7-1-1961

Venue: Forum Non Conveniens -- The Florida View

Herbert Odell

Follow this and additional works at: http://repository.law.miami.edu/umlr

Recommended Citation
Available at: http://repository.law.miami.edu/umlr/vol15/iss4/8
The plaintiff was injured while working for defendant-railroad in Duval County, Florida. An action was brought under the Federal Employers' Liability Act in Dade County, Florida. The defendant predicated its motion for dismissal on the doctrine of forum non conveniens. Although the defendant conceded that venue was proper in Dade County, it contended that Duval County was the more convenient place for trial. The court denied the motion on the ground that it had no authority to entertain it. Held, judgment for plaintiff affirmed.

The doctrine of forum non conveniens is not applicable when invoked to effectuate an intrastate change of venue. Atlantic Coast Line R.R. v. Ganey, 125 So.2d 576 (Fla. App. 1961).

The doctrine of forum non conveniens originated in the Scottish courts, although it was early recognized, theoretically at least, in the American courts. Application of the doctrine requires that the defendant be amenable to process in at least one other forum in addition to the one in which the litigation was begun. Jurisdiction and venue are

---

2. The defendant sought reversal on several other grounds in addition to the one indicated, but they are of no relevance to the point under discussion in this article.
3. Barrett, The Doctrine of Forum Non Conveniens, 35 CALIF. L. REV. 380 (1947); Cameron, Forum Non Conveniens, 23 Miss. L.J. 11 (1951). The doctrine in its development in Scotland was referred to as forum non competens, but this was changed to forum non conveniens as the court realized that the doctrine was not concerned with the competency of the court, but rather with the convenience of the particular forum in which the complaining party had instituted proceedings. Tulloch v. Williams, 4 Scots Rev. R. (8 Dunlop) 653 (1846); Longworth v. Hope, 3-M Sess. Cas. 1049 (Scot. 1865); Clements v. Macaulay, 4 Scots Rev. R. (4 Macph.) 603 (1866); Williamson v. North-Eastern Ry., 11-R Sess. Cas. 506 (Scot. 1884).
4. Great V. Ry. v. Miller, 19 Mich. 305 (1869); Ferguson v. Neilson, 11 N.Y. Supp. 524 (Sup. Ct. 1890); Collard v. Beach, 93 App. Div. 339, 87 N.Y. Supp. 884 (1904). In 1830 there was a New York case that might have been concerned with the doctrine, but the opinion is so terse it is difficult to ascertain exactly what it held. Carpenter v. Watrous, 5 Wend. 102 (N.Y. Sup. Jud. Ct. 1830).


For notes discussing the doctrine's ramifications in the federal courts on the basis of the decision in Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947), see 47 COLUM. L. REV. 853 (1947); 15 GRO. WASH. L. REV. 489 (1947); 46 MICH. L. REV. 102 (1947); 26 TEXAS L. REV. 218 (1947); 21 TUL. L. REV. 669 (1947).
5. In Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 506-07 (1947), Mr. Justice Jackson, speaking for the Court said, "In all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them." In Longworth v. Hope, 3-M Sess. Cas. 1049, 1058 (Scot. 1865), Lord Deas stated, "Where there are two competent forums, the question is, do the ends of justice require that an action brought in the one should be sisted in order that proceedings may be taken or go on in the other?"
assumedly proper in the forum of origination before the doctrine will be considered. Whether the plea of forum non conveniens will be accepted is discretionary with the trial court. However, if applied, the doctrine results in a dismissal of the suit and the plaintiff must seek relief in the more convenient forum.

There are three general bases for the application of forum non conveniens. The Scottish view is that "the object, under the words 'forum non conveniens' is to find that forum which is the more suitable for the ends of justice, and is preferable because pursuit of the litigation in that forum is more likely to secure those ends." The English courts employ the doctrine "whenever there is such vexation and oppression that the defendant who objects to the exercise of the jurisdiction would be subjected to such injustice that he ought not to be sued in the Court in which the action is brought. . . ." The New York courts offer a third theory for the application of forum non conveniens. They base their adhribition of the doctrine on the inconvenience which would result to the court if the plaintiff were allowed to maintain the action in a New York forum. Whenever both parties are nonresidents and the cause of action arose in another state, the New York courts automatically apply the doctrine unless there are special circumstances to compel retention of the litigation. This use of the theory has hardened a discretionary doctrine into a formulaic concept. Thus, there are three general bases on which to sustain a dismissal under forum non conveniens: (1) the Scottish view which is to seek justice for both parties; (2) the English view which is to avoid vexation and oppression to the defendant; and (3) the New York view which is to prevent inconvenience to the court.

6. "Indeed, the doctrine of forum non conveniens can never apply if there is absence of jurisdiction or mistake of venue." Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 504 (1947). If there were improper venue or jurisdiction, the defendant could seek dismissal on these grounds without having to resort to a discretionary dismissal by the court on the basis of forum non conveniens. The propriety of jurisdiction and venue in the original forum is primarily why the Scottish courts stopped referring to the doctrine as forum non competens. See note 3 supra.

7. See Longworth v. Hope, 3-M Sess. Cas. 1049, 1053, (Scot. 1865), in which the Lord President in discussing the doctrine said, "In such cases [when the doctrine is applicable] the Court is called upon to exercise a discretion." See also Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Annot., 48 A.L.R.2d 800 (1956); Annot., 87 A.L.R. 1425 (1933).


