

1979

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

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.,

Defendant-Appellant.

Case No. 16356

BRIEF OF RESPONDENTS

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

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STATEMENT OF THE NATURE OF THE CASE

Respondent, having obtained a default judgment against Appellant in the State of Wyoming brought this action seeking enforcement of the Wyoming judgment in the State of Utah under the Full Faith and Credit Clause of the United States Constitution.

DISPOSITION IN THE LOWER COURT

The case was before the Court pursuant to Respondent's Motion for Summary Judgment. The district court held that Appellant had received notice of the Wyoming action, that the State of Wyoming had personal jurisdiction over Appellant and granted the motion for summary judgment ordering that Respondent recover from Appellant the amount of the Wyoming judgment.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the district court judgment.

STATEMENT OF FACTS

From April 16, 1976 through June of 1977, the law firm of Murane and Bostwick provided legal services to Appellant, Pease Brothers, Inc., hereinafter referred to as "Defendant". The legal services provided to Defendant by Murane and Bostwick, included a four-day trial in a Wyoming court, and preparation for that trial. The trial arose from transactions of Defendant in the State of Wyoming. (R.6)

Defendant is a Utah Corporation involved in construction work.

The Defendant maintains a business office at 120 East Main Street Vernal, Utah. As the general manager of that office, Defendant hired Stanley R. King aka S. R. King. Mr. King had worked as the Defendant's manager for many years until his recent death. Generally he was the only person in the office of Defendant. Ray W. Pease, the President of Defendant, and any other officers of Defendant were generally on one of the construction sites where Defendant was working.

During the time Murane and Bostwick was providing legal services to Defendant, the Defendant moved from the State of Wyoming and was no longer transacting business in the State of Wyoming. After Murane and Bostwick had provided the requested legal services to Defendant, Defendant refused to pay for those services. As a result, Murane and Bostwick assigned the account to Respondent, Rock Mountain Adjustment Company, hereinafter referred to as "Plaintiff" for the purposes of collection. (R.6) Since Defendant had not appointed an agent in the State of Wyoming upon whom service could be made, nor did Defendant retain any officer or any personnel in the State of Wyoming upon whom service could be made, Defendant pursuant to Rule 4(1) of the Wyoming Rules of Civil Procedure requested the Clerk of the Seventh Judicial District Court of Natrona County, Wyoming, to mail by registered mail a copy of the complaint and summons to the Defendant at its Vernal, Utah ad-

dress. (R.8,9) The Court Clerk upon receiving the Affidavit and Request to Mail provided by Plaintiff, served the Defendant on January 18, 1978, by mailing the complaint and summons to Pease Brothers, Inc., 120 East Main, Vernal, Utah, 84078. (R.10) The complaint and summons were sent by the Clerk by registered mail on a form provided by and acceptable to the United States Postal Service. That form provided by the United States Postal Service provided that service should be made upon the addressee or an agent of the addressee.

In Vernal, Utah, a party has the option of either picking up his mail at the United States Post Office or having the mail delivered to his place of business by the United States Postal carrier. Defendant, Pease Brothers, Inc., has the United States Postal carrier deliver the mail to its place of business at 120 East Main Street, Vernal, Utah. When mail is delivered to that address, the mail is accepted and received by S. R. King, Defendant's manager. (R. 50,51) The return receipt received on January 23, 1978, by the Clerk of the Seventh Judicial District Court of Wyoming, Natrona County, shows that the summons and complaint sent by registered mail to Defendant were received by Defendant's manager, S. R. King, at the Vernal, Utah office. The return receipt contains S. R. King's signature showing that he received the summons and complaint on behalf of the Defendant. When Defendant refused to answer the

Complaint served on it, Judgment by Default was entered on February 27, 1978 in the District Court of Natrona County, Seventh Judicial District. (R.4,5)

On March 31, 1978, this action was filed in the Fourth Judicial District Court of Uintah County seeking enforcement of the Wyoming judgment under the Full Faith and Credit Clause of the United States Constitution, art. IV, §1. (R.1,2) Defendant answered that complaint, admitted the Wyoming judgment and raised as a defense a collateral attack alleging that the Wyoming Court lacked personal jurisdiction over it on the grounds that service had been made on S. R. King, Defendant's manager rather than on Ray Pease, Defendant's president and registered agent. (R.22,45) The matter was submitted to the Court pursuant to a summary judgment motion. (R.42) The Court, after reviewing the motion and memoranda submitted pursuant to Rule 2.8 of the Rules of Practice of The Fourth Judicial District, and after oral argument by counsel ruled that the Plaintiff had complied with the provisions of Rule 4(1) of the Wyoming Rules of Civil Procedure, and that the Defendant did receive notice of the proceedings in the State of Wyoming. The Court then entered judgment on behalf of Plaintiff, from which judgment Defendant has brought this appeal. (R.56,57)

ARGUMENT

POINT I. THE GRANTING OF THE MOTION FOR SUMMARY JUDGMENT BY THE COURT WAS PROPER SINCE THERE WAS NO GENUINE ISSUE AS TO ANY MATERIAL FACT TO BE DETERMINED.

