

US COURTS ON LEGAL BASIS FOR JURISDICTION

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Two recent decisions, one from the United States Supreme Court and the other from the United States Court of Appeals for the Eleventh Circuit, present new developments which may affect domestic and international litigants. In *Hertz Corp. v. Friend*, ___ U.S. ___, 130 S.Ct. 1181 (2010), the U.S. Supreme Court clarified that for jurisdictional purposes, a corporation's "principal place of business" is its "nerve center" which will typically be the corporation's headquarters. The Eleventh Circuit's recent decision in *Wilson v. Island Seas Investments, Ltd.*, 590 F.3d 1264 (11th Cir. 2009), made clear that a plaintiff's financial ability to prosecute his or her case in a foreign jurisdiction should be taken into consideration by the district court in deciding whether to dismiss the plaintiff's action based on the doctrine of *forum non conveniens*.

Hertz Corp. v. Friend:

In *Hertz Corp.*, two California citizens sued the Hertz Corporation ("Hertz") in a California state court for alleged violations of California's wage and hour laws. Hertz responded by filing a notice of removal to federal court based on diversity jurisdiction. In other words, Hertz claimed that its "principal place of business" was located in New Jersey, not California, and therefore jurisdiction was proper based on the federal statute permitting a federal court to hear claims premised on diversity of citizenship amongst the parties.

In support of its position Hertz submitted a declaration stating, among other things, that Hertz operated facilities in 44 states; that it operated only 273 of its 1,606 car rental facilities in California; that it employed only 2,300 of its 11,230 full-time employees in California, and that it generated approximately \$811 million of its \$4.37 billion annual revenue from California-based rentals. More importantly for the Court, the declaration also stated that the leadership of Hertz and its domestic subsidiaries was located at the company's "headquarters" in Park Ridge, New Jersey.

Accepting Hertz's statements at face value, the district court nonetheless determined that Hertz was a citizen of California. The district court reached its conclusion based on the Ninth Circuit Court of Appeals' test which required the court to undertake a two-step analysis. First, a district court must determine the amount of a corporation's business activities on a state by state basis. The state which encompasses the corporation's greatest amount of operations is designated as the corporation's "principal place of business." If there is no such state, then the corporation's "principal place of business" is its "nerve center," usually considered the state where the majority of its executive and administrative functions are performed. Applying this test, the district court determined that California was Hertz's "principal place of business." The Ninth Circuit Court of Appeals affirmed, and Hertz petitioned the U.S. Supreme Court for certiorari review.

Justice Breyer in speaking for a unanimous court began by noting that the phrase “principal place of business” had proved more difficult to apply than its drafters had intended. On the one hand, the issue was clear when a corporation’s headquarters and executive offices were located in the same state in which it transacted most of its business. However, the issue became exceedingly complex when a corporation would have its headquarters in one state and conduct most of its operations in another.

Over the years, the Court noted, the various circuits had developed exceedingly fact-intensive tests which made the determination of a corporation’s “principal place of business” cumbersome and unpredictable. The Supreme Court therefore concluded that a more practical solution was to designate the corporation’s “nerve center” as its “principal place of business.” In doing so, the Court stated that a corporation’s “nerve center” would be the place where a corporation’s officers direct, control, and coordinate the corporation’s activities (usually its headquarters). By adopting the “nerve center” approach, the Court determined that both the courts and litigants benefited from a straightforward test which would streamline jurisdictional questions, thus allowing the parties to conserve resources better directed at litigating the merits of the underlying dispute.

Wilson v. Island Seas Investments, Ltd.:

Wilson arose from the unfortunate death of a vacationer in the Bahamas. While vacationing on Grand Bahama Island, the decedent and her family decided to take a banana boat ride from a vendor which operated a kiosk at the hotel where the family was staying. Prior to boarding the banana boat, the decedent allegedly told the kiosk attendant that she and another family member could not swim. The kiosk attendant assured the decedent that the banana boat was perfectly safe and that she need not be concerned. Tragically, while riding on the banana boat, the boat capsized, costing the decedent her life.

The decedent’s daughter filed a lawsuit in the Southern District of Florida as the personal representative for the decedent’s estate. The defendants responded by moving to dismiss the lawsuit based on the doctrine of *forum non conveniens*. The defendants were all residents or corporations of the Bahamas. At least one defendant, it was alleged, owned and operated various Florida corporations, unrelated to the litigation.

In support of her response to the defendants’ motion, the plaintiff presented an un rebutted affidavit from a Bahamian attorney which stated numerous obstacles to the plaintiff pursuing her case in the Bahamas. For example, the affidavit stated that contingency fee agreements are outlawed in the Bahamas; that an attorney would likely charge an hourly rate of \$600 for handling the case; that the plaintiff’s U.S. attorneys would not be permitted to prosecute the action in the Bahamas on her behalf; that a Bahamian court would require the plaintiff to post security for litigation costs; that the plaintiff could be assessed the defendants’ attorneys’ fees should she be unsuccessful in her case; and that a Bahamian court would likely not grant the plaintiff a jury trial. The plaintiff also filed her own affidavit stating, among other things, that she would not be able to litigate her claims if the case were to be heard in the Bahamas, rather than Florida. Ultimately, the district court dismissed the case, finding that the balance of conveniences strongly favored dismissal as the Bahamas was the proper forum.

On appeal to the Eleventh Circuit, the plaintiff claimed that the district court erred in conducting its balancing test of the conveniences between the two forums. The Eleventh Circuit agreed, concluding that the district court erred in several respects. The Court concluded, for example, that the district court incorrectly considered the Southern District of Florida as the relevant forum, rather than Florida as a whole, in conducting its *forum non conveniens* analysis. The district court also erred, according to the Court, by relying heavily on the fact that key witnesses were located in the Bahamas when the defendants conceded that certain Bahamian witnesses, such as the kiosk attendant, could not be located. Most notably, however, was that the Eleventh Circuit found that the district court erred by failing to take into consideration the financial inability for the plaintiff to pursue her claims in the Bahamas should the case be dismissed.

The Eleventh Circuit therefore remanded the case to the district court so that it could properly take these factors into consideration in conducting its *forum non conveniens* analysis.

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