

Minimum Contacts Standard Applied to State Court's Assertion of Quasi In Rem Jurisdiction

In *Shaffer v. Heitner*¹ the U.S. Supreme Court held that a state court may no longer exercise quasi in rem jurisdiction based solely on the presence of a non-resident defendant's property within the state. Such jurisdiction must now be evaluated according to the minimum contacts standard set forth in *International Shoe Co. v. Washington*.²

Heitner, a nonresident of Delaware, filed a shareholders derivative suit in a Delaware Chancery Court. The suit named as defendants Greyhound Corporation, a Delaware corporation, its subsidiary, Greyhound Lines, and 28 present or former officers or directors of one or both corporations.³

Simultaneously with his complaint, Heitner filed a motion for an order of sequestration of the Delaware property of the individual defendants, all of whom were nonresidents of Delaware. The property was common stock in the Greyhound Corporation and options and warrants to purchase such stock. The stock was considered to be in Delaware by virtue of a state law which makes Delaware the situs of all capital stock issued by Delaware corporations.⁴ The motion was granted and 82,000 shares belonging to 19 of the defendants were seized by means of stop transfer orders.

The defendants, whose property was seized, responded by entering a special appearance in order to quash service of process and to vacate the sequestration order. They contended that under *International Shoe* they did not have sufficient contact with Delaware to sustain the jurisdiction of that state's courts.⁵ The Court of Chancery and the Delaware Supreme Court both found that the statutory Delaware situs of the stock provided a sufficient basis for the use of quasi in rem jurisdiction by a Delaware court. The Delaware Supreme Court stated that "jurisdiction under [the sequestration statute, Del. Code Ann. tit 10, §366] remains . . . *quasi in rem* founded on the presence of capital stock here, not on prior contact by

1. ___ U.S. ___, 97 S.Ct. 2569, 53 L. Ed. 2d 683 (1977).

2. 326 U. S. 310 (1945).

3. Heitner alleged that the officers had violated their duties to Greyhound by causing it to engage in activities which resulted in substantial liability in a private antitrust suit and a large criminal contempt fine. All facts are from the Supreme Court's opinion 97 S.Ct. at 2572, 53 L. Ed. 2d at 688.

4. DEL. CODE ANN. tit. 8, §169 (1974) provides: "For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in this State, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this State, whether organized under this chapter or otherwise, shall be regarded as in this State."

5. The defendants also contended that the ex parte sequestration procedure denied them due process of law and that the stock was not capable of attachment in Delaware.

defendants with this forum."⁶

In *Pennoyer v. Neff*⁷ the U.S. Supreme Court delineated certain principles governing a state's exercise of jurisdiction. The first of these is that every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory.⁸ The second is that no state can exercise direct jurisdiction and authority over persons without its territory. Following *Pennoyer*, a state could acquire in personam jurisdiction over a defendant only if process were served on him within the forum state. In personam jurisdiction is based on the state's authority over persons within its borders and binds the defendant personally. In contrast, judgements in rem and quasi in rem, do not bind the defendant personally but affect the defendant's rights in property, such as title to or status of property subject to the court's jurisdiction.⁹ Common examples of true in rem actions are proceedings to register title to land, to condemn or confiscate property, or to administer a decedent's estate.¹⁰ Such a judgment affects the interests of all persons in the designated property and is based on the state's authority over property within its territory.

Quasi in rem judgments, unlike true in rem judgments, affect the interests of only the defendant and not the interests of all persons in the property. Quasi in rem actions may be of two types. An action to remove a cloud on title is an example of the first. Such an action has as its objective the determination of the interests in specific property.¹¹ In the second type, the plaintiff has a personal claim against a nonresident defendant who owns property within the state.¹² The plaintiff then seeks to apply the property of the defendant to the satisfaction of the claim.

A classic example of the second type of quasi in rem jurisdiction is *Harris v. Balk*.¹³ In that case the U.S. Supreme Court found that a debt was an intangible form of property which traveled with the debtor and hence could be garnished wherever the debtor traveled, even though in personam jurisdiction could not be exercised over the creditor.¹⁴

While in rem and quasi in rem jurisdiction have remained basically unchanged since *Pennoyer*, the basis of in personam jurisdiction has undergone several changes. To the present discussion the most important development is the minimum contacts standard laid down in *International Shoe*. In that case the Court moved away from the earlier theories that a

6. *Greyhound Corp. v. Heitner*, 361 A.2d 225, 229 (Del. 1976).

