

**JOHNLO TRADING COMPANY, PETITIONER, VS. JOSE P. FLORES,
JUDGE OF THE COURT OF FIRST INSTANCE OF LA UNION, AND M. B.
FLORENTINO & CO., LTD., RESPONDENTS.**

G. R. No. L-3987. May 18, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari.

On April 20, 1950, M. B. Florentino & Co., Ltd., filed with the Court of First Instance of La Union against Johnlo Trading Company and Lipsett Pacific Corporation a case for the collection of the sum of P14,304.19 and damages in the sum of P10,000. Collaterally, plaintiff alleged that Johnlo Trading Company had transferred to Lipsett Pacific Corporation all its equipment and properties in the Philippines with intent to defraud its creditors and, as said Johnlo Trading Company has no other property in the Philippines to pay its alleged indebtedness, it prayed that said properties be attached. The motion for attachment was granted, but was later amended at the request of the plaintiff, upon its finding that all of the said properties had been transferred to other persons and the proceeds of the sale deposited with the National City Bank of New York. Consequently, the deposit in the amount of P25,000 was garnished in compliance with the order of the court.

Johnlo Trading Company is a joint venture organized by two foreign corporations to engage solely in the demilitarization of ammunition at Rosario, La Union, and Bauan, Batangas, under a direct contract with our Government wherein, as a special concession, it was not required to register with the Bureau of Commerce nor to obtain a license to do business in the Philippines as required by law because the business to be undertaken was single and isolated. Because of that concession, it was not also required to designate any agent in the Philippines upon whom legal process may be served under the law in cases of litigation. However, the summons for Johnlo Trading Company in this case was served on Charles T. Balcoff upon the claim that he is its representative in the Philippines. The other corporation was duly served with summons. As no one appeared nor answered the complaint in behalf of Johnlo Trading Company, the court, upon petition of the plaintiff, declared said company in default, and allowed the plaintiff to submit its evidence. After having been informed that it was so declared in default, Johnlo Trading Company, through counsel, filed a motion for reconsideration and prayed for the setting aside of said order upon the ground that, Balcoff not being its agent nor representative, the Court had not yet acquired jurisdiction over its person, and, therefore, the period for filing its answer had not yet commenced to run. Said motion was denied, hence Johnlo Trading Company filed this petition for certiorari.

Johnlo Trading Company, petitioner herein, claims that the summons served on Charles T. Balcoff upon the claim that he is the agent of said company in the Philippines is ineffectual because he is neither an agent nor a representative authorized to receive legal process in its behalf. B. M. Florentino & Co., Ltd., respondent, claims on the other hand that he is the representative of that company and, therefore, the service made on him is valid and binding under section 14, Rule 7 of the Rules of Court. The only question, therefore, to be determined hinges

on whether the relation which Balcoff bore to petitioner is such as to engender the belief that he acted not only as its counsel but also as its representative in contemplation of law.

As a general proposition, it may be stated that "an attorney cannot, without authority to do so, accept service of process which commences action against his client. Moreover, as a general rule, an attorney-at-law has no authority merely by virtue of his general employment as such, to waive or admit service for his client of original process by which the court for the first time acquires jurisdiction of the client" (5 Am. Jur. p. 313). We may even say that some authorities hold that the mere relation of attorney and client existing between a foreign corporation and the person served with summons does not warrant service upon the attorney in another action (Taylor v. Granite State Provident Association, 136 N. Y. 343, 32 N. E. 992, 32 American St. Rep. 749), and service upon an attorney representing a foreign corporation in the collection of other claims for which his service had not been engaged was held to be invalid (Moore v. Freeman's National Bank, 92 N. C. 590); but there are other authorities which hold a contrary view, which seems to be controlling, as can be gleaned from a long line of cases some of which are here-under quoted by way of reference.

