

Hemphill Vs. Orloff

Hemphill Vs. Orloff

SooperKanoon Citation : sooperkanoon.com/94911

Court : US Supreme Court

Decided On : Jun-04-1928

Appeal No. : 277 U.S. 537

Appellant : Hemphill

Respondent : Orloff

Judgement :

Hemphill v. Orloff - 277 U.S. 537 (1928)

U.S. Supreme Court Hemphill v. Orloff, 277 U.S. 537 (1928)

Hemphill v. Orloff

No. 343

Argued March 7, 8, 1928

Decided June 4, 1928

277 U.S. 537

ERROR TO THE SUPREME COURT OF MICHIGAN

SYLLABUS

1. A business association of the kind commonly known as "Massachusetts trusts" or "common law trusts," which, under its organic instrument and the law of the state where it was formed, is a legal entity with other attributes like those of corporations, including exemption of its shareholders and trustees from personal liability for the acts and engagements of the association, cannot carry on local business in another state without that state's express or implied permission. P. [277 U. S. 548](#) .

Page 277 U. S. 538

2. As in the case of a corporation, and for the same general reasons, such an association cannot claim for itself in that regard the privileges and immunities guaranteed to the associates as individuals by Art. IV, 2, of the Constitution. P. [277 U. S. 550](#) .

3. Whether a given association be called a corporation, partnership, or trust is not the essential factor in determining whether a state may forbid or condition the doing of local business; the real nature of the organization must be considered; if clothed with the ordinary functions and attributes of a corporation, it is subject to similar treatment. P. [277 U. S. 550](#) .

4. Where such an association was unable to enforce a promissory note in the courts of a foreign state because it had not complied with statutes conditioning its right to do business there, *held* that the statutes did not deprive the association, its trustees, or members of property without due process of law. P. [277 U. S. 551](#) .

5. An investment trust organized in one state was not engaged in interstate commerce when dealing in negotiable notes within another state. P. [277 U. S. 550](#) .

238 Mich. 508 affirmed.

Error to a judgment of the Supreme Court of Michigan which affirmed a judgment on a verdict directed for the defendant in an action brought by Hemphill on a

promissory note drawn payable to the order of a Massachusetts investment trust, for which he was acting.

Page 277 U. S. 543

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

Plaintiff in error, vice-president of the payee and acting for it, sued Mrs. Orloff, in the Circuit Court, Wayne County, Michigan, on her promissory note, payable to the Commercial Investment Trust, or order, executed at Detroit, Michigan, July 22, 1921. She defended upon the ground, among others, that the payee was a foreign corporation within the meaning of the Michigan statutes, that it had not complied therewith, and, consequently could not maintain the action. Both

Page 277 U. S. 544

the trial and supreme court of the state sustained this defense.

Relevant provisions of the statutes follow -- Mich.Compiled Laws, 1915:

"Sec. 9063. It shall be unlawful for any corporation organized under the laws of any state of the United States except the State of Michigan, or of any foreign country, to carry on its business in this state until it shall have procured from the secretary of state of this state a certificate of authority for that purpose. . . ."

"Sec. 9068. No foreign corporation subject to the provisions of this act shall be capable of making a valid contract in this state until it shall have fully complied with the requirements of this act, and at the time holds an unrevoked certificate to that effect from the secretary of state."

"Sec. 9071. The term 'corporations,' as used in this act, shall be construed to include all associations, partnership associations, and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships, under whatever term or designation they may be defined and known in the state where organized."

The Commercial Investment Trust -- hereinafter the Trust -- is of the class commonly known as "Massachusetts trusts," or "common law trusts." The following statement sufficiently indicates the general features of the lengthy "agreement and declaration of trust" under which it was organized at Boston, Mass., March 29, 1915.

The business of the association shall be conducted under the name specified for the trustees in their collective capacity -- the Commercial Investment Trust. They may adopt another . Seven are designated; their successors shall be elected for terms of two years at annual shareholders' meetings, each share being entitled to one vote, which may be cast by proxy.

Page 277 U. S. 545

Wide powers are granted to the trustees to buy and sell stocks, bonds, negotiable securities, personal and real property, to loan money, etc., and generally to manage and conduct the trust as fully as if they were the absolute owners of the estate; also they shall have power, but without obligation on their part, to execute any and all instruments and to do any and all things not inconsistent with the provisions hereof, the execution or performance of which they may deem expedient. They may appoint and define the duties of officers and agents.

"But the trustees shall not have any power or authority to borrow money on the credit or on behalf of the shareholders or to make any contract on their behalf for repayment of any money raised by mortgage, pledge, charge or other incumbrances in pursuance of the provisions hereof, or to make any contract or incur any liability whatever on behalf of the shareholders or binding them personally."

