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1. Courts ruling on Donnas challenge to Personal Jurisdiction.

Personal jurisdiction is the power of the court to bind the person of the defendant.

The Supreme Court of the United States has held that improper assertion of personal jurisdiction is a violation of the due process clause of the 14th Amendment and is thus unenforceable (**Pennoyer**). Modern courts have held that for personal jurisdiction to be proper, the D must have such minimum contacts so as not to offend our traditional notion of fair play and substantial justice (**International Shoe).** The contacts must be purposeful, that is, the defendant must have purposefully availed themselves of the benefits and protections of the forum state (**Hanson**). It is not enough that it is foreseeable that the D's product might find its way into the forum state but the defendant must have reasonably anticipated being hauled into court there (**WW Volkswagen**). However, if the defendant has purposefully directed his efforts towards a contact in the forum state and the state has an interest in adjudicating the claim, personal jurisdiction will be held proper (**Burger King**). Finally, if a web site is involved, the courts have held that the more interactive and commercial the site is, the more likely it is to meet the requirements of minimum contact (**Zippo**).

Here, the defendant has filed a Rule 12(b)(2) motion to challenge personal jurisdiction in Ca. If she were a resident of Ca, or even if she had been served in Ca, personal service would be proper (**Burham**). As stated in International Shoe, we must look to her minimum contacts with the forum state since she is not a resident and was not personally served in Ca. First of all we must look to the fact that she is a real estate broker and had sold a few properties in Ca over the years. This in itself may not meet the minimum contacts requirement but when coupled with other factors, it could help to tip the scales. Another factor leaning in the direction of proper personal jurisdiction is the fact that she maintained an advertisement in the Sacramento newspaper. This, under Hanson, would be seen as having purposefully availed herself to the benefits and protections of the forum state. The benefits are that she has a whole other audience from the advertisement in Ca that she could otherwise not have had she remained solely in Nv. Having this advertisement would also afford her some protections in the state. Were she to be defrauded or something of that nature, she could sue in Ca. Also, under WW Volkswagen, I would say it was likely that based on her sales and advertising in Ca, she could have reasonably anticipated being hauled into court there. Burger King would support this analysis as well since she has purposefully directed her efforts to possible clients in Ca. Ca would also have an interest in protecting the interests of its domiciliaries so again, this would support a finding of minimum contacts. Next the facts state that she had chance to visit Dr. Plenty who is based in Ca. The facts state that he made his way to Nv to treat ski injuries, but the facts do not mention whether she was treated in Ca or Nv. I would make an argument that one way or another she is being treated by a Dr. licensed by the state of Ca and perhaps had even seen him in Ca.

All of these facts lead me to believe that there were proper minimum contacts within Ca to support the courts finding that personal jurisdiction was proper in this case .I believe that the denial of her Rule 12(b)(2) was the correct course of action.

2. Courts ruling on the motion to change Venue.

Venue is used to decide a proper location to adjudicate proceedings. Venue is proper

where a D is a resident if all D's are residents of the same state, where a substantial amount of the events giving rise to the claim occurred and under 1391a, in a case dealing with federal question, where the D is subject to personal jurisdiction, and under 1391b, in a case dealing with diversity, like the one at hand, where the D can be found.

Under the above statement of the rules of venue, it is possible to see that perhaps the venue was improper in this case, however, under Rule 12(g)(1) all defenses that are being plead must be joined together in the initial motion. Rule 12 (g)(2) states that any defenses under Rule 12(b)(2-5) that are not joined in the initial motion will be deemed waived. Unfortunately for Donna, her motion to challenge improper venue under Rule 12(b)(3) was not joined with the initial motion filed challenging personal jurisdiction.

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Since her Rule 12(b)(3) motion was not joined under Rule 12(g)(1), her challenge to improper venue was deemed waived by the court and therefor the courts ruling to deny the motion was proper.

3. Courts ruling on Dr. Plenty's Amendment to his claim.

An amendment to a pleading is allowed once as a matter of course under Rule 15. Also, under the **Relation back Doctrine**, even a claim that has gone past the statute of limitations can be added to a complaint if it relates back to the original claim.

Initially, his amendment appears that it could be proper due to the "free" amendment as a matter of course provided by Rule 15. However, as stated in the related back doctrine, if the statute of limitations has expired, the claim must arise out of the same facts as the original claim. The amendment he is attempting to make deals with an unpaid bill by Donna. The original claim has to do with a personal injury that he sustained as a result of Donna's actions. While the amendment does deal with the same defendant, and under **supplemental jurisdiction** the federal court may be able to hear a similar claim, it does not arise out of the same facts of the original claim. While judicial economy might be best served by hearing an additional claim like this, Im not convinced that this could be allowed because of the difference in facts the claims are based on, not to mention the fact that the statute of limitations has expired.

