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1. Can Easy Mortgage (P) v. Wagner (D) case be heard in Court in FL?

All courts are courts of limited jurisdiction. To determine whether the court in FL can hear the case at hand, the court must have jurisdiction over the parties and over the case. To establish jurisdiction over the parties, they must have both personal jurisdiction and subject matter jurisdiction.

Personal Jurisdiction (PJ) is the court's ability to exercise authority over the person. Without PJ, the court cannot render a valid judgment. The basis for PJ is established through a state's long arm statute and by the Due Process Clause of the US Constitution. The facts do not determine whether Florida's long arm statute allows for the state extend to the fullest extent of the Constitution, but assuming it does, FL's long arm statute will allow for the FL court to exercise PJ over D statutorily. The Due Process Clause requires that PJ requires such contacts with the forum such that the state's exercise of PJ over the D will be fair and reasonable.

Traditionally, state's exercised their power of PJ by personal power over the D. Pennoyer provided that such power was satisfied if the D was present in the forum and served with process. Modernly, the Supreme Court has expanded upon the traditional bases of determining PJ and in International Shoe held that PJ would be present to the extent that the D had such minimum contacts with the forum that the exercise of PJ over him would not offend the traditional notions of fair play and substantial justice. Thus, Shoe established the requirements of minimum contacts and fairness.

The nature and manner of contacts is an important factor, with continuous and systematic contacts giving rise to general jurisdiction, while claims that arise out of the specific contact within the forum resulting in specific jurisdiction. The McGee court determined that even one contact with the forum was sufficient.

To further define the understanding of minimum contacts, the Hanson court held that the D must purposefully avail himself of the forum such that he would enjoy the benefits and protection of the laws of the forum.

The court in World Wide Volkswagen addressed the issue of fairness and continued the expansion to include that the element of foreseeability, requiring that D's contacts with the forum must result in him being able to reasonably foresee being haled into court in the forum. The court in Burger King expanded upon the fairness element requiring that the court balance the interests of the parties.

Due process also requires that the D is served with process. The Mullane court held that service of process must be reasonably calculated under all the circumstances that informs interested parties of the pendency of the litigation and affords them the opportunity to provide adequate opposition. Rule 4 of the FRCP satisfies the service of process requirement established by Mullane.

at explained
~~Here, FL exercising PJ over the D would only result from specific jurisdiction/~~ However, it must be determined that he had such minimum contacts with the forum that his Due process rights are not violated. In taking out a mortgage with a company in Denver, CO, D may not have recognized that he was dealing with a FL corporation. However, his contact with Easy Mortgage may be sufficient to establish PJ in FL. In taking out a mortgage, a borrower signs numerous documents, many of which identify the company and its location. And despite D's

living in CA and doing business with an office in CO, it can be reasonably assumed that he could expect to be haled into court in the state of the corporation with which he was doing business.

Somewhat conclusory
His contacts with the company was in effect a contact with the forum state such that he purposefully availed himself of the benefits and protection of the laws of the state. Further, as stated earlier, such contacts would result in it being reasonably foreseeable that he would be haled into court in the state in which his mortgage company had its corporate offices. In balancing the interests of the parties, including the burden on the D and the interest of the state forum to adjudicate the claim, it is likely the court would determine that the FL court would have PJ over D.

To hear the case in the Federal court in FL. the court must also have subject matter jurisdiction (SMJ). To establish SMJ, the case must be an Arising Under case under 28 USC 1331 or a Diversity case under 28 USC 1332. Arising under cases flow from constitutional issues in dispute and other federal questions, which are not here.

In Diversity cases, there must be complete diversity between the adverse parties and the amount in controversy must exceed \$75,000. Diversity is determined based upon the citizenship of the parties. Individual citizenship is determined by one's domicile--the state in which they currently live and their intention to stay there permanently. D's citizenship is CA. The citizenship of the corporation is determined by two factors, the state of incorporation and its principal place of business (PPB). PPB is determined by applying either a muscle test--bulk of activity, or nerve test--place of corporate operations. The facts are not clear regarding the bulk of activity and therefore applying the nerve test, P's domicile will be FL. Therefore, there is complete diversity between P and D.

The amount in controversy must exceed \$75,000. Here the amount is \$551,000, and therefore meets that test. Therefore, there is SMJ.

good job (45)
Thus, the case can be heard in the Court in FL.

2. can D join sellers, contractor and inspector?

