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Abbott G. M. Diesel, Inc. v. Piper Aircraft Corporation et al : Brief of Plaintiff-Appellant

Utah Supreme Court

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Ray R. Christensen; Attorneys for Defendant-Respondent;

John H. Snow; Attorneys for Defendant;

F. Alan Fletcher; Attorneys for Plaintiff-Appellant;

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IN THE SUPREME COURT OF THE
STATE OF UTAH

* * * * *

ABBOTT G. M. DIESEL, INC.,)
a Delaware Corporation,)
)
Plaintiff)
and Appellant,)

-vs-

CASE NO. 15016

PIPER AIRCRAFT CORPORATION,)
a Corporation; and PIPER)
CORPORATE AIRCRAFT)
CENTER WEST, a Corporation,)
aka CORPAC-WEST,)
)
Defendants)
and Respondents.)

* * * * *

BRIEF OF PLAINTIFF-APPELLANT

* * * * *

APPEAL FROM AN ORDER OF THE THIRD JUDICIAL
DISTRICT COURT OF SALT LAKE COUNTY
ENTERED BY THE HONORABLE MARCELLUS K. SNOW

* * * * *

RAY R. CHRISTENSEN
Christensen, Gardner,
Jensen and Evans,
Attorneys for
Defendant-Respondent
Piper Aircraft Corporation
900 Kearns Building
Salt Lake City, Utah 84101

F. ALAN FLETCHER
KENT W. WINTERHOLLER
Parsons, Behle & Latimer
Attorneys for
Plaintiff-Appellant
Abbott G. M. Diesel, Inc.
79 South State Street
Post Office Box 11898
Salt Lake City, Utah 84147

JOHN H. SNOW
Snow, Christensen & Martineau
Attorneys for Defendant
Corporate Aircraft Center West
701 Continental Bank Building
Salt Lake City, Utah 84101

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IN THE SUPREME COURT OF THE

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* * * * *

ABBOTT G. M. DIESEL, INC.,)	
a Delaware Corporation,)	
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Plaintiff)	
and Appellant,)	BRIEF OF PLAINTIFF-APPELLANT
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-vs-)	
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PIPER AIRCRAFT CORPORATION,)	
a Corporation; and PIPER)	
CORPORATE AIRCRAFT)	
CENTER WEST, a Corporation,)	CASE NO. 15016
aka CORPAC-WEST,)	
)	
Defendants)	
and Respondents.)	

* * * * *

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from an Order of the Third Judicial District Court of Salt Lake County entered by District Court Judge Marcellus K. Snow whereby Judge Snow quashed service of summons upon defendant-respondent Piper Aircraft Corporation, (hereinafter "Piper"), and dismissed without prejudice this action by plaintiff-appellant Abbott G. M. Diesel, (hereinafter "Abbott"), as against Piper.

DISPOSITION IN THE LOWER COURT

By a motion dated April 30, 1976 Piper moved the court below to quash the service of summons upon it and to dismiss this action against it by Abbott, upon the grounds that Piper was not subject to the jurisdiction of the court. (Record 38-39). On January 4, 1977 the Third Judicial District Court

of Salt Lake County, Judge Marcellus K. Snow, granted Piper's motion, quashing service of summons upon Piper and dismissing the action by Abbott against it. (Record 84-85).

RELIEF SOUGHT ON APPEAL

Abbott seeks reversal of the Order of the Court below whereby said court quashed service of summons upon Piper and dismissed this action as against it. Abbott seeks to have this court hold Piper subject to the jurisdiction of the lower court.

STATEMENT OF THE FACTS

Abbott brought this action against Piper and Defendant Corpac-West seeking damages of each defendant, jointly and severally, for breach of contract, i.e. delivery of non-conforming goods; (Record 2-7), and breach of contract, i.e. breach of express and implied warranties of merchantability, warranties of fitness for a particular use and marketable quality; (Record 7-9). Additionally Abbott seeks of defendant Corpac-West damages based upon a mutual mistake of a material fact. (Record 8-9).

Abbott alleges Piper is both doing business in Utah and that it has caused injury to Abbott by virtue of Piper's activities in this state. (Record 2).

Piper has filed an Affidavit which asserts that it does no business in Utah, has no salesman, offices, records,

goods or property located in this state and that any and all contacts with the state of Utah occur through independent businessmen located here or elsewhere. (Record 41-43; 45-50). Piper contends that the contacts it has with this state do not constitute those "minimum contacts" necessary for a Utah Court to properly assert jurisdiction over it consistent with the dictates of the due process clause of the Fourteenth Amendment to the United States Constitution as interpreted by the United States Supreme Court. (Record 45-50).

