12-8-1959

Fisher Governor Co. v. Superior Court of City and County of San Francisco

Roger J. Traynor

[S. F. No. 20299. In Bank. Dec. 8, 1959.]

FISHER GOVERNOR COMPANY (a Corporation), Petitioner, v. SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Respondent; VALEEN O. PRESTWICH et al., Real Parties in Interest.

[1] **Corporations—Foreign Corporations—Doing Business.**—Under Code Civ. Proc., § 411, subd. 2, authorizing service of process on foreign corporations that are "doing business in this State," the quoted words are a descriptive term that the courts have equated with such minimum contacts with the state that maintenance of the suit does not offend traditional notions of fair play and substantial justice, and whatever limitation it imposes is equivalent to that of the due process clause.

[2] **Id.—Foreign Corporations—Doing Business.**—"Doing business in this State," within the meaning of Code Civ. Proc., § 411, subd. 2, is synonymous with the power of the state to subject foreign corporations to local process.

[3] **Id.—Foreign Corporations—Doing Business.**—Although a foreign corporation may have sufficient contacts with a state to justify an assumption of jurisdiction over it to enforce causes of action having no relation to its activities in that state, more contacts are required for the assumption of such extensive jurisdiction than sales promotion within the state by independent nonexclusive sales representatives. To hold otherwise would subject any corporation that promotes the sales of its goods on a nationwide basis to suit anywhere in the United States without regard to other considerations bearing on the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.

[4] **Id.—Foreign Corporations—Doing Business.**—The interest of the state in providing a forum for its residents or in regulating the business involved, the relative availability of evidence and the burden of defense and prosecution in one place rather than another, the ease of access to an alternative forum, the avoidance of multiplicity of suits and conflicting adjudications, and the extent to which the cause of action arose out of defendant foreign corporation's local activities, are relevant to the inquiry whether jurisdiction may constitutionally be assumed against such corporation on the theory that it was doing business in the state.

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[1] See **Cal.Jur.2d**, Foreign Corporations, § 34 et seq.; **Am.Jur.**, Foreign Corporations, § 360 et seq.

McK. Dig. Reference: [1-5] Corporations, § 898.

[5] **Id.—Foreign Corporations—Doing Business.**—In actions for wrongful death and personal injuries against an Iowa corporation when a gas meter and pressure reducing station exploded owing to defective equipment manufactured by such corporation, defendant was not doing business in this state so as to be amenable to process where the causes of action did not arise out of and were not related to defendant's activities in this state, but the relevant events occurred in Idaho, where evidence could be produced as easily or more easily elsewhere, where even if plaintiffs could not secure jurisdiction over defendant in Idaho, they could prosecute their actions against the corporation as conveniently in Iowa as in this state, and where there was no evidence to support plaintiffs' contention that jurisdiction over the corporation's codefendants could only be secured in California and that therefore jurisdiction over the corporation was justified to avoid duplicity of litigation.

PROCEEDING in mandamus to compel the Superior Court of the City and County of San Francisco to enter its order quashing service of summons. Writ granted.

Pelton, Gunther, Durney & Gudmundson, George W. Granger and Thomas N. Kearney for Petitioner.

No appearance for Respondent.

Carroll, Davis, Burdick & McDonough and Francis Carroll for Real Parties in Interest.

TRAYNOR, J.—Petitioner Fisher Governor Company, an Iowa corporation, seeks a writ of mandate to compel the Superior Court of the City and County of San Francisco to enter its order quashing service of summons in three actions brought by plaintiffs, the real parties in interest in this proceeding. (See Code Civ. Proc., § 416.3.) The actions were brought to recover damages for the wrongful deaths of Lowell Prestwich and Donald B. Eatchel and for personal injuries suffered by Clifford Turner. The complaints allege that the injuries and deaths occurred in Kimberly, Idaho, when a gas meter and pressure reducing station exploded owing to defective equipment manufactured by Fisher. Plaintiffs joined various other corporations as defendants. Fisher was served by making personal service in California on George R. Friederich and Company, a manufacturers' agent who sells Fisher's products. (See Corp. Code, § 6500.) Fisher appeared spe-

cially in each action and moved to quash the service of summons on the ground that it was not doing business in this state. Its motions were denied.

[1] Code of Civil Procedure, section 411, subdivision 2, authorizes service of process on foreign corporations that are "doing business in this State." "That term is a descriptive one that the courts have equated with such minimum contacts with the state 'that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." ' (*International Shoe Co.* v. *Washington,* 326 U.S. 310, 316 [66 S.Ct. 154, 90 L.Ed. 95, 161 A.L.R. 1057].) Whatever limitation it imposes is equivalent to that of the due process clause [2] '"[D]oing business" within the meaning of section 411 of the Code of Civil Procedure is synonymous with the power of the state to subject foreign corporations to local process.' (*Eclipse Fuel etc. Co.* v. *Superior Court,* 148 Cal.App.2d 736, 738 [307 P.2d 739]. . . .)" (*Henry R. Jahn & Son* v. *Superior Court,* 49 Cal.2d 855, 858-859 [323 P.2d 437]; *Carl F. W. Borgward, G.M.B.H.* v. *Superior Court,* 51 Cal.2d 72, 75 [330 P.2d 789]; *Cosper* v. *Smith & Wesson Arms Co., ante,* p. 77, 82 [346 P.2d 409].)

