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benefit when a housing authority eliminates a slum, but this activity has been considered a public purpose in North Carolina since *Wells* was decided in 1938.

The dissent's concern with the indirectness of the efforts of the Housing Corporation in eliminating inadequate housing is likewise answered in part by the existing case law. The court has upheld the discretion of housing authorities in locating their projects on sites not presently in a slum area.⁵⁵ Thus the court has not insisted in every instance on the most direct attack on the slum to sustain a finding of public purpose. This view is consistent with the development of the law following *Berman* whereby "[h]ousing projects for persons of low income alone, without provisions for slum clearance, became objects for which the power of eminent domain could be exercised."⁵⁶ In *Martin* the court found sufficient nexus between the activities of the Housing Corporation and the elimination of the shortage of low cost housing, and such minimal intrusion into the private arena that the activities could be sustained as pursuant to a proper governmental function and thus for a public purpose. In so holding the court acted in the context of existing case law without overruling *Mitchell*, which can be seen as blocking deep-seated involvement in the affairs of private enterprise. Nevertheless, the analytical tools of *Martin* afford the means to modify the *Mitchell* result should the purpose sought be of sufficient social importance, the means chosen sufficiently direct, and the degree of intrusion into the private sphere sufficiently circumscribed.

KENNETH C. DAY

Personal Jurisdiction—Jurisdiction Over Foreign Corporation Based Upon Making a Contract in North Carolina

Courts can obtain personal jurisdiction over nonregistered foreign corporations by the use of long-arm statutes.¹ *International Shoe Co. v.*

⁵⁵ *E.g.*, *Housing Auth. v. Wooten*, 257 N.C. 358, 126 S.E.2d 101 (1962); *In re Housing Authority*, 233 N.C. 649, 65 S.E.2d 761 (1951).

⁵⁶ Comment, 1969 LAW & SOC. ORDER, *supra* note 32, at 697.

¹ For a brief review of the development of the long-arm statute, see *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957). The important thing to remember about long-arm statutes is that the mere ability to fit a situation within a statute's language does not mean that jurisdiction will always be proper. The ultimate test is the due process clause of the fourteenth amendment—not the wording of the long-arm statute. *Id.* at 222.

*Washington*² and cases which have followed³ have expanded in personam jurisdiction, especially over foreign corporations. However, problems still arise out of situations involving a single contract made by a foreign corporation within the forum state. The North Carolina Supreme Court considered such a situation in *Goldman v. Parkland of Dallas, Inc.*⁴ Plaintiff Goldman, a North Carolina resident, sued Parkland, a Texas corporation, for breach of contract. Under the contract, Goldman was to serve as manufacturer's representative for Parkland in the sale of dresses in several Southeastern states, including North Carolina.⁵ The contract terms were discussed in Atlanta, but the court found that the contract was executed when Goldman signed an offer sent to him by Parkland and dropped it into a mailbox in North Carolina.⁶ Parkland never had a representative in North Carolina other than Goldman. The contract's connections with North Carolina were that it was executed there, and by its terms was to be performed there to some extent. Goldman alleged that he had performed under this contract for several months prior to Parkland's breach, had done most of his work in North Carolina, and had sold a quantity of the dresses there.⁷ The court found these contacts sufficient to satisfy the long-arm statute.⁸

North Carolina's long-arm statute seems to provide two conditions which can give rise to jurisdiction over foreign corporations making contracts with state residents. The statute subjects them to suit in the state on any cause of action arising "out of any contract [either] made in this State or to be performed in this State."⁹ In *Goldman* the court avoided decision of a constitutional question—whether either condition alone will

² 326 U.S. 310 (1945).

³ *E.g.*, *Hanson v. Denckla*, 357 U.S. 235 (1958); *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957).

⁴ 277 N.C. 223, 176 S.E.2d 784 (1970).

⁵ The terms of the contract are presented in some detail in the opinion of the Court of Appeals, *Goldman v. Parkland of Dallas, Inc.*, 7 N.C. App. 400, 173 S.E.2d 15 (1970).

⁶ 277 N.C. at 227, 176 S.E.2d at 787.

⁷ *Id.* at 229, 176 S.E.2d at 788.

⁸ *Id.*

⁹ N.C. GEN. STAT. § 55-145(a) (1965) provides:

Every foreign corporation shall be subject to suit in this State, by a resident of this State or by a person having a usual place of business in this State, whether or not such foreign corporation is transacting or has transacted business in this State and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows: (1) Out of any contract made in this State or to be performed in this State....

satisfy the requirements of due process—by declining to base jurisdiction solely upon the contract's being made in North Carolina.

