

10-1984

## Burger King Corp. v. Rudzewicz

Lewis F. Powell Jr.

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Grant Cert  
(not an appeal)

Presents Q as to whether in personam ~~juris~~ ~~or~~ may be asserted over a non-resident  $\Delta$  on the sole basis of contractual negotiations with the resident  $\Pi$ .

Byron & I have tried several times to get 4 votes on this Q. The CAs are divided.

CA 11 did not invalidate Fla long-arm statute. It found no juris where only contacts were contractual dealings.

PRELIMINARY MEMORANDUM

September 24, 1984 Conference  
Summer List 23, Sheet 1

No. 83-2097-AFX

Burger King Corp.

v.

John Rudzewicz

Cert to CA 11

(Vance, Pittman[dj], and Johnson[diss])

Federal/Civil

Timely

Dismiss the appeal and grant cert. This is as good a case as any to clear up the confusion in the lower courts.

Lee

1. SUMMARY: May personal jurisdiction be exercised over a nonresident defendant based upon his contractual dealings with a resident plaintiff?

2. FACTS AND DECISION BELOW: In 1979, John Rudzewicz, appellee, and Brian MacShara decided to purchase a Burger King restaurant franchise near Detroit, Michigan. For the following five months, appellee negotiated with Burger King's district office in Birmingham, Michigan. During the course of these negotiations, H.G. Hoffman, the Michigan district manager, was Burger King's sole representative. At the close of each "round" of negotiations, the company's national office in Miami would mail to Rudzewicz printed documents for his signature. These documents were signed, and then mailed back to Miami.

The negotiations concluded with an agreement that appellee and MacShara would acquire an existing store in Drayton Plains, Michigan. The national office sent to appellee and MacShara copies of the final lease and franchise agreements. The two men signed the contracts at a Michigan closing ceremony attended by employees of the local district office.

Petitioner and MacShara were required to remit payments due under the contracts to the national office in Miami. All notices required under the agreements likewise were to be mailed to the national office, and the contracts were to be construed "in accordance with the laws of the State of Florida." The lease agreement provided if arbitration were necessary, the proceedings would be held in Miami.

Although payments under the contract were to be mailed to Miami, the district office was to provide the franchisees with all of the necessary supervision and consultation. The district office was also in charge of the advertising for the Drayton Plains store.

Shortly after the opening of the new franchise, petitioner and MacShara ceased making the payments due under the contracts. Burger King instituted this diversity action in the United States District Court for the Southern District of Florida, alleging that appellee and MacShara were liable for breach of contract and patent infringement. The defendants entered a special appearance to contest personal jurisdiction, but the district court denied their claim and a bench trial ensued. At the conclusion of the trial, the district court entered a judgment in favor of Burger King in the amount of \$228,875.40.

The Eleventh Circuit reversed the judgment of the district court, holding that it lacked personal jurisdiction over Rudezwick. Although appellee's activities fell within the literal terms of Florida's long-arm statute, the court of appeals held that the invocation of personal jurisdiction over appellee would exceed the bounds of due process. The court stated that appellee lacked the minimum contacts with the state of Florida necessary to ensure that "the maintenance of the suit "did" not offend traditional notions of fair play and substantial justice." Shaffer v. Heitner, 433 U.S. 186 (1977). The fact that appellee was required to remit payments to Miami did not justify the district court's exercise of personal jurisdiction. CA 11  
Rev.

CALL stated that other courts had encountered problems in deciding whether a non-resident buyer could be "held to account in a foreign jurisdiction." In an understatement, the court noted that the array of relevant considerations "complicates efforts to adjudicate such jurisdictional challenges in a reasoned and coherent manner." According to CALL, the most important factors are "reasonable notice" and "financial preparedness." The appellee did not have reasonable notice that suit might be brought in Florida because the district office "conducted all of the negotiations and wholly supervised the contract." Moreover, appellee, who planned to operate a "local concern serving at best a neighborhood or community," was financially unprepared to bear the cost of defending a suit in Florida. Therefore, CALL concluded that the exercise of personal jurisdiction over appellee would offend the "fundamental fairness which is the touchstone of due process."

✓ Judge Johnson dissented from the judgment of the court of appeals. He found that Rudzewicz had reasonable notice of the possibility that he might be sued under the contracts in the state of Florida, and that he should have been adequately prepared for this contingency. Judge Johnson noted that Rudzewicz was a sophisticated businessman who had obligatted himself to make payments totaling over \$1 million.

Burger King filed a timely notice of appeal in this Court.

3. CONTENTIONS: Appellant contends that CALL erred in holding that the district court in Florida lacked personal juris-

diction over Rudewicz. It argues that CALL found a lack of personal jurisdiction primarily because Rudzewicz had "never set foot on Florida soil." The real question, according to appellant, is whether the "totality of [the appellee's] relationship with Burger King made it fair and reasonable to impose upon him the requirement of making his first trip to Florida to defend this action." After exhaustively discussing the facts of the case, Burger King concludes that it was not "unreasonable" to require Rudzewicz to defend the lawsuit in Florida.

