

1948

Columbia Iron Mining Company, a corporation v. State Tax Commission : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

C.C. Parsons; WM. M. McCrea; A. D. Moffat; Calvin A. Behle; Attorneys for Plaintiff.

Unknown.

Recommended Citation

Brief of Appellant, *Columbia Iron Mining v. State Tax Commission*, No. 19487232.00 (Utah Supreme Court, 1948).

https://digitalcommons.law.byu.edu/byu_sc1/10

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU
45.9
.S9
DOCKET NO.

UTAH SUPREME COURT

BRIEF.

7232 P1

Supreme Court

OF THE

STATE OF UTAH

COLUMBIA IRON MINING COM-
PANY, a corporation,

Plaintiff,

vs.

STATE TAX COMMISSION,

Defendant.

BRIEF OF PLAINTIFF

C. C. PARSONS,
WM. M. McCREA,
A. D. MOFFAT,
CALVIN A. BEHLE,
Attorneys for Plaintiff

Dated October 7, 1948

INDEX

	<i>Page</i>
I. STATEMENT OF FACTS	1
1. Plaintiff is a Utah Mining Company....	1
2. The Basis for Plaintiff's Occupation Tax Returns	2
3. The Defendant's Recomputation; Hearing and Review	2
4. Plaintiff's Ore Contracts	3
II. STATEMENT OF ERRORS	5-6
III. ARGUMENT	6-7
IV. CONCLUSION	8-9

CITATIONS

Laws of Utah 1937, Ch. 101, as amended, (§§80-5-65 to 82, Utah Code Annotated 1943)	2
Utah Code Annotated 1943: § 80-5-77	3
§ 80-5-66	6-8
50 Am. Jur. 225	6
New Park Mining Co. et al v. State Tax Commission, 196 P (2) 485, .. Utah.,	6
Salt Lake Union Stock Yards v. State Tax Commission 93 Utah 166, 71 P(2) 538,	6
Ware v. Hylton, 3 U. S. (3 Dall.) 199, 241, 1 L. ed. 568,	7
Covert v. State Board of Equalization, 173 P(2) 545, 550; 29 Cal. (2) 125	7
Combined Metals Reduction Co. v. State Tax Com- mission (Utah), 176 P (2) 614, 616,	7
Dubuque & Sioux City RR. Co. v. Richmond, 86 U. S. (19 Wall.) 584, 22 L. ed. 173,	8

IN THE
Supreme Court
OF THE
STATE OF UTAH

COLUMBIA IRON MINING COM-
PANY, a corporation,

Plaintiff,

vs.

Case No. 7232

STATE TAX COMMISSION,

Defendant.

BRIEF OF PLAINTIFF

I.

STATEMENT OF FACTS

1. Plaintiff is a Utah mining company.

Plaintiff, Columbia Iron Mining Company, since its organization under the laws of the State of Utah on June 30, 1930, has been and now is the owner of iron mining properties located in Iron County, Utah. Continuously since its organization it has been engaged in the business of mining iron ore from said properties. It is and has been a wholly owned subsidiary of the United States Steel Corporation. (R. 24)

2. The Basis for Plaintiff's Occupation Tax Returns.

As required by Laws of Utah 1937, Ch. 101, as amended (§§ 80-5-65 to 82, Utah Code Annotated 1943), plaintiff has for each year to and including 1948 filed its mining occupation tax returns on forms prescribed by the defendant State Tax Commission, and has for each such year paid the tax shown thereon to be due. (R. 27) Within the time allowed by law plaintiff filed such return for the year 1948 based upon 1947 operations, and by said return reported a tax of \$12,759.17 to become due June 1, 1948. (R. 27, 48) This amount has been paid and there is no dispute with respect thereto (R. 20)

In so reporting and paying the mining occupation taxes over all these years plaintiff has consistently used as the basis for computation "the amount of money or its equivalent actually received" from the various purchasers of iron ore from plaintiff paid in accordance with the terms of the various contracts under which plaintiff has sold its ores. (R. 27, 48)

