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Service Of Process To An Agent Under Federal Rule 4(d) 1 - National Equipment Rental, Ltd. v. Szukhent

Service Of Process To An Agent Under Federal Rule 4(d)1

National Equipment Rental, Ltd. v. Szukhent[1]

Petitioner, a Delaware corporation with its principal place of business in New York, leased farm equipment in Michigan to respondents, residents of Michigan. The lease contained a provision whereby respondents appointed Florence Weinberg, wife of an officer of petitioner corporation and unknown to respondents, as their agent to receive service of process in New York. Petitioner brought an action in the Federal District Court, alleging a total default by respondents and demanding payment due. Mrs. Weinberg was served pursuant to Federal Rule 4(d)1,[2] and she immediately notified respondents. Respondents moved to quash service, claiming that Mrs. Weinberg was not a valid agent. The lower courts ruled that an actual agency did not exist because the agreement did not include a provision requiring Mrs. Weinberg to notify respondents,[3] and because she acted under

1. 375 U.S. 311 (1964).
2. Federal Rule of Civil Procedure 4(d) provides in part:
"(d) SUMMONS: PERSONAL SERVICE. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:
(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service or process."
3. 30 F.R.D. 3 (E.D. N.Y. 1962).

petitioner's orders rather than respondents' and in the former's interests rather than the latter's.[4]

Reversing the lower courts, the Supreme Court held that Florence Weinberg was an agent authorized by appointment in that she accepted the summons and complaint according to contract and properly transmitted it to respondents. The Court felt that service was properly made on an agent even though the agent was not personally known to the principal and even though there was no express agreement to transmit notice to the principal. Whether state law or federal law were applied under Rule 4(d)1, the agency would still be valid. Justice Black dissented, arguing that the agency was contrary to recognized principles of agency, and would deprive respondents of due process of the law.[5]

Two questions are posed in the principal case. One is the validity of the agency created by the agreement between the parties, in view of the absence of a provision for notice in the lease and a possible conflict of interests between the agent and his principal. The other is the possibility that enforcement of a clause in a form contract which compelled respondents to litigate in a singularly inconvenient forum was a denial of due process of law.

Substituted service under Rule 4(d)1 is dependent on the existence of a valid agency relationship between the recipient of process and the principal he is to bind. State statutes providing for substituted service of process are usually required to include a provision that the principal will be notified.[6] However, in a private agreement creating an agency relationship for service of process, the lack of such a provision is generally not sufficient to invalidate the agency.[7] The Court of Appeals ruled that the agency relationship failed because of a conflict of interests between Mrs. Weinberg and respondents. The courts have consistently held that a proper agency for service of process does not exist when the interests of the agent conflict with those of the principal. This is especially true when the agent is representing the interests of the person serving process (as when the agent is his spouse) rather than of the person served.[8] The Supreme Court apparently

4. 311 F.2d 79 (2d Cir. 1962).

5. National Equipment Rental, Ltd. v. Szukhent, 375 U.S. 311, 318 (1964).

6. See Wuchter v. Pizutti, 276 U.S. 13 (1928); Hess v. Pawloski, 274 U.S. 352 (1927); Southern Ry. Co. v. Simon, 184 Fed. 959 (E.D. La. 1910); Anderson v. Scholes, 83 F. Supp. 681 (D. Alaska 1949); Jefferson Fire Ins. Co. v. Brackin, 140 Ga. 637, 79 S.E. 467 (1913); Nelson v. Chicago B.&Q. Co., 225 Ill. 197, 80 N.E. 109 (1906); Schaaf v. Brown, 304 Ky. 466, 200 S.W.2d 909 (1947); Horvath v. Brettschneider, 131 Misc. 618, 227 N.Y. Supp. 109 (1928); Pinney v. Providence Loan & Inv. Co., 106 Wis. 396, 82 N.W. 308 (1900).

