

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

PROUSE, DASH & COUCH, LLP

Plaintiff-Appellant,

vs.

BRUCE ANTHONY GORCYCA, et al.

Defendants-Appellees.

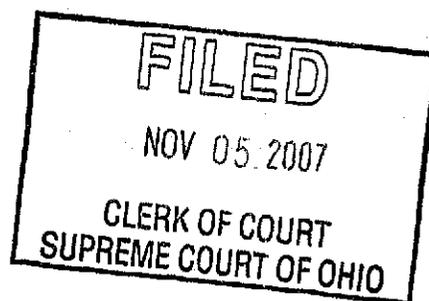
**ON APPEAL FROM THE
COURT OF APPEALS FOR
CUYAHOGA COUNTY,
EIGHTH APPELLATE DISTRICT**

**COURT OF APPEALS
CASE NO. 86324**

MOTION FOR RECONSIDERATION

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This court, on October 31, 2007 reversed the judgment in part, vacated the judgement in part and remanded the cause to the Court of Appeals. The ruling of this court was **“that DiMarco was a resident of Ohio, ... [and] that the trial court had personal jurisdiction over him, ...”**

That conclusion is flawed because the court need look no further than the pleadings to decide the **“resident”** status of DiMarco and Yum. This issue was conclusively determined by appellant's complaint which alleged the following:

2. Defendant, BRUCE ANTHONY GORCYCA DIMARCO (**“DiMarco”**) is a United States citizen, owner of real property located in Parma, Ohio **and at all material times resided in the City of Mississauga, in the Province of Ontario.** ...

3. The defendant JI HAE LINDA YUM (**“YUM”**) is a Canadian citizen, spouse of the Defendant DiMarco, owns real property located in Parma, Ohio, **and resides in the City of Mississauga, in the Province of Ontario.** ... (Complaint of Plaintiff @ ¶¶ 2, 3).

These allegations by appellant are conclusive on the issue of **“resident”** in this litigation. See ***Burke v. Michigan Central R.R.***, 96 Ohio St.496, 504-05, 118 N.E. 111, 114 (1917) (**“the admission by the defendant of the averments in plaintiff's petition dispensed with proof of these averments. ...”**).

The court goes on to state, without a citation to authority, that Ohio courts can exercise jurisdiction over a person who is a resident of Ohio. However the court fails to follow through with that analysis and consider the constitutional issue. While a court may, in certain circumstances, certainly exercise jurisdiction over an Ohio resident the fact that a defendant is a resident of Ohio but no longer lives in Ohio does not give the court continuing blanket jurisdiction throughout the lifetime of the resident to exercise jurisdiction on the claim that it did not arise in Ohio.

§4(B) of Article IV of Ohio Constitution provides:

“The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters ... as may be provided by law.”

Thus, contrary to the statement by this court there was no need to analyze §2307.382 of the Ohio Revised Code, that statement was misplaced. §2307.382 provides that a court may only exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the transaction of any business in this state, contracting to supply services or goods in this state, causing tortious injury by an act or omission in this state, causing tortious injury in this state by an act or omission outside the state if a person regularly does or solicits business or engages in any other persistent course of conduct or derives substantial revenue from goods used or consumed or services rendered in this state, causes injury in this state to any person by breach of a warranty expressly or impliedly made in this sale of goods, causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring the person when he might reasonably have expected that some person would be injured thereby in this state, causing tortious injury to any person by a criminal act, any element of which takes place in this state, having an interest in using or possessing real property in this state, or contracting to insure any person, property or risk located within this state at the time of contracting.

If any of these claims arise for which the court may exercise personal jurisdiction **“only a cause of action arising from acts numerated in this section may be asserted against him.”** Ohio Rev.Code §2307.382(C).

Moreover, that statute must be read *in pari materia* with Rule 4.3(A) of the Ohio Rules of Civil Procedure which authorizes service of process outside the state **“upon a person who, at the time of service or process, is a nonresident of this state or is a resident of this state who is absent from this state. ...”**

While the court cited a plethora of statutes defining the term **“resident”**, none of those statutes are applicable to the case at hand. The court goes on to state that **“that**

DiMarco was a resident of Ohio for personal-jurisdiction purposes until the day he fled to Canada to evade criminal investigation or prosecution. ...”

The court overlooks the claim for relief. The claim for relief was not in any way related to any action or activity by DiMarco in Ohio. It was only a claim for legal representation concerning defending an extradition request by the United States. All services were contracted for and performed in Canada. Thus, a due process analysis must be undertaken to decide if DiMarco conducted any activity in Ohio which gave rise to the claim for relief for legal services rendered by appellant in Canada on DiMarco's behalf. There was simply none.

The claim for legal services was for a defense against an extradition action filled in Canada. DiMarco did not flee to Canada to avoid a civil lawsuit. Neither DiMarco nor Yum conducted any activity in Ohio with respect to appellant's claim for unpaid legal fees.

DiMarco was denied due process of law when the court exercised personal jurisdiction in order to enter a judgment *in personam* where DiMarco was not a resident of Ohio, and conducted no activity in Ohio concerning appellant's claim for breach of contract.