As early as 1936,14 in a dictum, Florida seemingly accepted the doctrine of forum non conveniens.15 Although it has not been directly adjudged and allowed on appellate review,16 forum non conveniens has been applied by the circuit courts (trial level) of Florida.17 In Hubbard v. Southern Ry.,18 the plaintiff brought suit against a Virginia corporation under the FELA19 for an accident which occurred in Georgia. The case was dismissed on the basis of forum non conveniens. The court held that the doctrine should be applied:

[When there is another forum which also has “jurisdiction” over the parties and the subject matter and the case can be more appropriately and justly tried in the other forum without the attendant inconveniences and additional expense and burdens that would result if the case remained in the initially chosen forum.]20 Thus, the Hubbard case, apparently has applied forum non conveniens on the basis of a combined Scottish and English view.21

In the instant case and in Greyhound Corp. v. Rosart,22 both of which were decided by the Third District Court of Appeal of Florida, the doctrine of forum non conveniens was rejected where an intrastate change of venue was sought on a forum non conveniens rationale.23 The ratio decidendi of the court was that the legislature was capable of providing for intrastate venue changes if it so desired.24 The decisions are a correct application of the doctrine.25 Within the confines of a jurisdiction the legislature, through statutory enactment, may provide for change of venue based on

---

15. "It is settled law that courts of one state are not required to assume jurisdiction of causes between nonresidents arising in other jurisdictions, though by the rule of comity rather than that of strict right they generally do so. After all is said, the question of jurisdiction in transitory actions between nonresidents is one of discretion on the part of the court assuming it, and no rule has yet been promulgated to guide that discretion." Hagen v. Viney, 124 Fla. 747, 751, 169 So. 391, 392-93 (1936).
18. 14 Fla. Supp. 10 (Dade Cir. 1959).
19. See note 1 supra.
21. See text accompanying notes 10 and 11 supra.
22. 124 So.2d 708 (Fla. App. 1960). This case was decided only a few months prior to the case under discussion.
25. There are seemingly no cases concerning intrastate transfer on the basis of forum non conveniens.
convenience factors. However, where the most propitious forum would be in another state, application of forum non conveniens is the only solution as the legislature of one state is not capable of providing for venue changes on an interstate basis.

In both the present case and in Greyhound, the dicta indicated that the court was accepting the formulary New York view of forum non conveniens. "The doctrine can and may still be applied by Florida courts where non-residents, who have causes of action arising in foreign states against foreign resident defendants, seek to litigate their actions in Florida courts..." In order to meet the enigmas of the future, this doctrine should remain completely flexible. There is no reason to limit it merely to situations where both parties are nonresidents and the cause of action accrued in another state. Thus, it is submitted that the court should not adopt a talismanic formula in its application of a doctrine that has developed to aid the interests of justice through the discretionary powers of the trial judge.

HERBERT ODELL

26. An example of such a provision is found in N.Y. Civ. Prac. Act § 187: "The court, by order, may change the place of trial of an action in the supreme court... Where the convenience of material witnesses and the ends of justice will be promoted by the change."

27. This is assuming, of course, that the action is brought in the state courts. In the federal courts Congress has provided for interstate transfer of venue under certain conditions. 28 U.S.C. § 1404(a) (1958). For an excellent discussion of this federal statutory provision see Masington, Venue in the Federal Courts — The Problem of the Inconvenient Forum, 15 U. MIAMI L. Rev. 237 (1961). Florida has no similar provision for intrastate transfer of venue.

28. See text accompanying note 12 supra.

29. Atlantic Coast Line R.R. v. Ganey, 125 So.2d 576, 580 (Fla. App. 1961). (Emphasis added.) Although the court did not state in terms their basis for application of the doctrine, i.e. vexation to the defendant, the requirements stated for abidition of the doctrine — that both parties be nonresidents and that the cause of action accrue out of state — are identical to those which New York has adopted in applying the "convenience of the court" test. Thus, whether or not it follows the New York rationale, the Florida judiciary is accepting the New York result which is certainly a rigid application of a supposedly flexible doctrine.

30. "[T]he doctrine, as we construe it, is non-discriminatory and does not turn on considerations of domestic residence or citizenship as against foreign residence or citizenship. It turns, rather, on considerations of convenience and justice and it may, therefore, be applied for and against domestic residents and citizens as well as for and against foreign residents and citizens... It is only in those exceptional cases where a weighing of all of the many relevant factors... establishes that there is available another forum where trial will best serve the convenience of the parties and the ends of justice, that the doctrine is ever invoked." Gore v. United States Steel Corp., 15 N.J. 301, 311, 104 A.2d 670, 675-76, cert. denied, 348 U.S. 861 (1954). See also, Winsor v. United Air Lines, Inc., 154 A.2d 561 (Del. Super. Ct. 1958); Williamson v. North-Eastern Ry., 11 R Sess. Cas. 596 (Scot. 1884); Tulloch v. Williams, 4 Scots Rev. R. (8 Dunlop) 655 (1846).

31. "The academic writer can not hope to furnish assistance in the practical problems which will rise in the exercise of discretion. These must be left to the experience and sound judgment of the courts, particularly of trial courts. There need be little fear that they will abuse a discretion frankly recognized as such. The danger is always lest an illusory quest for certainty lead them to predicate mechanical rules on the solutions deemed advisable in a few of the more common cases, thus turning a simple practical problem into a complicated mystery." Foster, Place of Trial — Interstate Application of Intrastate Methods of Adjustment, 44 HARV. L. Rev. 41, 60-61 (1930). (Footnotes omitted.)