

Spring 2002

2001 Survey of Rhode Island Law: Cases: Federal Civil Procedure

Jill A. Taft

Roger Williams University School of Law

Follow this and additional works at: http://docs.rwu.edu/rwu_LR

Recommended Citation

Taft, Jill A. (2002) "2001 Survey of Rhode Island Law: Cases: Federal Civil Procedure," *Roger Williams University Law Review*: Vol. 7: Iss. 2, Article 17.

Available at: http://docs.rwu.edu/rwu_LR/vol7/iss2/17

This Survey of Rhode Island Law is brought to you for free and open access by the Journals at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Federal Civil Procedure. *Payphone LLC v. Brooks Fiber Comm.*, 126 F. Supp. 2d 175 (D.R.I. 2001). A corporation may not pierce its own corporate veil or apply the alter ego doctrine for its own benefit, nor may it employ these doctrines to create diversity jurisdiction.

FACTS AND TRAVEL

Plaintiff PayPhone LLC sued Brooks Fiber Communications (BFC-RI) for negligence and breach of contract.¹ PayPhone operated pay telephones in the New England area and had its principal place of business in Rhode Island.² During the early summer of 1999, a great many fraudulent phone calls were made to Puerto Rico and the Dominican Republic over a six-week period.³ An error in the switching process allowed callers to direct-dial long distance phone calls.⁴ The cost of the fraudulent calls was approximately \$98,000 billed to PayPhone.⁵

Payphone contended BFC-RI's switch should have recognized the number used to access the long distance service as invalid and should not have completed the calls.⁶ Additionally, PayPhone alleged that although the co-defendant, Cable and Wireless, Inc. (C&W) was aware that PayPhone's public phones were programmed so that direct-dialed international calls would be placed through a live operator, C&W allowed a large number of calls to be completed in violation of the programming instructions.⁷

BFC-RI removed the proceeding to federal court on the basis of diversity jurisdiction and PayPhone moved to remand to state court.⁸ A hearing before the Magistrate Judge was held on May 16, 2000 to determine the citizenship of defendant, BFC-RI. In that hearing, BFC-RI persuaded the Magistrate Judge that it was a citizen of Mississippi owing to the fact that its great-grandparent corporation, MCI WorldCom (MCI) was located there.⁹ BFC-RI

1. *Payphone LLC v. Brooks Fiber Comm.*, 126 F. Supp. 2d 175, 177 (D.R.I. 2001).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 178.

7. *Id.*

8. *Id.*

9. *Id.*

maintained that it and MCI disregarded their separate corporate identities and therefore BFC-RI satisfied the requirement of complete diversity. The Magistrate Judge denied PayPhone's motion to remand and PayPhone filed a timely notice of appeal.¹⁰

ANALYSIS AND HOLDING

Precedent in the First Circuit has established the rule that a corporation may not pierce its own corporate veil or employ the alter ego doctrine to benefit itself, nor may it utilize either of these doctrines in order to establish diversity jurisdiction.¹¹ The court held that as a matter of law, BFC-RI should not have been allowed to argue that it and MCI had ignored separate corporate identities.¹² The court posited two reasons for this: First, the alter ego and corporate veil doctrines are reserved for the relief of aggrieved third parties.¹³ Second, allowing a corporation to choose its citizenship in order to create or maintain diversity jurisdiction would be contrary to Congress's intent to limit federal diversity jurisdiction and reduce the federal diversity caseload.¹⁴

The court went on to hold that BFC-RI was precluded from piercing its own corporate veil by the doctrine of equitable estoppel.¹⁵ In Rhode Island, equitable estoppel is established by "proof of an affirmative statement . . . by the person against whom the estoppel is claimed which is directed at the person seeking to establish the estoppel, and that the statement or conduct actually induces the other to act . . . to his injury."¹⁶ The court found ample evidence to establish this requirement.

First, when BFC-RI sought authorization to do business in Rhode Island, it made representations to the Rhode Island Public Utilities Commission (P.U.C.) that Rhode Island was the only state where it planned to do business.¹⁷ Second, when BFC-RI and MCI WorldCom merged in 1998, the companies again had to obtain approval from the P.U.C. as required by Rhode Island law.¹⁸ At that

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 180.

17. *Id.*

18. *Id.*

time, both companies stated to the P.U.C. that BFC-RI would operate as a separate corporation following the merger.¹⁹ By making these representations, the court held that BFC-RI had held itself out to both P.U.C. and the public as a local company providing local service.²⁰ As such, PayPhone was induced to do business with BFC-RI.²¹ The court held that allowing BFC-RI to “recharacterize” itself as a citizen of Mississippi would be misleading and detrimental to PayPhone.²² Therefore, BFC-RI was estopped from claiming diversity of citizenship.²³

CONCLUSION

A corporation is not allowed to pierce its own corporate veil to create a diversity of citizenship or to otherwise benefit itself; therefore, the magistrate judge’s denial of PayPhone’s motion to remand to state court was contrary to law.²⁴ The court held it had no subject matter jurisdiction because there was no diversity of citizenship between BFC-RI and PayPhone, LLC. The case was remanded to Rhode Island Superior Court.²⁵

Jill A. Taft

19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*