In the present case there are no issues of material fact relating to the merits to be determined by the Court. When the Defendant chose to ignore the Wyoming proceedings and allowed default to be entered against it, the Defendant waived its right to challenge the facts set forth in those pleadings. The only relief the Defendant can rely on in the courts of the State of Utah, is to challenge the judgment collaterally by alleging lack of personal jurisdiction by the Wyoming Court, which Defendant has done. The issue of jurisdiction is a question of law determining whether or not the due process requirements of the United States Constitution were fulfilled. Defendant has not alleged that there is any dispute as to the material facts, nor has Plaintiff. The only issue before the trial court, therefore, was a question of law making summary judgment the proper procedure to determine the issue.

POINT II THE STATE OF WYOMING HAD PERSONAL JURISDICTION OVER DEFENDANT WHEN ENTERING THE DEFAULT JUDGMENT IN THAT THE METHOD OF SERVICE USED COMPLIED WITH THE REQUIREMENTS OF DUE PROCESS, THE PLAINTIFF FOLLOWED THE STATUTORY PROCEDURE SET FORTH AND DEFENDANT DID RECEIVE NOTICE OF THE WYOMING PROCEEDINGS.

The Due Process Clause of the United States Constitution requires that before a State can acquire personal jurisdiction over an out-of-state defendant, there must exist three things.

(1) A state statute authorizing jurisdiction over the out-of-state defendant.

(2) The state statute must set forth a method of notifying the out-of-state defendant of the legal action which is reasonably calculated to give the out-of-state defendant notice.

(3) There must exist sufficient minimum contact between the state and the out-of-state defendant. International Shoe Company v. Washington, 326 U.S. 310 (1945), Gray v. American Radiator 22 Ill.2d 432,176 N.E.2nd 761 (1961).

All three requirements were complied with by the Plaintiff and by the State of Wyoming in obtaining service on Defendant.

The Wyoming statutes specifically provide that the State of Wyoming may obtain jurisdiction over out-of-state defendants. Wyo. Stat. §5-1-107 provides that:

A Wyoming Court may exercise jurisdiction on any basis not inconsistent with the Wyoming or the United States Constitution.

When the exercise of personal jurisdiction is author-

ized by this section, service may be made outside this state and proved according to the Wyoming Rules of Civil Procedure.

Wyoming Rule of Civil Procedure, Rule 4(1) provides that service may be obtained on out-of-state defendants as follows:

In all cases where service by publication can be made under these rules or where statute permits service outside the state, the Plaintiff may obtain service without publication by either of the following methods. . . .
(2). Service by registered or certified mail. Upon the request of any party, the clerk shall by registered or certified mail, mail a copy of the complaint and summons addressed to the party to be served at the address given in the affidavit required under subdivision (f) of this rule. The mail shall be sent marked restricted delivery requesting a return receipt signed by the addressee or the addressee's agent as specifically authorized in writing by a form acceptable to and deposited with the postal authorities. When such return receipt is received signed by the addressee or his agent, the clerk shall file the same and enter a certificate in the cause showing the making of such service.

On this appeal, Defendant has not alleged that it lacks sufficient minimum contacts with the State of Wyoming so as to give the State of Wyoming jurisdiction over it, nor has Defendant alleged that the manner by which service was obtained was unconstitutional for failure to meet the requirements of due process. Defendant's sole contention on appeal is that the Wyoming Court failed to obtain personal jurisdiction over it because the summons and complaint were served on its manager, S. R. King, rather than its President, Ray W. Pease, by the United States Postal Service.

