

1979

Rocky Mountain Adjustment Co. v. Pease Brothers, Inc. : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

ROCKY MOUNTAIN ADJUSTMENT
COMPANY, a Wyoming
corporation,

Plaintiff-Respondent,

vs.

PEASE BROTHERS, INC.,
a Utah corporation,

Defendant-Appellant.

:
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:

Case No. 16356

APPELLANT'S BRIEF ON APPEAL

An appeal from a judgment of the Fourth
Judicial District Court of Uintah County,
State of Utah, the Honorable George C.
Ballif, Judge

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APPELLANT'S BRIEF ON APPEAL

STATEMENT OF THE NATURE OF THE CASE

This case involves an attempt by a Wyoming plaintiff to enforce a default judgment obtained in Wyoming upon a Utah defendant. Plaintiff contends that there was proper service of complaint and summons upon the defendant and that the Wyoming judgment should be enforced. Defendant claims that the Wyoming Court did not have personal jurisdiction over the defendant because the service of process was defective and therefore the Wyoming judgment was void.

DISPOSITION IN THE LOWER COURT

Plaintiff's motion for a summary judgment was heard by Judge George C. Ballif, who determined that plaintiff complied

with the provision of Rule 4(1) of the Wyoming Rules of Civil Procedure so that there was valid service of process, granted the motion for summary judgment and ordered that plaintiff recover the amount of the Wyoming judgment plus interest.

RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of the lower court's finding that there was valid service of process upon the defendant and seeks a determination that the judgment by the Wyoming Court was void as to the defendant and not entitled to the Full Faith and Credit Clause of the Constitution of the United States and that the defendant is entitled to adjudicate the issues of liability on their merits.

STATEMENT OF THE FACTS

From May of 1976 to June of 1977, David A. Scott did legal work on behalf of the defendant, Pease Brothers, Inc. (hereinafter referred to as defendant) for which said Scott prepared a bill of \$7,121.78 in fees and costs, (Ex A, R-7). Scott subsequently assigned his account with the defendant to the plaintiff, Rocky Mountain Adjustment Company (hereinafter referred to as plaintiff) for the purpose of collection, (R-13).

On January 18, 1978 plaintiff filed a complaint against the defendant in the District Court of the Seventh Judicial District, County of Natrona, State of Wyoming, (R-11,¹²). Inasmuch as defendant is a Utah corporation and personal service

of process could not be made in Wyoming, service was attempted by requesting the Clerk of the Court to mail by registered mail a copy of the summons and complaint to the defendant at its address in Vernal, Utah, requesting a return receipt signed by the addressee only, as required by rule 4(1) of the Wyoming Rules of Civil Procedure, (R-9,10).

The summons and complaint were delivered to defendant's address and apparently received, and the return receipt signed by one S. R. King, according to the affidavit of the postal agent (R-36,50). Defendant contends that R.W. Pease, president of defendant, is the named process agent for defendant corporation, that said Pease never received a restricted delivery mailing of the summons and complaint and that the person who signed the return receipt (Ex F, R-36) is not an officer or authorized process agent for defendant corporation (R-45). There was no proof to the contrary.

Having not been properly served with process, defendant failed to answer or defend against the complaint and a default judgment was entered against defendant on February 23, 1978 in the amount of \$7,121.78 (R-4,5,18).

On March 3, 1978 plaintiff filed a complaint in the Fourth Judicial District Court of Uintah County, State of Utah, seeking to have the Wyoming judgment enforced (R-1). The summons and complaint were personally served upon Ray Pease, president of

defendant corporation on April 4, 1978 (R-19).

Defendant, in its answer, alleged that the judgment was void and not entitled to Full Faith and Credit because of the failure of service of process upon the defendant, (R-22). Plaintiff made a motion for summary judgment pursuant to Rule 56(a) of the Utah Rules of Civil Procedure (R-43) which was granted, (R-56,57). It is from this order and judgment that defendant appeals.

ARGUMENT

POINT ON APPEAL

THE DISTRICT COURT ERRED IN GRANTING THE SUMMARY JUDGMENT BECAUSE THE WYOMING JUDGMENT WAS MADE WITHOUT PROPER SERVICE OF SUMMONS UPON OR APPEARANCE BY THE DEFENDANT AND IS THEREFORE VOID.

A. The service of summons and complaint upon defendant was not made in compliance with Rule 4(1) of the Wyoming Rules of Civil Procedure.

Rule 4(1) of the Wyoming Rules of Civil Procedure provides that service outside of the state can be made either by (1) personal service or (2) by registered or certified mail. Plaintiff attempted to follow Rule 4(1)(2) and obtain service by registered mail. In order for such service to be valid the rule required that "...the mail shall be sent 'Restricted Delivery' requesting a return receipt signed by the addressee or the addressee's agent who has been specifically authorized

in writing by a form acceptable to, and deposited with, the postal authorities...".

The summons and complaint were sent by registered mail as required, (R-33), however, the return receipt did not bear the signature of the addressee or the addressee's specifically authorized agent (R-36). The illegible signature is apparently that of one S. R. King, who, according to the affidavit of Barney Sessions, is regularly in defendant's office when the mail is delivered (R-50). S. R. King is neither an officer or an authorized process agent for defendant Pease Brothers, Inc., according to the affidavit of R. W. Pease, president of defendant (R-45).

