

Kruger v. Dean Worldwide, Inc., 4 ROP Intrm. 282 (Tr. Div. 1994)
STEPHEN KRUGER,
Plaintiff,

v.

DEAN WORLDWIDE, INC., et al.,
Defendants.

CIVIL ACTION NO. 287-93

Supreme Court, Trial Division
Republic of Palau

Decision and order
Decided: January 14, 1994

LARRY W. MILLER, Justice:

This action arises out of a contract to ship plaintiff's household goods from California to Palau. Before the Court are defendants' motions to quash service of process and to dismiss for lack of personal jurisdiction. The first motion is denied. The second motion is denied as to defendant Dean Worldwide, Inc. ("Dean"), but granted as to defendant Michael Wilson.¹

I. SERVICE OF PROCESS

Defendants' motion to quash is based primarily on the fact that, as of the time of the motion, plaintiff had not filed any affidavit of service in accordance with 14 PNC § 144. Plaintiff responds that under ROP Civ. Pro. 4(g), "[f]ailure to make proof of service does not affect the validity of the service." Although no similar proviso appears in the statute, the Court does not believe that any different result was intended.

In any event, plaintiff has now filed a proof of service in **L283** response to defendants' motion. That proof indicates on its face that, in accordance with 14 PNC § 144, service was accomplished by a "person authorized to makes service of summons in the state . . . where the defendant[s] [were] served." Defendants having offered no reason to doubt that service was in fact accomplished in that fashion, their motion to quash is denied.²

¹ According to plaintiff, Dean and Wilson are the only defendants on whom service has been effected.

² Plaintiff's motion for Rule 11 sanctions is denied. Although not a basis for dismissal, plaintiff was in default of his obligation under both the statute and the rule to file his proof of service "promptly and in any event within the time during which the person served must respond to the process". ROP Civ. Pro. 4(g). Giving defendants the benefit of the doubt as is appropriate under Rule 11, plaintiff's failure may have left defendants' counsel without clear assurance that service was in compliance with Palau's rules and statutes.

II. PERSONAL JURISDICTION

Defendants assert in their second motion that they are not subject to jurisdiction under 14 PNC § 142, Palau's long-arm statute. Plaintiff's response is twofold: that the long-arm statute is not the exclusive source of jurisdiction over defendants and that, in any event, Dean is amenable to process under that statute. Plaintiff concedes that the long-arm statute does not apply to Wilson.

A. Exclusivity of the Long-Arm Statute

The premise of defendants' motion, as stated in the initial sentence of their supporting memorandum, is that "[t]he extent of this Court's jurisdiction over non-resident defendants is defined by" 14 PNC § 142. That section enumerates a series of acts, the commission of any one of which submits a person "to the **1284** jurisdiction of the courts of the Republic as to any cause of action arising therefrom."³ 14 PNC § 143, in turn, authorizes service of process to be made outside the Republic "upon any person subject to the jurisdiction of the courts of the Republic under this subchapter." Defendants argue, therefore, that since they are assertedly not covered by §142, they were not subject to service outside of Palau under §143 and are accordingly not properly before this Court.

Plaintiff argues in response that the long-arm statute is not exclusive, relying primarily on Article X, Section 1, and Article X, Section 5, of the Palau Constitution. Based on these provisions -- that "[t]he judicial power of Palau shall be vested in a unified judiciary" and "shall extend to all matters in law and equity" -- plaintiff asserts that "the jurisdiction of the Supreme Court is set by Constitution, not by statute".

Plaintiff's argument confuses the concepts of subject matter jurisdiction and personal jurisdiction. Subject matter jurisdiction "refers to the competency of the court to hear and determine a particular category of cases." S. Gifis, *Law Dictionary* (2d ed. 1984), at 254. Personal jurisdiction "refers to the court's powers over the parties involved in a particular law suit." Id.

1285 The constitutional provisions relied upon relate to subject matter jurisdiction. But the fact that this Court may hear all cases does not mean that its power has over all parties, nor does it even address the question of what parties may be brought before the Court. Rather, the Court believes that the framers intended that the extent of this Court's personal jurisdiction should be defined by statutory law, limited by the requirements of due process.⁴ Indeed, that the first OEK

³ The title of §142, "Jurisdiction over acts of nonresidents", is something of a misnomer since it applies, by its terms, to "[a]ny persons, ..., whether or not a resident of the Republic". The real purpose of §142 is to set forth the Court's jurisdiction over persons not present in the Republic at the time a lawsuit is commenced, whether or not they are otherwise residents of Palau.

⁴ See Restatement of Conflict of Laws (2d), § 36, Comment g ("When the question has arisen, the courts have usually held themselves without authority under their local law to exercise jurisdiction on bases not recognized at common law unless authorized to do so by statute.").

Kruger v. Dean Worldwide, Inc., 4 ROP Intrm. 282 (Tr. Div. 1994) perceived a need to enact the “Long Arm Jurisdiction and Service of Process Act of 1982”, of which 14 PNC 142 is a part, is strong evidence that it was not a subject addressed by the Constitution. See *Elbelau v. Election Commissioner*, Civil Action No. 475-92 (Oct. 4, 1993), at 10.

This is the rule stated by the United States Supreme Court, and the Court believes it is a sound one. See *Omni Capital Int’l v. Rudolf Wolff & Co.*, 484 U.S. 97, 108-111 (1987).⁵ Each of the alternative non-statutory jurisdictional bases proposed by plaintiff raises significant policy and constitutional questions.⁶ **L286** Those questions should be addressed in the first instance by the OEK, and not by the Court on its own initiative.

