

Lauren E. Ellisberg  
Coburn v. Martinez Argument - Draft  
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Advanced Appellate Advocacy  
Professor Abraham

ARGUMENT

**I. MARY JO COBURN FAILED TO ESTABLISH PERSONAL JURISDICTION OVER WALLY MARTINEZ BECAUSE COBURN WRONGLY INDUCED MARTINEZ TO ENTER THE STATE OF TENNESSEE AND FRAUDULENTLY ENTICED HIM TO REMAIN IN THE JURISDICTION AFTER HIS PLANNED DEPARTURE IN ORDER TO SERVE HIM WITH PROCESS**

Mary Jo Coburn failed to establish personal jurisdiction over Wally Martinez (hereinafter "Martinez") based on the doctrine of "fraudulent enticement." Martinez was personally served with the summons and complaint in this action after he was fraudulently induced to enter the state of Tennessee, and was then fraudulently enticed to stay for the sole purpose of serving him with process.

Courts have held due process is threatened when personal jurisdiction, based on in-hand service of process, is sought over a defendant when he has been fraudulently enticed to enter a jurisdiction. Burnham v. Superior Court, 495 U.S. 604 (1990). The Supreme Court of the United States enunciated the doctrine of "fraudulent enticement" in Commercial Mutual Accident Company v. Davis, 213 U.S. 245 (1909). The court found that where a person is "induced by artifice or fraud to come within the jurisdiction of the court for the purpose of procuring service of process, such fraudulent abuse of the writ will be set aside

Lauren E. Ellisberg (2011)

upon proper showing.”Id. at 256. Moreover, the doctrine requires three elements to be met: 1) that the plaintiff “induced the defendant to enter the jurisdiction of the court; 2) that the plaintiff’s inducement consisted of “artifice or fraud”; and 3) that the plaintiff’s purpose was to secure service of process. Id.

Mary Jo Coburn sought to prevent Wally Martinez from publishing the tapes in his journalistic capacity by inducing him with promises of more information and documents relating to a police conspiracy. See pg. 17 of record transcript. Furthermore, once Wally Martinez was in Tennessee, Mary Jo Coburn fraudulently attempted to detain him in order to secure service of process. Mary Jo Coburn lured Wally Martinez into the State of Tennessee by trickery and deceit, and then used that occasion to serve him with the summons and complaint in this action. The decision of the United States District Court of the Northern District of Tennessee finding that no personal jurisdiction exists over Wally Martinez must be upheld.

**A. Mary Jo Coburn induced Wally Martinez to enter the state of Tennessee under artifice and fraud, with the purpose to secure service of process.**

The District Court incorrectly held that Coburn did not misrepresent the nature of the documents by which she induced Martinez to come to Tennessee. Mary Jo Coburn promised Wally

Lauren E. Ellisberg (2011)

Martinez that she had documents regarding the killing of UbumuVictoire, specifically a "police conspiracy to execute UbumuVictoire and then a conspiracy to cover it up, and then a conspiracy to whitewash the whole affair." Pg. 17 of record. When Martinez expressed an interest in these documents, he attempted to meet Coburn in Dewey City, where the cause of action arises, but she insisted on the two meeting in New Taft, Tennessee and refused to enter Dewey City, despite having the financial means to do so. Upon traveling to New Taft on April 8, 20\_\_, Martinez met with Coburn the next morning on April 9th in his hotel room. Coburn presented documents which contained no new information, and which had previously been released to the public. There was no mention or suggestion of a police conspiracy that would exonerate Coburn or anything of journalistic value to Martinez. This is evidence that Coburn never had any intention of providing Martinez with documents relating to a "police conspiracy" and merely conjured up information that would be enticing to a news journalist in order to get Martinez into Tennessee.

The District Court found that "apart from express misrepresentations, a plaintiff's holding out of a purpose to engage in settlement negotiations is a fraudulent trick if the plaintiff secretly intends to use the occasion to serve the defendant with process—at least when service of process is the

Lauren E. Ellisberg (2011)

plaintiff's dominant motive for luring the defendant into the jurisdiction." Coburn v. Martinez at 96; See also Coyne v. Grupo Industrial Trieme, S.A., 105 F.R.D. 627, 629-630 (D.D.C. 1985). However, the lower court wrongfully applied the law to the set of facts in the instant case. The District Court misapplied the holding of Commercial Mut., which states that service should not be set aside where a plaintiff invites a defendant to the jurisdiction for settlement negotiations, and in fact engages in bona fide negotiations and does not cause the defendant to be served until after those negotiations have come to an end. Here, Coburn did not engage in bona fide negotiations, evidenced by nature of the documents presented upon their first meeting. The documents did not pertain to proposed content laid out by Coburn during her telephone conversations with Martinez. Coburn's main objective was to prohibit Martinez from publishing the tapes, and she sought to do so by serving him with a summons and complaint, not by negotiations. Thus, Martinez was induced to enter Tennessee under artifice and fraud and service of process should be set aside.

