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**Personal Jurisdiction Over Nonresident Debtors: When May Creditors Sue at Home?**

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A corporate creditor may wish to centralize a lawsuit it starts in the courts of its home state, even though facts leading to the controversy arose far from home. Would a nonresident forced to defend under such circumstances be deprived of constitutional due process? This is the question posed in Burger King Corporation v. Rudzewicz.

ISSUE

In Burger King, the Supreme Court will consider whether the parties and the controversy have a sufficient relationship to a Florida federal court to support imposing personal jurisdiction there over a Michigan defendant. This will require that the jurisdictional facts of the case be examined to determine whether the defendant can be forced to defend in Florida without violating his right to fundamental fairness guaranteed under the Due Process Clause of the United States Constitution.

FACTS

John Rudzewicz contracted with Burger King, a Florida corporation, to purchase a Burger King franchise in Michigan. When Burger King never received payments called for under the contract, it brought suit against Rudzewicz and another in the United States Court for the Southern District of Florida, alleging breach of contract and trademark infringement. The court denied Rudzewicz's motion to dismiss for lack of personal jurisdiction. After trial and judgment against him for approximately a quarter of a million dollars, Rudzewicz appealed. The United States Court of Appeals for the Eleventh Circuit reversed, holding that his challenge to the court's personal jurisdiction was proper and should have been upheld (724 F.2d 1505 (1984)).

The two-judge majority noted that Rudzewicz had no office in Florida, nor did it appear that he had ever been there. Contract negotiations were conducted between Rudzewicz and Burger King's district representative entirely in Michigan. Anticipated profits from the franchise would derive exclusively from Michigan food sales. Therefore, concluded the majority: "Rudzewicz lacked fair notice that the distant corporate headquarters which insulated itself from direct dealings with him would later seek to assert jurisdiction over him in the courts of its own home state."

A Florida statute provides that state may exercise jurisdiction over anyone who breaches a contract by "failing to perform acts required by the contract to be performed" in Florida. While the language of this "long arm" statute had been met, the majority held that the lack of fair notice to Rudzewicz of the possibility of suit in Florida deprived the proceeding of fundamental fairness required by the Due Process Clause of the Constitution. To force Rudzewicz to defend so far from home, observed the majority, would both increase the cost of defense and impair his ability to call Michigan witnesses. Acknowledging that Rudzewicz appeared to be a person of considerable financial resources and commercial sophistication, the majority nonetheless read the facts to reveal a disparity of bargaining power between him and Burger King which would make Florida jurisdiction particularly unfair. In addition, the majority expressed concern that "elements of surprise ..., if sanctioned, could ultimately sow the seeds of default judgments against franchisees owing smaller debts."

One judge dissented. He argued that, because both the franchise agreement and lease signed by appellee contained clauses requiring all questions of interpretation to be governed by Florida law, Rudzewicz had so availed himself of Florida law as to make it fair to assert Florida jurisdiction over him. Also, the dissent was unconvinced that a Florida suit would be far less convenient to Rudzewicz or that the facts of the case reflected a disparity of bargaining power between the parties.

BACKGROUND AND SIGNIFICANCE

In addressing the question of whether personal jurisdiction over Rudzewicz would violate the Due Process Clause of the Constitution, the Court has to look at the cause and effect of a long line of precedents. Importantly, in International Shoe Co. v. State of Washington (326 U.S. 310 (1945)), the Court held that the Due Process
Clause permitted jurisdiction over nonresident defendants who could not be found and served in the forum state—as long as doing so was fair under the circumstances of the case. The Supreme Court has struggled since to make this somewhat inchoate standard intelligible.

With a single exception, the Supreme Court failed to strike down an assertion of judicial jurisdiction in the thirty years following International Shoe. During this period, some state and lower federal courts applied the Due Process Clause to restrain themselves. Others did not. Then, in a series of cases (Shaffer v. Heitner (433 U.S. 186 (1977)), Kulko v. Superior Court of California (436 U.S. 84 (1978)), World-Wide Volkswagen Corp. v. Woodson (444 U.S. 296 (1980)) and Rush v. Savchuck (444 U.S. 320 (1980)), the Supreme Court increased due process protections available to nonresident defendants.

The Court may now be in the process of striking a balance in regulating personal jurisdiction between the laissez-faire approach of the post-International Shoe period and the constraints of its Shaffer line of decisions. The Court decided three personal jurisdiction cases last term: Kreton v. Hustler Magazine, Inc. (104 S. Ct. 1473 (1984), Preview, 1983-84 term, pp. 57-60); Calder v. Jones (104 S. Ct. 1482 (1984), Preview, 1983-84 term, pp. 111-13); and Helicopteros Nacionales de Columbia v. Hall (104 S. Ct. 1868 (1984), Preview 1983-84 term, pp. 57-60). In addition to Burger King, the Supreme Court has agreed to review a further personal jurisdiction case: Phillips Petroleum Co. v. Shutts (Docket No. 84-233)—to be argued on February 25, 1985.

In Burger King, the Court may find occasion to return to the foreseeability test discussed but not clarified in World-Wide Volkswagen. For a forum to have personal jurisdiction, how reasonably predictable must it be to the nonresident defendant that his or her acts could lead to suit there? In addition, the Court may return to the split-contacts issue raised in Kreton. Even if some of Rudzewicz's acts related to the controversy (the promise to mail payments to Florida, contractual choice of Florida law) can be centered in the forum state, many of his acts clearly occurred in Michigan. Will the Court follow its approach in Kreton and attach decisive importance to related contacts with the forum although most contacts related to the controversy were centered elsewhere? Finally, what aid, if any, will Burger King's case for personal jurisdiction receive from the fact that it is a Florida corporation, or that the agreements Rudzewicz signed contained provisions subjecting them to Florida law? Burger King may provide the Court an opportunity to demonstrate how far it is willing to take the idea expressed in Calder that forum citizenship is capable of adding strength to a plaintiff's case for personal jurisdiction. It may also create an opportunity to express what the Court regards to be the proper relationship between personal jurisdiction and the choice of law process.

ARGUMENTS

For Burger King (Counsel of Record, Joel S. Perwin, 1201 City National Bank Building, 25 W. Flagler Street, Miami, Fl. 33130; telephone (305) 338-2800)
1. Exercising jurisdiction in Florida did not offend due process because Rudzewicz purposefully availed himself of the benefits and protection of that forum.
2. Burger King's cause of action arose out of Rudzewicz's contacts with the forum.

For Rudzewicz (Counsel of Record, Thomas H. Oehmke, 639 Beaubien, Detroit, MI 48226; telephone (313) 963-3525)
1. The minimum contacts necessary to support personal jurisdiction in Florida are lacking here.
2. It is fundamentally unfair for Burger King to concentrate its franchise litigation in Florida.
3. Rudzewicz should only be required to defend in Michigan, where he is domiciled, where the business was transacted and where the franchised restaurant is located.