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THE BASSETT BULLETIN™

ZINC NACIONAL, S.A. VS. BOUCHE TRUCKING, INC.

Under state and federal law, a non-resident Defendant is not usually subject to the jurisdiction of Texas courts if their product just happens to pass through Texas on its way to somewhere else. However, a recent decision handed down by the 8th District Court of Appeals in El Paso demonstrates that a company can be brought under the personal jurisdiction of Texas courts if they ship their product through Texas as part of a regular distribution network. This decision could make it easier for Plaintiffs to drag non-resident Defendants under the jurisdiction Texas courts, especially in trucking cases.

FACTS OF THE CASE

Zinc Nacional (Zinc) is based in Monterey, Mexico, and is a Mexican corporation that manufactures paper and related products for world-wide distribution. It does not have any kind of office in Texas, has no employees in Texas, does not advertise in Texas, and does no marketing in Texas. Only three of 260 world-wide customers are located in Texas. Zinc sells its products to manufacturers in New Mexico, Nevada, and Florida, using a Mexican company, C.H. Robinson de Mexico, for transportation.

One of Zinc's customers is American Gypsum, located in Albuquerque, New Mexico, who receives two to three shipments of paper from Zinc each week. Zinc loaded a shipment of eight rolls of paper on December 13, 1999, to be shipped to American Gypsum. C.H. Robinson de Mexico, using their own trailer, shipped the load from Monterey Mexico, to Laredo, Texas, where it was normally delivered to a customs agent before entering the United States. The purchase order specifically stated "F.O.B. Mid-Bridge Laredo" to ensure that the transfer of title took place in Nuevo Laredo, Mexico, and not Texas. The shipment was then picked up in Laredo by a Texas corporation, Bouche Trucking, Inc. (Bouche), for transport to New Mexico.

The driver for Bouche was Jorge Arellano, and on December 14, 1999, he picked up the shipment from Zinc to be delivered to American Gypsum in Albuquerque. The rolls of paper shifted during transport causing the trailer rig to overturn on U.S. Hwy. 55. Arellano sued Bouche, alleging negligence in (1) failing to properly load the paper, (2) failing to properly secure the load, and (3) failing to properly hire and/or train its personnel. A third-party petition was then filed by Bouche against Zinc seeking indemnity and contribution.

THE TRIAL COURTS' RULING

Zinc filed a Special Appearance in the trial court claiming it was not subject to the trial court's jurisdiction because it was a non-resident Defendant. The trial court denied Zinc's Special Appearance and found that Texas courts had jurisdiction over Zinc. The trial court did not issue any findings of fact or conclusions of law in denying the Special Appearance. Zinc then filed this interlocutory appeal.

THE COURT OF APPEALS' DECISION

In this case, the 8th District Court of Appeals agreed with the trial court, and found that a Texas court had jurisdiction over Zinc even though it was a non-resident Defendant. The Court found that Zinc had purposeful contacts with Texas, and that it deliberately structured its business to use Texas ports of entry and Texas roads to transport its products on a regular basis.

In coming to this decision, the Court relied on Section 17.042 of the Texas Civil and Practice Remedies Code, also known as "the long—arm statute." Section 17.042 permits Texas courts to exercise jurisdiction over non-resident Defendants that conduct business in Texas. However, the Court pointed out, the application of the "long—arm statute" must be consistent with federal and state constitutional due process guarantees of fair play and substantial justice.

The Court's focus next turned to the Defendant's activities and expectations, the key considerations in determining whether the jurisdiction was proper. In order for specific jurisdiction to be found, two requirements must be met: (1) the contact with the forum must be purposeful (purposeful availment) and (2) the cause of action must relate to, or arise from, those contacts.

Further, the Defendant must seek some benefit, advantage, or profit by using the jurisdiction in question. Here, Zinc's contact with Texas was purposeful, as it structured its business to use Texas ports, roads, and highways. Therefore, there was an adequate relationship between the forum, Zinc, and this litigation. Additionally, the second prong of this test was met, as the cause of action arose from an accident involving a truck loaded by Zinc to be shipped knowingly across the state of Texas.

After finding that Zinc had purposefully established minimum contacts with Texas, the Court stated that it must also decide whether asserting personal jurisdiction comports with the traditional notions of fair play and substantial justice. The Court considered three factors in deciding the issue: (1) the burden on the Defendant, (2) the interest of the state, and (3) the Plaintiff's interest in obtaining convenient and effective relief.

The Court found the burden on Zinc does not offend the traditional notions of fair play and substantial justice as the distance between Monterey, Mexico, and El Paso, Texas, is not adequate to defeat jurisdiction. In addition, the second and third factors were found to be met, as Texas has a keen interest in ensuring that its roads and citizens are kept safe, the Plaintiff is a Texas resident who works for a Texas company, and the accident occurred in Texas.

WHAT EFFECT WILL THIS DECISION HAVE?

This decision will likely allow Plaintiffs to force more non-resident Defendants into Texas courts, and make it harder for Defendants to dispute jurisdiction. It would be prudent to assume that if your company has any regular shipments that travel through Texas, even for a very short distance, you may well find yourself in a Texas court if anything goes wrong.

Here are some suggestions to limit your exposure while shipping in a foreign jurisdiction:

- (1) Draft contracts with your brokers, shippers, or carriers to ensure that they will assume your defense and indemnity in case of an accident.
- (2) Review your insurance policy and confirm that (a) you are protected in those states and (b) your coverage is large enough to cover the loss caused by any catastrophic accidents.
- (3) In the event of an accident or lawsuit, seek counsel immediately to protect your interests and rights from the beginning.

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