"Service upon the attorney who was representing a foreign corporation in proceedings to enforce the payment of a judgment was held to be sufficient in an action against the foreign corporation to restrain it from enforcing the judgment. Adams v. Grundy & Co. (1926) 256 Mass. 246, 152 N. E. 379.

"The general counsel of the foreign corporation who had charge of the corporation's business in the state, and to whom were referred all papers involving the rights of the corporation, was held to be its chief agent, defined by the statute as its managing agent, where the corporation had ceased to do business in the state and was in process of winding up through a receivership, which necessitated the services of a lawyer, and the corporation had no other agent in the state. Newport News & M. Valley Co. v. Macdonald Brick Co. (1900) 109 Ky. 408, 59 S. W. 332.

"In Saundera v. Sioux City Nursery (1890) 6 Utah, 431, 24 P. 532, service upon an attorney of a foreign corporation who was employed in the collection of certain claims due it, and who was, at the time of service, intrusted by the corporation with the possession of certain of its property, was held to be valid, under a statute providing for service, in an action against a foreign corporation upon its acknowledged agent in the territory, or, if no such agent be found, on any person in its employ, or who had any of its property in charge.

"Service of a show-cause order in a contempt proceeding upon the attorney of a foreign corporation has been held valid, where the designated process agent was inaccessible and concealed himself so as to avoid the service. See Eureka Lake & Y. Canal Co. v. Superior Ct. (1886) 116 U. S. 410, 29 L. ed. 671, 6 S. Ct. 429. "And in Clews v. Rockford, R. I. & St. L. R. Co. (1874) 49 How, Pr. (N. Y.) 117, service upon the general solicitor or counsel of a foreign corporation was held to be valid, where the corporation had an established place of business in the state and was doing business therein, and had not designated any person upon whom process might be served, as required by statute." (113 A. L. R. pp. 121-122).

An interesting case in Saunders vs. Sioux City Nursery & Seed Co., 24 Pac. Rep. 532. In this case it was urged by the defendant that the court did not acquire jurisdiction over his person for the reason that the service of summons on one Theodore Burmister was void. It appears from the record that Burmister, at the time of the service, was an attorney of the defendant, and was employed in the collection of certain claims due it, and was entrusted by it with the possession of its property. The law involved provided that "when the defendant is a foreign corporation, and has an acknowledged agent in the territory, service may be made on such agent, or, if no such agent is found, on any person in its employ, or who has any of its property in charge." The evidence showed that the officer, before making the service, made diligent search for an agent of the defendant on whom to make it, but he was unable to find one in the territory. So the service was made on its attorney, Theodore Burmister. In holding that the service so made was valid, the Supreme Court of Utah made the following comment:

"This statute is based upon the presumption that a person intrusted by a foreign corporation with the possession of its property will, in the discharge of his duty, communicate to it the service upon him of any process against such corporation issued in any suit that may result in a judgment and execution that may deprive him of his possession and such corporation of its property. The probabilities are, under such circumstances, that the corporation will be informed of the pendency of the suit. The principle involved is similar to that when the law authorizes service made by a copy left at the defendant's usual place of abode with some person of sufficient age and capacity, or in cases of constructive notice. The legislators doubtless thought the authority to make such service might be necessary to meet the contingencies which might arise in the administration of public justice. Conceding human motives their usual play, such service is likely to result in actual notice to persons whose rights may be affected by such methods and modes of procedure. Such laws are based on the assumption that men will be prompt to protect their own interest, and diligent in the discharge of their duties to those who have reposed confidence in them. We are of the opinion that the law authorizing the service as it was made in this case is valid." (24 Pac Rep. p. 533).

