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Immunity from Process of One Induced by Fraud to Come to State - Margos v. Moroudas

IMMUNITY FROM PROCESS OF ONE INDUCED BY FRAUD TO COME TO STATE

Margos v. Moroudas[1]

This case was a consolidation of two suits, one brought by Mary Margos for personal injuries sustained by her while riding in an automobile operated by the defendant, Gus Moroudas, and the second brought by Mike Margos,

[1] 184 Md. 362, 40 A. 2d 816 (1945).

her husband, for loss of services and medical expenses resulting from that injury. The defendant was a resident of West Virginia; the plaintiffs were residents of Pennsylvania; and the accident occurred in the latter state. At the time these suits were brought the statute of limitations had run against the plaintiff in both West Virginia and Pennsylvania, so the suits were entered in The Baltimore City Court in the State of Maryland. Although actual service of process was had upon the defendant in the City of Baltimore, he appeared specially and filed a motion to quash the writ of summons and to set aside the return of the sheriff thereon, upon the contention that the circumstances surrounding the service of process rendered it invalid.

The undisputed testimony indicated that Gus Moroudas was on good terms with Mike and Mary Margos after the accident and that he had no reason to suspect that they planned to bring suit against him. In reliance upon the representations of Mike Margos that he might be of aid to them in collecting insurance, the defendant traveled from Pennsylvania to Baltimore where he contacted a Baltimore attorney who he believed to be the insurance agent. The plaintiff's attorney, however, had prearranged with this party for the service of process on the defendant, and it was forthwith carried out. The testimony of the defendant indicated that he had no other business in Baltimore and that he came to that city only at the request of the plaintiff and upon the receipt of forty dollars from the plaintiff to cover expenses of the trip. He knew nothing of the pending suit and had no suspicion that a suit was contemplated.

From the evidence before the court it was concluded that the presence of the defendant in Baltimore and the service of process upon him was procured by fraud, trickery, and artifice, and there was presented for the first time in this state the question of whether or not service procured under such circumstances will be set aside when a motion to quash the writ of summons is made. Although the precise question had not been dealt with in Maryland heretofore, authorities elsewhere[2] are strong in their support of the defendant's case, and the lower court's decision

[2] Cited in the decision were: Ex parte Johnson, 167 U. S. 120 (1897); Dunlap v. Cody, 31 Iowa 260 (1871); Townsend v. Smith, 47 Wis. 623, 3 N. W. 439 (1879); Wood v. Wood, 78 Ky. 624 (1880); Cavanaugh v. Manhattan Transit Company, 133 F. 818 (C. C. D. N. J. 1905); Empire Mfg. Co. v. Ginsburg. 253 Ill. App. 242 (1929); Steiger v. Bonn, 4 F. 17 (C. C. D. N. J. 1880); Williams v. Reed, 29 N. J. 385 (1862); Sessoms Grocery Company v. International Sugar Feed Company, 188 Ala. 232, 66 So. 479 (1914).

that the writ of summons be quashed was affirmed by the Court of Appeals.

Since this was a transitory action and there was an actual service of process upon the defendant in the City of Baltimore prior to the trial, there was no contention that the court was without jurisdiction over the subject matter or over the person, it being well settled that a transitory action may be brought against a non-resident for a tort committed beyond the territorial limits of the state[3] if the defendant is found within the state and personal service is had against him.[4] Thus it is clear, and the court so indicated in its decision, that the fraud and trickery involved in the service of process in no way deprived the court of the jurisdiction over the person so gained and that the granting of the defendant's motion was not based upon any theory of jurisdictional lack. This view is substantiated by the generally accepted rule that a judgment procured in a suit in which jurisdiction over the person is procured under circumstances similar to those in this case is not void and is not open to collateral attack on the point of personal jurisdiction in the same state or in other states.[5]

Prior to this case it was well settled in Maryland that a non-resident who comes into the state solely for the purpose of appearing as a witness or as a party plaintiff or defendant in a civil or criminal proceeding is, while here for that purpose and while entering or leaving in good faith and without unreasonable delay, exempt from the service of process for a suit instituted against him in this state.[6] The problem of the present case, however, is not entirely analogous to those involving parties to a judicial proceeding since the exemptions in those cases are granted as a matter

[3] N. C. Railway Co. v. Scholl, 16 Md. 317, 77 Am. Dec. 295 (1860); State, Use of Allen v. P. & C. R. R. Co., 45 Md. 41 (1876).

