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Summary of Viega GmbH v. Eighth Judicial Dist. Court, 130 Nev. Adv. Op. 40

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CIVIL PROCEDURE: GENERAL & SPECIFIC JURISDICTION

Summary

The Court determined whether the district court exceeded its jurisdiction by using the agency theory to establish personal jurisdiction and add Viega GmbH and Viega International as defendants.

Disposition

A typical parent-subsidary relationship is insufficient to establish personal jurisdiction over a non-resident defendant unless (1) there is agency or (2) the non-resident purposefully availed itself of the privileges of doing business in Nevada.

Factual and Procedural History

Petitioners Viega GmbH and Viega International GmbH asserted that the district court exceeded its jurisdiction by finding that the agency theory permitted Aventine-Tramonti Homeowners' Association (the "HOA") to add the Petitioners as defendants. The HOA asserted that Viega GmbH and Viega International's American subsidiaries are agents for their parent companies and could therefore add these companies to its suit. Viega GmbH and Viega International challenge the validity of the district court's exercise of jurisdiction over them, and the Court considered the Petitioners writ of prohibition. The Court reviewed this case en banc.

Discussion

The Court first discussed how a writ of prohibition is available when the district court exceeds its jurisdiction. A writ of prohibition is an extraordinary remedy that the Court will only consider when there is no "plain, speedy and adequate remedy in the ordinary course of law."² As no adequate and speedy legal remedy typically exists when the district court exceeds its jurisdiction, a writ of prohibition was appropriate to challenge district court.

Establishing personal jurisdiction over a nonresident parent company

The Court then discussed how to establish personal jurisdiction over a non-resident defendant. First, the plaintiff must make a prima facie showing of facts that, if true, would establish jurisdiction to avoid dismissal. Second, the plaintiff then bears the burden at trial to prove jurisdiction by a preponderance of evidence. As a question of law, the Court reviews the district court's determination of personal jurisdiction de novo.

Jurisdiction over a non-resident defendant is proper only if the plaintiff demonstrates that the exercise of jurisdiction satisfies Nevada's long-arm statute³ and does not offend principles of due process.

¹ By Brian Vasek.

² *Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867, 869, 124 P.3d 550, 552 (2005).

³ NEV. REV. STAT. § 14.065 (2013).

Due process is satisfied when non-resident defendants' contacts in the state are sufficient to either establish (1) general jurisdiction, or (2) specific jurisdiction. It must also be reasonable to subject the non-resident defendants to suit in state. If a foreign company's contacts are so "continuous and systematic" as to render [it] essentially at home in the forum State," the district court may exercise general jurisdiction over that company.⁴ If the foreign company purposefully enters the forum's market or establishes contacts in the forum and affirmatively directs conduct there, specific jurisdiction may arise if the claims arise from that purposeful contact or conduct.

Corporate entities are presumed separate from their subsidiaries, and the mere "existence of a relationship between a parent company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiaries' minimum contacts with the forum."⁵ The contacts of subsidiaries are imputed to parent companies only under narrow exceptions such as the "alter ego" and "agency" theories. The "alter ego" theory permits plaintiffs to pierce the corporate veil and impute a subsidiary's contacts to the parent company after showing that the subsidiary and the parent company are one and the same. The "agency" theory permits plaintiffs to pierce the corporate veil and impute a subsidiary's contacts to the parent company after showing that the subsidiary was acting on the parent's behalf.

In the present case, the parties agreed that neither Viega GmbH nor Viega International directly engage in business in Nevada. Instead, the HOA attempted to establish general and specific jurisdiction over these companies based upon the contacts of their American subsidiaries. Viega GmbH and Viega International asserted that neither the alter ego nor agency theory support the district court's finding of contact with Nevada. The HOA asserted that the American subsidiaries serve as Viega GmbH and Viega International's agents, and the agency theory supports the district court's findings of both general and specific jurisdiction.

Agency and general jurisdiction

The Court concluded that the HOA did not establish general jurisdiction over the Viega GmbH and Viega International. General jurisdiction permits a plaintiff to assert claims against a defendant unrelated to the forum, but this broad jurisdiction is only available in limited circumstances. "A court may assert general jurisdiction over foreign (sister- state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State."⁶ Typically, a corporation is "at home" where it is incorporated or has its principal place of business in that state.

In the present case, the HOA did not allege that the international companies are incorporated or hold their principal place of business in Nevada. The HOA had also not alleged any circumstances that demonstrated Viega GmbH or Viega International had formed a relationship with Nevada that was so continuous and systematic to be considered "at home." Even if the American subsidiary existed solely to serve as an agent of the parent company, general jurisdiction could exist.

