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CASE DIGEST

I. Act of State Doctrine

Bandes v. Harlow & Jones, Inc.
570 F. Supp. 955 (S.D.N.Y. 1983)

During the Nicaraguan civil war in 1979, Salvador Bandes, president and majority stockholder of Industria Nacional de Clavos y Alhambres de Puas (INCA), fled from Nicaragua and the Sandinista revolutionary forces "intervened" in INCA. Shortly before Bandes's departure, INCA had paid $460,000 to an American firm, Harlow and Jones, Inc. (H & J), for steel billets which were never delivered. Bandes entered into negotiations with H & J for a refund of the payment. Prior to the settlement, however, interventor Alvarez informed H & J that he, as the Nicaraguan state Fideicommissary, was the only authorized representative of INCA.

H & J brought an action in the United States District Court for the Southern District of New York, interpleading Bandes and Alvarez, to determine who the proper recipient of the refund should be. Bandes asserted that since the interpleader fund was written in the United States and in light of the fact that the confiscatory actions of the Nicaraguan Government Council were inconsistent with United States laws and policy, the court was not required to give any legal effect to those actions. Alvarez maintained, however, that the intervention of INCA was not a permanent taking because, under decrees enacted by the Government Council, Bandes had a right to seek redress by appearing in person before the Nicaraguan Attorney General to contest the confiscation of his property within thirty days of the intervention.

The district court granted Bandes's motion for summary judgment. It held that, under the act of state doctrine, which precludes judicial scrutiny of politically-sensitive foreign affairs, no effect could be given to the intervention of INCA, and that the refund should be returned to Bandes, the rightful representative of INCA. The court noted that, although the act of state doctrine did not mandate a "hands-off attitude" when confiscated property was located in the United States, the court could not give effect to the

foreign state's action, since the taking had been without compensation, and was, therefore, contrary to the laws and policy of the United States.

II. COMMERCE

Moyglare Stud Farm Ltd. v. Due Process Stable, Inc.
569 F. Supp. 1565 (S.D.N.Y. 1983)

In this diversity action, the plaintiff, Moyglare Stud Farm, Ltd., an Irish corporation, seeks a declaratory judgment to determine whether the defendant's revocation of a contract of sale is invalid. The contract calls for the sale of a thoroughbred racehorse for $1 million, with annual payments of $250,000 to be made during the four years following the sale. Negotiations regarding the transaction took place in Florida, New Jersey and New York. Pursuant to the defendant's request, a stipulation that New Jersey law was to apply to the contract and that delivery of the horse was to take place in New Jersey was included in the contract. Eighteen months after delivery, defendant notified Moyglare that it was revoking its acceptance of the horse due to a concealed injury present at the time of sale.

Defendant contends that, since plaintiff, a corporation neither registered nor authorized to do business in New Jersey, did not comply with the Corporation Business Activities Reporting Act, N.J.S.A. 14A:13-14 *et seq.* it was barred from bringing suit on the contract. The district court held that although New Jersey law must apply in the case *sub judice*, it was unnecessary to dismiss the complaint under the state's door-closing statute. Pursuant to subsection C of N.J.S.A. 14A:13-20, the court has the power to excuse the corporation's failure to file a timely report and allow plaintiff access to the courts. Further, the district court held that the plaintiff had subsequently filed the appropriate reports and did not intentionally evade New Jersey taxes or knowingly avoid the state's reporting requirements.

The court found that the statute was meant to act essentially as an information gathering device rather than as a punishment of foreign entities for their ignorance of New Jersey law. The court concluded that an isolated transaction occurring in an interstate forum should not preclude a party from asserting a claim due to its ignorance of, and thus noncompliance with, a state law.

III. Constitutional Law

Keene v. Smith
569 F. Supp. 1513 (E.D. Cal. 1983)

Plaintiff, a member of the California State Senate and the California State Bar, brought this action challenging the constitutionality of the Foreign Agents Registration Act, 22 U.S.C. §§ 611, *et seq.*, ("Act") which requires each "agent of a foreign principal" to register with the Attorney General of the United States. The act required all registrants to supply the Attorney General with two copies of any "political propaganda" intended for dissemination in the United States. The plaintiff argued that the challenged prohibitions infringed upon his first amendment right of free speech. Plaintiff alledged that, if his Canadian films on nuclear weaponry and acid rain were labelled as "political propaganda," he would be branded as a purveyor of propaganda and which would thus have an adverse impact on his professional and personal reputation as an attorney and a state senator. The plaintiff moved for a preliminary injunction and defendants moved to dismiss.

