

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Alexander Proudfoot Company World Headquarters L.P. and APCO,
Inc. v. Dennis C. Thayer

877 F.2d 912 (11th Cir. 1989) · No. No. 88-5701 · Decided July 19, 1989

SUMMARY

The Eleventh Circuit held that Florida law governs whether a contractual clause conferring personal jurisdiction is effective in a diversity action. Although the clause alone could not establish jurisdiction under Florida law, the defendant's failure to return confidential materials to Florida satisfied the Florida long-arm statute, and his contractual consent to Florida jurisdiction resolved the due process inquiry. The court reversed the dismissal for lack of personal jurisdiction and remanded.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	James Lawrence King, Chief District Judge, sitting by designation; Vance, Circuit Judge; Cox, Circuit Judge; King, Chief District Judge, sitting by designation
JURISDICTION	Federal
DECIDED	July 19, 1989
DOCKET	No. 88-5701
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed the district court's dismissal of their action for lack of personal jurisdiction over the nonresident defendant.
STANDARD OF REVIEW	De novo, plenary review of a dismissal for lack of personal jurisdiction.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Alexander Proudfoot Company World Headquarters L.P., APCO, Inc. v. Dennis C. Thayer

TOPICS

- personal jurisdiction
- civil procedure
- employment contracts
- contracts
- federalism

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a federal court sitting in diversity should apply federal or Florida law to determine the effect of a contractual provision consenting to personal jurisdiction in Florida.
2. Whether Florida's long-arm statute authorized personal jurisdiction over Thayer based on his failure to deliver confidential materials to Proudfoot in Florida as required by the employment agreement.
3. Whether enforcement of the contractual consent to personal jurisdiction violated due process.

HOLDINGS

1. A federal court sitting in diversity must apply Florida law, rather than federal judge-made law, to determine the effect of the contractual consent-to-personal-jurisdiction clause because applying federal law would encourage forum shopping and produce inequitable administration of the laws.
2. Florida's long-arm statute authorized personal jurisdiction because Thayer allegedly breached the employment agreement by failing to deliver confidential materials to Proudfoot in Florida, an act the contract required to be performed in Florida.
3. Because Thayer freely agreed to personal jurisdiction in Florida and did not show that the provision was obtained under duress or was unreasonable or unjust, exercising jurisdiction did not violate due process.

KEY QUOTATIONS

"Because the application of federal judge-made law here would encourage forum shopping and promote the inequitable administration of the laws, we must apply state law to decide the issue presented." (paragraph 32)

"Accordingly, having contractually waived his due process right not to be subjected to suit in a forum without sufficient contacts, Thayer cannot now assert that personal jurisdiction in Florida violates his due process rights." (paragraph 39)

FACTUAL BACKGROUND

Proudfoot, a Delaware corporation headquartered in Florida, employed Thayer under an agreement containing noncompetition, confidentiality, document-return, Florida choice-of-law, and Florida forum provisions. Thayer executed the agreement after it was mailed to his Missouri residence, and the agreement was completed in Florida. During his employment, Thayer regularly communicated with Proudfoot personnel in Florida, traveled to Florida on multiple occasions, and submitted expense vouchers to the Florida office. After resigning, Thayer joined a competitor, allegedly used or disclosed Proudfoot's confidential information, and did not return confidential materials to Proudfoot in Florida.

PROCEDURAL HISTORY

Proudfoot filed a state-court action seeking enforcement of employment-agreement provisions, including noncompetition and confidentiality covenants. Thayer removed the action to federal court and moved to dismiss for lack of personal jurisdiction. The Southern District of Florida granted the motion, concluding that the

contractual consent-to-jurisdiction clause was insufficient and that Florida's long-arm statute was not satisfied. The Eleventh Circuit reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court's dismissal for lack of personal jurisdiction was reversed, and the case was remanded for further proceedings because Florida law and due process permitted jurisdiction over Thayer.

CASES CITED

- Stewart Organization, Inc. v. Ricoh Corp., 810 F.2d 1066 (11th Cir. 1987), aff'd, 487 U.S. 22 (1988)
- Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938)
- Swift v. Tyson, 41 U.S. (16 Pet.) 1 (1842)
- Hanna v. Plumer, 380 U.S. 460 (1965)
- Walker v. Armco Steel Corp., 446 U.S. 740 (1980)
- Burlington Northern R. Co. v. Woods, 480 U.S. 1 (1987)
- Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967)
- Arrowsmith v. United Press International, 320 F.2d 219 (2d Cir. 1963) (en banc)
- Manetti-Farrow, Inc. v. Gucci America, Inc., 858 F.2d 509 (9th Cir. 1988)
- The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)
- Burger King Corp. v. Rudzewicz, Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985)
- McRae v. J.D./M.D., Inc., 511 So. 2d 540 (Fla. 1987)
- Pesaplastic, C.A. v. Cincinnati Milacron Co., 750 F.2d 1516 (11th Cir. 1985)
- Ford Motor Co. v. Atwood Vacuum Machine Co., 392 So. 2d 1305 (Fla. 1981), cert. denied, 452 U.S. 901 (1981)
- International Shoe Co. v. State of Washington, International Shoe Co. v. Washington, 326 U.S. 310 (1945)
- Milliken v. Meyer, 311 U.S. 457 (1940)
- World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)
- Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694 (1982)
- National Equipment Rental, Ltd. v. Szukhent, 375 U.S. 311 (1964)
- Shawmut Boston International Banking Corp. v. Duque-Pena, 767 F.2d 1504 (11th Cir. 1985)
- Ten Mile Industrial Park v. Western Plains Service Corp., 810 F.2d 1518 (10th Cir. 1987)
- Dandlea v. Malsbary Manufacturing Co., 839 F.2d 163 (3d Cir. 1988)
- In re Air Crash Disaster Near New Orleans, Louisiana, 821 F.2d 1147 (5th Cir. 1987)
- Elston Investment, Ltd. v. David Altman Leasing Corp., 731 F.2d 436 (7th Cir. 1984)
- Guaranty Trust Co. v. York, 326 U.S. 99 (1945)

- *Bernhardt v. Polygraphic Co. of America*, 350 U.S. 198 (1956)
- *Byrd v. Blue Ridge Rural Electric Cooperative*, 356 U.S. 525 (1958)
- *Vaughn v. AAA Employment, Inc.*, 511 So. 2d 1045 (Fla. 2d DCA 1987)

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