SERVICE UPON CORPORATION PERMITTED ALTHOUGH NO ATTEMPT TO SERVE MAJOR OFFICERS OR EMPLOYEES

Moriarty v. Westgate Center, Inc.
172 Ohio St. 402 (1961)

Plaintiff instituted this action against a corporation for personal injuries alleged to have been caused by defendant's negligence. The sheriff made a return of summons stating that he had served the defendant "by handing to Wm. Griffiths . . . a certified copy thereof with all the endorsements thereon. The president or other chief officer of said company not found in my county." There was evidence that Griffiths was in charge of the office when served with the summons and that within forty-eight hours at least two of the corporate officers had been informed of the service.[1] The Ohio Revised Code, section 2703.10, provides:

> A summons against a corporation may be served upon [1] the president, mayor, chairman, or president of the board of directors or trustees, or other chief officer; or [2] if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, [3] if none of such officers can be found, by a copy left at the office or the usual place of business of the corporation with the person having charge thereof." (Numbers in brackets added.)

Plaintiff appealed from an order granting a motion to quash service of summons[2] and the court of appeals affirmed the order. The Ohio Supreme Court, in reversing the lower courts, held that the sheriff could effect service by the third method set forth in the statute, without first making a reasonable effort to comply with the first two provisions of the statute, if the summons is brought to the attention of the chief officer of the corporation prior to the return day.

The instant case presents two distinct problems: (1) whether the return of the sheriff is defective because the return described the service other than by the method actually employed; and (2) whether the service was defective since no attempt was made to effect service under the first or second method before it was made under the third method. As to the first problem, a motion to quash summons should be overruled if it appears there was a valid service on the defendant even though not in accordance

[1] Moriarty v. Westgate Center, Inc., 172 Ohio St. 402 (1961). "During normal business hours when there are only subordinate employees in the office of a corporation, the superior of those employee is . . . 'the person having charge thereof.'" Ohio Rev. Code § 2703.10 does not require that such person be either an officer or an employee of the corporation served.

[2] Although an order overruling a motion to quash service of summons is not a reviewable, final order, the court in the principal case acquiesced in the desire of both parties to ignore procedural questions as to the jurisdiction of the court of appeals to review the order of the common pleas court.

with the manner stated in the return.[3] The court has authority to order the return of process amended in accordance with the facts relating to such service either before or after the judgment.[4] Thus, it is clear that although there was a defective return of service in the principal case, the motion to quash should be overruled if the service is found to be valid.

As to the second problem, the principal case holds that the corporation can be effectively served under the third method prior to reasonable efforts to effect service under the first or second methods if the chief officer has notice of the service. In *Abraham v. Akron Sausage Co.*,[5] the court of appeals held that if a sheriff first finds one of the chief officers enumerated in the first method of service, it is his duty to serve such officer, but he can effectively serve one of those persons specified in the second method prior to searching for a chief officer. It was implied in that case that a search must be made for one of the persons enumerated in either the first or second method before service could be made by the third method, that is, by leaving a copy at the office or the usual place of business of the corporation with the person having charge thereof. Later, another appellate court held in *Sunday Creek Coal Co. v. West*[6] that before a sheriff may resort to the manner of service described in the third provision, he should make reasonable efforts to ascertain if an officer "can be found" in the county upon whom service may be made. In contrast to the instant case it is important to note that the affidavit of the company president in *Sunday Creek* states that the company had no notice of the suit until the day of the trial.

It is doubtful that the legislature intended the interpretation accorded this statute in the instant case,[7] but it cannot be said the interpretation will work to the disadvantage of the corporation. The fact determination as to whether the appropriate corporate official received notice when the summons was served pursuant to the third method would be easier to make than the determination as to whether the sheriff made a diligent search for an appropriate corporate official before making service pursuant to the third method. If a reasonable search has been made for the major officers, service by leaving a copy of the summons at the office of the corporation with the person having charge thereof will be effective even

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[3] Paulin v. Sparrow, 91 Ohio St. 279, 110 N.E. 528 (1915).

[4] *Ibid.*

[5] 23 Ohio App. 224, 155 N.E. 254 (1926).

[6] 47 Ohio App. 537, 192 N.E. 284 (1933).

[7] Abraham v. Akron Sausage Co., *supra* note 3, at 228, 155 N.E. 255. "The object of a summons is to notify the defendant that he has been sued, and when a summons is served upon the secretary of a corporation, this notice is brought home to the company as forcibly and just as effectively as if served upon the president. But, when the chief and subordinate officers are not served with a summons for the company, the legislature must have thought that, before a minor employee is served, an effort should be made by the sheriff to locate one of the chief or subordinate officers of the company, and for that reason used the words 'can be found' in such a situation instead of the words 'be found' as in the other situation."

though the chief officers of the corporation have no notice. If a reasonable search has not been made, service is not effective under the third method unless a chief officer of the corporation has actual knowledge of the service.[8]

[8] Ohio and West Virginia arrive at the same conclusion: If the sheriff made no reasonable effort to find the chief officer, cashier, treasurer, secretary, clerk or managing agent of a corporation before leaving a copy of a summons against such corporation at the office of the corporation with the person having charge thereof, the service is effective if such person did in fact bring the summons promptly to the attention of the chief officer of such corporation prior to the return day. W. Va. Code ch. 50, art. 3, § 4937 (1931); Tioga Coal Corporation v. Silman, 125 W. Va. 58, 22 S.E.2d 873 (1942).