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Casenotes

FEDERAL DIVERSITY JURISDICTION AS AFFECTED BY STATE STATUTES DEPRIVING STATE COURTS OF JURISDICTION

*Angel v. Bullington*¹

Plaintiff, Bullington, a citizen of Virginia came to the North Carolina courts to recover a deficiency judgment on a mortgage after default by defendant, Angel, a citizen of North Carolina. The land, situated in Virginia, had been sold to Angel by Bullington in 1940, and a series of notes secured by a deed of trust on the land had been given by the defendant to secure the balance of the purchase price. Upon default, Bullington, acting under an acceleration clause in the deed, caused the land to be sold and the proceeds to be applied to the notes. Since a deficiency remained, Bullington brought an action against Angel in a North Carolina State court where he recovered despite the defendant's contention that the North Carolina law precluded recovery. On appeal by defendant, the North Carolina Supreme Court reversed the trial court and ordered the action dismissed, holding that the courts of the State were deprived of jurisdiction to grant deficiency judgments. The court based its view on a 1933 North Carolina statute providing: "In all sales of real property by mortgagees and/or trustees under powers of sale . . . the . . . holder of the notes secured by said mortgage or deed of trust shall not be entitled to a deficiency judgment . . ."²

Relying upon the holding of the Supreme Court of North Carolina that the statute related "solely to the adjective law" of the State³ and that it hence served only to limit the jurisdiction of the State courts but not to deprive the plaintiff of any substantive rights, plaintiff did not seek review of this decision in the Supreme Court of the United States. Instead, he brought a new suit in the United States District Court for the Western District of North Carolina where he recovered the judgment he had unsuccessfully sought in the state courts. Both the District Court⁴ and the Circuit Court of Appeals for the Fourth

¹ 330 U. S. 183 (1947).

² N. C. Gen. Stat. (1943) Sec. 45-36.

³ Bullington v. Angel, 220 N. C. 18, 16 S. E. (2d) 411 (1941).

⁴ Bullington v. Angel, 56 F. Supp. 372 (W. D. N. C. 1944).

Circuit, which affirmed the judgment,⁵ rejected the defendant's plea that the prior judgment of the state barred recovery. The lower federal courts accepted at face value the North Carolina Supreme Court's characterization of the state statute as remedial and as not affecting the substantive rights of the parties. The Supreme Court granted *certiorari*⁶ "because the failure to dismiss this action, on the ground that the judgment in the North Carolina court precluded the right thereafter to recover on the same cause of action in the federal court, presented an important question in the administration of justice." In a 6-3 decision (Reed, Rutledge and Jackson, JJ., dissenting) the Supreme Court reversed the judgment.⁷

Mr. Justice Frankfurter, speaking for the Court, held that a federal district court sitting in North Carolina was bound to follow state law and policy; that the state court's characterization of the statute as remedial should not be followed by the federal courts where to do so would result in the federal courts giving "that which North Carolina has withheld;" that the unappealed decision of the state's highest court had necessarily involved a determination of the constitutionality of the state statute; and that, since another suit by plaintiff in the state courts would be barred by *res judicata*, plaintiff's suit in a federal court sitting in the same state is also barred by *res judicata*.

Through a combination of *res judicata* and *Erie*⁸ doctrines the Court completely blocked the possibility that Bullington might have a further hearing on the constitutionality of the statute involved.⁹ It decided that Bull-

⁵ Angel v. Bullington, 150 F. (2d) 679 (C. C. A. 4th, 1945).

⁶ Angel v. Bullington, 326 U. S. 713 (1945).

⁷ *Supra*, n. 1, 185.

⁸ Erie R. Co. v. Tompkins, 304 U. S. 64 (1938).

⁹ It is quite likely, from the better view of the authorities on conflicts of laws, that the state court's application of the statute so as to bar plaintiff's recovery was erroneous. The situs of the land was Virginia; the contract was made in Virginia to be performed in Virginia; the only contact with North Carolina was the fact that it was the forum and residence of the defendant. The statute might well have been construed as applying only to land in North Carolina, thus not precluding the application of Virginia law by the North Carolina courts. See *McGill v. Brewer*, 132 Ore. 422, 280 P. 508 (1929), on rehearing 285 P. 208 (1930); *Felton v. West*, 102 Cal. 266, 36 P. 676 (1894); *New York Life Ins. Co. v. Aitkin*, 125 N. Y. 660, 26 N. E. 732 (1891); and cases collected in 136 A. L. R. 1059. See also STUMBERG, *CONFLICTS OF LAWS* (1937) 351; and GOODRICH, *CONFLICT OF LAWS* (2d ed. 1938) 402.