After deciding that the contract was executed in North Carolina, the court in *Goldman* turned to the issue of whether the contract had a "substantial connection" with the state. That particular phrase had been used previously to interpret the second condition of the statute: "contracts to be performed in this State." In those cases in which the contracts had been made in other states,¹⁰ the courts needed to determine to what extent the performance itself had to be within North Carolina before the statute and due process were satisfied. In *Byham v. National Cibo House Corp.*,¹¹ the court decided that "[i]t is sufficient for the purposes of due process if the suit is based on a contract which has substantial connection with the forum state,"¹² or in other words, is to be performed substantially within North Carolina. *Goldman* seems to stand for the proposition that whether a contract is made within the state is one of the factors to be considered in deciding if the contract has a "substantial connection" with the state,¹³ and thus whether due process requirements are met. The decision merges execution and performance into factors of a single test, rather than considering them separate tests as a reading of the statute might suggest.

The *Goldman* opinion is not particularly illuminating as to how the factors making up a "substantial connection" are to be weighed. As noted above, the North Carolina statute allows jurisdiction based upon contracts which were not made within the state.¹⁴ But it is not a logical step to say that the court would allow jurisdiction based upon a contract

¹⁰ *E.g.*, *Bowman v. Curt G. Joa, Inc.*, 361 F.2d 706 (4th Cir. 1966); *Byham v. National Cibo House Corp.*, 265 N.C. 50, 143 S.E.2d 225 (1965).

¹¹ 265 N.C. 50, 143 S.E.2d 225 (1965).

¹² *Id.* at 57, 143 S.E.2d at 232.

¹³ The Supreme Court, in *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957), used the phrase "substantial connection" in describing all aspects of the contract's connection with the forum state. The language in the *Goldman* opinion indicates the term is used broadly:

In the instant case the contract in question clearly met the requirement of "substantial connection" with North Carolina. It was made in this State. Plaintiff, under the terms of the contract, solicited business in thirty or more North Carolina cities and towns He devoted a larger part of his time to promoting defendant's business in North Carolina than in any other state and did in fact sell a quantity of dresses manufactured by the defendant to customers within this State.

277 N.C. at 229, 176 S.E.2d at 788.

¹⁴ See note 10 and accompanying text *supra*.

which was made in North Carolina but not to be performed there, since the requirements of due process read additional standards into the statute.

There is, as yet, no North Carolina decision concerned with whether the making of a contract within the state is, in itself, a sufficient connection to subject the foreign corporation to suit there.¹⁵ A somewhat similar problem was before the United States Supreme Court in *McGee v. International Life Insurance Corp.*,¹⁶ where the Court allowed California to exercise personal jurisdiction over an Arizona insurance company which had solicited a California resident's business by mail. But *McGee* cannot be cited for the proposition that the making of *any* commercial contract within a forum state is sufficient to satisfy the minimum contacts required for due process, because, as the Court stressed in *Hanson v. Denckla*,¹⁷ insurance is "an activity that the State treats as exceptional and subjects to special regulation."¹⁸ Indeed, in *Hanson* the Court stated that "it is a mistake to assume that this trend [toward relaxation of minimum contacts requirements] heralds the eventual demise of all restrictions on the personal jurisdictions of state courts."¹⁹ Minimal contacts are still a prerequisite.

The touchstone case involving the North Carolina long-arm statute is *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*²⁰ There the contract was made in New York and called for a single shipment of goods from New York to North Carolina. The Fourth Circuit Court of Appeals held that the requisite minimum contacts were not present in this situation. In the course of its opinion, the court discussed²¹ *Compania de Astral*,

¹⁵ The *Goldman* opinion is elusive on this point. Although the court is careful to set out the extent of the performance (both actual and contemplated) within North Carolina, the point is made that

clearly the North Carolina Legislature, by the express words of the statute authorizing such service on a foreign corporation *when the contract was made in North Carolina*, sought to give its courts the power to assert jurisdiction over nonresident defendants to the full extent permitted by the due process amendment.

277 N.C. at 229-30, 176 S.E.2d at 788-89 (emphasis added). This latent ambiguity may allow the case to be cited as a chameleon precedent—assuming the color either of an argument that a contract alone is enough, or that more is required.

¹⁶ 355 U.S. 220 (1957).

¹⁷ 357 U.S. 235 (1958).

¹⁸ *Id.* at 252. The discussion of *McGee* in *Goldman* does not explicitly recognize this distinction. Jurisdiction based upon a single contract may turn on a number of factors. See Annot., 23 A.L.R.3d 551 (1969).

¹⁹ 357 U.S. at 251.

²⁰ 239 F.2d 502 (4th Cir. 1956).

²¹ *Id.* at 508.