By appropriate Affidavit Abbott has established that Piper solicits business of Utah residents by mailings to Utah and seeks the business of Utah residents through advertisements placed in nationally circulated magazines which are regularly circulated in this state. (Record 52-53). Abbott has also established that Piper employs a Regional Sales Representative and a Regional Service Representative who regularly visit the state of Utah at five to six week intervals to promote customer relations and to confer with Piper's sales outlets with respect to Piper sales and service matters. (Record 54). Additionally Abbott's Affidavit shows that Piper has entered into a number of written contracts with Utah residents, (Record 54, 77-78), has established Piper Flite Centers in Utah to encourage Utah residents to use Piper products, (Record 54, 78), that Piper has property located in Utah (Record 54, 78), that Piper is regularly,

consciously and carefully directing and controlling the sale and use of Piper manufactured products in this state, (Record 54, 77-79), that Piper from time to time sends its employees to Utah for the purpose of inspecting and approving facilities as authorized Piper Service Centers, (Record 54, 79), that Piper through agents performs warranty services in this state, (Record 54, 78-79), and that Piper regularly seeks the aid of Utah residents in promoting its business in Utah (Record 54, 80). Abbott contends that these activities constitute, upon Piper's part, doing business in Utah so as to subject Piper to the jurisdiction of the courts of this state.

ARGUMENT

POINT I

PIPER IS DOING BUSINESS IN UTAH

In Hill v. Zale Corporation, 25 Utah 2d 357, 482 P.2d 332 (1971) this court enunciated those factors which bear upon the question of whether or not a foreign corporation is doing business in Utah so as to be subject to the jurisdiction of the courts of this state. Those factors are stated as follows:

"When the problem arises, its solution depends on whether it can fairly be said that the corporation is doing business within the State in a real and substantial sense. This involves the analysis of a number of factors,

none of which is alone the sine qua non to establish a business presence in the State, but from a consideration of the total picture as to the existence or absence of them the answer to that critical question is to be found:

1. Whether there are local offices, stores or outlets;

2. The presence of personnel, how hired, fired and paid; the degree of control and the nature of their duties;

3. The manner of holding out to the public by way of advertising, telephone listings, catalogs, etc.;

4. The presence of its property, real or personal, or interest therein, including inventories, bank accounts, etc.;

5. Whether the activities are sporadic or transitory as compared to continuous and systematic;

6. The extent to which the alleged facts of the asserted claim arose from activities within the state;

7. The relative hardship or convenience to the parties in being required to litigate the controversy in the state or elsewhere."

25 Utah 2d at 360, 482 P.2d 334.

How these above-stated factors are to be analyzed and applied is cogently stated in Union Ski Co. v. Union Plastics Co., 548 P.2d 1257, 1259 (Utah 1976) as follows:¹

"In harmony with the foregoing this court has consistently held that the transaction of

¹ See also Pellegrini v. Sachs & Sons, 522 P.2d 704, 705 (Utah 1974) where this Court followed the Hill v. Zale Corp. decision, supra.

has consistently held that the transaction of business within the meaning of our statute requires that the defendant has engaged in some substantial activity with some degree of continuity within this State. In the case of Hill v. Zale Corp., we set forth a number of examples of activity to be examined in determining whether, by reason of any one of them, or any combination of them, it can fairly and reasonably be said that activities of the foreign corporation in this State should subject it to the jurisdiction of our courts."

[Emphasis added].

Thus it is readily apparent that in order to determine whether or not Piper should be subject to the jurisdiction of Utah's courts with regard to the instant action the Hill v. Zales Corp. factors, supra, should be examined to determine whether "by reason of any one of them, or any combination of them, . . ." it is fair to subject Piper to the jurisdiction of Utah's courts. Examination of these above-stated factors as per Piper in this case clearly shows that Piper is and should be subject to the jurisdiction of the courts of Utah.

(1) Does Piper have local offices, stores or outlets?

Piper, as an entity, does not maintain local offices. However Piper contracts on a continuous, ongoing basis with local Utah business firms in order to have sales and service outlets in Utah. See Statement of Facts, supra. These local businesses, operating as stores or outlets, are tightly controlled by Piper for the purpose of fostering the sale and servicing of Piper products in this state. Therefore Piper does have agents operating in Utah. See Statement of Facts, supra.

(2) Does Piper employ persons in Utah?

