2001

Travelers Express Company, Inc. v. The State of Utah : Brief of Appellant

Utah Supreme Court

L. Ridd Larson; Douglas Matsumori; Ray, Quinney and Nebeker; Attorney for Plaintiff-Respondent.
David L. Wilkinson; Attorney General; Joseph P. McCarthy; Assistant Attorney General; Attorneys for Defendants-Appellants.

IN THE SUPREME COURT OF THE STATE OF UTAH

TRAVELERS EXPRESS COMPANY, INC., a Minnesota corporation,

Plaintiff-Respondent.

-v-

STATE OF UTAH, LINN C. BAKER, in his capacity as Treasurer of the State of Utah, and RICHARD G. JENSEN, in his capacity as auditor of the State of Utah,

Defendants-Appellants.

CASE NO. 19216

BRIEF OF DEFENDANTS-APPELLANTS

DAVID L. WILKINSON
Attorney General
JOSEPH P. McCARTHY
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Defendants-Appellants

L. RIDD LARSON
DOUGLAS MATSUMORI
RAY, QUINNEY & NEBEKER
400 Desert Building
Salt Lake City, Utah 84111-1996

Attorney for Plaintiff-Respondent

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L. RIDD LARSON
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400 Desert Building
Salt Lake City, Utah 84111-1996

Attorney for Plaintiff-Respondent

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STATEMENT OF THE KIND OF CASE

Plaintiff brought this action for a declaratory judgment to determine whether it was required to file information required by the Treasurer under the Utah Unclaimed Property Act and to pay over amounts claimed by the Treasurer for uncashed money orders issued by Plaintiff.

DISPOSITION IN THE LOWER COURT

Summary Judgment was entered by the District Court in favor of Plaintiff and against the Defendant on cross motions for summary judgment, defendants appeal.

RELIEF SOUGHT ON APPEAL

Defendants seek reversal of the judgment and judgment in favor of Defendants as a matter of law.

STATEMENT OF FACTS

Plaintiff issues money orders throughout the United States. Some money orders issued in Utah are never cashed. The Treasurer of the State of Utah claimed that under the Utah Unclaimed Property Act[1] plaintiff had a duty to file reports concerning these funds and to pay funds over to the Treasurer. Plaintiff filed reports and paid funds to the Treasurer under an agreement which preserved plaintiff's right to file an action to

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1. Section 78-44-1, et seq. U.C.A. 1953

determine whether it had a duty to file reports and to pay these funds to the Treasurer. Plaintiff claimed that under the six year statute of limitations[2], the rights of the payee-owner are extinguished and consequently there is no "sum payable" seven years after the money order was issued which could be "presumed abandoned" after seven years at which time plaintiff would have to file its report with the Treasurer.[3]

The parties stipulated that the sole question involved is whether the six year limitation precludes the Treasurer from requiring reports and transfer of funds under the Utah Act.

ARGUMENT

POINT I

THE UTAH DISPOSITION OF UNCLAIMED PROPERTY ACT WAS INTENDED TO PREVENT LOSS TO THE OWNER OF PROPERTY IN THE CUSTODY OF OTHERS BY PUBLIC OR CORPORATE ESCHEAT.

Prior to the enactment of the Utah Unclaimed Property Act, unclaimed property escheated to the State. One of the purposes the Legislature had in mind in adopting the Act was to prevent forefeiture of the owner's property. In general this purpose is accomplished by requiring the person in possession of such property to transfer possession to the Treasurer who has a duty to try to locate the owner. The owner's right to recover

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2. Section 78-12-23 U.C.A. 1953
3. Section 78-44-2, U.C.A. 1953

his property from the Treasurer is not time limited and an escheat does not occur. The Treasurer contends that the Utah Act removes limitations periods which might otherwise have been applicable between the owner and the person in possession of the property in cases covered by the statute.

The Act was intended to prevent forfeiture by private escheat or unjust enrichment of a person or entity in possession which has no equitable claim to funds or property in its possession merely because the owner had failed to demand payment within the six year period.