Rule 19 provides for Compulsory Joinder of Parties. In determining whether a party must be joined Rule 19 requires that a party be necessary in order for them to be required to be joined. In determining whether the parties are necessary, the court must ask four questions: 1) Without the parties can the parties be accorded complete relief? 2) Does the absentee party or parties have an interest in the action? 3) If so, will their absence impair or impede their ability to protect their interest? and 4) Does the absence of the absentee parties expose the existing parties to multiple or inconsistent liabilities?

Here, the parties can still be accorded complete relief if each of the parties D is seeking to join are not joined. P's relief will come in repossessing and reselling D's house if he does not pay his unpaid debt, and D can bring an action against other parties that might be liable for the asbestos in another action. Also, none of the parties has an interest in the action at hand. And while the contractor will want to collect for the money not paid for the work he completed, he can bring an action against the D himself. Consequently, this case does not give rise for D to join the parties under Rule 19 as compulsory parties.

Rule 19 is secondary to this question

FRCP Rule 20 provides for Permissive Joinder of Parties. It allows for parties to be added as defendants against whom a right to relief can be claimed, added jointly, severally or in the alternative, regarding claims that arose out of the same transaction or occurrence as the original claim with a common question of law or fact.

This is primary
Rule 14 provides for the Impleading of Parties and provides that defending parties may join third parties if they are or may be liable to the party joining them for all or part of the claim filed against the defending party in the original action against them.

Here, the original sellers owned the home since it was built in 1971. It is likely that as the original owners they were aware of the asbestos being present in the home and therefore may be liable to D for condition of the home. However, the questions of law or fact in the case against D are only tangentially related to the asbestos. Rather, the action is related to his not paying his mortgage payment. *good point*

Similarly, the inspector may have owed a duty to the D to discover the asbestos with a reasonable inspection, but he would not be liable to D for the lack of making his mortgage payments. And the contractor performing the remodel work would definitely not be liable to D for P's action against D. If anything, the contractor has a valid claim that he can bring against D for nonpayment for the work he performed.

Given that, the parties cannot be claimed jointly, severally or in the alternative as there are not claims that arose out of the same transaction or occurrence with the original claim for which they can be liable.

Could have more analysis - Inspection could be connected to the loan.

(25)
(20)
3. D's claim against P for failing to disclose the default penalty.

Rule 18 provides that any party may assert a claim, counterclaim, crossclaim or third party claim for as many claims as it has against them that arise out of the same transaction or occurrence as the original claim against them.

Rule 13(a) provides that D MUST assert any counterclaim against P that arises under the same transaction or occurrence as the claim against him. Here, the claim for failing to disclose the default penalty is a direct result of the claim that P has filed against D and therefore his counterclaim is compulsory.

Good job
However, for every claim, SMJ must be satisfied, and if not, the court can only hear the case if it is able to do so under supplemental jurisdiction (SJ). SJ is addressed in 28 USC 1367. Section 1367(a) provides that the court will have SJ if the claim arises out of the same transaction or occurrence, as it does here. Section (b) addresses limitations of the P to exercise SJ and does not apply here. And section (c) provides the court with the discretion to grant or deny SJ based judicial efficiency, convenience, fairness and complexity of state issues.

Here, there is no reason for the court not to grant SJ and therefore, D can assert his counterclaim against P.

2)

1. May defendant (D) remove to federal court in OR? May it file a general demurrer?

One of the factors in removing a case from state to federal court is that the federal court must have subject matter jurisdiction. To establish SMJ, the case must be an Arising Under case under 28 USC 1331 or a Diversity case under 28 USC 1332. Arising under cases flow from constitutional issues in dispute and other federal questions, which are not here.

In Diversity cases, there must be complete diversity between the adverse parties and the amount in controversy must exceed \$75,000. Diversity is determined based upon the citizenship of the parties. Individual citizenship is determined by one's domicile--the state in which they currently live and their intention to stay there permanently. P's citizenship is CA. The citizenship of the corporation is determined by two factors, the state of incorporation and its principal place of business (PPB). PPB is determined by applying either a muscle test--bulk of activity, or nerve test--place of corporate operations. D is an OR corporation (albeit nonprofit), and it can be inferred that their PPB is in OR. Therefore, there is complete diversity between P and D. The amount in controversy must exceed \$75,000. Here the amount is \$78,000, and therefore meets that test. Therefore, there is SMJ.

28 USC 1441 provides that a D may remove a claim brought against him in state court to federal court if the court in which it is being removed has the original authority to hear the case. However, it requires that the case be removed to the district court which encompasses the state court in which it was brought. Further, it does not allow a defendant to remove a case to the federal court in which it is a citizen.

