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Case Digest

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CASE DIGEST

This CASE DIGEST provides brief analyses of cases that represent current aspects of transnational law. The Digest includes cases that establish legal principles and cases that apply established legal principles to new factual situations. The cases are grouped in topical categories and references are given for further research.

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I. FOREIGN AFFAIRS

AGENCY FOR INTERNATIONAL DEVELOPMENT'S ADOPTION OF POLICY PLACING ABORTION-RELATED RESTRICTIONS ON GRANTS TO NONGOVERNMENTAL ORGANIZATIONS UPHeld, *DKT Memorial Fund Ltd. v. Agency for International Development*, 887 F.2d 275 (D.C. Cir. 1989).

Three nongovernmental organizations (NGO), Parivar Seva Sanstha from India (PSS), Population Services Family Planning Programmes, Ltd. from England (PSFP), and DKT Memorial Fund Ltd., a United States NGO (DKT), brought suit in the United States District Court for the District of Columbia. They asked the court to declare that the Agency for International Development (AID) had not properly implemented new policy limitations announced by the Reagan Administration.

According to the Foreign Assistance Act, 22 U.S.C. 2151b(b) (1982), the United States President is authorized to contribute assistance to foreign population planning. The administrator of AID was delegated the responsibility of allocating population planning funds. In 1984, at the United Nation's International Conference on Population in Mexico, the Reagan Administration announced a new family planning policy. This policy (Mexico City Policy) provided that NGOs may not receive funds

from the United States if they perform abortions or recommend abortion as a family planning alternative. Subsequently, AID adopted this policy by inserting certain restrictive clauses in contracts used by AID for providing grants to NGOs. The policy applies even in cases in which an NGO uses funds other than those received from AID to promote abortion.

The plaintiffs alleged that the clauses violate the Foreign Assistance Act and the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 (1982), as well as the plaintiffs' first amendment rights of freedom of speech and association. The district court held that the plaintiffs lacked standing and dismissed the case. The United States Court of Appeals for the District of Columbia reversed and allowed the plaintiffs to amend the complaint directing that there be further proceedings on the issue of standing and appropriate proceedings for disposition on the merits if the district court granted standing. The district court denied the foreign plaintiffs' claims for first amendment protection. The court held, however, that AID's refusal to allow United States NGOs to subgrant to foreign NGOs based on the new clauses violated DKT's right to freedom of association.

The United States Court of Appeals for the District of Columbia *Held: affirmed in part, reversed in part and remanded*. The court affirmed the district court holding on the statutory challenges. The plaintiffs claimed that the Mexico City Policy's funding requirements contradicted the purpose of the Foreign Assistance Act and exceeded the limits that Congress placed in the Act. The court disagreed, stating that Congress allowed the President the authority to limit funding for foreign NGOs.

The plaintiffs argued that the clauses violated the APA because they were arbitrary and capricious. According to the court, the APA was not violated because the President's power to make policy changes under 22 U.S.C. § 2151b(b) is very broad and because the APA could not be construed to grant the court the authority to review the President's decision.

The court of appeals affirmed the district court decision to deny standing to the foreign NGOs. The court held that because foreign NGOs were nonresident aliens acting outside the control and supervision of the United States government, they were not within the zone of interests protected by the first amendment. According to the court of appeals, the Reagan Administration's Mexico City Policy as implemented by AID was simply a refusal to subsidize NGOs' rights of free speech. The court made clear that even though United States entities had rights to use their funds in certain ways while receiving government aid, this would not require treating foreign entities in the same manner.

The court of appeals reversed the district court decision to allow relief based on DKT's constitutional claim. DKT claimed that the Mexico City Policy and the clauses used by AID to implement that policy violated DKT's constitutional right to freedom of association. The clauses prohibited United States NGOs from subgranting to foreign NGOs who were ineligible to receive grants directly from AID. According to the court, AID's adoption of the Mexico City Policy did not affect the right of DKT to associate but was a refusal to subsidize abortion-related activities carried out during DKT's association with foreign NGOs. The court reasoned that DKT could still associate with foreign NGOs, but that it could not subgrant to foreign NGOs who could not receive grants directly from AID.

The court remanded the case to the district court to dismiss the claim because DKT presented no claim ripe for adjudication. The court concluded that DKT had not shown that PSS or PSFP discontinued their association with DKT or would do so in the future. Therefore, DKT had sustained no injury in fact. *Significance*—In this decision, the court upheld the broad authority given to the President under the Foreign Assistance Act to make policy changes affecting the extent to which the Agency for International Development can dispense funds to foreign-based and United States-based nongovernmental associations.