[4] Hieston v. Natl. City Bk. of Chicago, 132 Md. 389, 104 A. 281 (1918).

[5] RESTATEMENT, JUDGMENTS, Sec. 15. It is to be noted that this statement deals only with a collateral attack upon such a judgment based upon the allegation that the court was without jurisdiction, and does not raise the problem of whether or not the full faith and credit clause precludes the showing of fraud to defeat such a judgment in a suit upon it in another state. On this point see: Levin v. Gladstein, 142 N. C. 482, 55 S. E. 37 (1906); GOODRICH, CONFLICT OF LAWS (2d Ed.) Sec. 206.

[6] Feuster v. Redshaw, 157 Md. 302, 145 A. 560 (1929). An exception to this rule is noted in Mullen v. Sanborn & Mann, 79 Md. 364, 29 A. 522, 47 Am. St. Rep. 421, 25 L. R. A. 721 (1894), which held that, "the exemption was denied in favor of a non-resident party who, after having caused an attachment to be issued on original process against a citizen of this state that is quashed, is, while voluntarily appearing to testify in his own behalf at the trial of the short note case, summoned in an action against him at that time begun in this state by the debtor for damages for wrong fully and maliciously causing the attachment to be issued."

of public policy in the due administration of justice, the theory being that such a rule tends to assure the attendance of such non-resident parties by virtue of the guarantee that they will not be distracted, harassed, or intimidated by the prospects of service of process for the commencement of other litigation against them within this state.[7] Such considerations do not present themselves in the present case, and the court did not purport to have reached its decision by a mere extension of these exemptions to include persons whose presence in the state was procured by fraud.

It is apparent, then, that the court did not rely on either lack of jurisdiction over the person or exemption from service as the possible basis for its action granting the defendant's motion to quash the writ of summons but rested its decision on the equitable principle that the law will not permit a party to take advantage of his own wrongs. The court quoted the rule as stated in American Jurisprudence:[8]

> ". . . Relief is accorded in such cases not because, by reason of fraud, the court did not get jurisdiction of the person of the defendant by the service, but on the ground that the court will not exercise its jurisdiction in favor of one who has obtained service of his summons by unlawful means. Thus, if a person resident outside the jurisdiction of the court and the reach of its process is inveigled, enticed, or induced, by any false representation, deceitful contrivance, or wrongful device for which the plaintiff is responsible, to come within the jurisdiction of the court for the purpose of obtaining service of process on him in an action brought against him in such court, process served upon him through such improper means is invalid, and upon proof of such fact the court will, on motion, set it aside. . . ."

A clear distinction was drawn between the instant case and that of *Jaster v. Currie*[9] on which the plaintiffs strongly relied. In that case suit had been filed against the defendant in the state of his residence, and he was later served notice by the plaintiff's attorney that the plaintiff's deposition would be taken in another state on a certain day. On advice of counsel the defendant went to that state and was present at the taking of the deposition, but before he could leave the state process was served upon him on a suit on

[7] *Supra*, n. 6.
[8] 42 Am. Jur., Process, Sec. 35.
[9] 198 U. S. 144 (1905).

the same cause of action instituted against him in that state. The defendant alleged that the deposition was merely a ruse for the purpose of enticing him into the state in order to secure service of process, the Supreme Court, however upheld the writ of summons. The Court of Appeals of Maryland agreed with that decision on the facts presented but distinguished the present case on several material differences. Here the parties were not at arms length, nor was it contemplated by the defendant that they would become so, and the defendant was directly misled by the representations of the plaintiff and was thus decoyed within the jurisdiction of the Maryland court. In the *Jaster v. Currie*[10] case, however, the plaintiff and the defendant were already party litigants, and although the defendant came into the state as the result of the plaintiff's notice of the deposition, the deposition could have been arbitrarily taken and there was no misrepresentation with regard to the motives of the plaintiff or any other circumstance leading to the service of process on the defendant.

From a consideration of the facts of the instant case and the cases cited by the court as authority for its decision, it becomes apparent that in all of them there exists the common denominator of a false and fraudulent representation on the part of the plaintiff by which the defendant is induced to enter the state, when the true purpose of the device was to procure service of process upon him. Where such a situation occurs the Court of Appeals in the *Margos v. Moroudas* case[11] has clearly established the rule that the wrongdoer shall not be allowed to profit by his wrongs, and upon proper motion, the writ of summons will be quashed.

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[10] *Ibid.*
[11] *Supra*, n. 1.