

APR 27 1964

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 16, Original

STATE OF ARIZONA, *Plaintiff,*

v.

STATE OF CALIFORNIA and
CHARLES L. HARNEY, INC.,
A California Corporation, *Defendants.*

**BRIEF OF STATE OF CALIFORNIA IN OPPOSITION
TO MOTION FOR LEAVE TO FILE COMPLAINT**

Of Counsel:

HARRY S. FENTON

*Chief Counsel, Department of
Public Works*

HOLLOWAY JONES

EMERSON W. RHYNER

ROBERT F. CARLSON

ROBERT J. DEFEEA

ROBERT E. BROWN

Public Works Bldg.,

1120 N Street,

Sacramento, Calif.

*Attorneys for State of
California,*

Department of Public Works

JACK MAXWELL HOWARD

369 Pine Street

San Francisco, California 94104

*Attorney for State of
California,*

Department of Public Works

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I. THE NATURE OF THE CASE

The substance of the complaint for which Supreme Court jurisdiction is sought involves a claim against the State of California for injuries to a resident of Arizona alleged to have been suffered as a result of an unsafe condition on the San Francisco-Oakland Bay Bridge in the State of California. The complaint shows that the injured party has complied with the claim statute in California, which is a preliminary requisite to legal action against the State in the California Courts, and therefore, the California

Courts are open to such claimant to prosecute her suit on the facts alleged to have occurred.

California Government Code Sections 905.2, 911.2, 945.6(a) and 835, which statutes are made retroactive by Section 152 of Chapter 1715 California Statutes of 1963. See Appendix, p. 7.

The State of Arizona whose status is that of an industrial accident insurance carrier for the claimant's employer has a complete remedy for any legal right it has to recover amounts which it paid to the injured person by merely asserting a lien against any judgment which the injured party may receive in the Courts in the State of California, pursuant to California Labor Code Section 3856. See Appendix, p. 7.

II. THE ASSIGNED CLAIMS WILL NOT SUPPORT THE JURISDICTION OF THE SUPREME COURT

The complaint alleges that the tort claims of Grand Canyon College (a private school) and Miss McIntosh were assigned to the State of Arizona. The State of Arizona cannot prosecute these assigned claims against the State of California.

The complaint fails to state a cause of action on the alleged claim of Grand Canyon College. It affirmatively appears that Miss McIntosh received temporary disability compensation (plaintiff's complaint p. 7), and the complaint fails to allege the college paid any salary for which it did not receive services (complaint, p. 8).

Under Arizona law, it is clear that when an injured party accepts workmen's compensation he loses his right to further recovery against the party allegedly causing the injury, and that the employer's carrier can only prosecute an action for the amounts of compensation which it pays.

Arizona Revised Statutes Annotated, Section 23-1023 (A and B). See Appendix, p. 7;

State v. Pressley,

250 P.2d, 992

74 Ariz. 412;

Industrial Commission v. Nevelle,

119 P.2d 934

58 Ariz. 325.

Under California law, tort claims for personal injury are not assignable.

Pacific Gas & Electric Company v. Nakano,

12 Cal.2d 711

87 P.2d 700;

Washington v. Washington,

47 Cal.2d 249

302 P.2d 569.

Even assuming *arguendo* the validity of these claims and of their assignment, the nature of these claims affords no basis for Supreme Court jurisdiction.

Oklahoma ex rel Johnson v. Cook,

304 U. S. 387;

Massachusetts v. Missouri,

308 U. S. 1.

III. ARGUMENTS AGAINST ACCEPTANCE OF JURISDICTION

The question then becomes whether a State, as industrial accident insurance carrier with a simple and adequate remedy in the forum where the injuries occurred, may as a matter of right take its subrogation claim for Thirteen Hundred Thirty-Seven Dollars Ninety-five Cents (\$1,337.95) against another State across the country and into the Supreme Court of the United States. It is clear from the nature of the case that such result would be a serious imposition upon Court and parties which the law does not require.

1. Plaintiff's Motion is an effort to circumvent the Eleventh Amendment. The mere fact that the State of California has waived sovereign immunity from suits in State Courts does not constitute a waiver of its constitutional immunity from suit in Federal Courts on claims of citizens of another State.

United States Constitution, Amendment XI;
Petty v. Tennessee-Missouri Bridge Commission,
359 U.S. 275.

2. There being no want of another suitable forum the Court can and should withhold its exercise of jurisdiction.

Massachusetts v. Missouri, 308 U. S. 1, 19.

IV. IN CONCLUSION

The Motion is without merit and should be denied.