The court held that the plaintiff had demonstrated his standing to sue by exhibiting (1) that he had suffered, or would imminently suffer, some injury, (2) that the injury could fairly be traced to the challenged conduct, and (3) that the injury could be remedied on an exercise of the court's power. First, the court found that the plaintiff's injury was "real and immediate" because of his inability to present his ideas to the public for an evaluation of their merits due to the characterization of those ideas as "political propaganda." Second, such a characterization of his films would denigrate the contents of the films and vilify the plaintiff as a purveyor of propaganda. The court found that, as a "direct" and "traceable" consequence of the defendant's conduct, there would be a rejection of the plaintiff's ideas. Third, the court concluded that the plaintiff had sought the appropriate judicial remedy through an injunction. It noted that he had demonstrated the existence of serious questions meriting litigation and had shown the significantly heavier burden of hardship.

The court held that each day the plaintiff's films were unavailable to him as a medium of communication, his first amendment right of freedom of speech was abridged. This hardship was far greater than any likely to befall the defendant from a denial of a preliminary injunction. Finally, the court determined that there

was a sufficient basis in both law and fact to enjoin the defendant from characterizing the films as "political propaganda."

IV. Customs Duties

Schaper Manufacturing Co. v. U.S. International Trade Commission

717 F.2d 1368 (Fed. Cir. 1983).

Schaper Manufacturing Co., (Schaper) a toy manufacturing company, and A. Eddy Goldfarb, (Goldfarb) a toy and game inventor sought review of a United States International Trade Commission (I.T.C.) order dismissing their complaint in the U.S. Court of Appeals for the Federal Circuit. Plaintiffs initially brought suit under the Tariff Act of 1930, (19 U.S.C. § 1337) for unfair trade practices and patent infringement, alleging that certain importers had copied their design of a toy vehicle and were importing such copies without designating the true source of the toy's design. The I.T.C. dismissed the action on the grounds that the unfair practices did not affect or injure "an industry efficiently and economically operated in the United States" and therefore the claim did not come within the scope of the Tariff Act. The U.S. Court of Appeals agreed with the ITC.

In starting with the premise that the definition of "United States" is geographical and not based on citizenship, the court found that the production of the toy vehicle was not an industry within the U.S. Although the original design and specifications were developed in the U.S. and Schaper made quality control inspections in the U.S., the fact that all of the manufacturing and packaging took place in Hong Kong removed Schaper and Goldfarb from the purview of the Act.

The court construed the statute consistently with Congressional intent and noted that Congress did not intend to protect American importers like Schaper, who cause the imported item to be produced for them abroad and engage in relatively small non-promotional and non-financial activity in this country. Furthermore, even if present-day economic realities call for broader definitions to protect American interests, the court found that it would be up to Congress to legislate such a policy.

V. Discovery

Lasky v. Continental Products Corp.
569 F. Supp. 1227 (E.D.Pa. 1983)

Lasky brought a products liability action against Continental Gummi-Werke, Aktiengesellschaft (CGW), a corporation organized under the laws of the Federal Republic of Germany, seeking to recover damages for injuries sustained in an accident allegedly caused by defective tires manufactured by CGW. He then proceeded by serving interrogatories and a request for production of documents on CGW. In response, CGW moved for a protective order requiring that all discovery be done in accordance with the provisions of the Hague Convention.

The court denied the motion because no evidence was presented to show that discovery under the Federal Rules of Civil Procedure would violate German law. Although the Convention specifies that letters of request are the only method of compelling the production of evidence in foreign countries, the language is permissive. Article 27 states: "[the Convention] shall not prevent a Contracting State from . . . . permitting by internal law or practice, methods, of taking evidence other than those provided for in the Convention." The court concluded that if it had followed the general provisions of the treaty, the plaintiffs would have been precluded from obtaining valuable evidence since West Germany does not execute letters of request for the purpose of obtaining pretrial discovery of documents.

VI. Dumping

Armco, Inc. v. United States
570 F. Supp. 51 (Ct. Int'l Trade, 1983)

Armco, a domestic steel manufacturer, brought an action to review a determination by the United States Trade Commission that the United States steel industry had not been materially injured by the importation and sale of Korean steel wire nails in the United States. Armco claimed that it had been materially injured by sales of Korean steel wire nails in the United States market below the trigger price. Armco moved for summary judgment and for preliminary injunctive relief to enjoin the liquidations of any entries of those products after May 23, 1978 and before February 2, 1978. They also sought to have the case remanded to the Trade

Commission for a determination as to whether any false, fictitious or fraudulent representations in the administrative record had affected the Commission's conclusions. Armco further requested that all liquidations or entries made after December 14, 1982 on merchandise which entered between May 23, 1980 and February 28, 1982 be set aside and stayed. This case resulted from one of Treasury Department's antidumping investigations based on information obtained from the "trigger mechanism." Under this procedure, prices of imported steel mill products were monitored, and sales below the allowable trigger price, or fair value price, were targeted for antidumping investigation pursuant to the Antidumping Act of 1921, 19 U.S.C. § 160 (repealed 1979).

