Florida Law Review

Volume 25 | Issue 3 Article 14

March 1973

Conflict of Laws: Florida Fails to Adopt Modern Approach

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CONFLICT OF LAWS: FLORIDA FAILS TO ADOPT MODERN APPROACH

Colhoun v. Greyhound Lines, Inc., 265 So. 2d 18 (Fla. 1972)

Plaintiff, a Florida resident, purchased a bus ticket in Tampa from defendant-bus company. While using the ticket, plaintiff was injured in a bus accident in Tennessee. Twenty months later plaintiff instituted suit in the circuit court of Hillsborough County, Florida. The court determined that the Tennessee one-year statute of limitations barred the suit, and the Second District Court of Appeal affirmed.[1] Granting certiorari, the Supreme Court of Florida HELD, while the counts sounding in tort were barred by the Tennessee statute of limitations, the cause of action sounding in contract was timely, since it arose in Florida and thus the Florida three-year statute of limitations on contracts applied.[2]

The traditional approach to conflict of laws is based on the theory of "vested rights."[3] The right of action of a party is created by the laws of the place where a transaction occurs, and that jurisdiction's law determines all substantive issues connected with that action.[4] The rule of *lex loci delicti,* the law of the place of injury, applies in tort actions.[5] In contract actions, however, *lex loci contractus,* the law of the place of making, determines the construction or validity of a contract, while the law of the place of performance governs matters pertaining to performance.[6] Whether a breach of contract has occurred and whether the promisee is entitled to damages are generally questions of performance and are governed by the law of the place of performance.[7]

Because of the practical difficulty of duplicating a foreign state's court administrative procedure, matters of procedure are determined by the law of the forum.[8] Since statutes of limitation are a procedural matter affecting the remedy of a party they are, in the absence of statutory exceptions, governed by the law of the forum.[9] Many states, however, have limited the applicability of the forum's statute of limitations by enacting borrowing statutes[10] that

1. Colhoun v. Greyhound Lines, Inc., 253 So. 2d 176 (2d D.C.A. Fla. 1971).

2. 265 So. 2d 18 (Fla. 1972). Two justices dissented without opinion, *id.* at 21.

3. R. LEFLAR, THE LAW OF CONFLICT OF LAWS 3 (student's ed. 1959).

4. *Id.*

5. Astor Elec. Serv. Inc. v. Cabrera, 62 So. 2d 759 (Fla. 1952); 2 V. BEALE, THE CONFLICT OF LAWS §377.2 (1935).

6. Walling v. Christian & Craft Grocery Co., 41 Fla. 479, 27 So. 46 (1899); Castorri v. Milbrand, 118 So. 2d 563 (2d D.C.A. Fla. 1960).

7. Peak v. International Harvester Co., 194 Mo. App. 128, 186 S.W. 574 (1916) and cases cited therein. *See also* Hopkins v. Lockheed Aircraft Corp., 201 So. 2d 743, 751 (Fla. 1967).

8. Brown v. Case, 80 Fla. 703, 86 So. 684 (1920); 3 V. BEALE, *supra* note 5, §584.2.

9. Brown v. Case, 80 Fla. 703, 86 So. 684 (1920); 3 V. BEALE, *supra* note 5, §604.2.

10. FLA. STAT. §95.10 (1971) provides: "When the cause of action has arisen in another state or territory of the United States, or in a foreign country, and by the laws thereof an action thereon cannot be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this state."

direct the court to apply the statute of limitations of the place where the cause of action arose.[11]

In recent years courts and critics have expressed dissatisfaction with the traditional rules of choice of law,[12] which they believe have induced courts to fashion escape devices[13] to avoid the mechanistic result of the older rules.[14] However, some courts have adopted modern conflicts theories that base choice of law decisions on an analysis of various contacts and state interests with respect to each issue.[15] These theories advance the underlying purpose of the substantive rule of the state that has a significant interest in seeing its law applied or has the most significant relationship with the parties and events.[16]

Nevertheless, Florida has not joined the number of states that have discarded the rules of *lex loci delicti* and *lex loci contractus.* In *Hopkins v. Lockheed Aircraft Corp.*[17] the Florida supreme court attempted to abandon the traditional rule of *lex loci delicti* in favor of a "significant contacts" theory. However, on rehearing the court reversed itself and refused to overrule the older principles.[18] Furthermore, decisions of the district courts of appeal subsequent to *Hopkins* indicate that Florida courts will continue to follow the rules of *lex loci delicti*[19] and *lex loci contractus.*[20]

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11. *See* Ester, *Borrowing Statutes of Limitation and Conflict of Laws,* 15 U. FLA. L. REV. 33 (1962); Vernon, *Statutes of Limitation in the Conflict of Laws: Borrowing Statutes,* 32 ROCKY MT. L. REV. 287 (1960).

