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Cache Valley Syndicate Trust v. State of Utah : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH :
in the Matter of: :
Cache Valley Syndicate Trust : Case No. 15396
Successor to :
Financial Service Co., Inc. :

BRIEF OF APPELLANT

Appeal from the Judgement of the
District Court of Cache County
Honorable VeNoy Christoffersen, Judge

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Section 6-1-10, Utah Code Annotated
(1953 as amended)

Section 16-10-97, Utah Code Annotated
(1953 as amended)

LEGAL ENCYCLOPEDIA CITED

Section 109, Page 394, American Jurisprudence
"Assignment for the Benefit of Creditors"

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BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an appeal from a declaratory judgement issued by the court on the 2nd day of August 1977, in a statutory assignment for the benefit of creditors.

DISPOSITION IN LOWER COURT

The lower court issued a declaratory judgement establishing the priority of creditors, designating the creditors to be placed in each of said priorities and accepting the claims filed by creditors.

RELIEF SOUGHT ON APPEAL

The appellant seeks to have this court reverse the declaratory judgement establishing the priority of creditors

and establish a priority of creditors wherein creditors of the trust are given priority over the claims of the beneficial interest holders, and to order that Bonnie Erickson's action be removed from the present classification and placed in the classification to be established for other beneficial interest holders. The appellant also seeks to have this court order that the final list of creditors and beneficial interest holders be made subject to a pending lawsuit against the trust by Elmer Ericksen.

DESIGNATION OF PARTIES

Elmer G. Erickson and his wife, Bonnie Erickson, are the appellants herein. Frank M. Wells, the successor trustee of the statutory assignment for the benefit of creditors in the matter of Cache Valley Syndicate Trust, is the respondent.

STATEMENT OF FACTS

Financial Service Company, Incorporated, a Utah Corporation, was set up in Cache Valley for the purpose of placing mortgages for private parties, dealing in land transactions and casualty insurance. Financial Service Company became involved in financial difficulties and in approximately October of 1971 informed its investors that it was insolvent. As a result of this insolvency a new entity entitled Cache Valley Syndicate Trust was created and Imperial Trust, a trust company from Arizona, was made trustee. In lieu of liquidating the

Service Company, the trustee at Cache Valley Syndicate Trust agreed to transfer to the financial investors and other parties holding claims against the Financial Service Company, beneficial interest shares in Cache Valley Syndicate Trust. Substantially all the claimants against the insolvent Financial Service Company became beneficial interest holders in Cache Valley Syndicate Trust in a sum proportionate to the claim they had against Financial Service Company. Shortly thereafter, Imperial Trust resigned as the trustee and a new board of trustees was appointed consisting of R. Lynn Toolson, Elmer Gibson, Golden Stettler, H. M. Nielsen, and A. L. Dittmer. Elmer Eickson, one of the appellants herein was hired as a consultant by Cache Valley Syndicate Trust. Bonnie Erickson, the other appellant herein, is a beneficial interest holder of Cache Valley Syndicate Trust, having received beneficial interest shares to represent monies owed to her by Financial Service Company. After Cache Valley Syndicate Trust was created it continued to do business and to incur debts and obligations for services rendered to it and otherwise deal with new creditors.

Cache Valley Syndicate Trust was never able to financially recover and continued to become more indebted by reason of some of the assumed problems of Financial Service Company. On July 26, 1976, a statutory assignment for the benefit of creditors was created. (Record 1) Elray Robinson was originally appointed trustee, and on the 15th day of March,

1977, Frank M. Wells was appointed as the successor trustee to Elray Robinson. (R. 300) On the 4th day of April, 1977, an Order to Show Cause was issued ordering all of the creditors to show cause why the court should not enter a declaratory judgement accepting the assignee's proposed classification of claims against the trust. (R.304) The proposed classifications are set forth at page 305 through 308 of the record. On the 12th day of April, 1977, a hearing was held before the Honorable VeNoy Christoffersen, at which time the respondent and many other parties presented objections to the proposed priorities and to the claims made against the trust. That hearing was continued until May 23, 1977, at which time the court heard further arguments concerning the proposed priority classification and the claims against the trust. Both of the hearings consisted of arguments and statements by various claimants. None of the statements were under oath and no testimony was presented to the court. Thereafter, on August 2, 1977, the court issued a declaratory judgement accepting with minor changes the proposed classification and the creditors as submitted by the trustee. (R.357) The respondents Notice of Appeal was filed on the 31st day of August, 1977.