4. DISCUSSION: The appeal brought by Burger King should be dismissed, as CALL carefully avoided holding the Florida long-arm statute unconstitutional. Admittedly, a plain reading of the statute might suggest that jurisdiction over Rudzewicz was proper under state law. The statute provides that personal jurisdiction may be exercised over a non-resident defendant who breaches a contract by "failing to perform acts required by the contract to be performed in [Florida]." Fla.Stat. §48.193(1)(g). The Florida courts, however, have interpreted the long-arm statute as requiring that the non-resident defendant have constitutionally sufficient contacts with the forum state. Osborn v. University Society, Inc., 378 So.2d 873 (Fla.App. 1979). Therefore, CALL was able to hold that the district court was precluded from exercising personal jurisdiction over appellee, without holding the state long-arm statute unconstitutional.<sup>1</sup>

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<sup>1</sup>Cf. Calder v. Jones, 52 U.S.L.W. 4349 (1984). In that case, a California court held that it could constitutionally exercise

Footnote continued on next page.

Although the appeal should be dismissed, the jurisdictional statement may be treated as a petition for a writ of certiorari. 28 U.S.C. §2103. The petition is probably worthy of a grant. The federal and state courts are divided on the issue of whether personal jurisdiction may be exercised over a nonresident defendant based upon his <sup>n</sup>contractual dealings with a resident plaintiff. Because each case turns upon its own facts, it is impossible to determine the extent of the division. In a dissent from a denial of certiorari, however, Justice White points to fourteen cases that are "arguably" inconsistent with the Eleventh Circuit's decision here. Lakeside Bridge & Steel Co. v. Mountain State Construction Co., 445 U.S. 907, 909-910 (1980) (White, J., joined by Powell, J., dissenting from a denial of certiorari); Justice White cites eight lower court cases that are "arguably" consistent with the Call's decision. Id.

The disarray among the lower courts is troubling, for it may have a "disruptive effect on commercial relations in which certainty of result is a prime objective." Nevertheless, it seems unlikely that four Justices will be willing to grant the petition, for the Court recently has refused, over dissents, to review three cases raising the same issue. Lakeside Bridge &

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personal jurisdiction over two defendants pursuant to a long-arm statute. This Court held that the case was improperly brought as an appeal because no state statute had been "drawn into question ... on the ground of its being repugnant to the Constitution." 28 U.S.C. §1257(2). The Court reasoned that there could be no claim that the statute was unconstitutional because it clearly provided that the state's jurisdiction was as broad as the federal constitution permits. Id. at 4350 n.7.

Steel Co. v. Mountain State Construction Co., 445 U.S. 907, 909-910 (1980) (White, J., joined by Powell, J., dissenting from a denial of certiorari); Baxter v. Mouzavires, 455 U.S. 1006 (1982) (White, J., joined by Powell, J., dissenting from a denial of certiorari); Chelsea House Publishers v. Nicholstone Bookbindery, Inc., 455 U.S. 994 (1982) (White, J., joined by Burger, C.J., and Powell, J., dissenting from a denial of certiorari). The reluctance of the Court to consider these cases is understandable, for it would be difficult to come up with a rule of general applicability. Nevertheless, the Court probably should try to bring some measure of uniformity to the area.

5. RECOMMENDATION: I recommend dismissing the appeal, and granting the petition for a writ of certiorari.

There is a response.

September 11, 1984

Bentley

Opin in petn



September 24, 1984

Court .....

Voted on....., 19...

Argued ....., 19...

Assigned ....., 19...

No. 83-2097

Submitted ....., 19...

Announced ....., 19...

BURGER KING CORP.

vs.

RUDZEWICZ, JOHN

*Noted  
Postpone  
(after discussion)*

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT			MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G		
Burger, Ch. J.			✓		<del>POST</del>							
Brennan, J.		<del>scribble</del>		✓								
White, J.		<del>scribble</del>		✓								
Marshall, J.		<del>scribble</del>		✓								
Blackmun, J.		<del>scribble</del>		✓								
Powell, J.		<del>scribble</del>		✓								
Rehnquist, J.							✓	✓	✓			
Stevens, J.							✓	✓	✓			
O'Connor, J.							✓	✓	✓			

83-2097 Burger King v. Rudzewicz (Annmarie)

LFP out - letter 4/11/85  
WJB for the Court 1/18/85  
    1st draft 4/11/85  
    2nd draft 5/3/85  
    3rd draft 5/15/85  
        Joined by SOC 4/15/85  
                  TM 4/16/85  
                  WHR 4/18/85  
                  BRW 4/18/85  
                  HAB 4/22/85  
                  CJ 5/15/85  
  
JPS dissenting  
    1st draft 5/13/85  
        Joined by BRW 5/15/85  
JPS will dissent 4/18/85

File

Unrecorded  
& unrecorded

December 28, 1984

BURGER2GINA-POW

83-2097 Burger King v. Rudzewicz

MEMO TO FILE

This case, here on appeal from CALL, presents a due process question under the Florida Long-Arm Florida statute.

Appellant, Burger King, Incorporated, a Florida corporation with its principle office located in that state, claims to be the "world's largest restaurant organization" with over 3000 restaurants in its system - most of which are conducted through "franchised units".