Piper has no employees who live in Utah. However Piper does regularly have its employees come into this State, on five to six week intervals, to foster Piper sales and service, provide guidance to Piper dealers, and approve Piper service outlets. See Statement of Facts, supra. Additionally Piper supplies parts and aircraft, advertising logos and other materials to its dealers located in Utah in order to foster sales and service of its products in this state. (Record 54, 79).

(3) Does Piper advertise or solicit business in Utah?

It is clear and undisputed that Piper actively and on an ongoing basis seeks business in Utah by media advertising and direct mail solicitation. (Record 52-80).

(4) Does Piper own property, or an interest in property, in Utah?

Piper owns at least a reversionary interest in personal property located in the State of Utah. (Record 78-79). This tangible personal property was supplied by Piper to Utah residents with the intent such would be located on at least a semi-permanent basis in this state. (Record 78-79). Thus Piper has an interest in property located in Utah which it intentionally placed here.

(5) Are Piper's activities in Utah sporadic or transitory, or are said activities continuous and systematic?

Piper's activities and contact with Utah clearly are not "sporadic or transitory" but are continuous, systematic and ongoing. (Record 52-80). Piper, on an ongoing, systematic, continuous basis advertises and solicits business in Utah, directs its employees to come into Utah and conduct business here, contracts with Utah residents and Utah business entities and provides warranty services in Utah through its agents. (Record 52-80). This factor alone should be sufficient to subject Piper to the jurisdiction of Utah's courts.

(6) Does the claim of Abbott arise from activities of Piper in Utah?

Abbott's claim against Piper is based upon an alleged breach of contract for the sale of an aircraft. Piper through Piper's agent defendant Corpac-West, contracted to sell to Abbott an aircraft and contracted to provide warranty services with respect to said aircraft. That contract was with a Utah resident, (Abbott), to supply goods and services in this state. Therefore the claim herein asserted by Abbott as against Piper arises out of Piper's dealings with a resident of Utah under an agreement to supply goods to be located in this state and services in connection with those goods to be performed in Utah. Thus the claim here being asserted arises, at least in part, out of Piper's activities in Utah.

(7) Would this controversy be best resolved in Utah or elsewhere in terms of the degree of hardship it would impose upon the parties if the action is maintained in Utah?

The record in this action as presently developed weighs in favor of Abbott on this factor. Abbott's principal place of business is in Utah, it contracted to purchase the aircraft here and was entitled to receive warranty services in this state. Piper has not asserted it would work a hardship upon it if it were required to defend this action in Utah. It is fair to impute to Piper, on the basis of Piper's substantial contacts with Utah voluntarily accomplished as above stated, that it, at the time of such agreement, understood full well the potential of having to answer in a Utah court for any breach or alleged breach of such agreement. Therefore it is not unfair to hold Piper subject to the jurisdiction of Utah's courts. It should be considered that Piper's co-defendant, Corpac-West, is subject to the jurisdiction of the Utah courts, the case being still pending against it, and submission of Piper to the jurisdiction of a Utah court will avoid multiplicity of actions.

As applied to the record thus far developed in this lawsuit the Hill v. Zale Corp. factors show that Piper is doing business in Utah. Piper seeks the business of Utah residents, Piper sends its employees into this state, it contracts on a regular, continuous, ongoing basis with Utah residents and businesses, Piper has tangible personal property located in Utah and Piper's contacts with Utah are continuous, systematic and ongoing.

This Court has recently provided substantial guidance relative to those situations wherein it is proper for a Utah

Court to assert jurisdiction over a foreign corporation manufacturer. In Pellegrini v. Sachs & Sons, supra fn.1, that guidance is stated as follows:

"In her "situs of causation" argument plaintiff cites a number of cases as being quite liberal in approving jurisdiction over nonresidents in the states where products have caused injury. But it will be found that most of these cases are against manufacturers. The adjudications are on the ground that in sending their wares into foreign states they have a substantial and continuing interest in the sale and distribution; and that their conduct through their agents in promoting those objectives is sufficient to meet the 'minimum contacts' test."

522 P.2d at 706.

Abbott submits that Piper, as a manufacturer of aircraft, (Record 41-42), sends its goods and wares into Utah, has a substantial interest in the sale and distribution of said goods in this state and engages in conduct in Utah, through agents, sufficient for a Utah court to properly assert jurisdiction over Piper.

As is above shown it is clear that Piper has engaged in a number of activities in this state by which it has purposefully availed itself of the privilege of conducting activities within Utah.² Therefore maintenance of this suit by Abbott against Piper in Utah "does not offend 'traditional notions

² See Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283, 1298 (1958).

of fair play and substantial justice."³ Piper should be held accountable in a proper Utah court in this lawsuit.