**B. Even if this court should find that Martinez was not induced to enter into the state of Tennessee, Mary Jo Coburn failed to advise the defendant that he will be served with process immediately if negotiations fail.**

The Court in Coyne found a strong presumption in favor of setting aside service "whenever a defendant enters the

Lauren E. Ellisberg (2011)

jurisdiction for settlement talks at the plaintiff's invitation and the plaintiff has not clearly and unequivocally alerted the defendant before the trip that the defendant would be served." Moreover many courts have established "a per se rule of immunity from service for such defendants unless the plaintiff specifically advises the defendant that he will be served with process immediately if negotiations fail." Id at 630. The District Court failed to apply either standard because it found that Coburn's intention to sue the defendant in Tennessee did not materialize until after the defendant arrived. However, the District Court concedes that the authorities relied upon in Coyne dealt with service "made very soon after the defendant arrived," which is analogous to the case at hand. Upon inspection of the fraudulent documents, at their first meeting on April 8<sup>th</sup>, Martinez voiced his frustration and belief that he had been led on. See pg. 19. Coburn then attempted to detain Martinez by offering "other documents that she was sure" he had never seen before. A mere 24 hours after this conversation, Martinez was served.

**C. Coburn used artifice and fraud to detain Martinez in Tennessee until the morning of April 9 under the tacitly fraudulent purposes of serving him with process.**

The District Court correctly held that even if Martinez had entered Tennessee without fraudulent inducement, "service was

Lauren E. Ellisberg (2011)

invalid because the plaintiff used a fraudulent device to induce him to remain in Tennessee in order to serve him." Record pg. 97. After Martinez was aware on April 8 that Coburn had no intention of providing him with useful information, he voiced his frustrations. At that time Coburn promised him "extremely interesting" documents that "contained the kind of information that [Martinez] was seeking." Id. In actuality, no such documents were ever produced, nor has Coburn offered any evidence to show that the documents do, in fact, exist. The District Court concluded that Coburn did not negotiate in good faith in her conversations with Martinez on the morning of April 9. Moreover, the court found that "having created the impression on the morning of April 8 that there would be further negotiations about documents and tapes on the morning of April 9, the [Coburn] was duty-bound to correct that impression when she changed her mind..." E/M Lubricants, Inc. v. Microfral, S.A.R.L., 91 F.R.D. 235, 238 (N.D. Ill. 1981).

Coburn contends that "fraudulent inducement to remain in a jurisdiction after entering it voluntarily is not grounds for quashing subsequent service." However, the court in Gumperz v. Hoffman, 283 N.Y.S. 823 (App. Div. 1935) held that "the duty of persons present in the jurisdiction to submit to service of process means that service is not vitiated by fraudulent devices to lure them out of hiding." Here, Coburn attempted to lure

Lauren E. Ellisberg (2011)

Martinez to stay in Tennessee by fraudulent devices. Thus, service of process should be quashed and the District Court opinion must be upheld.

**II. THE DISTRICT COURT CORRECTLY HELD THAT MARY JO COBURN FAILED TO SHOW THAT WALLY MARTINEZ HAD MINIMUM CONTACTS WITH THE STATE OF TENNESSEE TO ESTABLISH PERSONAL JURISDICTION BECAUSE MARTINEZ'S PLACING OF THE TAPES ON www.outlawcops.com DOES NOT CONSTITUTE PURPOSEFUL AVAILMENT OF THE PRIVILEGE OF CONDUCTING ACTIVITIES OR CAUSING CONSEQUENCES IN TENNESSEE AS OPPOSED TO ANY OTHER STATE**

On May 9<sup>th</sup>, 20\_\_\_ Mary Jo Coburn attempted to serve Wally Martinez a second time, this time in Dewey City, New York. Without challenging the validity of the process server, service must be quashed because Tennessee cannot assert jurisdiction over Martinez because of a lack of minimum contacts between Martinez and Tennessee. Tenn. Code Ann. §§ 20-2-214(a)(6), 20-2-225 (the Tennessee long arm statute) asserts jurisdiction over non-residents of Tennessee to the maximum extent allowed by the constitution of the United States. *International Shoe Co. v. Washington*, established that "in order for a state court's exercise of personal jurisdiction to be consistent with due process, the defendant must have "minimum contacts" with the forum state such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice.'" 326 U.S. 310, 316 (1945). The exercise of jurisdiction over Martinez in this case would not comport with due process of

Lauren E. Ellisberg (2011)

law under the Fourteenth Amendment because Coburn has failed to show sufficient minimum contact between Martinez and Tennessee. Thus, service must be squashed and the District Court's opinion must be upheld.