While perhaps erroneously applied, it is quite problematical whether the statute was unconstitutional as applied to the plaintiff. There is a great difference between saying (a) that a forum *ought*, by the better view, to apply the law of a sister state which is the situs of a contract, or (b) that the forum is *compelled* by the federal constitution to apply that law. This latter was the question which Bullington originally raised

ington, in failing to appeal the decision of the North Carolina Supreme Court shutting him out of the North Carolina courts, had chosen "not to continue to assert his rights after an intermediate tribunal . . . decided against him . . ."^{9a} For purposes of litigating the federal question involved in the action brought in the state courts, the North Carolina Supreme Court was an intermediate tribunal. Even though this tribunal did not purport to decide the "merits" of Bullington's claim, Mr. Justice Frankfurter reasoned, it nevertheless refused on a so-called local ground to enforce a claim based on an asserted federal right. Hence its decision "concluded an adjudication of a federal question even though it was not couched in those terms."^{9b} The Court reasoned next that the North Carolina statute was expressive of a state policy against permitting recovery of any deficiency judgments. Falling back upon the rationale of the *Erie* and post-*Erie* cases to the effect that a case in a federal court solely because of diversity of citizenship must reach the same conclusion it would have reached in the state courts, the Supreme Court decided that the federal court in North Carolina should have rejected Bullington's suit on the grounds that it was identical to one which had already been finally concluded in the state courts.

It is not the purpose of this discussion to enter into a consideration of the *res judicata* aspects of the majority decision.¹⁰ Rather, the immediate object is to examine the case in the light of the further indications it gives as to

in the state courts and which was now held to be *res judicata*. Perhaps Mr. Justice Frankfurter and the majority had no qualms in thus cutting off Bullington's chance for at least one "real bite at the apple of discord" (Justice Rutledge's dissent) because they may have viewed plaintiff's chances as very dim for convincing the Court that the Constitution *compels* North Carolina to apply Virginia contract law.

^{9a} *Supra*, n. 1, 189.

^{9b} *Ibid.*

¹⁰ While the dissent of Justice Rutledge decried the majority opinion as embodying a novel and unprecedented approach to the doctrine of *res judicata* and one which was not warranted by the facts of the case, it appears that the result of the majority on this point—if not all of its reasoning—is logical, although very harsh in its effect upon the plaintiff's case. Even though the state Supreme Court purported to rule only upon a question of "jurisdiction" and not upon the "merits" of the case, the majority view would seem technically correct. That is, where the question of jurisdiction is whether a state may refuse to hear a cause of action in its courts and where this involves a constitutional question, then a ruling on the jurisdictional issue must involve adjudication of the constitutional issue. The real hardship in the instant case—and the real point to the dissenting opinions—is that Bullington had no reason to be forewarned that the Supreme Court would arrive at such a combination of *Erie* and *res judicata* doctrines as to result in his being prevented from having at least one full day in court.

the scope and extent of the still expanding *Erie* doctrine, with particular reference to the implications it has for the jurisdiction of federal courts in diversity cases.

Perhaps the most significant result of the majority opinion is the strong suggestion that a state may under some circumstances validly close the doors not only of its own courts, but also of the federal courts in that state to certain types of litigation. As one more step in the post-*Erie* development of the logical consequences of the doctrine of uniformity of law within a state, the majority holding would seem to render obsolete, or at least to qualify seriously, the hitherto fundamental doctrine that a state cannot limit or control the jurisdiction of the federal courts.¹¹

It is ten years since the Court in the historic *Erie* case decided that a federal court sitting in a diversity case may not apply a "federal common law," but must apply the law of the state. While the *Erie* case left to inference that it was the "substantive" law of the state that the federal court must apply and did not further define just what would be included in this category for purposes of diversity jurisdiction, subsequent cases have provided—and are continuing to provide—the answers on a case-by-case basis. These later cases have also provided a clearer picture of the rationale of the *Erie* doctrine as now viewed by the Court. In these cases such matters as burden of proof,¹² public policy governing insurance contracts,¹³ state applications of conflicts of laws rules,¹⁴ and statutes of limitations barring equitable relief¹⁵ have been held to be "substantive" law which the federal courts must follow. Finally, in the instant case, a state statute denying to all state courts jurisdiction over a particular cause is, if constitutional, likewise "substantive" for purposes of diversity jurisdiction.

From this line of cases it has become clear that the policy of the Court is to assure uniformity of outcome within any given state—as far as legal rules affect the outcome—of any case which is heard in a federal court of that state because of diverse citizenship. The accidental or fortuitous circumstance that one of the parties is a

¹¹ *David Lupton's Sons Co. v. Automobile Club*, 225 U. S. 489 (1911); *Suydam v. Broadnax*, 14 Pet. 67 (U. S. 1840).

¹² *Cities Service Oil Co. v. Dunlap*, 308 U. S. 208 (1939) (burden of proof in attack on holder of legal title to land); *Palmer v. Hoffman*, 318 U. S. 109 (1943) (burden of proving contributory negligence).

¹³ *Griffin v. McCoach*, 313 U. S. 498 (1941).

¹⁴ *Ibid.*; *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U. S. 487 (1941).