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Because of this, I don't believe the relation back doctrine would apply and since the statute of limitations has expired, I don't believe a court could here the matter.

4. Courts ruling on the motion to dismiss based on it being in the wrong forum.

Forum non conveniens is a common law doctrine that allows the court to dismiss a case, even when subject matter jurisdiction and personal jurisdiction is proper, if it is substantially difficult for a defendant to defend the matter in the forum.

Transfer is allowed by a defendant when a matter has been brought in an inconvenient jurisdiction. The court will look to the difficulty for the parties as well as the witnesses. They may also look to where the actual events took place when deciding whether to transfer to another jurisdiction. A state court is not allowed to transfer a matter to another state and if the defendant is a resident of the state the matter is being heard in, a transfer to federal court would be improper based on the fact that there is no risk of judicial prejudice.

As stated above, forum non conveniens is a doctrine that would allow a court to dismiss a case should it determine that the defendant will have substantial difficulty in appearing in the jurisdiction the plaintiff filed in. Under the facts of the case it would seem that the defendant has

had some form of success at her job. It is indicated that she has been successful enough to sell properties outside of NV and can afford to ski based on her injury. Since CA and NV are so close together, it would be cheap and quick for her to catch a flight to CA to defend the claim.

I don't believe that the substantial difficulty required by forum non conveniens is met here so I believe the court would deny a motion for forum non conveniens.

Finally we have to deal with her alternative request to transfer the matter to NV. As a plaintiff has the right to file in a location of his choice, as Dr. Plenty has done, I am not convinced that a court would be likely to transfer the claim to a NV court. In my discussion of forum non conveniens stated, I don't belive it will be difficult for the defendant to get to CA to defend the case. Also, since there are no witnesses, this will not be a consideration of the court. As discussed above, a state has an interest in protecting its citizens and I believe they may want to keep this claim in Ca. However, were they to transfer the case to NV, based on the Dr.'s practice there and the fact that he sees patients, personal jurisdiction by the NV court may be proper.

Im not convinced that there is enough against the defendant to warrant a transfer out of CA and I would deny the motion.

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1. Courts Denial to Remand.

Subject matter jurisdiciton is the power of the court to hear certain matters

State court is a court of general jurisdiction which means it can most any claim that can be heard in federal court.

Federal courts are courts of limited jurisdiction which means they can generally hear only two types of cases, other than a few that they have exclusive jurisdiction over such as admiralty and bancruptcy.

The two types of claims that a federal court can hear are claims that arise out of federal question(1331) and claims based on diversity of citizenship (1332). Claims that arise under federal question are claims that spring from the laws of the federal government of from the Constitution or treatise of the US. This is not a matter of federal question.

The other type of claim is one that arises out of diversity. For a federal court to assert proper subject matter jurisdiction over a claim based on diversity the claim must meet a minimum amount in controversy and there must be complete diversity of parties (Strawbridge). For a claim to meet the minimum amount in controversy, the claim must exceed $75,000 and the claim must be made in good faith. For the case to be dismissed it must be a legal certainty that the amount claimed cannot be met. For the claim to meet the requirements of diversity of citizenship all parties must be citizens of a different state. If any defendant in the claim is from the same state as the plaintiff, complete diversity will be destroyed and the case dismissed. To be a citizen of a state the party must be a citizen of the US and must be domiciled in the state. Domicile is defined as presence of a residence within the state with the intent to remain there indeffinitely. It is a two part test that involves both a mental and physical aspect. The domicile of a party does not change until they have a new domicile (Mas).

Corporations have dual citizenship (1332(c)(1)). The first is the state in which they are incorporate and the second is to determine their principal place of buisness. There can be only one principal place of buisness but this is determined in two different ways. They first way is to

determine where the corporation does most of their buisness. This is know as the muscle test and is the majority view. The second is to determine where the corporate headquarters is. This is called the nerve test.

The case at hand demonstrates a case in diversity that was first brought under concurrent jurisdiction, in state court. The defendant seems to have properly removed the case to federal court as long as all of the requirements are met. First of all the plaintiff has two claims, one for $60,000 and one for $20,000. Alone neither of these claims would be enough to make it into federal court. However, under aggregation, a single plaintiff may join multiple claims against the same defendant to meet the minimum amount in controversy. If both claims were aggregatted, the amount would be $80,000 meeting the minimum amount in controversy requirement.