Respectfully submitted,

Of Counsel:

HARRY S. FENTON

HOLLOWAY JONES

EMERSON W. RHYNER

ROBERT F. CARLSON

ROBERT J. DEFEA

ROBERT E. BROWN

*Attorneys for State of California,
Department of Public Works*

JACK MAXWELL HOWARD

369 Pine Street

San Francisco, California 94104

*Attorney for State of California,
Department of Public Works*

APPENDIX

California Government Code Section 905.2

“There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against the State:

“(a) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by statute or constitutional provision.

“(b) For which the appropriation made or fund designated is exhausted.

“(c) For money or damages (1) on express contract, (2) for an injury for which the State is liable or (3) for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution.

“(d) For which settlement is not otherwise provided for by statute or constitutional provision.”

CALIFORNIA GOVERNMENT CODE SECTION 911.2

“A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than the 100th day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than one year after the accrual of the cause of action.”

CALIFORNIA GOVERNMENT CODE SECTION 945.6(a)

“(a) Except as provided in subdivision (b), any suit brought against a public entity on a cause of

action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.”

CALIFORNIA GOVERNMENT CODE SECTION 835

“Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

“(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

“(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have have taken measures to protect against the dangerous condition.”

SECTION 152 OF CHAPTER 1715, CALIFORNIA STATUTES OF 1963

“(a) This act applies to all causes of action heretofore or hereafter accruing.

“(b) Nothing in this act revives or reinstates any cause of action that, on the effective date of this act, is barred either by failure to comply with any applicable statute, charter or ordinance requiring the presentation of a claim or by failure to commence an action

thereon within the period prescribed by an applicable statute of limitations.

“(c) Subject to subdivision (b), where a cause of action accrued prior to the effective date of this act and a claim thereon has not been presented prior to the effective date of this act, a claim shall be presented in compliance with this act, and for the purposes of this act such cause of action shall be deemed to have accrued on the effective date of this act.

“(d) Subject to subdivision (b), where a cause of action accrued prior to the effective date of this act and a claim thereon was presented prior to the effective date of this act, the provisions of this act so far as applicable shall apply to such claim; and, if such claim has not been acted upon by the board prior to the effective date of this act, such claim shall be deemed to have been presented on the effective date of this act.”

CALIFORNIA LABOR CODE SECTION 3856

“In the event of suit against such third party:

“(a) If the action is prosecuted by the employer alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney’s fee which shall be based solely upon the services rendered by the employer’s attorney in effecting recovery both for the benefit of the employer and the employee. After the payment of such expenses and attorney’s fees, the court shall apply out of the amount of such judgment an amount sufficient to reimburse the employer for the amount of his expenditure for compensation together with any amounts to which he may be entitled as special damages under Section 3852 and

shall order any excess paid to the injured employee or other person entitled thereto.

“(b) If the action is prosecuted by the employee alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney’s fee which shall be based solely upon the services rendered by the employee’s attorney in effecting recovery both for the benefit of the employee and the employer. After the payment of such expenses and attorney’s fee the court shall, on application of the employer, allow as a first lien against the amount of such judgment for damages, the amount of the employer’s expenditure for compensation together with any amounts to which he may be entitled as special damages under Section 3852.

“(c) If the action is prosecuted both by the employee and the employer, in a single action or in consolidated actions, and they are represented by the same agreed attorney or by separate attorneys, the court shall first order paid from any judgment for damages recovered, the reasonable litigation expenses incurred in preparation and prosecution of such action or actions, together with reasonable attorneys’ fees based solely on the services rendered for the benefit of both parties where they are represented by the same attorney, and where they are represented by separate attorneys, based solely upon the service rendered in each instance by the attorney in effecting recovery for the benefit of the party represented. After the payment of such expenses and attorneys’ fees the court shall apply out of the amount of such judgment for damages an amount sufficient to reimburse the employer for the amount of his expenditures

for compensation together with any other amounts to which he may be entitled as special damages under Section 3852.

“(d) The amount of reasonable litigation expenses and the amount of attorneys’ fees under subdivisions (a), (b), and (c) of this section shall be fixed by the court. Where the employer and employee are represented by separate attorneys they may propose to the court, for its consideration and determination, the amount and division of such expenses and fees.”

ARIZONA REVISED STATUTES ANNOTATED, SECTION 23-1023
(A and B)

“A. If an employee entitled to compensation under this chapter is injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in event of death his dependents, shall elect whether to take compensation under this chapter or to pursue his remedy against such other person.

“B. If the election is to take compensation, the claim against such other person shall be assigned to the state for the benefit of the compensation fund, or to the person liable for the payment thereof. Such a claim assigned to the state may be prosecuted or compromised by the commission.”