12. *See, e.g.,* Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963); W. COOK, THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS (1949).

13. *See, e.g.,* Levy v. Daniels' U-Drive Auto Renting Co., 108 Conn. 333, 143 A. 163 (1928) (cause of action of passenger of rented auto involved in accident was characterized as sounding in contract so Connecticut law applied). *See also* Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944 (1953); Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961); Haumschild v. Continental Cas. Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1959).

14. Cheatham & Reese, *Choice of the Applicable Law,* 52 COLUM. L. REV. 959 (1952).

15. While there are many approaches, three doctrines have dominated critical discussion. First, the approach of the RESTATEMENT suggests that the state whose law should be applied is the state having the most significant relationship with the parties and events with respect to a particular issue. RESTATEMENT (SECOND) OF THE CONFLICT OF LAWS §§145, 188 (1971). Second, Professor Branierd Currie advocated an "interest analysis" approach that stresses interpretation of the conflicting substantive rules to be applied in terms of the purpose of those rules. Where the rules of two states are in conflict a state should apply its own law if it has a legitimate governmental interest in doing so. B. CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (1963). Finally, the choice-influencing considerations approach of Professor Leflar creates a checklist of factors that the court should evaluate in determining the applicable law. These factors include predictability of results, maintenance of interstate and international order, simplification of the judicial task, advancement of the forum's governmental interests, and application of the better rule of law. Leflar, *Conflicts Law: More on Choice-Influencing Considerations,* 54 CALIF. L. REV. 1584 (1966).

16. *See* RESTATEMENT, *supra* note 15, §145, comment *d* at 416, §188, comment *c* at 578.

17. 201 So. 2d 743 (Fla. 1967).

18. *Id.* at 752.

19. Beasley v. Fairchild Hiller Corp., 401 F.2d 593 (5th Cir. 1968); Lescard v. Keel, 211 So. 2d 868 (2d D.C.A. Fla. 1968), *cert. denied,* 218 So. 2d 172 (Fla. 1968).

20. Center Chem. Co. v. Avril, Inc., 392 F.2d 289 (5th Cir. 1968); State-Wide Ins. Co. v.

The instant case is the first conflicts decision by the Florida supreme court since *Hopkins*. The lower court had allowed the plaintiff to plead alternatively with claims sounding in tort and in contract.[21] On review the supreme court was presented with the question of whether the Florida borrowing statute[22] required the application of the Tennessee statute of limitations to any of the causes alleged. If the cause of action arose in Tennessee and would be barred under Tennessee's statute of limitations, Florida's borrowing statute similarly would bar an action in the Florida courts. Because the tort action arose at the place where the last act necessary to establish liability occurred, the court concluded that the one-year Tennessee statute of limitations barred the tort actions.[23] However, relying upon a 1917 case that held the cause of action accrues at the place of completion of the contract,[24] the court concluded that the contract was completed in Florida by the purchase of the bus ticket. Thus, the contract cause of action arose in Florida, rendering the borrowing statute inapplicable.[25] The Florida three-year statute of limitations on actions sounding in contract[26] made the complaint timely.

While the court's analysis of the applicability of the borrowing statute in tort actions conforms with the weight of authority,[27] its treatment of the place of accrual of the contract action neither follows its own prior decisions nor the majority view. In defining the place of accrual of an action for breach of contract, Florida courts have held that the cause of action accrues where the breach occurs.[28] Although a question of where the cause of action arises under the borrowing statute has not been brought before the supreme court previously, the Fifth Circuit Court of Appeals has applied the Florida borrowing statute in a breach of warranty action.[29] The circuit court concluded that it must look to the law of the state in which the breach (a heli-

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Flaks, 233 So. 2d 400 (3d D.C.A. Fla. 1968); Confederation Life Ass'n v. Vega Y Arminan, 207 So. 2d 33 (3d D.C.A. Fla. 1968), *aff'd mem.*, 211 So. 2d 169 (Fla. 1968), *cert. denied*, 343 U.S. 980 (1968).