Next we must look to diversity of citizenship. The plaintiff in this case is from CA so right off the bat we know that if the citizenship of Titan is CA then the removal will be improper. First of all the facts tell us that the corporation was incorporated in Illinois. The first citizenship of Titan is IL so we are good so far. Secondly it tells us that their factory is in OR. Under the muscle test, their second place of citizenship would be OR, however, the facts state that the CEO and owner live in CA where the orders are taken. This would lead me to believe that the corporate headquarters is in CA. If we use the nerve center test then diversity would be destroyed and the removal would be improper.

Since we know that the majority rule is the muscle test we will apply that for the second place of citizenship keeping complete diversity intact. I would say that the court was correct in denying Adams motion to remand.

2.Courts denial of motion to dismiss.

Under Rule 12(c) a motion may be filed alleging that there were insufficient facts to state a cause of action.

Under Rule 12(c), a defendant may file a motion to dismiss on the grounds of insufficient facts. This rule is different from many other Rule 12 motions because it can be filed after an answer has been given. If there were indeed insufficeint facts to state a cause of action then this motion would be proper.

Since the facts do seem to support a proper cause of action, this motion was correctly denied

3. Courts ruling on Titans demand for arbitration.

Under Erie, a federal court sitting in a diversity action is bound to use state substantive law but is free to use federal procedural law. The twin aims of Erie was to discourage forum shopping and to decrease inequaties between similar matter being heard in state and federal court. York gave us the outcome determinitive test to help us determine what is substantive and what is procedural. Under the outcome derterminitive test, if there is a possibility that the outcome may be different in state court than fed court, then the law will count as substantive and state law will apply. Byrd furthered this test by adding a state and federal interest balancing test as well as a definite outcome determinitive test. Under this rule, the out come would have to most certainly be different for the matter to count as substantive. Finally, under Hannah, we were given two more rules which apply to a choice of law problem, Hannah 1 and Hannah 2. Hannah 1 breaks down to the twin aims of Erie, again, to discourage forum shopping and to

decrease inequaties between similar matter being heard in state and federal courts. Hannah 2 states that in matters where there are similar and conflicting rules of procedure between state and federal courts, the federal rule will apply.

Here, the defendant Titan has filed for the arbitration that is required by state law. The facts state that there is no such similar rule in federal court. This would be a choice of law problem that the rules of Erie and its progeny would apply to. First of all we know from Erie that if a matter is substantive we must apply the state law but how do we know whether something is substantive or not. This can be a difficult problem but applying the rules from York, Byrd and finally Hannah 1 & 2 can make the decision much easier. Under York we apply the outcome determinitive test. Would the outcome of this litigation be different if we were to apply the non-binding arbitration? The answer to this is most likely no. Going through a non binding arbitration would simply take a bit more time and in the end would have very little difference in the outcome since what ever agreement is reached is non binding. Next, under Byrd a similar analysis would give us a similar answer. The only thing that I can recognize is that perhaps the plaintiff would be forced to pay more in attornies fees. This would not definitely give us a different outcome in the litigation. Finally under Hannah 1, would applying this discourage forum shopping or decrease inequities between state and federal court? I dont belive it would. Finally if there are state and federal procedural laws that are in conflict we must apply the federal rules. Since I have come to a conclusion that in all likleyhood, this arbitration would be procedural, we would apply federal law.

Under federal law there is no arbitration agreement and therefore the court correctly denied Titans request for arbitration under state law.

4. Courts ruling on Adams amendment.

An amendment to a pleading is allowed once as a matter of course under Rule 15. Also, under the **Relation back Doctrine**, even a claim that has gone past the statute of limitations can be added to a complaint if it relates back to the original claim. When a party has filed against an incorrect party name they must amend the complaint within 120 days of filing, they must show that the defendant was on reasonable notice that the complaint was filed so as not to prejudice his defense and the defendant must know that if not for a litigitimate mistake on behalf of the plaintiff, he would have been served.

Ca allows a plaintiff to file against a Doe defendant when he is unsure of the parties name and to amendt it later when he learns the true name. The federal rules are much more stringent.

Here the relationback doctrine would apply because the amendment to the name is related to the facts of the original complaint.

The facts do not indicate that Adam filed the amendment in more than 120 days after the original compliant was filed so he is good so far. Next since the President of Titan was served he was aware that the claim was filed and so his defense would not prejudiced. Finally, since he belived he could escape liability because of the incorrect name, he knew there was a ligitimate mistake on behalf of the plaintiff and without that mistake, the correct name would appear on the complaint.

The court should grant Adams request to amend the compaint.