The Treasurer contends that Plaintiff and other entities which issue money orders or similar instruments have no equitable claim to funds which remain in possession when a money order is not presented for payment. At the time the money order is issued, the owner pays all of the money (and perhaps a fee as well) to the issuer which it will be required to pay at some future date. The issuer receives income from investment of funds received for money orders until the money order is presented for payment.

Section 78-48-8 in the Act as it was passed in 1957 covered "... all intangible property..." not otherwise covered in the Act. In 1959 the legislature specifically included the term "money order."

It is clear that the 1959 amendment evidenced the Legislature's intent that the six year limitation not apply.

The Legislature intended that from the time of abandonment until the owner is located that all of the people through the Uniform School Fund, not the entity, have the use and benefit of this property. It further determined that transfer of funds to the Treasurer would relieve the person in possession from any liability to the owner.

POINT II

THE SIX YEAR LIMITATION PERIOD IS INAPPLICABLE

Some cases have held that a limitation of action period not only bars the remedy but bars the right as well.[4] The general rule[5] and later case law[6] hold that statutes of limitation are procedural bars only and the legislature has the power to extend the period as to causes of action that have not been time barred by the effective date of the limitation period.

The Treasurer does not claim that the legislature can constitutionally revive causes of action that have been time barred by then applicable statutes of limitations.[7]

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4. Ireland v. Mackintosh, 61 Pac 901 (Utah)
5. See Statutes of Limitations 63 Harvard Law Review 1177
6. Del Monte Corp. v. Moore, 580 P.2d 24 (Utah)
7. Douglas Aircraft Co. v. Cranston, 374 P.2d 819 (Cal), 98 A.L.R. 2d 298.

The basic question is only whether the Utah Legislature intended to effect a change in the rights of the owner and issuer either as a change in the law of property or in the limitation period applicable. Under the commonly accepted rules of statutory construction the Treasurer submits that the intent of the Legislature was to change the limitation period for otherwise the Act could never become effective.

Plaintiff may argue that the six year limitation permits it to refuse payment to all of its customers who present money orders for payment after six years. It would seem that this position has not been taken as a matter of actual practice by Plaintiff. What is clear is that Plaintiff cannot waive the statute for customers and at the same time urge the statute against the Treasurer under the Act.[8]

POINT III

RULES OF STATUTORY CONSTRUCTION COMPEL THE APPLICATION OF THE UTAH DISPOSITION OF UNCLAIMED PROPERTY ACT TO THIS CASE.

There are many rules for construing statutes, and all of these rules are merely aids to the court to determine what a

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8. South Carolina Tax Comm. v. Metropolitan Life Ins. Co., 221 S.E.2d 522

legislature intended to accomplish when it enacted or amended a statute.

A statute carries with it a presumption that it is valid and that words and phrases were chosen advisedly to express the legislative intent.[9] The court does not look to correlation or arrangment of words alone but may look to reason, spirit and sense of the legislation as indicated by the entire context and subject matter of statutes dealing with the subject.[10] The court should give an act such a construction as will accomplish its purpose.[11] A statute must be construed with reference to the objects sought to be accomplished by it.[12] Where there is doubt or uncertainty concerning interpretation and applicable of statutes, they should be reviewed in light of the conditions and necessities which they are intended to meet and objectives sought to be obtained thereby.[13]

When a statute has been enacted for a particular purpose and another statute has been enacted at another time for

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9. Gord v. Salt Lake City, 20 Utah 2d 138, 434 P.2d 449.
10. Masich v. U.S. Smelting, Rfg. & Min. Co., 113 Utah 101, 191 P.2d 612, app. dism. 335 U.S. 866, reh. den. 335 U.S. 905.
11. Ralph Child Const. Co. v. State Tax Comm., 12 Utah 2d 53, 362 P.2d 422.
12. Conover v. Bd. of Education of Nebo Sch. Dist., 110 Utah 4564, 175 P.2d 202, reh. den. k86 P.2d 588.
13. Continental Tel. Co. v. State Tax Comm., 539 P.2d 447 (Utah); Grant v. Utah State Land Board, 26 Utah 2d 100, 485 P.2d 1035.

