CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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BBA Aviation v Superior Court (11/23/10)

General and Specific Jurisdiction; Representative Services Doctrine

In 2005, plaintiff was hired by Ontic, a California corporation, as a computer programmer analyst. He was terminated in 2008. He filed a wrongful termination suit against Ontic and its English parent company BBA. The complaint alleged BBA was an agent of Ontic, which is a wholly owned subsidiary of BBA. Ontic has its own corporate officers, human resources staff and financial personnel. Ontic's president is also president of BBA's component and repair group, and is a member of BBA's executive management group. BBA is headquartered in London, England, and is traded on the London Stock Exchange. Its brand appears on Ontic's signage, uniforms, badges and stationery. BBA is not registered to do business in California.

BBA filed a motion to quash service of the summons and complaint for lack of **personal jurisdiction**. Plaintiff argued there was **general jurisdiction** because BBA had direct contacts with the state and based on the representative services doctrine, which imputes the court's jurisdiction over a subsidiary to its parent corporation when the subsidiary only operates in support of the parent's own business. BBA argued it is a holding company whose sole business is investing in its subsidiaries and the doctrine would not apply. Declarations were provided from BBA personnel stating that it does not directly produce or provide any goods or services for any consumer or business and exclusively operated as a holding company.

The trial court denied the motion to quash, finding the representative services doctrine applicable. The court stated BBA did not identify itself as a holding company in its consolidated annual reports or other publications, and concluded that if it was a holding company it could support that claim with documentation, not merely declarations. BBA petitioned for a writ of mandate

that the Second DCA originally denied. Following a review by the California Supreme Court, the case was returned to the appellate court for consideration of the jurisdiction issue.

It is well known that a forum state may exercise personal jurisdiction over a nonresident if the defendant has **minimum contacts** with the state such that asserting jurisdiction does not violate traditional notions of fair play and substantial justice. (*International Shoe Co. v Washington* (1945) 326 U.S. 310) Minimum contacts exist where the defendant's conduct in, or in connection with, the forum state is such that the defendant should reasonably anticipate being subject to suit in that state. (*World-Wide Volkswagen Corp. v Woodson* (1980) 444 U.S. 286) Under the minimum contacts test, personal jurisdiction may be either general or specific. (*Von's Companies, Inc. v Seabest Foods, Inc.* (1996) 14 Cal.4th 434) When a nonresident defendant is a parent corporation of a subsidiary which does business in California, the minimum contacts may be direct between the parent and the state, or imputed to the parent via its subsidiary. **General jurisdiction** over a local subsidiary extends to the foreign parent under an alter ego theory, general principles of agency or under the representative services doctrine, a narrow species of agency. Plaintiff does not claim an alter ego theory. Agency is proved by evidence that the entity for whom the work was performed had the right to control the activities of the alleged agent. For jurisdiction, however, neither ownership nor control of a subsidiary corporation by a foreign parent corporation, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business. (*Sonora Diamond Corp. v Superior Court* (2000) 83 Cal.App.4th 523)

Agency supports the imputation of jurisdiction only when the control exercised over the subsidiary is "*so pervasive and continual*" that the subsidiary is just a "*means through which the parent acts, or nothing more than an incorporated department of the parent*." The parent's general executive control is not enough and the parent must in effect *"take over performance of the subsidiary's day-to-day operations in carrying out the parent's policy."* (*Sonora Diamond,* at p. 542) The **representative services doctrine** is a variation of agency, but does not depend on whether the parent enjoys pervasive and continuous control over the subsidiary as to establish a general agency relationship. (*F. Hoffman-LaRoche, Ltd. v Superior Court* (2005) 130 Cal.App.4th 782) Under the doctrine, general jurisdiction may be exercised over a foreign parent corporation when the local agent essentially exists only to further the business of the parent, and but for the

local agent's existence the parent would be performing those functions in the forum itself. There is jurisdiction when the local subsidiary assists the parent in the pursuit of its own business. The doctrine does not support jurisdiction where the parent is merely a holding company whose only business pursuit is the investment in the subsidiary. There is no jurisdiction because a holding company performs no function other than investing in its subsidiaries, and the local company cannot be performing a function the parent would otherwise have to perform itself.

