IN THE SUPREME COURT OF GUAM

DENNIS LARSEN and VIVIAN LARSEN,
Plaintiffs-Appellants,

v.

HYATT INTERNATIONAL CORPORATION,
HYATT HOTELS CORPORATION,
JOHN DOE INSURANCE COMPANY 1 and 2,
Defendants-Appellees.

Supreme Court Case No. CVA11-003
Superior Court Case No. CV0387-10

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted July 15, 2011
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, J.:

[1] Dennis Larsen ("Mr. Larsen"), a Guam resident, sprained his ankle while walking off the driveway of the Hyatt Resort and Casino in Manila, Philippines ("Hyatt Manila"). As a result, Mr. Larsen and his wife Vivian Larsen ("the Larsens") filed a complaint in the Superior Court of Guam against Hyatt International Corporation ("Hyatt International"), Hyatt Hotels Corporation ("Hyatt Hotels") and John Doe Insurance Companies 1 and 2. The Larsens served their complaint on Neil Withers, Director of Finance of P.H.R. Micronesia, Inc. dba Hyatt Regency Guam ("Hyatt Guam"). Hyatt Guam is not a defendant in this suit, and the parties do not dispute that Defendants-Appellees, Hyatt International and Hyatt Hotels Corporation, are headquartered outside of Guam. Defendants-Appellees Hyatt International and Hyatt Hotels Corporation maintain that the Superior Court lacks personal jurisdiction over them, and filed a Motion to Quash Service and a Motion to Dismiss for Lack of Personal Jurisdiction. The Superior Court granted both motions, and the Larsens appeal.

[2] To determine whether a court has personal jurisdiction over a foreign defendant, we apply the test articulated in *Doe v. Unocal*, 248 F.3d 915 (9th Cir. 2001). Although the Superior Court identified the *Unocal* factors, it conducted an insufficient analysis of the facts. The Superior Court should also have allowed the Larsens the opportunity for jurisdictional discovery, rather than relying entirely on facts provided by Hyatt International and Hyatt Hotels. We therefore reverse the Superior Court's Amended Decision and Order and vacate the Judgment dismissing the case. We remand this case for limited jurisdictional discovery on the agency relationship between the Defendants-Appellees and Hyatt Guam.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The Larsens filed a Complaint and Demand for Jury Trial in the Superior Court of Guam. The complaint listed Hyatt International Corporation, Hyatt Hotels Corporation, and John Doe Insurance Companies 1 and 2 as defendants. The Larsens seek compensation for injuries allegedly suffered as a result of Defendants-Appellees' negligent maintenance of hotel property, and to collect against the liability insurance of Hyatt International and Hyatt Hotels. The Larsens served their complaint on Neal Withers, the Director of Finance for Hyatt Guam, and attached a summons for Hyatt International and Hyatt Hotels.

[4] In response, Hyatt International and Hyatt Hotels filed a Motion to Quash Service and Dismiss for Lack of Personal Jurisdiction ("Motion to Quash Service and Dismiss"). Declarations from Roy Lehto, Attorney Baltzar Y. Repol, and Neil Withers were submitted along with Hyatt International and Hyatt Hotel's motion. These parties declared that: (1) the person served was not employed by Hyatt International or Hyatt Hotels, nor was he authorized to accept service; (2) Hyatt International and Hyatt Hotels are not the managers of Hyatt Guam or Hyatt Manila; (3) Hyatt Guam is managed by Hyatt of Guam Limited ("HGL") based in Hong Kong, while Hyatt Manila is managed by Hyatt International-SEA based in Singapore; and (4) there are statutes in the Philippines which permit suit against negligent parties for bodily injury. A letter from the Department of Revenue and Taxation stating that they have no record of having registered or admitted Hyatt International Corporation and Hyatt Hotels Corporation in Guam, no license for the corporations, no record of an appointed agent for service of process for the corporations and no record of having issued Certificates of Registration/Authority to them was attached. Additionally, an investigation report from the Philippines and corporate structure diagrams for both Hyatt Guam and Hyatt International-SEA were also attached.

