

Hunter Vs. Mutual Reserve Life Ins. Co.

Hunter Vs. Mutual Reserve Life Ins. Co.

SooperKanoon Citation : sooperkanoon.com/90789

Court : US Supreme Court

Decided On : Dec-12-1910

Appeal No. : 218 U.S. 573

Appellant : Hunter

Respondent : Mutual Reserve Life Ins. Co.

Judgement :

Hunter v. Mutual Reserve Life Ins. Co. - 218 U.S. 573 (1910)

U.S. Supreme Court Hunter v. Mutual Reserve Life Ins. Co., 218 U.S. 573 (1910)

Hunter v. Mutual Reserve Life Insurance Company

No. 39

Argued November 7, 1910

Decided December 12, 1910

218 U.S. 573

ERROR TO THE SUPREME COURT

OF THE STATE OF NEW YORK

SYLLABUS

A few separate and disconnected transactions by a foreign corporation after its withdrawal from a state, all relating to matters existing before such withdrawal, do not constitute doing business in that state so as to preclude such a corporation from revoking the power of attorney to accept process given by it to a state officer as required by statute of the state to enable it to enter and do business in the state. *Connecticut Mutual Life Ins. Co. v. Spratley*, [172 U. S. 602](#) ; *Mutual Reserve Fund Life Association v. Phelps*, [190 U. S. 147](#) ; *Mutual Reserve Ins. Co. v. Birch*, 200 U.S. 612; *Commercial Mutual Accident Co. v. Davis*, [213 U. S. 245](#) , distinguished.

A power of attorney to a state officer to accept process required by statute to be given by a foreign corporation as a condition for doing business in the state, although irrevocable in form, may be revocable, on the withdrawal of such corporation from the state, as to matters not connected with business transacted in such state or with residents thereof, and the courts of one state are not required to give full faith and credit, under the federal Constitution, to a judgment of another state against a corporation based on service on a state officer of that state in which said corporation had done business but from which it had in good faith withdrawn after revoking the power of attorney which it had given to such officer as a condition for doing business in the state, and where the cause of action did not arise in, or was not connected with a transaction arising in such state, or in favor of a citizen thereof.

184 N.Y. 136 affirmed.

The facts are stated in the opinion.

Page 218 U. S. 579

MR. JUSTICE Mc KENNA delivered the opinion of the Court.

This writ of error is prosecuted to review a judgment of the Court of Appeals of the State of New York modifying a judgment of the Supreme Court of that state. The judgment of the Court of Appeals was remitted to and made the judgment of the latter court.

The action was brought by Hunter, whom we shall call plaintiff, against the insurance company, which we shall refer to as defendant, upon five judgments obtained in the State of North Carolina, recovered by one Emrick Wadsworth, a citizen of North Carolina, and owned by plaintiff. The judgments were recovered upon policies of insurance issued by defendant, one of which was issued to a citizen of North Carolina while defendant was doing business there, the others to citizens of New York and New Jersey. They were assigned to Wadsworth long after

Page 218 U. S. 580

defendant had attempted to remove move from North Carolina. Judgment was rendered for their full amount with interest and costs, to-wit, the sum of \$9,965, by direction of the appellate division of the court, to which the case was submitted upon an agreed statement of facts. The Court of Appeals reduced the same by the amount of the four judgments recovered on the policies issued in New York and New Jersey. The federal question presented is whether due faith and credit was refused to the judgments in violation of the Constitution of the United States.

The judgments were obtained by default, after service made upon the insurance commissioner of the state. The decision of the case turns upon the validity of the service.

The defendant is a life insurance company organized under the laws of New York. Prior to March 13, 1899, it was duly admitted to do business in the State of North Carolina, it complying with the laws of the state successively passed, which required insurance companies to appoint agents upon whom service of process could be made.