S.A. v. Boston Metals Co.,²² which had been cited by the plaintiff for the proposition that the mere making of a contract within the forum state is a sufficient basis for jurisdiction when the long-arm statute so allows. In *Erlanger* the court said that *Astral* does not rest on that basis.²³ The inference would seem to be that the court would not be impressed simply by the execution of a contract within the state without more. The *Erlanger* court, in explaining its holding, said:

The orderly and fair administration of the laws throughout the nation is a highly important factor to consider. We cannot shut our eyes to the disorder and unfairness likely to follow from sustaining jurisdiction in a case like this. It might require corporations from coast to coast having the most indirect, casual and tenuous connection with a State to answer frivolous law suits in its courts. To permit this could seriously impair the guarantees which due process seeks to secure.²⁴

Does it make sense to say that the connections with North Carolina would be substantially less "indirect, casual and tenuous" if the *Erlanger* contract had been made in the state upon its deposit into a mailbox? To base a decision on that ground would be to ignore the reasons behind the requirement of minimal contacts with the forum state. Contracts with foreign corporations would involve "battles of the forms" in which the out-of-stater would design its paperwork so that the last act would have to be done in its own state.²⁵

*Byham v. National Cibo House Corp.*²⁶ is very similar to *Goldman* on its facts. In *Byham*, a North Carolina resident sued a foreign corporation on a cause of action arising from a franchise contract. The contract was made in Tennessee and authorized a pizza house in North Carolina under the defendant's franchise. The defendant sent a representative to

²² 205 Md. 237, 107 A.2d 357 (1954), *cert. denied*, 348 U.S. 943 (1955). A dissenting opinion is found at 108 A.2d 372 (1954).

²³ 239 F.2d at 508 n.4. In *Astral* the Maryland court allowed personal jurisdiction, pursuant to its statute, over a Panamanian corporation. The suit was based on the breach of a contract made in Maryland for the sale of three ships. However, to find jurisdiction, the court did not look just to the fact that the contract was made there. Instead, it also noted that the ships in question were in Maryland and that the funds for the purchase were held in escrow in Baltimore. It concluded that there was "considerable contact with this State and considerable reliance upon its laws and the protection which they afforded." 205 Md. at 261-62, 107 A.2d at 367.

²⁴ 239 F.2d at 507 (citations omitted).

²⁵ See *Golden Belt Mfg. Co. v. Janler Plastic Mold Corp.*, 281 F. Supp. 368 (M.D.N.C. 1967), *aff'd per curiam*, 391 F.2d 266 (4th Cir. 1968).

²⁶ 265 N.C. 50, 143 S.E.2d 225 (1965).

help find a location for the business. The court found a "substantial connection" with North Carolina on these facts.²⁷ In *Goldman* the contract was made within the state but no representative entered. Parkland's activities in the state came about through the actions of its agent, Goldman. At first blush it appears that Goldman, by his own actions, created personal jurisdiction over Parkland. But this was done pursuant to an agreement with the foreign corporation, which was the beneficiary of the activities. And the agreement (just as the one in *Byham*) contemplated a continuing relationship between the parties, not just a single transaction as in *Erlanger*. Considering the two cases together, it is unrealistic to say that just the making of a contract within the state in *Goldman* takes the place of the temporary entry of a representative in *Byham* to supply the substantial connection. This area of the law depends heavily on a case by case analysis and does not lend itself to facile comparisons. But it seems apparent that the North Carolina court views the place of the contract's completion as only one factor to be considered in finding a substantial connection between the contract (and thus the foreign corporation) and the state. The inference from *Goldman* and the other cases discussed herein seems to be that the mere fact that the contract on which the cause of action arises was made within the state is not enough by itself to sustain jurisdiction over a foreign corporation.²⁸

ELMER LISTON BISHOP, III

Professional Responsibility—Canon 6 and the Lender's Attorney

An ethical problem recently arose in a situation in which an attorney was employed by a lending institution to make a title search and close a secured loan. The transaction was completed and the note and deed of trust

²⁷ *Id.* at 61, 143 S.E.2d at 234.

²⁸ A holding that execution in North Carolina is alone sufficient for jurisdiction would be inconsistent with the other phrase of N.C. GEN. STAT. § 55-145(a)(1) (1965), which subjects foreign corporations to suit within the state on causes of action based on contracts "to be performed in this State." See note 9 and accompanying text *supra*. This has been construed to mean performance to a substantial degree. *Bowman v. Curt G. Joa, Inc.*, 361 F.2d 706 (4th Cir. 1966); *accord*, *Golden Belt Mfg. Co. v. Janler Plastic Mold Corp.*, 281 F. Supp. 368 (M.D.N.C. 1967), *aff'd per curiam*, 391 F.2d 266 (4th Cir. 1968). It would be anomalous for the court to allow the mere fact of execution in North Carolina, no matter how fortuitous the circumstances, to be a sufficient basis for jurisdiction while insisting that otherwise a substantial degree of performance within the state must be shown.