The Defendant in making this allegation has not differentiated between an individual receiving service of process by mail and a corporation receiving service of process by the mail. There is no way that the Defendant, Pease Brothers, Inc., a corporation, could sign for registered mail received by it. Corporations act only through their agents and employees. Furthermore, the Defendant has not designated in writing to the postal service which of its agents it desires to have receive its registered mail. Defendant has requested that the United States Postal Service deliver all its mail to its Vernal office at 120 East Main, Vernal, Utah. Through the years, the Defendant has had its manager, S. R. King, receive its mail and sign for any mail that comes restricted delivery. The postal service, in delivering registered mail to an individual, is able to require that individual or his agent to receive and sign for the registered mail. However, when mail is delivered to a corporation, the postal service can only deliver the mail to that corporation by delivery to the corporation's agent in the corporate office, or to the person sent by the corporation to pick up the mail at the United States Postal Office. In the present case, the Defendant has requested the United States Postal Service to deliver the mail to its Vernal office and to deliver it to its manager in that office. Defendant's contention that service should be made upon Ray W. Pease, its president, by the United States Post Office

is absurd. Defendant is contending that the United States Postal Service should travel from construction site to construction site until it locates Mr. Pease. The United States Postal Service is not equipped with the manpower, nor the inclination to do what Defendant is contending it should do.

Even if the United States Postal Service had delivered the mail to Ray W. Pease, Defendant could still contend that the service was insufficient. Defendant has not designated, in writing to the United States Post Office, that Mr. Pease should receive the registered mail. In fact, Defendant has not notified the United States Post Office of anyone who should receive registered mail for it. Defendant has rather requested that the mail be delivered to its Vernal, Utah, Office. Defendant now seeks to have this Court invalidate service on it because of Defendant's own actions.

Defendant's further contention that service upon its manager rather than its president was improper, and therefore personal service was not obtained, is not in accord with the law in the State of Wyoming. The Wyoming Rules of Civil Procedure specifically provide that when service is being made upon a corporation, service can be made by delivering copies to any officer, manager, general agent or agent of the corporation. Rule 4(d) of the Wyoming Rules of Civil Procedure. In Okley Mine & Smelter Supply Company 439 P.2d 661 (Wyo. 1968) the Wyoming Supreme Court stated that service on

the receptionist of the corporation was sufficient. The Court reasoned that to hold otherwise would make it so that,

"[No] message either legal or otherwise could safely be left for a person except by seeking them out personally even if this occasioned a game of hide-and-seek. Neither the statutes nor rules relating to personal service have been this rigidly interpreted, nor would that be required in order to accomplish fair play, substantial justice and due process." *Id.* at 665.

In Ford Motor Co. v. Arguello, 381 P.2d 886 (Wyo. 1963), service was made on the plaintiff's employee, one E. F. Nieman, while the employee was in attendance at the opening of a new Ford agency in Evanston, Wyoming. The Wyoming Supreme Court in refusing to quash the service stated that:

Due process requires that only the representative served be a responsible representative for the foreign corporation. *Id.* at 897.

The cases in the State of Wyoming and numerous other jurisdictions make it clear that service on the manager of a corporation is sufficient to give the state personal jurisdiction over a foreign corporation. In the present case, S. R. King is the manager of Defendant, and he is generally the only person that is in Defendant's corporate office. The service on S. R. King by Plaintiff satisfies the requirements of due process and did give actual notice to Defendant of the Wyoming action. Defendant's refusal to pay for legal services contracted for and its further ignoring of the Wyoming action should not be rewarded by this Court, holding that the State

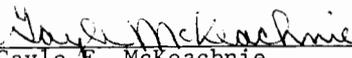
of Wyoming did not obtain personal jurisdiction over the Defendant and reversing the enforcement of the Wyoming judgment by the District Court.

CONCLUSION

Summary Judgment granted by the District Court enforcing the Wyoming judgment on the grounds that the State of Wyoming had personal jurisdiction over the Defendant is in accordance with law. The procedure used to give notice to Defendant of the Wyoming action and the party on whom notice was served was in accordance with law and meets the due process requirements of the United States Constitution.

WHEREFORE, Plaintiff requests that this Court affirm the decision of the District Court.

RESPECTFULLY SUBMITTED



Gayle F. McReachnie



Clark B. Allred

Attorneys for Plaintiff-Respondent

MAILING CERTIFICATE

STATE OF UTAH)
) ss
COUNTY OF UINTAH)

Tamala Thomas, being duly sworn, says:

That she is employed in the office of Gayle F. McKeachnie and Clark B. Allred, Attorneys for Respondent, Rocky Mountain Adjustment Company, a Wyoming Corporation, herein; that she served the Brief of Respondents upon counsel by placing two true and correct copies thereof in an envelope addressed to:

Robert M. McRae
McRae & DeLand
Attorney for Appellant
317 West First South
Vernal, Utah 84078

and depositing the same, sealed, with first class postage prepaid thereon, in the United States Mail at Vernal, Utah, on the 22 day of June, 1979.

Tamala Thomas

Subscribed and sworn to before me this 22 day of June, 1979.

Clark B. Allred
Notary Public
Residing at Vernal, Utah

My Commission Expires:

Oct. 26, 1982