[5] In the Larsens' opposition, the Larsens argued that jurisdictional contacts of the subsidiary are imputed to the corporate parent and that the Larsens were entitled to jurisdictional discovery. The Larsens offered advertisements and publications about Hyatt International and Hyatt Hotels downloaded from the internet, which they claimed established that Hyatt International and Hyatt Hotels exercise a significant degree of control over Hyatt Guam. The Larsens also amended their complaint to reflect the information that Hyatt International and Hyatt Hotels provided in their Motion to Quash Service and Dismiss.[1]

[6] The Superior Court granted the motions, concluding that the relationship between Defendants-Appellees Hyatt International and Hyatt Hotels and subsidiary Hyatt Guam was "too far attenuated . . . to subject either to litigation in the forum." Record on Appeal ("RA") tab 44 at 1, 4 (Am. Dec. & Order, Jan. 6, 2011). The court subsequently dismissed the case with prejudice. RA tab 54 (Judgment, Feb. 18, 2011). The Larsens appeal.

II. JURISDICTION AND STANDARD OF REVIEW

[7] This court has jurisdiction over appeals from final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 112-54 (2011)); 7 GCA §§ 3107, 3108(a) (2005).

[8] This court reviews *de novo* decisions to dismiss for lack of personal jurisdiction. *PCI Commc'ns, Inc. v. GST Pacwest Telecom Haw., Inc.*, 1999 Guam 17 ¶ 15 (citing *People v. Quichocho*, 1997 Guam 13 ¶ 3). We will review a motion to quash service of process *de novo*. *Pavlovich v. Super. Ct.*, 58 P.3d 2, 10 (Cal. 2002); *Mecca Multimedia, Inc. v. Kurzbard*, 954 So. 2d 1179, 1181 (Fla. Dist. Ct. App. 2007) ("The determination of whether the trial court properly

[1] The amendments, contained in paragraphs 4, 5, and 6 of the motion concerned Hyatt International's subsidiary relationship with Hyatt Guam, Hyatt International's relationship with Hyatt Manila, and Hyatt Hotel's parent relationship over Hyatt International.

ruled on a motion to quash service of process for lack of personal jurisdiction is a question of law, which we review *de novo*.").

III. ANALYSIS

[9] A jurisdictional inquiry involves two steps. First, a statute of the territory must confer jurisdiction over the defendants. *Forsythe v. Overmyer*, 576 F.2d 779, 782 (9th Cir. 1978). Guam's long-arm statute permits the courts to "exercise jurisdiction on any basis not inconsistent with the Organic Act or the constitution of the United States." 7 GCA § 14109 (2005). Second, the court must determine whether the exercise of jurisdiction in this specific case comports with due process. *See Asahi Metal Indus. Co. v. Super. Ct.*, 480 U.S. 102, 108 (1987); *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945).

[10] "There are two types of personal jurisdiction: general and specific." *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995). A court may exercise specific jurisdiction only if the defendant's "contacts with the forum give rise to the cause of action before the court." *Unocal*, 248 F.3d at 923. But, when the cause of action does not relate to the foreign corporation's activities in the forum state, the court must have general jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.9 (1984). The claims in this case have no relationship to Guam, nor to the Defendants-Appellees' contacts with Guam. Accordingly, the Superior Court could exercise general jurisdiction over the Defendants-Appellees only if their "continuous corporate operations within [the] state are . . . so substantial and of such a nature as to justify suit against the defendant[s] on causes of action arising from dealings entirely distinct from those activities." *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1169 (9th Cir. 2006) (quoting *Int'l Shoe Co.*, 326 U.S. at 318) (internal quotation marks

and brackets omitted); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2849 (2011).

