

**IN THE SUPREME COURT OF OHIO  
CASE NO. 2006-0957**

**PROUSE, DASH & COUCH, LLP**

**Plaintiff-Appellant,**

**vs.**

**BRUCE ANTHONY GORCYCA, et al.**

**Defendants-Appellees.**

**ON APPEAL FROM THE  
COURT OF APPEALS FOR  
CUYAHOGA COUNTY,  
EIGHTH APPELLATE DISTRICT**

**COURT OF APPEALS  
CASE NO. 86324**

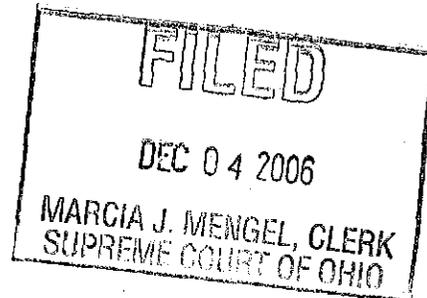
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**MERIT BRIEF OF APPELLEES BRUCE ANTHONY GORCYCA  
AND  
JI HAE LINDA YUM**

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## STATEMENT OF THE CASE AND FACTS

Plaintiff, a Canadian law firm located at 50 Queen Street, West, Braniston Ontario, sued defendants, Bruce Anthony Gorcyca DiMarco(Bruce) and his wife, Ji Hae Linda Yum (Linda), Canadian residents who resided in Mississauga, Ontario on April 11, 2003. A special process server was appointed by the court on April 15, 2003. Summons was issued and sent by registered mail to defendants who were served at their home address in Mississauga, Ontario.

Defendants filed a motion to dismiss on May 9, 2003, which motion was overruled by the court on May 15, 2003.

On May 30, 2003, a motion for an order of pre-judgment attachment was filed by plaintiff. Defendants filed their answers on June 18, 2003. The court granted an order of attachment on July 2, 2003.

Defendants filed a motion to dismiss or transfer based on **forum non conveniens**. That motion was denied by the court on October 1, 2003. The court then set a case management order with respect to discovery and trial. Defendant filed a motion for leave to take Bruce's deposition in Canada. This motion was denied by the court on March 17, 2004.

This case was tried before the court. On the first day of the trial the Justice Center was closed due to some sort of an emergency. Thus, the trial on March 30, 2003 were conducted at the Cuyahoga County Bar Association. All parties agreed to this procedure and to having a private court reporter record the testimony. (Tr.3-4)

Defense counsel raised the issue that this was a civil suit for attorney fees. The contract was made and all legal services were performed in Canada. Plaintiff was a Canadian law firm and defendants were Canadian residents. Counsel argued that the suit should be tried in a Canadian court. (Tr.13-14). The court stated that the issue had been previously considered and overruled.

The court then stated that it was exercising its ***in rem jurisdiction***. Thus, no personal judgment could be rendered by the court concerning the amount due for attorney fees. (Tr.16-17).

Counsel for plaintiff then made an opening statement adding to those matters raised in the trial brief submitted by him. (Tr.25). Defense counsel was unable to make an opening statement at this time because his file had been left at the Justice Center when the building was ordered to be evacuated on March 30, 2003. (Tr.26-27).

On March 23, 2005, the court entered a personal judgment against defendants jointly and severally for breach of contract in the amount of \$206,342.97 in United States currency. The court also ruled that the property at 5810 Gilbert Avenue, Parma, Ohio had been fraudulently transferred from defendant Bruce Anthony Gorcyca DiMarco (Bruce) to his wife Linda DiMarco.(Linda) even though the court entered a joint and several judgment against Bruce and Linda.

The Court of Appeals for Cuyahoga County reversed the trial court's ruling it had no jurisdiction over appellant's claims.

In the memorandum in support of jurisdiction filed by appellant, only two propositions of law which were presented as follows:

**Proposition of Law No. I:** Ohio Courts Have Personal Jurisdiction Over Persons Who Own Real Property In Ohio and/or Contract For Services To Be Performed In Ohio. Ohio Courts Do Not Lose Jurisdiction Because Such Persons Leave The State Or Temporarily Reside elsewhere.

**Proposition of Law No. II:** One May Not Insulate Oneself From The Personal Jurisdiction Of Ohio Courts By Willfully Fleeing Prosecution.