An investigation of Korean products was conducted because a survey of shipments of Korean steel wire nails from May 1, 1978 to May 28, 1978 indicated that twenty-two of thirty-three Korean companies were selling such products to the United States below the target price. In August of 1982, the United States International Trade Commission found that less-than-fair-value imports were causing material injuries to domestic industries. Accordingly, antidumping duties were imposed on Korean steel wire nails which entered the United States on or after February 3, 1982.[1] This regulation required that Korean companies file deposits in the amount of their estimated antidumping duties upon the entry of Korean nails into the United States.

The Court of International Trade denied Armco's motion for summary judgment and refused to grant the requested preliminary injunction, holding that Armco had not established a nexus between its loss of sales and Korea's failure to uphold the United State's dumping duties. The court found that Armco also failed to show the threat of immediate irreparable harm which is necessary to justify the grant of an injunction. The court reasoned that the nails had long since entered domestic commerce and were not affected by antidumping duties currently imposed on the Korean merchandise pursuant to 47 Fed. Reg. 35266.

Armco's motion for remand was also denied based on the court's finding that Armco had not shown that the Korean nails caused any injury to domestic industries. Finally, the court concluded that since Armco had failed to seek and obtain a timely injunction to prevent liquidation of the entry of the Korean nails

1. 47 Fed. Reg. 35266 (Aug. 13, 1982).

during the period of initial monitoring, their motion to set aside the liquidations covering merchandise which entered between May 23, 1980 and February 2, 1982 should also be denied.

VII. IMMIGRATION

Bahramizadeh v. United States Immigration and Naturalization Service
717 F.2d 1170 (7th Cir. 1983)

Bahramizadeh, a native of Iran, posted a $3,000 maintenance of status and departure bond as a condition for entry into the United States as a nonimmigrant student. The bond stipulated two conditions to which Bahramizadeh agreed. The conditions were: (1) not to overstay the one year term authorized by the bond; and, (2) not to accept employment in the United States without the permission of the Immigration and Naturalization Service (INS).

With the permission of the INS, Bahramizadeh extended the bond's one year term. During this extended period, he married a United States citizen who filed a petition on his behalf with the INS seeking to obtain an immigrant visa. Before the INS processed this petition, Bahramizadeh visited his local INS office twice in order to facilitate the processing of the petition and to extend his student visa which was about to expire. After the expiration of the student visa, Bahramizadeh again visited the INS office. An official of the INS advised Bahramizadeh during each visit that the INS was aware of his circumstances and, due to his wife's pending petition, he need not extend his student visa.

The INS subsequently granted the wife's petition after a considerable length of time due to administrative delays. Shortly thereafter, the INS notified Bahramizadeh that he had forfeited the $3,000 bond which he had posted for his student visa because he had breached its terms by overstaying the stipulated time limit. After exhausting all administrative avenues of review, Bahramizadeh filed a complaint in the applicable district court. The court granted the INS's motion for summary judgment because they found that Bahramizadeh had breached the terms of the bond.

On appeal, the Seventh Circuit noted that, pursuant to 8 C.F.R. ¶ 103.6(c)(3), a bond forfeiture required a substantial violation of the bond's terms. The court held that the current INS interpretation of a "substantial violation" was inconsistent with the

express wording of the statute and was also inconsistent with the legislative intent behind the statute because the Commission which drafted it had effectively read the requirement of "substantial" out of the regulation. The Seventh Circuit reversed and remanded the case to the district court to determine whether the violation was "substantial" in light of the fact that Bahramizadeh made good faith and reasonable efforts to comply with the bond's terms. The district court's findings in this case may provide guidelines for future interpretations determining which acts constitute a substantial violation of a maintenance of status and departure bond.

VIII. JURISDICTION OF INTERNATIONAL ORGANIZATIONS

Mendaro v. World Bank
717 F.2d 610 (D.C. Cir. 1983)

Susana Mendaro, an employee of the International Bank for Reconstruction and Development (the World Bank), brought suit against the bank under title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) to 2000(e)-17 (1976 & Supp. V 1981), alleging that during her term of employment she was a victim of sexual harassment and discrimination. She claimed that her subsequent termination was a retaliatory action on the part of the Bank. The Equal Employment Opportunity Commission dismissed Mendaro's complaint on the ground that they lacked jurisdiction, finding that the World Bank was an international governmental agency and was not subject to the laws of the United States.

