

1979

Rocky Mountain Adjustment Co. v. Pease Brothers, Inc. : Reply 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.	:	Case No. 16356
PEASE BROTHERS, INC., a	:	
Utah corporation,	:	
Defendant-Appellant.	:	

REPLY BRIEF OF APPELLANT

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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STATUTES CITED

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REPLY BRIEF OF APPELLANT

POINT I

RESPONDENT IS RELYING UPON FACTS AND
ALLEGATIONS NOT IN THE RECORD TO SUPPORT
HIS POSITION THAT THE SERVICE UPON DEFEN-
DANT PEASE BROTHERS, INC., WAS VALID

Plaintiff-Respondent attempted service of process
upon defendant under Rule 4(L)(2) of the Wyoming Rules of
Civil Procedure. In order to do so it was necessary that the
summons and complaint be sent by 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...."

In the instant case the return receipt was signed by

one S. R. King, the only evidence in the record with regards to S. R. King's qualifications to sign the return receipt was the affidavit of postal agent Barney Sessions that: "the person who is regularly in the office when the mail is delivered is Stanley R. King." [R-50].

On page 2 of their brief, plaintiff made the following allegations of fact which were not in the record or before the court below: that "Stanley R. King was the general manager of defendant's office", that "generally he was the only person in the office of defendant" and that "Ray W. Pease and any other officers of defendant were generally out on a construction site." Throughout plaintiff's brief there are repeated references to S. R. King as "defendant's manager," (see pages 3, 4, 7, 8, 9, and 10) without any evidence in the record that S. R. King was in fact "defendant's manager". The evidence before the court was that S. R. King was not an officer or authorized process agent for defendant corporation. [R-45].

On page 8 of respondent's brief, plaintiff alleges that "through the years defendant has had its manager S. R. King, receive its mail and sign for any mail that comes restricted delivery." Again, there is nothing in the record to support this allegation. In a similar vein, plaintiff alleges on pages 8 and 9 that "defendant has requested the United States Postal Office to deliver the mail to its Vernal

office and to deliver it to its manager in that office" and that "defendant has not notified the United States Post Office of anyone who should receive registered mail for it," without substantiation in the record.

The failure of plaintiff to establish that S. R. King was in fact a registered agent for service of process, or even a manager, is critical, according to the Wyoming Supreme Court in Pease Bros. v. American Pipe and Supply Co., 522 P.2d 996 at 1000 (Wyo. 1974). [See appellant's brief pages 5 and 6].

It is interesting to note that plaintiff claims that postal agents would have had to follow R. W. Pease from job to job site when in fact the sheriff had no trouble serving Ray Pease at defendant's Vernal office with the complaint to have the Utah Court enforce the Wyoming judgment. [R-19].

POINT II

RULE 4(d) OF THE WYOMING RULES OF CIVIL PROCEDURE AND THE CASES CITED BY RESPONDENT ON PAGE 9 AND 10 OF ITS BRIEF REFER ONLY TO PERSONAL SERVICE OF PROCESS UPON A CORPORATION. RULE 4(L) WHICH PROVIDES FOR MAILING OF SUMMONS AND COMPLAINT TO NON-RESIDENT DEFENDANTS IS IN DEROGATION OF THE COMMON LAW AND IS TO BE STRICTLY ENFORCED

On pages 9 and 10 of Respondent's brief it is alleged 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." This rule, and the cases cited interpreting it by respondent, apply only when personal service is attempted in state upon a corporation under Rule 4(d) of the Wyoming Rules of Civil Procedure. In Oxley v. Mine and Smelter Supply Co., 439 P.2d 661 at 665, quoted on page 10 of respondent's brief, the court's language was "Neither the statutes or rules relating to personal service have been this rigidly interpreted...." (emphasis added).

In Markey v. Connelly, 367 P.2d 964, 965-966 (Wyo. 1962), the court stressed that personal service is the preferred means and that "service of process by publication is limited to instances where personal service is not reasonable or practicable, is permissible only when authorized by statute and the method provided therefore must be strictly followed." The court then held that because the defendant did not receive a copy of the notice of publication by registered mail, the service was defective and the Wyoming Court did not have jurisdiction over the defendant even though he had received actual notice by regular mail and notice was sent by registered mail but returned unopened to the clerk's office.

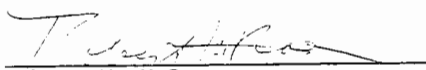
Service upon a non-resident defendant only by registered mail is a further refinement of constructive service, is permissible only when authorized by statute and

the method provided therefore must be followed just as strictly. See also In Re Estate of Longquest, 526 P.2d 994, quoted in appellant's brief on page 7.

Service of process upon the defendant could have been achieved by personal service as provided under Rule 4(L)(1), Wyoming Rules of Civil Procedure, which states: "In all cases where service by publication can be made under these rules, or where a statute permits service outside this state, the plaintiff may obtain service without publication by either of the following methods: (1) "Personal Service Outside the State. By delivery to the defendant of copies of the summons and complaint." Instead, plaintiff attempted service by mail under the second option and ran the risk that the Post Office would deliver the mail to a person not specifically authorized to receive it.

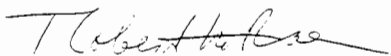
Because the service of process was attempted by constructive means rather than by personal service, and was not done in strict compliance with the statute, the Wyoming Court did not have jurisdiction over the defendant and the Wyoming judgment was void. The decision of the lower court to enforce the Wyoming judgment should be reversed.

Respectfully submitted this 7th day of August, 1979.



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MAILED two copies of the foregoing, postage prepaid,
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