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, DiMarco, who was contesting an extradition request from the United States. DiMarco had been detained in Toronto, Ontario, Canada and remained in Canada at all times.

The only nexus to Ohio was a claim that DiMarco owned real property in Parma, Ohio, even though he resided in Mississauga, Ontario, Canada. The same claim was

made against defendant Yum. **The complaint alleged that both DiMarco and Yum “resided in the City of Mississauga, in the Province of Ontario”** . All legal services rendered by appellant involved defense of extradition proceedings against DiMarco. However, these 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. Even if the court had ***in rem*** jurisdiction as to appellee’s Ohio property, it would be limited to an unliquidated claim against the property which had not been reduced to judgment. .

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.

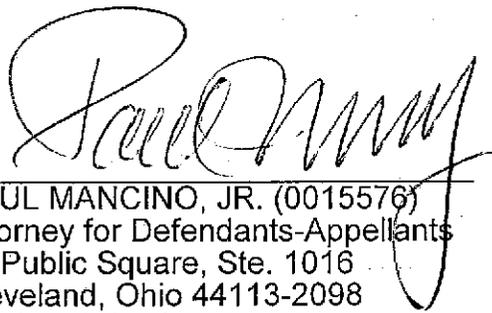
The Supreme Court noted the cause of action or claim for relief was **“not one that arises out of an act done or transaction consummated in the forum State. ...”** 357 U.S. at 251. The Supreme Court also noted the difference between *in personam jurisdiction* and *in rem jurisdiction* noting that *in 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. Appellees 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, DiMarco, 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 contracts 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).

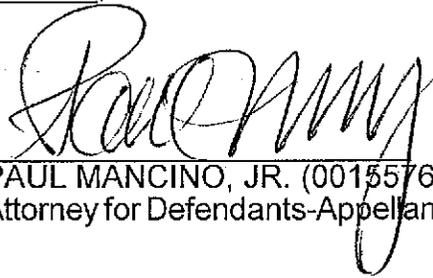
Appellant therefore requests reconsideration by this court and urges this court to consider the constitutional issue presented in this appeal.



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SERVICE

A copy of the foregoing **Motion for Reconsideration**, has been mailed to Daniel F. Linder, Attorney for Plaintiff-Appellee, 55 Public Square, Ste. 1600, Cleveland, Ohio 44113-1964, on this 2nd day of November, 2007.



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

FILED IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

2003 APR 11 P 2:40

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50 Queen Street West E. FUERST
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CUYAHOGA COUNTY

Judge: JANET R BURNSIDE



CV 03 498823

Plaintiff,)
)
 vs.)
 BRUCE ANTHONY GORCYCA)
 DIMARCO (a.k.a. Tony DiMarco and Bruce)
 Gorcyca))
 610 Kedleston Way)
 Lorne Park)
 Mississauga, Ontario L5H 1Y5)
)
 and)
)
 JI HAE LINDA YUM (a.k.a. Linda)
 DiMarco and Linda Gorcyca))
 610 Kedleston Way)
 Lorne Park)
 Mississauga, Ontario L5H 1Y5)
)
 Defendants.)

COMPLAINT

Now comes the Plaintiff, by and through counsel, and for its claims for relief, states the following:

PARTIES

1. Plaintiff, Prouse Dash & Crouch, LLP ("PDC") is a Limited Liability Partnership carrying on business as a law firm in Brampton, in the Province of Ontario, Canada and providing legal services in return for payment of fees. At all times material, Plaintiff is a "creditor" of Defendants as contemplated by R.C. §1336.01 et seq.
2. Defendant, BRUCE ANTHONY GORCYCA DIMARCO ("DiMarco"), is a United States citizen, owner of real property located in Parma, Ohio and at all material times

resided in the City of Mississauga, in the Province of Ontario. Said Defendant is sought for extradition to the United States and has been charged with criminal offenses in Canada. The Defendant DiMarco also goes by the names Tony DiMarco, Bruce Gorcyca and was Bruce Anthony Gorcyca at birth. At all times material, Defendant DiMarco is a "Debtor" of the Plaintiff as contemplated by R.C. §1336.01 et seq.

3. The Defendant, JI HAE LINDA YUM ("YUM") is a Canadian Citizen, spouse of the Defendant DiMarco, owns real property located in Parma, Ohio, and resides in the City of Mississauga, in the Province of Ontario. Yum also goes by the names Linda DiMarco and Linda Gorcyca from time to time. At all times material, Defendant Yum is a "Debtor" and/or an "Insider" of the Plaintiff as contemplated by R.C. §1336.01 et seq.

INTRODUCTION

4. During the summer of 2000, the government authorities in the Greater Toronto, Canada Area became aware of the presence of the Defendant DiMarco who was wanted by the authorities of the government of the United States of America. Acting on information, the said authorities apprehended and arrested the Defendant and held him for extradition to the United States and detained him.
5. While the Defendant DiMarco was being held at the Metro West Detention Centre in the City of Toronto, Ontario, the Defendant Yum attended at the offices of the Plaintiff to secure the assistance of the Plaintiff to represent her and her husband, the Defendant DiMarco.