Although Fisher's principal offices and manufacturing plants are in Iowa and it has no employees or property in California and has not appointed an agent to receive service of process here, plaintiffs contend that Fisher's sales activities in this state are sufficient to subject it to the jurisdiction of our courts even if the causes of action are not related to those activities. Fisher's products are sold in California through independent manufacturers' agents who also sell similar products of other manufacturers. These agents receive commissions on sales made of Fisher's products and provide Fisher's catalogues to interested persons on request. Fisher is listed in telephone books at the agents' addresses and numbers.

In *Cosper* v. *Smith & Wesson Arms Co., supra, ante,* p. 77, we held that essentially similar sales activities in this state were sufficient to sustain jurisdiction when the cause of action arose out of the sale in this state of a defective gun manufactured by Smith and Wesson that exploded injuring a California resident here. In the present case, the causes of action arose in Idaho, the defective equipment was not sold in this state, neither of the decedents was a California resident, and none of the plaintiffs are California residents. The causes of action are not related to any business done by Fisher here.

[3] Although a foreign corporation may have sufficient contacts with a state to justify an assumption of jurisdiction over it to enforce causes of action having no relation to its activities in that state (*Perkins* v. *Benguet Mining Co.*, 342 U.S. 437, 445-447 [72 S.Ct. 413, 96 L.Ed. 485]; *International Shoe Co.* v. *Washington, supra,* 326 U.S. 310, 318; *Le Vecke* v. *Griesedieck Western Brewery Co.*, 233 F.2d 772, 777-778; *Koninklijke L. M.* v. *Superior Court,* 107 Cal.App.2d 495, 500-501 [237 P.2d 297]), more contacts are required for the assumption of such extensive jurisdiction than sales and sales promotion within the state by independent nonexclusive sales representatives. (*LeVecke* v. *Griesedieck Western Brewery Co., supra,* 233 F.2d 772, 776-777; *W. H. Elliott & Sons Co.* v. *Nuodex Products Co.*, 243 F.2d 116, 122, concurring opinion; *L. D. Reeder Contractors of Arizona* v. *Higgins Industries,* 265 F.2d 768, 779; *Kenny* v. *Alaska Airlines,* 132 F.Supp. 838, 852-854; see *A. G. Bliss Co.* v. *United Carr Fastener Co. of Canada,* 116 F.Supp. 291, 294, aff'd., 213 F.2d 541.) To hold otherwise would subject any corporation that promotes the sales of its goods on a nationwide basis to suit anywhere in the United States without regard to other considerations bearing on "the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." (*International Shoe Co.* v. *Washington, supra,* 326 U.S. 310, 319; see also, *L. D. Reeder Contractors of Arizona* v. *Higgins Industries, supra,* 265 F.2d 768, 779.) Accordingly, we must look beyond defendant's sales activities in this state to determine whether jurisdiction may constitutionally be assumed.

[4] The interest of the state in providing a forum for its residents (*McGee* v. *International Life Ins. Co.*, 355 U.S. 220, 223 [78 S.Ct. 199, 2 L.Ed.2d 223]) or in regulating the business involved (*Travelers Health Assn.* v. *Virginia,* 339 U.S. 643, 647-648 [70 S.Ct. 927, 94 L.Ed. 1154]); the relative availability of evidence and the burden of defense and prosecution in one place rather than another (*McGee* v. *International Life Ins. Co., supra,* 355 U.S. 220, 223-224; *Henry R. Jahn & Son* v. *Superior Court, supra,* 49 Cal.2d 855, 861-862; *Carl F. W. Borgward, G.M.B.H.* v. *Superior Court, supra,* 51 Cal.2d 72, 79; *Cosper* v. *Smith & Wesson Arms Co., supra, ante,* pp. 77, 83); the ease of access to an alternative forum (*Travelers Health Assn.* v. *Virginia, supra,* 339 U.S. 643, 648-649); the avoidance of multiplicity of suits and conflicting adjudications (*Henry R. Jahn & Son* v. *Superior Court, supra,* 49 Cal.2d 855, 862; *Carl F. W. Borgward,*