**A. Martinez did not purposefully avail himself of the privilege of acting in Tennessee or causing a consequence in Tennessee because Martinez has no contacts with Tennessee and continues to reside in New York at all relevant times.**

Martinez has no relevant contacts with Tennessee giving rise to specific jurisdiction under International Shoe. He has resided in New York at all relevant times concerning the cause of action. The District Court found that "all of his indicia of residence - property, bank accounts, voter registration, and the like - are in New York." Coburn at 90. International Shoe further requires that "...in each case that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." 357 U.S. at 253. The cause of action in question, an alleged breach of a fiduciary duty of confidentiality, and all events giving rise to this action, occurred in New York.

**B. Martinez's contacts with Tennessee, the telephone calls between Martinez and Coburn and his visit to Tennessee, do not constitute sufficient minimum contacts and do not bear an appropriate relationship to the cause of action.**



Lauren E. Ellisberg (2011)

Whether the telephone calls made by Martinez in New York to Coburn in Tennessee constitute contacts sufficient to sustain personal jurisdiction depends on all the circumstances. See Digi-Tel Holdings, Inc. v. Proteq Telecommunications (PTE), Ltd., 89 F.3d 519, 523 (8th Cir. 1996); Rambo v. American Southern Ins. Co., 839 F.2d 1415, 1418 (10th Cir. 1988).

Martinez's first relevant contact with Tennessee arose in April, when he placed three telephone calls from New York to Coburn in Tennessee. Martinez made these calls in order to authenticate the tapes he had obtained in order to publish them on his website. The District Court noted that "the telephonic contacts in this case were few in number, occurred during a very limited period of time, and did not culminate in the creation of ongoing obligations between the parties." Coburn at 91. Martinez did not have an expectation that he might be hauled into court in Tennessee as a result of these conversations. Thus, the District Court correctly held that the telephone calls failed to purposefully avail Martinez of the privilege of conducting activities in Tennessee.

The court did find that Martinez's presence within the state of Tennessee for a period of two to three days constituted a minimum contact. The court reasoned that by entering into Tennessee to partake in negotiations with Coburn, he purposefully availed himself of the privilege of conducting

Lauren E. Ellisberg (2011)

activities in Tennessee, and enjoyed the protections of its laws. However, because this contact is not systematic and continuous, due process requires that the relevant contacts bear an appropriate relationship to the cause of action.

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-416 (1984). The visit on April 8 is not related to Coburn's claim of a breach of fiduciary duty of confidentiality which occurred entirely in New York. The Court in Reynolds v. International Amateur Athletic Fed'n, found that contacts occurring after the accrual of the cause of action, having no causal or legal relationship to the plaintiff's claim, and lacking relevance to the merits of the action, are not a basis for upholding personal jurisdiction." 23 F.3d 1110, 1116, 1119 (6<sup>th</sup> Cir. 1994). Thus, the District Court was correct in holding that "neither the telephone calls made by Martinez to Coburn, nor his visit to Tennessee constitute sufficient minimum contacts giving rise to this cause of action to satisfy the requirements of due process." Coburn at 92.

**C. Publishing the tapes on [www.outlawcops.com](http://www.outlawcops.com) would not constitute purposeful availment of the privilege of engaging in activity or causing a consequence in Tennessee because Martinez did not target or expressly aim his conduct at the state of Tennessee.**

Publishing the tapes of Coburn on [www.outlawcops.com](http://www.outlawcops.com) does not constitute purposeful availment under the theory enunciated

Lauren E. Ellisberg (2011)

in International Shoe. If Martinez's action causes him to purposely avail himself of the privilege of "engaging in activity or causing a consequence" in Tennessee, then he should be subject to personal jurisdiction as he could be seen being hauled into court in Tennessee for any damages that arise out of his actions. See International Shoe. However, Martinez's website resides on a server in New York (cite) and is accessible to anyone in the world with internet access. His website neither targets nor expressly aims its conduct at the state of Tennessee. Coburn contends that if Martinez publishes the tapes on his website that it would have "intended injurious effects in Tennessee." Coburn at 92. However, the District Court found that the operator of a website is not subject to personal jurisdiction of every state merely because their website reaches every state.

This was upheld in Imo Industries, Inc. v. Keikert where the court held that in order to assert jurisdiction over a non-resident on the basis of the effects within the forum of the defendant's tortious conduct, the plaintiff must show that the defendant targeted or expressly aimed its conduct at the forum and thus that the forum was the "focal point" of the tortious activity. 155 F.3d 254, 260-266 (3<sup>rd</sup> Cir. 1998). It is against notions of fairness and justice to assume that someone who runs a completely passive website, conducting no business

Lauren E. Ellisberg (2011)

transactions or interactive features, is subject to the jurisdiction of every state and country in the world. The District Court correctly held that the Martinez's placing of the tapes on his website would not constitute purposeful availment of the privilege of conducting activities or causing consequences in Tennessee, and thus the court lacks personal jurisdiction.