On March 6, 1899, the legislature passed a law known as the Willard law. The law prescribed that no foreign insurance company should do business in the state until it had, by a duly executed instrument, filed in the office of the secretary of state, constituted and appointed the insurance commissioner its true and lawful attorney, upon whom all lawful process in any action or legal proceedings might be served, and agreed that such service should have the same force and validity as if served on the company, and that "the authority thereof" should "continue in force irrevocable so long as any liability of the company" should "remain outstanding in this commonwealth." Chapter 54 of the Laws of 1899.

On or about the thirteenth of April, defendant executed the power of attorney required, and thereupon a license

Page 218 U. S. 581

was issued to it to do business, as provided by law, under which it did business in the state for a time.

The legislature which passed the Willard law passed also a law called the Craig act, by which it was provided that any foreign insurance company desiring to do business in the state after June 1 then ensuing must become a domestic corporation of the state. There were severe penalties prescribed for the violation of the act. The company was subjected to a penalty of \$200 a day for every day it "continued to operate or do business without having complied with the requirements of the act," and it was deprived of the right of suing in the state courts, or to enter into any new contracts, or enforce those it had made. In addition to the penalty of \$200, it was subjected to a penalty of \$500 for each day that it did business after the first day of June, 1899, "without first becoming a domestic corporation."

The act took effect on the 10th of February, 1899. In May of that year, the board of directors of defendant passed a resolution to withdraw from the state, and to dispense with and terminate the services of all of its agents. It also revoked the authority of the insurance commissioner to act as its attorney to receive service of

process. A certified copy of the resolution was served on the commissioner, and the agents of the company were withdrawn from the state, the premiums upon the policies theretofore issued by it being remitted by mail to its home office, where the policies and premiums were payable, and losses upon policies being paid by check from its office. Outside of this, the record shows four transactions: (1) the rewriting of a policy of insurance in 1899, originally issued in 1886, which was mailed from its office in New York; (2) sending a check in payment of a policy issued prior to May 17, 1899, to be delivered upon receipt of certain unpaid assessments; (3) the adjustment in North Carolina, in June, 1902, of a loss upon a policy issued in Washington,

Page 218 U. S. 582

District of Columbia, the beneficiary having removed to North Carolina; (4) the adjustment, by an attorney employed for the purpose, of a claim upon a policy written in North Carolina prior to May 17, 1899. The two first transactions were prior to the beginning of the actions in which the judgments were recovered, and the two last were subsequent to that time. These are the transactions upon which plaintiff relies to establish that defendant was doing business at that time in the state.

Three of the policies upon which judgments were recovered were issued in the State of New York long prior to the year 1899. The fourth policy was issued in New Jersey, also prior to 1899. The assignments to Wadsworth were made in December and January, 1902, and the suits were begun on January 20, 1902.

There is no controversy over the power of the state to pass the Willard and Craig acts, so called, or to make their provision conditions upon which foreign insurance corporations could do business in the state. The controversy is over the duration of the conditions. The decision upon that, plaintiff contends, depends upon the question whether the insurance company was doing business in the state at the time the actions on the policies were brought and process served, and, insisting that it was, cites *Connecticut Mutual Life Ins. Co. v. Spratley*, [172 U. S. 602](#) ; *Mutual Reserve Association v. Phelps*, [190 U. S. 147](#) . Plaintiff further insists that,

even if it be assumed that defendant had withdrawn from the state in good faith and had ceased to do business therein after May 18, 1899, it was still liable to be sued in the courts of the state "in any action or local proceeding of every nature of which the courts of North Carolina had jurisdiction," and that the insurance commissioner was its agent to receive service of process. This contention is based on the provision of the statute which continues the authority of the commissioner "in force and irrevocable so long as any

Page 218 U. S. 583

liability of said company remains outstanding in said state."