[11] Hyatt Guam admits that it is subject to general jurisdiction in Guam. The question we must resolve, therefore, is whether Hyatt Guam's contacts with Guam warrant the exercise of general jurisdiction over Hyatt International and Hyatt Hotels. Specifically, we need to determine whether the fact that "Hyatt Guam is four times removed from Hyatt International [and] six times removed from Hyatt Hotels" is sufficient basis to dismiss the case. Appellee's Br. at 11 (May 17, 2011). We conclude that, on the facts of this case, the Larsens should be permitted limited jurisdictional discovery to establish whether Hyatt Guam is an agent of Hyatt Hotels or Hyatt International.

A. Imputing General Jurisdiction from a Subsidiary to Parent

[12] A parent corporation may be imputed a subsidiary's contacts with a forum state if: (1) the subsidiary is the alter ego of the parent company; or (2) the parent company exercises a significant degree of control over the subsidiary. *See Gallagher v. Mazda Motor of America Inc.*, 781 F. Supp 1079 (E.D. Pa. 1992).

1. Alter Ego Test

[13] Under the alter ego test, the Larsens must allege facts that, if true, would establish that (1) there is such unity of interest and ownership that the parent and subsidiary no longer have separate identities; and (2) failure to disregard their separate identities would result in fraud or injustice. *Unocal*, 248 F.3d at 926. On appeal, the Larsens contend that they do not allege jurisdiction based "on the 'alter ego' principle." Appellant's Br. at 13 (Apr. 19, 2011). We do not, therefore, address whether Hyatt Guam is the alter ego of the Defendants-Appellees.

2. Agency Test

[14] An "agency relationship is typified by parental control of the subsidiary's internal affairs or daily operations." *Unocal*, 248 F.3d at 926. As the Ninth Circuit Court of Appeals has noted:

> The agency test is satisfied by a showing that the subsidiary functions as the parent corporation's representative in that it performs the services that are "sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services."

Id. at 928 (internal citation and quotation marks omitted) (citing *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1405 (9th Cir. 1994)).

[15] In applying the facts of this case to the agency test,[2] the Superior Court relied on the "great-grand subsidiary" relationship between the two entities. RA tab 44 at 4. It further relied on the freedom Hyatt Guam had to choose its management partner. *Id.* Upon these two grounds, the Superior Court rejected the proposition that "but for the existence of [Hyatt of Guam Limited in Hong Kong], either [Hyatt International or] Hyatt Hotels would undertake the management of Hyatt Guam." *Id.*

a. The Degree of Separation Between Entities is Not Controlling

[16] The fact that Hyatt Guam is a "great-grand subsidiary" of Defendants-Appellees does not automatically mean that the agency test cannot be satisfied. Indeed, courts have applied the test to cases involving *sub*-subsidiaries.[3] *See HealthMarkets, Inc. v. Super. Ct.*, 90 Cal. Rptr. 3d 527, 530 (Ct. App. 2009) ("We conclude that specific personal jurisdiction over a parent company

[2] Although the Larsens argue that the Superior Court ignored the "parent subsidiary principle," the Superior Court recognized the Larsen's argument. Appellant's Br. at 5. The "parent subsidiary principle" in most of the cases cited by the Larsens, and as analyzed by the Superior Court, parallel the guidelines set forth by the agency test. *See* RA tab 44 at 3.

[3] Although the cases cited pertain to sub-subsidiaries and not to a "sub-sub-sub-sub-sub-subsidiary" as in this case, RA tab 44 at 2, the "level of control, direct[ion] and supervis[ion]" is what many of these cases focus on regardless of whether the party at issue is a "subsidiary" or a "sub-subsidiary." *See, e.g., Bellomo v. Penn. Life Co.*, 488 F. Supp. 744, 745 (S.D.N.Y. 1980) (addressing the "sub-subsidiary" party as a "subsidiary" throughout the opinion.); *see also Riemer v. KSL Recreation Corp.*, 807 N.E.2d 1004, 1009 (Ill. App. Ct. 2004) (analyzing the degree of independence between the sub-subsidiary and the parent).

