

Payton v. Swanson

Fla. 3d DCA
175 So. 2d 48 (Fla. 3d DCA 1965) · 1965-05-11

HENDRY, Judge.

Appellant-defendant prosecutes this interlocutory appeal from an order denying his motion to dismiss for lack of jurisdiction.

Plaintiff-appellee, a non-resident of Florida, filed a complaint styled “Complaint In Action Ex Contractu”, joining appellant Ray Payton, a non-resident, as principal defendant and the Five Points National Bank of Miami, as garnishee. Plaintiff then served the bank with a Writ of Garnishment. The suit was quasi in rem, as plaintiff sought to garnish a bank account *49 of defendant Payton in garnishee bank. Mr. Payton, who was not personally served, made a special appearance by which he sought to dismiss the cause and dissolve the writ of garnishment on the ground that the court lacked jurisdiction.

Clearly, personal service of process on a non-resident principal defendant is not required to gain quasi in rem jurisdiction over his property within this state by way of garnishment.[^1]

It is appellant’s contention that by virtue of the language of Pennoyer v. Neff,[^2] as quoted in the Harris & Co. Advertising, Inc. v. Republic of Cuba case,[^3] a quasi in rem action is not available to a non-resident plaintiff against a non-resident principal defendant.

Even if a proper construction of the dictum of Pennoyer is as appellant contends, a contrary result has been reached in numerous cases decided subsequent to Pennoyer.[^4]

We perceive the majority view to be as follows:

“There can be no doubt that a nonresident may maintain an ordinary action upon a money demand * * * without regard to the place where the cause of action arose; and, as an attachment is nothing more than a remedy in aid of an ordinary action, we see no reason why such non-resident may not invoke such remedy just as well as a citizen of this state, unless there is something in the provisions of our attachment law which confine the benefits afforded by it to citizens or residents of this state.”

5

Florida prescribes no limitation regarding residency of a plaintiff to avail himself of garnishment procedure.[^6] We do not feel that due process requires us to judicially engraft upon the statute such a limitation.

The order appealed is therefore affirmed.

Affirmed.

Footnotes

1 Harris & Co. Advertising, Inc. v. Republic of Cuba, Pla.App.1961, 127 So.2d 687.

2 95 U.S. 714, 24 L.Ed. 505 (1878).

3 Supra, note 1 at G98.

4 e. g. *Sheldon v. Blanvelt*, 29 S.C. 453, 7 S.E. 593, 1 L.R.A. 685 (1888); *Hodgson v. Southern Building & Loan Ass'n*, 91 Md. 439, 46 A. 971, (1900) ; *Morrison v. Illinois Cent. R. Co.*, 101 Neb. 49, 161 N.W. 1032 (1917). See also Anno: 14 A.L.R.2d 420 et seq.

5 *Sheldon v. Blanvelt*, 29 S.C. 453, at 497, 7 S.E. 593 at 597 (1888).

6 Ch. 77.01 F.S., F.S.A. Right to Garnishment:

“Every person who shall have brought a suit to recover a debt or shall have recovered a judgment in any court of this state against any person, * * * shall have a right to a 'writ of garnishment, * *