St. John's Law Review

Volume 39
Number 1 *Volume 39, December 1964, Number 1*

Article 29

May 2013

Subsidiary Deemed Agent for Service of Process

St. John's Law Review

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

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[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).

Rolls Royce of Canada, Ltd., which, in turn, owned all the stock of Rolls Royce, Inc., a Delaware corporation doing business in New York. The Delaware subsidiary owned no products of its own, and its sole business consisted of selling and servicing the products of the parent. The subsidiary bought from the parent at a price lower than that which the ultimate consumer paid. The parent, however, gave the warranty and paid the subsidiary a fixed annual fee for services rendered in connection with these warranties. The court, rejecting the contention that the subsidiary was an independent purchaser, held that it was, in effect, a sales agent of the parent, thereby subjecting the parent to in personam jurisdiction.[63]

Section 302 (a) (2) — Commission of a "Tortious Act"; circulation of a dangerous instrumentality.

Two very significant recent decisions in this area are *Singer v. Walker*[64] and *Feathers v. McLucas*.[65] In both cases, the courts sustained jurisdiction upon the theory that a tortious act was committed within New York.

There has been an increased sensitivity of recent for both acquisition-of-jurisdiction and choice-of-law purposes, as to whether a tortious act is committed at the place of manufacture or at the place of injury.[66] But it is worthy of note, indeed, when even for only jurisdictional purposes a tortious act is held to have occurred at the place where a product (which later, and elsewhere, produced the injury) was merely circulated for, or even after, sale.

The *Singer* case holds just that. There the defendant, an Illinois corporation, manufactured geologists' hammers, labeled them unbreakable, and shipped them f.o.b. Rockford, Illinois, to a New York dealer. The New York dealer bought them via mail order by use of a catalogue sent to him by defendant. In February 1960, the infant-plaintiff's aunt bought one such hammer in New York and thereafter presented it to him as a gift. In April 1960, while on a field trip in Connecticut, the hammer broke while being used by the plaintiff to break rocks. This resulted in plaintiff's loss

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[63] *Id.* at 75, 248 N.Y.S.2d at 275.

[64] 21 App. Div. 2d 285, 250 N.Y.S.2d 216 (1st Dep't 1964).

[65] 21 App. Div. 2d 558, 251 N.Y.S.2d 548 (3d Dep't 1964).

[66] See Trippe Mfg. Co. v. Spencer Gifts, Inc., 270 F.2d 821 (7th Cir. 1959); Hellriegel v. Sears, Roebuck & Co., 157 F. Supp. 718 (N.D. Ill. 1957); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961); Lewin v. Bock Laundry Mach. Co., 42 Misc. 2d 599, 249 N.Y.S.2d 49 (Sup. Ct. 1964); Fornabaio v. Swissair Transp. Co., 42 Misc. 2d 182, 247 N.Y.S.2d 203 (Sup. Ct. 1964). As to the choice-of-law problem, see Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).