

VARGAS & COMPANY, PLAINTIFF AND APPELLEE, VS. CHAN HANG CHIU ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 8576. February 11, 1915*

Ponente: MORELAND, J.

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This is an action brought to set aside a judgment of the justice's court of Manila on the ground that the plaintiff here, the defendant in the action in which the judgment was secured, was not served with summons and that, therefore, the justice's court acquired no jurisdiction to render the judgment and that the same is null and void. Judgment was entered in favor of plaintiff declaring the judgment in controversy void and setting it aside. This appeal is from that judgment.

It appears from the record that the plaintiff is a mercantile association duly organized under the laws of the Philippine Islands and presumably registered as required by law. On the 19th day of August, 1911, an action was begun by Chan Hang Chiu against the plaintiff in this case to recover a sum of money. The summons and complaint were placed in the hands of the sheriff, who certified that on the 19th day of August, 1911, he served the same, on Vargas & Co. by delivering to and leaving with one Jose Macapinlac personally true copies thereof, he being the managing agent of said Vargas & Co. at the time of such service. On July 2, 1912, the justice's court rendered judgment against Vargas & Co. for the sum of P372.28. Thereafter execution was duly issued and the property of Vargas & Co. levied on for the payment thereof. Thereupon Vargas & Co. paid the amount of the judgment and costs under protest, with notice that it would sue to recover the amount paid. The execution was returned satisfied and there the matter rested until the present action was brought.

The contention of plaintiff is, and that contention is supported by the decision of the court below, that Vargas & Co. being a partnership, it is necessary, in bringing an action against it, to serve the summons on all of the partners, delivering to each one of them personally a copy thereof; and that the summons in this case having been served on the managing agent of the company only, the service was of no effect as against the company and the members thereof and the judgment entered by virtue of such a service was void.

Plaintiff also contends, and this contention is likewise supported by the court below, that, even admitting that service on the managing agent of the plaintiff is sufficient service, as a matter of fact no service was really made on the managing agent of the company but, rather, on an employee or salesman of the company, who had no powers of management or supervision and who was not competent to receive service on behalf of the company within the provisions, of section 396 of the Code of Civil Procedure.

We are of the opinion that neither of these contentions can be sustained. As to the first, we may say that it has been the universal practice in the Philippine Islands since American occupation, and was the practice prior to that time, to treat companies of the class to which the plaintiff belongs as legal or juridical entities and to permit them to sue and be sued in the name of the company, the summons being served solely on the managing agent or other official of the company specified by the section of the Code of Civil Procedure referred to. This very action is an

illustration of the practice in vogue in the Philippine Islands. The plaintiff brings this action in the company name and not in the name of the members of the firm. Actions against companies of the class to which plaintiff belongs are brought, according to the uninterrupted practice, against such companies in their company names and not against the individual partners constituting the firm. In the States, in which the individual members of the firm must be separately served with process, the rule also prevails that they must be parties to the action, either plaintiffs or defendants, and that the action cannot be brought in the name of or against the company itself. This follows naturally for the reason that, if it is necessary to serve the partners individually, they are entitled to be heard individually in the action and they must, therefore, be made parties thereto so that they can be heard. It would be idle to serve process on individual members of a partnership if the litigation were to be conducted in the name of the partnership itself and by the duly constituted officials of the partnership exclusively.

From what has been said it is apparent that the plaintiff in this action is acting contrary to its own contention by bringing the action in the name of the company. If it be necessary that all of the members of that company be served with process, then the action should be brought in the individual names of the partners and not in the name of the company itself.

Article 35 of the Civil Code provides:

"The following are judicial persons:

"1. The corporations, associations, and institutions of public interest recognized by law.

"2. The associations of private interest, be they civil, commercial, or industrial, to which the law grants proper personality, independent of that of each member thereof."

Article 38 provides: "Judicial persons may acquire and possess property of all kinds, as well as contract obligations and institute civil or criminal actions in accordance with the laws and rules of their establishment."

Article 116 of the Code of Commerce provides in part:

"After a commercial association has been established, it shall have legal representation in all its acts and contracts."

These provisions have been the foundation of the practice followed without interruption for many years that associations of the class to which plaintiff belongs have an independent and separate legal entity sufficient to permit them to sue and be sued in the company name and to be served with process through the chief officer or managing agent thereof or any other official of the company specified by law.

As to the second contention, we may say that the presumption is that a judgment rendered by a justice's court is a valid and enforceable judgment where the record discloses that all of the steps necessary to confer jurisdiction on the court have been taken. In the case before us it affirmatively appears that the service of process was made on the person the sheriff certified was the managing agent of the defendant company. The sheriff's certificate serves as prima facie evidence of the existence of the facts stated therein. The record, therefore, discloses, so far as the fact of service is concerned, that it was duly made on the managing agent of the company as required by section 396, paragraph 1, of the Code of Civil Procedure. In attacking the judgment on the ground that service was not made on the managing agent of the company, it is incumbent on the plaintiff to overcome the presumption arising from the sheriff's certificate before the attack will succeed. Endeavoring to overcome the presumption referred to, plaintiff offered as a witness one Tomas O. Segovia, an employee of the plaintiff company. He testified that he was a bookkeeper and that as such he was well acquainted with the business of the company and that the person Macapinlac referred to in the sheriff's certificate as managing agent of the plaintiff company was an agent for the sale of plows, of which the plaintiff company was a manufacturer; and that he had no other relations with the

company than that stated. During the course of the examination this question was put to and answer elicited from this witness:

"How do you know that they were not summoned, or that they did not know of this case brought before the justice of the peace of the city of Manila?

"I being the bookkeeper and the general attorney-in-fact to Vargas & Co., in Iloilo, ought to know whether they have been notified or summoned, but I only knew about it when the sheriff appeared in our office to make the levy."

This is the only witness who testified in the case. It does not appear when he became the bookkeeper of the company, or that he was in such a position that he could know or did know personally the acts of the company and its relations to Macapinlac. He does not testify of his own knowledge to the essential facts necessary to controvert the statements contained in the sheriff's certificate of service. His testimony is rather negative than positive, it being at all times possible, in spite of his evidence, indeed, in strict accord therewith, that Vargas & Co., of which the witness was neither official nor manager, could have appointed a managing agent for the company or could have removed him without the personal knowledge of the witness. The witness had no personal knowledge of the relation between the company and Macapinlac. He never saw the contract existing between them. He did not hear the agreement between them nor did he know of his own knowledge what the relations between the company and Macapinlac were. His testimony besides being negative in character has in it many of the elements of hearsay and is not at all satisfactory. It would have been very easy to present one of the members of the company, or all of them, who engaged Macapinlac, who know the relations between him and the company, to testify as to what those relations were and to deny, if that were the fact, that Macapinlac was such an agent or official of the company as is within the purview of section 396 above referred to. The facts stated in the certificate of the sheriff will not be considered as overcome and rebutted except on clear evidence showing the contrary. The evidence of the bookkeeper, who is the only witness for the company, is not satisfactory in any sense and is quite insufficient to overcome the presumption established by the sheriff's certificate.

In view of these considerations it is not necessary to consider the question presented by the payment by the plaintiff company of the judgment.

The judgment appealed from is reversed and the complaint dismissed on the merits, without costs in this instance. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

Carson, J., dissents.

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