7. 95 U.S. 714 (1877).

8. *Id.* at 722.

9. *Developments in The Law- State Court Jurisdiction*, 73 HARV. L. REV. 909, 948 (1960).

10. *Id.* at 949.

11. *Id.*

12. *Id.*

13. 198 U. S. 215 (1905).

14. *Id.* at 222.

corporation doing business consented to being sued within the state,¹⁵ or that a corporation "doing business" in a state could be considered "present"¹⁶ in the forum. Instead the Court said that, "[D]ue 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 have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"¹⁷

In *Shaffer*, the Court put to rest the proposition that the presence of property within the state, without more, gives that state jurisdiction to adjudicate rights to the property. The Court began with the recognition that "[t]he phrase, 'judicial jurisdiction over a thing,' is a customary elliptical way of referring to jurisdiction over the interests of persons in a thing."¹⁸ This recognition led the Court to conclude that the basis of in rem jurisdiction "must be sufficient to justify exercising 'jurisdiction over the interests of persons in a thing'. The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process Clause is the minimum contacts standard elucidated in *International Shoe*."¹⁹ The Court noted that the presence of property within a state may indicate that the necessary minimum contacts are also present, particularly when conflicting claims to the property are the underlying source of controversy or when an injury is suffered on the property of a nonresident land owner.

However, in the type of quasi in rem jurisdiction typified by *Harris v. Balk*, in which the property within the state is unrelated to the plaintiff's cause of action, there must be other ties among the defendant, the state, and the litigation.²⁰ "[T]he presence of the property alone would not support the State's jurisdiction."²¹ The Court stated that in cases such as *Harris* and *Shaffer* "the only role of the property is to provide the basis for bringing the defendant into court."²² The Court felt that, in these cases, "if a direct assertion of personal jurisdiction over the defendant would violate the Constitution, it would seem that an indirect assertion of that jurisdiction should be equally impermissible."²³

According to the Court, the primary rationale for allowing the presence of property alone to support jurisdiction is to keep defendants from removing their assets to avoid payment of their obligations. This rationale was

15. *Pennoyer v. Neff*, 95 U.S. 714, 733-735 (1877).

16. *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914).

17. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

18. 97 S.Ct. at 2581, 53 L. Ed. 2d at 699, quoting RESTATEMENT OF CONFLICT OF LAWS (SECOND) §56, introductory note.

19. 97 S.Ct. at 2582, 53 L. Ed. 2d at 699-700.

20. *Id.* at 2582, 53 L. Ed. 2d at 701.

21. *Id.* at 2582-2583, 53 L. Ed. 2d at 701.

22. *Id.* at 2583, 53 L. Ed. 2d at 701.

23. *Id.*

rejected because "[t]he Full Faith and Credit Clause . . . makes the valid *in personam* judgment of one State enforceable in all other States".²⁴ The Court also rejected the contention that allowing in rem jurisdiction avoids the uncertainty of the minimum contacts test, stating that "the cost of simplifying the litigation by avoiding the jurisdictional question may be the sacrifice of 'fair play and substantial justice.'"²⁵

In attempting to justify the exercise of jurisdiction under the minimum contacts standard, Heitner first contended that the defendant's positions as officers and directors of a corporation chartered in Delaware provided sufficient contacts with the State to give its courts jurisdiction in a derivative suit.²⁶ The argument was based on the assertion that Delaware has a strong interest in supervising the management of Delaware corporations. Secondly, Heitner contended that the defendants associated themselves with the State of Delaware by accepting positions as officers and directors of a Delaware corporation. Heitner asserted that Delaware law provides certain benefits to corporate officers and that these benefits served as incentive to the defendants to assume their positions.²⁷ In return, Heitner contended that it was "only fair and just" that the defendants be required to respond in Delaware when accused of misusing their powers.²⁸

The Court found Heitner's first contention unconvincing because of the failure of the Delaware Legislature to assert its interest in supervising the management of Delaware corporations. The sequestration statute based jurisdiction on the presence of property within the state and not on the defendant's status as officers and directors. The Court felt that although the procedure might be primarily used in derivative actions, the statute itself "evinces no specific concern with such actions" and could be used in any suit against a nonresident.²⁹ "If Delaware perceived its interest in securing jurisdiction over corporate fiduciaries to be as great as Heitner suggests, we would expect it to have enacted a statute more clearly designed to protect that interest."³⁰ At the most the Court felt that this state interest might support the application of Delaware law to the controversy.

