

SCOTUS: *Walden v. Fiore, et al.*: Supreme Court Clarifies Specific Jurisdiction

In *Walden v. Fiore, et al.* the Supreme Court of the United States recently reiterated “[w]ell-established principles of personal jurisdiction” regarding a forum State’s exercise of specific jurisdiction over a defendant. The Court reaffirmed that when determining whether specific jurisdiction exists over a defendant the “proper focus” is on the relationship of the defendant and his conduct to a forum state, not the defendant’s relationship with a plaintiff who seeks to bring suit there.¹

Walden is the Court’s second opinion this year that provides guidance on personal jurisdiction, and the second time in as many months that in so doing the Court has reversed an attempt by the United States Court of Appeals for the Ninth Circuit to expand the permissible reach of the states’ personal jurisdiction over a potential defendant.²

I. Background and procedural history

In 2006, Gina Fiore and Keith Gipson (the “Plaintiffs”) flew to Nevada from a trip to Puerto Rico on a flight that connected through Atlanta. While connecting through Atlanta’s airport, they were searched by Anthony Walden, a local law enforcement officer deputized by the Drug Enforcement Agency (the “DEA”) and approximately \$97,000 (which they claimed constituted gambling winnings from a casino) was seized. The Plaintiffs were advised the cash would be returned to them if they could prove a legitimate source for it. They continued on to Nevada, and over the course of the next few months their attorney in Nevada worked to provide documentation to the DEA to legitimize the cash and secure its release back to the Plaintiffs. After seizing the cash, Walden allegedly “helped draft an affidavit to show probable cause for forfeiture of the funds and forwarded that affidavit” to federal prosecutors in Georgia.³ No forfeiture action was ever brought against Plaintiffs, and they got their money back in 2007.

The Plaintiffs then sued Walden in Nevada federal court. They alleged that the affidavit he helped draft for federal prosecutors “was false and misleading because [he] misrepresented the encounter at the airport and omitted exculpatory information . . .” The lawsuit against Walden alleged violations of their Fourth Amendment rights by seizing the money without probable cause, keeping it after concluding it did not come from drug-related activity, drafting and forwarding a false probable cause affidavit, willfully seeking forfeiture while withholding exculpatory information, and withholding the exculpatory information from prosecutors.⁴

Walden moved to dismiss for want of personal jurisdiction. Personal jurisdiction over Walden was asserted under the theory of “specific jurisdiction,”

which depends on an affiliation between the forum and the underlying controversy (*i.e.*, an activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation). This is in contrast to ‘general’ or ‘all purpose’ jurisdiction, which permits a court to

¹ *Walden v. Fiore, et al.*, No. 12-574, slip op. at 13-14 (Feb. 25, 2014), available at http://www.supremecourt.gov/opinions/13pdf/12-574_8mj9.pdf.

² See *Daimler AG v. Bauman*, No. 11-965 (Jan. 14, 2014), available at http://www.supremecourt.gov/opinions/13pdf/11-965_1qm2.pdf; see also Firm Memorandum, SCOTUS: *Daimler v. Bauman*: Supreme Court Clarifies and Curtails General Jurisdiction (Jan. 22, 2014), available at <http://www.cahill.com/publications/firm-memoranda/1013023>

³ *Walden*, slip op. at 3.

⁴ *Id.* at 1-3.

assert jurisdiction over a defendant based on a forum connection unrelated to the underlying suit (e.g., domicile).⁵

The District Court granted the motion, determining that Walden’s “search of respondents and his seizure of the cash in Georgia did not establish a basis to exercise personal jurisdiction in Nevada.” A divided panel of the United States Court of Appeals for the Ninth Circuit reversed. The majority of the panel held “that the District Court could properly exercise jurisdiction over ‘the false probable cause affidavit aspect of the case.’ According to the Court of Appeals, [Walden] ‘expressly aimed’ his submission of the allegedly false affidavit at Nevada by submitting the affidavit with knowledge that it would affect persons with a ‘significant connection’ to Nevada.”⁶ Rehearing en banc was denied by the full Ninth Circuit over the dissent of eight judges writing two separate dissents.⁷