In Pease Bros. v. American Pipe & Supply Co., 522 P.2d 996, 1000, (Wyo. 1974), the Wyoming Court quoted from the decision of various state courts to support the general rule that "a judgment by default cannot properly be entered unless the defendant is brought into court in some way sanctioned by law". One such case was Ponca Wholesale Mercantile Company v. Alley, (Tex. Civ. App. 1964) 378 S.W.2d 129, 131, which was cited for the holding that "service upon a corporation by delivery to 'Manager Don Londers' instead of the registered agent for service of process, was void". In Ponca the court noted that Texas law provided for service of process upon a corporation only by serving the president, or any vice president or the registered

agent of the corporation, (Tex. Bus. Corp. Act V.A.T.S., Article 2.11). The petition for default judgment merely alleged that service was made upon Ponca Wholesale Mercantile Company by delivering copy to "Manager Don Londers" and therefore did not show that a designated officer or registered agent of appellant corporation was served with process. The court held the judgment to be void because "the law is well settled that the record must show affirmatively a strict compliance with the manner of service provided in order to support a default judgment". Ponca Wholesale Mercantile Co. v. Alley, 378 S.W.2d at 132.

In the instant case, plaintiff's affidavit in support of entry of default judgment merely alleged that "the summons, together with a copy of the complaint herein, was served upon the defendant Pease Brothers, Inc., by certified mail, No. 223876" (R-16). There was no allegation that a return receipt was signed by the addressee or the addressee's authorized agent.

The fact that the post office did not require that the return receipt be signed by the "addressee or the addressee's agent who has been specifically authorized in writing by a form acceptable to and deposited with postal authorities" will not make the service of process any more effective. In Oedekoven v. Oedekoven, 475 P.2d 307 (Wyo. 1970) service was attempted upon the defendant in South Dakota by certified mail, but the mail was received and signed for by a minor child. The Wyoming court

found that the attempted service was "defective and not sufficient to give the court jurisdiction over the person of the defendant". The court went on to state:

"In National Supply Company v. Chittin, Wyo. 1964, 387 P.2d 1010, 1011, we said the requirements of Rule 4 are minimum; that any omission of statements which are requisite under the rule is fatal; and that the omission involved in that particular case prevented the trial court from securing jurisdiction of defendant. The same reasoning applies to the failure to follow Rule 4(1)(2) in the case we are now considering." Oedekoven v. Oedekoven, 475 P.2d at 308.

Similarly, the Wyoming Court held in In Re Estate of Longquest, 526 P.2d 994 at 998 (Wyo. 1974) that "Non-resident service-or-process statutes are in derogation of the common law and are given a strict construction; each step prescribed is jurisdictional and a condition precedent to completion of service of process upon a non-resident defendant".

Plaintiff justified its failure to strictly follow the requirements of Rule 4(1)(2) by distinguishing between an individual defendant and a corporate defendant (R-48), but there is no such distinction in the rule. The fact that a postal agent will accept a return receipt signed by any person at the corporation office does not make the service of process valid, any more than where the postal agent accepts the signature

of a minor child at the home of the addressee.

Wyoming law distinguishes between an individual defendant receiving service of process and a corporate defendant only in the case of personal service within the county where the action is brought. In such a case, Rule 4(d) of the Wyoming Rules of Civil Procedure requires service upon a corporation "by delivery to any officer, manager, general agent or agent for process". Even in this situation, service upon a person who is "regularly at the office" would not be valid unless there were no "officer, manager, general agent or agent for process" who could be located within the County.

B. Under Wyoming law, judgments entered without strict compliance with the requirements for service of process are void.

The leading case on judgments entered without strict compliance with the requirements for service of process is Pease Brothers, Inc. v. American Pipe & Supply Co., 522 P.2d 996 (Wyo. 1974) in which personal service was attempted upon an employee of Pease Brothers in a county other than the one in which the action is brought. The court held that since the employee was not "found in the county in which the action is brought", service was not made in conformity with the rule and the court did not have jurisdiction over Pease Brothers even though the summons was forwarded on to the officer of the company.

In so holding the court quoted from Kinkel Outdoor Products, Inc. v. Bell, (Va. 1965) 205 Va. 927, 140 S.E.2d 695, 698 for the rule:

"Judgments without personal service of process within the state issuing it, or its equivalent, or upon a service of process is a manner not authorized by law, are void judgments, and may be so treated in any direct or collateral..." Burks PI & Ano. 4 Ed, § 353 pp 667-68. (Emphasis supplied by the Wyoming Court at 1,000.)

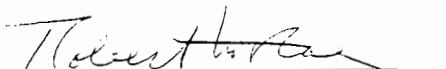
The above holding was given further support in Bryant v. Wybro, 544 P.2d 100 (Wyo. 1976) where service was made upon one Hendrickson, who had held himself out to be an agent for process. Since no evidence was produced at the hearing to set aside the default judgment that Hendrickson had even been authorized as agent for such service or empowered to accept such service for the defendant, the court found that Hendrickson was not proper and the judgment was void. In so ruling it held that Pease Bros., Inc. v. American Pipe & Supply Co. was dispositive on the principle that judgment entered without proper service of process or appearance was void.

CONCLUSION

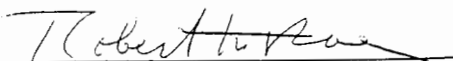
The summary judgment granted by the court below on plaintiff's suit to have a Wyoming default judgment enforced in Utah was not in accordance with the law and should be overturned.

The Wyoming judgment was made without jurisdiction over the defendant because the service of process was made in a manner not in accordance with law and the judgment was void and the defendant should be entitled to adjudicate the issue of liability on the merits and for its costs in this appeal.

Respectfully submitted this 21st day of May, 1979.


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MAILED two copies of the foregoing, postage prepaid, to Gayle F. McKeachnie, Attorney for Plaintiff-Respondent, at 53 South 200 East, Vernal, Utah 84078, this 21st day of May, 1979.


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