Supreme Court Decisions: If the Shoe Fits...

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In the case of Shaffer v. Heitner, 97 S.Ct. 2569 (1977), the Supreme Court has determined that state court jurisdiction is no longer based on the standards of Pennoyer v. Neff, 95 U.S. 714. The Court now holds that the jurisdictional standard of "minimum contacts" applied to personal actions in International Shoe Co. v. Washington, 326 U.S. 310, also governs in rem and quasi-in-rem actions.

Heitner, a non-resident of Delaware, owned one share of stock in Greyhound Corporation, a Delaware corporation. He filed a shareholder's derivative suit in Delaware state court, alleging that Greyhound, a subsidiary in California, corporations in activities in Oregon which caused a private anti-trust suit that resulted in substantial damages as well as fines from a criminal contempt action.

Simultaneously, Heitner filed a motion for an order of sequestration of property under 10 Del. C. § 366. He also filed supporting affidavits that the defendants were non-residents and identifying the property to be sequestered as stock, stock options, warrants of purchase and other corporate rights of the defendants. An order of sequestration was signed later the same day and the court appointed a sequestrator to "seize" and stop transfers of the defendants' stock shares and options.

In Delaware, the stock of all corporations existing under the state's law has a situs there. For purposes of the sequestration statute, the stock certificates were considered to be statutorily present in Delaware and subject to seizure even though they weren't physically present in the state.

Property was seized from twenty-one of the defendants. A special appearance was entered in an attempt to quash service of process and to vacate the sequestration order. The defendants contended they were denied procedural due process, an issue the Supreme Court chose not to reach. They also contended their property seized was not capable of attachment and their contacts with the state of Delaware were insufficient under International Shoe, to sustain state court jurisdiction.

The Delaware Chancery Court rejected these arguments. Finding no state law or federal constitutional barriers to the statute in its procedural application, the Chancery Court held that the statutory situs of the stock was sufficient to support quasi-in-rem jurisdiction.

On appeal, the Delaware Supreme Court affirmed, holding that application of the International Shoe test was not at issue. The Court reasoned that jurisdiction was quasi-in-rem based on the presence of the stock in Delaware through its statutory situs of ownership. Since the presence of the stock wasn't based on prior contacts with the forum, the seizure was not held invalid for failure to meet the minimum contacts test of International Shoe.

The United States Supreme Court reversed. The Court said that Delaware's rejection of the jurisdictional challenge assumed the continued validity of Pennoyer v. Neff, that quasi-in-rem jurisdiction is based on property present in or attached to the state, but doesn't require contacts between the defendants and the state.

Departing from the past, the Court decided that the jurisdictional scheme outlined in Pennoyer is circular in reasoning and that the idea of jurisdiction over property really means jurisdiction over the interests of persons in property. Thus, the basis for an exercise of in rem jurisdiction must be sufficient to justify an exercise of jurisdiction over the interests of persons in property.

The minimum contacts standard, as set out in International Shoe, will now determine whether an exercise of in rem or quasi-in-rem jurisdiction is consistent with due process.

According to the Court, while cases having their source of controversy in claims to the property itself will generally support state court jurisdiction, the presence of a defendant's property in a state is merely evidence that jurisdiction exists. Applying the facts of Shaffer, the Supreme Court determined that the presence of corporate holdings that were neither the subject matter of the litigation nor related to the underlying cause of action were insufficient contacts for jurisdiction of Heitner's action in Delaware.

The presence of property in a state might suggest other ties between the defendant, the state, and the litigation, but if the property serving as the basis for an exercise of state court jurisdiction is completely unrelated to the plaintiff's cause of action, the presence of property alone won't support jurisdiction. If other contacts or ties don't exist, the case can't be brought in that forum.

