In the Supreme Court

OF THE

United States

OCTOBER TERM, 1963

No. 16, Original

STATE OF ARIZONA,
Plaintiff,

vs.

STATE OF CALIFORNIA and CHARLES L. HARNEY, INC., a California corporation,
Defendants.

BRIEF OF DEFENDANT CHARLES L. HARNEY, INC., IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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STATEMENT OF THE CASE

Plaintiff seeks to invoke the original jurisdiction of this court in order to prosecute an assigned claim for personal injuries. The Complaint alleges that the accident upon which the action is based occurred on March 4, 1962. It is alleged that plaintiff's assignor was injured while a passenger in an automobile on the San Francisco-Oakland Bay Bridge, that these injuries were the result of a dangerous and defective condition existing on the bridge, and that the accident and injuries were proximately caused by the carelessness and negligence of the defendants.

The Complaint further alleges that plaintiff's assignor claimed compensation under its workmen's compensation laws, and pursuant thereto, plaintiff made payments for temporary disability, compensation, and medical care to or on behalf of its assignor. Pursuant to the laws of plaintiff State, by operation of law, the claim for damages was assigned to plaintiff and plaintiff became the sole owner thereof.

Jurisdiction of defendant, Charles L. Harney, Inc., is sought under 28 U.S.C. Section 1251(b)(3).

ARGUMENT

I. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION.

The Motion should be denied if no cause of action is stated on the face of the Complaint or it is plain that no relief may be granted.

Georgia v. Pennsylvania R.R. Co., 324 U.S. 439 (1944);

Alabama v. Arizona, 291 U.S. 286 (1934);

Arizona v. California, 298 U.S. 558 (1935).

The accident occurred on March 4, 1962. This Motion was filed two years later, on or about March 4, 1964.

Both under Arizona and California law, an action to recover for personal injuries cannot be assigned.

Employers Casualty Co. v. Moore, 60 Ariz. 544, 124 Pac. 2d 414 (1943);

Peller v. Liberty Mutual Fire Ins. Co., 220 A.C.A. 615 (1963).

In Arizona, however, a statutory exception is made where an injured employee elects to receive compensation. His claim is automatically assigned to the State and thereafter the employee has no interest in any amount recovered by the State.

Ariz. Rev. Stat., Sec. 23-1023;

Moseley v. Lily Ice Cream, 38 Ariz. 417, 300 Pac. 958;

Commission v. Neville, 58 Ariz. 325, 119 Pac. 2d 934.

Since Arizona does not recognize such assignment in absence of statute, the liability sought to be imposed by this Complaint under Arizona law is one created by statute and is barred by the one year Statute of Limitations in Arizona.

Ariz. Rev. Stat., Sec. 12-541.

As indicated, California prohibits an assignment of an action for personal injuries, and the Complaint is accordingly barred in that State. There is no statutory provision for such an assignment to the employer or compensation insurance carrier. The employer can institute an action on behalf of and for the employee, but this is subject to a one year Statute of Limitations.

Aetna Casualty and Surety Co. v. Pacific Gas & Electric Co., et al., 41 Cal. 2d 785, 264 Pac. 2d 5 (1953).

Thus, whether Arizona or California Law is considered, the Complaint, on its face, fails to state a cause of action and is barred.

II. THE COMPLAINT DOES NOT PRESENT A CONTROVERSY FOR ORIGINAL JURISDICTION.

This court has not and should not entertain original jurisdiction merely because one State is suing another State or its citizens. To do so would impose an enormous and insurmountable burden upon the court which would effectively paralyze its judicial function.

> *Massachusetts v. Missouri,* 308 U.S. 1 (1939);
> *Alabama v. Arizona,* 291 U.S. 286 (1934);
> *State of Oklahoma ex rel. Johnson v. Cook,* 304 U.S. 387 (1937).

This in effect is an action by an insurance carrier who has received by assignment the cause of action of its insured. The alleged controversy does not involve the sovereign or "quasi-sovereign" interests of the State of Arizona, and the fact that this insurance carrier happens to be a State does not warrant this court's acceptance of jurisdiction.

The Motion should be denied.

Dated, San Francisco, California,
April 30, 1964.

Respectfully submitted,
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