The Second DCA noted that a holding company is formed to control other companies, usually confining its role to owning stock and supervising management. It does not participate in making day-to-day business decisions in those companies. A true holding company does not engage in operational control of businesses it owns. As such, plaintiff here must prove BBA conducted its own operations or transactions through Ontic to prove it is not a holding company. Plaintiff produced no such evidence. Mere reference to annual consolidated reports does not constitute substantial evidence to show BBA is not a holding company. Case law holds that such reports are standard business practice and will not support jurisdiction in the absence of evidence establishing an agency relationship. (*Sonora Diamond*, at p. 549) The same is true with the use of the BBA brand name by Ontic. It does not prove that the two companies were a single entity in practice and does not turn a holding company into an operating company. BBA's declarations did establish that the company has no operations of its own. Such statements are an adequate basis to support a motion to quash. Even if BBA is not a holding company, in order for the representative services doctrine to apply, plaintiff must also prove that Ontic did not pursue its own business and only operated for the benefit of BBA. The doctrine requires a showing of a high level of control such that the subsidiary is just an instrumentality of the parent's own business. (*F. Hoffman-LaRoche*, at p. 802) Plaintiff produces no evidence to disprove BBA's declarations that Ontic is the sole owner of its licenses and products. Thus, the Justices concluded that the representative services doctrine did not apply.

Plaintiff also claims jurisdiction is proper under general agency principles. Such a claim must show the parent's purposeful disregard of the subsidiary's independent corporate existence. (*Sonora Diamond*, at p. 542) Plaintiff does argue that the presence of common officers and directors between the two corporations supports a finding of agency. The Court concluded that even if a corporate

officer at Ontic holds a board position at BBA, there is no evidence his executive role was affected in any way. It has long been considered an attribute of ownership that officers and directors of the parent may serve as officers and directors of the subsidiary. (*Sonora Diamond*, at p. 548)

Neither the makeup of board nor other interactions between BBA and Ontic exceed the normal parent-subsidiary relationship. There is no authority for the proposition that the use of the parent's brand name on the subsidiary's business cards or signs constitutes pervasive control over day-to-day operations. As such the Appellate Court could find no agency relationship to establish jurisdiction.

Next, plaintiff contends there is **general jurisdiction** over BBA. A non-resident defendant may be subject to the general jurisdiction of our courts if its contacts with California are substantial, continuous, and systematic. (*Snowney v Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054) The relevant inquiry is the nature of the defendant's own contacts with the forum state, not its subsidiary's contacts. Whether a defendant's contacts are continuous and systematic depends on various factors including maintenance of an office, presence of employees, use of bank accounts, and the marketing or selling of goods in the forum state. (*Helicopteros Nacionales de Columbia, S.A. v Hall* (1984) 466 U.S. 408) Here, plaintiff can offer no evidence to show BBA's actions constitute substantial, continuous and systematic contacts in California.

Finally, plaintiff asserts there is a sufficient basis to impose **specific jurisdiction**, which requires a sufficient nexus among the defendant, the state, and the litigation. Specific jurisdiction exists if: (1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the controversy is substantially related to or arises out of the defendant's contacts with the forum; and (3) the assertion of jurisdiction would comport with fair play and justice. (*Dorel Industries, Inc. v Superior Court* (2005) 134 Cal.App.4th 1267)

In this case, it is not enough for plaintiff to show BBA had general involvement in his employment. He must show that BBA's activities establishing jurisdiction related specifically to his termination. (*Sammons Enterprises, Inc. v Superior Court* (1988) 205 Cal.App.3d 1427) The Justices referred to evidence which demonstrated that the separation agreement and release form given to plaintiff upon termination named only Ontic as plaintiff's employer and made no mention of BBA. A parent company purposefully avails itself of forum benefits

through the activities of its subsidiary, as required to justify the exercise of specific personal jurisdiction, if and only if the parent deliberately directs the subsidiary's activities in, or has a substantial connection with, the forum state. (*Health Markets, Inc. v Superior Court* (2009) 171 Cal.App.4th 1160)

BBA's petition is granted. A writ of mandate is issued directing the trial court to vacate its order denying BBA's motion to quash service of summons and to enter a new order granting the motion. BBA is to recover its costs in this proceeding.

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