However, in the merit brief filed by appellant, three propositions of law are now raised as follows:

**Appellant's Proposition of Law No. I:** Ohio Courts Have Personal Jurisdiction Over Persons Who Are Ohio Residents But, At The Time Of The Institution Of Litigation Or Service Of Process, Are Absent From The State. Ohio Courts Do No Lose Jurisdiction Because Such Persons Leave The State Or Temporarily Reside Elsewhere.

**Appellant's Proposition of Law No. II:** Ohio Courts May Exert Personal Jurisdiction Over Nonresident Defendants If The Nonresident Defendants have Either Established Minimum Contacts With The Forum State, Or If They satisfy The Elements Of the Long-Arm Statute.

**Appellant's Proposition of Law No. III:** A Nonresident Defendant May Establish Minimum Contacts With The Forum Stat With One Single Act If That Single Act Creates A Substantial Connection With The Forum State.

### **Trial Evidence**

Counsel for plaintiff then made an opening statement adding to those matters raised in the trial brief submitted by him. (Tr.25). Defense counsel was unable to make an opening statement at this time because his file had been left at the Justice Center when the building was ordered to be evacuated on March 30, 2003. (Tr.26-27).

Plaintiff called William Gilmour who gave his educational and professional background. He had been admitted to the Ontario Canada Bar as a barrister and solicitor in 1990. Prior to this case he had done two fairly major extradition cases, one of which involved an internet terrorist. (Tr.28-59). Gilmour testified he became a partner in the plaintiff law firm in February 1992. He then outlined the procedures for representation of clients. He testified that it was the practice to have engagement letters. However, no engagement letter or contract was required according to Ontario law. (Tr.30-31). Gilmour then explained some issues concerning the taxation of legal services in Ontario and its value added tax. (Tr.35-37).

Gilmour testified that his initial contact was with Linda DeMarco (Linda) on behalf of her husband, Bruce. She spoke to Gilmour about a potential claim for Bruce Anhtony DiMarco (Bruce ) who was injured while in Canadian custody. (Tr.38-39). After Gilmour was retained for the civil case involving injuries to Bruce it became an investigative retainment involving negotiations with the US Attorney on behalf of Bruce. (Tr.42-43).

Gilmour testified that he did some work for Pacific Blue Productions. This was a corporation owned by Linda. (Tr.44-45). Gilmour then presented the invoices that were rendered for the legal services on behalf of Bruce concerning a breach of recognizance and representation on Bruce's extradition proceedings. (Tr.46-48).

Gilmour testified that Bruce raised an objection when plaintiff wanted security for payment of its attorney fees. Bruce informed plaintiff that the home was no longer in his name but in his wife's name. This was because Bruce's first wife claimed to have some claim in the home. At that point Bruce believed there was a fixed fee arrangement. This was denied by Gilmour. (Tr.53-54). There was some discussion concerning a \$300,000.00 flat fee. This was rejected by Gilmour because this was an unlimited attorney-client engagement. (Tr.57-58). Gilmour then discussed the transfer of the property from Bruce's mother to Bruce on October 2, 1998 and the subsequent transfer from Bruce to Linda on June 15, 1999. (Tr.60-61).

Gilmour then related what he did in his representing of Bruce during his extradition proceedings. This included finding out about a certified judgment filed by Securities & Exchange Commission in Florida and speaking with a special agent regarding the transfer of his property. (Tr.60-67). Gilmour then discussed various offers made by Bruce concerning the payment of attorney fees, all proposals were rejected. (Tr.76-80). At the conclusion of Gilmour's testimony defense counsel was unable to cross-examine him because his file had been left at the Justice Center when the Justice Center was ordered to be evacuated. (Tr.81).

On March 31, 2004 the direct examination of Gilmour was continued. Gilmour identified some exhibits. Gilmour explained that he stayed on the case even though the bill was so high because he did not want to prejudice Bruce's defense. (Tr.7-9, 3/31/04).

On cross-examination Gilmour testified that he and another lawyer went to see Bruce after he was contacted by Linda. The client was Bruce who wanted a civil action

filed on his behalf for injuries he received while he was in Canadian custody. (Tr.19). A retainer of \$3,000.00 was paid. His first account was rendered at Bruce's request while he was still in jail. Bruce had also represented himself on his habeas corpus petition. (Tr.28-30).