Here, plaintiff (P) brought the action against D in state court in CA. As a corporation, D's residency is based upon the state in which it is incorporated and its principal place of business. Both of those are Oregon and thus, D's is a citizen of Oregon. If D wanted to remove to federal court, they would have had to remove to the district court in California that encompasses the County Superior Court in San Francisco. Further, D would not have been able to remove to the federal district in which they are citizens, Given that they are citizens of OR, they would be prohibited from removing the case to the US District Court in Oregon.

Regarding filing a general demurrer: California follows Code pleadings and as such allows defendants to file a general demurrer, essentially answering the complaint against them as failing to state a cause of action sufficient maintain P's suit. It must be filed as the first responsive pleading. In effect, D asserts the defense that despite P's cause of action, there is insufficient reason to support the suit. So, given the facts that P did not disclose the lien, there is enough cause for a suit against D. The demurrer will likely be denied.

2. Which law should the Oregon Court apply?

The Rules of Decision Act provides that the laws of several states shall be the laws of civil actions in federal courts unless there is a valid federal interest otherwise. In *Swift v. Tyson*, the Supreme Court determined, however, that the only state laws that federal courts should apply to civil cases were statutory laws, in effect holding that the common law, or judge made laws, were not really laws. This provided federal courts with the ability to establish federal common law as they developed their own sense of which laws to apply in civil cases when there was not a state statutory law that applied.

pd
The Erie Court overruled Swift and held that the state's laws should control in civil cases, whether written or unwritten. In the same year, Congress passed the Rules enabling Act, empowering the Supreme Court to apply federal rule of procedure and establishing the Federal Rules of Civil Procedure. The result was that when federal courts were hearing diversity cases, they were to apply federal procedural rules and state substantive laws. The only problem is that Erie did not identify a test for determining which laws are procedural and which are substantive, leaving ambiguity for courts in their application of the Erie holding.

To attempt to address the issue, the court in York established the Outcome Determinative Test. The test looks at the outcome of the case, applying the rules of the federal and state laws to determine if the outcome for the parties would be clearly different. If there is a difference in the outcome, then state law should control. Here, the issue at hand is whether the D is liable to the P for the \$78,000 lien on the yacht. Applying either the federal maritime law, Oregon law or California law, the outcome of the suit is not determinative. A jury could decide for the P or D applying either of the laws.

The Byrd court established the Interest Balancing Test, in which the court would look to the issue and determine whether or not there was a strong state or federal interest that would be in issue by applying one law over the other. If so, the laws the one with the greater interest would control. It often arises in the case of a federal Constitutional issue being at risk of being violated. Here, there are not any federal or state issues that would arise to that level.

Finally, the Hanna Court established two tests to determine which law to apply. The first was to look at the twin aims of Erie--to discourage forum shopping, and to minimize the inequitable application of laws. The second is to determine whether or not there is a federal rule on point. Here, in looking at the twin aims, ~~there is no reason that the application of one law over the other would contribute to forum shopping.~~ And there does not appear to be a risk for the inequitable application of law. However, there is a federal rule of procedure on point. The US Maritime law specifically provides authority for the Oregon Harbormaster to seize vessels. Especially given the rule is one of procedure, the court should apply the federal US Maritime law.

*of the twin aims of Erie...
the one with the greater interest...
4/5 Very good test*

3. How should the court rule regarding a Motion for More Definite Statement?

very good can
Rule 12 provides the defendant with the authority to file a motion for a more definite statement. Rule 8 establishes the guidelines for the P in filing its original complaint and requires that P provide 1) a short and plain statement establishing that the court has subject matter jurisdiction; 2) a short and plain statement establishing the basis for a claim against D; and 3) a demand for relief. However, when the plaintiff is asserting a claim of fraud, Rule 9(b) requires a heightened pleading--that P's complaint pleads the facts of fraud with particularity.

Here, the complaint alleges both breach of contract and material misrepresentations. The allegation of material misrepresentations is essentially the same as claiming that D was fraudulent in their representation to P. Consequently, she is required to have pleaded that allegation with particularity accordingly.

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However, the complaint was filed in state court and CA state court follows Code pleading and does not require particularity for fraud per se. Nevertheless, Code

pleading does require that the P state facts sufficient to state a cause of action. The standard for Code pleading is therefore more restrictive with regard to the degree of specificity and factual support required in complaints--requiring a heightened level of specificity in general.

Consequently, the court should grant the D's motion for a more definite statement.

END OF EXAM