

Schwartz on Aiding and Abetting Jurisdiction in the US

Julia Schwartz has posted 'Super Contacts': Invoking Aiding and Abetting Jurisdiction to Hold Foreign Nonparties in Contempt of Court on SSRN.

Under Federal Rule of Civil Procedure 65(d), district court injunctions are binding on nonparties who have notice of the order and are in active concert with the enjoined parties. Every court to address the issue has held that nonparties residing in other US jurisdictions can be held in contempt for aiding and abetting the violation of an injunction, even when they have no other contacts with the forum. Courts have held that a nonparty's assistance in the violation of an injunction creates a "super contact" with the forum, which is sufficient to establish personal jurisdiction. Despite consensus regarding the nationwide scope of injunctions, whether a foreign nonparty who aids and abets the violation of an injunction can be held in contempt without any connection to the forum state remains unresolved.

Because international law concerning the enforcement of US judgments abroad is un-settled, this Comment proposes an alternative approach to determining whether a foreign nonparty who aids and abets the violation of an injunction should be subject to the court's contempt power. There are two justifications for asserting jurisdiction over foreign nonparties who knowingly assist an enjoined party in violating an injunction. First, a court's assertion of "aiding and abetting jurisdiction" over a nonparty would be similar to conspiracy jurisdiction, which courts invoke to hold foreign defendants without connection to the forum liable for the in-forum actions of their coconspirators. This approach would allow courts to establish jurisdiction whenever the substantive elements of aiding and abetting liability are met. Second, there is precedent for the enforcement of court orders against foreign nonparty subsidiaries in the discovery context. Courts considering whether a foreign nonparty subsidiary is bound by a discovery order assess the burdens that would result from compliance with the order and whether the order was evaded in good faith based on a conflict between the countries' laws. These cases indicate that contempt sanctions should issue when a nonparty purposefully evades a district court injunction and there is no compelling burden justifying the evasion.

This student note is forthcoming in the *Chicago Law Review*.