3. The Defendant's Recomputation; Hearing and Review.

Defendant, on the theory that plaintiff's return for 1948 did not truly reflect the value of the ore sold, fixed a value of \$1.55 per ton which, after the statutory deductions and exemptions, resulted in a claimed tax of \$28,433.12, being \$15,673.95 greater than the tax computed by plaintiff. (R. 30-34)

Within the time allowed by law plaintiff filed its

petition for redetermination, which was denied by defendant on August 12, 1948. (R. 19) On September 7, 1948, plaintiff deposited with defendant the sum of \$28,433.12, being the full amount of the taxes, interest and other charges audited and stated by defendant as aforesaid; and on September 11, 1948 filed an undertaking, approved by defendant, all as required by Utah Code Annotated 1943, § 80-5-77. (R. 7-9) Application for writ of review was filed the same day and the writ issued to review the decision of the defendant. (R. 2-6)

4. Plaintiff's Ore Contracts.

(a) The sales of ore made during the year 1947 were for all practical purposes made entirely to Geneva Steel Company, another wholly owned subsidiary of United States Steel Corporation. (R. 25-6) These sales were made pursuant to what is called for convenience, the Geneva Contract, dated August 17, 1943, and originally made by and between plaintiff and the Defense Plant Corporation. By its terms plaintiff agreed to furnish the iron ore required in the operation of the steel manufacturing facilities then owned by Defense Plant Corporation and known as the Geneva Plant. (R. 25; 63-78)

The Geneva Plant in Utah County, Utah, was constructed during World War II by the Defense Plant Corporation, a subsidiary of Reconstruction Finance Corporation, each an instrumentality of the United States of America. Neither plaintiff Geneva Steel Company, nor United States Steel Corporation, has or ever has

had any private interest in either of said federal corporations. (R. 25)

On June 19, 1946 the United States Government sold the Geneva Plant to Geneva Steel Company, and in connection with that sale assigned the Geneva Contract of August 17, 1943 to Geneva Steel Company. (R. 25; 79-80)

(b) During World War II the United States also constructed a blast furnace at Ironton known as Ironton No. 2 Blast Furnace. On August 1, 1947 the United States, acting through Reconstruction Finance Corporation, entered into a contract with plaintiff whereby plaintiff agreed to furnish the iron ore required to operate that furnace. (R. 26; 81-90)

In the spring of 1948 Kaiser-Frazer Parts Corporation acquired this furnace and the United States assigned the contract of August 1, 1947 to it as purchaser. (R. 26) Kaiser-Frazer Parts Corporation is not in any manner affiliated with either plaintiff, Geneva Steel Company or the United States Steel Corporation; its relations, on the contrary, are more in common with those of the Utah Construction Company. (R. 11-16)

This contract is still in effect, but it happened that during 1947 no ore was furnished and paid for under this contract, the Kaiser-Frazer iron ore requirements being furnished by the Excelsior Mining Company, operated by Utah Construction Company. (R. 32) The contract terms of the Excelsior Mining Company contract were relied upon by the defendant Commission as a substitute for the terms of the Geneva contract. (R. 31, 33)

(c) Whenever over the years since 1937 and including 1947 plaintiff has sold ore other than under the Geneva contract (which since 1942 has also been applied to the much smaller Geneva operation at Ironton (R. 26)), plaintiff has included the amounts received under all such contracts in its returns. (R. 25) During 1947 a total of 653 tons of ore were so sold. (R. 48)

• • • •

The above facts are not in dispute.

Plaintiff concedes, for the purpose of the instant case, that if the defendant has the authority and power to base the mining occupation tax for plaintiff on gross value rather than on the amount of money actually received by plaintiff from the contract sales of its ores, the tax was properly due for the year 1948 in the sum of \$28,433.12.

II.

STATEMENT OF ERRORS

1. The State Tax Commission erred in that it disregarded the amounts actually received by plaintiff from the sale of its ores under bona fide contracts.