On October 12, 1976, Elray Robinson, trustee for Cache Valley Syndicate Trust, a Utah statutory assignment for the benefit of creditors, filed a lawsuit against Elmer Erickson and multiple other defendants. The claim against

Elmer Erickson alleged that he was indebted to the trust for the sum of \$92,000 plus millions of dollars for special and punitive damages. A counter claim was filed against Cache Valley Syndicate Trust by Elmer Erickson claiming that the trust was indebted to him for monies he had advanced on its behalf in the sum of \$100,000 and claiming that Elmer Erickson was a creditor of the trust to the extent that he had advanced said money. That case was transferred to Judge Palmer of the Second Judicial District Court, Davis County, and has not yet been litigated.

The lower court at its hearing on May 23, 1977, stated that it would rule on the priority classification on the basis of the arguments and the memorandums submitted to it. The court stated that it was not going to rule on the claims against the trust at this time, but would leave that issue open for an evidentiary hearing. (Transcript P. 103 - 106)

The Declaration of Trust which created Cache Valley Syndicate Trust was recorded in the Cache County Recorder's Office on November 1, 1974, Book 134 Page 754 Filing Number 363576. (R. 3) That trust stated in part as follows:

"Further, it is understood and agreed that we and such other unitholders as may come into said association are associated together merely and solely for the purpose of being cestuis que trustent of the trust hereby created, thus being entitled to the equitable and beneficial interest of all profits and property, both personal and real, of the trust estate hereby created

We do now covenant and declare that the following are and shall be the fundamental articles of said trust by which we and all persons who at any time hereafter may transact any business with the said trustee shall be bound and concluded.

4. The purpose of this trust is to acquire by purchase, lease, exchange or units, or otherwise, (See attached list marked Exhibit A), and to distribute the proceeds therefrom to the cestuis que trustent, and to do all and other necessary and proper things incident to the conducting of said business aforesaid in such manner as may be to the best interest and profits of the trust estate, subject, however to this declaration of trust.
6. The trustee is hereby granted full and complete power to sell, encumber or otherwise deal with said property and to that end to execute all contracts, transfers, assignments and all other instruments to pass title to trust property, bind the trust estate,
9. The trustee shall annually or oftener divide the net income from the trust property among the unit holders; . . . His decisions as to what constitutes net income shall be conclusive on all parties.
10. The trustee shall not have any power or authority to enter into any contract that shall bind or affect the unitholders personally . . . and all persons or corporations extending credit to, contracting with, or having any claims against the trustee shall look only to the property of the trust for the payment of any such contract or claim, or for the payment of any debt, damage, judgment, or decree, or of any money that may otherwise become due or payable to or from the trustee, so that neither any trustee or unitholder, present or future, shall be personally liable therefor.
15. Upon the termination of this trust the then unitholders shall participate in the distribution of all properties belonging prorata to each unitholder according to the value and number of units held by each."

ARGUMENT

POINT I

THE LOWER COURT COMMITTED ERROR IN ESTABLISHING A PRIORITY CLASSIFICATION FOR CREDITORS AND BENEFICIAL INTEREST HOLDERS.

The lower court in its order established a priority classification consisting of three classes. The first class was made to include all unsecured creditors and the majority of beneficial interest holders of Cache Valley Syndicate Trust. The second classification consisted of those beneficial interest holders who were personally involved in the supervision of trust matters. The third classification included all claims of Elmer G. Erickson and all claims not placed in classes one and two.

It is the contention of the appellant that the court committed error in accepting and establishing such a classification. The appellants contend that the plan of distribution which should be applied in this case is as follows:

1. All expenses of the administration of the assignment.
2. All unpaid taxes.
3. (a) All creditors who have claims for wages or who hold a secured position.
(b) All unsecured creditors.
4. Beneficial interest holders who have not

participated in the mismanagement of the

trust, for the amount of their claim less any preferences that they have previously obtained from the trust.

5. All of the beneficial interest holders who have participated in the mismanagement of the trust, for the amount of their claim less any preferences that they have previously obtained from the trust.