Gilmour testified that when he examined the house in Parma he saw that there was a doll collection. Bruce wanted a \$50,000.00 credit applied to his account for the doll collection. This was rejected. (Tr.36-40). Significantly, Gilmour testified that he did not charge for any legal work done on behalf of Pacific Blue, which was Linda's corporation. (Tr.50-51). His entire billing was for work done for Bruce. None of the billing had any items identifiable to Linda or her corporation Pacific Blue. (Tr.52-53).

When shown Exhibit A, the authority and power-of-attorney for assignment and sale of stock, Gilmour said it was not his writing; that it was for the personal injury lawsuit and negotiations with US attorney. Moreover, Exhibit B was not an agreement for a fixed fee. (Tr.63-63). Gilmour stated that his billing invoices were directed to Bruce, (Ex.1, Tr.77). At that point plaintiff's Exhibits and defendants's Exhibits were admitted and received by the court. (Tr.78-79).

At this point defense counsel again renewed his motion to dismiss the case for lack of jurisdiction and venue. Counsel argued that the only nexus to Ohio was that Linda owned a piece of property in Parma, Ohio. (Tr.84-86). The court overruled the motion. (Tr.86).

On further redirect examination of Gilmour he stated at no time did Bruce Tony ever dispute any of the invoices that were sent. (Tr.143-44). On re-cross, Gilmour admitted Bruce raised the flat fee arrangement many times. Gilmour's invoices were only for legal representation on behalf of Bruce. (Tr.143-46). Gilmour testified that even though those legal services were rendered on Bruce's behalf he expected both Bruce and Linda to pay his fees. (Tr.156-58). This included the legal work performed in connection with Bruce's

legal problems although no charge was for any of Linda's work. (Tr.160-70).

On March 30, 2004 a witness, Paul Dhaliwal, was taken out of order. Paul Dhaliwal was a lawyer with plaintiff's firm since 2002. (Tr.82-83). Dhaliwal asked Gilmour why he continued to represent Bruce even though the bill was getting so large. He stated that Gilmour believed that something was going to happen and Gilmour did not want to prejudice the interest of his client, **Bruce**. (Tr.87-90). He said he did research on the internet concerning conditions in US jails, federal sentencing guidelines and matters relating to the securities and exchange matters. He admitted that when he met Linda at these meetings the discussions concerned the incarceration of Bruce, (Tr.94, 98). None of his work involved Linda's personal business. None of the firm's billing involved any specific work involving Linda nor Pacific Blue Productions. (Tr.105). He claimed that even though Bruce was in jail subject to extradition that both Bruce and Linda were his clients. (Tr.112-13). The extradition affected Linda, being his wife. (Tr.90).

Juan Pabal Sanchez, a defense witness, was called out of order. He was referred to Gilmour by Bruce for his legal problems. (Tr.87-89). He requested the same flat fee consideration that Gilmour gave to Bruce. (Tr.91). Gilmour would not give him the same deal. (Tr.92). Sanchez stated that Bruce was an honest person. (Tr.98).

Charles Arnold, a friend of Bruce, loaned him \$20,000 for legal fees. (Tr.105-06). Arnold said that Gilmour told him that he had a flat fee arrangement with Bruce. (Tr.109-10).

Harry Doan was called as the next witness. He testified that although he knew Gilmour for thirty (30) years he did not socialize with him. According to Doan the clients were Bruce, Linda and Pacific Blue Productions. (Tr.120). Doan testified that there was no written contract in this case and that no retainer contract was required. (Tr.121). When asked what law in Canada makes a spouse responsible for the debt of the other spouse, Doan stated that this had nothing to do with a spouse but one who retained and gave

instructions to the attorney, which, according to his understanding, was Linda. (Tr.142). However, Doan, upon his review of the plaintiff's documents saw nothing in writing from Linda hiring or agreeing to pay attorney fees.(Tr.146).

Gilmour was further examined on March 31, 2004. He admitted that Bruce raised his belief that this was a flat fee arrangement many times. Gilmour's invoices only reflected that legal services were rendered on Bruce's behalf. (Tr.145-48). According the Gilmour, his clients were both Bruce and Linda even though he had no written retainer agreement with either of them. (Tr.156). However, he expected both of them to pay. (Tr.158). He had a discussion with Linda concerning security for payment of the legal fees as they were getting larger. (Tr. 166). In any event, all of his legal services were rendered on Bruce's behalf. (Tr.168-70).