"Trustees shall hold the legal title to, and have the absolute and exclusive control of, all property at any time belonging to this trust subject only to the specific limitations herein contained; they shall have the absolute control, management and disposition thereof."

"The death or resignation of the trustees, or any of them, shall not operate to annul the trust or to revoke any existing agency created pursuant to the terms of this instrument."

"Every note, bond, contract, instrument, certificate, share, or undertaking and every other act or thing whatsoever executed or done by the trustees or any of them in connection with the trust hereby created, shall be conclusively taken to have been executed or done only in their or his capacity of trustee or trustees under this agreement, and such trustee or trustees shall not be personally liable thereon. "

Page 277 U. S. 546

The trustees and shareholders are exempted from personal liability. [*](#)

Shareholders' meetings shall be held annually for the purpose of electing trustees. Interest in the estate shall be evidenced solely by certificates for participation shares, to be regarded as personal property. A shareholder's death shall not operate to determine the trust nor entitle the decedent's representative to an accounting or to take action in the courts or elsewhere against the trustees. Shareholders shall have no title in the trust property or right to call for partition, division, or accounting. The

Page 277 U. S. 547

trustees shall have no power to call upon shareholders for any sum of money or assessment whatever, except such as they may agree to pay.

"The trustees, may, from time to time, distribute to the shareholders such receipts or other parts of the trust estate as they shall determine. The amount and conditions of such payments shall be determined by the trustees."

"For any of the purposes of the trust, the number of shares may, from time to time, be increased or reduced by the trustees. In case the number of shares is increased, the additional shares shall be issued and disposed of upon such terms and in such manner as the trustees may determine."

The trust shall continue until the death of the last survivor of seven named individuals.

Concerning Voluntary Associations, Chapter 182, General Laws of Massachusetts 1921, Vol. 2, p. 2077, provides:

"Sec. 2. The trustees of an association shall file a copy of the written instrument or declaration of trust creating it with the commissioner and with the clerk of every town where such association has a usual place of business. . . ."

"Sec. 6. An association may be sued in an action at law for debts and other obligations or liabilities contracted or incurred by the trustees, or by the duly authorized agents of such trustees, or by any duly authorized officer of the association, in the performance of their respective duties under such written instruments or declarations of trusts, and for any damages to persons or property resulting from the negligence of such trustees, agents or officers acting in the performance of their respective duties, and its property shall be subject to attachment and execution in like manner as if it were a corporation, and service of process upon one of the trustees shall be sufficient."

Gen.Acts Mass.1916, c. 184.

Page 277 U. S. 548

The Massachusetts courts give effect to agreements like the one here described, recognize the entity of associations organized thereunder, and hold both trustees and shareholders exempt from personal liability. See *Hussey v. Arnold*, 185 Mass. 202; *Williams v. Milton*, 215 Mass. 1, and cases cited; *Frost v. Thompson*, 219 Mass. 360.

It was held by the court below that the Trust must be regarded as a corporation within intendment of the Michigan statutes which could not lawfully carry on local business within the state or make valid contracts in connection therewith without having complied with prescribed requirements. There was no attempt to comply therewith.

Plaintiff in error insists that, as construed by the Supreme Court, the statutes of Michigan deny to the trustees, collectively called "Commercial Investment Trust," the benefits of Section 2, Article IV, of the Constitution: "The citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several States." Also that they deprive the trustees of property without due process of law contrary to the Fourteenth Amendment and restrain interstate commerce.

It is settled doctrine that a corporation organized under the laws of one state may not carry on local business within another without the latter's permission, either express or implied. A corporation is not a mere collection of individuals capable of claiming all benefits assured them by Section 2, Article IV, of the Constitution. [Bank of Augusta v. Earle](#), 13 Pet. 519, [38 U. S. 584](#) -587; [Paul v. Virginia](#), 8 Wall. 168; [Western Turf Association v. Greenberg](#), [204 U. S. 359](#) , [204 U. S. 363](#) . See also [Slaughter House Cases](#), 16 Wall. 36, [83 U. S. 77](#) . In the first of the causes just cited, Chief Justice Taney, for the Court, said:

"It is true that in the case referred to [[United States Bank v. Deveaux](#), 5 Cranch 61], this Court decided that, in a question of jurisdiction they might look to the character

Page 277 U. S. 549

of the persons composing a corporation, and if it appeared that they were citizens of another state, and the fact was set forth by proper averments, the corporation might sue in its corporate name in the courts of the United States. . . ."