If the situation of defendant regarding what it had done and its obligations was exactly expressed by the contentions of plaintiff, they might be irresistible. But not only the Willard act, but the Craig act, must be considered in determining defendant's conduct. It had done business in the state, and the former act became a part of its obligations to its policy holders. The latter act imposed new conditions upon it, and as an alternative to compliance with them, required it to remove from the state. An evasion of the requirement was, as we have seen, severely penalized. Money penalties, one of \$200 and one of \$500, for every day it should do business after the first of June, 1899, were imposed upon it, and no contract it should make or had made could be enforced in the courts of the state. Such were the alternatives presented by the Craig act. In other words, defendant was given the choice to become a domestic corporation or go out of the state. It chose to go out of the state, and adopted the only way it could to do so. We think such course was open to it, and we see no reason to question its good faith.

It is, however, contended that defendant "persisted in doing business in the state, and was so found at the time of the service of process in question." Four instances are adduced to sustain the contention, two of which occurred in 1899 and two in 1902. These instances have no relation to one another, and no relation to the transactions upon which the judgments were based. Between the first two and the last two, there was an interval of three years, and yet it is insisted that there was such connection between them that they constituted doing business continuously

in the state, and the defendant was hence precluded from revoking its power of attorney to the insurance commissioner. The contention of plaintiff, so far as based on the

Page 218 U. S. 584

instances adduced, encounters a great difficulty. They were not new business. They related to old transactions, and were intended only to fulfill their obligations. This was the plain duty of defendant -- a duty which it could not evade, nor could the state even prevent it. *Bedford v. Eastern Building & Loan Association*, [181 U. S. 227](#) . Between doing business for such purposes and doing business generally there is quite a difference. If not, the consequences are somewhat serious. The Craig act, as we have seen, imposes a penalty of \$700 a day for each day after the first day of June, 1899, that a foreign corporation shall do business in the state without conforming to the provisions of the act.

Plaintiff, however, presses with earnestness, in support of his contention, the following cases: *Connecticut Mutual Life Ins. Co. v. Spratley*, [172 U. S. 602](#) ; *Mutual Reserve Fund Life Association v. Phelps*, [190 U. S. 147](#) ; *Mutual Reserve Ins. Co. v. Birch*, 200 U.S. 612; *Commercial Mutual Accident Co. v. Davis*, [213 U. S. 245](#) .

In the *Spratley* case, the life insurance policy which was the subject of the suit was issued by the insurance company when it was concededly present and doing business in the State of Tennessee. The service was upon an agent by the name of Chaffee, sent to investigate into the circumstances of the death of Spratley and the claims of his widow. These facts distinguish the case from the one at bar. But certain language of the court is quoted to establish, not only was the insurance company so doing business in the state as to justify service of process upon the agent appointed by the company, but doing business generally. The Court, through Mr. Justice Peckham, said:

"We think the evidence in this case shows that the company was doing business within the state at the time of this service of process. From 1870 until 1894, it had

done an active business throughout the state by its agents

Page 218 U. S. 585

therein, and had issued policies of insurance upon the lives of citizens of the state. How many policies it had so issued does not appear. Its action in July, 1894, in assuming to withdraw from the state was simply a recall of its agents doing business therein, the giving of a notice to the state insurance commissioner, and a refusal to take any new risks or to issue any new policies within the state. Its outstanding policies were not affected thereby, and it continued to collect the premiums upon them and to pay the losses arising thereunder, and it was doing so at the time of the service of process upon its agent."

And further:

"It cannot be said with truth, as we think, that an insurance company does no business within a state unless it have agents therein who are continuously seeking new risks, and it is continuing to issue new policies upon such risks. Having succeeded in taking risks in the state through a number of years, it cannot be said to cease doing business therein when it ceases to obtain or ask for new risks or to issue new policies, while at the same time its old policies continue in force and the premiums thereon are continuously paid by the policy holders to an agent residing in another state, and who was once the agent in the state where the policy holders resided. This action on the part of the company constitutes doing business within the state so far as is necessary within the meaning of the law upon this subject. And this business was continuing at the time of the service of process on Mr. Chaffee in Memphis."

