South Carolina Law Review

Volume 8 | Issue 1 Article 16

Fall 1955

Partnerships and Business Corporations

Robert E. Vandiver
Watkins, Vandlver & Freeman (Anderson, SC)

PARTNERSHIPS AND BUSINESS CORPORATIONS

ROBERT E. VANDIVER*

During the period of Survey, no South Carolina case in the field of Partnerships was reported to the Surveyor and only one case, *Foster, Adm'x. v. Rulane Gas Company*[1] was reported in the field of Business Corporations. This innocent looking case turned out to be rather potent and controversial. Consequently, it will be more fully presented than if it had been otherwise.

The facts of the reported case were found largely in the dissenting opinion. Plaintiff, a resident of South Carolina, sued on a transitory cause of action for a tort not connected with any business activities in South Carolina and committed in North Carolina on or about March 12, 1952. Rulane Gas Company, the defendant-respondent, was incorporated in North Carolina and domesticated in South Carolina in 1947 under the domestication statutes,[2] designating Palmetto Rulane Company, Bennettsville, South Carolina, as the place where legal papers might be served upon it by delivery to any officer, agent, or employee of it found there.

The corporation was dissolved under North Carolina laws on March 31, 1952, and filed its Certificate of Withdrawal from South Carolina on May 16, 1952, receiving back its previously filed Certificate of Domestication. Upon commencement of this action, the following methods of service of summons and complaint in March, 1953, were used: (a) service on the Secretary of State, and the additional procedure set forth, under Sections 10-424 and 12-722 of the Code of Laws of South Carolina, 1952, (b) service in Charlotte, North Carolina, on a former officer of the corporation, who was resident agent for it, and (c) service in Bennettsville, South Carolina, on a former employee of Palmetto Rulane Company. Respondent moved to set aside service for want of jurisdiction. An affidavit recited the above mentioned dissolution and withdrawal, and further pointed out that, at the time of the commencement of this action, the respondent was not engaged in any business in this State and did not have any agent, officer or employee upon whom process might be served. The motion was granted by the circuit judge on the ground that the plain purpose of the domestication statutes and the Code Sections which

*Member of Firm of Watkins, Vandiver & Freeman, Anderson, S. C.; A.B., 1939, Furman University; LL.B., 1940, University of South Carolina; member Anderson County and South Carolina Bar Associations.

1. 226 S.C. 149, 84 S.E. 2d 344 (1954).
2. CODE OF LAWS OF SOUTH CAROLINA, 1952, § 12-721, *et seq.*

relate to the service of process on any foreign corporation doing business within the State and failing to domesticate,[3] was to protect the citizens of this State to whom such a corporation had become obligated on transactions had within South Carolina, it being pointed out that the effect of these laws was to provide an effective means of maintaining jurisdiction when this occurred, citing *Terry Packing Co. v. Southern Express Company*[4] as authority for this rule.

Upon appeal, a majority of the South Carolina Supreme Court (three of the five participating justices concurring in the main opinion, with a concurring opinion by one of these three justices, one justice concurring in the result of the majority opinion, and one justice filing a dissenting opinion) affirmed the circuit judge. Except for instructions for affirmance and ordering the circuit judge's order to be reported, the majority opinion was as follows:

> Where a foreign corporation has complied with the statutory requirements as to the appointment of a process agent, the Supreme Court of the United States has clearly indicated a leaning toward the construction of such statutes where possible, that would exclude from their operation causes of action not arising in the business done by them in the state. Missouri Pac. Railroad Co. v. Clarendon Boat Oar Co., 257 U. S. 533, 42 S. Ct. 210, 66 L. Ed. 354; Robert Mitchell Furniture Co. v. Selden Breck Const. Co., 257 U. S. 213, 42 S. Ct. 84, 66 L. Ed. 201; Chipman v. Thomas B. Jeffrey Co., 251 U. S. 373, 40 S. Ct. 172, 64 L. Ed. 314.

The concurring opinion added that Section 12-722 of the 1952 Code limits the Secretary of State's authority to accept process service for a foreign corporation conducting business in this State without having complied with Section 12-721, which requires the designation of a place, etc., within the State for service of process, to actions against the corporation "growing out of the transaction of any business in this State". Continuing, this opinion held it to be immaterial that Section 10-424 (which more fully sets forth the mechanics of process service on the Secretary of State when Section 12-721 is not complied with) did not contain the same limitation, since these three sections, which constituted Section 7765 in the 1942 Code, must be construed together.

The opinion further noted that, if the action does not arise from business of a foreign corporation within this State, personal service

3. Code of Laws of South Carolina, 1952, §§ 12-722 and 10-424.
4. 125 S.C. 198, 118 S.E. 628 (1921).

within the State on agents of the corporation who may be served, is essential to jurisdiction.

The vigorous dissenting opinion in the reported case ably portrays the other side of the question. We quote the following from it:

> . . . under Code Section 10-214[5] a foreign corporation is subject to suit by a resident of this State for any cause of action, which means, of course, that a resident of this State may sue a foreign corporation in our courts upon a cause of action which arises in another jurisdiction, if it is a transitory cause of action and if jurisdiction of the defendant is properly obtained. Lipe v. Carolina, C. & O. Ry. Co., 123 S. C. 515, 116 S. E. 101, 103, 30 A.L.R. 248. In the latter, jurisdiction of our court of a foreign corporation was sustained upon a cause of action for wrongful death from injuries inflicted in North Carolina . . .