It follows from this conclusion that plaintiff must show that defendants fall within the reach of some existing statute or rule⁷ in order to proceed with this action. Since plaintiff concedes that he cannot do so with respect to Wilson, the motion to dismiss must be granted at least as to him.

B. Applicability of the Long-Arm Statute to Dean

It remains to be determined whether 14 PNC § 142 applies to Dean. Plaintiff relies on §142(a) which provides in pertinent part:

“Any . . . corporation . . . who in person or through an agent **L287** does any of the

⁵ In *Omni Capital*, the Court rejected a suggestion that it should permit service of process not otherwise authorized by statute or rule, saying that it “would consider that action unwise, even were it within [its] power.” 484 U.S. at 111.

⁶ Plaintiff’s proposed “local forum” rule envisions that a defendant may be subjected to jurisdiction in Palau’s courts solely because the plaintiff resides here. While the plaintiff’s residence may be a factor supporting the exercise of jurisdiction, the proposed rule is not supported by the case relied upon by plaintiff, and is inconsistent with the general understanding that the existence of jurisdiction requires at least some connection between the defendant and the forum. See Restatement of Conflict of Laws (2d), § 24: “A state has power to exercise judicial jurisdiction over a person if the person’s relationship to the state is such as to make the exercise of such jurisdiction reasonable.”

The same concerns are raised by plaintiff’s invocation of the doctrine of pendent jurisdiction which, as developed in the United States cases relied upon by plaintiff, ordinarily relates only to extensions of subject matter jurisdiction.

These concerns are relevant not only to the question of due process under the Palau Constitution, but to the question whether judgments issued by this Court will be recognized elsewhere. See id. § 98 (only valid judgments recognized); § 92 (judgment valid only if judicial jurisdiction exists over defendant as set forth in preceding sections).

⁷ 14 PNC § 147 provides that “[n]othing contained in this subchapter limits or affects the right to serve process in any manner now or hereafter provided by law.” However, plaintiff has not suggested that any statute other than §142 might be applicable here.

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acts enumerated in this section thereby submits to the jurisdiction of the courts of
the Republic as to any cause of action arising therefrom:

(a) The transaction of any business within the Republic”.

Plaintiff argues that Dean’s actions in contracting to ship plaintiff’s household goods from California to Palau, and in utilizing air and sea carriers and a local transfer company to deliver those goods to Kruger in Palau constituted the transaction of business “within the Republic” and subjected it to jurisdiction as to the two causes of action which arose therefrom.⁸ Plaintiff asserts further that exercise of jurisdiction over Dean is consistent with due process.⁹

The Court agrees.¹⁰ The sweep of §142(a) is purposefully broad, allowing Palau’s courts to exercise jurisdiction over corporations who engage in any business in Palau -- even a single transaction -- with respect to legal claims that result from that transaction. See, e.g., *Micronesian Industrial Corp. v. M/T Bowoon No. 7*, 1 ROP Intrm. 57, 59 (Tr. Div. 1982). It is a much lower **1288** threshold than that posed by a “doing business” requirement, which requires a substantial and continuous presence in the forum state and which establishes that a corporation may be sued on any claim against it.

Here, by carrying out in Palau its contract to deliver plaintiff’s goods to him, Dean has submitted itself to the jurisdiction of this Court for the claims arising out of that contract. Directly on point and persuasive is the decision of the United States Courts of Appeals for the Second Circuit in *Aquascutum of London, Inc. v. S.S. American Champion*, 426 F.2d 205 (2d Cir. 1970). The Court there interpreted substantially identical statutory language to uphold jurisdiction in New York over an English-based corporation that contracted in London to ship certain goods to the plaintiff in New York. As the Court noted, the contract there, as alleged here, was not to put the goods on a boat but to deliver them to their destination: “W&J undertook not simply to arrange for transportation of the goods to New York City but to effect it.” 426 F.2d at 210. It mattered not that, as here, the defendant used intermediaries to accomplish that goal: “W&J was no less transacting business in New York because it employed steamship lines to perform the carriage for it.” Id.

Exercising jurisdiction over Dean on the facts alleged is also consistent with the requirements of due process. As has been developed in the United States, due process requires only that a corporate defendant have certain “minimum contacts” with a forum such that it is “reasonable . . . to require the corporation to **1289** defend the particular suit which is brought

⁸ Although plaintiff’s complaint contains six counts, he asserts specific long-arm jurisdiction only as to the first two, for breach of contract and for fraudulent inducement of contract.

⁹ Insofar as defendants’ motion is based solely on the pleadings without the submission of affidavits, the Court takes as true the allegations in plaintiff’s complaint, subject to proof at trial if the issue of jurisdiction remains contested.

¹⁰ In their motion to dismiss, defendants anticipated that plaintiff would rely on another subdivision of §142. Defendants did not submit a reply brief and thus have not addressed plaintiff’s arguments under §142(a).

Kruger v. Dean Worldwide, Inc., 4 ROP Intrm. 282 (Tr. Div. 1994) there.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 317 (1945). Here, as plaintiff points out, Dean -- which touts itself as a “Worldwide” company -- is in the business of making money by shipping goods to places like Palau and contracted to do so here.¹¹ Requiring it to defend claims related to that contract does not offend “traditional notions of fair play and substantial justice.” 326 U.S. at 310.

CONCLUSION

Defendants’ motion to quash service of process and defendant Dean’s motion to dismiss are denied; defendant Wilson’s motion to dismiss is granted. A status conference to discuss further proceedings is scheduled for February 17, 1994, at 9:30 a.m.

¹¹ These facts emphasize Dean’s purposeful activities via-a-vis Palau and distinguish its situation from that of the defendant in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980) (rejecting Oklahoma’s exercise of jurisdiction over a New York company based solely on “the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma”).