

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 23, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1493

Cir. Ct. No. 2014CV3511

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**THE SEGREGATED ACCOUNT OF AMBAC ASSURANCE
CORPORATION (THE "SEGREGATED ACCOUNT") AND
AMBAC ASSURANCE CORPORATION ("AMBAC"),**

PLAINTIFFS-APPELLANTS,

v.

COUNTRYWIDE HOME LOANS, INC.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
PETER C. ANDERSON, Judge. *Reversed and cause remanded.*

Before Lundsten, Higginbotham, and Blanchard, JJ.

¶1 PER CURIAM. The Segregated Account of Ambac Assurance Corporation (the Segregated Account) and Ambac Assurance Corporation

(collectively, “the insurers”) appeal an order dismissing for lack of personal jurisdiction the insurers’ action for fraudulent inducement against Countrywide Home Loans, Inc., a New York corporation. The insurers contend that there are three independent bases for personal jurisdiction over Countrywide in this action. However, we address only one of these arguments, because we conclude that it is dispositive in favor of the insurers. The insurers contend that Countrywide consented to general personal jurisdiction by following the requirement in WIS. STAT. § 180.1507 (2013-14)¹ that, as a “foreign corporation,” Countrywide maintain in Wisconsin “a registered office and registered agent.” Based on Wisconsin Supreme Court precedent that we conclude is controlling, we agree with the insurers and accordingly we reverse.

BACKGROUND

¶2 In December 2014, the insurers filed a complaint to initiate this action in Dane County circuit court, alleging fraudulent inducement against Countrywide. The complaint includes the following allegations.

¶3 Ambac “is a Wisconsin-domiciled stock insurance corporation,” with “its principal place of business in New York, New York.” Countrywide “is a New York corporation with its princi[pal] executive offices” in California, and during the pertinent period originated mortgage loans.

¶4 In 2005, Ambac issued policies insuring against losses resulting from residential mortgage-backed securities, based on representations made by

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Countrywide to Ambac during 2004-05 regarding Countrywide's mortgage origination practices. Because Countrywide provided false and misleading information in this connection, Ambac is obligated to make "more than \$350 million in claims payments."

¶5 The Segregated Account was established in 2010, pursuant to WIS. STAT. § 611.24, under a plan approved by the Wisconsin commissioner of insurance. Ambac then "allocated" the above-referenced policies to the Segregated Account. A circuit court "placed the Segregated Account into statutory rehabilitation under WIS. STAT. §§ 645.31 and 645.32." The rehabilitation proceedings were pending in Dane County circuit court at the time the complaint in this action was filed.

¶6 In February 2015, Countrywide moved to dismiss or stay this action on multiple grounds, including that the court lacks personal jurisdiction over Countrywide, a foreign corporation. The circuit court granted the motion to dismiss for lack of personal jurisdiction.

DISCUSSION

¶7 The parties agree that we review de novo the circuit court's decision to dismiss based on lack of personal jurisdiction, because no fact finding by the circuit court is at issue. *See Rasmussen v. General Motors Corp.*, 2011 WI 52, ¶14, 335 Wis. 2d 1, 803 N.W.2d 623.

¶8 We first briefly summarize pertinent Wisconsin business corporation law. A foreign corporation "authorized to transact business in this state shall continuously maintain in this state a registered office and registered agent." WIS. STAT. § 180.1507; *see also* WIS. STAT. § 180.1510 (describing methods for service

of process on registered agent of a foreign corporation). It is undisputed that, while Countrywide was not incorporated in Wisconsin and did not maintain a principal place of business in Wisconsin, it had a designated Wisconsin agent for service of process during pertinent time periods.

¶9 With that background, the insurers argue that, by maintaining a Wisconsin agent to receive service of process during pertinent time periods, Countrywide “subjected” itself to the “general jurisdiction” of Wisconsin courts, and actually consented to personal jurisdiction. The insurers contend that “[t]his actual consent obviates the need for a separate basis for personal jurisdiction.”

¶10 Countrywide responds that its appointment of an in-state agent for service, pursuant to WIS. STAT. § 180.1507, “constitutes consent to a method of service,” but does not constitute consent “to personal jurisdiction for all disputes.” Countrywide contends that the insurers’ general and personal jurisdiction argument is a “novel interpretation of Wisconsin’s registration statute” and relies on “overturned, obsolete, or inapt case law.”

¶11 We agree with the insurers that this issue is resolved based on two opinions of the Wisconsin Supreme Court that we now briefly summarize.

¶12 The first-issued case is *Punke v. Brody*, 17 Wis. 2d 9, 115 N.W.2d 601 (1962). The court addressed the plaintiff’s contention that service on an agent for the defendant was sufficient because the defendant had conferred authority to accept service on an agent, which the court explained “is essentially a claim that [the defendant] consented to the exercise of jurisdiction by Wisconsin courts.” *Id.* at 13. The court favorably quoted the following from the Restatement, Conflict of Laws: “A state can exercise through its courts jurisdiction over an individual who consents to such exercise of jurisdiction.” *Id.* (quoting RESTATEMENT, CONFLICT

OF LAWS § 81 (AM. LAW INST. 1934)). The court further favorably quoted the following from the Restatement:

Comment:

a. The consent here considered as a basis of jurisdiction is actual assent to the exercise of jurisdiction. It may be expressed in words or shown by conduct.

b. Consent may be given with respect to a particular action either after the action has been brought or before the action has been brought; or it may be given generally with respect to actions which may thereafter be brought.