7. Green Mountain College v. Levine, 120 Vt. 332, 139 A.2d 822 (1958).

8. See John W. Musury & Son v. Lowther, 299 Mich. 516, 300 N.W. 866 (1941), where service was invalid where an agent for a garnishee defendant failed to notify his principal of a suit against him because it would be in the agent's interests to suppress notice; Atwood v. Sault Ste. Marie Light, Heat & Power Co., 148 Mich. 224, 111 N.W. 747 (1907), where service was held invalid when the agent of defendant assigned a claim to plaintiff, and then received service from the plaintiff in his agent's capacity so as to obtain service on defendant; Baird-Gatzmer Corp. v. Henry Clay Coal Mining Co., 131 W. Va. 793, 50 S.E.2d 673 (1948), where service was held invalid where the auditor of the state was served as defendant's agent in a suit against defendant to recover back state taxes. See also Consolidated Iron & Steel Co. v. Maumee Iron & Steel Co., 284 Fed. 550 (8th Cir. 1922); Tortat v. Hardin Mining and Mfg. Co., 111 Fed. 426 (W.D. S. Dak. 1901); Buck v. Ashuelot Mfg. Co., 4 Allen

recognized this principle but felt that it was not applicable to an agency as limited as the one in this case, particularly in light of the fact that notice was given to respondents by Mrs. Weinberg and that it was in her interest to notify respondents rather than to suppress service. Other courts, however, in refusing to uphold such agencies, have not differentiated between cases in which notice to the principal was given and those in which it was withheld.[9]

The majority in the present case ruled that since respondents did, in fact, receive complete and timely notice of the suit against them, there was no due process claim available to them. If, on the other hand, no actual notice had been given at all,[10] or if this were a statutory agency in which no actual notice had been provided for in the statute,[11] the due process claim could be entertained.

Due process of law means a course of legal proceedings according to rules and principles which have been established in our system of jurisprudence for the protection and *enforcement* of private citizens.[12] These rules and principles are designed to give to a citizen the opportunity to be heard and to defend, enforce, and protect his rights in a fair and orderly judicial proceedings.[13] The concept of fairness or reasonableness, associated with due process, is one which the courts have always strived to attain in the area of service of process, and it is implicit in all pronouncements on the subject.

This concern for notions of reasonableness and fairness is evident as far back as the Magna Charta, which provided for trial in one's own district.[14] In the United States, one can be subject to suit in a forum outside of his own state though served within his state, or through a statutory agent, but only if the [same] standard of reasonableness

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(Mass.) 357 (1862); People v. Feicke, 252 Ill. 414, 96 N.E. 1052 (1911); St. Louis Coal & Mining Co. v. Sandoval Coal & Mining Co., 111 Ill. 32 (1884); St. Louis and Sandoval Coal & Mining Co. v. Edwards, 103 Ill. 472 (1882); Loy v. Hurst, 243 Ind. 23, 182 N.E.2d 423 (1962); Rehm v. German Ins. & Sav. Institution, 125 Ind. 135, 25 N.E. 173 (1890); George v. American Ginning Co., 46 S.C. 1, 24 S.E. 41 (1896); North British and Mercantile Ins. Co. v. Storms, 6 Tex. Civ. App. 659, 24 S.W. 1122 (1894).

9. In White Horse Mountain Gold Mining Co. v. Powell, 30 Colo. 397, 70 Pac. 679 (1902), the court refused to allow service where an agent of the defendant mining company had his claim assigned to plaintiff, received service of process from him, and then notified his principal of the suit against him. The court did not distinguish this situation from cases where the agent refuses to notify his principal, allowing a default judgment to be entered. It seems as though the court would invalidate service in either case.

10. For cases where no actual notice was given, and a due proces claim was allowed, see Schroeder v. New York, 371 U.S. 208 (1962); Walker v. Hutchinson City, 352 U.S. 112 (1956); Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950).

11. Cases cited note 6 *supra*.

12. Hurtado v. California, 110 U.S. 516 (1884); Kenwood v. Louisiana, 92 U.S. 480 (1875).

13. Covey v. Town of Somers, 351 U.S. 141 (1956); Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950); Milliken v. Meyer, 311 U.S. 457 (1940); Wise v. Herzog, 114 F.2d 486 (D.C. Cir. 1940).