However, a debtor won't be able to avoid legal obligations by removing property to a state where his creditor can't obtain jurisdiction, the Court notes. The Full
Faith and Credit Clause makes enforceable the judgment of one state in all others. Once a court of competent jurisdiction in one state has determined that a defendant is the debtor of a plaintiff, it will allow an action on the debt in other states where the defendant has property, even if the latter wouldn't originally have had jurisdiction to determine the debt.

A number of reasons why contacts with a state can support a finding of jurisdiction are given by the Court. A defendant's claim to property located in a state would normally indicate an expected benefit from the state's protection of that property. A state has an interest in assuring the marketability of property within its borders as well as in providing a procedure for peaceful resolution of disputes about possession of the property. Also, there is the likelihood that important records and witnesses will be found in the state where the property is located. The Court notes, however, that while these and other factors may affect a decision as to jurisdiction, none is necessarily decisive.

United States Supreme Court upheld an order of the U.S. District Court for the Southern District of New York authorizing agents of the Federal Bureau of Investigation to install pen registers (a device that records the numbers dialed on a telephone) and directing the New York Telephone Company to provide the FBI with the information and facilities necessary to employ the pen registers covertly during the investigation of an illegal gambling operation.

The District Court issued the order on the basis of an FBI affidavit stating that there was probable cause to believe that two telephones in Manhattan were being used in furtherance of illegal gambling activity. The Company refused fully to comply with the court order, locating the lines that were of interest but refusing to lease to the FBI unused lines needed to operate their equipment without notice. Although the FBI was authorized to compensate the Company for its assistance, the agents were advised to string their own cables to the suspects' apartment, a task impossible without alerting the suspects. The Company moved in the District Court to vacate part of the order directing it to furnish facilities and technical assistance to the FBI on the ground that the order could only be issued in connection with a wiretap order meeting the requirements of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520. It denied that the District Court possessed authority to give the order under either Fed. Rule Crim. Proc. 41 or the All Writs Act, 28 U.S.C. § 1651(a). The District Court held that pen registers are not governed by Title III because they do not intercept oral communication, they only record phone numbers. It claimed jurisdiction to issue the order upon a showing of probable cause relying upon the authority of the All Writs Act and its "inherent powers" to direct the Company to assist the FBI.

In Application of the United States of America in the Matter of an Order Authorizing the Use of a Pen Register or Similar Mechanical Device, 538 F.2d 956 (2d. Cir. 1976), the Court of Appeals agreed with the District Court on the scope of Title III and the power to authorize pen register surveillance under Fed. Rule Crim. Proc. 41. However, the majority also held that "in the absence of specific and properly limited Congressional action, it was an abuse of discretion for the District Court to order the Telephone Company to furnish technical assistance." 538 F. 2d at 961. The Court of Appeals warned that "such an order could establish a most undesirable, if not dangerous and unwise, precedent for the authority of the federal courts to impress unwilling aid on private third parties" and that "there is no assurance that the court will always be able to protect (third parties) from excessive or overzealous Government activity or compulsion." 538 F. 2d at 962-963. The District Court's order against the Company was invalidated and a petition for certiorari was granted by the Supreme Court.

Justice White's majority opinion (joined in by Chief Justice Burger and Justices Blackmun, Powell, and Rehnquist) reviews the language and legislative history of Title III and concludes that pen registers are not within the scope of its requirements. Title III is concerned with the interception of wire or oral communication, "'intercept meaning 'the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device.' 18 U.S.C. § 2510(4). Pen registers do not acquire the 'contents' of communications ...." 46 U.S.L.W. at 4035. Therefore, reasons the majority, the District Court had authority to direct the Company to provide assistance to the FBI although the pen register order was not in conformity with Title III.

By holding that the District Court had power to authorize the installation of the pen registers, the majority expands the meaning of search and seizure under Fed. Rule Crim. Proc. 41 to include a "search" to discover the use a telephone is being put to when there is a suspicion of its involvement in a criminal venture. Rule 41 authorizes warrants for seizures of property or contraband and "'property' is defined to include documents, books, papers and any other tangible objects. The opinion states that "it does not