This reference to the law in the state must be considered. A statute of the state provided that process might be served upon any agent of a corporation doing business in the state, found within the county where the suit was brought, no matter what character of agent such person might be, and, in the absence of such an agent, it

Page 218 U. S. 586

should be sufficient to serve process upon any person found in the county who represented the corporation at the time of the transaction out of which the suit arose took place. It was under this statute that service was made upon Chaffee. This service was held good, this Court saying, in addition to what has been quoted above:

"Even though we might be unprepared to say that a service of process upon 'any agent' found within the county, as provided in the statute, would be sufficient in the case of a foreign corporation, the question for us to decide is whether, upon the facts of this case, the service of process upon the person named was a sufficient service to give jurisdiction to the court over this corporation."

Further explanation of the language of the Court is contained in the following passage:

"A vast mass of business is now done throughout the country by corporations which are chartered by states other than those in which they are transacting part of their business, and justice requires that some fair and reasonable means should exist for bringing such corporations within the jurisdiction of the courts of the state where the business was done *out of which the dispute arises.* "

(Italics ours.)

Mutual Reserve Association v. Phelps is distinguished from the case at bar by the same features that distinguish the *Spratley* case from it. The suit was brought by a citizen of the State of Kentucky upon a policy issued when the association was doing a general business in the state through regular agents, under a license from the state. The commissioner subsequently cancelled its license, and it withdrew its agents from the state. The service of process in the action was nevertheless made upon the commissioner and sustained. It was stipulated by the parties that outstanding policies were continued in force after the action of the commissioner, on which the association had collected and was collecting dues, premiums, and assessments, and this Court held, on the authority

of the *Spratley* case, that the association was doing business in the state. These general words must be qualified, as we have seen, like words in the cited case should be qualified, to protect transactions which had been entered into, and to give them the benefit of the law in view of which they were made. This Court said:

"The plaintiff was a citizen of Kentucky, and the cause of action arose out of transactions had between the plaintiff and defendant while the latter was carrying on business in the State of Kentucky, under license from the state."

And it was said of the statute that it and

"other kindred statutes enacted in various states indicate the purpose of the state that foreign corporations engaging in business within its limits shall submit the controversies growing out of that business to its courts, and not compel a citizen for such a controversy to seek, for the purpose of enforcing his claims, the state in which the corporation had its home."

Mutual Reserve Life Insurance Company v. Birch was a like case. Certain judgments which were sued on in New York were obtained in actions upon policies issued when the insurance company was doing its regular business in the State of North Carolina, and antedated its resolution to withdraw from the state. The case was rested in the Court of Appeals of New York on *Woodward v. Mutual Life Ins. Co.*, 178 N.Y. 490. It was said in that case that the stipulation of the company in regard to service of process became an obligation of the company precisely as though it

"had been incorporated in the policies, and thereafter, whether the company continued to do business in the state or not, policy holders could commence action by service upon the secretary of state,"

subsequently changed to the insurance commissioner. *Woodward v. Mutual Reserve Life Ins. Co.* was cited by this Court in its opinion sustaining the judgment in the *Birch* case.

Commercial Mutual Accident Co. v. Davis has the same

characteristics as the cases which we have reviewed, and needs no other comment than that it repeated the doctrine of the other cases.

The first contention of plaintiff is therefore untenable. The next contention is that, even if defendant did withdraw from the state in good faith, the authority to the insurance commissioner to receive service of process continued as long as the company had outstanding liabilities in the state. And this, it is insisted, constituted the duration of the authority not only for causes of action arising in the state, but for causes of action arising in other states. In other words, that the language of the statute is not limited by its purpose to protect the resident policy holders of the company, but for the benefit of every litigant upon any cause of action, and, to use the graphic language of the Court of Appeals, to

"perpetuate a local forum to which, under guise of an assignment to some resident, nonresidents of far distant states might flock for the purpose of instituting litigation upon contracts issued to them at their homes, against a corporation there readily subject to service, and which long before had attempted in good faith to withdraw from the jurisdiction thus hunted out."