Defense called Ji Hae Linda Yum Gorcyca DiMarco (Linda). She testified she was the owner of Pacific Blue Productions. She met Bruce in Hong Kong in 1998. They later married in Ohio. They moved to Florida and had one son who was born in Ohio. Linda took care of Bruce's mother who became very ill. It was during Bruce's mother's illness that the property was transferred to Bruce. This was on October 2, 1998. (Tr.175-77). Bruce then transferred the house to Linda after Bruce's mother died on June 14, 1999. The home was transferred because Bruce was fifteen (15) years older than her and he had some ongoing medical problems. (Tr.178).

Linda testified that Gilmour did not perform any legal services on behalf of her business (Tr.186). Linda stated she never agreed to be responsible for attorney fees for her husband Bruce. (Tr.191). Linda testified that Bruce was unable to leave the province of Ontario. (Tr.203). Linda testified that she did not hire Gilmour to perform any legal services for her. (Tr.207, 209).

On rebuttal, Gilmour was recalled as a witness. He identified Exhibit 14, a letter to the US Attorney which requested Bruce's extradition to the United States. (Tr.214-15).

At the conclusion of the proceedings the court requested proposed findings of fact and conclusions of law. Plaintiffs' counsel argued that the court had personal jurisdiction over Bruce in addition to ***in rem jurisdiction***. (Tr.246-47).

### ARGUMENT

**Appellant's Proposition of Law No. I:** Ohio Courts Have Personal Jurisdiction Over Persons Who Are Ohio Residents But, At The Time Of The Institution Of Litigation Or Service Of Process, Are Absent From The State. Ohio Courts Do Not Lose Jurisdiction Because Such Persons Leave The State Or Temporarily Reside Elsewhere.

**Appellant's Proposition of Law No. II:** Ohio Courts May Exert Personal Jurisdiction Over Nonresident Defendants If The Nonresident Defendants Have Either Established Minimum Contacts With The Forum State, Or If They Satisfy The Elements Of The Long-Arm Statute.

**Appellant's Proposition of Law No. III:** A Nonresident Defendant May Establish Minimum Contacts With The Forum State With One Single Act If That Single Act Creates A Substantial Connection With The Forum State.

As noted, this court accepted jurisdiction on August 23, 2006. 110 Ohio St.3d 1463, 852 N.E.2d 1213 (Aug. 23, 2006). In accepting jurisdiction only the two propositions of law were presented by appellant in its memoranda. Now appellant, in an attempt to expand the record in this appeal has presented three (3) propositions of law.

In any event, appellant makes an obtuse argument that appellant should benefit from the fact that appellant's claim for legal services for representing appellee, Bruce Anthony Gorcyca DeMarco, in the Canadian Courts somehow, transformed itself into activity in Ohio. This casuistic argument can carry no weight. The simple fact was that neither Bruce or Linda conducted any activity in Ohio with reference to appellant's legal services in Canada.

Appellant was not without recourse. Appellant has access to the Canadian courts in which it could bring its claim. If appellant obtained a judgment in the Canadian courts it could then execute on that judgment by transferring it to the Cuyahoga County, Ohio.

For whatever matter Bruce was wanted in the United States had nothing to do with appellant's activities except performance of legal services in Canada. The extradition proceeding was instituted and litigated in Canada.

The Court of Appeals for Cuyahoga County saw the issue and properly decided the issue. In a nutshell, under no circumstances should this case have been filed and decided on its merits in the Court of Common Pleas of Cuyahoga County.

