

LAWRENCE A. MORGAN, Petitioner, v. **THE LIQUIDATED BANK OF LIBERIA**, a Financial Institution operating under the laws of Liberia, represented by and thru its Deputy Governor & Officer-In-Charge, **D. ANDREW MASON**, and **HIS HONOUR FRANCIS N. PUPO, SR.**, Judge, People's Debt Court, Montserrado County, and the **SHERIFF** of said Court, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING A
PETITION FOR A WRIT OF PROHIBITION..

Heard: November 24, 1982. Decided: February 3, 1983.

1. A person shall not be arrested or imprisoned for disobedience of any money judgment or order requiring the payment of money, except such judgment debts which are enforceable by contempt as provided by statute.
2. It is within the discretion of the Justice in Chambers to grant prohibition when other remedies exist, and without a clear and convincing evidence of abuse of discretion, the prohibition will not be disturbed.
3. Prohibition can lie when there is a manifest necessity; where a petitioner's rights are adversely affected; or whenever a subordinate court proceeds by rules contrary to known and accepted practice.
4. Where a corporation is duly formed in keeping with law, its shareholders or officers cannot be held personally liable for the obligation of the corporations unless such liability was overtly undertaken by them.
5. An officer of a corporation cannot be held for corporate debts except there is a showing that he has used the corporation as an alter ego; that he has diverted corporate assets to his personal use; that he personally obligated himself for the debts of the corporation; or that the corporation was a bogus corporation intended to defraud creditors.
6. In all actions or claims against a corporation, service of legal process upon a party other than a registered agent is procedurally defective and contrary to law.
7. Where a statute has prescribed methods of serving legal process upon all corporations authorized to do business in Liberia, a departure from such method is fatal to the action.

8. Every foreign or domestic corporation is required to designate a local registered agent for service of process, and where a corporation fails to designate a registered agent, substituted service must be made upon the Minister of Foreign Affairs.

9. If a corporation is defectively formed with a fraudulent intent to avoid liability to creditors, courts of equity will normally pierce the corporate veil and hold shareholders personally liable. To do this, however, it must be conclusively established that the corporation was nothing but a bogus corporation intended to defraud creditors.

Growing out of an action of debt against the Carbon Mining Corporation, a writ of attachment was issued upon the president of the corporation, Lawrence Morgan, ordering him to show properties of the corporation for levy, with orders that he be arrested and placed in the jail for failure to comply. In apprehension of his arrest, Lawrence Morgan applied to the Justice in Chambers for a writ of prohibition alleging that he is not the registered agent of the corporation; that he could not be held personally liable for the debts of the corporation; and that imprisonment is not the appropriate remedy for such debts. From a ruling granting the prohibition, respondent appealed to the Full Bench.

The Supreme Court held that; (i) where a corporation is formed in keeping with law, its shareholders or officers cannot be held personally liable for corporate debts; and (ii) that it was error for the trial court to have ordered the arrest of petitioner, there being no allegation he is an alter ego of the defendant, or that he had diverted corporate assets to his personal use. The Court also held that the defendant corporation, being a corporate entity, process ought to have been served on the corporate registered agent, or where he is not available, on the Minister of Foreign Affairs. The Supreme Court accordingly determined that the issuance of the writ of prohibition under the circumstances was proper, and it therefore affirmed the ruling of the Justice in Chambers.

Lawrence A. Morgan appeared for petitioner. Roger Steele appeared for respondents.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

An inspection of the records certified to this Court reveals that this case originally began as an action of debt against Carbon Mining Corporation, a domestic enterprise, and its President Lawrence A. Morgan. A writ of Attachment was thereafter issued upon Lawrence Morgan ordering him to show properties of Carbon Mining Corporation for levy, with further orders that his body be arrested and placed in the common jail for failure to comply. In apprehension of his arrest, Lawrence A. Morgan then immediately applied to the Justice in Chambers for a prohibition on the following grounds: (1) that he is not the registered

agent of Carbon Mining Corporation upon whom process could be served; and (2) that even if he, Lawrence A. Morgan, could be held personally liable for the debts of Carbon Mining Corporation, his imprisonment is not the appropriate remedy for such debts.