Ms. Mendaro then filed the present suit in the United States District Court for the District of Columbia. The Bank moved to dismiss on the grounds that, as an international government organization, its internal affairs are not subject to the jurisdictions of its member states. Mendaro argued that under article VII section 3 of the Article of Agreement of the World Bank, 27 December 1945, 60 St. at 1440, 2 UNTS 134, the Bank effectively waived any immunity from suit provided by the International Organizations Immunities Act, 22 U.S.C. § 288-288i (1976 & Supp. V 1981). Article VII, section 3 permits actions to be brought against the World Bank in a "court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities." The district court declined to follow Mendaro's broad interpretation of article VII section 3, and dismissed the ac-

tion for lack of jurisdiction.

The Court of Appeals for the District of Columbia, affirmed the decision of the district court. It interpreted article VII, section 3 narrowly as a result of the International Organizations Immunities Act. The Act, and case law under it, hold that the immunity of an international organization must be expressly waived. The court found no such express waiver.

The court reasoned that subjecting aspects of the internal operations of the World Bank, such as employee relations, to the jurisdiction of the courts of its member states, would disrupt the operation of the Bank. The court found that international organizations such as the World Bank, owe their allegiance not to individual governments, but to principles and policies. A waiver of immunity would force the World Bank to comply with the often conflicting employment laws of its member states. The court found that it would be administratively burdensome for Bank officers, responsible for carrying out the essential purposes of the organization, to concern themselves with the employment laws of member states.

This case is significant because it ensures that the internal affairs of international organizations will not be subject to the jurisdiction of United States courts. Absent an express waiver of immunity, international organizations such as the World Bank, can conduct the activities for which they were chartered, free from compliance with individual state's laws.

IX. Trade Act

Abbott v. Donovan
570 F. Supp. 41 (Ct. Int'l Trade 1983)

In 1980, Local 113 of the Allied Industrial Workers of America filed a petition with the Department of Labor's Office of Trade Adjustment Assistance (OTAA) requesting a certification of eligibility for trade adjustment assistance benefits under the Trade Act of 1974, 19 U.S.C. §§ 2101-2487 (1976 & Supp. IV 1980) for all employees of the Dana Corporation's Marion, Indiana plant. The Secretary of Labor concluded that increases in imports of articles similar to or directly competitive with such products as journal crosses and bearing races produced at the Marion plant significantly contributed to the decline in sales and/or production and to the total or partial separation of workers at that plant. Only those workers

engaged in employment related to the affected articles were certified for eligibility. Plaintiff's request for administrative reconsideration as to the remaining employees was granted, and, upon the Secretary's reaffirmation of the prior decision, they sought judicial relief in the United States Court of International Trade.

Plaintiffs presented four questions to the court for consideration. First, they requested the court to determine whether OTAA's failure to conduct a field investigation was an abuse of discretion. The court found that OTAA did not abuse its discretion in conducting its investigation by mail because both the nature and extent of an investigation are matters which rest within the sound discretion of the Secretary of Labor.

Second, they asked the court to consider whether all of the employees at the Marion plant constituted an appropriate subdivision of the firm. Under the Trade Act, the Secretary of Labor may certify as eligible for trade adjustment assistance benefits only those workers who were employed in the subdivision that produces the article that was adversely affected by imports of like or directly competitive articles.

Third, the plaintiffs requested a determination as to whether the Secretary of Labor erred in refusing to find service workers who provided ancillary and support services to both certified and non-certified departments eligible for trade adjustment assistance. The court concluded that service workers may not be certified as eligible for trade adjustment assistance benefits unless there is an important causal nexus between increased imports and the layoff of service workers. The Department of Labor has interpreted the Trade Act as requiring that at least 25 percent of the service workers' activity be expended in service to the subdivision which produces the import-impacted article. The court remanded this part of the action on the grounds that the Secretary's determination was not supported by substantial evidence in that the administrative record contained no data supporting the Secretary's findings that significantly less than 25 percent of the service workers' activity was expended in service to the certified departments.

Finally, they sought a judgment as to whether the Secretary's determination resulted in dissimilar treatment of similarly situated workers without a rational basis in violation of their constitutional guarantee of equal protection of the law. The court stated that the different treatment resulted not from arbitrary, capricious or improper distinctions by the Secretary, but rather from a proper in-

terpretation of the statute. The class of workers denied certification did not satisfy the criteria of the statute because they were not involved in producing articles directly affected by increased imports of similar or directly competitive articles.