¹⁵ *Guaranty Trust Co. v. York*, 326 U. S. 99 (1945).

non-resident instead of a resident shall not result in any different legal treatment in the federal forum than if the cause were heard and decided in the state forum. Hence the true test of whether a state rule of law is "substantive," and therefore to be followed by the federal court, is whether failure to give effect to the state rule would produce a "substantially different result."¹⁶ In applying this test the Court will, as it did in the *Bullington* case, disregard the state court's characterization of a rule or statute as "procedural," since the *Erie* policy is "so important to our federalism [that it] must be kept free from entanglements with analytical or terminological niceties."¹⁷

In the field of conflict of laws, public policy of a state may be sufficiently strong to prohibit the enforcement of foreign rights or the application of foreign law.¹⁸ When such is the case and such refusal is within the constitutional power of the state, "it is for the state to say whether [an asserted right or a rule of law] is so offensive to its view of public welfare as to require its courts to close their doors to its enforcement."¹⁹ And since "for purposes of diversity jurisdiction a federal court is 'in effect, only another court of the State'"²⁰ the federal court must follow state policy. While the North Carolina Supreme Court in the *Bullington* case did not rest its decision as to the effectiveness of the statutory withdrawal of jurisdiction on public policy, it is clear that Mr. Justice Frankfurter speaking for the Court's majority viewed the statute as reflecting a state policy on behalf of debtors:

"The essence of diversity jurisdiction is that a federal court enforces State law and State policy. If North Carolina has authoritatively announced that deficiency judgments cannot be secured within its borders, it contradicts the pre-suppositions of diversity jurisdiction for a federal court in that State to give such a deficiency judgment. North Carolina would hardly allow defeat of a State-wide policy through occasional suits in a federal court."²¹

¹⁶ *Ibid.*

¹⁷ *Ibid.*; *Sampson v. Channell*, 110 F. (2d) 754 (C. C. A. 1st, 1940) *Certiorari* denied, 310 U. S. 650 (1940).

¹⁸ No attempt is made to catalogue or illustrate here the variety of cases which have been decided by State and Federal courts holding that a State may refuse on grounds of public policy to recognize "foreign rights".

¹⁹ *Supra*, n. 13, 507.

²⁰ *Supra*, n. 1, 187 and *supra*, n. 15, 108.

²¹ *Supra*, n. 1, 191.

In arriving at its conclusion that North Carolina's withdrawal of jurisdiction from the State courts also operated as a rule for the federal court, the majority opinion found it necessary to declare obsolete the holding of *David Lupton's Sons Co. v. Automobile Club*.²² This case had held that a statute qualifying the rights of foreign corporations to sue in the New York State courts did not affect the rights of foreign corporations to sue in the federal courts in New York. The statute in the *Lupton* case merely prescribed conditions which must be met before a foreign corporation might have the privilege of suing in the state courts; it did not, as did the statute in the *Bullington* case, deprive the state courts of all jurisdiction. Nevertheless, the Court did not attempt to distinguish the earlier case, but instead termed it "obsolete insofar as . . . based on a view of diversity jurisdiction which came to an end with [the] Erie [case]."

This language of the Court, together with the general result of the case serves as a reminder that there may be other types of state jurisdictional statutes which now require application by the federal courts although they were formerly thought to apply to the state courts only. For example, it is conceivable that situations may arise where *forum non conveniens* may be "substantive" from the viewpoint of the *Guaranty v. York* test of "substantially different result;" likewise the question may arise as to state statutes which give jurisdiction over a certain cause to a particular court. It is more difficult to see, however, in these latter instances how a federal court's assumption of jurisdiction would be likely to produce different legal results; but perhaps the same statute might sometimes be "substantive" and sometimes not. The further question will undoubtedly also arise as to the effect of the expanded *Erie* doctrine on the doctrine of equitable remedial rights and generally on the equity jurisdiction of federal courts sitting in diversity cases where the state has created new remedies or limited the use of equitable remedies by statute or by judicial decision.

Until the instant case it does not appear that any federal court was persuaded that the *Erie* doctrine extended to the point where it might affect federal *jurisdiction* in matters at law or in equity. On the contrary, it seemed clear that the *Erie* doctrine was confined to matters of "substance" and not of jurisdiction, since to hold otherwise seemed to lead to the illogical conclusion that

²² *Supra*, n. 11.

the jurisdiction of federal courts may be controlled by act of the state legislature or decision of the state courts. It was stated in a case on which *certiorari* was denied by the Supreme Court only a few years prior to the instant case that a state may not determine the jurisdiction of a federal court "under the theory that the latter is required to follow the public policy of the former."²³

However, the *Bullington* case seems to have opened up a new vista for the application of individual State policy and State law—namely, the possibility that in exercising its freedom of declaring public policy a State may secure some indirect measure of control over the jurisdiction of the Federal courts. The implication seems plain that the Supreme Court has not yet arrived at the outer boundaries of application of the *Erie* doctrine.

²³ *Stephenson v. Grand Trunk Western R. Co.*, 110 F. (2d) 401 (C. C. A. 7th, 1940); *certiorari* granted, 310 U. S. 632 (1940); *certiorari* dismissed, 311 U. S. 720 (1940).