This case presented a situation where appellant, a law firm sued Bruce and Linda for legal services rendered only in Canada. Neither Bruce or Linda conducted any activity in Ohio which gave rise to its claim for legal services. All of the legal services rendered were performed in Canada. At no time did defendants ever come to Cuyahoga County nor conducted any activity in Cuyahoga County. The Common Pleas Court was simply without jurisdiction to proceed in this matter and the Court of Appeals correctly concluded that the Common Pleas Court was without jurisdiction as stated by the Court of Appeals:

In the instant case, Prouse argues that the Parma property became a term of the contract for legal services provided to appellants when they told Gilmour that the house would be used to pay the balance on the contract. However, verbal assurances do not create an interest in real property sufficient enough to make that property party of an otherwise unrelated contract. Accordingly, there is no connection between Prouse's claims and appellants' interest in the Ohio property. The trial court lacked personal jurisdiction over appellants to hear claims against them. See, also, **Lincoln Tavern, Inc. V. Snader** (1956), 165 Ohio St.61, 68 (holding that an attachment of real property "**is a provisional remedy; an ancillary proceeding which must be appended to a principal action and whose very validity must necessarily depend upon the validity of the commencement of the principal action**").

Because the court lacked personal jurisdiction to hear the instant case, appellants' first assignment of error is sustained.

Appellant's argument that in this private civil action that Bruce's residing in Canada allowed an Ohio court to exercise jurisdiction is pure legal sophistry. The claim for legal services was for a defense against an extradition action filed in Canada. Bruce did not flee to Canada. Bruce did not flee to Canada to avoid a civil lawsuit. Neither Bruce nor Linda conducted any activity in Ohio with respect to appellant's claim for legal fees.

Appellees were denied due process of law when the court exercised personal jurisdiction in order to enter a judgment *in personam* where defendants were not residents of Ohio, and had conducted no activity in Ohio concerning plaintiff's claim for breach of contract.

The trial court entered a joint and several judgment against defendants in the sum of \$206,342.07. This was based on appellant's claim for breach of contract. While the court ostensibly ruled that it only had *in rem* jurisdiction, the court never obtained jurisdiction over appellant's person to authorize it to render a personal judgment. This constituted a denial of due process of law. The court's reliance on *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), appears to be misplaced. *Erie* involved the procedure to be used in federal courts in diversity cases. A federal court was required by *Erie* to apply a state's rules of decision to all non-federal matters. According to *Erie* "the law to be applied in any case is the law of the state." 304 U.S. at 78. This was not a suit between citizens of different states brought in a federal court. Here we have two residents of Canada involved in a suit in an Ohio court brought by a Canadian law..

Appellant, in its complaint, did not allege any facts or activities that appellees conducted in Ohio which would allow an Ohio court to exercise jurisdiction over appellees. Appellant was a limited liability partnership located in Brampton, Ontario, Canada. Appellees were residents of Mississauga, Ontario, Canada. This was a suit for legal fees rendered by appellant on behalf of appellee, Bruce Anthony Gorcyca, who was contesting an extradition request from the United States. Bruce had been detained in Toronto, Ontario, Canada and remained in Canada at all times.

The only nexus to Ohio was a claim that appellee Bruce Gorcyca (Bruce) owned real property in Parma, Ohio, even though he resided in Mississauga, Ontario, Canada. The same claim was made against defendant Ji Hae Linda Yum (Linda). The complaint alleged that both appellees were Canadian citizens. All legal services rendered by

appellant involved defense of extradition proceedings against Bruce. However, that legal services were rendered in Canada based on a contract of employment which was entered into in Canada. There was absolutely no nexus to any Ohio activity. Consequently it was a denial of due process of law to exercise personal jurisdiction so as to enter personal judgment. If the court had *in rem* jurisdiction as to the Ohio property, it would be limited to an unliquidated claim against the property which had not been reduced to judgment. .

Section 2307.382 of the Ohio Revised Code allows that the court to exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's "**Having an interest in, using, or possessing real property in this state; ...**" However, where personal jurisdiction is based on this section "**only a cause of action arising from acts enumerated in this section may be asserted against him.**" Ohio Rev. §2307.38.2(c).

Thus, at best, only a claim concerning a fraudulent transfer could be litigated in an Ohio court. However, there was no existing judgment to support a claim of fraudulent transfer to allow that claim to be considered. It would seem that appellant would first have to obtain a judgment in Canada against appellees and thereafter pursue a claim that the transfer of the property was fraudulent as to appellant. However, this could not be accomplished in a unitary proceeding. Thus, the fundamental concept of due process was denied appellees. Due process required the court **to observe that fundamental fairness essential to the very concept of justice."** *Lisenba v. California*, 314 U.S. 219, 236 (1941).