II. PATENTS

FEDERAL LONG-ARM STATUTE AUTHORIZES ASSERTION OF PERSONAL JURISDICTION OVER FOREIGN HOLDER OF UNITED STATES PATENT IN PATENT OWNERSHIP SUIT, *National Patent Development Corporation v. T. J. Smith & Nephew Ltd.*, 877 F.2d 1003 (D.C. Cir. 1989) (en banc).

National Patent Development Corporation (National), a United States corporation, brought suit for a declaratory judgment against T. J. Smith & Nephew Ltd., a British corporation, in the United States District Court for the District of Columbia asking the court to declare that National had a one-half ownership interest in several United States patents reissued in 1985 to Smith & Nephew. National alleged that Smith & Nephew obtained rights to these patents through fraud, breach of contract and breach of fiduciary duties. National asked the court to declare that the patents were held in trust for Hydron, Ltd., a British corporation owned equally by National and another British corporation, SANACO, and to assign to Hydron "all rights, title, and interest in the patents."

The district court granted subject matter jurisdiction based on diver-

sity of citizenship but refused to exercise personal jurisdiction under 35 U.S.C. § 293 (1982) stating that, because the suit was for fraud and breach of contractual and fiduciary duties, it "was not an 'action respecting, the patent or rights thereunder' within the meaning of section 293."

On appeal, a panel of the United States Court of Appeals for the District of Columbia Circuit affirmed. The panel held that personal jurisdiction can be obtained over nonresident patent owners under section 293 if the complaint raises an issue of patent law. According to the panel, however, because this case involved a disagreement concerning patent ownership rather than patent law, case precedent required that the complaint be dismissed.

After a rehearing en banc, the court of appeals, *Held: Reversed and Remanded*. According to the court, the language of section 293 "broadly authorizes the assertion of jurisdiction" over foreign owners of United States patents in cases "respecting the patent or rights thereunder." The court held that a suit over patent ownership falls within the natural meaning of section 293 and that the natural meaning must be conclusive, absent a clearly expressed legislative intent to the contrary. The court pointed out that state court authority would not be usurped by the United States District Court for the District of Columbia under the natural meaning interpretation because the federal district court would continue to be constrained by federal subject matter requirements.

The court concluded that a party who takes advantage of the protections granted by registering a patent in the United States, even though the party resides in a foreign state, should be expected to participate in legal proceedings concerning that patent in United States courts. *Significance*—This decision expands the scope of the United States federal long-arm statute to include personal jurisdiction over a nonresident owner of a United States patent in a suit over patent ownership.

III. ANTITRUST

VENUE OVER ALIEN DEFENDANTS IN ANTITRUST SUIT PROPER IN ANY UNITED STATES FEDERAL DISTRICT COURT UNDER ALIEN VENUE ACT—*Go-Video, Inc. v. Akai Electric Co., Ltd.*, 885 F.2d 1406 (9th Cir. 1989).

Go-Video, Inc., a Delaware corporation, whose principal place of business is in Arizona, brought suit in the United States District Court for the District of Arizona against several foreign electronics manufacturers, a foreign electronics trade association, various United States motion picture companies, and one United States motion picture trade association claiming that these groups violated section 1 of the Sherman Act, 15

U.S.C. § 1 (1988). Go-Video claimed that defendants were involved in a conspiracy to halt the marketing of dual deck video cassette recorders (VCR) in the United States and as part of this conspiracy refused to deal with Go-Video. Go-Video held a United States patent for a "dual deck" VCR for which it had attempted to purchase parts necessary to its manufacture.

The plaintiff served the manufacturing defendants under section 12 of the Clayton Act; 15 U.S.C. § 22 (1988). Go-Video claimed that because the manufacturing defendants were alien corporations venue was proper under the Alien Venue Act, 28 U.S.C. § 1391(d) (1976), which states that "An alien may be sued in any district." The district court agreed, holding that it could obtain personal jurisdiction over the defendants on the basis of the defendants' "national contacts."