POINT II

PIPER IS SUBJECT TO THE JURISDICTION OF UTAH'S COURTS FOR THE TRANSACTION GIVING RISE TO THIS LAWSUIT BY VIRTUE OF UTAH'S LONG ARM STATUTE.

Utah Code Annotated §78-27-24 (Supp. 1975) sets forth those grounds upon which the Courts of Utah may exercise jurisdiction over persons or entities who are not residents of Utah, but who should nonetheless answer to Utah's citizens in Utah's Courts. That statute reads in pertinent part as follows:

"Any person, notwithstanding section 16-10-102, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising from:

- (1) The transaction of any business within this state;
- (2) Contracting to supply services or goods in this state;
- (3) The causing of any injury within this state whether tortious or by breach of warranty;"

³ International Shoe Co. v. Washington, 329 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102 (1945).

Additionally Utah Code Annotated §78-27-22 (Supp. 1975) declares the purpose of the above cited statutory provisions to be:

"The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution."

It is thus obvious that if a nonresident accomplishes any of the acts enumerated in Utah Code Annotated §78-27-24, supra, and assertion of jurisdiction over that nonresident by the courts of this state does not offend the due process clause of the Fourteenth Amendment to the United States Constitution, then jurisdiction over such nonresident must be sustained in conformance with the above stated declaration of the Utah Legislature.

A.

Piper has Contracted to Supply Services in this State and has Caused Injury in Utah by a Breach of Warranty.

Exhibit A of Abbott's Complaint on file herein is titled "Aircraft Purchase Order, Terms, Conditions, and Warranties." (Record 13). Paragraph 7 of that Exhibit reads as follows:

"The aircraft products purchased herein are covered by only the following warranties and no other:

The written warranty of the Aircraft Manufacturer, if any, in existence at the time the aircraft described herein is delivered together with those written warranties, if

any, issued by any product manufacturers whose products are purchased herein and which warranties accompany the delivery of the aircraft products.

NO OTHER WARRANTY, WHETHER OF MERCHANTABILITY, FITNESS OR OTHERWISE, EXPRESS OR IMPLIED IN FACT OR BY LAW, IS GIVEN WITH RESPECT TO SUCH AIRCRAFT PRODUCTS, AND NO OTHER FURTHER OBLIGATION OR LIABILITY SHALL BE INCURRED BY SELLER BY REASON OF THE MANUFACTURE AND/OR SALE OF THE AIRCRAFT PRODUCTS OR THEIR USE, WHETHER FOR BREACH OF ANY WARRANTY, NEGLIGENCE OF MANUFACTURE, OR OTHERWISE."

Exhibit A of the Complaint, (Record 13), is the agreement entered into between Abbott and Defendant Corpac-West for the purchase of the aircraft which is the subject of this lawsuit. Defendant Corpac-West, through execution of Exhibit A, pledged and bound Piper, as the manufacturer of the Aircraft in question, to provide warranty services to an aircraft whose owner was a company with its principal place of business located in Utah and, as a point in fact, would maintain the situs of the aircraft in Utah. Thus Defendant Corpac-West, in this instance, was acting as agent for Piper, binding Piper through contractual obligation in an agency relationship of at least apparent authority to provide warranty services to an aircraft located in Utah. Therefore Piper, through its agent Corpac-West, contracted to supply services in this state. Piper fits within the precise terms of Utah Code Annotated §78-27-24(2), supra, and is subject to the jurisdiction of the courts of this state for any breach of that contractual obligation. A breach of contract by

Piper is precisely what is alleged in The First Cause of Action of Plaintiff's Complaint. (Record 2-7).

Additionally, Utah Code Annotated §78-27-24(3), supra, subjects a nonresident to the jurisdiction of the courts of this state if said non-resident causes injury within Utah through a breach of warranty. The Second Cause of Action of Abbott's Complaint alleges that Piper failed to fulfill warranty obligations as a manufacturer of the aircraft in question which caused injury to Abbott in Utah. Thus, Piper is also subject to the jurisdiction of the courts of this state due to the allegations of The Second Cause of Action of Abbott's Complaint. (Record 7-9). Clearly then, based upon the statutes in question, Piper is subject to the jurisdiction of the courts of Utah if asserting such jurisdiction does not run afoul of the parameters of the due process clause of the Fourteenth Amendment to the U. S. Constitution.

Finally, Point I of this brief clearly demonstrates that Piper has, and is, transacting business in the State of Utah. Thus Piper falls within the parameters of subsections (1), (2) and (3) of Utah Code Ann. § 78-27-24, supra, and must be found subject to the jurisdiction of the courts of this state.