⁴ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. ___, ___, 131 S. Ct. 2846, 2851 (2011) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)).

⁵ *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001).

⁶ *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at ___, 131 S. Ct. at 2851 (2011).

Agency and specific jurisdiction

The Court next discussed how a subsidiary's contacts in the state may permit a plaintiff to establish specific jurisdiction of the non-resident parent company. A plaintiff may establish specific jurisdiction over a non-resident defendant "by attributing the contacts of the defendant's agent with the forum to the defendant."⁷ An agency relationship is formed when the parent company has the right to control the performance of the wholly owned subsidiary. While agencies can vary widely in scope and purpose, corporate entities are presumed separate. Therefore, indicia of ownership alone is insufficient to subject a parent company to jurisdiction based upon the subsidiary's contacts.

When describing a broad agency relationship between a parent company and its subsidiary, the control at issue must not only be of a degree "more pervasive than. . . common features" of ownership, "[i]t must veer into management by the exercise of control over the internal affairs of the subsidiary and the determination of how the company will be operated on a day-to-day basis" such that the parent has "moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy."⁸ This may be the case in instances "where the local entity as agent essentially exists only to further the business of the foreign entity, and but for the domestic entity's existence, the foreign entity would be performing those functions in the forum itself."⁹ "The doctrine supports jurisdiction 'when the local subsidiary performs a function that is compatible with, and assists the parent in the pursuit of, the parent's own business."¹⁰

Assertion of personal jurisdiction over Viega GmbH and Viega International

The Court finally considered whether the HOA established a prima facie showing of personal jurisdiction over Viega GmbH and Viega International under the agency theory. The HOA asserted a broad agency relationship between the international parent companies and its American subsidiaries. The parties did not dispute that the American subsidiaries were subject to jurisdiction in Nevada. However, the HOA argued that one American subsidiary purchased and assumed the liabilities of the second subsidiary directly on behalf of the international parent companies to further the parent companies' activities in Nevada. The HOA asserted that this agency relationship is demonstrated by both the control that the international entities exercised over the American subsidiaries and by the fact that the American subsidiaries existed as the sole basis for American marketing and operations.

To demonstrate this interdependence, the HOA pointed to Viega websites that referred to all of the Viega entities simply as "Viega," a unified global enterprise with operations in America sharing the same corporate logo. The HOA noted that international parent companies' board member serve on the boards of directors for the American subsidiaries and that the American subsidiaries submit monthly reports to the international parent companies for review by an

⁷ Trump v. Eighth Judicial Dist. Court, 109 Nev. 687, 694, 857 P.2d 740, 745 (1993).

⁸ F. Hoffman-La Roche, Ltd. v. Superior Court, 30 Cal. Rptr. 3d at 418- 19 (Ct. App. 2005); Enic, PLC v. F.F. South St Co., Inc., 870 So. 2d 888, 891-92 (Fla. Dist. Ct. App. 2004) ("The amount of control exercised by the parent must be high and very significant . . . The parent corporation, to be liable for its subsidiary's acts under the . . . agency theory, must exercise control to the extent the subsidiary manifests no separate corporate interests of its own and functions solely to achieve the purposes of the dominant corporation." (internal quotations marks and citations omitted))

⁹ F. Hoffman-La Roche, 30 Cal. Rptr. 3d at 419 (citing Sonora Diamond Corp. v. Superior Court, 99 Cal. Rptr. 2d 824 (Ct. App. 2000)).

¹⁰ *Id.* (quoting Sonora Diamond Corp. v. Superior Court, 99 Cal. Rptr. 2d 824 (Ct. App. 2000)).

international management board. The HOA claimed that the international parent companies control the hiring of the American subsidiaries executive officers, who must obtain approval from the international parent companies before entering into any large financial transactions. However, these factors merely show the amount of control typical in a parent-subsidiary relationship and are insufficient to demonstrate agency. Neither does the fact that the international parent companies created American subsidiaries to conduct business in Nevada specifically. Sending representatives to attend meetings and a grand opening in America does not show that the international parent companies are managing the day-to-day activities of the American subsidiaries' activities in Nevada. The subsidiaries have their own production and distribution facility in American, and the international parent companies have claimed that they do not sell their products here.

Conclusion

The Court concluded that there was not enough to demonstrate that Viega GmbH and Viega International GmbH purposefully availed themselves of the privileges of doing business in Nevada. The HOA demonstrated no more than a typical parent-subsidiary relationship. The Court granted the petition and directed the clerk of the court to issue a writ of probation precluding the district court from proceeding with the case against the international parent companies.