UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Securities Investor Protection Corporation, Eugene W. Bell, Trustee for the Liquidation of Joseph Sebag Incorporated, and John L. Britton, Trustee for the Liquidation of First State Securities Corporation v. Seymour Vigman, et al.

764 F.2d 1309 (9th Cir. 1985) · No. Nos. 84-6074, 84-6311 · Decided July 2, 1985

SUMMARY

The Ninth Circuit reversed the dismissal of Eugene C. Ferri, Jr. and Mobile International Corporation in a securities-fraud action brought by the Securities Investor Protection Corporation and liquidation trustees. The court held that Section 27 of the Securities Exchange Act authorizes nationwide service of process, that personal jurisdiction over a resident defendant depends on contacts with the United States, and that a co-conspirator venue theory may apply in multi-defendant securities litigation.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	BARNES, Senior Circuit Judge; Earl C. Barnes, Senior Circuit Judge; Reinhardt, Circuit Judge; Earl B. Gilliam, District Judge, sitting by designation
JURISDICTION	Federal
DECIDED	July 2, 1985
DOCKET	Nos. 84-6074, 84-6311
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed the dismissal, without leave to amend and not on the merits, of claims against Ferri and Mobile for lack of personal jurisdiction and improper venue.
STANDARD OF REVIEW	De novo review of dismissal of a complaint without leave to amend.
PRECEDENTIAL VALUE	Published Ninth Circuit opinion; precedential within the Ninth Circuit subject to subsequent legal developments.
PARTIES	Securities Investor Protection Corporation, Eugene W. Bell, Trustee for the Liquidation of Joseph Sebag Incorporated, John L. Britton,

Trustee for the Liquidation of First State Securities Corporation v. Eugene C. Ferri, Jr., Mobile International Corporation

TOPICS

personal jurisdiction · venue · service of process · statutory interpretation · appellate procedure

PRACTICE AREAS

securities litigation · civil procedure · federal jurisdiction · personal jurisdiction · venue

QUESTIONS PRESENTED

1. Whether Section 27 of the Securities Exchange Act authorizes nationwide service of process and permits personal jurisdiction over defendants in any federal district court based on sufficient contacts with the United States.
2. What due-process standard governs personal jurisdiction over a foreign defendant served under the Act's nationwide-service provision.
3. Whether a co-conspirator theory of venue applies in a multi-defendant action alleging a common scheme in violation of federal securities laws.
4. Whether the plaintiffs should be permitted to amend their pleadings to allege the nexus between Ferri and Mobile and the alleged securities-fraud scheme.
5. Whether the district court should exercise pendent jurisdiction over the common-law fraud claim on remand.

HOLDINGS

1. Section 27 of the Securities Exchange Act authorizes nationwide service of process, and a federal district court may exercise personal jurisdiction over a resident defendant who has minimum contacts with the United States.
2. For a foreign defendant served under Section 27, personal jurisdiction depends on whether the defendant acted within any district of the United States or sufficiently caused foreseeable consequences in the United States.
3. In a multi-defendant action alleging a common scheme in violation of federal securities statutes, venue established for one defendant in a district is proper as to all alleged co-conspirator defendants, even if some defendants had no direct contact with the forum.
4. The plaintiffs should be allowed to amend their pleadings to show the relationship between Ferri and Mobile and the alleged securities-fraud scheme.

KEY QUOTATIONS

> *“'minimum contacts' with a particular district or state for purposes of personal jurisdiction is not a limitation imposed on the federal courts in a federal question case by due process concerns.”* (¶ 27)

> *"We hold, therefore, that so long as a defendant has minimum contacts with the United States, Section 27 of the Act confers personal jurisdiction over the defendant in any federal district court."* (¶ 30)

> *"Under the co-conspirator venue theory, where an action is brought against multiple defendants alleging a common scheme of acts or transactions in violation of securities statutes, so long as venue is established for any of the defendants in the forum district, venue is proper as to all defendants."* (¶ 37)

