

**CLAUDE NEON LIGHTS, FEDERAL INC., U. S. A., PETITIONER, VS.
PHILIPPINE ADVERTISING CORPORATION AND FRANCISCO
SANTAMARIA, JUDGE OF FIRST INSTANCE OF MANILA,
RESPONDENTS.**

G. R. No. L-37682. November 26, 1932

Ponente: BUTTE, J.

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BUTTE, J.:

This case is to be determined upon the petition for writ of certiorari and the demurrer thereto filed by the respondents. The petition sets up two causes of action: one attacking the validity of a writ of attachment issued by the respondent judge on the petition and affidavit of the respondent Philippine Advertising Corporation, on April 6, 1932; the second, attacking the validity of the order of the respondent judge issued the same day on the petition of the respondent Philippine Advertising Corporation, appointing a receiver of the property which was seized by the sheriff under said writ of attachment.

On April 5, 1932, the respondent Philippine Advertising Corporation filed suit against the petitioner in the Court of First Instance of Manila, claiming P300,000 as damages for alleged breach of the agency contract existing between the said respondent and the petitioner. At the same time, said respondent filed in said court an application for writ of attachment duly verified in which it is stated that the defendant (petitioner herein) is a foreign corporation having its principal place of business in the City of Washington, District of Columbia. It is not alleged in said application that the defendant, Claude Neon Lights, Inc. (the petitioner herein) was about to depart from the Philippine Islands with intent to defraud its creditors or that it was insolvent or had removed or disposed of its property or was about to do so with intent to defraud its creditors. The only statutory ground relied upon in the court below and in this court for the issuance of the writ of attachment against the petitioner is paragraph 2 of section 424 of the Code of Civil Procedure, which provides that a plaintiff may have the property of the defendant attached "in an action against a defendant not residing in the Philippine Islands".

On April 6, 1932, the respondent judge issued the writ of attachment as prayed for, and the sheriff has attached all the properties of the petitioner in the Philippine Islands. On the same date, on the ex parte petition and nomination of the respondent, the respondent judge appointed Manuel C. Grey receiver of said properties of the petitioner, fixing his bond at P3,000.

Motions to dissolve said writ of attachment and receivership were filed in the court below, supported by affidavits of the attorney in fact for the petitioner in which it is recited, among other things, that the petitioner is not indebted to the respondent in any sum whatever nor has it in any way breached any contracts with the respondent or at any time interfered in the management of its business in the Philippine Islands as carried on by its agent, the respondent, and it has faithfully complied with every condition of said contract; that the attachment of the machinery and plants of the petitioner, as well as its other assets, is highly prejudicial to it as it is unable to proceed with its business in the Philippine Islands and irreparable loss will result to it unless such attachment be

raised; that the filing of said suit was malicious, without foundation, and intended only to injure the petitioner and to depreciate the value of its holdings in the Philippine Islands. It does not appear that any answer was made to said motion in which said allegations were denied or that any refuting evidence was offered.

On June 20, 1932, the court denied said motions to vacate the attachment and receivership, declaring that the writ of attachment conforms to section 424 of the Code of Civil Procedure.

The petitioner for certiorari prays that the writ of attachment issued by the respondent judge on April 6, 1932, as well as the order of the same date, appointing Manuel C. Grey receiver of the property of the petitioner, be annulled.

The sufficiency of the application for the writ of attachment is assailed by the petitioner upon several grounds but we shall confine ourselves to the consideration of the question whether or not paragraph 2 of section 424 of the Code of Civil Procedure is applicable to this petitioner.

The petitioner is a corporation duly organized under the laws of the District of Columbia; it had complied with all the requirements of the Philippine laws and was duly licensed to do business in the Philippine Islands on the date said writ of attachment was issued. The petitioner was actively engaged in doing business in the Philippine Islands and had considerable property therein, which consisted of its manufacturing plant, machinery, merchandise and a large income under valuable contracts, all of which property was in the possession and under the control and management of the respondent Philippine Advertising Corporation, as the agent of the petitioner, on the date said attachment was levied. Considered from a practical and economic viewpoint, its position in the business community was indistinguishable from that of a domestic corporation.

Section 424 of the Code of Civil Procedure under which the petitioner's property was attached, reads as follows:

"Attachment—A plaintiff may, at the commencement of his action, or at any time afterwards, have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, in the manner hereinafter provided, in the following cases:

- In all the cases mentioned in section four hundred and twelve, providing for the arrest of a defendant. But the plaintiff must make an election as to whether he will ask for an order of arrest or an order of attachment; he shall not be entitled to both orders;
- In an action against a defendant not residing in the Philippine Islands."

It may be observed at the outset that the words of section 424, *supra*, taken in their literal sense seem to refer to a physical defendant who is capable of being "arrested" or who is "not residing in the Philippine Islands". It is only by a fiction that it can be held that a corporation is "not residing in the Philippine Islands". A corporation has no home or residence in the sense in which those terms are applied to natural persons. For practical purposes, a corporation is sometimes said, in a metaphorical sense, to be "a resident" of a certain state or a "citizen" of a certain country, which is usually the state or country by which or under the laws of which it was created. But that fiction or analogy between corporations and natural persons by no means extends so far that it can be said that every statute applicable to natural persons is applicable to corporations. Indeed, within the same jurisdiction a corporation has been held to be a "citizen" of the state of its creation for the purpose of determining the jurisdiction of the Federal courts (*Wisconsin vs. Pelican Insurance Co.*, 127 U.S., 265) but not a "citizen" within the meaning of section 2 of article 4 of the Constitution of the United States which provides that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states (*Paul vs. Virginia*, 8 Wall., 169).

