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Mere Billing Insufficient for "Minimum Contacts"

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Mere billing insufficient for "Minimum Contacts."

*Perlmutter v. Standard Roofing & Tinsmith Supply Co.*⁵⁶ was an action for breach of contract or breach of warranty. The facts established that plaintiffs in New York ordered tile by telephone from Selling, a New Jersey corporation. Selling placed the orders with the defendant, a wholesale distributor, also incorporated in New Jersey, who thereafter billed the plaintiffs. Plaintiffs, in their complaint, did not state from whom or by whom the materials were received in New York. No privity of contract was established between defendant and Selling Corporation. It appeared that defendant's sole function was to bill plaintiffs and to negotiate with plaintiffs in reference to the defective tile. The court held that these facts were insufficient to establish the necessary minimum contacts—that to grant in personam jurisdiction over defendant "on the basis of such unsubstantial contact would offend the traditional notions of justice and fair play."⁵⁷

Subsidiary deemed agent for service of process.

A foreign corporation may not be subjected to personal jurisdiction solely on the basis of the activities of its subsidiaries;⁵⁸ nor will ownership of the stock of the subsidiary by the parent corporation make the parent amenable to service of process in New York.⁵⁹ Where, however, there are circumstances which tend to prove that the subsidiary is the mere instrumentality of the parent, acting for and completely dependent on the parent, the result is otherwise. In such a situation, the subsidiary is regarded as the agent of the parent,⁶⁰ and service upon the agent will be regarded as service upon the principal.⁶¹ Such was the result in *Taca Int'l Airlines v. Rolls Royce of England, Ltd.*⁶² In *Taca*, the defendant-parent corporation owned all the stock of

⁵⁶ 43 Misc. 2d 885, 252 N.Y.S.2d 583 (Sup. Ct. 1964).

⁵⁷ *Id.* at 889, 252 N.Y.S.2d at 587.

⁵⁸ Cannon Mfg. Co. v. Cudahy Packing Co., 267 U.S. 333 (1925); *Echeverry v. Kellogg Switchboard & Supply Co.*, 175 F.2d 900 (2d Cir. 1949).

⁵⁹ *Compania Mexicana Refinadora Is., S.A. v. Compania Metropolitana De Oleoductus, S.A.*, 250 N.Y. 203, 163 N.E. 907 (1928); *Simonson v. International Bank*, 16 App. Div. 2d 55, 225 N.Y.S.2d 392 (1st Dep't 1962), *aff'd*, 14 N.Y.2d 281, 200 N.E.2d 427, 251 N.Y.S.2d 433 (1964).

⁶⁰ *Sterling Novelty Corp. v. Frank & Hirsch Distrib. Co.*, 299 N.Y. 208, 86 N.E.2d 564 (1949); *Goodman v. Pan Am. World Airways*, 1 Misc. 2d 959, 148 N.Y.S.2d 353 (Sup. Ct.), *aff'd*, 2 App. Div. 2d 707, 153 N.Y.S.2d 600 (2d Dep't 1956); *Rabinowitz v. Kaiser-Frazer Corp.*, 198 Misc. 707, 96 N.Y.S.2d 642, (Sup. Ct. 1950), *aff'd*, 278 App. Div. 584, 102 N.Y.S.2d 815 (2d Dep't), *aff'd*, 302 N.Y. 892, 100 N.E.2d 177 (1951).

⁶¹ *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 115 N.E.915 (1917).

⁶² 21 App. Div. 2d 73, 248 N.Y.S.2d 273 (1st Dep't 1964).