Illustrations:

[...]

5. A appoints an agent in state X and authorizes him to receive service of process in any action brought against A in a court of X. B brings an action against A in a court of X and process is served upon the agent. The court has jurisdiction over A.

Id. at 13-14 (internal quotes and footnotes omitted) (quoting RESTATEMENT, CONFLICT OF LAWS § 81 cmts. a-b and illus. 5 (AM. LAW INST. 1934)). Resuming its discussion regarding this “actual assent to the exercise of jurisdiction” concept, the court in *Punke* stated:

There is no question but that [the agent] was [the defendant’s] agent in Wisconsin for some purposes. Had [the defendant] authorized him to receive service of summons in any action brought against [the defendant] in Wisconsin, the court would have jurisdiction, based on consent.

Id. at 14 (footnote with citation omitted).

¶13 The second-issued case is *Hasley v. Black, Sivals & Bryson, Inc.*, 70 Wis. 2d 562, 235 N.W.2d 446 (1975). After concluding that the defendant in that case was “within the reach of” the long-arm statute and had received adequate

notice through service of process, the court in *Hasley* turned to due process concerns under such precedent as *International Shoe Co. v. Washington Office of Unemployment Comp. and Placement*, 326 U.S. 310 (1945). *Hasley*, 70 Wis. 2d at 581. The court in *Hasley* noted that *International Shoe* requires “certain minimum contacts” between the defendant and the forum, “such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Id.* at 582 (quoting *International Shoe*, 326 U.S. at 316). The *Hasley* court then stated:

Thus, a defendant entity might be subject to personal jurisdiction by its actual presence in a state via incorporation there, *or by its consent evidenced by appointment of an agent for service of process*, or by the presence evidenced in continual and substantial operations. No burden on due process would arise by the forum’s exercise of personal jurisdiction in such circumstances, ... although such individual acts, because of the nature, quality and circumstances of their commission, may certainly justify personal jurisdiction for suits arising from such contacts.

Id. at 582 (citation omitted) (emphasis added).

¶14 We now explain why we reject the limited arguments that Countrywide makes as to why we should not treat these statements in *Punke* and *Hasley* as controlling.

¶15 First, Countrywide briefly asserts that *Punke* involves only the question of “whether an authorized agent could accept proper *service*.” (Emphasis in original.) This is not a developed argument, and, in any case, so far as we understand the assertion, it is false. Whether or not it was necessary to the court’s decision, the *Punke* court included the broad language of the quoted Restatement passages regarding “actual assent to the exercise of jurisdiction.” *See Punke*, 17

Wis. 2d 9, 13-14. This language goes beyond the question of whether the agent could accept service.

¶16 Second, Countrywide labels the quoted passage in *Hasley* as mere “dicta.” This labeling is a nonstarter under the current approach of our supreme court, which is to prohibit this court from dismissing language in its published opinions as dictum. See *Zarder v. Humana Ins. Co.*, 2010 WI 35, ¶58, 324 Wis. 2d 325, 782 N.W.2d 682 (“[T]he court of appeals may not dismiss a statement from an opinion by [the supreme court] by concluding that it is dictum.”).

¶17 Third, Countrywide asserts that our supreme court in the passage from *Hasley* quoted above was following an “overruled principle enunciated in *Pennoyer v. Neff*, 95 U.S. 714 (1878), that ‘presence’ in a forum is grounds for personal jurisdiction.” Countrywide’s assertion is confusing on multiple levels. We reject it for at least the reason that, as the passage quoted above reflects, the court in *Hasley* explicitly applied the modern-era, *International Shoe* approach, not the older *Pennoyer* approach. See *Hasley*, 70 Wis. 2d at 581-82.

¶18 We pause to observe that Countrywide does not present us with a developed legal argument that the United States Supreme Court has effectively overruled *Punke* and *Hasley* regarding the application of the due process clause of the federal constitution in this context. More specifically, Countrywide’s extensive discussion of *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), fails to address head-on the topic of actual-consent-to-personal-jurisdiction as set forth in *Punke* and *Hasley*. Put differently, if there is discussion in *Daimler* that directly undermines *Punke* and *Hasley*, Countrywide fails to explain what that might be.

¶19 Countrywide asserts that “the crux” of *Daimler* is in “direct[] conflict” with the insurers’ consent theory. But Countrywide then backs up this assertion with nothing more than the mere suggestion that consent would create more widespread personal jurisdiction over corporations than the United States Supreme Court may have contemplated in the course of addressing other topics in *Daimler*. In effect, Countrywide suggests that the United States Supreme Court has a policy preference against state statutes such as WIS. STAT. § 180.1507, but fails to identify language in *Daimler* that invalidates or contradicts the Wisconsin statute or related case law.

¶20 In sum, the only arguments that Countrywide offers on the question of whether *Punke* and *Hasley* are controlling are undeveloped or have no merit. Therefore, we do not delve into other arguments made by the parties on appeal. We follow the direction of our supreme court, unchanged since at least 1962.

¶21 For these reasons, we conclude that the circuit court has personal jurisdiction over Countrywide in this action.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