21. 265 So. 2d at 21, *citing* Doyle v. City of Coral Gables, 159 Fla. 802, 33 So. 2d 41 (1947).

22. FLA. STAT. §95.10 (1971); *see* text accompanying note 10 *supra*.

23. 265 So. 2d at 21; *see* TENN. CODE ANN. §28-304 (1955).

24. Peters v. E.O. Painter Fertilizer Co., 73 Fla. 1001, 75 So. 749 (1917). This decision arose in connection with a question of proper venue for an action for breach of warranty on a sales contract. The acceptance and breach of the contract occurred in the same county, and the court placed strong support for its result on the fact that the suit was instituted in the county where he breach occurred. *See* Williams v. Scholfield, 144 So. 2d 89 (1st D.C.A. Fla. 1962).

25. 265 So. 2d 18, 21 (Fla. 1972).

26. FLA. STAT. §95.11 (5) (e) (1971).

27. *See* Ester, *supra* note 11, at 47.

28. Like Peters v. E. O. Painter Fertilizer Co., 73 Fla. 1001, 75 So. 749 (1917), these decisions have arisen in regard to questions of proper venue. Producers Supply, Inc. v. Harz, 149 Fla. 594, 6 So. 2d 375 (1942); Croker v. Powell, 115 Fla. 733, 156 So. 146 (1934); Williams v. Scholfield, 144 So. 2d 89 (1st D.C.A. Fla. 1962), *cert. denied*, 150 So. 2d 443 (Fla. 1963); Gates v. Stucco Corp., 112 So. 2d 36 (3d D.C.A. Fla. 1959).

29. Beasley v. Fairchild Hiller Corp., 401 F.2d 593 (5th Cir. 1968).

copter crash) occurred to determine whether the action could have been maintained in the foreign state's courts at the time it was filed in the Florida courts.[30] In states whose borrowing statutes are applicable where the action "arises" or "accrues" in a different jurisdiction, the majority of courts hold that this refers to the place where the contract was to be performed.[31]

Despite the apparent inconsistency with prior law, the result of allowing plaintiff to maintain her action and applying Florida law to the issues of the case is appropriate. However, the court needs a more solid basis on which to rest its decision not only in the instant case but in future conflicts cases where precedent may dictate other undesirable results. The newer theories of conflict of laws would provide a flexible concept for the court to use.

The modern approaches replace the mechanical application of old rules with analysis of the policies and interests at stake in the choice of law.[32] Although the traditional rules had a basis in social and economic policy, the courts have obscured the reasoning behind the rules, thus failing to consider the relevant facts that make a wise choice of law.[33] Consideration of all relevant factors under the newer approaches would lead to the best practical result.[34] While the method of determining the legitimate interests or most significant relationship to the state may afford less predictability than rigid rules,[35] the benefit of the modern approach is that the choice of law will depend on the relevant facts of each issue with emphasis on the purpose and policy behind the law.[36] Furthermore, the traditional goal of predictability of rules to be applied has no practical meaning where the parties are not cognizant of the choice of law consequences arising out of the simple purchase of a bus ticket.[37]

Applying the modern theory to the instant case, Florida law would govern the action. Plaintiff resided in Florida and purchased her bus ticket there from defendant. She boarded defendant's bus in Tampa, surrendering herself to the care of the defendant. Whatever expectations plaintiff may have had with respect to defendant's duties, obligations, and manner of performance of the contract of carriage were formed in Florida prior to her departure. The bus trip passed through several states with the accident occurring in

30. *Id.* at 596.

31. Baltimore & O.R.R. v. Reed, 223 F. 689 (6th Cir.), *cert. denied*, 239 U.S. 640 (1915) (in action for injuries in railroad accident, whether actions were *ex contractu* or *ex delicti*, the cause of action arises in the state where the accident occurred). *See also* Ester, *supra* note 11, at 50.

32. Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963); Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954); Griffith v. United Airlines, Inc., 416 Pa. 1, 203 A.2d 796 (1964). This comment takes no position as to which of the new approaches, outlined *supra* note 15, the court should adopt. What is important in all of these approaches is the analysis by the court of the particular conflicts situation, rather than the mechanical application of traditional rules.

33. W. Cook, *supra* note 12, at 45.

34. Leflar, *supra* note 15.

35. Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99, 102 (1954).

36. Griffith v. United Airlines, Inc., 416 Pa. 1, 203 A.2d 796, 802 (1964).

37. *Compare* Restatement, *supra* note 15, §188, comment *b* at 576.

Tennessee. While Tennessee has an interest in protecting its highways from negligent drivers, it has no state interest in preventing plaintiff from recovering on her contract cause of action, which was based on rights and obligations incident to the Florida contract. On the other hand, Florida has an interest not only in protecting its citizens and assuring their just compensation for injuries but also in preserving the rights and obligations created by a contract made under Florida law.

Once the choice of substantive law has been made, then the choice of the statute of limitations under the borrowing statute should conform to that choice.[38] To allow application of Tennessee's statute of limitations when the court has determined that Florida law governed the action is incongruous.[39] That result would mean that a procedural rule of a state having only fortuitous contacts with the action would bar the substantive rights of plaintiff created under the law of the state having the greatest interest in the issue. Borrowing statutes were enacted to prevent forum shopping and promote uniformity of result by applying the statute of limitations of the state whose substantive law would apply to the action under traditional rules.[40] These purposes can be preserved adequately by a changed judicial construction of the statute.[41] The court should interpret the cause of action as arising, for purposes of the borrowing statute, in the jurisdiction whose law applies, that is, the state having the greatest interest in the action. Also, the legislature could revise the borrowing statute to reflect a more flexible approach by amending it to require the application of the statute of limitations of the state whose substantive law applied to the issue.[42]

Although the Supreme Court of Florida rejected modern approaches to conflict of laws in *Hopkins v. Lockheed Aircraft Corp.*[43] the instant case reveals the dilemma in which the court is placed if it must rely on the traditional rules. Under analysis the result in this case does not conform to the weight of authority. The action should have been barred by the Tennessee statute of limitations. However, the court seemingly misapplied the law and reached the better result of permitting the plaintiff to proceed with her action. If strict uniformity and predictability have ceased to be the most important considerations, then the newer approaches, which emphasize the

38. Comment, *Choice of Law and the New York Borrowing Statute: A Conflict of Rationales,* 35 ALBANY L. REV. 754 (1971); Comment, *The Impact of Significant Contacts on the Pennsylvania Borrowing Statute,* 72 DICK. L. REV. 598 (1968).

39. Comment, *Choice of Law and the New York Borrowing Statute: A Conflict of Rationales,* 35 ALBANY L. REV. 754 (1971).

40. Comment, *The Impact of Significant Contacts on the Pennsylvania Borrowing Statute,* 72 DICK. L. REV. 598, 605-06 (1968).

41. *Id.* at 618.

42. The following proposed statutory revision of FLA. STAT. §95.10 (1971) would accomplish this objective:

When the cause of action against a person has been fully barred by the laws of the state, territory of the United States, or foreign country whose substantive law is found to apply to the action, no action shall be maintained upon that cause of action in this state.

See also Comment, *supra* note 40, at 617.

43. 201 So. 2d 743 (Fla. 1967).

relevant contacts and interests involved in a particular issue, will allow the court more latitude in considering the individual conflicts problem than will the mechanical application of outdated rules. Concededly, the significant contacts or interest analysis approaches are not without their own difficulties. What contacts are relevant, what state interests are important, and whether these contacts or interests should be considered quantitatively or qualitatively are still much disputed questions. Moreover, the Florida borrowing statute must be reappraised to reflect the new policy of conflicts resolution. The borrowing statute must direct application of the statute of limitations that is consistent with the state whose substantive law will govern the action. While the supreme court evidenced no inclination to change its mind on conflicts resolution, the opinion in the instant case indicates that the court should reconsider its position.

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