Where a court proceeds to enter a personal judgment there must be some activity conducted in the forum state *i.e.*, Ohio, which would authorize the extraterritorial service of process in order to acquire personal jurisdiction over a nonresident defendant. No such activity was alleged in this case because the contract of employment was entered into in Canada and all legal services were rendered in Canada. There was no allegation of any

activity conducted by either appellee in Ohio which would authorize the Common Pleas Court to exercise ***in personam*** jurisdiction over appellees to render a personal judgment. Counsel consistently objected to the court's authority to hear this suit. (Tr.14-16, 83-86).

Consequently, **"... before a court may exercise personal jurisdiction over a defendant, there must be more than a notice to the defendant and a constitutionally sufficient relationship between the defendant and the forum. ...:" *Omni Capital Int'l v. Rudolph Wolff & Co.*, 484 U.S. 97, 104 (1987).**

The Supreme Court in ***Hanson v. Denckla***, 357 U.S. 235 (1958), considered the necessary minimum contacts which are required for a valid ***in personam judgment*** against a non-resident to satisfy the requirements of the due process clause. As an initial matter it was

**essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."**  
357 U.S. at 253.

In ***Hanson*** a controversy arose as to right to receive part of the corpus of a trust established in Delaware by the settlor who later became domiciled in Florida. In proceedings in the Florida courts, the Florida Supreme Court had decided that the trust was invalid. Thus the property passed under the residuary clause of the settlor's will.

In court proceedings in Delaware the Delaware Supreme Court concluded that the decree of the Florida court was not binding for purposes of full faith and credit. Thus it upheld a court ruling from a Delaware court that the trust was valid. The United States Supreme Court ruled that the Florida judgment was invalid because the Florida court did not acquire personal jurisdiction over the trustee and had no jurisdiction over the trust. Consequently the Florida court could not make a determination as to the validity of the trust.

The Supreme Court ruled that unilateral activity by those who claim some relationship with a non-resident defendant cannot satisfy the jurisdictional requirement of

having contact with the state in which the suit has been brought. Consequently, in Hanson, the court ruled that because the Delaware Trust Company had no office in Florida, transacted no business there, and none of the trusts assets were ever held or administered in Florida, there were no minimum contacts with Florida which would give the Florida court **"in personam jurisdiction."** The trust company, for purposes of adjudicating the validity of the trust agreement had been executed in Delaware by the settlor whose domicile was in Pennsylvania. This was so notwithstanding the fact that the settlor of the trust had thereafter become domiciled in Florida, the trustee had remitted trust income in the state and that the powers of appointment granted by trust agreement had been exercised in Florida.

The Supreme Court noted the cause of action or claim for relief was **"not one that arises out of an act done or transaction consummated in the forum State. ..."** 357 U.S. at 251. The Supreme Court also noted the difference between in personam jurisdiction and in rem jurisdiction noting that in rem jurisdiction was based on **"the presence of the subject property within the territorial jurisdiction of the forum State..."** 357 U.S. at 246. **"In personam"** jurisdiction was based on activity conducted in the forum state.

As applied to this case, there was absolutely no activity conducted in Ohio, giving rise to appellant's claim for attorney fees. The Common Pleas Court unconstitutionally exceeded the reach of its in rem jurisdiction to render a personal judgment against appellants. The contract for employment was made in Canada. The legal services were rendered in Canada. Appellees conducted no activity in Ohio which would satisfy the minimal requirements of the due process clause so as to allow the Common Pleas Court of Cuyahoga County to exercise personal jurisdiction over them. Defendants did not have the **"continuous and systematic"** contacts in Ohio so as to allow an Ohio court to exercise personal jurisdiction over them. Helicopteros Nacionales de Columbia v. Hall,

466 U.S. 408, 414-16 (1984). Accord, Barile v. University of Virginia 2 Ohio App.3d 233, 441 N.E.2d 608 (1981) (holding that minimum contacts were established in Ohio where the defendant had aggressively pursued an Ohio resident in Ohio which allowed an Ohio court to exercise jurisdiction over a non-resident defendant.).

Thus, appellees, who did nothing in Ohio which gave rise to the alleged breach of contract, there were simply no minimum contacts to satisfy due process of law. “[D]ue 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.’...” Internat’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)

See Austin v. United States, 590 U.S. 602, 626 (1993) (Scalia, J., concurring)(noting with reference to in rem forfeiture “the fiction that the property is guilty, ...”) Meadows v. Meadows, 73 Ohio App.3d 316, 319, 596 N.E.2d 1146, 1148 (1992) (“The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by court having jurisdiction over the person of the defendant.”)

