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Cases of Note-Jurisdiction and the Internet and Books and the First Amendment

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Jurisdiction and the Internet

by **Anne F. Jennings**

BLAKE HALL, plaintiff-appellant v. BRAD LARONDE, defendant-respondent (Ventura County, Super. Ct. No. 165615)

A recent opinion handed down by California's second appellate division addresses a subject certain to be argued for many years to come — that of personal jurisdiction and Internet commerce. As many of you may know, the courts have defined jurisdiction as a "term of comprehensive import embracing every kind of judicial action." *(Federal Land Bank of Louisville, Kentucky v. Crombie*, 258 Ky 383, 80 S.W.2d 39.) It is the "power and authority of a court to hear and determine a judicial proceeding." In re de Camillis' Estate. 66 Misc.2d 882, 322 N.Y.S.2d 551. While there are many types of jurisdictional questions, the issue in the case of *Hall v. LaRonde* was that of personal jurisdiction which the United States Supreme Court has defined as "the power which a court has over the defendants' person and which is required before a court can enter a personal or in personam judgment." *(Pennoyer v. Neff*, 95 U.S. 714.)

Jurisdiction is important in that it allows the defendant in a civil action to be heard in a court (or jurisdiction) where he resides, does business or where the subject of the litigation involved occurred. While jurisdiction has been disputed in the courts for many untold numbers of reasons, the law has traditionally involved a fairly simplistic formula. However, what has been standard practice is now uncharted territory, as the Internet evolves into a worldwide center of commerce.

In the matter at hand, the appellant Hall alleged that in 1994 he entered into a contract with LaRonde who was doing business as LaRonde Technical Consulting. The contract authorized LaRonde to sell licenses for the use of a computer software application to the general public. LaRonde agreed to compensate Hall by paying him $1 for every license sold. While Hall received payments for sales for approximately twelve months, the payments ceased in September of 1995 although LaRonde continued to market the software application.

Hall is a resident of and maintains his principal place of business in Manhattan Beach, California. However, LaRonde maintains his principal place of business in Skaneateles, New York. Following service of process, LaRonde made a motion to quash service of the summons on the grounds that the courts in California have no jurisdiction and he claimed that sufficient minimum contacts with California were lacking.

Hall submitted an affidavit in opposition to the motion and declared that he originally contacted LaRonde by electronic mail. Thereafter the two conducted extensive discussions concerning the software module and modifications to the product. Hall stated that he performed all the work on the module in California; that all negotiations were conducted by electronic mail and telephone; and that he had no other business or personal connections with New York. LaRonde did not contradict the statements made by Hall. But, following a hearing on LaRonde's motion, the court granted his motion to quash and ordered the case dismissed. Hall thereafter appealed the Order to the Second Appellate District.

On appeal, the Court reviewed the prevailing California law as to jurisdiction and cited several cases as follows:

Each person has a liberty interest in not being subject to judgments of a forum with which he or she has no minimum contacts. (*Von's Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445.) The requirement of minimum contacts ensures that the assertion of jurisdiction does not violate "'traditional notions of fair play and substantial justice.'" (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 [90 L.Ed. 95, 102].) Personal jurisdiction may be either general or specific. Where a nonresident's contacts with the forum state are "'substantial ... continuous and systematic,'" a court may assert general jurisdiction over the person of the nonresident. (*Von's Companies, Inc. v. Seabest Foods, Inc.,* supra, 14 Cal.4th at p. 445.) Such general jurisdiction does not require a connection between the specific transaction at issue and the forum state. (Ibid.)

Hall did not argue that there existed sufficient evidence to support a finding of general jurisdiction. He did, however, contend that the evidence demonstrated sufficient minimum contacts for specific jurisdiction. According to *Von's Companies, Inc. v. Seabest Foods*, Inc. (14 Cal.4th at p. 446), specific personal jurisdiction may be asserted where the defendant has purposefully availed himself of forum benefits and the controversy is related to or arises out of the defendant's contacts with the forum. Sufficient minimum contacts for specific jurisdiction exist where a nonresident "'deliberately' has engaged in significant activities within a state or has created 'continuing obligations' between himself and residents of the forum." (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 475-476.)

To support his claim, LaRonde argued that the case of *Interdyne Co. v. SYS Computer Corp.* (1973) 31 Cal.App.3d 508 was on point. In Interdyne, the plaintiff was a California corporation whose sales representative contacted the defendant in New Jersey. The contact resulted in some small orders placed through an intermediary and a later direct communication between the parties. Contract negotiations were conducted by letter and telephone over a period of several months. Ultimately, the parties reached an agreement and plaintiff shipped the goods. Later, when defendant failed to pay, plaintiff sued in California.

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Other than the contacts with plaintiff, defendant had no contact with California. The Court of Appeal thereafter upheld the trial court's decision to grant defendant's motion to quash and concluded, "When a California business seeks out purchasers in other states — purchasers who are not 'present' in California for general purposes — deals with them only by out-of-state agents or by interstate mail and telephone, it is not entitled to force the customer to come to California to defend an action on the contract." (*Interdyne Co. v. SYS Computer Corporation*, supra, 31 Cal.App.3d at pp. 511-512.)