In resisting the petitioner's application for the writ of prohibition, the respondents argued that the application should be denied for reasons that (1) petitioner had adequate remedy in the court below; (2) that the insertion of an arrest clause in the writ of attachment was a clerical error which should not affect their legal interest; and (iii) that because the corporation's registered agent, Mr. Beauford A. Mensah, is presently out of the country, its president, Lawrence A. Morgan, has a duty to show the corporation's properties for attachment or provide a bond in lieu thereof.

After listening to the arguments, a review of the pleadings, and a thorough perusal of the relevant sections of the New Associations Laws of Liberia, the Chambers Justice agreed with Petitioner Morgan and granted his application for prohibition. From this ruling, the respondents have appealed to the Full Bench for review.

On this appeal, we are to determine: (a) whether or not a president and majority shareholder of a domestic corporation, who is not its registered agent, may be held personally liable for the debts of the corporation and thereby be subject to incarceration for his failure to show corporate assets for attachment? (b) Whether or not the Chambers Justice was correct in vacating the attachment proceedings against Petitioner Lawrence A. Morgan as president of Carbon Mining Corporation?

The records before us clearly show that Carbon Mining Corporation was duly formed in keeping with law and therefore its shareholders or officers cannot be held personally liable for the corporation's debts unless such liability was overtly undertaken by them. New Associations Law, Rev. Code 5: 2.5 and 2.6.

Furthermore, under Liberian Law, every foreign or domestic corporation is required to designate a local registered agent for service of process, and where a corporation fails to designate a registered agent, substituted service must be made upon the Minister of Foreign Affairs. *Ibid.*, 5: 3.1 & 3.2

Mr. Beauford A. Mensah was the registered agent of Carbon Mining Corporation who should have been served with process in this case and the fact that he was out of the country at the time this action was filed does not do much to explain why substituted service was not made upon the Foreign Minister.

Where a statute has prescribed methods of serving legal process upon all corporations

authorized to do business in Liberia, a departure from such method is fatal to the action. *Woermann v. Townsend*, 7 LLR 293, 297(1941).

With reference to the respondent's argument that the insertion of an arrest clause in the writ of attachment was a clerical error, we fail to see why then a prohibition should not lie to enjoin the enforcement of the error. We therefore agree with the Chamber Justice that the court below had proceeded by the wrong rules to justify a prohibition. On this point, the Civil Procedure Law clearly states that a person shall not be arrested or imprisoned for disobedience of any money judgment or order requiring the payment of money, except such judgment debts which are enforceable by contempt. Civil Procedure Law, Rev. Code 1: 44.71(3), or by imprisonment, *ibid.*, 1: 44.71(2). See also *ibid.*, 1: 44.1 (emphasis supplied).

On the question of whether or not a prohibition shall lie when other remedies exist, we say that it is within the sole discretion of the Justice in Chambers to decide. Without clear and convincing evidence that the Chamber Justice had abused this discretion, the prohibition will not be disturbed. *Kilpatrick v. Oost Afrikaansche Compagnie*, 10 LLR 84 (1949).

Prohibition will also lie when there is a manifest necessity, *Dennis v. Republic*, 7 LLR 212 (1941); or where a petitioner's rights are adversely affected; *Dweh v. Findley et al.*, 15 LLR 638 (1964). It may likewise be granted whenever a subordinate court proceeds by rules contrary to known and accepted practice. *Montgomery v. Findley*, 14 LLR 463 (1961).

There is no settled principle on whether a corporate officer or shareholder can be held personally liable for debts of a corporation. The only generally accepted principle is that if a corporation is defectively formed with a fraudulent intent to avoid liability to creditors, courts of equity will normally pierce the corporate veil and hold shareholders personally liable. To do this it must be conclusively established that the corporation was nothing but a bogus corporation intended to defraud creditors. This is not the case here.

There is no allegation that Lawrence A. Morgan had used Carbon Mining Corporation as an alter ego, or that he had diverted corporate assets to his personal use. Neither is there any evidence that he personally obligated himself for debts of his corporation. In the absence of any of these facts, Lawrence A. Morgan cannot be held personally liable for the obligations of Carbon Mining Corporation merely by virtue of his being a majority shareholder and president thereof.

We hold, therefore, that in all actions or claims against a duly organized and registered domestic corporation, service of legal process upon a party other than a registered agent is procedurally defective and contrary to law.

Hence, the prohibition was properly granted in this case and we affirm same. The Clerk of this Court will therefore direct the court below to resume jurisdiction of the case without holding a non statutory officer personally liable for debts of Carbon Mining Corporation. And it is so ordered.

Petition granted.