based on the activities of its subsidiary or sub-subsidiary is appropriate only if the parent purposefully directed those activities at this state."); *Dev. Corp. of Palm Beach v. WBC Constr., L.L.C.*, 925 So. 2d 1156, 1161 (Fla. Dist. Ct. App. 2006) (applying the agency theory test to a sub-subsidiary); *Rotoli v. Domtar, Inc.*, 637 N.Y.S.2d 894, 895 (N.Y. App. Div. 1996) (analyzing whether the sub-subsidiary was a "mere department" of the parent even after the court acknowledged that it was unable to find a case where jurisdiction over a parent was determined on the basis of a sub-subsidiary's presence in the state). The agency test, therefore, requires inquiry into the degree of control the parent exerts over the subsidiary and is not solely satisfied by the degree of separation between the parent and the subsidiary.

b. The Superior Court Should Have Permitted Limited Jurisdictional Discovery Before Applying the Agency Test

[17] Courts applying the agency test examine: (1) the importance of the subsidiary's operations to the parent company; and (2) whether the parent corporation has the right to control the subsidiary's operations. *See Unocal*, 248 F.3d at 928-31. "[T]he purpose of examining sufficient importance is to determine whether the actions of the subsidiary can be understood as a manifestation of the parent's presence." *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 921 (9th Cir. 2011). With respect to control, the *Bauman* court asserted:

> [A] person may be an agent although the principal lacks the right to control the full range of the agent's activities, how the agent uses time, or the agent's exercise of professional judgment. A principal's failure to exercise the right of control does not eliminate it, nor is it eliminated by physical distance between the agent and principal . . . .

Id. at 923 (citing Restatement (Third) of Agency § 1.01 cmt. c (2006)).

[18] For example, in *Unocal*, the Ninth Circuit refused to assert general jurisdiction over a French corporation because the corporation's relationship with its California subsidiaries did not

satisfy the agency test. 248 F.3d at 930-31. The *Unocal* plaintiffs were Burmese citizens who brought suit as a class in federal district court in California, claiming that Total S.A. ("Total"), a French corporation, committed human rights violations in Burma. *Id.* at 920. In applying the agency test, the *Unocal* court first considered whether Total's California subsidiaries undertook actions sufficiently important to Total's business. *Id.* at 928. The court dismissed the argument that because Total intended to expand its marketing network and produce higher value-added specialty products in the United States through its subsidiaries, its subsidiaries were acting as its agents. *Id.* at 929. The court stated this was insufficient to conclude that the French corporation would have performed the activities of its U.S. subsidiaries if they were unavailable. *Id.* Next, the *Unocal* court addressed whether Total controlled the day-to-day activities of its California companies. *Id.* at 930. It concluded that although Total may indirectly control or supervise its subsidiaries, this was also not enough for the court to find the Californian subsidiaries acted as agents. *Id.*

[19] The Ninth Circuit Court of Appeals engaged in a similar analysis in *Bauman.* In *Bauman*, a group of Argentinian residents brought suit against Mercedes Benz USA ("MBUSA") under the Alien Tort Statute and the Torture Victims Protection Act, 28 U.S.C. § 1350, alleging that its wholly-owned Argentinian subsidiary collaborated with state security forces to kidnap, detain, torture, and kill the plaintiffs or their relatives during Argentina's "Dirty War." 644 F.3d at 911. The United States District Court for the Northern District of California dismissed the case for lack of personal jurisdiction and plaintiffs appealed. *Id.* at 912.

[20] The court concluded that MBUSA's operations were sufficiently important to DaimlerChrysler Aktiengesellschaft's ("DCAG") operations. *Id.* at 922. It cited to the fact that the United States accounted for nineteen percent of all sales of defendant's Mercedes-Benz

products, of which California accounted for 2.4% of defendant's total worldwide sales. *Id.* Because selling Mercedes-Benz vehicles was a critical aspect of defendant's business, the court stated that the services that the subsidiary of the defendant performs in California were sufficiently important to the defendant and that the defendant would have to engage another subsidiary if the current subsidiary did not perform its job. *Id.*

[21] With regards to control, the Ninth Circuit court relied on the comprehensive written agreement between the parent and subsidiary. It noted:

> DCAG has the right to control nearly all aspects of MBUSA's operations including: the number of vehicles that MBUSA must sell; the approval of MBUSA's Authorized Resellers, as well as the location of each retail sales outlet, showroom and service facility; the dealership standards that MBUSA must comply with; the business systems that MBUSA uses; the type of customer information that MBUSA must collect; which management personnel are appointed to run MBUSA; which management personnel positions shall exist at MBUSA; the standards and requirements MBUSA must meet for vehicle servicing; whether MBUSA is required to establish a Service Coordination Center, and if so, what tasks that Center will perform; the warranty terms applicable to MBUSA's customers; whether MBUSA can alter or modify any vehicle; what technical service publications MBUSA shall have in its library; the content and scope of MBUSA's advertising and marketing strategy; the type, design and size of MBUSA's signs; the prices that MBUSA must pay to DCAG; the prices that MBUSA may charge to its Authorized Resellers; the working capital level and financing capability level that MBUSA must maintain; what other goods MBUSA may sell or manufacture; whether MBUSA must assist in vehicle homologation; and the sales numbers of various Authorized Resellers. If that exhaustive list were not enough, DCAG also has the right to require MBUSA to execute "*any agreement relating to . . . any other matter related to this Agreement* in the form from time to time adopted by [DCAG]" as long as those new Agreements are not an "unreasonable burden" on MBUSA. (emphasis added). MBUSA must comply with all of DCAG's current requirements and all future requirements that may be set forth in any future document promulgated by DCAG. DCAG also receives notice about nearly all of MBUSA's actions, including personnel changes, customer information, and marketing strategy.

Id. at 924 (alterations in original). Upon these facts, the *Bauman* court found that the plaintiff established that the subsidiary was an agent for the parent and, therefore, the parent was subject to general jurisdiction in California. *Id.*

[22] As *Unocal* and *Bauman* illustrate, the agency test requires the court to examine the nature of the parent corporation's business relationship with its subsidiary. That information is often exclusively in the possession of the defendant, in this case Hyatt International and Hyatt Hotels. *See, e.g., Genpharm Inc. v. Pliva-Lachema a.s.*, 361 F. Supp. 2d 49, 59 (E.D.N.Y. 2005) ("Pre-motion discovery should also be permitted when the facts necessary to establish personal jurisdiction lie within the defendants exclusive knowledge."). It is for this reason that many courts applying the agency test have permitted limited jurisdictional discovery before granting a motion to dismiss for lack of personal jurisdiction. *See, e.g., Bellomo*, 488 F. Supp. at 744 (adjourning motion to dismiss for lack of personal jurisdiction, with determination pending further discovery to reveal evidentiary facts regarding jurisdiction); *Mirrow v. Club Med. Inc.*, 118 F.R.D. 418, 419-20 (E.D. Pa. 1986) (affording plaintiff an opportunity for discovery to demonstrate a sufficient relationship between parent and subsidiary); *Gallagher v. Mazda Motor of Am., Inc.*, 781 F. Supp. 1079, 1086 (E.D. Pa. 1992) (allowing sixty days for discovery on the limited issue concerning jurisdictional contacts). In *Bauman*, the district court addressed the motions to quash service and dismissed only after it allowed the parties limited jurisdictional discovery regarding the agency relationship between parent and subsidiary and the availability of alternative fora. 644 F.3d at 918. We believe that the Superior Court should have proceeded in this manner. We therefore remand this case for limited jurisdictional discovery on the agency relationship between the parent and subsidiary.

IV. CONCLUSION

[23 We hold that the Superior Court erred in relying entirely on the facts provided by Hyatt International and Hyatt Hotels. We **REVERSE** and **REMAND** this case for limited jurisdictional discovery on the agency relationship between the parent and subsidiary. The subsequent Judgment dismissing the case is therefore **VACATED**. We order the Superior Court to continue to analyze facts under the *Unocal* test following the manner set forth in *Bauman.*

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Associate Justice

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Chief Justice