This opinion quotes Code Section 12-705[6] as providing that foreign corporations domesticating in South Carolina ". . . shall be subject to the laws of the same in like manner as corporations chartered under the laws of the State . . . ." The dissent continues with the conclusion that, under this section and two other statutes,[7] the dissolved foreign corporation in this case continued as a corporate body for two years after dissolution for the purpose of defending any suit against it for any liability incurred during its corporate existence. As to consent of respondent to jurisdiction of the courts of this State, this opinion states:

> . . . Consent by respondent here accompanied its domestication which was not withdrawn prior to dissolution. Dissolution, we think, fixed and froze its rights with respect to causes of action then existing in favor of residents of this State.

The dissenting opinion concludes that the lower court's order should be reversed, and adds the observation that the methods of service used in this case are not at issue, since the dismissal of service below for lack of jurisdiction was on the ground that the action did not arise out of business within the State.

The writer views the reported case as a close one. Further argument supplementing the dissenting opinion is available. Section 12-721 provides for a process service procedure against a domesticated foreign corporation (*i. e.*, by service of an agent of the corporation at a designated place within the State) and contains no limitation to

5. CODE OF LAWS OF SOUTH CAROLINA, 1952.
6. CODE OF LAWS OF SOUTH CAROLINA, 1952.
7. CODE OF LAWS OF SOUTH CAROLINA, 1952, §§ 12-601 and 12-644.

causes of action arising out of business within the State, while Section 12-722 provides for a process service procedure (*i. e.,* by service of the Secretary of State, etc.) in the event a foreign corporation transacts business within the State without first complying with Section 12-721 and in the further event the action arose out of in-state business. Argument then follows that Section 12-721 is complete, independent and clear of meaning within itself; that it contains no limitation or restriction to actions arising out of within State business; and, therefore, that service was sufficient thereunder, without any dependence on Section 12-722. If that argument be sound, then there is no basis for construing, through interpolation, the legislative intent of Section 12-721 to include such a limitation.

The *Lipe* case[8] was cited in both the majority and dissenting opinions and, therefore, is worthy of comment. The trend or leaning of the United States Supreme Court toward limitation of jurisdiction along the lines set forth in the majority opinion of the case under survey first appears to have been recognized in this State in the *Lipe* case. However, the *Lipe* case simply reviewed the rule of limitation and conceded the leaning of the United States Supreme Court toward construction of domestication statutes "where possible," to deny jurisdiction against a foreign corporation if the cause of action arose from out-of-state business. In view of the phrase, "where possible," this leaning would appear to be applicable only where a court can logically construe the statutes involved to contain a legislative intent of limitation. The *Lipe* case upheld jurisdiction even though the cause of action arose from out-of-state business of the foreign corporation, on the ground that an actual service on its agents doing its business in the State had been made, adding that, therefore, there was no necessity for the court to pass on the validity of any constructive service. Thus, the *Lipe* case merely noted a trend or leaning, and the recognition of such leaning, not being necessary to the decision of the case, was obiter dictum. However, the later case of *Thompson v. Queen City Coach Company*[9] adopted the above leaning and further held that in a suit against a foreign corporation where the cause of action arises out of the State, our courts do not have jurisdiction unless it be shown that the corporation is doing business within the State.

To this topic surveyor, the majority opinion of the case under survey appears to be the more just rule. The logical inference from

8. Lipe v. Carolina C. & O. Ry. Co., 123 S.C. 515, 116 S.E. 101, 30 A.L.R. 248 (1923).
9. 169 S.C. 231, 168 S.E. 693 (1933).

the majority rule is that the court, through interpolation, construed the limitation clause in Section 12-722 to be applicable also to Section 12-721, as well as Section 10-424. The writer attaches particular importance (apparently more importance than did any opinion in the case) to the construction of Section 12-721, since it appears to be the section applicable to the facts of the present case. Admittedly, to this writer, interpolation is not the strongest agent of construction and should be used with caution. However, in some cases, interpolation is a necessary and proper instrument of interpretation and construction in arriving at the legislative meaning and intent. Such a case is the instant case. Surely, the Legislature intended a statutory meaning and purpose in line with the majority opinion. It is both inconceivable and quite illogical to think that our Legislature intended to provide for a wider scope of actions against a domesticated foreign corporation than against one not domesticated, and thereby punish a foreign corporation for domesticating as required by our law (since Section 12-721, setting forth a procedure for service of process on domesticating corporations, contains no limitation to actions arising out of business within the State) and reward a foreign corporation for doing business in the State without domesticating as required by our law (since Section 12-722, relating to process service on a foreign corporation failing to domesticate, contains such a limitation). No citation of authority is necessary to show that there is often only a fine line between adjudicating and legislating. There is no question but that the intent of Section 12-721, both in the 1952 Code and as it appears in our 1942 Code, should have been clearer. Where clarity is lacking, the burdens and problems of our courts become even more tremendous.