2. The State Tax Commission erred in basing the mining occupation tax payable by plaintiff for 1948 on its conception of the gross value of the ore produced and sold in 1947, rather than on the amount of money re-

ceived by plaintiff from the sale of its ores under bona fide contracts.

III.

ARGUMENT

The plaintiff sold its ore under bona fide contracts, and therefore defendant has no power or authority under the Utah statutes to use as the basis for the mining occupation tax any amount other than the amount of money actually received by plaintiff from the sale of its ores.

There is but one statute and one point involved. § 80-5-66 provides that all persons engaged in mining shall pay to the State of Utah an occupation tax based as follows:

“The basis for computing the occupation tax imposed by this act for any year shall be as follows:

“(a) If the ore or metals extracted is sold under a bona fide contract of sale, the amount of money or its equivalent actually received by the owner, lessee, contractor or other person operating the mine or mining claims, from the sale of all ores or metals during the calendar year***.”

This statute is plain and unequivocal. There is no ambiguity and therefore no place for construction. 50 Am. Jur. 225; New Park Mining Co. et al v. State Tax Commission, 196 P(2) 485, Utah; Salt Lake Union Stock Yards v. State Tax Commission, 93 Utah 166, 71 P(2) 538.

Not only is the meaning of the words "bona fide" simple and unambiguous, and therefore without need for "interpretation": the test of *when* a contract is bona fide is to be applied *at the time of its execution*:

"'Bona fide' is a legal technical expression; and the law of Great Britain and this country has annexed a certain idea to it. It is a term used in statutes in England, and in acts of assembly in all the states, and signifies a thing done really, with a good faith, without fraud, or deceit, or collusion, or trust. ***A debt must be bona fide at the time of its commencement, or it never can become so afterwards.'" *Ware v. Hylton*, 3 U. S. (3 Da11.) 199, 241, 1 L. Ed. 568.

"'Bona fide' means 'in or with good faith; without fraud or deceit; genuine.'" *Covert v. State Board of Equalization*, 173 P(2) 545, 550; 29 Cal. (2) 125.

This court only last year said with respect to this very statute:

"'Webster's New International Dictionary defines 'bona fide' as being 'in or with good faith; without fraud or deceit***.'" *Combined Metals Reduction Co. v. State Tax Commission*, (Utah) 176 P(2) 614, 616.

Plaintiff sold the bulk of its ore under a contract the terms of which were negotiated and accepted by an agency of the United States of America. It is submitted that the contract was fair and reasonable; both parties were satisfied with the contract and abided by its terms.

There is no suggestion in the record nor any claim on the part of defendant of any bad faith in the negotiations or transactions between the plaintiff and the United States. A second similar contract is in effect with a company with which plaintiff has no inter-corporate relationships.

A contract that is bona fide when executed does not lose that character because of events occurring subsequent to its execution. *Dubuque & Sioux City RR. Co. v. Richmond*, 86 U. S. (19 Wall.) 584, 22 L. Ed. 173.

It follows from the plain mandate of Utah's legislature that the defendant Tax Commission, charged with the duty of administering the laws *as they are written*, has no alternative but to accept the terms of the plaintiff's contracts as the basis for determining the tax. The defendant Tax Commission has not shown wherein the Geneva contract or any of the other contracts of plaintiff for the sale of its ores is not bona fide; and until it can sustain that burden or the statutes are amended, the provisions of § 80-5-66(a) must be applied.

IV.

CONCLUSION

Since plaintiff paid in full its 1948 mining occupation tax liability as provided by the statutes of this state, the order of the Commission should be set aside and there should be refunded to plaintiff the illegally

extracted excess in the sum of \$15,673.95, together with accumulated interest and costs on review.

Respectfully submitted,

C. C. PARSONS,

WM. M. McCREA,

A. D. MOFFAT,

CALVIN A. BEHLE,

Attorneys for Plaintiff