duriron Co.,* 401 P.2d 423 (Alaska 1965). The *Stephenson* decision extended jurisdiction of the Alaska courts to an Ohio manufacturer of an allegedly defective gas valve involved in a gas explosion in Anchorage, even though the manufacturer had no agent

[10] 304 F.2d 915 (1st Cir. 1962), 14 W. RES. L. REV. 610 (1963).
[11] International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945).

in Alaska and its total sales for Alaska delivery never exceeded 0.12% of its total annual gross sales volume. The opinion covered the instant facts with particularity, and discussed in detail the *International Shoe, McGee,* and *Hanson* decisions (as well as *Perkins* v. *Benguet Consol. Mining Co.,* 342 U.S. 437 (1952) and *Gray v. American Radiator & Standard Sanitary Corp.,* 22 Ill.2d 432, 176 N.E.2d 761 (1961)). The court's decision seems to turn on the doctrine of "estimate of the inconveniences," as the court found that "it would be far more convenient for Duriron to defend the suits in Alaska than to defend in Ohio and transport all of the witnesses to that state from Alaska," 401 P.2d at 430. If the location of the witnesses is to be the controlling factor in determining the extent of jurisdiction of the Alaska courts, rarely will Alaska courts lack jurisdiction hereafter.

TORTS

Municipal Liability—"Natural Causes"—Climatic Conditions and Vehicular Traffic. A municipality is generally not liable for injuries which result from the "natural causes" of snow and ice on city sidewalks.[1] Three recent Alaska decisions held that pedestrian and vehicular traffic which caused rough surfaces on sidewalks and crosswalks were also "natural causes."

In *Hale v. City of Anchorage,*[2] plaintiff was injured when she slipped on a rough surface of snow and ice on a sidewalk curb-cut. The roughness of the sidewalk had been caused by pedestrian and automobile traffic during periods of alternate thawing and freezing. In *Morrison v. City of Anchorage,*[3] plaintiff was injured while attempting to avoid a slush-filled gutter as she stepped from an icy sidewalk. In *Gunsolus v. City of Fairbanks,*[4] plaintiff was injured when she slipped and fell on an icy manhole cover at a street intersection crosswalk. In all three cases plaintiff sued a city for failing to remove snow and ice. *Held:* Pedestrian and vehicular travel which causes rough surfaces on sidewalks and crosswalks, and rising temperatures which cause slushy gutters, are "natural causes," and, unless an obstruction results, a city is not liable for resulting injuries.

In *Gilfilen v. City of Seward*[5] the Court of Appeals for the Ninth

[1] 19 McQUILLIN, MUNICIPAL CORPORATIONS § 54.84 n. 36, 37 (3d ed. 1950).
[2] 389 P.2d 434 (Alaska 1964).
[3] 390 P.2d 782 (Alaska 1964).
[4] 391 P.2d 13 (Alaska 1964).
[5] 262 F.2d 864 (9th Cir. 1959).