14. Magna Charta, cc. 17–19, provides that Common Pleas cases shall not be heard just anywhere, but only in the proper county or domicile when the court would so convene there.

inherent in the due process concept is adhered to.[15] Perhaps the best statement of this idea by an American court was in *International Shoe Co. v. Washington*,[16] where the court said that service of process on a defendant in an *in personam* action, to be proper, could not offend "traditional notions of fair play and substantial justice."[17] The Court went on to say: "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure."[18]

Of course, jurisdictional requirements may be contracted away,[19] but such contracts are carefully scrutinized. For example, most courts have consistently refused to enforce contract provisions limiting the place of trial of potential causes of action to specific courts or courts in specific places.[20] The enforcement of these provisions ousts courts of jurisdiction which would otherwise be theirs.[21] A growing minority of the cases have taken a contrary view, but even these hold that contract provisions requiring trial in foreign courts are enforceable only if they appear to be reasonable in the light of surrounding circumstances.[22]

Often, courts will not uphold contract provisions as reasonable when one party at his leisure and drawing upon expert legal advice drafts a contract whereby the other contracting party waives his rights and privileges, unless the other party is in an equal bargaining position.[23] As Justice Black, dissenting in the present case, said: "This printed form provision [on which respondent here supposedly contracted away his right to service in his own state was] buried in a

15. See, *e.g.*, Hess v. Pawloski, 274 U.S. 352 (1927), where a state statute validly provides that a non-resident motorist using its highways shall be deemed to have appointed a state officer his agent to receive service of process in any action growing out of the use of such highways. See also Morris v. Sun Oil Co., 88 F. Supp. 529 (D. Md. 1950).

A foreign corporation, in the absence of consent, is amenable to service of process conferring jurisdiction in personam only when it is doing business within the state so as to warrant an inference that it is present there, see, *e.g.*, People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79 (1918); Philadelphia & Reading Ry. Co. v. McKibbin, 243 U.S. 264 (1917). Each case rests on its own facts, and so long as reasonable, service will be allowed. See Doherty & Co. v. Goodman, 294 U.S. 623 (1935); Electrical Equipment Co. v. Daniel Hamm Drayage Co., 217 F.2d 656 (8th Cir. 1954).

16. 326 U.S. 310 (1945).

17. *Id.* at 316.

18. *Id.* at 319.

19. Kenney Constr. Co. v. Allen, 248 F.2d 656 (D.C. Cir. 1957); Bowles v. Schmitt & Co., 170 F.2d 617 (2d Cir. 1948); Gilbert v. Burnstine, 255 N.Y. 348, 174 N.E. 706 (1931).

20. See, *e.g.*, Insurance Co. v. Morse, 20 Wall (87 U.S.) 445 (1874); United Fuel Gas Co. v. Columbian Fuel Corp., 165 F.2d 746 (4th Cir. 1948).

21. For a detailed discussion of the topic see Annot., 56 A.L.R.2d 300 (1957).

22. See, *e.g.*, W. H. Muller & Co. v. Swedish American Line, Ltd., 224 F.2d 806 (2d Cir. 1955); Cerro De Pasco Copper Corp. v. Knit Knutsen, O.A.S., 187 F.2d 990 (2d Cir. 1951).

23. In discussing insurance contracts with limits placed on the forum for actions brought by either party, the court in Aschenbrenner v. U.S. Fidelity and Guaranty Co., 292 U.S. 80, 84–85 (1934), said: "The phraseology of contracts of insurance is that chosen by the insurer and the contract in fixed form is tendered to the prospective policy holder who is often without technical training, and who rarely accepts it with a lawyer at his elbow." See also Berio v. Inland Waterway Corp., 349 U.S. 85 (1955).

multitude of words [and] is too weak an imitation of a genuine agreement to be treated as a waiver of so important a constitutional safeguard as is the right to be sued at home. Waivers of constitutional rights, to be effective . . . must be deliberately and understandably made and can be established only by clear, unequivocal, and unambiguous language."[24]