On appeal, the United States Court of Appeals for the Ninth Circuit *Held: Affirmed*. The appellants argued that antitrust plaintiffs who wish to use the service of process provision in section 12 of the Clayton Act should also be subject to that section's venue provision because section 12 should be interpreted as an "integrated whole." The appellants reasoned that the language of section 12 which refers to serving process "in such cases" should be interpreted to refer to cases in which the section's venue requirements are met. According to Go-Video, "such cases" should be interpreted to refer to any case which falls under the phrase "any suit, action, or proceeding under the antitrust laws . . ." in section 12.

The court held that process may be served on a defendant in an anti-trust case under section 12 of the Clayton Act even though venue is established under the Alien Venue Act rather than under section 12. The court reasoned that specific venue provisions, such as the provision in section 12 of the Clayton Act, are not interpreted to preempt, but rather to supplement, general venue laws such as the Alien Venue Act. The court also found that the interpretation relied on by Go-Video was more consistent with the legislative history and better supported by precedent than the interpretation of the appellants. According to the court, the purposes and language of the Clayton Act support the view that a party alleging injury should be permitted to bring suit in a greater number of forums.

In addition, the court held that the district court properly exercised personal jurisdiction over the appellants. The court agreed with the district court's conclusion that the worldwide service of process provision in section 12 authorizes the exercise of personal jurisdiction over an alien corporation in any judicial district, as long as the corporation has sufficient contacts with the United States. The court footnoted to *Omni Capital Int'l v. Rudolph Wolff & Co.* 484 U.S. 97 (1987), and *Asahi Metal*

Industry v. Superior Court, 480 U.S. 102 (1987), identifying that the United States Supreme court has explicitly declined to decide the constitutionality of national contacts analysis. The court concluded that its use of national contacts analysis was consistent with the notions of fair play and substantial justice preserved under the fifth amendment due process clause. *Significance*—In this decision, the court made it easier for suits to be brought against alien defendants under the United States antitrust laws by construing the Clayton Act to allow venue to be determined by a broader venue provision in the Alien Venue Act.

IV. ALIENS AND CITIZENSHIP

INS ORAL NOTICE TO EMPLOYER OF SUSPECTED VIOLATIONS OF IRCA SUFFICIENT TO ESTABLISH KNOWLEDGE ELEMENT OF OFFENSE, *Mester Manufacturing Co. v. Immigration and Naturalization Service*, 879 F.2d 561 (9th Cir. 1989).

The Immigration and Naturalization Service (INS) served a Notice of Intent to Fine (NIF) on Mester Manufacturing Co. (Mester), located in California and Mexico, charging employment violations of the Immigration Reform and Control Act (IRCA), 8 U.S.C. § 1324a (1986). According to the INS, Mester also committed paperwork violations by failing to produce certain employee verification forms (I-9) to the INS for review. At a subsequent hearing requested by Mester, the administrative law judge (ALJ) issued a cease and desist order for one year and fined Mester \$500.00 for each of six discovered violations.

The United States Court of Appeals for the Ninth Circuit *Held: Affirmed*. According to the court, IRCA is a major change in immigration law and this was the first time a circuit court reviewed the Act's employer sanctions. Under IRCA an employer is forbidden to knowingly hire or continue to employ an alien whose employment is not authorized in the United States. If requested, notice and a hearing before an ALJ, as provided in the Administrative Procedure Act, 5 U.S.C. § 554 (1982), must be given to those charged with violating IRCA.

Mester claimed that the IRCA penalties violated substantive and procedural due process. According to Mester, its right to procedural due process was denied because it received inadequate notice. The court disagreed, finding that the citation sufficiently informed Mester of the charges against it. In addition, the court held that Mester's ignorance of the statute's requirements was no defense and that the company was not entitled to a full explanation of the alleged violations before enforcement procedures were implemented.

Mester next claimed that the INS method of notifying Mester violated

the provisions of the statute. The INS cited only paperwork violations and notified Mester orally of employment violations. According to the court, 8 U.S.C. § 1324(a)(i)(2) seems to make the citing of all suspected violations mandatory. The court, however, held that the INS complied with the statute because it cited the paperwork violations which were the only violations that in fact existed on the date of the citation. The court concluded that the knowledge element of Mester's offense was satisfied by oral notice of the employment violations and that a determination as to whether the INS should institute better procedures is a matter of executive discretion.

Significance—In this first review by a United States circuit court of the employer sanctions under IRCA, the court determined that oral notice by the INS of suspected violations of the statute was sufficient to satisfy the knowledge element of the offense and did not violate the Constitution's due process guarantees.