"But the principle has never been extended any farther than it was carried in that case, and has never been supposed to extend to contracts made by a corporation, especially in another sovereignty. If it were held to embrace contracts, and that the members of a corporation were to be regarded as individuals carrying on business in their corporate name, and therefore entitled to the privileges of citizens, in matters of contract, it is very clear that they must, at the same time, take upon themselves the liabilities of citizens, and be bound by their contracts in like manner. The result of this would be to make a corporation a mere partnership in

business, in which each stockholder would be liable, to the whole extent of his property, for the debts of the corporation, and he might be sued for them in any state in which he might happen to be found."

"The clause of the Constitution referred to certainly never intended to give to the citizens of each state the privileges of citizens in the several states, and at the same time to exempt them from the liabilities which the exercise of such privileges would bring upon individuals who were citizens of the state. This would be to give the citizens of other states far higher and greater privileges than are enjoyed by the citizens of the state itself. Besides, it would deprive every state of all control over the extent of corporate franchises proper to be granted in the state, and corporations would be chartered in one to carry on their operations in another. It is impossible, upon any sound principle, to give such a construction to the article in question."

"Whenever a corporation makes a contract, it is the contract of the legal entity -- of the artificial being created

Page 277 U. S. 550

by the charter -- and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a state, and we now proceed to inquire what rights the plaintiffs in error, a corporation created by Georgia, could lawfully exercise in another state, and whether the purchase of the bill of exchange on which this suit is brought was a valid contract, and obligatory on the parties."

Obviously the trust here involved is a creature of local law which demands the privilege of carrying on business in Michigan as an association -- an entity -- clothed with peculiar rights and privileges under a deed of settlement undertaking to exempt all of the associates from personal liability. As in the case of a corporation and for the same general reasons, it cannot rely upon rights guaranteed to the individuals.

Whether a given association is called a corporation, partnership, or trust is not the essential factor in determining the powers of a state concerning it. The real nature of the organization must be considered. If clothed with the ordinary functions and attributes of a corporation, it is subject to similar treatment. This was distinctly pointed out in *Oliver v. The Liverpool & London Life & Fire Ins. Co.*, 100 Mass. 531, affirmed here *sub nom.* [77 U. S.](#) *Co. v. Massachusetts*, 10 Wall. 566. See also *Flint v. Stone-Tracy Co.*, [220 U. S. 107](#) , [220 U. S. 162](#) ; *Hecht v. Malley*, [265 U. S. 144](#) ; *Burk-Waggoner Oil Assn. v. Hopkins*, [269 U. S. 110](#) ; *Hamilton v. Young*, 116 Kan. 128; *Weber Engine Co. v. Alter*, 120 Kan. 557; *State v. Hinkle*, 126 Wash. 581; *State v. Paine*, 137 Wash. 566.

Upon the facts disclosed, the court below held the Trust was carrying on the business of dealing in negotiable notes within the State of Michigan, and we find no reason for rejecting that conclusion. Such business is not interstate commerce. [Nathan v. Louisiana](#), 8 How. 73; [Paul v. Virginia](#),

Page 277 U. S. 551

8 Wall. 168; *Hatch v. Reardon*, [204 U. S. 152](#) , [204 U. S. 162](#) ; *Blumenstock Bros. v. Curtis Pub. Co.*, [252 U. S. 436](#) , [252 U. S. 443](#) .

What we have already said shows plainly enough the insubstantial nature of the suggestion that the questioned statutes deprive the Trust, its trustees or members, of property without due process of law.

The judgment of the court below must be

Affirmed.

*

"No recourse shall at any time be had under or upon any note, bond, contract, instrument, certificate, undertaking, obligation, covenant, or agreement issued or executed by the trustees under or pursuant to the terms of this agreement or in managing the trust estate, or by the executive committee or any member thereof, or by any officer or agent of the trustees, or by reason of anything done or omitted

to be done by them or any of them against the trustees individually or against the members of the committee or against any such officer or agent or against any shareholder, or the holder of any other security issued by the trustees, either directly or indirectly, by legal or equitable proceeding, or by virtue of any suit or otherwise, except only to compel the proper application or distribution of the trust estate, it being expressly understood and agreed that this agreement and all obligations and instruments executed thereunder are executed pursuant hereto by the trustees, and any acts done or omitted to be done by them are solely the obligations, instruments, acts, and omissions of or in respect of the trust estate, and that all the obligations, instruments, liabilities, covenants and agreements, acts and omissions of the trustees as trustees shall be enforced against and be satisfied out of the trust estate only, or such part thereof as shall, under the terms and provisions of this agreement, be liable for or chargeable therewith, and all personal and individual liability of the trustees, except as above stated, and of the members of the executive committee, and all officers and agents, and of the shareholders and all beneficiaries of the trust, are hereby expressly waived and negated. The trustees and their agents are not authorized to contract any debt or do anything which will charge the shareholders or bind them personally."

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