The question arises whether this petitioner, a foreign corporation, shall, in a metaphorical sense, be deemed as

"not residing in the Philippine Islands" in the sense in which that expression would apply to a natural person.

Having regard to the reason for the statute which is the protection of the creditors of a non-resident, we are of the opinion that there is not the same reason for subjecting a duly licensed foreign corporation to the attachment of its property by a plaintiff under section 424, paragraph 2, as may exist in the case of a natural person not residing in the Philippine Islands. The law does not require the latter, as it does the former, to appoint a resident agent for service of process; nor to prove to the satisfaction of the Government before he does business here, as the foreign corporation must prove, that he "is solvent and in sound financial condition" (section 68, Act No. 1459, as amended, the Corporation Law), or to produce evidence of "fair dealing" (*ibid.*). He pays no license fee nor is his business subject at any time to investigation by the Secretary of Finance and the Governor-General; nor is his right to continue to do business revocable by the Government (*Cf.* section 71, Act No. 1459 of the Corporation Law). His books and papers are not liable to examination "at any time" by the Attorney-General, the Insular Auditor, the Insular Treasurer, "or any other officer of the Government" on the order of the Governor-General (section 54, *ibid.*). He is not, like a foreign corporation "bound by all laws, rules and regulations applicable to domestic corporations" * * * (section 73, *ibid.*), which are designed to protect creditors and the public. He can evade service of summons and other legal process, the foreign corporation never. (Section 72, *ibid.*)

Corporations, as a rule, are less mobile than individuals. This is specially true of foreign corporations that are carrying on business by proper authority in these Islands. They possess, as a rule, great capital which is seeking lucrative and more or less permanent investment in young and developing countries like our Philippines. Some of them came here as far back as the Spanish regime and are still important factors in our financial and industrial life. They are anything but "fly-by-night" concerns. The latter, we believe, are effectually excluded from our Islands both by our laws and by our geographical and economic situation.

If, as we believe, section 424, paragraph 2, should not be held applicable to foreign corporations duly licensed to do business in the Philippine Islands both because the language and the reason of the statute limit it to natural persons, we sustain and reinforce the provisions of section 71 of the Corporation Law, Act No. 1459, which provides in substance that if the Secretary of Finance or the Secretary of Commerce and Communications and the Governor-General find a duly licensed foreign corporation to be insolvent or that its continuance in business will involve probable loss to its creditors, they may revoke its license and "the Attorney-General shall take such proceedings as may be proper to protect creditors and the public". Section 71, *supra*, contemplates that the proceedings instituted by the Attorney-General shall effect the protection of all creditors and the public equally. Obviously, the benefit of that section will be minimized, if not entirely defeated, if a creditor or a few creditors can obtain privileged liens by writs of attachment based on the sole allegation, which is easily and safely made, that the corporation is "not residing in the Philippine Islands". (*Cf. Kuenzle & Streiff vs. Villanueva*, 41 Phil., 611.)

Paragraph 2' of section 424, *supra*, does not apply to a domestic corporation. Our laws and jurisprudence indicate a purpose to assimilate foreign corporations, duly licensed to do business here, to the status of domestic corporations. (*Cf. Section 73, Act No. 1459, and Marshall-Wells CoT vs. Henry W. Elser & Co.*, 46 Phil., 70, 76; *Yu Cong Eng vs. Trinidad*, 47 Phil., 385, 411.) We think it would be entirely out of line with this policy should we make a discrimination against a foreign corporation, like the petitioner, and subject its property to the harsh writ of seizure by attachment when it has complied not only with every requirement of law made specially of foreign corporations, but in addition with every requirement of law made of domestic corporations. (Section 73, *supra*.)

It is true that the majority of the states in the American Union hold the contrary rule. But our situation is obviously very dissimilar from that of a state in the American Union. There forty-eight states and the central

government, all creating corporations which do a tremendous interstate business, are contiguous and separated by imaginary lines. A higher degree of protection against irresponsible corporations may be more necessary there than here. We have no interstate business. Only the central government grants charters to corporations. But even in the American Union there is a minority rule which we regard as the better reasoned and the better suited to our conditions, both geographical and economical, and more nearly in harmony with the policy of our law both under the Spanish regime and since the American occupation. This minority rule is supported by the following authorities: *Brand vs. Auto Service Co.* (New Jersey, 1907), 67 Atl., 19, 20; *Mellor vs. Edward V. Hartford, Inc.* (New Jersey, 1929), 146 Atl., 206; *Charles Friend & Co. vs. Goldsmith & Co.* (Illinois, 1923), 138 N. E., 185; *Fullilove vs. Central State Bank* (Louisiana, 1926)', 107 So., 590. In the present instance, a particularly monstrous result has followed as a consequence of the granting of the writ attaching all of the property of the petitioner on the sole allegation that it "is not residing in the Philippine Islands". As the petitioner's business was a going concern, which the sheriff, who levied the writ, obviously could not manage, it became necessary on the same day for the court to appoint a receiver. This receiver, as the demurrer admits, "was and is an employee working under the president of the respondent Philippine Advertising Corporation, so that to all intents and purposes, all the property of the petitioner in the Philippine Islands was seized and delivered into the hands of the respondent Philippine Advertising Corporation."

The prayer of the petitioner is granted. The order and writ of attachment complained of are annulled and set aside and the court below is directed to vacate the order appointing Manuel C. Grey receiver of the property of the petitioner and to require said Manuel C. Grey to submit his final report at the earliest practicable date. Costs in both instances to be borne by the respondent, Philippine Advertising Corporation. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Vickers, and Imperial, JJ., concur.

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