Coming now to our case, we find that the record is not quite clear that Charles T. Balcoff acted merely as counsel in his relation to the petitioner. There is proof to show that he acted in a representative capacity in and outside of court, so much so that he undertook to settle claims that had been filed against it. Granting, however, for the sake of argument that Balcoff merely acted as counsel for the petitioner, still we are of the opinion that, upon the strength of the authorities we have quoted above, the service made upon him of the summons intended for the petitioner can be deemed sufficient in contemplation of law, or within the meaning of Section 14, Rule 7, of our Rules of Court, to bind his client Johnlo Trading Company, upon the theory that, as the only person in the Philippines charged with the duty of settling claims against it, he must be presumed, as was said in the Saunders case, to communicate to his client the service made upon him of any process that may result in a judgment and execution that may deprive it of its property, and the probabilities are, under such circumstances, that the corporation will be duly informed of the pendency of the suit. And this is a very realistic interpretation of the law, for it goes on the assumption that men holding such relationship "will be prompt to protect their own interest, and diligent in the discharged of their duties to those who have reposed confidence in them."

But Charles T. Balcoff, as we have already pointed out, acted in this case not merely as counsel of Johnlo Trading Company but also as its representative in the settlement of claims. Thus, Exhibit "2", which is a communication written by the Secretary of the Government Enterprises Council, an office under the President of the Philippines, shows that Johnlo Trading Company is represented in the Philippines by Atty. Balcoff, and the Government Enterprises Council is the office with which Johnlo Trading Company transacted regarding its demilitarization contract. It also appears that long before the institution of the present case, and during the preliminary negotiations made for the extrajudicial settlement of the claim against said company, it was Balcoff who acted and made representations in its behalf, as shown by the telegram he sent to the counsel of the plaintiff of the following tenor: "Request withhold action stateside figures arrived today being audited Fleming Williamson believe settlement can be made shortly." (Exh. "3"). To the same tenor is also the letter he sent to the Luzon Surety Company in which he stated that the claim of the plaintiff will be approved but that it will require sometime to audit the claim and other papers pertaining thereto (Exh. "4"). And while this case was pending in the lower court, Balcoff sent a telegram to the manager of the plaintiff inviting him to a conference regarding the claim in litigation (Exh. "5"), and later he again wrote to him inviting his attention to the result of the conference he had with Mr. McNutt and Mr. Prior relative to the claim (Exh. "6"). All of these communications led the plaintiff to believe that Balcoff really acted as the representative of Johnlo Trading Company, such that, in the light of the following authorities, we may say that service upon him is binding upon the petitioner:

"The United States Supreme Court has said that, in the absence of any express authority given to a person to receive service of process on behalf of a foreign corporation, the question as to whether the service upon such

person is sufficient service upon the corporation depends upon a review of the surrounding facts, and upon the inferences which the court might properly draw therefrom; and if it appears that there is a law of the state in respect to the service of process on foreign corporations, and that the character of the agency is such as to render it fair, reasonable, and just to imply an authority on the part of the agent to receive such service, the law will and ought to draw such inference and imply such authority, and service under such circumstances upon a person of that character would be sufficient. (*Connecticut Mut. L. Ins. Co. vs. Spratley* (1899) 172 U. S. 602, 43 L. ed. 569, 19 Sup. Ct. Rep. 308.)

"*Bass vs. American Products Export & Import Corp.* (117 S. E. 594), holds that service of process upon one whose ostensible relationship or connection with a corporation is such as to bind the corporation as to third persons, under the doctrine of agency by estoppel, is a sufficient service to give jurisdiction over the corporation for which the person served acts. The court points out that the authority of any agent to bind a corporation by acceptance or receipt of legal service is seldom expressly conferred, but is usually implied by law from the ostensible relationship between the parties; so that if the relationship between the person served and the corporation is such as would entail or support liability of the corporation as to third persons, for the acts of such persons within the apparent scope of his authority, there is no reason why such authority to bind the corporation should not be held to extend to and include the same implied authority to accept service, or to act for the corporation in the receipt of legal process, as an actual agent, without express authority, would have in like circumstances; the term "agent," as used in a procedure statute enacted for the benefit of the general public may not properly be given a more limited signification than it would have in adjudicating the rights of individuals, arising out of a similar state of facts.