Appellee Rudzewicz is a resident and citizen of Michigan, a successful certified public accountant. He and another Michigan resident named MacShara, wish to become a franchisee of Burger King, and after extended negotiations the parties signed for "principle documents":

"the offering circular"; (ii) the preliminary agreement; (iii) the franchise agreement; and (iv) the lease agreement.\*

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Burger King maintains a "district office" in Michigan, and its Michigan office conducted the negotiations with the two Michigan individuals. The documents mentioned above were prepared by Burger King in Florida (presumably standard forms for franchisees), were mailed to Michigan where they were signed and returned to Miami for Burger King signing.

The new Burger King restaurant - apparently from mismanagement - was less than successful; the franchisees defaulted in the payment of rent. They also were obligated to pay a percentage royalty and certain other fees. I suppose they defaulted on these but I am not. The briefs I have with me in Richmond include only those involving Rudzewicz. I do not know whether or not MacShara is still litigating.

sure. Burger King sued in Florida District Court under the state Long-Arm Statute claiming breach of contract and trademark infringement. Only the breach of contract claim is before us. The DC found there were adequate "minimum contacts" required by the Florida statute, and found that \_\_\_\_\_ jurisdiction existed. The Court of Appeals disagreed, finding an absence of the necessary "minimum contacts".

The Court of Appeals viewed the case as involving only the following question:

A

"Whether a Florida court can exercise jurisdiction over a non-resident purchaser [Rudzewicz] by virtue of his contract with a Florida corporation [Burger King] obligating him to remit payments to Miami."

This is a difficult case for us to deal with because it seems to be essentially factual in the sense that the parties disagree as to the nature of the relationship. Burger King argues that CALL mischaracterize the question by viewing it as involving only an obligation to pay money owed by a Michigan debtor against a Florida creditor. Although the particular claim in issue is for monetary damages, Burger King argues that this was not a "one-shot transaction - like an order from a Sears catalogue after which both parties go their own way." Rather, a complicated long-term relationship was established that entailed, in consideration for paying money all of the assistance and oversight that businesses like Burger King provide their franchisees. These are described a great length in the brief.

I find appellees brief curiously written, and not easy to understand. It argues first that this is not an appeal, and the appeal therefore should be dismissed. This argument is based on the view that the decision below left the Florida Long-Arm statute fully in effect. The statute was not declared unconstitutional. I have not given this argument much thought. Perhaps we can simply treat this as a petition for cert.

Appellee's basic argument is, as CALL found, inadequate "minimum contacts" to justify personal jurisdiction in Florida. The only act at issue was the "failure to mail checks to Florida" in payment of money due. I find this a rather shallow argument. Appellee does assert that CALL's decision is consistent with other cases decided by courts of appeals. Appellee apparently thinks none of the decisions of this Court is relevant as our cases are largely ignored. Burger King, on the other hand, relies to some extent on World-Wide Volkswagen, Rush v. Savchuk, and others. The Court of Appeals also was of the view that none of the prior decisions of this Court is controlling.

\* \* \*

I would like to have my clerk's recommendation in a very short memorandum.

LFP, JR.

83-2097 BURGER KING v. RUDZEWICZ

Argued 1/8/85



The Chief Justice

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Justice Brennan

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Justice White

Justice Marshall

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Justice Blackmun

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Justice Powell

Justice Rehnquist

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Justice Stevens

---

Justice O'Connor

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April 12, 1985

83-2097 Burger King Corporation v. Rudzewicz

Dear Bill:

Please show at the end of the next draft of your opinion that I took no part in the consideration or decision of the above case.

Sincerely,

Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 12, 1985

No. 83-2097 Burger King Corporation v.  
Rudzewicz

Dear Bill,

Please join me.

Sincerely,

*Sandra*

Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 12, 1985

Re: No. 83-2097-Burger King v. Rudzewicz

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 18, 1985

Re: No. 83-2097 Burger King v. Rudzewicz

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 18, 1985

Re: 83-2097 - Burger King v. Rudzewicz

Dear Bill:

Your draft opinion has not persuaded me. I will probably circulate a dissent which may do a little more than quote at some length from the majority opinion in the Court of Appeals.

Respectfully,



Justice Brennan

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 18, 1985

83-2097 - Burger King v. Rudzewicz

Dear Bill,

I shall wait for John's writing.

Sincerely yours,



Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 22, 1985

Re: No. 83-2097, Burger King v. Rudzewicz

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a long horizontal stroke extending to the right.

Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

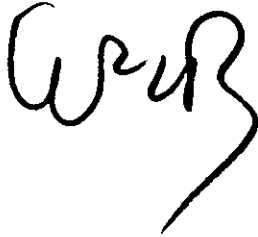
May 14, 1985

Re: No. 83-2097 - Burger King v. Rudzewicz

Dear Bill:

I join your second draft.

Regards,

A handwritten signature in black ink, appearing to be 'WB', written in a cursive style.

Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 15, 1985

83-2097 -

Burger King Corporation v. Rudzewicz

Dear John,

Please add my name to your dissent.

Sincerely,



Justice Stevens

Copies to the Conference