There seems to be no disagreement between the parties as to those claims set forth in Sections 1, 2, and 3 (a) in the preceding paragraph. The dispute arises as to those claims set forth in paragraph 3 (b), 4 and 5. It is the position of the appellant that a beneficial interest holder is not a creditor of the trust and consequently can not participate in the distribution of the assets until all creditors are paid in full. The respondent in its proposed classification and the court in its declaratory judgement placed all of the unsecured creditors in the same classification as the beneficial interest holders, thereby ordering that all of said parties participate equally in the assets to be distributed. Section 6-1-10 Utah Code Annotated (1953 as amended) states that an assignee for the benefit of creditors shall make a fair and equitable dividend among the creditors of the assets in his hand in proportion to their claims. It is clearly the intent of the law that an assignee pay the creditors before any money is returned to the investors in the business, trust or entity which has

been assigned for the benefit of creditors. The issue then before this court is whether or not a beneficial interest holder in a declaration of trust is in fact a creditor as contemplated by Section 6-1-10 Utah Code Annotated.

The Declaration of Trust which is quoted in part in the Statement of Facts clearly establishes that the beneficial interest holders are the equitable owners of the trust. As equitable owners they are bound by the terms and conditions of the Declaration of Trust. Paragraph 4 of that agreement states that the beneficial interest holders are entitled to the distribution of the proceeds of the trust. In paragraph 6 the trustee is granted the full power to sell, encumber, and otherwise deal with the trust property, and to bind the trust estate by his actions. Paragraph 9 provides that the trustee shall distribute to the beneficial interest holders the net income. Paragraph 10 provides that the beneficial interest holders shall not be personally liable and that all creditors and other claimants shall look to the property of the trust for the payment of their claims, and not to the personal liability of the beneficial interest holders.

It is clear from the Declaration of Trust that the beneficial interest holders are to receive the profits, net income or proceeds after the obligations incurred by the trustee are paid. The beneficial interest holders are to be

absolutely bound by any action taken by the trustee in incurring debts and satisfying the same. The trust is very explicit in stating that the extent of the liability that the beneficial interest holders assume is the investment they have made in the trust. Therefore, it is clear that the Declaration of Trust anticipated that creditors and other parties dealing with the trust would have first claim against the trust properties and that any profits or net income left thereafter would be distributed to the beneficial interest holders. A statutory assignee operating under the supervision of the court may not distribute the assets in such a manner as to defeat the Declaration of Trust and the rights of the creditors and beneficial interest holders created thereunder. If the priority of claims established by the District Court is allowed to stand, the District Court will have nullified the Declaration of Trust and placed the beneficial interest holders on the same level as creditors dealing with the trust under the trust agreement.

The assignment for the benefit of creditors of Cache Valley Syndicate Trust can be compared with the dissolution of a corporation. In fact there are many similarities between the position held by the beneficial interest holders and that of a share holder in a corporation. A beneficial interest holder does not assume personal liability for the debts of the trust and has no authority to control the affairs of the trust. The authority reserved to the trustee is the same as the authority reserved to the officers of a corporation.

Section 16-10-97 of the Utah Code Annotated (1953 as amended) provides that in a decree of dissolution of a corporation the assets shall be distributed in the following manner:

1. The payment of all cost and expense of dissolution.
2. The payment of debts, obligations and liabilities.
3. The distribution of the remaining assets to the share holders.

It is the position of the appellant that the beneficial interest holders are the equitable owners of Cache Valley Syndicate Trust and consequently stand in a position similar to that of share holders of a corporation. They are not personally liable for indebtednesses incurred by the trust, but their investment is subject to the payment of the just debts and obligations owed to creditors who have dealt with the trust.

American Jurisprudence, "Assignment for the Benefit of Creditors," Section 109, Page 394, states that a creditor is defined as one who has a definite demand against the assignor of a cause of action capable of adjustment and liquidation at trial. It also states the rights of creditors are fixed as of the date of the assignment, and if they are not creditors at the date of the assignment they have no right to participate in the proceeds. A beneficial interest holder of Cache Valley Syndicate Trust under the terms of the trust declaration did

not have, at the date of assignment, for the benefit of creditors

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any right to instigate a legal action against the trust for any monies except the distribution of the proceeds or net income derived from the trust. The assignment for benefit creditors was filed specifically on the basis that Cache Valley Syndicate Trust was insolvent. Consequently, there were no proceeds or net income to be distributed to the beneficial interest holders. Since the beneficial interest holders have no legal claim against the trust they can not be considered creditors. The most a beneficial interest holder can claim is a pro rata distribution of the trust's assets after all debts and encumbrances incurred by the trust have been paid in full.