B.

Assertion of Jurisdiction over
Piper by Utah Courts does not
Offend against the Due Process
Clause of the Fourteenth Amend-
ment to the U. S. Constitution.

The circumstances under which a state may assert jurisdiction over an unwilling nonresident Defendant without offending the due process clause of the Fourteenth Amendment to the U. S. Constitution are laid out in three (3) United States Supreme Court decisions, International Shoe Co. v. Washington, 329 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed. 2d 1283 (1958); and McGee v. International Life Insurance Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed. 2d 223 (1957). The United States Supreme Court in the International Shoe case, supra, set out the following test relative to when and under what circumstances a nonresident of any given state is or may be subject to the jurisdiction of that state's courts:

"Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. Pennoyer v. Neff, 95 U.S. 714, 733, 24 L ed 565, 572. But now that the capias ad respondendum has given way to personal service of summons or other forms of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

Id., 326 U.S. 316, 90 L.Ed. 102

And further:

"Those [due process] demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection."

Id., 326 U.S. 317, 90 L.Ed. 102.

Thus a nonresident of Utah may be subjected to the jurisdiction of the courts of this state when that nonresident has such "minimal contacts" with Utah that the maintenance of a suit in Utah against said nonresident does not offend "traditional notions of fair play and substantial justice." The Record in this action shows clearly such contacts with Utah by Piper so that requiring Piper to defend this lawsuit in Utah does not offend those "traditional notions of fair play and substantial justice" and is thus in harmony with the dictates of the due process clause of the Fourteenth Amendment to the U. S. Constitution. Those relevant portions of the record and showings made thereby are as follows:

(1) The solicitation by Piper of the business of Abbott for a number of years through direct mailings to Abbott from Piper's corporate offices in Lockhaven, Pennsylvania to Abbott's office in Salt Lake City, Utah.

(See Paragraph 2 of the Affidavit of Robert G. Abbott dated October 18, 1976. (Record 52-53)).

(2) Solicitation by Piper of the business of Utah residents in Utah for a number of years through published aircraft and flying magazines generally distributed in this state. (See paragraphs 3-6 of the Affidavit of Robert G. Abbott dated October 18, 1976. (Record 53)).

(3) Establishment in Utah by Piper of franchised dealerships and flite training programs through contract with Intermountain Piper, Inc. for the distribution of Piper manufactured products and promotion of sales in Utah of Piper products. (See paragraph 7 of the Affidavit of Robert G. Abbott dated October 18, 1976, (Record 54), and the Affidavit of William R. Farley attached thereto and incorporated therein. (Record 77-80)).

(4) Consistent and continuing contact with Utah through the employment of a Regional Sales Representative and a Regional Service Representative who, on a regular basis, visit Utah to promote the sales of Piper products in this state. (See paragraph 8 of the Affidavit of Robert G. Abbott dated October 18, 1976. (Record 54)).

These factual showings clearly demonstrate that Piper seeks to sell its products to Utah residents for use in Utah.

Piper thus fits within the U. S. Supreme Court holding in International Shoe at 326 U.S. 319, 90 L.Ed. 104, wherein that Court stated:

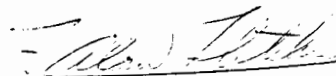
"But to the extent that a corporation exercises the privileges of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances hardly be said to be undue."

Piper seeks sales of its products in Utah to Utah residents who will use said products in this state. It is only fair that it answer in the courts of Utah for obligations arising out of its solicitation and sales activities in Utah. This is precisely what Abbott herein seeks.

CONCLUSION

Under either a "doing business" test or a "minimum contacts" test Piper has purposely availed itself of the privilege of conducting activities in Utah. Therefore the trial court must be reversed and this action reinstated as against Piper.

RESPECTFULLY submitted this 28th day of April, 1977.


F. ALAN FLETCHER


KENT W. WINTERHOLLER

of and for
PARSONS, BEHLE & LATIMER
Attorneys for
Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served 2 true and accurate copies of the foregoing BRIEF OF PLAINTIFF-APPELLANT by deposit with the United States Postal Service upon Ray R. Christensen, Christensen, Gardner, Jensen & Evans, Attorneys for Defendant-Respondent, Piper Aircraft Corporation, 900 Kearns Building, Salt Lake City, Utah 84101; and to John H. Snow, Snow, Christensen & Martineau, Attorneys for Defendant, Corporate Aircraft Center West, 701 Continental Bank Building, Salt Lake City, Utah 84101; postage prepaid, this 28th day of April, 1977.

Kent W. Whitehall