"Service of process on a person who solicited for a foreign building and loan association, receipted for and remitted all instalments, dues, and fines, on a commission basis, and who, the trial court found, was, as a matter of fact, the agent of the association, is, under the Code provision for service on "any resident agent" of a foreign corporation, sufficient service on the association in a case arising out of negotiations for a loan with such agent, for the Code draws no distinction between classes of agents, but contemplates any resident agent as an appropriate one to be served, and the corporation, having held out the person served as its resident agent, with full powers, cannot, after process has been served on such person, set up that, if he was an agent at all, it was an agency of limited powers, not extending to the transaction out of which the case arose. The courts will not sanction a doctrine that a corporation can deny the power of an agent when an advantage is to be obtained by such denial, and share in the fruits of the contract when it is to its interest to consider such contract binding. *Pollock vs. Carolina Interstate Bldg. & L. Asso.* (1896) 48 S. C. 65, 59 Am. St. Rep. 695, 25 S.E. 977. (Italics supplied).

"And in *Italian-Swiss Agri. Colony vs. Peace*, (1901) 194 111. 98, 64 N. E. 317, where the question arose as to the sufficiency of the service of process on one who represented himself to be the agent of the defendant, a foreign corporation, the court held that the appointment of an agent may be established by implication of law, arising out of the conduct of the parties, or by way of estoppel; and that there was no reason why this implication or estoppel should not arise in favor of one who seeks to serve the process of courts on the agent, as well as in favor of one who seeks to bind the principal by the acts and contracts of the agent." (30 A. L. R. pp. 177-178).

Whether, therefore, Charles T. Balcoff is considered as an attorney or as a representative of Johnlo Trading Company in the light of the facts we have recited above, there is the inescapable conclusion that, whether under the law or under equity, the service made upon him is in contemplation of law sufficient and binding upon his client. As was well said in one case, "the courts will not sanction a doctrine that a corporation can deny the power of an agent when an advantage is to be obtained by such denial, and share in the fruits of the contract when it is to its interest to consider such contract binding." (*Pollock vs. Carolina Interstate Bldg. & L. Association*, supra.) Indeed, if Balcoff is not to be considered an agent of Johnlo Trading Company empowered to receive process in its behalf, as he claims, and it is admitted that there is no other person in the Philippines who can represent such

company, how can the respondent then bring the petitioner within the jurisdiction of our courts? When the Government Enterprises Council gave the petitioner the privilege to engage in the demilitarization business in the Philippines without first obtaining a license from the Bureau of Commerce and without designating any agent on whom process may be served in cases of litigation as required by law, it did not certainly contemplate a situation whereby the petitioner could incur obligations and then get away with them by placing itself beyond the jurisdiction of our courts. That can not be the import of the exemption extended to the petitioner by the government, for such would be unfair and unreasonable to local creditors. And it cannot be contended, as claimed by the petitioner, that the remedy open to respondent is to serve the summons by publication under Section 17, Rule 7 of the Rules of Court, for that rule only applies when the action "affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, * * * or the property of the defendant has been attached within the Philippines", neither of which is present here. In fact, this is what petitioner said in its motion for reconsideration: "In the instant case, this Court has jurisdiction neither over the res »or over the person of defendant Johnlo Trading Company. No property in the Philippines belonging to Johnlo Trading Company has been attached. What was attached is the money belonging to defendant Lipsett Pacific Corporation." (Annex "G"). If this claim is entertained, then the respondent will be placed in a predicament where it would be found bereft of any remedy to press its claim against the petitioner, a situation which would be unfortunate indeed. For these reasons, we are constrained to hold that his Honor, the respondent Judge, acted properly in issuing the order subject of the present petition for certiorari.

Wherefore, this petition is hereby dismissed, without pronouncement as to costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Mon-temayor, Reyes and Jugo, JJ., concur.

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