FACTUAL BACKGROUND

SIPC and trustees for two failed securities broker-dealers brought claims arising from alleged predatory and manipulative schemes involving the stock of seven over-the-counter companies. Ferri was a United States citizen who allegedly maintained securities accounts at First State Securities Corporation, while Mobile was a foreign corporation alleged to have maintained a securities account at A.G. Becker through First State. The plaintiffs alleged violations of Section 10(b) of the Securities Exchange Act, Rule 10b-5, common-law fraud, and other claims, but the claims remaining against Ferri and Mobile were federal securities-law and common-law fraud claims.

PROCEDURAL HISTORY

SIPC and the liquidation trustees filed a securities-fraud action in the United States District Court for the Central District of California against seventy-five defendants. The district court dismissed Ferri and Mobile, concluding that it lacked personal jurisdiction and that venue was improper, and certified its orders for immediate appeal under Federal Rule of Civil Procedure 54(b). The Ninth Circuit reversed and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The district court must reconsider personal jurisdiction over Mobile under the United States-contacts and foreseeable-consequences standard; permit plaintiffs to amend their pleadings to establish the nexus between Ferri and Mobile and the alleged scheme; allow plaintiffs to perfect service on Mobile if personal jurisdiction is established; and decide in its discretion whether to reinstate the common-law fraud claim.

CASES CITED

- Whittington v. Whittington, 733 F.2d 620 (9th Cir. 1984)
- Des Brisay v. Goldenfield Corp., 549 F.2d 133 (9th Cir. 1977)
- Touche Ross & Co. v. Redington, 442 U.S. 560 (1979)
- Clark v. Watchie, 513 F.2d 994 (9th Cir. 1975)
- Securities and Exchange Commission v. Diversified Industries, Inc., 465 F. Supp. 104 (D.D.C. 1979)
- Amba Marketing Systems, Inc. v. Jobar International, Inc., 551 F.2d 784 (9th Cir. 1977)
- Haas v. Wieboldt Stores, Inc., 725 F.2d 71 (7th Cir. 1984)
- Hilgeman v. National Insurance Co. of America, 547 F.2d 298 (5th Cir. 1977)

- Mariash v. Morrill, 496 F.2d 1138 (2d Cir. 1974)
- Leroy v. Great Western United Corp., 443 U.S. 173 (1979)
- International Shoe Co. v. State of Washington, International Shoe Co. v. Washington, 326 U.S. 310 (1945)
- Hanson, Executrix, et al. v. Denckla et al., Hanson v. Denckla, 357 U.S. 235 (1958)
- Shaffer v. Heitner, 433 U.S. 186 (1977)
- Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)
- Johnson Creative Arts & Wool v. Masters, Inc., 743 F.2d 947 (1st Cir. 1984)
- Nelson v. Quimby Island Reclamation District, 491 F. Supp. 1364 (N.D. Cal. 1980)
- FTC v. Jim Walter Corp., 651 F.2d 251 (5th Cir. 1981)
- Travis v. Anthes Imperial Ltd., 473 F.2d 515 (9th Cir. 1974)
- Leasco Data Processing Equipment Corp. v. Kerman, 468 F.2d 1326 (2d Cir. 1972)
- Still v. Rossville Crushed Stone Co., 370 F.2d 324 (6th Cir. 1966)
- Ritter v. Zuspan, 451 F. Supp. 926 (E.D. Mich. 1978)
- Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947)
- Wyndham Associates v. Bintliff, 398 F.2d 614 (2d Cir. 1968)
- Kadar Corp. v. Milbury, 549 F.2d 230 (1st Cir. 1977)
- United Mine Workers v. Gibbs, 383 U.S. 715 (1966)
- Kehr v. Smith Barney Harris Upham & Co., 736 F.2d 1283 (9th Cir. 1984)
- North American Asbestos Corp. v. Superior Court, 128 Cal. App. 3d 138, 179 Cal. Rptr. 889 (1982)