G.M.B.H. v. *Superior Court, supra,* 51 Cal.2d 72, 79; *Gordon Armstrong Co.* v. *Superior Court,* 160 Cal.App.2d 211, 219 [325 P.2d 21]; see also, *Atkinson* v. *Superior Court,* 49 Cal. 2d 338, 347-348 [316 P.2d 960]); and the extent to which the cause of action arose out of defendant's local activities (*International Shoe Co.* v. *Washington, supra,* 326 U.S. 310, 319; *McGee* v. *International Life Ins. Co., supra,* 355 U.S. 220, 223; *Hanson* v. *Denckla,* 357 U.S. 235, 251-253 [78 S.Ct. 1228, 2 L.Ed.2d 1283]; *Henry R. Jahn & Son* v. *Superior Court, supra,* 49 Cal.2d 855, 860-861, and cases cited; *Carl F. W. Borgward, G.M.B.H.* v. *Superior Court, supra,* 51 Cal.2d 72, 79; *Cosper* v. *Smith & Wesson Arms Co., supra, ante,* pp. 77, 83; *Gordon Armstrong Co.* v. *Superior Court, supra,* 160 Cal.App.2d 211, 219-220; *Florence Nightingale School of Nursing* v. *Superior Court,* 168 Cal.App.2d 74, 81-83 [335 P.2d 240]; *Holtkamp* v. *States Marine Corp.,* 165 Cal.App.2d 131, 138-139 [331 P.2d 679]; see also *Owens* v. *Superior Court,* 52 Cal.2d 822, 830-831 [345 P.2d 921]) are all relevant to this inquiry. (See 108 U. of Pa. L. Rev. 131.)

[5] None of these considerations supports an assumption of jurisdiction in plaintiffs' actions. The causes of action did not arise out of and are not related to Fisher's activities in this state, and none of the relevant events occurred here. (*Cf. Jeter* v. *Austin Trailer Equipment Co.,* 122 Cal.App.2d 376, 378 [265 P.2d 130].) Evidence can be produced as easily or more easily elsewhere, and even if plaintiffs cannot secure jurisdiction over Fisher in Idaho, they can prosecute their actions against Fisher as conveniently in Iowa as here. Moreover, although plaintiffs contend that jurisdiction over Fisher's codefendants can only be secured in California and that therefore jurisdiction over Fisher is justified to avoid a duplicity of litigation, there is no evidence in the record before us to support that contention. The relationship between Fisher and its codefendants and the basis of plaintiffs' actions against Fisher's codefendants do not appear, and there is no reason to assume that by supplying equipment for installation in Idaho, Fisher knowingly injected itself into a transaction or operation of its codefendants having substantial California contacts related to the causes of action. (See *Atkinson* v. *Superior Court, supra,* 49 Cal.2d 338; *cf. Hanson* v. *Denckla, supra,* 357 U.S. 235, 253-254.)

Let the peremptory writ of mandate issue as prayed.

Gibson, C. J., Schauer, J., Spence, J., McComb, J., Peters, J., and White J. concurred.

[53 C.2d 227; 1 Cal.Rptr. 169, 347 P.2d 305]

[L. A. No. 25674. In Bank. Dec. 9, 1959.]

VENTURA PORT DISTRICT et al., Respondents, v. THE TAXPAYERS, PROPERTY OWNERS, CITIZENS AND ELECTORS OF THE VENTURA PORT DISTRICT et al., Defendants; FLORENCE L. GREGORY, Appellant.

[1] **Waters—Harbors—Port Districts.**—Under Harb. & Nav. Code, § 6233, the establishment and legal existence of a port district under the Port District Act (Harb. & Nav. Code, §§ 6200-6372) and all legal proceedings in respect thereto are valid in every respect and incontestable unless proceedings denying the validity of its establishment are commenced within 60 days after the date of filing in the office of the secretary of state of the certificate of the board of supervisors canvassing and certifying the results of the election on the proposed district organization.

[2] **Id.—Harbors—Port Districts.**—A port district could validly finance the acquisition and construction of a recreational harbor under the Port District Act, as against the objection that the enterprise for which the bonds were proposed to be issued contemplated and was limited to a marina or small-craft recreational harbor, where, though the district's master plan and the economic study made by the district included in their respective titles the terms "Small Craft Harbor" and "Small Craft Marina," no limitation was placed on access to and use of the facilities contemplated other than such limitations as might be inherent in the plans and specifications themselves, and where use by smaller vessels engaged in commercial, as well as recreational, pursuits was contemplated. The fact that it was planned to construct a marina first did not deprive the district of its authority to construct it.

[3] **Id.—Harbors—Port Districts.**—A state loan obtained by the Ventura Port District to enable the district to purchase real property necessary for a harbor and marina site and for engineering and construction of the marina was validated by the First and Second Validating Acts of 1959 (Stats. 1959, chap. 1447, p. 3723; chap. 1448, p. 3728), since the definition of "bonds," as set forth in the validating acts, encompassed the obligation of the district to repay the state loan from its revenues. Since the state loan was incurred for payment of part of the cost of the marina project, the acts, in validating the

McK. Dig. References: [1-3, 5] Waters, § 434; [4] Statutes, § 10.