As between the beneficial interest holders, those beneficial interest holders who have participated in the mismanagement of trust funds would have claims that would subordinate to those beneficial interest holders who did not participate or engage in such mismanagement. This position is not contested by the respondent. Consequently, the proposed classifications 4 and 5 would be appropriate.

The claim of any beneficial interest holder would have to be reduced by the amount of any preference that he have received prior to the assignment for the benefit of creditors. This would constitute an issue of fact which should be resolved by the court. The issue of whether a beneficial insurance holders claim should be placed in class 4 or 5 is also a matter of fact to be determined after an evidentiary

hearing. Such a hearing has not been held by the court. The court stated that such a hearing should be held, but then entered its order without such a hearing. (T. 103 - 106)

POINT II

BONNIE ERICKSON'S CLAIM AS A BENEFICIAL INTEREST HOLDER SHOULD NOT BE TREATED ANY DIFFERENTLY THAN THAT OF OTHER BENEFICIAL INTEREST HOLDERS WHO HAVE NOT BEEN INVOLVED WITH MISMANAGEMENT OF THE TRUST PROPERTY.

The record which has been forwarded to this court is absolutely void of any affidavits, testimony or other evidence indicating that Bonnie Erickson, one of the appellants herein, has ever been involved in dealing with the trust property or in the mismanagement of trust property. She became a beneficial interest holder at the time Cache Valley Syndicate Trust was organized by reason of monies invested in Financial Service Company. Since that time she has not held the position of a trustee or any other office with Cache Valley Syndicate Trust. In the hearing held before the court an objection was made as to the classification of Bonnie Erickson. Mr. Daines, the attorney for the trustee, stated:

"I think Mr. Phillips raised a valid question as to that claim."

The Court stated:

"Then as to Bonnie Erickson I assume this would have a different position than Elmer. [Erickson]"
(T. 73 line 1 - 20)

The declaratory judgement issued by the court placed

Bonnie Is. Erickson in class three. There is no evidence to
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justify such classification. The appellant respectfully requests that the court order Bonnie Erickson be treated the same as any other beneficial interest holder who has not been involved in the mismanagement of trust property.

POINT III

ANY DESIGNATION OF CREDITORS AND DISTRIBUTION OF ASSETS BY THE TRUSTEE SHOULD BE MADE SUBJECT TO THE PENDING LAWSUIT FILED BY ELMER ERICKSON AGAINST CACHE VALLEY SYNDICATE TRUST.

As indicated in the Statement of Facts, Elmer Erickson has filed a counter claim against Cache Valley Syndicate Trust in the approximate sum of \$100,000 for monies advanced to the trust as a creditor. This case has not yet been litigated. It is the position of the appellant that the District Court may not in the declaratory judgement establish the classification of creditors and the claims of creditors without making such order subject to the results of said lawsuit. If the court's declaratory judgement stands without being altered, the trustee would have the authority to completely distribute the assets of the trust to the creditors that have been approved by the court. Such a distribution would make it impossible for Elmer Erickson to receive a distribution of assets if a trial court should determine that he is a creditor who is entitled to share equally with other unsecured creditors. It should be noted that Judge Christensen

ruled that the claims of creditors were not to be finally determined by the hearing held before his court, but were to be open subject to litigation and other objections. The order he issued, however, did make a final determination as to creditors, and by doing so eliminated any claim that may be established through the lawsuit that is presently pending in the court.

CONCLUSION

The appellant contends that the declaratory judgement issued by the Honorable VeNoy Christoffersen should be modified to provide that creditors should be paid before any assets are distributed to beneficial interest holders. The appellant, Bonnie Erickson, claims that she is entitled to a distribution of the assets the same as any other beneficial interest holder who has not been involved in mismanagement of trust funds. The appellant, Elmer Erickson, contends that the court should not make a final determination of the creditors and the amounts of money to be distributed to the creditors until such time as the lawsuit he has against Cache Valley Syndicate Trust is fully litigated.

Respectfully submitted this 19th day of January, 1978.

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CERTIFICATE OF DELIVERY

A copy of the foregoing Brief of Appellant was delivered to the Attorney for the Respondent, N. George Daines, III, 128 North Main Street, Logan, Utah 84321 on this day of January by Robert V. Phillips.

ROBERT V. PHILLIPS, Attorney at Law