Rejecting Heitner's second contention, the Court felt that providing defendants the benefits of Delaware law did not demonstrate that appellants had "purposefully avail[ed themselves] of the privilege of conducting activities within the forum State . . . ' in a way that would justify bringing them before a Delaware tribunal.'"³¹ The Court also noted that some states

24. *Id.* at 2583, 53 L. Ed. 2d at 702.

25. *Id.* at 2584, 53 L. Ed. 2d at 702.

26. *Id.* at 2585, 53 L. Ed. 2d at 703-704.

27. See DEL. CODE ANN. tit. 8, §§143, 145 (1974), which provide for interest-free loans and indemnification.

28. 97 S.Ct. at 2586, 53 L. Ed. 2d at 705.

29. *Id.* at 2585, 53 L. Ed. 2d at 704.

30. *Id.* at 2586, 53 L. Ed. 2d at 704.

31. *Id.* at 2586, 53 L. Ed. 2d at 705, quoting *Hanson v. Denckla*, 357 U.S. 235, 254 (1958).

have enacted laws which treat the acceptance of a directorship as consent to the state's jurisdiction and that Delaware had failed to enact such laws.³² Like Heitner's first contention, the argument at most indicated that Delaware law should govern the defendants' obligations to the corporation.

Justice Powell and Justice Stevens, in concurring opinions, indicated that the decision should not be read to invalidate quasi in rem jurisdiction where real property is involved. Justice Brennan agreed that the minimum contacts standard should be met in order to exercise jurisdiction. Brennan, however, felt that the state interest in regulating a corporation founded under its laws should give that state jurisdiction. In addition, Brennan felt that the officers' association with Delaware, through their positions in Delaware corporations and the benefits derived from Delaware law, supplied the necessary minimum contacts.³³

The decision in *Shaffer* at last resolves the incongruity created by *International Shoe*. Before *International Shoe* the *Pennoyer* rules made it more difficult for states to exercise in personam jurisdiction over nonresident defendants. This was offset, however, by the availability of in rem and quasi in rem jurisdiction. With the advent of the minimum contacts standard and the change in emphasis away from territorial power to "fair play and substantial justice" it was easier to obtain in personam jurisdiction. At the same time, through the expedient of quasi in rem jurisdiction, a state could "indirectly" bind a nonresident even though it could not exercise in personam jurisdiction consistently with "fair play and substantial justice." The assumption that a state could exercise judicial authority over "things" without at the same time exercising it over persons is fallacious.³⁴ In all civil cases it is the defendant's interest in something which is at stake, whether it be his bank account or his use of some "thing." The defendant is affected in the same manner, although possibly not to the same extent, whether jurisdiction is in personam or quasi in rem. Therefore it seems only just that the jurisdictional test should be the same for both types of jurisdiction.

The question remains, however, as to what types of contact with the forum will justify the exercise of in rem jurisdiction. Both Powell and Stevens indicate that the presence of real estate within the forum, without more, provides the contacts necessary for the state to exercise jurisdiction. It has been suggested that the ownership of real property, particularly income-producing property, within the forum may supply the minimum contacts necessary for in personam jurisdiction because the "nonresident

32. See CONN. GEN. STAT. §33-322 (1958); N.C. GEN. STAT. §55-33 (1975); S.C. CODE §33-5-70 (1976).

33. 97 S.Ct. at 2592, 53 L. Ed. 2d at 712.

34. See Zammit, *Quasi-In-Rem Jurisdiction: Outmoded and Unconstitutional?*, 49 ST. JOHNS L. REV. 668, 670 (1975) and W. COOK, *THE LOGICAL & LEGAL BASES OF THE CONFLICT OF LAWS* 60 (1942).

owners and possessors are continuously receiving benefits from the protective laws and facilities of the state in which the real estate is located."³⁵ Nothing in the majority opinion seems to support such a conclusion. The Court is saying that when the property is unrelated to the cause of action its presence may suggest other ties "among the defendant, the State and the litigation," but presence alone will not support jurisdiction.³⁶

Ownership of real property may indicate that the defendant is conducting activities within the state sufficient to supply the minimum contacts necessary under *International Shoe*. But absent these more substantial contacts mere ownership of one form of property should not make it more just to subject the defendant to an inconvenient forum than ownership of another form of property.

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35. See Note, *Ownership, Possession or Use of Property As A Basis of In Personam Jurisdiction*, 44 IOWA L. REV. 374, 377, 378 (1959).

36. 97 S.Ct. at 2582, 53 L. Ed. 2d at 701.