a different purpose and there is apparent conflict, the statutes should be looked at together with a view to reconciling apparent conflict and giving each statute its intended effect insofar as possible without nullifying the other.[14]

A preference should be given to latter statutes over prior ones where there is a conflict.[15] The latter statute is controlling.[16]

The legislature does not intend to do a vain and useless act.[17]

The Treasurer submits that the Disposition of Unclaimed Property Act was intended to be a remedial act. The intention was to require the holder of the abandoned property to report to the Treasurer such property and to pay it over to the Treasurer in accordance with the terms of the Act. It would be a vain and useless act to require a holder of property to report on and pay over such property to the Treasurer at any time after the six year statute had run if it intended to terminate the right or the right of action of the owner and vest the right or prevent anyone

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14. In re Utah Savings & Loan Ass'n., 21 Utah 2d 169, 442 P.2d 929; Chaturn v. Terr)., 107 Utah 2d 340, 153 P.2d 941; Smith v. Am. Packing, 102 Utah 351, 130 P.2d 951.

15. Bateman v. Board of Examiners, 7 Utah 2d 221, 322 P.2d 381.

16. Pacific Intermountain Express v. State Tax Comm., 7 Utah 2d 15, 316 P.2d 549.

17. Pacific Northwest Bell Tel. Co. v. Dept. of Revenue, 481 P.2d 556 (Wash.).

from exercising a claim or right on behalf of the owner against the holder.

The six year statute has been Utah law as to written contracts since at least 1900. The Act became law in 1957. The only reasonable construction which will give both statutes effect without nullifying the Act is to construe the six year statute to remain effective except as it is modified by the Act. Giving this construction allows both statutes to have maximum effect. As applied to property subject to the Act, the limitation is extended as to all deposits, bank accounts, life insurance proceeds and money orders and other property subject to the Act. If the construction urged by plaintiff were to be adopted, the property would never be turned over to the State Treasurer, a result obviously not intended by the Act.

Defendants are aware that there are decisions contrary to their position. For example, Washington has construed its act to allow the construction sought by the plaintiff.[18] However, its Supreme Court in a 4-3 decision held that since the Washington Act eventually provided for escheat, the right of the Department was derivative from the owner, and since the owner was cut off, the state was likewise cut off. The Department by regulation could not set aside the limitation applying to the

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18. Pacific Northwest Bell Tel. Co. v. Dept. of Revenue, supra,

wner and the legislature which did not enact Section 16 of the Uniform Act nor later amend the Act to include Section 16 as urged by the Department did not intend otherwise. The majority acknowledged that the Uniform Act (like Utah's Act) has eliminated escheat. The three dissenting justices, applying some of the rules of construction above, held that Section 16 was not needed, and that the legislative intent in adopting the statutory plan was clear. The dissenters also thought that escheat, when the claimant had died and there was no one else who could make claims to the assets, was not significant.

While the California Act apparently contained Section 16 of the Uniform Act, the Supreme Court held that the section did not operate retroactively to revive cases already barred by the statute of limitations.[19] It did hold that claims not barred by the effective date of the Act were subject to the provisions of the Act.

On March 11, 1983 (after this case was argued below) the Massachusetts Supreme Court decided Treasurer and Receiver General v. John Hancock Mutual Life Insurance Co.[20] In that case John Hancock made essentially the same argument that Plaintiff makes in this case. It argued that the six year

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19. Douglas Aircraft Co. Inc. v. Alan Cranston, 374 P.2d 819.