This is certainly the logical consequence of plaintiff's contention, and to sustain it, he relies upon *Johnston v. Trade Ins. Co.*, 132 Mass. 432; *Wilson v. Martin-Wilson Automatic Fire Alarm Co.*, 149 Mass. 24; *Biggs v. Life Association*, 128 N.C. 5. A statute like that of North Carolina was construed in the Massachusetts cases, and therefore the construction given to it is instructive. In all of the cases, the corporation had "a domicil of business in the commonwealth," to use the language of the Supreme Judicial Court of Massachusetts, and the court recognized that the right to sue upon cause of action arising in another state was not within "the main purpose" of the statute passed on -- indeed, that it "was not framed for that purpose" -- but decided that

"the words "all lawful processes in any action or proceeding" must be held to include all actions which might lawfully be brought against a company thus having a domicile of business in this commonwealth." In *Wilson v. Martin-Wilson Automatic Fire Alarm Co.*, the contract sued on was made in the state, and was to be performed there.

In *Biggs v. Mutual Reserve Life Association*, the policy on which the action was based was issued to a resident of the state. The language of the court was quite general. The court did not discuss whether it was "ceasing to do business in the state" to transact that business through agents located outside of the state, by means of the mail, though it may be said that the court expressed doubt of it by referring to the *Spratley* case. It was said:

"It is sufficient to point out that the statute requires the power of attorney to be irrevocable not 'as long as the company continues to do business' in this state, but as long as 'any liability of the company remains outstanding' in this state, and the contract with the state, as expressed in the power of attorney filed by the company, so specifies. No amount of authorities having a more or less fancied analogy can overcome these plain words of the statute, and of the power of attorney drawn and filed in conformity thereto. *Green v. Life Association*, 105 Ia. 628; *Insurance Co. v. Gillett*, 54 Md. 213."

This general language must be considered in reference to the case -- a conclusion which is justified by the decision of the court in *Moore v. Mutual Reserve*, 129 N.C. 31, where it is said that the state, having the right to prescribe the terms upon which the insurance company might carry on its business in the state, and the company,

"being permitted, proceeded to make contracts with citizens of the state, and became liable to them under these contracts. One of the provisions upon which defendant was allowed to do business here was that James R. Young, insurance commissioner, and his successors in office,

should be constituted its agent, upon whom service of process might be made, and that said agency should continue so long as the defendant had any liabilities remaining unsatisfied in this state arising from or out of its said business of insurance."

As to the revocation of the authority of the commissioner, the court said:

"It is conceded that, as a general rule, a principal has the right to revoke a power of attorney at any time, whether it is in terms irrevocable or not. But to this general rule there are well established exceptions, as to where it is coupled with an interest, or where it is contractual in its nature, given for a consideration and for the protection of someone or some interest. In our opinion, this power falls under this exception to the general rule. It was contractual in its nature, was given upon consideration that defendant should have the right to carry on its business in this state, and for the protection of those who should deal with the defendant."

Manifestly this means who should deal with the defendant in the state. The facts in the case at bar are different from the cited cases. The policies upon which the four judgments were recovered were not issued in North Carolina, and, not having been issued under the faith of its laws, are not entitled to their remedial sanction. The facts in this case are also different from those in the Massachusetts cases. Defendant did not have "a domicil of business" in the state, nor were the contracts to be performed there. It in good faith withdrew from the state -- withdrew, indeed, under the compulsion of law. We say "under compulsion of law" for clearly the Craig act required that as an alternative to compliance with its provisions. It presented a choice to defendant of one of two courses. Defendant accepted one of them -- that is, withdrew from the state, and revoked the power which it had given to the insurance commissioner to accept service for it. Revoked it as far as it could do so. It

Page 218 U. S. 591

could not revoke it as to any "interest or right founded or created upon faith thereof," and which "required its perpetuation and continuance," as the Court of

Appeals has correctly said, and we think with that learned court that it would be extremely inequitable to regard it as irrevocable to plaintiff and those in his situation. Indeed, it is not within the contemplation of the statute that the authority to the commissioner is to be available to those in the situation of plaintiff.

Judgment affirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com