Unlike the court in *Interdyne*, the Court of Appeal in Hall did not "believe that the physical presence of a representative of the defendant in California should be determinative." Stating that Interdyne was decided more than 20 years ago and that much has happened in the role that electronic communications plays in business transactions since that time, the Court found that there was "no reason why the requisite minimum contacts cannot be electronic." While it was uncontroverted that Hall reached out to New York in a search for business, it was also uncontroverted that LaRonde reached back to California. And, the record revealed that LaRonde's contacts with California consisted of more than simply purchasing a software module from Hall. As a result, LaRonde created a "'continuing obligation'" between himself and a resident of California. And, LaRonde's contacts with California were more than "'random,' 'fortuitous,' or 'attenuated.'" (*Burger King Corp. v. Rudzewicz*, supra, 471 U.S. at p. 475-76 [85 L.Ed.2d at p. 542-43].)

When, as in Hall, the plaintiff establishes sufficient minimum contacts, the burden then shifts to the defendant to "'present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" (*Burger King Corp. v. Rudzewicz*, supra, 471 U.S. at p. 477 [85 L.Ed.2d at p. 544].) LaRonde, however, then failed to point to any place in the record where he raised such considerations in the trial court. The judgment was then reversed and the costs on appeal were awarded to Hall.

Books and the First Amendment

Rice v. Paladin Enterprises Inc., 1997 WL 702330, *1 (4th Cir.(Md.)

by **Bruce Strauch** (Assoc, Prof., the Citadel, Charleston, SC 29409) <strauchb@citadel.edu>

In 1993, a contract killer shot and killed at close range a husband and wife and the wife's eight-year-old quadriplegic son by a former marriage. The killer had been hired by the former husband of the female victim with the objective of getting at a $2 million settlement for injuries which had crippled the boy. Up to that point, you just had a standard American horror drama. At the criminal trial, however, the fact surfaced that the amateur killer had learned his trade from a particular how-to-do manual. This subsequently led to a civil lawsuit with First Amendment implications that have aroused wide interest in the publishing world.

The estates of the victims brought a civil wrongful-death action against Paladin Enterprises which had published a book called *Hit Man: A Technical Manual for Independent Contractors.* The killer had followed the book's directions to a "T" — selection of rifle and fabrication of a whisper-quiet silencer, choice of murder site,

technique of killing, sanitizing of murder site, method of disposing of the weapon. The introduction to the book is particularly cold-blooded, citing as moral authority for the pages that follow both the Mack Bolan hero series and the hit man's filling of a societal need for personal justice. There is additional sociopathic rantings about what a giant among men you will be once you've got a few kills under your belt.

When a judge is confronted with no question of fact for the jury, he grants summary judgment based on the law of the case. For purposes of their motion for summary judgment, Paladin stipulated that the killer followed the instructions of the book and that their target audience in marketing the book was murderers and would-be murderers. It further stipulated that it intended the book to be used by criminals and that it in fact, through this publication, assisted the killer in his brutal crime. Under those circumstances, the only issue for the judge to consider was whether the First Amendment is a complete defense. The trial judge held in Paladin's favor, but on appeal the U.S. 4th Circuit reversed and sent the case back for trial.

If anything of value grew out of the exhaustive TV coverage of the O.J. Simpson trial, it is that Americans en masse now realize there is a civil side of the law that parallels the criminal side. In the Paladin case, the civil action is predicated on the criminal act of aiding and abetting a murder. Almost any criminal act is also a tort, i.e. a civil injury and gives rise to an action for money damages. In Maryland, aiding and abetting does not necessarily require a preplanned concerted act. It may grow out of counseling and encouraging the crime. The Appeals Court held that a jury could reasonably find that *Hit Man* proselytizes, glamorizes and concretely promotes the commission of crime. Thus, there is a question of fact for the jury and a trial is necessary.

On the First Amendment issue, the Appeals Court drew a distinction between abstract advocacy and advocacy intended to incite or produce lawless behavior. It cited a series of cases on aiding and abetting through publication of tax fraud and wiretap information and instruction manuals on the manufacture of illegal drugs and explosives. The liability is not based on the defendant's advocacy of lawless behavior but upon his success in instructing others in breaking the law. The First Amendment stops where the publisher acts with the express intent of furthering the criminal act.

A legion of media groups and First Amendment watchdog groups submitted *amici curiae* briefs warning direly of the chilling effect on the rights of free speech. The Appeals Court called this claim of a constitutional right to knowingly assist in murder "breathtaking." It went on to say there would be little likelihood of liability for copycat killings based on movies, novels or news accounts because the intent to assist in violent crimes will never be present. In this truly unique case the publisher stands in "almost taunting defiance," asserting a Constitutional right to assist in murder.

What doubtless has the *amici* (among whom is Media Professional Insurance) so exercised is this: Without an absolute bar, the possibility of an action for negligent rather than intentional aiding and abetting arises. This gives much wider scope to the plaintiff's lawyers who want to bring civil actions. A killer behind bars has no money. Publishers and their insurers are perceived as the deep-pockets.