Justice Black also suggested that forcing respondents to go to New York to defend this suit under the circumstances of this case would be to deny them due process of law,[25] and he called for an application of the standards of reasonableness and fairness used in making such determinations. Several cases are illustrative. In *Mutual Life Insurance Co. v. Spratley*,[26] the court recognized the difficulties involved in forcing a plaintiff to litigate his case in a jurisdiction which would render it almost impossible for him to present his case properly. The Court said: "A vast mass of business is now done throughout the country by corporations which are chartered by States other than those in which they are transacting part of their business, and justice requires that some fair and reasonable means should exist for bringing such corporations within the jurisdiction of the courts of the State where the business was done, out of which the dispute arises."[27] Likewise, in *Traveller's Health Ass'n v. Virginia*,[28] the Court upheld the Virginia "Blue Sky Laws," which required certain out of state corporations which do business in the state to accept service of process made on the Secretary of State of Virginia. The Court did so because it did not want Virginia residents to have to go to Nebraska to have their cases heard, when it would be more convenient for all concerned to have the cases heard in Virginia.[29]

The courts protect defendants as well as plaintiffs from being forced to defend their suits in inconvenient forums. In *Gulf Oil Corp. v. Gilbert*,[30] plaintiff, a resident of Virginia, sued a Pennsylvania corporation which did business in both Virginia and New York, in the New York District Court. The Supreme Court invoked the doctrine of forum non conveniens, reasoning that it can be invoked when a plaintiff is under temptation to resort to a strategy of forcing trial at a most inconvenient place for an adversary. Courts should consider the relative ease of access to sources of proof, availability of witnesses and the cost of getting them to the forum, and other practical problems which make trial of a case easy, expeditious, and inexpensive. After weighing

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24. National Equipment Rental, Ltd. v. Szukhent, 375 U.S. 311, 332 (1964). See also Fay v. Noia, 372 U.S. 391 (1963); Emspak v. United States, 349 U.S. 190 (1955); Johnson v. Zerbst, 304 U.S. 458 (1938); Aetna Life Ins. Co. v. Kennedy, 301 U.S. 389 (1937); Hodges v. Easton, 106 U.S. 408 (1882).

25. 375 U.S. at 329–33.

26. 172 U.S. 602 (1899).

27. *Id.* at 619.

28. 339 U.S. 643 (1950).

29. See also Pennsylvania Lumbermen's Mutual Fire Ins. Co. v. Meyer, 197 U.S. 407 (1905); Lafayette Ins. Co. v. French, 18 How. (59 U.S.) 404 (1855).

30. 330 U.S. 501 (1947).

these factors, if the balance strongly favors plaintiff to defendant's prejudice, then the plaintiff's choice of forum will be disturbed.[31]

Applying the insight provided by the forum non conveniens cases, it is difficult to find the requisite fairness in requiring respondents to obtain counsel in New York and transport themselves and their witnesses there to litigate a dispute arising out of a transaction which took place entirely in Michigan.

The decision in the present case constitutes notice to insurance companies, rental agencies, and other businesses that by burying service of process provisions within the terms of complex and detailed form contracts, unsuspecting parties may be forced to litigate disputes in distant forums to their great disadvantage. It will place many individuals at the mercy of large, well-counseled businesses, and will deprive them of the protection which the due process clause of the Constitution should afford them. Under our system everyone has a right to be heard. And if one cannot be heard because he is subjected to a distant forum by the legal maneuvering of his adversary, he is not being afforded sufficient protection. It is indeed difficult to reconcile the majority decision in *National Equipment* with our concepts of reasonableness and fairness in the area of judicial procedure.[32]

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31. See Note, *Place of Trial — Interstate Application of Intrastate Methods of Adjustment*, 44 HARV. L. REV. 41 (1930); Blair, *The Doctrine of Forum Non Conveniens in the Anglo-Saxon Laws*, 29 COLUM. L. REV. 1 (1929).

32. In another dissenting opinion, Justice Brennan, joined by the Chief Justice and Justice Goldberg, suggest that Federal Rule 4(d)1 should be construed so as to deny the validity of an agent whose interests conflict with his principal's. They would also require a provision for notice in the agreement. Nor would they bind a party to an agreement such as the one in *National Equipment* without proof that in addition to his signature on the form, he understandably consented to be sued in a state not that of his residence.