Appellees were also denied due process of law when the court refused to dismiss or transfer this case pursuant to the doctrine of Forum Non Conveniens.

The Supreme Court considered this doctrine in Chambers v. Merrell-Dow Pharmaceuticals, Inc., 35 Ohio St.3d 123, 519 N.E.2d 370 (1988). In Chambers, fifteen (15) actions were filed separately in the Hamilton County Common Pleas Court. Plaintiffs were residents of Great Britain, Scotland and South Wales. A suit was brought concerning a drug that was used to relieve nausea and vomiting during pregnancy. Defendant moved to dismiss the action based on the doctrine of forum non conveniens. The trial court

dismissed the complaint conditioned upon the consent of the defendant to be sued and accept process in the United Kingdom, defendant's agreement to make any necessary documents and witnesses available in such actions and the defendant's agreement to waive any applicable statute of limitations. Based on those conditions, the court dismissed the case. On appeal the Court of Appeals affirmed. On further appeal to the Ohio Supreme Court the Ohio Supreme Court likewise affirmed, ruling:

The common-law doctrine of ***forum non conveniens*** is committed to the sound discretion of a court of general jurisdiction, and may be employed pursuant to the inherent powers of such court to achieve the ends of justice and convenience of the parties and witnesses. ...

This case should have been transferred or dismissed pursuant to that doctrine. This case involved a contract for legal services entered into in Canada and would obviously be governed by Canadian law. A Canadian court would be more suited with its knowledge of contract law involving an attorney and client than would a court in Ohio. All witnesses with knowledge of the proceedings resided in Canada, including plaintiff and defendants.

Fundamental fairness was denied in this case. Thus suit was probably filed in Ohio to take advantage of the fact that appellee, Bruce Gorcyca, could not enter the United States with impunity. Appellant, as his counsel, was aware that if appellee entered the United States while the extradition proceedings were pending in Canada he would be arrested. Thus, appellant plaintiff took unfair advantage of a situation that appellant helped create. Appellant had represented Bruce in his efforts to obtain bond from a Canadian court so that Bruce could be released on bail. The extradition matter was being litigated in the Canadian courts.

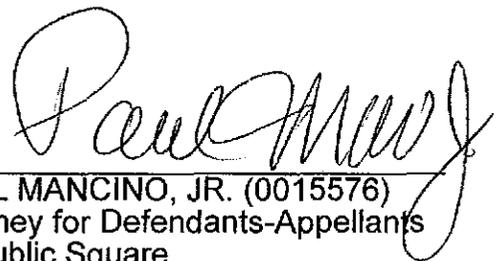
Moreover, when appellees filed a motion to take Bruce's deposition it was opposed by appellant. The court denied permission to take the deposition of Bruce. Thus, appellant, who had created the situation which prevented Bruce from entering the United States, was allowed to take advantage of this ploy so as to deny Bruce his day in court. This maneuver constituted a denial of due process of law. **"The fundamental requisite**

of due process of law is the opportunity to be heard." Grannis v. Odean, 234 U.S. 385, 394 (1914). The hearing must be "at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552 (1965). Neither of these two requisites was present in this case.

### CONCLUSION

The Court of Appeals properly considered and decided this case. Appellant had no right to commence an action in Ohio for attorney fees against Canadian citizens to recover for legal services all of which were rendered in Canada. There was simply no connection to nor nexus with Ohio despite appellant's attenuated claims to the contrary. The Common Pleas Court of Cuyahoga County simply had no jurisdiction. The Court of Appeals properly decided this case.

Therefore the judgment of the Court of Appeals for Cuyahoga County must be affirmed.



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### SERVICE

A copy of the foregoing Merit Brief of Appellants Bruce Gorcyca and Ji Hai Linda Yum, has been mailed to Daniel F. Linder, Attorney for Plaintiff-Appellee, 55 Public Square, Ste. 1600, Cleveland, Ohio 44113-1964, on this 1st day of December, 2006.



PAUL MANCINO, JR. (0015576)  
Attorney for Defendants-Appellants