II. SCOTUS declines to expand the contacts sufficient to create specific personal jurisdiction

The Supreme Court reversed the Court of Appeals.⁸ Reaffirming its prior precedent, the Court noted that whether a forum State may assert specific jurisdiction over a nonresident “focuses on the relationship among the defendant, the forum, and the litigation.” The defendant’s conduct related to the lawsuit “must create a substantial connection with the forum State.” “First, the relationship must arise out of contacts that the defendant *himself* creates with the forum State.”⁹ In evaluating the nature of these contacts, a court must look “to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.”¹⁰ The Court pointed to prior decisions to illustrate this test:

- A Florida court could not “exercise personal jurisdiction over a trustee in Delaware based solely on the contacts of the trust’s settlor, who was domiciled in Florida and had executed powers of appointment there.”¹¹
- “Oklahoma courts could not exercise personal jurisdiction over an automobile distributor that supplies New York, New Jersey, and Connecticut dealers based only on an automobile purchaser’s act of driving it on Oklahoma highway.”¹²
- A forum state may exercise personal jurisdiction “over defendants who have purposefully reached out beyond their State and into another by . . . entering a contractual relationship that envisioned continuing and wide-reaching contacts in the forum State.”¹³

⁵ *Id.* at 6, n.6 (internal citations, brackets and some quotation marks omitted).

⁶ *Id.* at 3-4 (internal citation omitted).

⁷ *Id.* at 4.

⁸ *Id.* at 4-5.

⁹ *Id.* at 6 (internal quotation marks omitted).

¹⁰ *Id.* at 7.

¹¹ *Id.* at 7.

¹² *Id.*

¹³ *Id.* (internal brackets omitted).

The common thread that runs through this test for specific jurisdiction is that “the plaintiff cannot be the only link between the defendant and the forum” State. The “defendant’s relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction. . . . Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State.”¹⁴

III. SCOTUS emphasizes application of specific jurisdiction test in the context of intentional torts

The Court noted that in the context of intentional torts, a “forum State’s exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum.”¹⁵ The Court illustrated by pointing to a hornbook case regarding personal jurisdiction, *Calder v. Jones*.¹⁶ “In *Calder*, a California actress brought a libel suit in California state court against a reporter and an editor, both of whom worked for the National Enquirer at its headquarters in Florida.”¹⁷ The claims were based on an allegedly libelous article published in a magazine circulated to 600,000 people in California. “California’s assertion of jurisdiction over the [Florida] defendants was consistent with due process.” The article had “relied on phone calls to ‘California sources’” for information; “caused reputational injury in California;” and the “brunt” of the plaintiff actress’s injury was suffered in California. Taken together, these contacts were sufficient to establish jurisdiction in California. The “reputation-based ‘effects’ of the alleged libel connected the defendants to California, not just the plaintiff” who lived there. The “reputational injury [in California] caused by the defendants’ story would not have occurred but for the fact that the defendants wrote an article for publication in California that was read by a large number of California citizens.”¹⁸

Applying these principles, the Court held that Nevada could not exercise jurisdiction over Walden based on his conduct in Georgia: He “approached, questioned, and searched [plaintiffs], and seized the cash at issue, in the Atlanta airport.” The allegedly false affidavit was drafted and forwarded within Georgia. Walden “never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada.” Thus, “when viewed through the proper lens—whether the *defendant’s* actions connect him to the *forum*—[Walden] formed no jurisdictionally relevant contacts with Nevada.”¹⁹

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Guillaume Buell at 212.701.3012 or gbuell@cahill.com.

¹⁴ See *id.* at 8.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 9-10 (citing *Calder*, 465 U.S. 783).

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 9-10.

¹⁹ *Id.* at 11-13.