20. 446 N.E.2d 1376

statute precluded that need to report property in its possession since the property was not "abandoned property"at the end of the ten or fourteen year dormancy period in effect in 1980. The Massachusetts court answered this argument as follows:

> The Legislature could not have meant to allow statutes of limitations governing the various types of property defined as abandoned in G.L. c. 200A, §§1-6, to determine randomly the scope of the abandoned property law. Most typical statues of limitations are shorter than the ten or the fourteen year dormancy periods in effet under the abandoned property and unclaimed funds laws. If John Hancock's argument were to prevail, no type of abandoned property subject to a typical statute of limitations could ever be collected by the Treasurer. Thus, John Hancock's construction of the statute would render the statute difficult, if not impossible, to enforce. It also would create a situation in which the purposes of the abandoned property act, to reunite the property with its owners and to employ the property for public purposes in the interim, could not be achieved. "An intention to enact a barren and ineffective provision is not lightly to be imputed to the Legislature." Insurance Rating Bd. v. Commissioner of Ins., 356 Mass. 184, 189, 248 N.E.2d 500 (1969). Therefore, we read §7(c) as applying only to that property for which the statute of limitations had expired as of the effective date of St. 1950, c. 801.
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> Under this interpretation, the purpose of §7(c) was to require only prospective reporting of abandoned property. in this way, no person or entity who had relied on the use of the funds after expiration of a statute of limitations and before passage of St.1950, c. 801, would be disadvantaged. This interpretation is further supported by the repeal of this version of §7(c) in 1975, because that section had become an

unnecessary anachronism by then. See St. 1975, c. 277, §4.[21]

The Court also held that

> In addition, the concept of a statute of limitations is autithetical to the purposes of the abandoned property act. If we adopted John Hancock's construction of the statute, we would permit every entity to make a self-serving interpretation of the abandoned property and unclaimed funds laws, and to use that interpretation to its benefit by failing to report such property and barring any later enforcement action by a statute of limitations. We are unwilling to attribute to the Legislature an intent to grant unfettered discretion to the holders of abandoned property to determine what property must be reported, and therefore what property is owed to the Commonwealth. We affirm the judge's ruling that no statute of limiations bars the Treasurer's action against John Hancock.[22]

It is respectfully submitted that while the Utah Act is based on the Uniform Act, but omitting Section 16, the Court should construe the Utah Act in a manner that will give the effect to the legislation that was intended by the Legislature. The Treasurer submit that the view of the Massachusetts Court is a for more reasonable interpretation than is that of the Washington Court (4-3 decision).

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21. 446 N.E.2d 1376, 1380-1381
22. 446 N.E.2d 1376, 1381-1382

This court held In the Matter of the Estate of Louis A. Grosser[23] that a will witnessed by a 16 year old boy in 1974 was valid. The Uniform Probate Code, adopted thereafter, in Section 75-2-505(1) required a witness to be 18. Section 75-8-101(2)(a) provides that the Utah Uniform Probate Code takes effect on July 1, 1977, and applied to all wills of decedents dying thereafter. Grosser died on April 17, 1981. Section 75-2-506 provides that a will is valid if at the time of making the execution complies with the law of the place where the will is executed. This language was held to be broad enough to include wills executed in Utah. In the Matter of the Estate of Buffi,[24] the Idaho Supreme Court construed I.C. Section 15-2-506 (identical to Section 75-2-506) as a section only to cover wills made in other jurisdictions, and not to be used to validate Idaho wills. Justice Howe, speaking for a unanimious court said, "... We will not lightly ascribe an interpretation which will produce such an incongruous result. Furthermore, we are hesitant to assume that the Legislature, in adopting the Uniform Probate Code, intended to invalidate wills which had been properly made under prior law in this state."

Acts based on Uniform Acts, like any other acts of the Legislature should be construed to make sense.

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23. No. 18075, January 14, 1983
24. 98 Idaho 354, 564 P.2d 150 (1977)

SUMMARY AND CONCLUSION

The Treasurer prays the Court to reverse the decision of the District Court and to declare as a matter of law that the Utah Uniform Disposition of Unclaimed Property Act applied to all property described in the statutes in the possession of the plaintiff on the effective date of the Act and for six years prior thereto.

DAVID L. WILKINSON
Attorney General

JOSEPH P. MC CARTHY
Assistant Attorney General

MAILING CERTIFICATE

This is to certify that I mailed two true and correct copies to the Attorney for the Plaintiff-Respondent, L. Ridd Larson, RAY, QUINNEY & NEBEKER, 400 Desert Building, Salt Lake City, Utah 84111-1996 on this 2nd day of June, 1983.